Finance (No. 2) Act 2015

2015 CHAPTER 33

PART 4

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Corporation tax

38 Restitution interest payments

(1) CTA 2010 is amended as follows.

(2) In section 1 (overview of Act), in subsection (3), after paragraph (ac) insert—

"(ad) restitution interest (see Part 8C),".

(3) After Part 8B insert—

"PART 8C

RESTITUTION INTEREST

CHAPTER 1

AMOUNTS TAXED AS RESTITUTION INTEREST

357YA Charge to corporation tax on restitution interest

The charge to corporation tax on income applies to restitution interest arising to a company.

Changes to legislation: *There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Section 38. (See end of Document for details)*

357YB **Restitution interest chargeable as income**

(1) Profits arising to a company which consist of restitution interest are chargeable to tax as income under this Part (regardless of whether the profits are of an income or capital nature).

(2) In this Part references to "profits" are to be interpreted in accordance with section 2(2) of CTA 2009.

357YC **Meaning of "restitution interest"**

(1) In this Part "restitution interest" means profits in relation to which Conditions A to C are met.

(2) Condition A is that the profits are interest paid or payable by the Commissioners in respect of a claim by the company for restitution with regard to either of the following matters (or alleged matters)—
   (a) the payment of an amount to the Commissioners under a mistake of law relating to a taxation matter, or
   (b) the unlawful collection by the Commissioners of an amount in respect of taxation.

(3) Condition B is that—
   (a) a court has made a final determination that the Commissioners are liable to pay the interest, or
   (b) the Commissioners and the company, have in final settlement of the claim, entered into an agreement under which the company is entitled to be paid, or is to retain, the interest.

(4) Condition C is that the interest determined to be due, or agreed upon, as mentioned in subsection (3) is not limited to simple interest at a statutory rate (see section 357YU).

(5) Subsection (4) does not prevent so much of an amount of interest determined to be due, or agreed upon, as represents or is calculated by reference to simple interest at a statutory rate from falling within the definition of "restitution interest".

(6) For the purposes of subsection (2) it does not matter whether the interest is paid or payable—
   (a) pursuant to a judgment or order of a court,
   (b) as an interim payment in court proceedings,
   (c) under an agreement to settle a claim, or
   (d) in any other circumstances.

(7) For the purposes of this section—
   (a) "interest" includes an amount equivalent to interest, and
   (b) an amount paid or payable by the Commissioners as mentioned in subsection (2) is "equivalent to interest" so far as it is an amount determined by reference to the time value of money.

(8) For the purposes of this section a determination made by a court is "final" if the determination cannot be varied on appeal (whether because of the absence of any right of appeal, the expiry of a time limit for making an appeal without an appeal having been brought, the refusal of permission to appeal, the abandonment of an appeal or otherwise).

(9) Any power to grant permission to appeal out of time is to be disregarded for the purposes of subsection (8).

357YD **Further provision about amounts included, or not included, in "restitution interest"**

(1) Interest paid to a company is not restitution interest for the purposes of this Part if—
   (a) Condition B was not met in relation to the interest until after the interest was paid, and
   (b) the amount paid was limited to simple interest at a statutory rate

(2) Subsection (1) does not prevent so much of a relevant amount of interest determined to be due, agreed upon or otherwise paid as represents or is calculated by reference to simple interest at a statutory rate from falling within the definition of "restitution interest".

(3) In subsection (2) "relevant amount of interest" means an amount of interest the whole of which was paid before Condition B was met in relation to it.

(4) Section 357YC(7) applies in relation to this section as in relation to section 357YC.

357YE **Period in which amounts are to be brought into account**

(1) The amounts to be brought into account as restitution interest for any period for the purposes of this Part are those that are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

(2) If Condition A in section 357YC is met, in relation to any amount, after the end of the period for which the amount is to be brought into account as restitution interest in accordance with subsection (1), any necessary adjustments are to be made; and any time limits for the making of adjustments are to be disregarded for this purpose.

357YF **Companies without GAAP-compliant accounts**

(1) If a company—
   (a) draws up accounts which are not GAAP-compliant accounts, or
   (b) does not draw up accounts at all,

   this Part applies as if GAAP-compliant accounts had been drawn up.

