PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

FINANCE (NO. 2) BILL

(Except clauses 1, 5 to 7, 11, 72 to 74, and 112, schedule 1, and certain new clauses and new schedules)

Fifth Sitting

Tuesday 6 May 2014

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Saturday 10 May 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Martin Caton, † Mr Gary Streeter

† Burt, Lorely *(Solihull)* (LD)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Dinenage, Caroline *(Gosport)* (Con)
† Duddridge, James *(Rochford and Southend East)* (Con)
† Elphicke, Charlie *(Dover)* (Con)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Fuller, Richard *(Bedford)* (Con)
† Garnier, Mark *(Wyre Forest)* (Con)
Gauke, Mr David *(Exchequer Secretary to the Treasury)*
† Gilmore, Sheila *(Edinburgh East)* (Lab)
† Glindon, Mrs Mary *(North Tyneside)* (Lab)
† Hames, Duncan *(Chippenham)* (LD)
† Heaton-Harris, Chris *(Daventry)* (Con)
† Jamieson, Cathy *(Kilmarnock and Loudoun)* (Lab/Co-op)
† Kane, Mike *(Wythenshawe and Sale East)* (Lab)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Leadsom, Andrea *(Economic Secretary to the Treasury)*
† Leslie, Chris *(Nottingham East)* (Lab/Co-op)
† Mahmood, Shabana *(Birmingham, Ladywood)* (Lab)
† McKenzie, Mr Iain *(Inverclyde)* (Lab)
† McKinnell, Catherine *(Newcastle upon Tyne North)* (Lab)
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† Morgan, Nicky *(Financial Secretary to the Treasury)*
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† Pincher, Christopher *(Tamworth)* (Con)
† Rudd, Amber *(Hastings and Rye)* (Con)
† Rutley, David *(Macclesfield)* (Con)
† Shelbrooke, Alec *(Elmet and Rothwell)* (Con)
Smith, Henry *(Crawley)* (Con)
† Swales, Ian *(Redcar)* (LD)
Vaz, Valerie *(Walsall South)* (Lab)
† Wheeler, Heather *(South Derbyshire)* (Con)
† Williamson, Chris *(Derby North)* (Lab)
Wilson, Sammy *(East Antrim)* (DUP)

Matthew Hamlyn, Kate Emms, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 6 May 2014

[MR GARY STREETER *in the Chair*]

Finance (No. 2) Bill

(Except clauses 1, 5 to 7, 11, 72 to 74 and 112, schedule 1, and certain new clauses and new schedules)

3.30 pm

The Chair: Colleagues, we gather again. May I say how wonderful it is to see the two Front-Bench teams looking very female?

Clause 26

RELEASE OF DEBTS: STABILISATION POWERS UNDER BANKING ACT 2009

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson (Kilmarnock and Loudoun) (Lab/Co-op): It is a pleasure to be in Committee again, Mr Streeter, and thank you for your comments about the two Front-Bench teams. My hon. Friend the Member for Scunthorpe is the token male on this occasion, but he does a fine job and we are pleased that he is with us on the Front Bench.

The clause is about the release of debts. It will amend the corporation tax rules on loan relationships that apply to cases in which credits are not required to be brought into account on the release of debts. The cases covered include when a debt is released as a result of the application of any of the stabilisation powers under part 1 of the Banking Act 2009.

The existing rules ensure that a debtor company released from a debt as part of an insolvency arrangement is not taxed on the profit arising from the release so that, in effect, the transaction is tax-neutral and the debtor is not penalised for release from a debt obligation, as that would be counter-productive. The change will ensure that resolution by the Bank of England, which is a form of such arrangements, is treated in the same way.

The background to the measure is that section 322 of the Corporation Tax Act 2009 exempts a company that is party as a debtor to a loan relationship—a debtor relationship is any loan relationship in which the company is the debtor, which is the borrower of money or the issuer of security—from a credit arising on the release of that debt when one of three conditions is met: the release is part of a statutory insolvency arrangement; it is in consideration of shares, or any entitlement to such shares; or if the debtor meets one of the insolvency conditions, such as insolvent liquidation, administration and administrative receivership, or there is the appointment of a provisional liquidator or an equivalent procedure outside the UK. The clause adds the condition that liability is released in consequence of the exercise of a stabilisation power under part 1 of the Banking Act 2009, which is known as the special resolution regime.

The change was flagged up in the other place in November 2013, when Lord Deighton commented:

> "the exercise of any of the stabilisation powers under Part 1 of the Banking Act 2009 to reduce a bank's debt may lead to taxable loan relationship profits that would hinder its rescue. Consequently we will bring in measures in the next Finance Bill, with retrospective effect to this date, to relieve any such taxable profits that arise."—[*Official Report, House of Lords,* 26 November 2013; Vol. 749, c. 1332.]

We do not intend to oppose the clause.

The Economic Secretary to the Treasury (Andrea Leadsom): It is a great pleasure to be serving under your chairmanship, Mr Streeter.

As the hon. Member for Kilmarnock and Loudoun says, the clause is a consequential change to the corporation tax rules on corporate debt that apply to cases in which credits are not required to be brought into account on the release of debts. The measure was announced by the Commercial Secretary to the Treasury on 26 November 2013 during the passage of the Financial Services (Banking Reform) Act 2013.

The clause will amend the corporation tax rules on loan relationships in part 5 of the Corporation Tax Act 2009. The change will apply to any bank or other financial institution subject to the application of any of the stabilisation powers under part 1 of the Banking Act 2009, and it will ensure that when a debt is released as a result of the application of any of those stabilisation powers, the debtor will not be required to bring into account the resultant credit. That will put banks and other financial institutions in the same position as other companies that enter into statutory insolvency arrangements.

