



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Martin Caton and Christopher Chope
Chairmen of the Public Bill Committee
House of Commons
London
SW1A 0AA

18 October 2010

Dear Martin & Christophe

FINANCE (NO.2) BILL 2010: GOVERNMENT AMENDMENTS

I am writing to you today to inform you of proposed Government amendments.

Full details are below. For each case I attach draft amendments and explanatory notes. The amendment numbers contained within these documents are provisional and will be updated, as appropriate, once the amendments appear on the order paper.

Clause 11, Schedule 5 – Financing costs and income of group companies

Schedule 5 includes changes to the “debt cap” rules. Two amendments are required to ensure the Schedule operates as intended. The debt cap rules broadly require groups to compare the net financing expenses of UK group companies with the gross external financing expenses of the worldwide group overall.



There is at least one situation where a worldwide group is disadvantaged because of the interaction of the debt cap rules and the tax rules that apply to the deduction of interest by UK company. In particular when a UK company pays interest to a fellow group company late there can be a substantial mismatch in the debt cap calculations for the UK company and the worldwide group if the interest accrued prior to the introduction of the debt cap rules. The effect of this mismatch is that there is a greater disallowance of financing costs for the UK group than if the interest had been paid before the introduction of the debt cap.

The powers to lay regulations introduced by the Schedule only enable modifications to the debt cap rules for an amount disclosed in the accounts of a worldwide group, not where an amount is eliminated on consolidation. It has become clear that, as currently drafted the powers do not allow regulations to cover the situation where no amount is “disclosed” in the accounts of the worldwide group. This is the case for late paid intra-group interest.

The amendments address this by extending the definition of “accounts amount” for the worldwide group as proposed in Paragraphs 25 and 28 of Schedule 5 of the Bill to include the amount “nil” in respect of amounts not disclosed in the accounts of the worldwide group.

There is a similar adjustment to the definition of “tax amount” which is the amount of deduction to which a UK group company is entitled. If no member is entitled to such a deduction then the tax amount is “nil”.



Two amendments are required because the issue affects two sets of powers although the amendments are identically worded.

Currently there are plans to issue regulations under only one set of the powers to deal with some identified mismatches. It is expected that the regulations will apply from 1 January 2010 which is the start date for the debt cap rules. This will ensure that groups are not disadvantaged from the start of those rules.

Clause 14 – Film tax relief: unused losses

Clause 14 corrects an unintended anomaly in the rules for claiming film tax credits.

The amendment has been tabled to correct a typographical error in the published bill.

The draft clause, as published in July, contained the correct formula to give effect to the correction of the anomaly that had arisen. This allowed any unused loss brought forward (RUL in the formula) to be added to the current year loss (L) for the purposes of calculating film tax relief.

The error in the published bill is that the addition has been shown as a subtraction, the "+" translated to a "-". This minor amendment is necessary to ensure the clause operates as intended.



I am copying this letter to all members of the Committee and to the Clerk to the Committee and depositing a copy in the Library of the House.

Yours ever
David

David Gauke MP

EXPLANATORY NOTE

AMENDMENTS 8-9: SCHEDULE 5: FINANCING COSTS AND
INCOME OF GROUP COMPANIES

SUMMARY

1. Clause 11 and Schedule 5 make a number of changes to the corporation tax rules on the 'worldwide debt cap' legislation, which restrict the finance costs that can, for tax purposes, be deducted by a UK company to the total finance costs claimed by the worldwide group of which it is part. Two of the changes are to enable regulations to be laid to deal with mismatches between the figures that are drawn from the accounts of the worldwide group and those used by the UK company in calculating the amount of the debt cap restriction. However, the powers as drafted do not apply to mismatches that arise where no amount appears in the consolidated worldwide group accounts or if the amount used by the UK company is nil. Amendments 8 and 9 resolve this issue.

DETAILS OF THE CLAUSE

2. Paragraph 25 inserts new section 331A into Chapter 8 of Part 7 of the Taxation (International and Other Provisions) Act 2010 (TIOPA). This chapter deals with computation of the tested expense amount and the tested income amount. New section 331A provides a new regulation-making power. Regulations made under this power may apply to any situation where, in respect of the same debt, there is a mismatch between the "accounts amount" that contributes to the computation of the available amount of the worldwide group, and the "tax amount" taken into account in computing the net financing deduction of a UK Company. The regulations can change the way in which the tested expense amount or the tested income amount is calculated in order to correct such mismatches, and can amend any provision of Part 7 in order to do this.
3. New section 331A(2) currently defines "accounts amount" as the amount of any expenses disclosed in the financial statement of the worldwide group. Amendment 8 extends this definition to include the case where no amount is disclosed in the financial statement of the worldwide group in respect of the matter; in that case the amount is nil. The amendment also deals with the case where an amount is disclosed in the financial statements of the worldwide group but no deduction under the Corporation Tax Acts in respect of the same matter is included in the tax amount of a member of the worldwide group.