(2) Accordingly, references in this Part to amounts recognised for accounting purposes are references to amounts that would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.

Changes to legislation: *There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Section 38. (See end of Document for details)*

(3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.

(4) In this section "GAAP-compliant accounts" means accounts drawn up in accordance with generally accepted accounting practice.

357YG **Restitution interest: appeals made out of time**

(1) This section applies where—

(a) an amount of interest ("the interest") arises to a company as restitution interest for the purposes of this Part,

(b) Condition B in section 357YC is met in relation to the interest as a result of the making by a court of a final determination as mentioned in subsection (3)(a) of that section,

(c) on a late appeal (or a further appeal subsequent to such an appeal) a court reverses that determination, or varies it so as to negative it, and

(d) the determination reversing or varying the determination by virtue of which Condition B was met is itself a final determination.

(2) This Part has effect as if the interest had never been restitution interest.

(3) If—

(a) the Commissioners for Her Majesty's Revenue and Customs have under section 357YO(2) deducted a sum representing corporation tax from the interest, or

(b) a sum has been paid as corporation tax in respect of the interest under section 357YQ,

that sum is treated for all purposes as if it had never been paid to, or deducted or held by, the Commissioners as or in respect of corporation tax.

(4) Any adjustments are to be made that are necessary in accordance with this section; and any time limits applying to the making of adjustments are to be ignored.

(5) In this section—

"final determination" has the same meaning as in section 357YC;

"late appeal" means an appeal which is made by reason of a court giving leave to appeal out of time.

357YH **Countering effect of avoidance arrangements**

(1) Any restitution-related tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to amounts to be brought into account for the purposes of this Part.

(2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or otherwise.

(3) For the meaning of "relevant avoidance arrangements" and "restitution-related tax advantage" see section 357YI.

357YI **Interpretation of section 357YH**

(1) This section applies for the interpretation of section 357YH (and this section).

(2) "Arrangements" include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(3) Arrangements are "relevant avoidance arrangements" if their main purpose, or one of their main purposes, is to enable a company to obtain a tax advantage in relation to the application of the charge to tax at the restitution payments rate.

(4) But arrangements are not "relevant avoidance arrangements" if the obtaining of any tax advantages that would (in the absence of section 357YH) arise from them can reasonably be regarded as consistent with wholly commercial arrangements.

(5) "Tax advantage" includes—

(a) a repayment of tax or increased repayment of tax,

(b) the avoidance or reduction of a charge to tax or an assessment to tax,

(c) the avoidance of a possible assessment to tax,

(d) deferral of a payment of tax or advancement of a repayment of tax, or

(e) the avoidance of an obligation to deduct or account for tax.

(6) In subsection (5)(b) and (c) the references to avoidance or reduction include an avoidance or reduction effected by receipts accruing in such a way that the recipient does not bear tax on them as restitution interest under this Part.

357YJ **Examples of results that may indicate exclusion not applicable**

Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is to enable a company to obtain a restitution-related tax advantage are not excluded by section 357YI(4) from being "relevant avoidance arrangements" for the purposes of section 357YH—

(a) the elimination or reduction for the purposes of this Part of amounts chargeable as restitution interest arising to the company in connection with a particular claim, if for economic purposes other or greater profits arise to the company in connection with the claim;

(b) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company's accounts as an item of profit or loss, or be so recognised earlier;

(c) ensuring that a receipt is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements.

Changes to legislation: *There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Section 38. (See end of Document for details)*

CHAPTER 2

APPLICATION OF RESTITUTION PAYMENTS RATE

357YK **Corporation tax rate on restitution interest**

(1) Corporation tax is charged on restitution interest at the restitution payments rate.

(2) The "restitution payments rate" is 45%.

357YL **Exclusion of reliefs, set-offs etc**

(1) Under subsection (3) of section 4 (amounts to which rates of corporation tax applied) the amounts to be added together to find a company's "total profits" do not include amounts of restitution interest on which corporation tax is chargeable under this Part.

(2) No reliefs or set-offs may be given against so much of the corporation tax to which a company is liable for an accounting period as is equal to the amount of corporation tax chargeable on the company for the period at the restitution payments rate.

(3) In subsection (2) "reliefs and set-offs" includes, but is not restricted to, those listed in the second step of paragraph 8(1) of Schedule 18 to FA 1998.

