

Clause 1: Replacement of LIBOR with incremental borrowing rate

Summary

1. This clause substitutes the statutory references to LIBOR in the leasing provisions with 'incremental borrowing rate' as defined by generally accepted accounting practice.

Details of the clause

2. Subsections (1) to (3) replace the statutory reference to LIBOR in three leasing provisions with 'incremental borrowing rate' as defined by generally accepted accounting practice:
 - Subsection (1) amends Section 70O, Capital Allowances Act (CAA) 2001
 - Subsection (2) amends Section 228MB, CAA 2001
 - Subsection (3) amends Section 437C, Corporation Tax Act (CTA) 2010
3. In each case the amendments also provide a power allowing the Treasury to amend the rate by regulations.
4. Subsections (4) to (6) provide that the changes have effect for the application of the above provisions on or after 1 January 2022.

Background note

5. This is the first of two clauses which respond to the reform of LIBOR and other benchmark rates.
6. LIBOR is a set of interest rate benchmarks based on the rates at which banks are willing to borrow wholesale unsecured funds. It is widely used as a reference rate for loans, derivatives and other financial instruments.
7. The Financial Conduct Authority (FCA) has indicated in 2017 that they do not intend to use their power to compel panel banks to contribute to LIBOR after the end of 2021. Panel banks have voluntarily agreed to continue providing submissions to LIBOR until then, but its publication cannot be guaranteed beyond this date.
8. On 23 June 2020 the Chancellor made a written ministerial statement indicating that the government will ensure the FCA's powers are sufficient to manage an orderly transition from LIBOR. This will include extending the circumstances in which the FCA may require an administrator to change the methodology of a critical benchmark and providing the FCA with the ability to specify the limited, continued

use of LIBOR in legacy contracts. It remains the case, however, that businesses should continue to transition away from using LIBOR as a reference rate in their financial contracts.

9. The government ran a consultation between 19 March 2020 and 28 August 2020 entitled “Taxation impacts arising from withdrawal of LIBOR”
 - To identify statutory references to LIBOR that needed amending as a result of the withdrawal of LIBOR
 - To ensure HMRC fully understands the tax impacts that could arise from the withdrawal of LIBOR
10. If you have any questions or comments, please contact Liang Tang (email: liang.tang@hmrc.gov.uk).

Clause 2: Tax consequences of reform etc of LIBOR and other reference rates

Summary

1. This clause provides a time limited power for the Treasury to make regulations by statutory instrument to address any unintended taxation issues that arise from the transition away from LIBOR and other benchmark rates by businesses and individuals.

Details of the clause

2. Subsections (1) and (2) provide a statutory power for the Treasury to make regulation in the future to address any tax issues arising from the discontinuation or reform of LIBOR and other benchmark rates.
3. Subsection (3) provides that the scope of such regulations can include provision that has retrospective effect.
4. Subsection (4) requires that if the regulations have retrospective effect for any person, then the person must be able to elect out of retrospective effect. The regulations may in addition allow the person to elect to limit the retrospective effect.
5. Subsection (5) requires that the regulations must specify how any election must be made and that the regulations may impose a time limit for making the election.
6. Subsection (6) to (10) provide additional detail of what may be done under the power and how regulations are to be made.
7. Subsection (11) provides that the power to make regulations is time limited and can only be used by 31 December 2022.

Background note

8. This is the second of two clauses which respond to the reform of LIBOR and other benchmark rates.
9. LIBOR is a set of interest rate benchmarks based on the rates at which banks are willing to borrow wholesale unsecured funds. It is widely used as a reference rate for loans, derivatives and other financial instruments.
10. The Financial Conduct Authority (FCA) has indicated in 2017 that they do not intend to use their power to compel panel banks to contribute to LIBOR after the end of 2021. Panel banks have voluntarily agreed to continue providing submissions to LIBOR until then, but its publication cannot be guaranteed beyond this date.
11. On 23 June 2020 the Chancellor made a written ministerial statement indicating that

the government will ensure the FCA's powers are sufficient to manage an orderly transition from LIBOR. This will include extending the circumstances in which the FCA may require an administrator to change the methodology of a critical benchmark and providing the FCA with the ability to specify the limited, continued use of LIBOR in legacy contracts. It remains the case, however, that businesses should continue to transition away from using LIBOR as a reference rate in their financial contracts.

12. The government ran a consultation between 19 March 2020 and 28 August 2020 entitled "Taxation impacts arising from withdrawal of LIBOR"
 - To identify statutory references to LIBOR that needed amending as a result of the withdrawal of LIBOR
 - To ensure HMRC fully understands the tax impacts that could arise from the withdrawal of LIBOR
13. If you have any questions or comments, please contact Liang Tang (email: liang.tang@hmrc.gov.uk).