

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

CORPORATION TAX ACT 2010 (PART 8C)  
(AMENDMENT) REGULATIONS 2017

*Thursday 20 April 2017*

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**The Committee consisted of the following Members:**

*Chair:* MRS CHERYL GILLAN

- |   |   |
|---|---|
| † Barclay, Stephen ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) | † Knight, Julian ( <i>Solihull</i> ) (Con)              |
| † Dowd, Peter ( <i>Bootle</i> ) (Lab)                                     | † Lefroy, Jeremy ( <i>Stafford</i> ) (Con)              |
| † Ellison, Jane ( <i>Financial Secretary to the Treasury</i> )            | Mahmood, Shabana ( <i>Birmingham, Ladywood</i> ) (Lab)  |
| Field, Mark ( <i>Cities of London and Westminster</i> ) (Con)             | † Raab, Mr Dominic ( <i>Esher and Walton</i> ) (Con)    |
| † Henderson, Gordon ( <i>Sittingbourne and Sheppey</i> ) (Con)            | Sheerman, Mr Barry ( <i>Huddersfield</i> ) (Lab/Co-op)  |
| Hoey, Kate ( <i>Vauxhall</i> ) (Lab)                                      | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)   |
| Johnson, Alan ( <i>Kingston upon Hull West and Hessle</i> ) (Lab)         | † Tugendhat, Tom ( <i>Tonbridge and Malling</i> ) (Con) |
| Kerevan, George ( <i>East Lothian</i> ) (SNP)                             | † Warburton, David ( <i>Somerton and Frome</i> ) (Con)  |
|   | † Williams, Craig ( <i>Cardiff North</i> ) (Con)        |
|   | Juliet Levy, <i>Committee Clerk</i>                     |
|   | † <b>attended the Committee</b>                         |

## Third Delegated Legislation Committee

Thursday 20 April 2017

[MRS CHERYL GILLAN *in the Chair*]

### Corporation Tax Act 2010 (Part 8C) (Amendment) Regulations 2017

11.30 am

**The Financial Secretary to the Treasury (Jane Ellison):** I beg to move,

That the Committee has considered the Corporation Tax Act 2010 (Part 8C) (Amendment) Regulations 2017 (S.I., 2017, No. 364).

It is a pleasure to serve under your chairmanship, Mrs Gillan, on this perhaps unusual day for Parliament.

The amendments make important changes to the 45% tax charge on restitution interest to exclude two particular groups from the rules and strengthen provisions to help stop avoidance. They will therefore enjoy broad support.

Restitution interest comes into play if a company wins its claim under common law to get tax back that it should not have had to pay to Her Majesty's Revenue and Customs. In that situation, firms could receive compound interest on the amount overpaid and, where any such amount of money is to be paid back to firms, the restitution interest income is subject to corporation tax in the normal way at a rate of 45%. However, the system also needs to recognise the particular circumstances of two groups that are exceptions to the normal rule: charities and life insurance companies. The regulations therefore introduce exceptions to the rules as well as amendments to strengthen provisions to stop avoidance.

Charitable companies and life insurance companies that have brought a claim against HMRC for a mistake of law will be affected by regulations 5 and 6 in the case of charitable companies and regulations 8 and 9 in the case of life insurance companies. Claims for restitution interest brought by a charitable company as well as those brought by a life insurance company, which is attributable to a policy holder of a with-profits fund, will now be outside the scope of the 45% corporation tax. Those will have effect from 21 October 2015, when the primary legislation came into force.

I can confirm that this issue was raised with me at a recent charity tax conference. It is something that charities have been talking to us about for some time.

Regulations 7, 10 and 11 in part 2 relate to the anti-avoidance provisions. We are strengthening the rules with effect from 21 October 2015 in various ways. I am happy to take questions and go into more detail about each of those regulations. As I say, they fall under the broad category of strengthening anti-avoidance.

Regulation 12 in part 2 deals with the treatment of tax already withheld. HMRC is required to withhold tax from the restitution at the time of its payment.

This regulation makes it clear that the tax that has been withheld by HMRC can be offset against a company's self-assessment. Again, the change will have effect from 21 October 2015. Regulations 13 to 18 in part 3 make minor amendments to ensure that the wording of the legislation is consistent and clear.

In summary, the amendments we are making to the legislation through these regulations represent a tightening of both the wording and the provisions to help stop avoidance. The key change that they make to exempt charities and certain income of life insurance companies is a fundamental issue of fairness. I hope that the regulations enjoy broad support. I commend them to the Committee.

11.34 am

**Peter Dowd (Bootle) (Lab):** It is a pleasure to serve under your chairmanship, Mrs Gillan.

I do not have much to say about this proposal, although I have a few questions that the Minister might be able to help me with. If she has time or the inclination, perhaps she might tell us a little more about the anti-avoidance measures. The number of charities affected is fairly tight. Theoretically, all charities could be affected, but how many charities have challenged the Treasury in practice? It would be helpful to know. I have seen a figure of £50 million for the cost. Can the Minister give any figures?

On informal consultation, I know that there was the conference, but can the Minister tell us a little more? Frankly, that is all I want to ask.

11.35 am

**Jane Ellison:** Those are all reasonable questions. There has been a lot more discussion with charities than just the recent conference, which illustrated that the issue remains current for charities. I held a roundtable on charitable taxation a few months ago. The concern obviously arose from the primary legislation, and there have been discussions since it came into force, because we are keen to give reassurance.

We think that fewer than 0.5% of claimant groups will be affected by the changes. As the amendments are to corporation tax and restitution interest, only charities with trading operations would be paying it, not the majority. It is fair to say that their concern is about being caught in future rather than resolving immediate issues.

It is worth noting that the corporation tax regime exempts charitable companies if the income is applied for charitable purposes. The amendment was made for very specific circumstances of commercial operations. This is about ensuring that we remain within the spirit of the corporation tax treatment of charities and bringing the regulations back within the spirit of that treatment. I hope that my comments have been helpful.

*Question put and agreed to.*

11.37 am

*Committee rose.*