I am delighted that the Opposition will not be objecting to the clause, so let me conclude by saying that the existing rules ensure that a debtor company that is released from a debt as part of an insolvency arrangement is not taxed on the profit arising from that release. The change will support fairness in the tax system by ensuring that resolution by the Bank of England, which is a form of such arrangements, is treated in the same way, and it will support financial stability by ensuring that the tax consequences of any future resolution can be dealt with in an orderly way. I commend the clause to the Committee.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27

HOLDINGS TREATED AS RIGHTS UNDER LOAN RELATIONSHIPS

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: Clauses 27 to 29 concern, in part, the introduction of new measures on tax avoidance. We have heard throughout our discussion of the Bill—no doubt we will hear more as our proceedings continue—about the seriousness of tax avoidance. Of course, the Opposition would support the Government on any steps to combat tax avoidance, but there are worries that the attempts of Her Majesty's Revenue and Customs to address it have not been as successful as we might have hoped in recent years.

The latest figures for 2011-12 show an increase in the tax gap of £1 billion—to £35 billion—compared with the previous year. According to a report by the Public Accounts Committee in December 2013, the amount lost to the Exchequer is underestimated, so the actual cost of tax avoidance could be considerably higher. We are worried that HMRC has not tried to gather intelligence about how much tax revenue is lost through aggressive tax avoidance schemes, meaning that any additional amount is not included in the figures cited.

In setting the context for clause 27, I would like to point to recent evidence brought to light by the PAC report, which identified a real-terms reduction in the revenue collected by HMRC in 2011-12 and 2012-13. The Committee argued that HMRC, in its actions to pursue unpaid tax, had not clearly demonstrated that it was on the side of the majority of taxpayers who pay their taxes in full. Questions were asked about whether HMRC was using the full range of sanctions at its disposal to pursue all unpaid tax vigorously, and about whether its measure of the tax gap captured all the avoided tax that it should be collecting.

Concern was also expressed about the possibility that HMRC had massively overestimated how much it would collect from UK holders of Swiss bank accounts. For 2013-14, it has so far collected only £440 million of the £3.12 billion predicted at the time of the 2012 autumn statement. All that sets the scene for the Opposition's suggestion that HMRC could be doing more to deal with tax avoidance.

The clause will amend legislation that applies to holdings in unit trusts, open-ended investment companies and offshore funds that are treated as loan relationships, meaning that distributions from any type of fund in which a company has a relevant holding are not treated as distributions for corporation tax purposes and instead fall within the remit of loan relationships legislation. It also introduces a new anti-avoidance provision that sets out that if a company has a holding in a fund that is treated as a loan relationship and arrangements are entered into to obtain a tax advantage for any person, adjustments must be made to counteract such an advantage.

It is worth mentioning the fact that unit trusts and open-ended investment companies are by far the most popular types of investment funds. In a unit trust, the fund manager buys bonds and shares in companies on the stock market on behalf of the fund. The fund is split into units, which are what the investors buy. The fund manager creates units for new investors and cancels units for those selling out of the fund. The creation of the units can be unlimited; hence why the fund is open-ended. The price of each unit depends on the net asset value of the fund's underlying investments and is priced once a day, which means that the value of the units bought directly reflects the underlying value of the investment.

An open-ended investment company in the UK is a company or fund that is structured to invest in other companies and is able to adjust constantly its investment criteria and fund size. The company's shares are listed on the London stock exchange and the share price is based largely on the fund's underlying assets. There are no bid and ask quotes on OEIC shares; buyers and sellers receive the same price.

An OEIC fund issuer is a company that creates and cancels shares when investors come into and go out of the fund. The shares directly reflect the value of the assets that the fund manager has invested in. When shares are issued, the fund receives money and invests it. When eliminating shares, the issuer pays out from its fund. Such funds can mix different types of investment strategies such as income growth, and small cap and large cap.

The clause follows on from the Government's announcement in Budget 2013 of a review of the law governing the corporation tax treatment of corporate debt and derivative contracts, with the objective of simplifying and tightening the legislation to make it more resistant to abuse. The majority of those reforms are scheduled to be implemented in the 2015 Finance Bill.

The Government consulted on modernising the taxation of corporate debt and derivative contracts, and published a summary of responses in December 2013. The key areas for consultation were: refining the core structure of the regime, including clarification of the role to be played by accountancy in determining taxable amounts; basing taxable amounts on accounting profit and loss, rather than, as now, taking account of debits and credits appearing in any part of a company's financial statements; combining the rules that apply separately to loan relationships and derivative contracts; revising some of the detailed rules and areas of connected party debt, intra-group transfers, partnerships, foreign exchange movements, hedging, debt restructuring, and the treatment of bond funds and certain particular types of instrument; and introducing an integrated and comprehensive anti-avoidance provision.

Under the existing approach, the treatment of loan relationships held or owed by corporate partners through partnerships is set out in the Corporation Tax Act 2009. The intention of the clause is to clarify and amend provisions in chapter 3 of part 6 of that Act, which are known as the bond fund rules. The changes include adding a provision to clarify how distributions are treated when those rules apply.

The bond fund rules intend to tax UK corporate holding units in certain collective investment schemes as if the units were loan relationships to prevent the deferral or avoidance of tax. If more than 60% of a fund's assets are debt-type at any time in the investor's accounting period, the investment is treated as a creditor-loan relationship—the fund is the lender of money—and charged on a fair value basis. All returns of interest to the holder are included in the calculation and any distributions in respect of a holding are not treated as such for tax purposes, presumably because distributions can reduce a fund's taxable income.

The rules have, on occasion, been used or exploited for avoidance purposes—for example, certain assets have been included in a fund presumably to engineer fair value losses for a low rate of tax, or none at all. The new provisions will apply to any arrangements that relate to a bond fund and allow reasonable adjustment to be made to counteract a tax advantage obtained by the company holding the investment in a fund or by any other person. Essentially, the clause is a move to prevent funds, or members of funds, from deliberately manipulating assets and balance sheets to gain a tax advantage.