(4) Amounts of income tax or corporation tax, or any other amounts, which may be set off against a company's overall liability to income tax and corporation tax for an accounting period may not be set off against so much of the corporation tax to which the company is liable for the period as is equal to the amount of corporation tax chargeable at the restitution payments rate.

CHAPTER 3

MIGRATION, TRANSFERS OF RIGHTS ETC

357YM **Assignment of rights to person not chargeable to corporation tax**

(1) Subsection (4) applies if—

(a) a company which is within the charge to corporation tax under this Part ("the transferor") transfers to a person who is not within the charge to corporation tax under this Part a right in respect of a claim, or possible claim, for restitution,

(b) the transfer is made on or after 21 October 2015, and

(c) conditions A and B are met.

(2) Condition A is that the main purpose, or one of the main purposes, of the transfer is to secure a tax advantage for any person in relation to the application of the charge to tax on restitution interest under this Part.

(3) Condition B is that as a result of that transfer (or that transfer together with further transfers of the rights) restitution interest arises to a person who is not within the charge to corporation tax under this Part.

(4) Any restitution interest which arises as mentioned in Condition B is treated for corporation tax purposes as restitution interest arising to the transferor.

(5) A person is "within the charge to corporation tax under this Part" if the person—
  (a) is a UK resident company, and
  (b) would not be exempt from corporation tax on restitution interest (were such interest to arise to it).

(6) In this section "tax advantage" has the meaning given by section 357YI.

357YN **Migration of company with claim to restitution interest**

(1) This section applies where—
  (a) restitution interest arises to a non-UK resident company,
  (b) the rights in respect of which the company is entitled to the restitution interest had (to any extent) accrued when the company ceased to be UK resident, and
  (c) the company's main purpose, or one of its main purposes, in changing its residence was to secure a tax advantage for any person in relation to the application of the charge to tax on restitution interest under this Part.

(2) The company is treated as a UK resident company for the purposes of the application of this Part in relation to so much of that restitution interest as is attributable to relevant accrued rights.

(3) "Relevant accrued rights" means rights which had accrued to the company when it ceased to be UK resident.

(4) The company is to be treated for the purposes of sections 185 and 187 of TCGA 1992 as not having disposed of its assets on ceasing to be resident in the United Kingdom, so far as its assets at that time consisted of rights to receive restitution interest.

(5) Any adjustments that are necessary as a result of subsection (4) are to be made; and any time limits for the making of adjustments are to be ignored for this purpose.

CHAPTER 4

PAYMENT AND COLLECTION OF TAX ON RESTITUTION INTEREST

357YO **Duty to deduct tax from payments of restitution interest**

(1) Subsection (2) applies if the Commissioners for Her Majesty's Revenue and Customs pay an amount of interest in relation to which Conditions 1 and 2 are met and—

Changes to legislation: *There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Section 38. (See end of Document for details)*

(a) the amount is (when the payment is made) restitution interest on which a company is chargeable to corporation tax under this Part, or

(b) a company would be chargeable to corporation tax under this Part on the interest paid if it were (at that time) restitution interest.

(2) The Commissioners must, on making the payment—

(a) deduct from it a sum representing corporation tax on the amount at the restitution payments rate, and

(b) give the company a written notice stating the amount of the gross payment and the amount deducted from it.

(3) Condition 1 is that the Commissioners are liable to pay, or have agreed or determined to pay, the interest in respect of a company's claim for restitution with regard to—

(a) the payment of an amount to the Commissioners under a mistake of law relating to a taxation matter, or

(b) the unlawful collection by the Commissioners of an amount in respect of taxation.

(4) Condition 2 is that the interest is not limited to simple interest at a statutory rate.

In determining whether or not this condition is met, all amounts which the Commissioners are liable to pay, or have agreed or determined to pay in respect of the claim are to be considered together.

(5) For the purposes of Condition 1 it does not matter whether the Commissioners are liable to pay, or (as the case may be) have agreed or determined to pay, the interest—

(a) pursuant to a judgment or order of a court,

(b) as an interim payment in court proceedings,

(c) under an agreement to settle a claim, or

(d) in any other circumstances.

