

Explanatory Note: draft clause

Partnerships: bare trusts

Summary

1. This clause introduces new provisions that have the effect of applying the partnership taxation rules in Part 9 ITTOIA 2005 and Part 17 CTA 2009, and the tax framework rules in TMA 1970, to beneficiaries of bare trusts where the trustee is a partner in a partnership and the beneficiary is chargeable to tax on the partnership's profits.

Details of the clause

2. Subsection (1) inserts New Section 848A into the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 05).
3. New Section 848A provides that where a partner in a firm is partner as a trustee for a beneficiary absolutely entitled to their share of the partnership profits, and the beneficiary is chargeable to tax on the share of partnership profits, the beneficiary of that trust is to be regarded as a partner of the firm for the purposes of Part 9 ITTOIA 05.
4. Subsection (2) inserts New Section 1258A into the Corporation Tax Act 2009 (CTA 09).
5. New Section 1258A provides that where a partner in a firm is partner as a trustee for a beneficiary absolutely entitled to their share of the partnership profits, and the beneficiary is chargeable to tax on the partnership profits, the beneficiary of that trust is to be regarded as a partner of the firm for the purposes of Part 17 CTA 2009.
6. Subsection (3) amends the Taxes Management Act 1970 (TMA 70)
7. Paragraph (a) inserts new subsection (10B) into section 12AA.
8. New subsection (10B) provides that where a partner in a firm is partner as a trustee for a beneficiary absolutely entitled to their share of the partnership profits, and the beneficiary is chargeable to tax on the partnership profits, the beneficiary of that trust is to be regarded as a partner of the firm for the purposes of TMA 1970.
9. Paragraph (b) inserts a reference to new subsection (10B) into s118 (interpretation).
10. Subsection (4) provides that new section 848A ITTOIA 05 applies for tax years from 2018-19 onwards.
11. Subsection (5) provides that new section 1258A CTA 09 applies for accounting periods beginning on or after 1 April 2018.
12. Subsection (6) provides that amendment of TMA 70 under subsection (3) has effect for tax years from 2018-19 onwards.

Background note

13. This clause makes it clear that where a beneficiary of a bare trust is absolutely entitled to any income of that bare trust consisting of profits of a firm in which a trustee of the bare trust is a partner, then they will be subject to the same rules for partnerships in Part 9 of ITTOIA, Part 17 of CTA 2009 and TMA as actual partners.
14. If you have any questions about this change, or comments on the legislation, please contact Robert Nott on 07748 634689 or email: Robert.nott@hmrc.gsi.gov.uk.

Allocation of firm's profits or losses between partners

Summary

1. This clause introduces new provisions to clarify the allocation of profits or losses of a partnership between partners for tax purposes.

Details of the clause

2. Subsection (1) inserts new subsection (4) into section 847 of Income Tax (Trading and Other Income) Act 2005 (ITTOIA 05).
3. New subsection (4) defines what is meant by an indirect partner in a partnership for the purposes of Part 9 ITTOIA 2005, that being a person who is a partner in a partnership which is itself a partner in the underlying partnership, either directly or indirectly via any number of intermediate partnerships.
4. Subsection (2) amends section 850 of ITTOIA 05:
5. Paragraph (a) amends subsection 850(1) to provide that a partner's profit share for income tax purposes will be equal to the partner's percentage of the profits calculated under section 849 ITTOIA 05.
6. Paragraph (b) inserts new subsections (1A), (1B) and (1C).
7. New subsection (1A) defines "the partner's percentage" for the purposes of section 850(1) to mean the partner's percentage share of the firm's profit or loss as set out in the profit-sharing arrangements, or their actual share of profit or loss for the period expressed as a percentage.
8. New subsection (1B)(a) defines "the firm's total profit or loss" for the purpose of new Subsection (1A) as the total of the profits and losses of all trades carried on by the firm for tax before any adjustment purely for the purpose of calculating tax liability.
9. New subsection (1B)(b) requires the partner's share of the total profit or loss to be determined in accordance with the firm's profit-sharing arrangements in place during the period.
10. New subsection (1C) provides that, for a person who is an indirect partner in an underlying partnership that carries on a trade ("the underlying trade"), the period of account to be considered in new subsection (1A) and (1B) is that of the underlying trade.
11. Subsection (3) amends section 1257 of the Corporation Tax Act 2009 (CTA 09) to define what is meant by an indirect partner in a partnership for the purposes of Part 17 CTA 09, that being a person who is a partner in a partnership which is itself a partner in the underlying partnership, either directly or indirectly via any number of intermediate partnerships.
12. Subsection (4) amends section 1262 of CTA 09.

