

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 74 and Schedule 17: Partnerships (Part 4): Disposals of Assets through Partnerships

Summary

1. This section and Schedule will prevent tax-motivated disposals of income streams or assets within the charge to tax on income through partnerships giving rise to tax advantages.
2. The legislation will impose a charge to tax on income on the person making the disposal.

Details of the Schedule

Income tax

3. Paragraph 22 of the Schedule is introductory.
4. Paragraph 23 amends section 809AZF in Chapter 5A of Income Tax Act (ITA) 2007 (transfers of income streams) so that Chapter 5A cannot apply to transfers effected through a reduction in partnership profit entitlements. The amendment has effect for cases where the transfer of a right to relevant receipts occurs on or after 6 April 2014.
5. Paragraph 24(1) inserts new Chapter 5AA into ITA. The Chapter introduces new section 809AAZA, which covers disposals of income streams by persons within the charge to income tax by or through partnerships.
6. New section 809AAZA(1) provides that the Chapter applies if there are arrangements between a transferor and a transferee as a result of which the conditions set out in new subsections (1)(a) to (1)(d) are met.
7. New section 809AAZA(1)(a) sets out the first condition, that there is, or there is in substance a disposal of a right to relevant receipts.
8. New subsection (1)(b) sets out the second condition, which is that the disposal is effected by or through a partnership.
9. New subsection (1)(c) sets out the third condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.
10. New subsection (1)(d) sets out the fourth condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.
11. New subsection (2) provides that the legislation does not however apply if the disposal is to a spouse or civil partner or relative of the transferor.
12. New subsection (3) defines disposal as including anything that is a disposal for the purposes of Taxation of Chargeable Gains Act (TCGA) 1992. This includes a part disposal.

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which received Royal Assent on 17 July 2014*

13. New subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.
14. New subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.
15. New subsection (6) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.
16. New subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.
17. New subsection (8) provides definitions. “Relevant receipts” takes its definition from the transfer of income streams legislation in Chapter 5A of Part 13 ITA 2007, which is income that would otherwise have been taxable income of the transferor. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.
18. New section 809AAZB(1) sets out the treatment where new section 809AAZA applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been but for the disposal.
19. New subsection (2) gives ‘relevant amount’ the same meaning as in the transfers of income streams legislation in Chapter 5A of Part 13 of ITA 2007, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.
20. New subsection (3) states that in subsection (2) to (6) that references to the transfer of the right are to be read as references to the disposal of the right.
21. New subsection (4) explains the interaction of new Chapter 5AA with new Chapter 5D of ITA 2007 (Disposals of assets through partnerships). If both apply then new Chapter 5AA will not apply if the charge under new Chapter 5D is greater.
22. Paragraph 24(2) covers commencement of new Chapter 5AA. The legislation applies where the arrangement referred to in new section 809AAZA(1) is made on or after 6 April 2014.
23. Paragraph 25(1) of the Schedule inserts new Chapter 5D into ITA. The Chapter introduces new section 809DZA, which covers disposals of assets by or through partnerships.
24. New section 809DZA(1) provides that the Chapter applies if both Condition A and Condition B are met.
25. New section 809DZA(2) contains Condition A which is that there are arrangements involving a transferor and a transferee as a result which all of the conditions set out in new subsections (2)(a) to (2)(d) are met.
26. New subsection (2)(a) sets out the first condition, that there is, or there is in substance a disposal of an asset.
27. New subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.
28. New subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

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29. New subsection (2)(d) requires that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.
30. New subsection (3) provides that the legislation does not, however, apply if the disposal is to a spouse or civil partner or relative of the transferor.
31. New subsection (4) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.
32. New subsection (5) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.
33. New subsection (6) makes clear that transferor and transferee do not have to be members of the partnership at the same time.
34. New subsection (7) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.
35. New subsection (8) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.
36. New subsection (9) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to tax on income would have applied to the “relevant amount” received by the transferee.
37. New subsections (10) to (12) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.
38. New subsection (13) provides definitions. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.
39. New section 809DZB(1) sets out the treatment where new section 809DZA applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.
40. New subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.
41. New subsection (3) explains the interaction of Chapter 5D with new Chapter 5AA (disposals of income streams through partnerships). If both apply then Chapter 5D will not apply if the charge under Chapter 5AA is equal or greater.
42. Paragraph 25(2) covers commencement. The legislation applies where the arrangement is made on or after 6 April 2014.