(6) For the purposes of subsection (2) the restitution payments rate is to be applied to the gross payment, that is to the payment before deduction of a sum representing corporation tax in accordance with this section.

(7) For the purposes of this section—

(a) "interest" includes an amount equivalent to interest, and

(b) an amount which the Commissioners pay as mentioned in subsection (1) is "equivalent to interest" so far as it is an amount determined by reference to the time value of money.

357YP **Treatment of amounts deducted under section 357YO**

(1) An amount deducted from an interest payment in accordance with section 357YO(2) is treated for all purposes as paid by the company mentioned in section 357YO(1) on account of the company's liability, or potential liability, to corporation tax charged on the interest payment, as restitution interest, under this Part.

(2) Subsections (3) and (4) apply if—

(a) the Commissioners have, on paying an amount which is not (when the payment is made) restitution interest, made a deduction under section 357YO(2) from the gross payment (see section 357YO(6)), and

(b) a company becomes liable to repay the net amount to the Commissioners, or it otherwise becomes clear that the gross amount cannot, or will not, become restitution interest.

(3) If the condition in subsection (2)(b) is met in circumstances where the company is not liable to repay the net amount to the Commissioners, the Commissioners must—

(a) repay to the company the amount treated under subsection (1) as paid by the company, and

(b) make any other necessary adjustments;

and any time limits applying to the making of adjustments are to be ignored.

(4) If the condition in subsection (2)(b) is met by virtue of a company becoming liable to repay to the Commissioners the amount paid as mentioned in subsection (2)(a)—

(a) this Part has effect as if the company were liable to repay the gross payment to the Commissioners, and

(b) the amount deducted by the Commissioners as mentioned in subsection (2)(a) is to be treated for the purposes of this Part as money repaid by the company in partial satisfaction of its liability to repay the gross amount.

(5) Subsections (3) and (4) have effect with the appropriate modifications if the condition in subsection (2)(b) is met in relation to part but not the whole of the gross amount mentioned in subsection (2)(a).

(6) In this section "the net amount", in relation to a payment made under deduction of tax in accordance with section 357YO(2), means the amount paid after deduction of tax.

357YQ **Assessment of tax chargeable on restitution interest**

(1) An officer of Revenue and Customs may make an assessment of the amounts in which, in the officer's opinion, a company is chargeable to corporation tax under this Part for a period specified in the assessment.

(2) Notice of an assessment under this section must be served on the company, stating the date on which the assessment is issued.

(3) An assessment may include an assessment of the amount of restitution income arising to the company in the period and any other matters relevant to the calculation of the amounts in which the company is chargeable to corporation tax under this Part for the period.

(4) Notice of an assessment under this section may be accompanied by notice of any determination by an officer of Revenue and Customs relating to the dates on which amounts of tax become due and payable under this section or to amounts treated under section 357YP as paid on account of corporation tax.

(5) The company must pay the amount assessed as payable for the accounting period by the end of the period of 30 days beginning with the date on which the company is given notice of the assessment.

357YR **Interest on excessive amounts withheld**

(1) If an amount deducted under section 357YO(2) in respect of an amount of interest exceeds the amount which should have been deducted, the Commissioners are liable to pay interest on the excess from the material date until the date on which the excess is repaid.

(2) The "material date" is the date on which tax was deducted from the interest.

(3) Interest under subsection (1) is to be paid at the rate applicable under section 178 of FA 1989.

357YS **Appeal against deduction**

(1) An appeal may be brought against the deduction by the Commissioners for Her Majesty's Revenue and Customs from a payment of a sum representing corporation tax in compliance, or purported compliance, with section 357YO(2).

(2) Notice of appeal must be given—
   (a) in writing,
   (b) within 30 days after the giving of the notice under section 357YO(2).

357YT **Amounts taxed at restitution payments rate to be outside instalment payments regime**

For the purposes of regulations under section 59E of TMA 1970 (further provision as to when corporation tax due and payable), tax charged at the restitution payments rate is to be disregarded in determining the amount of corporation tax payable by a company for an accounting period.

CHAPTER 5

SUPPLEMENTARY PROVISIONS

357YU **Interpretation**

(1) In this Part "court" includes a tribunal.