13. Paragraph (a) amends subsection (1) to provide that a partner's profit share for corporation tax purposes will be equal to the partner's percentage of the profits calculated under section 1259 CTA 09.
14. Paragraph (b) inserts New Subsections (1A), (1B) and (1C).
15. New subsection (1A) defines "the partner's percentage" for the purposes of section 850(1) to mean the partner's percentage share of the firm's profit or loss as set out in the profit-sharing arrangements, or their actual share of profit or loss for the period expressed as a percentage.
16. New subsection (1B)(a) defines "the firm's total profit or loss" for the purpose of new Subsection (1A) as the total of the profits and losses of all trades carried on by the firm for tax before any adjustment purely for the purpose of calculating tax liability.
17. New subsection (1B)(b) requires the partner's share of the total profit or loss to be determined in accordance with the firm's profit-sharing arrangements in place during the period.
18. New subsection (1C) provides that, for a person who is an indirect partner in an underlying partnership that carries on a trade ("the underlying trade"), the period of account to be considered in new subsection (1A) and (1B) is that of the underlying trade.
19. Subsection (5) provides that the amendments of ITTOIA 05 made by subsections (1) and (2) take effect for periods of account beginning on or after the day on which this Act is passed.
20. Subsection (6) provides that the amendments of CTA 09 made by subsections (3) and (4) take effect for accounting periods beginning on or after the day on which this Act is passed.

Background note

21. The clause provides that the allocation of profit for tax purposes between partners must be the same as the allocation of commercial profit between the partners.
22. HMRC does not intend to restrict any partnership's ability to allocate profits between partners on a commercial basis.
23. If you have any questions about this change, or comments on the legislation, please contact Robert Nott on 07748 634689 or email: Robert.nott@hmrc.gsi.gov.uk

Notional trades of indirect partners

Summary

1. This clause introduces new provisions to provide that an indirect partner in a partnership is considered to carry on a notional trade or business in respect of their interest in that partnership for tax purposes and explains the basis periods for the notional trade or business.

Details of the clause

2. Subsection (1) provides for the amendment of the Income Tax (Trading and Other Income) Act 2005 as follows.
3. Subsection (2) inserts new section 852A for notional trades of indirect partners.
4. New section 852A(1) provides that the section applies for the notional trade of a partner if the partnership they are a partner in is itself a direct or indirect partner of a trading partnership (the underlying partnership) from which the partnership (that they are directly a partner in) has trading profits or losses arising.
5. New subsection 852A(2) provides substituted rules for section 852(2) to (5)
6. Subsection 852(2) as substituted by new section 852A(2) provides the partner's notional trade commences on the later of their becoming an indirect partner in the underlying partnership, or that underlying partnership commences carrying on the underlying trade.
7. Subsection 852(3) as substituted by new section 852A(2) provides that where the partner themselves actually carried on the trade prior to the underlying partnership, the partner's notional trade commences when the partner begins carrying it on.
8. Subsection 852(4) as substituted by new section 852A(2) provides that the partner's notional trade permanently ceases on the earlier of the partner ceasing to be an indirect partner in the underlying partnership or the underlying partnership permanently ceasing to carry on the underlying trade.
9. Subsection 852(5) as substituted by new section 852A(2) provides that if the partner actually carries on the trade after the underlying firm permanently ceases carrying it on, the partner's notional trade ceases when they themselves (the partner) cease carrying it on.
10. Subsection (3) inserts new section 855A for notional businesses of indirect partners
11. New section 855A(1) provides that the section applies for the notional business of a partner in a firm if the partnership they are a partner in is itself a direct or indirect partner of an underlying trading partnership and the partnership they are directly a partner in has untaxed income or relievable losses that arise from the underlying partnership other than from carrying on a trade.
12. New subsections 855A(2) to (4) provide substituted rules for sections 854(2), 854(4), 855(2) and 855(3).