4. Paragraph 28 inserts new section 336A into Chapter 9 of Part 7 of TIOPA. The new section confers a regulation-making power similar to that in new section 331A. As with new section 331A, the regulations are intended to correct mismatches between the accounts amount and the tax amount. Regulations made under this section will correct the mismatch by changing the way in which the available amount is calculated and can amend any provision of Part 7.
5. Amendment 9, to new section 336A(2), is the same as that for new section 331A(2). The definition of “accounts amount” is extended to include the case where no amount is disclosed in the financial statements of the worldwide group in respect of the matter, in that case the accounts amount is nil. The amendment also deals with the case where an amount is disclosed in the financial statements of the worldwide group but no deduction under the Corporation Tax Acts in respect of the same matter is included in the tax amount of a member of the worldwide group.

BACKGROUND NOTE

6. In Finance Act 2009 a package of changes to the taxation of companies on their foreign profits was introduced. The package included the introduction of a measure to restrict the interest and other finance expenses that can be deducted in computing the corporation tax payable by the UK members of a worldwide group of companies.
7. The debt cap rules introduced as Schedule 15 to FA 2009 have now been rewritten as Part 7 of TIOPA. They broadly operate by requiring UK groups to compare their UK financing costs, as calculated under the Schedule, with the finance costs of their worldwide group as disclosed in the consolidated financial statements of the group. If the UK costs exceed the worldwide costs then the UK companies do not get any relief for the excess.
8. Further discussions with industry identified that some amendments to the debt cap rules would be needed to address issues that emerged subsequent to the passage of Finance Bill 2009. A number of changes were announced on the 9 November 2009. Draft legislation incorporating these points was published with the 2009 Pre-Budget Report.

RESOLUTION 9

9. The current Schedule incorporates these changes, along with a small number of further changes that arose from the subsequent consultation on the draft legislation. The changes include two new powers to lay regulations which as drafted would not enable the correction of a mismatch if in relation to a matter no expenses were disclosed in the financial statements of the worldwide group or no company within the group was entitled to a deduction under the Corporation Tax Acts. The amendments should enable regulations to be made that deal with such mismatches.

EXPLANATORY NOTE

**AMENDMENT 7: CLAUSE 14: FILM TAX CREDIT: UNUSED
LOSSES**

SUMMARY

1. Clause 14 amends the provisions in section 1201 of the Corporation Tax Act 2009 (CTA) that set out how a surrenderable loss is calculated for film tax relief claims. Amendment 7 corrects a typographical error in the Bill to ensure the provisions work as intended.

DETAILS OF THE AMENDMENT

2. The draft of clause 14, as published in July, contained the correct formula to give effect to the correction of the anomaly that had arisen. This allowed any unused loss brought forward (“RUL” in the formula) to be added to the current year loss (“L”) for the purposes of calculating film tax relief. The error in the published bill is that the addition has been shown as a subtraction. Amendment 7 is therefore necessary to ensure the clause operates as intended.

BACKGROUND NOTE

3. Film tax relief was introduced from 1 January 2007 and allows an additional deduction based on UK expenditure by companies on the production of films qualifying as culturally British. Losses sustained in production can be surrendered for a payable tax credit.
4. Amendment 7 and clause 14 ensure that, as intended, the amount of film tax credit available is the same regardless of the profile of the UK expenditure.



House of Commons

PUBLIC BILL COMMITTEE

FINANCE (NO.2) BILL

Mr David Gauke

- ★ Clause 14, page 11, leave out line 21 and insert “L + RUL”.

Mr David Gauke

- ★ Schedule 5, page 49, leave out lines 23 to 31 and insert “in respect of a matter is not equal to the tax amount in respect of that matter.

(2) For this purpose—

- (a) the “accounts amount” in respect of a matter is—
 - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or
 - (ii) if no amount is so disclosed, nil, and
- (b) the “tax amount” in respect of a matter is—
 - (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
 - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
 - (iii) if no member is entitled to such a deduction, nil.”.

Mr David Gauke

- ★ Schedule 5, page 52, line 12, leave out from “amount” to end of line 21 and insert “in respect of a matter is not equal to the tax amount in respect of that matter.

(2) For this purpose—

- (a) the “accounts amount” in respect of a matter is—
 - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or
 - (ii) if no amount is so disclosed, nil, and
- (b) the “tax amount” in respect of a matter is—
 - (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
 - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
 - (iii) if no member is entitled to such a deduction, nil.”.

Public Bill Committee:

Finance (no.2) Bill, *continued*