I have some questions about the clause—they pick up on points from the consultation—to which I hope the Minister will respond. What is the Government's analysis of the impact that the measures will have on the level of

[Cathy Jamieson]

investment in OEICs and unit trusts? How does HMRC define gaining a tax advantage? What factors will be taken into account when HMRC considers whether a deliberate tax advantage has been sought? What analysis have the Government carried out of the revenues lost to the Exchequer through the exploitation of the existing bond fund rules that the clause tries to address? What is the intended scope of the clause? For example, will it impact only small groups of taxpayers with small private funds—in other words, a very limited selection of taxpayers—or will it have tax implications for taxpayers in more widely accessible funds, such as those meeting the genuine diversity of ownership condition?

I ask those questions because the Government's consultation response summary states:

> "Current anti-avoidance provisions across the loan relationships and derivative contracts regimes reflect a piecemeal approach to blocking particular schemes as they come to light; this has been a source of complexity."

Will the Minister explain how provisions in the clause, and generally, reflect the more co-ordinated approach that the Government seem to wish for?

3.45 pm

Chris Heaton-Harris (Daventry) (Con): It is a pleasure to serve under your chairmanship, Mr Streeter.

I speak as one of two members of the Public Accounts Committee serving on this Committee—the hon. Member for Redcar is also a member—and I want to respond to what the hon. Lady said about one of the reports that we issued in December. I do not think she was trying to say that Lin Homer, the chief executive of HMRC, was a light touch when it came to tidying up any sort of tax-avoidance issues. In fact, under strong questioning from the PAC, it became rather obvious that while we might like some of these things out in the open so that we can see what HMRC is doing, a lot of detailed work is going on behind the scenes. If the hon. Lady read not just the conclusions of the report, but the interview with Lin Homer during which I, the hon. Member for Redcar and the Chair of the Committee all interacted with the chief executive of HMRC about these issues, she would see how much detailed work is going on to stop the type of tax avoidance that no member of this Bill Committee would condone.

Andrea Leadsom: I am grateful to the hon. Member for Kilmarnock and Loudoun for her contribution. Contrary to what she said, the evidence is that the market for tax-avoidance schemes is shrinking and that HMRC is securing greater revenues from those who try to avoid paying their fair share. For example, disclosures of tax-avoidance schemes fell by almost 50% between 2011-12 and 2012-13—from 116 to 59—and 80% of the avoidance cases heard in the courts are being won by HMRC. In 2012-13, HMRC won 26 of the 32 avoidance cases that it pursued, protecting £2.25 billion in revenues. In 2013-14, HMRC won 29 of 37 cases, protecting nearly £2.5 billion by mid-March 2014. Since April 2010, HMRC has collected more then £750 million in additional tax revenues from the UK's 6,000 wealthiest individuals, so there is evidence that HMRC is improving its tax-avoidance measures.

Cathy Jamieson: Will the Minister comment on the point that I raised about the £3.12 billion that was predicted in the 2012 autumn statement? Will that be collected?

Andrea Leadsom: I will have to get back to the hon. Lady on that very specific question. I am not sure what the progress is on that, but I think she would have to agree that there is evidence of a successful improvement through the anti-avoidance measures that the Government have been taking.

As the hon. Lady said, clauses 27 and 28 arise from the reviews that HMRC is undertaking on the rules for loan relationships and derivative contracts, which involve a major consultation exercise. Most changes to the rules will be in the 2015 Finance Bill, but clauses 27 and 28, which are both technical, have already been agreed with the consultation group.

The hon. Lady specifically suggested that the measures will be unsuccessful. In fact, the known avoidance schemes that are behind the introduction of the changes have already been closed, and clause 27 will provide safeguards against similar schemes. She is not right to think that the measure will not be successfully implemented.

Cathy Jamieson: I want to ensure that the hon. Lady understands that I was not suggesting that the measures would not be successful. I was simply raising a question about what analysis the Government have carried out and asking her to explain why she thought this approach was more co-ordinated.

Andrea Leadsom: As I said, a major consultation is taking place on the rules for loan relationships and derivative contracts. Most measures that arise from that will be in the 2015 Finance Bill. Clauses 27 and 28 are not in fact piecemeal, but deal with specific avoidance schemes.

Clause 27 changes the corporation tax rules on corporate debt and derivative contracts. The changes arise from a consultation on the modernisation of those rules that the Government launched last June. Consultation has been proceeding since then with a wide range of companies, representative bodies and other interested parties. These changes are being made in advance of wider changes to the regime that will be included in the 2015 Finance Bill. They amend what are known as the bond fund rules, which ensure the consistent tax treatment of loans or other debt-type assets, whether held directly or within a fund—for instance, in a unit trust. Generally, loans or similar assets held by a company are taxed under the specific legislation that applies to loan relationships, but companies could sidestep those rules and secure a different tax treatment simply by holding the assets in a fund rather than directly.

The bond fund rules therefore provide that, in some circumstances, holdings in funds are treated as loan relationships. However, the bond fund rules themselves have been used in corporation tax avoidance schemes in the past. Clause 27 will prevent avoidance by introducing new and stronger anti-avoidance protection into the rules, thus ensuring that the rules work correctly and cannot themselves be used for tax avoidance. It provides that if arrangements are made to get a tax advantage through a fund holding within the bond fund rules, that tax advantage is to be reversed.

The clause also makes a minor change to ensure that all distributions from a fund holding that falls within the bond fund rules are taxed as loan relationships and are not treated as exempt dividends, as can currently happen. Without that change, if a fund pays a dividend that reduces the fund's value, the recipient might get the benefit of a tax loss when no loss has been suffered. The change will ensure an appropriate and fair result in all cases.

Clause 27 will ensure that legislation can achieve its intended purpose and cannot be exploited for avoidance. It supports the Government's objectives of fairness and certainty in the tax code.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Clause 28

De-grouping charges (loan relationships etc)

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: The clause relates to de-grouping charges and amends measures in the Corporation Tax Act 2009 that apply to groups of companies. It will amend the de-grouping provisions in those sections of the 2009 Act that apply when a company to which a loan relationship or derivative contract has been transferred ceases to be a member of the group.