13. Section 854(2) as substituted by new subsection 855A(2) provides the partner's notional business commences on the later of their becoming an indirect partner in the underlying partnership, or that underlying partnership commences carrying on the underlying trade.
14. Section 854(4) as substituted by new subsection 855A(3) provides that the partner's notional business permanently ceases on the earlier of the partner ceasing to be an indirect partner in the underlying partnership or the underlying partnership permanently ceases carrying on the underlying trade.
15. Section 855(2) as substituted by new subsection 855A(4) provides that that where the partner themselves actually carried on the trade prior to the firm, the partner's notional business commences when the firm begins carrying it on.
16. Section 855(3) as substituted by new subsection 855A(4) provides that if the partner actually carries on the trade after the firm permanently ceases carrying it on, the partner's notional business ceases when the firm ceases carrying on the trade.
17. New section 855A(5) provides that for the purposes of this section the meaning of 'untaxed income' has the same meaning as in section 854.
18. Subsection (4) provides for the amendments made by this section to have effect from the tax year 2018-19 onwards.

Background note

19. The legislation currently provides rules to determine the basis periods for partners' notional trades, that is, the basis periods that apply to a partner's share of profits or losses from a firm carrying on a trade. This clause provides similar basis period rules for notional trades for partners in partnerships that are themselves partners in respect of profits or losses allocated to them by each partnership either directly or indirectly.
20. If you have any questions about this change, or comments on the legislation, please contact Robert Nott on 07748 634689 or email: Robert.nott@hmrc.gsi.gov.uk.

Partnership returns: information to be included

Summary

1. This clause introduces new provisions requiring additional information in a partnership return and statement where the reporting partnership is a partner in another partnership or where the reporting partnership includes a partner which is itself a partnership.

Details of the clause

2. Subsection (1) inserts new subsections (1B) and (1C) into section 12AA of the Taxes Management Act 1970.
3. New subsection (1B) extends subsections (1) and (1A) so that an officer of the Board may act under subsections (2) and (3) for the purposes of facilitating the establishment of the amounts in which indirect partners in a reporting partnership are chargeable to tax..
4. New subsection (1C) defines what is meant by an indirect partner in the reporting partnership for the purpose of this section, that being a person who is a partner in a partnership which is itself a partner in the reporting partnership, either directly or indirectly via any number of intermediate partnerships in between.
5. Subsection (2) inserts new subsections (1A), (1B), (1C) and (1D) into section 12AB TMA 70.
6. New subsection (1A) adds requirements for a reporting partnership which is a partner in another partnership to treat amounts of income and losses etc. from that other partnership separately from those amounts received from other sources in its partnership statement.
7. New subsection (1A)(a) requires for the purposes of subsection (1)(a)(i) that income or losses from that other partnership are treated as arising from a separate source to any other sources the reporting partnership has.
8. New subsection (1A)(b) requires for the purposes of subsection (1)(a)(ia) that disposal proceeds in respect of partnership property of the other partnership are treated as arising from a separate source to any other sources the reporting partnership has.
9. New subsection (1A)(c) requires for the purposes of subsection (1)(a)(ii) that where any income tax has been deducted, treated as deducted or paid on income of that other partnership, this tax is treated as having been deducted from income from a separate source to any other sources the reporting partnership has.
10. New subsection (1A)(d)(i) requires the reporting partnership to include on its partnership statement its share of all such amounts from any partnership statement made by the other partnership for all or any part of the reporting partnership's return period.

