

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 25: Agreements to Forgo Tax Reliefs

Summary

1. [Section 25](#) ensures the Corporation Tax Acts do not override an undertaking by a person to surrender the right to benefit from tax losses and other reliefs. It will apply to undertakings given in connection with arrangements designated by HM Treasury.

Details of the Section

2. Subsection (1) of the section ensures that where HM Treasury has designated an arrangement with a person as one to which the section applies, then any tax losses or other reliefs which that person has agreed to forgo under the terms of the arrangement will not be overridden by any statutory provision.
3. Whilst many reliefs provided under the Taxes Acts require a formal claim, some do not. For example, section 393(1) of the Income and Corporation Taxes Act 1988 provides that losses incurred in a trade in one accounting period are, in the absence of any other claim, automatically carried forwards to the next period, and reduce the amount of profit that is taxable in that later period.
4. The effect of this subsection is switch off any rules that grant such reliefs automatically where a person has undertaken to forgo these tax reliefs in connection with schemes that provide taxpayer support.
5. Subsection (2) sets out the types of arrangement that HM Treasury may designate for the purposes of subsection (1). The section will apply where the agreement to forgo tax relief is made as part of arrangements whereby the Government, through HM Treasury, another Government Department or another public body, provides financial support of whatever kind, either directly to the person who has given the undertaking or to another person, as part of the designated arrangement.
6. Subsection (3) denies any further relief from tax that might otherwise arise as a consequence of a person forgoing a right to tax relief, either to that person or any other. This might arise, for example, where one company in a group receives financial support from a designated arrangement and another company surrenders losses, and there is a compensatory payment made to the second company. In these circumstances, the payer would not be able to claim any deduction from their profits or other form of tax relief in respect of the compensatory payment.
7. Subsections (4) and (5) provide definitions and the commencement rule respectively. The section applies to arrangements entered into on or after 22 April 2009, but it may have effect in respect of tax reliefs that arise or would otherwise be effective in respect of periods before that date.

Background Note

8. On 19 January 2009 the Government announced its intention to offer an Asset Protection Scheme to restore confidence in the banks and get credit flowing again, by dealing with the losses associated with impaired assets.
9. The details of the Asset Protection Scheme were published on 26 February 2009. Under the scheme, the Government provides protection against future credit losses on certain assets in exchange for a fee. Arrangements under this section would include arrangements under the Asset Protection Scheme.