The stated policy aim is to support the Government's objective of establishing

"a simpler, more certain and more robust tax system."

In technical terms, the clause will repeal provisions in sections 345, 346, 631 and 632 of CTA 2009 that have the effect of restricting the de-grouping charge so that it brings into account credits and certain debits only in limited circumstances. Under the changes, where a transferee company ceases to be a member of a group on or after 1 April 2014, the rules will apply to bring into account both credits and debits for taxation purposes.

Again, the background to the clause relates to group continuity rules, which ensure that loan relationships and derivative contracts are transferred between two companies in the same group at a notional carrying value—in other words, their notional balance sheet value at the time of transfer—and on a tax-neutral basis, in other words without crystallising losses or bringing gains into the charge. Profit or loss on the loan relationship or derivative is not brought into account for tax purposes until the instrument is finally disposed of from the group.

Where a transferee company ceases to be a member of the group within six years of the date of transfer, a de-grouping charge is incurred, which brings into account an amount equal to the difference between the notional carrying value and the fair value of the loan relationship or derivative contract for tax purposes. However, in most cases the de-grouping charge applies only in limited cases, and only to bring credits, not debits, into charge. At Budget 2013, the Government announced a review of the legislation governing the taxation of corporate debt—the loan relationships—and derivative contracts. The aim of the review was to make the legislation simpler, more certain, and more resistant to abuse.

Once again, we are not seeking to remove the clause from the Bill, but there are a couple of points that I wish to make, and I have some questions for the Minister. As I said, the clause extends the de-grouping charge to cover both credits and debits on loan relationships and derivative contacts in the event of de-grouping, by removing a number of the subsections in CTA 2009. The Government are right to take action to restrict the scope for tax avoidance, especially given that the Exchequer has potentially lost out on significant sums; we have already heard some comment about that. Additionally, given the complexity of the taxation regime, any efforts to introduce greater simplicity and transparency would, of course, be welcomed.

However, the Government have stated in their policy note that the economic impact of the measures, including on the Exchequer, will be negligible; will the Minister confirm that? If the impact is negligible, can she confirm that she does not expect the measures to raise any additional revenue for the Exchequer? Given the discussions that we are having about the success or otherwise of the tax avoidance measures and about trying to rein in tax avoidance, can she explain whether the clause has any tangible impact?

I heard what the hon. Member for Daventry said about the full report of the Public Accounts Committee, but none the less, one of the things that came through from the report was the issue of trying to gather intelligence on the full cost of tax avoidance schemes. Can the Minister say whether it is her intention to undertake any more of that activity and, if so, to present the results to Parliament?

Andrea Leadsom: Clause 28 makes a change to the corporation tax rules on corporate debt in derivative contracts. It arises from a consultation that the Government launched in June last year on the modernisation of these rules. Consultation has been proceeding since then with a wide range of companies, representative bodies and other interested parties. It has been broadly welcomed by business. This change, which will ensure that certain profits and losses are treated consistently, is being made in advance of wider changes to the regime that will be included in the 2015 Finance Bill.

The changes made here will amend what are referred to as the de-grouping provisions. These rules apply when a loan or derivative is transferred to a company and that company ceases to be a member of a group. Currently, when a loan or derivative is transferred from one company to another in the same group, the rules provide that no tax losses are realised and no gains are taxed. The profit or loss on the loan relationship, or derivative, is not brought into account for tax purposes, unless that financial instrument is later disposed of out of the group.

4 pm

Where the company acquiring the financial instrument ceases to be a member of the group within six years of the date of the transfer, there is a deemed disposal and re-acquisition of the asset or liability. The effect of this de-grouping charge is that an amount equal to the difference between the carrying value and the market value of the loan or derivative is brought into account for tax at that point. However, unlike equivalent rules in other areas of tax, this charge in most cases applies only one way: profits are brought into charge, but losses are severely restricted. That is, it can increase, but not decrease, the amounts taxed. This feature of the rules is an anomaly, unnecessarily complicates current legislation, and provides no additional protection against avoidance.

The changes made by the clause will remove this anomaly in the current legislation. The clause repeals provisions that restrict losses on loans and derivatives that are brought into account when a company leaves a group. Where this takes place on or after 1 April 2014, the rules will apply to bring into account both profits and losses. This is in keeping with the proposals set out in the consultation document published last year. It will simplify the legislation and help to make it more robust against avoidance, by discouraging schemes that seek to use the rules to transfer tax losses.

In answer to the hon. Lady's question as to whether there will be any additional revenue from this, the measure does not address a particular avoidance scheme and does not, therefore, give rise to any quantifiable Exchequer yield. The measure is, in fact, part of an extensive and ongoing consultation on the corporation tax rules on corporate debt and derivatives, which will continue over the next year. Her Majesty's Revenue and Customs will monitor the impact of the change through its engagement with a wide range of stakeholders who are part of the consultation, as well as through its normal risk assessment and inquiry procedures.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

Disguised distribution arrangements involving derivative contracts

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: It is a pleasure to have the opportunity to speak on this clause on disguised distribution arrangements involving derivative contracts. Derivatives are securities, the prices of which are dependent on, or derived from, one or more underlying assets. The derivative itself is merely a contract between two or more parties, although it can be treated as an asset in itself. The value of the derivative is determined by fluctuations in the underlying asset. The most common underlying assets include stocks, bonds, commodities, currencies, interest rates and market indexes. Most derivatives are characterised by high leverage.

In a total return swap, the party receiving the total return will receive any income generated by the asset, as well as the benefit if the price of the asset appreciates over the life of the swap. In return, the total return receiver must pay the owner of the asset the set rate over the life of the swap. This particular measure seeks, once again, to block avoidance schemes using total return swaps, where deductions are claimed for payments between companies in the same group under derivative contracts that are linked to company profits. The measure seeks to ensure that deductions are not allowed for corporation tax purposes where a payment is made under a derivative contract that is, in substance, a payment of profits.