11. New subsection (1A)(d)(ii) requires the reporting partnership to state which of the assumptions made by the other partnership under new subsection (1B) were applied in arriving at the amounts included in the reporting partnership's partnership statement.
12. New subsection (1B) requires that where a reporting partnership has a partner which is itself a partnership, the amounts shown in the reporting partnership's partnership statement as allocated to that other partnership must be calculated and shown on each of the following assumptions:
 - (a) That it is a UK resident individual;
 - (b) That it is a non-UK resident individual;
 - (c) That it is a UK resident company;
 - (d) That it is a non-UK resident company.
13. New subsection (1C) applies new subsection (1D) if the partnership statement shows the name of every person who is an indirect partner in the reporting partnership and information about the nature and residence status of each of those persons for the applicable tax year or accounting period.
14. New subsection (1D) allows any of the assumptions in new subsection (1B)(a) to (d) to be disregarded if the information provided satisfying new subsection (1C) makes it apparent that no direct or indirect partner in that partnership is a person of a type described by that assumption.
15. Subsection (3) inserts definitions of "indirect partner" and "reporting partnership" for the purpose of section 12AB into subsection 12AB(5).
16. "indirect partner" takes the meaning as given in New Subsection 12AA(1AC)
17. "reporting partnership" means the partnership making the partnership statement in question under section 12AB(1).
18. Subsection (4) gives effect to the amendments made by this section for partnership returns for the 2018-19 tax year and onwards.

Background note

19. This clause provides that the allocation of profit or loss by a partnership to other partnerships is distinct from that partnership's other sources, is a separate source when allocated subsequently by that or any other partnership and is reported separately from any other income or losses on the partnership's return.
20. The clause also provides that partnerships must provide, on their partnership statement, for each partner that is a partnership, the share of profit or loss calculated on all four possible bases of calculation unless details for all the partners and indirect partners are included on the partnership statement and it is clear which basis of calculation is appropriate. This ensures that partnerships that are partners in other partnerships always have access to the appropriate profit calculations and can complete their own partnership statement correctly.
21. If you have any questions about this change, or comments on the legislation, please contact Robert Nott on 07748 634689 or email: Robert.nott@hmrc.gsi.gov.uk.

Partnership returns: overseas partners in investment partnerships

Summary

1. This clause makes provisions to relax some of the additional information requirements for overseas partners in investment partnerships subject to Common Reporting Standard requirements.

Details of the clause

2. Subsection (1) explains that the Taxes Management Act 1970 is amended as follows.
3. Subsection (2) inserts a reference to new section 12AZB in section 12AA(6) regarding the information about partners to be included with partnership returns.
4. Subsection (3) inserts new section 12AZB.
5. New section 12AZB(1) removes the requirement under section 12AA(6) to declare a person's tax reference in the partnership return for a period where that person and the partnership meet all of the conditions set out in new sections 12AZB(1)(a) to (d).
6. New section 12AZB(1)(a) is the condition that the person is not chargeable to income tax or corporation tax in the partnership return period,
7. New section 12AZB(1)(b) is the condition that the partnership does not carry on a trade, profession or UK property business at any time during the return period,
8. New section 12AZB(1)(c) is the condition that the partnership is required to make a relevant return or returns containing information about that person in respect of the whole of the return period, and
9. New section 12AZB(1)(d) is the condition that the partnership return includes a statement confirming that the condition in New Subsection 12AZB(1)(c) is met.
10. New section 12AZB(2) defines a relevant return for the purpose of new Section 12AZB(1)(c) .
11. New section 12AZB(3) requires the nominated partner or their successor to give notice of the person's tax reference to an officer of HMRC where new Section 12AZB(1) would otherwise apply but the relevant return referred to in new Section 12AZB(1)(c) is not in fact made.
12. New section 12AZB(4) requires the notice under new Section 12AZB(3) to be given within 12 months of the filing date for the partnership return.
13. New sections 12AZB(5) and (6) give the Commissioners for HMRC a power to make regulations to amend new Subsection 12AZB(2).
14. New section 12AZB(7) defines "filing date" for the purpose of this section to have the meaning given in section 12ABA TMA 70.
15. Subsection (4) adds new section 12AZB(3) to the table of special returns in section 98 TMA 70.

16. Subsection (5) gives effect to the clause for returns made from the passing of the Act.

Background note

17. This clause provides that partnerships that do not carry on a trade or profession or a UK property business will not be required to return the tax reference for a partner if that partner is not chargeable to income tax or corporation tax in the UK and the partnership reports details of the partner to HMRC under the Common Reporting Standard (CRS).
18. If you have any questions about this change, or comments on the legislation, please contact Robert Nott on 07748 634689 or email: Robert.nott@hmrc.gsi.gov.uk.

