These notes refer to the Finance Act 2014 (c.26) which received Royal Assent on 17 July 2014

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 27: Holdings Treated as Rights under Loan Relationships

Summary

1. This section amends the legislation which applies to those holdings in unit trusts, open-ended investment companies (OEIC) and offshore funds which are treated as loan relationships. It extends the existing treatment of distributions from authorised investment funds, so that distributions from any type of fund in which a company has a relevant holding are not treated as distributions for corporation tax purposes, and so fall within the loan relationships legislation instead. It also introduces a new anti-avoidance provision which sets out that where a company has a holding in a fund which is treated as a loan relationship and arrangements are entered into to obtain a tax advantage for any person, then adjustments must be made to counteract that tax advantage.

Details of the Section

2. Subsection (1) provides for amendments to the Corporation Tax Act 2009 (CTA 2009).

3. Subsection (2) adds a new subsection (3)(za) to section 465 (Exclusion of distributions except in tax avoidance cases). The new subsection adds holdings in funds which are treated as loan relationships under section 490(2) to the list of provisions under which some amounts are prevented from being distributions for corporation tax purposes.

4. Subsection (3) replaces subsection (2) of section 490 CTA 2009 with a new subsection (2). That subsection provides that where section 490 applies to a holding in an OEIC, unit trust, or offshore fund, then the relevant holding is treated as rights under a creditor loan relationship, and any distribution in respect of that holding is not a distribution and is therefore within Part 5.

5. Subsection (4) makes consequential repeals of subsections (4) and (5) of section 490.

6. Subsection (5) replaces section 492 CTA 2009 with a new section 492.

7. Section 492(1) sets out the circumstances in which the provision applies. Subsection 492(2) applies where section 490 applies to a relevant holding in a fund held by a company, where a relevant fund enters into any arrangements, and the main purpose or one of the main purposes of the arrangements is to obtain a tax advantage for any person.

8. Section 492(2) provides that a holder of an interest in a bond fund must make adjustments to counteract any tax advantage that arises which is connected in any way with the arrangements mentioned in subsection 492(1).

9. Section 492(3) provides that the arrangements may be entered into at a time when the company does not hold the relevant holding, and that the person obtaining the tax advantage need not be identified when the arrangements are entered into.

10. Section 492(4) provides that the adjustments required are those which are just and reasonable.

11. Section 492(5) defines terms used in the legislation.

12. Subsection (6) amends the definition of qualifying holdings in section 495 CTA 2009. It repeals subsection (2), which formerly restricted the categories of qualifying investment to be taken into account in deciding whether holdings in funds were qualifying holdings, and makes consequential amendments to subsection (1).

13. Subsections (7) to (9) are commencement provisions. They provide that the amendments have effect for accounting periods beginning on or after 1 April 2014, and provide that for these purposes a new accounting period begins on 1 April 2014. Any apportionment may be made on a time basis, or a just and reasonable basis.

Background Note

14. This section introduces some minor clarifications and amendments of the provisions of Chapter 3 of Part 6 of CTA 2009 (the "bond fund rules"). The changes include the addition of a section to clarify the way in which distributions are treated when the bond fund rules apply. The section also amends the anti-avoidance provisions, to counteract avoidance schemes that exploit the bond fund rules. While those schemes are subject to a number of challenges by HMRC, the section strengthens the anti-avoidance provisions within the bond fund rules specifically. The new provision will apply to any arrangements that relate to a bond fund, and allow a just and reasonable adjustment to be to made to counteract a tax advantage obtained by the company holding the investment in the fund, or by any other person.