The clause will introduce a new section to the CTA 2009 that provides that no deduction is allowable for corporation tax purposes where a payment is made from one group member to another using a derivative, and where that payment equates, in substance, to the profits of a group company. This is the second year in which the Government have acted to close a tax loophole related to total return swaps, following on from a clause on property land swaps in last year's Bill. This measure blocks avoidance schemes in which deductions are claimed for payments between companies in the same group, if those payments are linked to company profits—I mentioned this in relation to derivative contracts. It will apply from 5 December 2015 to schemes entered into on any date.

HMRC is targeting group companies that use financial derivatives such as swaps to mitigate their tax position. The change to the legislation removes their ability to deduct, for corporation tax purposes, the value of a payment made to another group company using a derivative that essentially equates to the profits of the company. The effect of the measure would be to ensure that no tax deduction is due for payments of that nature.

Again, I have some questions for the Minister; it would be helpful if she could answer them in her response. The clause's ultimate aim is to prevent profits from being shifted, for the purposes of tax avoidance, through the use of financial instruments such as derivatives and total return swaps. According to figures set out in the autumn statement and certified by the Office for Budget Responsibility, the measure is expected to generate £110 million over the four years 2013-14 to 2016-17. Although we welcome the fact that unlike some other corporation tax measures, this measure should generate some revenue for the Exchequer, it would have been interesting and informative to see more information on how the savings were calculated.

On numerous occasions, people have asked how HMRC will be able to bear down on, monitor and scrutinise tax avoidance and ensure that it is kept at the top of the agenda when further specialist staff might be removed from their posts by cuts. The Minister might want to comment on that. The estimated cost to the Exchequer of tax avoidance stands at £35 billion, and there is concern that that is likely to be an underestimate. She was unable, understandably at that point, to give me information on whether she expected all the amount predicted to be collected from one particular crackdown on tax avoidance. Can she give us any more information on how she expects the cost of tax avoidance to be reduced this year, and on what she expects to happen in the year ahead?

The Minister has already given some response to questions about the Public Accounts Committee report, and particularly on whether HMRC has tested the limits of its powers to address aggressive tax avoidance. I do not want to open up a tangential argument relating to what the PAC did or did not say or mean, but it is important to ask whether HMRC can pursue these matters as aggressively as people avoid tax by making use of various financial instruments. As I have said, we welcome the Government's stated aim of making legislation simpler, more certain and less open to abuse, but there is concern about how that will keep pace with cuts to HMRC staff. Will that make enforcement of the rules, which are already complex, more difficult?

The tax information accompanying the clause predicts that the measure will generate about £110 million in additional revenue to the Exchequer over the next four years. It would be helpful if the Minister could explain or give further information about the estimates on which that figure was based and how it will be monitored over the next four years. Will the Minister at least recognise the point that I have been making throughout our debates on these clauses? I want to try to ensure that HMRC can gather as much evidence or intelligence as possible about the extent of tax avoidance and where there may be other loopholes. It might then be able to bring back further information to Parliament, so that we could consider the matter in more detail and seek to plug those other loopholes.

Andrea Leadsom: Clause 29 blocks corporation tax avoidance schemes involving total return swaps and other financial derivatives. The schemes involve a UK company entering into contracts, described as total return swaps, with another company in the same group. Let me briefly explain how the types of arrangements targeted by the clause are structured.

Under a typical contract, all the UK company's profits are paid to another company in the same group, often based in a tax haven, in return for much smaller benefits, such as a small percentage of the profits being returned. The company making the payment claims a deduction against its profits for corporation tax purposes. The effect is that most or all of the profits escape taxation. The transaction in question is designed to confer a tax advantage that was never intended. The Government do not accept that such schemes achieve the tax avoidance benefit that is claimed, but the clause will put it beyond doubt that tax cannot be avoided in this way. The clause will provide that, where profits are paid away under a derivative contract of this type, no deduction will be allowed for tax purposes. The effect will be that the correct amount of profits will be taxed in the UK.

The legislation took effect from the date of the announcement at the autumn statement 2013. Some concerns were raised at the time that normal commercial arrangements could be affected. In response, the Government have published more detailed guidance and have made some minor changes to the final legislation to ensure that arrangements in the ordinary course of business will be unaffected.

I shall try to answer the hon. Lady's questions. As I mentioned before in relation to general HMRC success in ensuring anti-avoidance, HMRC recovered £23 billion from large business between April 2010 and April 2013. Since April 2010, HMRC has collected more than £750 million in additional tax revenue from the UK's 6,000 wealthiest individuals. HMRC is winning 80% of avoidance cases heard in the courts. Disclosures of tax avoidance fell by almost 50% between 2011-12 and 2012-13. As I said earlier, HMRC is doing pretty well at improving its ability to lock down anti-avoidance measures.

Cathy Jamieson: We are all appreciative of HMRC staff, who work extremely hard to identify tax avoiders, ensure that evidence is gathered, close down tax avoidance schemes and bring people to justice, where that is the right thing to do. Is the Minister able to say anything in answer to my question about potential cuts to the special staff who do such work at HMRC, and can she assure the Committee that that will not happen?

Andrea Leadsom: I can assure the hon. Lady that HMRC considers that it has the right level of resourcing for the job. Its success demonstrates that it is well resourced and doing a good job.

In answer to another of the hon. Lady's questions, HMRC is aware of at least five companies that are involved in the specific avoidance that is tackled by the clause. Tax at risk from the scheme was estimated at £40 million in 2013-14 and £120 million in the first full year covered by the clause, which is yet another example of how well HMRC is doing in jumping on such avoidance as soon it becomes aware of it.