Partnership returns: shares of profits and losses

Summary

1. This clause makes provisions to require that the amounts allocated to partners as profits and losses in a partnership return are considered final for tax purposes, subject to a new mechanism for disputes over the reported allocations of partnership income and losses to be referred to the Tribunal.

Details of the clause

2. Subsection (1) inserts new section 12AZC - Partnership return conclusive as to partnership shares – into the Taxes Management Act 1970.
3. New section 12AZC(1) provides for a partnership return to be conclusive as to whether a person receives a share in the profits or losses of a partnership and what that person's share is.
4. New section 12AZC(2) provides that this applies even if the person would not otherwise be chargeable to tax on those profits.
5. New section 12AZC(3) provides that any dispute between a person and one or more other partners over whether the partnership return correctly reports that person's share in the partnership's profit or loss may be referred to the Tribunal for determination.
6. New section 12AZC(4) clarifies that where the issue in point is in substance the total amount of the partnership's profit or losses, this cannot be referred to the Tribunal as a dispute under this process.
7. New section 12AZC(5) requires that notice of a dispute under new section 12AZC(3) must be given before the end of the period of 12 months from the date the partnership return was delivered or an amendment of the return was made by the taxpayer if the dispute relates to matters in that amendment.
8. New section 12AZC(6)(a) requires the dispute be notified to HMRC and the nominated partner by the person referring the dispute, at the same time it is notified to the Tribunal.
9. New section 12AZC(6)(b) requires the nominated partner to notify the referral of the dispute to all partners in the partnership.
10. New section 12AZC(7) requires that where the Tribunal determines that the return was not correct regarding a person's share of the partnership profits or losses, that it is to determine what the return should have given, and HMRC is required to amend the return accordingly.
11. New section 12AZC(8) requires that where a partnership return is amended following the outcome of a dispute, if that amendment requires amendment of other parties' or other partners' returns, HMRC must amend those returns by giving notice to those parties.

12. New section 12AZC(9) allows the nominated partner to give notice to HMRC that the dispute has been settled by agreement in writing of all partners in the partnership, and gives effect to the agreed outcome as notified as if it had been determined by the Tribunal
13. New section 12AZC(10) allows such an agreement to be disregarded if within 30 days a party to it gives notice to the other parties that they wish to repudiate it, or HMRC gives notice of its objection to the nominated partner.
14. New section 12AZC(11) provides that a partnership return which has been subject to a dispute may not have another referred, unless the return has been amended by the taxpayer and the previous dispute was referred prior to this.
15. New section 12AZC(12) defines “nominated partner” for the purpose of this section and clarifies that the section applies only to partners who were partners at any time during the period for which the return was made.
16. Subsection (2) amends section 12ABA(1) to allow for taxpayer amendment of anything that was included in the partnership return by an amendment by HMRC under new section 12AZC(7)(b) to give effect to the outcome of a dispute regarding that partnership.
17. Subsection (3) amends section 12AC.
18. Paragraph (a) inserts new paragraph (d) in subsection (2) which extends the enquiry window for the partnership return up to the anniversary of the quarter date following the notification of the referral of a dispute of the return to HMRC.
19. Paragraph (b) amends subsection (3) to allow a further enquiry to be made into a partnership return where that return has been amended as a consequence of a dispute made under new section 12AZC(3).
20. Paragraph (c) amends subsection (4) to allow an enquiry to extend to anything included in a return as a result of an amendment made pursuant to new section 12AZC(7)(b), subject to the limitations in subsection (5) and new subsection (5A).
21. Paragraph (d) inserts new subsection (5A) which limits the scope of an enquiry opened following the referral of a dispute to the matters within that dispute, if:
 22. The time limit for opening an enquiry into the return would otherwise have passed but for the extended time limit provided by the notification of the referral, or
 23. A final closure notice was previously issued in an enquiry, or
 24. A partial closure notice relating to matters under the dispute was previously issued in an enquiry.
25. Subsection (4) amends section 12AD (amendment of partnership return by taxpayer during enquiry) to include disputes, such that a dispute of a return whilst an enquiry is in progress will not restrict the scope of that enquiry.
26. Subsection (5) amends section 28B(2)(b) to allow a closure notice following an enquiry into the partnership to make amendments of anything that was included in the partnership return by an amendment by HMRC under new section 12AZC(7)(b) to give effect to the outcome of a dispute regarding that partnership.
27. Subsection (6) amends section 30B(1) to allow an officer of the Board where they have discovered a loss of tax to make amendment to remedy that loss of anything that was

