These notes refer to the Finance Act 2010 (c.13) which received Royal Assent on 8 April 2010

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Section 25: Property Loss Relief

Summary

1. Section 25 provides for changes to the rules for property loss relief against general income, which may be claimed by persons within the charge to income tax. The changes prohibit tax-generated losses attributable to the annual investment allowance (AIA) being offset against general income. They apply to losses arising from or in connection with relevant tax avoidance arrangements entered into on or after 24 March 2010.

Details of the Section

2. Subsection (2) inserts a new subsection (3) into section 117 of the Income Tax Act 2007 (ITA) signposting the new section 127A.

3. Subsection (3) inserts a new subsection (7) into section 120 of ITA, similarly signposting the new section 127A.

4. Subsection (4) inserts new section 127A after section 127 of ITA.

5. New section 127A(1) provides that the section applies if, in a tax year, a person makes a loss in a UK or overseas property business (alone or in partnership), the loss has a capital allowances connection (as defined in section 123(2)) and the loss arises directly or indirectly in consequence of, or otherwise in connection with, "relevant tax arrangements" as defined in new subsection (4).

6. New section 127A(2) provides that the property loss cannot be set off against general income to the extent that the loss is attributable to the AIA.

7. New section 127A(3) gives a rule ensuring that the AIA is treated as the first element of a property loss in priority to other capital allowances and other expenses that may be set off against other income.

8. New section 127A(4) defines the phrase "relevant tax avoidance arrangements" as used in new subsection (1). These are arrangements to which the person is a party and the main purpose, or one of the main purposes, of which is to put the person in a position to make use of an AIA in the obtaining of a reduction in tax liability by means of property loss relief against general income.

9. New section 127A(5) defines "arrangements" as including any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

10. New section 127A(6) explains that "the applicable amount of the loss" has the meaning given to it by section 122 of ITA.

11. Subsection (5) of the section gives the commencement rule. The section only applies to property losses arising from arrangements entered into on or after 24 March 2010, or transactions forming part of arrangements entered into on or after 24 March 2010.

12. Subsection (6) excludes arrangements or transactions entered into pursuant to an unconditional obligation in a contract made before 24 March 2010.

13. Subsection (7) explains what is meant by an unconditional obligation. It is an obligation that may not be varied or extinguished by the exercise of a right (whether or not under the contract).

Background Note

14. At Budget 2010, the Government announced that the maximum amount of the AIA was to be increased from £50,000 per annum to £100,000 per annum. The AIA is a relief that is available to most businesses and covers most expenditure on plant and machinery (the main exclusion being cars).

    The AIA is available to:

    - any individual carrying on a qualifying activity (this includes trades, professions, vocations, ordinary and overseas property businesses and individuals having an employment or office);
    - any partnership consisting only of individuals; and
    - any company (subject to certain restrictions).

15. There are several anti-avoidance rules in relation to losses arising from the carrying on of a trade profession or vocation. Those rules do not apply to property businesses. Property losses can only be set off against general income if the loss has a “capital allowances connection” and or “a relevant agricultural connection”.

16. New section 127A of ITA is a targeted anti-avoidance rule (TAAR) which prevents relief against general income being given to a person for a loss from a UK or overseas property business which is attributable to the AIA and arises from “relevant tax avoidance arrangements”. These are defined as arrangements to which the person is a party and the main purpose, or one of the main purposes, of which is to put the person in a position to make use of an AIA in the obtaining of a reduction in tax liability by means of property loss relief against general income.

17. The legislation is specifically targeted at persons who enter into tax avoidance arrangements with a main purpose of obtaining a tax reduction by way of property relief attributable to the AIA. It will have no relevance for the vast majority of taxpayers who do not enter into such arrangements.

18. The restriction applies to property losses attributable to the AIA which arise as a result of tax avoidance arrangements entered into on or after 24 March 2010.