In conclusion, the clause ensures that companies cannot use derivative contracts to avoid tax by transferring their profits. It brings fairness and certainty to taxpayers and underlines the Government's commitment to tackling tax avoidance.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

Avoidance schemes involving the transfer of corporate profits

4.15 pm

Shabana Mahmood (Birmingham, Ladywood) (Lab): I beg to move amendment 11, in clause 30, page 30, line 8, at end insert—

'(3) The Chancellor of the Exchequer shall, within six months of the passing of this Act, publish and lay before the House a report setting out the impact, over the next three years, of the changes made to the Corporation Tax Act 2009 by this section.

(4) The report must in particular set out—

(a) how much additional tax revenue the measures introduced by this section are expected to generate to the UK Exchequer, for each year in which they are in operation; and

(b) the impact of those measures on revenues lost to the Exchequer as a consequence of tax avoidance schemes, for each year in which they are in operation.'.

The Chair: With this it will be convenient to discuss clause stand part.

Shabana Mahmood: Clause 30 relates to avoidance schemes that involve the transfer of corporate profits. It proposes to insert new section 1305A after section 1305 in chapter 1, part 20 of the Corporation Tax Act 2009, whose intention is to stop arrangements that are entered into to transfer profits between companies in the same group for tax avoidance reasons.

The way in which we have come to this point, with clause 30 and the proposed insertion of new section 1305A into the CTA 2009, is illuminating and raises a number of questions. The measure follows the announcement of proposed new section 695A of the CTA 2009 on 5 December 2013, which was to be introduced in the Finance Bill 2014 with effect from the date of the announcement, that being the date of the autumn statement.

That measure was intended to close down a type of avoidance scheme in which a company enters into a derivative contract, known as a total return swap, with a parent company, or another group company generally located in a tax haven. Under the contract, all the company's profits are paid away in return for much

[Shabana Mahmood]

smaller payments back. A deduction is then claimed for the payment under the contract, leaving little or no profit chargeable to tax.

So far, so straightforward, except that, at some point between the announcement of section 695A and its revision, which occurred in January 2014, it seems that the HMRC became aware that avoidance schemes were being marketed to circumvent the provisions of section 695A by using arrangements other than derivatives to achieve the same effect, which is to try to obtain a deduction for a payment designed in substance to move profits earned in the UK to a tax haven, or otherwise to divert profits to generate a tax advantage. Therefore, we have clause 30 before us today and the addition of section 1305A into the CTA 2009.

Three things flow from that sequence of events. First—I will put this as a question—exactly what happened? What kind of scheme did HMRC become aware of that was designed to circumvent section 695A so soon after its announcement in the autumn statement at the end of last year? It would be helpful if the Minister detailed the sequence of events, as it would be good for the Committee to understand exactly what happens at the coal face when it comes to avoidance activity.

I understand that section 695A was itself revised, as I mentioned, in January 2014. A quite helpful technical note accompanied the revision in January. Will the Minister clarify exactly where we are up to with regard to section 695A, its revision and its interaction with proposed new section 1305A?

I note that the Exchequer Secretary is not here today. He and I have had a lot of discussions about avoidance activity and how quickly it can take place. He might not have been stunned, but certainly I was stunned at the speed of such avoidance activity, perhaps because I have been in this role for only a few months. Those who want to engage in such avoidance activity seem to move very fast, and it is good that HMRC has been able to head that off by tabling proposed new section 1305A and that it is proactive in doing so.

There are, however, questions about the simplicity of the tax code. Initially, we had a measure designed to clamp down on an avoidance activity. Almost immediately after, we had to table another measure. Many of the lawyers I have spoken to in relation to clause 30 have raised concerns about additional complexity in the tax code. Will the Minister give us the Government's view on what that means for simplicity in the tax code, given that further technical guidance is expected on section 1305A? The Exchequer Secretary and his officials are consulting various tax practitioners and legal advisers who will be engaged in that work. When the Minister answers that question, will she also explain to the Committee whether the Government view this and another measure as sitting with the work of the Office of Tax Simplification as well?

Another question I have is on the foreseeability of the need for section 1305A, given the speed with which the Government had to introduce it. I assume that, when section 695A was introduced in the autumn statement, there must have been some investigation at HMRC into the behaviour that was causing concern and the Government felt moved to tackle. Should it have been clearer or more obvious to HMRC that companies would move from a total return swap arrangement to a commodities trading-type arrangement, which would not be caught by section 695A, but which will be caught by section 1305A? Will the Minister explain whether it was the fear around commodities trading arrangements, as opposed to total return swap arrangements, that prompted the HMRC action that led to the clause?

The Exchequer impacts are illuminating. The impact for section 695A, as set out in the documents alongside the autumn statement, gave a net gain to the Exchequer of £40 million for 2013-14. That gain remains at £40 million for 2014-15, goes down to £20 million for 2015-16 and to £10 million for 2016-17. The impact of proposed new section 1305A is much greater. For 2014-15, the Exchequer impact forecasts a net gain to the Exchequer of £60 million. That rises to £80 million in 2015-16, remains at £80 million in 2016-17, rises to £85 million in 2017-18 and decreases slightly to £75 million in 2018-19. That differential in the Exchequer impacts goes to the heart of our amendment, which seeks a review of the Exchequer impact of the measures in clause 30.

Given that the projected Exchequer impacts of each section are so different and given how quickly section 695A unravelled and section 1305A was required, it raises the question of how effective the sections will be at clamping down on tax avoidance that results from the profit shifting that the Government rightly want to tackle. What evidence resulted in the significant difference between the two Exchequer impacts? What was the reason for the underestimation? It would be helpful if the Committee understood that.