(2) In this Part "statutory rate" (in relation to interest) means a rate which is equal to a rate specified—
   (a) for purposes relating to taxation, and
   (b) in, or in a provision made under, an Act.

357YV **Relationship of Part with other corporation tax provisions**

(1) So far as restitution interest is charged to corporation tax under this Part it is not chargeable to corporation tax under any other provision.

(2) This Part has effect regardless of section 464(1) of CTA 2009 (priority of loan relationship provisions).

357YW **Power to amend**

(1) The Treasury may by regulations amend this Part (apart from this section).

(2) Regulations under this section—
- (a) may not widen the description of the type of payments that are chargeable to corporation tax under this Part;
- (b) may not remove or prejudice any right of appeal;
- (c) may not increase the rate at which tax is charged on restitution interest under this Part;
- (d) may not enable any provision of this Part to have effect in relation to the subject matter of any claim which has been finally determined before 21 October 2015.

(3) Subject to subsection (2), regulations under this section may have retrospective effect.

(4) For the purposes of this section a claim is "finally determined" if a court has disposed of the claim by a final determination or the claimant and the Commissioners for Her Majesty's Revenue and Customs have entered into an agreement in final settlement of the claim.

(5) Section 357YC(8) (which defines when a determination made by a court is final) has effect for the purposes of this section as for the purposes of section 357YC.

(6) Regulations under this section may include incidental, supplementary or transitional provision.

(7) A statutory instrument containing regulations under this section must be laid before the House of Commons.

(8) The regulations cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by a resolution of the House of Commons.

(9) In reckoning the 28-day period, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or
- (b) the House of Commons is adjourned for more than 4 days.

(10) Regulations ceasing to have effect by virtue of subsection (8) does not affect—
- (a) anything previously done under the regulations, or
- (b) the making of new regulations."

Changes to legislation: *There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Section 38. (See end of Document for details)*

(4) In TMA 1970, in section 59D (general rule as to when corporation tax is due and payable)—

(a) in subsection (3) after "with" insert " the first to fourth steps of ";

(b) in subsection (5) after "59E" insert " and section 357YQ of CTA 2010 (assessment of tax chargeable on restitution interest) ".

(5) Paragraph 8 Schedule 18 to FA 1998 (company tax returns, assessments etc: calculation of tax payable) is amended as follows—

(a) in paragraph 2 of the first step, after "company" insert " (other than the restitution payments rate) ";

(b) After the fourth step insert—

"Fifth step

Calculate the corporation tax chargeable on any profits of the company that are charged as restitution interest.

(1) Find the amount in respect of which the company is chargeable for the period under the charge to corporation tax on income under Part 8C of CTA 2010.

(2) Apply the restitution payments rate in accordance with section 357YK(1) of that Act.

The amount of tax payable for the accounting period is the sum of the amounts resulting from the first to fourth steps and this step."

(6) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended in accordance with subsections (7) and (8).

(7) In paragraph 1, in the table after item 6 insert—

"6ZZA	Corporation tax	Amount payable under section 357YQ of CTA 2010	The end of the period within which, in accordance with section 357YQ(5), the amount must be paid."

(8) In paragraph 4(1), for "or 6" substitute " , 6 or 6ZZA ".

(9) The amendments made by subsections (1) to (8) have effect in relation to interest (whether arising before or on or after 21 October 2015) which falls within subsection (11).

(10) Section 357YO of CTA 2010, and the amendments made by subsections (1) to (8) so far as relating to the deduction of tax under section 357YO, have effect in relation to payments of interest made on or after 26 October 2015. This rule is not limited by the rule in subsection (9).

(11) Interest arising to a company falls within this subsection if—

(a) a determination made by a court that the Commissioners for Her Majesty's Revenue and Customs are liable to pay the interest becomes final on or after 21 October 2015, or

(b) on or after 21 October 2015 the Commissioners and a company enter into an agreement in final settlement of a claim for restitution, under which the company is entitled to be paid, or to retain, the interest.

(12) In subsections (9) to (11)—

(a) the reference to a determination made by a court becoming "final" is to be interpreted in accordance with section 357YC of CTA 2010;

(b) the references to "interest" are to be interpreted in accordance with section 357YC of CTA 2010."

Changes to legislation:
There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Section 38.