These notes refer to the Finance Act 2015 (c.11)
which received Royal Assent on 26 March 2015

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 118 and Schedule 18: Accelerated Payments and Group Relief

Summary

1. This section and Schedule amend the accelerated payment legislation in Part 4 of the Finance Act (FA) 2014 to ensure that those rules work effectively where avoidance arrangements give rise to losses or other amounts surrendered as group relief. The changes will come into effect on and after the day of Royal Assent to Finance Act 2015.

Details of the Section

2. Section 118 introduces Schedule 18.

Details of the Schedule

3. Paragraphs 1 and 2 are introductory.

4. Paragraph 3 introduces and defines the term ‘asserted surrenderable amount’. This is the amount that would be available for surrender as group relief if the taxpayer’s arrangements were to achieve their objective, taking into account any amount of relief claimed by the company itself against its own profits; but which an officer of HM Revenue & Customs (HMRC) officer considers will not be available for surrender if those arrangements fail to achieve their objective.

5. Paragraph 4 amends section 221 of FA 2014. The ‘denied advantage’, defined in section 220 of FA 2014, is the amount that HMRC considers will not be an effective tax advantage if the arrangements fail to achieve their objective. If the denied advantage consists of or includes an ‘asserted surrenderable amount’, this paragraph adds a requirement for HMRC to specify in an Accelerated Payment Notice (APN) the amount of any group relief that HMRC considers should not be available for surrender.

6. Paragraph 5 amends section 222 of FA 2014. It extends the taxpayer’s right to make representations to cover the amount that HMRC has specified which cannot be surrendered as group relief.

7. Paragraph 6 makes a small consequential amendment to section 223 of FA 2014, to the effect that section 223 applies only to the amount of an accelerated payment and not to any amount of denied group relief.

8. Paragraph 7 inserts section 225A to FA 2014. Section 225A sets out that where HMRC has given a notice to the effect that a specified amount may not be surrendered, the company may not consent to surrender that amount. As a result, this means that no company in the group may claim that amount as group relief. If any amount has been claimed, the claimant company or companies must amend their return(s) to reflect the new situation. The time limit for amending a company tax return is relaxed for this purpose.

9. Section 225A(6) and (7) of FA 2014 cover the situation where a claimant company is required to amend their return as a result of a notice under this legislation, but that amendment cannot take effect because there is an open enquiry into that return. In that particular situation, there would be no cash payment to the Exchequer so that the cashflow benefit would remain with the taxpayer while the dispute was in progress. Section 225A(6) and (7) allow HMRC to issue an APN to the claimant company (or companies) under the existing provision in section 219 of FA 2014 to ensure that the amount in dispute does sit with the Exchequer.`

10. Paragraph 8 amends section 227 of FA 2014, which gives HMRC the power to amend or withdraw an APN. The amendment enables HMRC to reduce or cancel a specified amount that cannot be surrendered as group relief. Where such a reduction or cancellation takes place, the original surrender and claim(s) are not automatically reactivated (section 227(12A) of FA 2014). Instead the companies may make revised surrenders and claims. The relevant time limits are relaxed for this purpose.

11. Paragraph 9 inserts new Section 227A to FA 2014. This applies where the final result of a dispute, whether by agreement or by final decision of a court or tribunal, is to allow some or all of the amounts that had originally been surrendered (or which could have been surrendered but for the issue of an APN) as group relief. A company in the group (not necessarily the original group relief claimant) may make a claim within 30 days of the final determination of the amount available.

12. Paragraph 10 makes changes to Schedule 32 to FA 2014 to have the same effect for Partner Payment Notices (PPN) as for APNs, with necessary adaptations.

13. Paragraph 11 amends Section 55 of TMA 1970. This ensures that where a company does not take the necessary action under Paragraph 75(6) of Schedule 18 to the Finance Act 1998 so that an assessment is issued under Paragraph 76, the company cannot then seek to retain the cash benefit of the tax by postponing the amount charged in the assessment.

14. Paragraph 12 sets out that this change to the accelerated payment legislation applies to group relief surrenders whenever they were made, provided all the necessary requirements for an accelerated payment are met. This ensures that APNs or PPNs issued as a result of this change are on the same footing as any other APN or PPN issued under this legislation.

Background Note

15. The Accelerated Payment Legislation was introduced in Part 4 of FA 2014. It permits HMRC to issue an Accelerated Payment Notice (APN) or Partner Payment Notice (PPN) requiring payment up front of the tax in dispute in certain specified circumstances.

16. Where a company has losses or certain other amounts that derive from arrangements that meet the criteria, an APN would not require it to pay over any amounts at that point because it may have no actual tax to pay when the dispute is resolved. However, it could surrender some or all of those amounts as group relief so that the cash timing benefit passes to other companies in the group.

17. This change therefore prevents those amounts being surrendered and claimed while the dispute is in progress, so that the relevant cash amount can be held by the Exchequer during the dispute. It takes effect on and after the date of Royal Assent to Finance Act 2015.

18. Where a company is a member of a partnership that generates a loss through arrangements that meet the criteria, the issue of a PPN will prevent that company surrendering its share of those losses to another company in its group. This has no effect on other members of the partnership who may be claiming or using the losses in different ways. The final amount of any loss that can be surrendered will be determined

through the partnership return, and any revision will then flow through to the partners in the normal way. When that happens HMRC will revise any PPN accordingly.