On the detail of the clause, the technical note for proposed new section 1305A was helpful, particularly at paragraphs 8 and 9. I will not repeat exactly what they say, but the Minister will note that their wording is fairly broad and much broader than the wording that we have seen for tax avoidance measures more generally. The former lawyer in me sees a number of immediate challenges to the scope of the proposed new section. A number of the technical specialists who have looked at the technical note and how the section might be implemented have also raised concerns about the wording. As I said earlier, I hope that we will get some guidance from HMRC about how the section will be implemented and interpreted. I hope that the Minister can provide some more detail on that. At the moment, discussions are continuing with tax specialists and HMRC, but the process is not immediately clear. I should be grateful if the Minister explained when we will get that guidance and whether it will cover interpretation, given how broad the wording is at the moment.

We support measures to clamp down on profit shifting. It is a difficult area to deal with and there has been a lot of action on the international front in this regard, particularly from the OECD, which was called on by G20 Finance Ministers in 2012 to consider how to deal with the problem of base erosion and profit shifting. In February 2013, the OECD presented its report to the G20 Finance Ministers and an action plan to deal with amendments and changes to international tax rules was requested, to combat base erosion and profit shifting. That plan was endorsed in 2013.

Perhaps the Minister could help us understand how the Government regard the clause's sitting alongside that OECD BEPS process, because the OECD will consider some relevant issues in its action plan. I believe that the timeline for the relevant action points that touch on issues raised in the clause is September 2014, which is when the OECD expects to give its report.

Obviously, the Government have moved a bit further and more quickly than the OECD BEPS process. Does the Minister expect further changes to this measure and attempts to combat profit shifting, beyond what we see already in the clause? How confident is she that the clause will be compliant with what will come out of the OECD BEPS process and that additional amendments will not be needed?

There is also an issue in relation to the GAAR—the general anti-abuse rule that came into force on 17 July 2013, which is part of a Government approach to managing the risk of tax avoidance. Looking at the detail of the clause, I was struck by the possibility that the GAAR could have been used instead of the clause. I am not clear why the Government did not feel able to rely on the provisions in the GAAR, rather than introducing the clause. It would help if the Minister explained the Government's thinking about why profit shifting and the tax avoidance as a result thereof, as dealt with in the clause, could not have come within the scope of the GAAR. Given that we have not even had a court case yet in relation to the GAAR, that would help us to understand the Government's thinking about how that will be implemented in a more practical way.

There remains an issue in relation to resources at HMRC. I should be grateful if the Minister explained where the experts who deal with this type of tax-avoiding behaviour sit within the wider HMRC framework. I assume that they might be connected to the large business service, but they might sit in a different team. It would help to know how many people are allocated to looking at this type of work, so that we can understand how busy they might be when the clause comes into effect.

In the technical note, HMRC concludes that a number of different financing structures may or may not fall under the clause, excepting cases where there is a tax-avoidance purpose. I am sure that when the lawyers get hold of the measure when the Bill becomes the Finance Act 2014, they will have a lot of fun with it. I should be interested to know how, at this point, HMRC intends to define that tax-avoidance purpose.

Finally, I have a couple of questions that have helpfully come from various taxation specialists connected to the Chartered Institute of Taxation. They raise an important point in relation to charities and the fact that the legislation seems to catch the normal transfer of profits into genuine charities from their trading subsidiaries. Can the Minister confirm whether those long-accepted transactions will be exempted from the clause?

4.30 pm

Charlie Elphicke (Dover) (Con): I am listening to the hon. Lady's argument with interest. Does she not think it is really important that the Government are strong on tax avoidance, particularly regarding moving profits into tax havens?

Shabana Mahmood: Absolutely. We have supported the OECD's BEPS project and all measures to tackle profit shifting. Such behaviour is damaging not just for our tax base and how much corporation tax is raised in this country, as it also affects businesses that do not engage in that activity. That explains why we do not oppose the substance of clause 30; our amendment is designed to get to the heart of the difference in the impact for the Exchequer of proposed new sections 695A and 1305A. However, the principles behind clause 30, and the desire to challenge profit shifting that is designed to avoid paying the correct or fair share of tax—however that is defined—are correct.

Charlie Elphicke: For the benefit of anyone reading the report of this sitting, does the hon. Lady agree that whether one uses differential prices to buy coffee beans or does the same thing through clever financial engineering, it is still wrong? People should not engage in the practice and should not game our tax system, as has been the case too often in the past.

Shabana Mahmood: The hon. Gentleman highlights a number of different ways in which profit shifting occurs. One type is transfer pricing, while another way of shifting profits is what we have been discussing in relation to the clause. Governments should tackle such artificial profit shifting between companies in the same group, or in other ways in relation to transfer pricing, and the OECD process, which we support, is very much centred on that. We want a much better international taxation regime that takes account of all these issues.

Charlie Elphicke: Will the hon. Lady give way?

Shabana Mahmood: I shall finish my remarks.

The guidance on proposed new section 1305A will clearly be important to help practitioners to understand how the measure will operate in practice. I understand that, during the discussions that have already been held with some practitioners, indications have been given about what the measure will and will not capture. It would be helpful if the Committee could be privy to those indications, as that would certainly help our deliberations.

Chris Williamson (Derby North) (Lab): I rise to make a brief contribution in support of my hon. Friend. It is important that we place on record the general public's cynicism that the Government are in any way interested in clamping down on tax avoidance. Before the election, the Prime Minister said that he would not balance the books on the backs of the poor, yet that is precisely what the Government have been doing over the past four years. People feel very strongly that a different set of rules operate in this place. The Government are hitting ordinary people with VAT increases and the bedroom tax, and are bringing more and more people into the 40p tax rate, but when it comes to doing anything about tax avoidance, they are singularly failing.

It is not just me saying that, and it is not the view—cynical, perhaps—of just the general public or the mass media. HMRC itself has acknowledged that tax avoidance has gone up by £1 billion, so there is quite clearly a desperate need for more action to address this, because people are understandably cynical when they see stories such as that reported on "Panorama" a couple of weeks ago about Bernie Ecclestone, with a £1 billion tax liability, being able to agree a £10 million pay off. It seems that the Government are singularly failing to take meaningful action to deal with tax avoidance.

