

## Explanatory Note

# New Clause 6: Carried interest and disguised investment management fees: "arise"

## Summary

1. This New Clause ensures that sums arising to a fund manager as investment management fees or carried interest cannot be sheltered from tax through arrangements that have the effect that the amounts arise to other persons.

## Details of the new clause

2. Subsection (1) introduces new sections 809EZDA and 809EZDB into ITA 2007.
3. Section 809EZDA addresses situations where sums arise to a person ("B") connected with the fund manager ("A"), but not where "B" is a company.
4. Section 809EZDA(1) sets out circumstances where new section 809EZDA applies.
5. Section 809EZDA(2) states that where section 809EZDA(1) applies, the sums in question are treated as arising to "A".
6. Section 809EZDA(3) determines the time at which the sum arises to "A".
7. Section 809EZDA(4) applies the meaning of "connected" from section 993 of ITA 2007, adapted for the purpose of this legislation.
8. Section 809EZDB addresses situations where sums arise to a connected company, or to an unconnected person, and that company or other person has the power to enjoy those sums.
9. Section 809EZDB (1) sets out that section 809EZDB applies where a sum arises to a company connected with A, or to a person unconnected with A, and A or a person connected with A has the "power to enjoy" the sum or any part of it
10. Section 809EZDB(2) sets out the 'enjoyment conditions' - that is, the conditions that have to be met for the person "B" to be considered to have power to enjoy the sums arising to them.
11. Section 809EZDB(3) ensures that where the conditions are met, the sum or part arises to A for tax purposes.
12. Section 809EZDB(4) determines the time at which the sum arises to "A".
13. Section 809EZDB(5) provides further interpretation as to when the 'enjoyment conditions' are met in relation to an amount. It allows the overall effect of all the relevant circumstances to be taken into account.

14. Section 809EZDB(6) and (7) exclude certain circumstances from the scope of section 809EZDB, but qualified by section 809EZDB(8) where there are arrangements that have a main purpose of avoiding tax.
15. Section 809EZDB(9) ensures that where a sum that would otherwise arise to A is reinvested in a collective investment scheme the sum will be treated as arising to A.
16. Section 809EZDB(10) applies the meaning of "connected" from section 993 of ITA 2007, adapted for the purpose of this legislation.
17. Subsection (2) omits the words 'directly or indirectly' from section 809EZA(3)(c) of ITA 2007 as the changes made by this new clause remove the need for those words.
18. Subsection (3) sets out the operative date for the changes made by this new clause.
19. Subsection (4) imports necessary definitions

## Background note

20. The government introduced legislation in the Summer Finance Bill 2015 concerning the taxation of 'carried interest', a part of a fund manager's rewards that is based on the performance of the fund. The legislation ensures that where carried interest is chargeable to tax under the capital gains tax rules, the full amount of the economic gain is charged to capital gains tax.
21. The government also introduced changes to the legislation concerning income tax on disguised investment management fees to complement the capital gains tax changes.