Corporation tax

43. Paragraph 26 of the Schedule is introductory.
44. Paragraph 27 amends section 756 in Chapter 1 of Part 16 of Corporation Tax Act (CTA) 2010 (factoring of income etc) so that Chapter 1 cannot apply to transfers effected through a reduction in partnership profit entitlements. The amendment has effect for cases where the transfer of a right to relevant receipts occurs on or after 1 April 2014.
45. Paragraph 28(1) inserts new Chapter 1A into CTA 2010. The Chapter introduces new section 757A, which covers disposals of income streams by companies by or through partnerships.

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46. New section 757A(1) provides that the Chapter applies if there are arrangements involving a company transferor and a transferee as a result of which all of the conditions set out in new subsections (1)(a) to (1)(d) are met.
47. New subsection (1)(a) sets out the first condition, that there is, or there is in substance a disposal of a right to relevant receipts.
48. New subsection (1)(b) sets out the second condition, which is that the disposal is effected by or through a partnership.
49. New subsection (1)(c) sets out the third condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.
50. New subsection (1)(d) sets out the fourth condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.
51. New subsection (2) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.
52. New subsection (3) provides that the disposal might in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.
53. New subsection (4) makes clear that the transferor and the transferee do not have to be members of the partnership at the same time.
54. New subsection (5) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.
55. New subsection (6) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if, for example, the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.
56. New subsection (7) provides definitions. “Relevant receipts” takes its definition from the transfer of income streams legislation in Chapter 1 of Part 16 ITA 2007, which is income that would otherwise have been taxable income of the transferor. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.
57. New section 757B(1) sets out the treatment where new section 757A applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been but for the disposal.
58. New subsection (2) gives ‘relevant amount’ the same meaning as in the transfers of income streams legislation, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.
59. New subsection (3) stipulates that references to the transfer of the right in the transfers of income streams legislation are to be read as references to the disposal of the right.
60. New subsection (4) explains the interaction of Chapter 1A with new Chapter 4 (Disposals of assets through partnerships). If both apply then Chapter 1A will not apply if the charge under Chapter 4 is greater.
61. Paragraph 28(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.
62. Paragraph 29(1) inserts new Chapter 4 into CTA 2010. The Chapter introduces new section 779A, which covers disposal of assets by or through partnerships.

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63. New section 779A(1) provides that the Chapter applies if both Condition A and Condition B are met.
64. New section 779A(2) contains Condition A which is that there are arrangements involving a company transferor and a transferee as a result of which all of the conditions set out in new subsections (2)(a) to (d) are met.
65. New subsection (2)(a) sets out the first condition, that there is, or there is in substance a disposal of an asset.
66. New subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.
67. New subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.
68. New subsection (2)(d) states that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.
69. New subsection (3) defines disposal of an asset as including anything that is a disposal for the purposes of TCGA1992. This includes a part disposal.
70. New subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.
71. New subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.
72. New subsection (6) is intended to put beyond doubt that the legislation cannot be avoided by means of chains of partnerships.
73. New subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.
74. New subsection (8) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to corporation tax on income would have applied to the “relevant amount” received by the transferee.
75. New subsections (9) to (11) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.
76. New subsection (12) provides definitions. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.
77. New section 779B(1) sets out the treatment where new section 779A applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.
78. New subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.
79. New subsection (3) explains the interaction of Chapter 4 with new Chapter 1A (disposals of income streams through partnerships). If both apply then Chapter 4 will not apply if the charge under Chapter 1A is the same or greater.
80. Paragraph 29(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.

Background Note

81. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013.
82. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the [GOV.UK](http://gov.uk) website on 20 May 2013 and the consultation closed on 9 August 2013.
83. This element of the partnerships review measure is discussed in the consultation document under the heading: *Partnership members with differing tax attributes*.