included in the return by an amendment by HMRC under new section 12AZC(7)(b) to give effect to the outcome of a dispute.

28. Subsection (7) amends section 55 TMA 1970.
29. Paragraph (a) makes a substitution in subsection (8B) to include new subsection (8E)
30. Paragraph (b) amends subsection 8C to provide that an amount tax specified by an amendment of an APN under new subsection 227(7A) is not an amount that can be postponed under this section.
31. Paragraph (c) inserts new subsection (8E)
32. New subsection (8E) provides that an amount of tax postponed under this section ceases to be postponed from the time the notice of the amendment of the APN is given and defines the due and payable dates for the tax due.
33. Subsection (8) amends section 59B(5)(b) to require payment of a notice given under new section 12AZC(8) in line with other amendments and corrections and returns under the provisions of Schedule 3ZA of the act.
34. Subsection (9) amends paragraph 7 of schedule 3ZA
35. Paragraph (a) amends the heading.
36. Paragraphs (b) and (c) amend subparagraphs 7(1) & 7(2) to add amendments of an individual's return under new section 12AZC(8)(a) to the payment provisions of paragraph 7 which requires payment of the amount due from the amendment within a period of 30 days from the date of notice of the amendment being given.
37. Subsection (10) amends section 850 ITTOIA 05 to refer to new section 12AZC as a provision to which the firm's profit sharing arrangements are subject to.
38. Subsection (11) amends section 1262 CTA 09 to refer to new section 12AZC as a provision to which the firm's profit sharing arrangements are subject to.
39. Subsection (12) amends sections 220 and 221 of Finance Act 2014 (FA 14) to allow an officer of HMRC to determine the amount to be paid under an Accelerated Payment Notice (APN) without regard to any dispute referred to the Tribunal under new section 12AZC(3).
40. Subsection (13) amends section 226 of FA 14 to ignore for APN penalty and other late payment penalty purposes any increase of the amount payable under the APN due to an amendment of that APN under new subsection 227(7A) consequential to a dispute regarding the partnership return to which the APN relates.
41. Subsection (14) amends section 227 of FA 14.
42. Paragraph (a) inserts new subsection (7A)
43. New section (7A) allows HMRC to make consequential amendments to an APN following an amendment of the partnership return to which it relates under new section 12AZC(7)(b) by giving notice to the person to whom the APN was issued.
44. Paragraph (b) amends section 227(13) to include an amendment of the APN made under new subsection (7A), so that if such an amendment means the person subject to the notice has paid more than the amended amount, the excess must be repaid.
45. Paragraph (c) inserts new subsection (13A)

46. New subsection (13A) requires that if an amendment under new subsection (7A) means that an increased amount is payable to HMRC under section 223(2), the amount must be paid within 30 days of notice being given.
47. Subsection (15) amends Schedule 32 to FA 14 to allow an officer of HMRC to determine the amount to be paid under an Accelerated Payment Notice without regard to any dispute referred to the Tribunal under new section 12AZC(3).
48. Subsection (16) provides for the amendments made under this clause to have effect for returns made for tax years from 2018-19 onwards.

Background note

49. This clause provides that the allocation of partnership profits shown on the partnership return is the allocation that applies for tax purposes for the partners.
50. The clause also provides that where a partner wishes to dispute the share of profit allocated to them in the partnership return that they may apply to the tribunal to resolve the dispute.
51. If you have any questions about this change, or comments on the legislation, please contact Robert Nott on 07748 634689 or email: Robert.nott@hmrc.gsi.gov.uk.