[Chris Williamson]

That is all I want to put on record—[Hon. Members: "Hear, hear!"] I am pleased that Government Members are cheering, but it is important that amendment 11 is agreed to because people have a right to know. It is all very well for the Government to say that they want to clamp down on tax avoidance. It seems to me that they have a record of saying that they would like to do something about these abuses, but in reality they do not deliver very much. Amendment 11 is very clear. If it is agreed, we will know the Government's impact precisely, and surely that is in all our interests. Surely our job is to ensure that we represent the wider public and that people have confidence that the Government and parliamentarians are serious about dealing with this dreadful abuse. The books are continually being balanced on the backs of people on low and middle incomes. The public need to know that sacrifices are not being made exclusively by ordinary people and that everybody, including the corporate sector, is paying their way. I therefore hope that the amendment will be agreed to.

I will be interested to hear precisely what the Minister proposes to do regarding international efforts to deal with tax avoidance, because this problem afflicts not just the United Kingdom—it is much broader. International, intergovernmental action is required, so will she say precisely what the Government are doing in that regard?

Charlie Elphicke: I have been provoked by the hon. Member for Derby North briefly to set the record straight. This country has had a scourge of tax avoidance for too long. As Members on both sides of the House know, I have long campaigned for positive reform. However, in response to the hon. Gentleman's speech—it was a shame that it missed the opportunity to build consensus in this Committee—I note that, in the Labour years, corporation tax receipts rose by about 6% in real terms, whereas income tax receipts nearly doubled. That was a great shame, and those figures show that the system was too lax. The steps that this Government have taken to tackle the problem of transfer pricing and profit shifting are to be welcomed. The Chancellor's move to engage with the OECD to start international discussions about how we can change the international rules to deal with an international problem is especially welcome.

Chris Williamson: The international approach is important but, in the interests of reaching a consensus, will the hon. Gentleman support the amendment?

Charlie Elphicke: I thank the hon. Gentleman for his helpful intervention, but I will not, because I want action, not words. We have had too many words, especially from the hon. Gentleman, and I welcome the fact that we have action from this Government.

Finally, I note that the Government have reduced the amount of income tax paid by hard-working people and their families, increased the personal allowance and helped people into work, having creating more jobs than for a very long time. The Government's efforts, especially for the least well-off, are worthy of high praise as we go further into recovery.

Ian Mearns (Gateshead) (Lab): Will the Minister let us know, in the light of HMRC's estimates, how many companies are established with the sole purpose of being a subsidiary to a greater corporate entity to take advantage of tax avoidance schemes that relate to the clause? Does HMRC have a good estimate of how many subsidiary companies are established solely for that purpose?

Andrea Leadsom: To respond to the hon. Member for Derby North, I completely agree with my hon. Friend the Member for Dover that it is a shame to take an approach of throwing around accusations about progress on tax avoidance, because the past two years have seen a step change in the Department's approach to tackling avoidance, following the introduction of a number of new tools, including the GAAR. Over 13 years, the hon. Gentleman's Government failed to introduce such a measure. That is a new regime for high-risk promoters of avoidance schemes and for accelerated payments of disputed tax in avoidance cases. HMRC is relentless in tackling tax avoidance and there are strong signs that its approach is working. HMRC has successfully challenged avoidance across all sectors, including corporate avoidance, personal tax avoidance, and the avoidance of direct and indirect taxes.

The number of disclosed tax avoidance schemes has fallen dramatically. It almost halved between 2011-12 and 2012-13, and it continues to fall. We win around 80% of the avoidance cases that we litigate. Our wins in court have protected billions of pounds in tax. That success means that there is less tax avoidance than there was several years ago, especially in the large business sector, and reputable advisers are turning away from tax avoidance for personal tax clients.

Chris Williamson: Perhaps the Minister will explain why there appears to be a discrepancy between what she is saying—that avoidance is going down—and the HMRC figures that suggest that there has been an increase in corporate tax avoidance. How does she square those two statements?

Andrea Leadsom: As I understand it, it is because the hon. Gentleman is looking at the percentage of tax avoidance. I think it is because the overall tax receipts have increased. I apologise that I am not quite sure of the numbers to which he refers, but I can talk to him about that later.

Ian Swales (Redcar) (LD): I congratulate the Minister on her appointment. Does she join me in welcoming the CBI's latest document on tax, which acknowledges that the climate for tax avoidance has changed and specifically mentions that the Public Accounts Committee and other parliamentarians are doing a good job in this area?

Andrea Leadsom: All the evidence suggests that the Government are successfully changing the culture and experience of tax avoidance in Britain. I commend the work of the Public Accounts Committee, which has done a great job.

Clause 30 blocks avoidance schemes that involve the transfer of profits between companies in the same group to avoid corporation tax. It has similar effects to the previous clause, on disguised distribution arrangements involving derivative contracts, but while that measure applies only when the profit transfer is made using a derivative contract, this clause applies however the profit transfer is achieved. Amendment 11 would provide for the publication of a report on the tax impact of the measure, and I shall speak about that shortly.

Let me explain what type of scheme the clause is designed to counter. The schemes may involve arrangements whereby a payment of profits is made from a UK company to another group company, generally in a tax haven, and a deduction is claimed for that payment, meaning that no profits are left to be charged to tax. Alternatively, it may involve the diversion of profits before they even reach the UK company. The transaction is designed to confer a tax advantage that was never intended. We do not accept that the schemes succeed in reducing corporation tax and they are liable to challenge. However, the measure is being introduced now to give certainty to taxpayers and to put a stop to these schemes quickly.

Ian Swales: May I press the Minister a little on what she is saying? Will the changes that she is describing include schemes in which interest is transferred to a group company—for example, when the group buys shares in a tax haven and loans money back to the UK group such that profits are transferred through interest payments? That is one of the most common methods used to achieve what she is seeking to stop.

4.45 pm

Andrea Leadsom: The Government have published a guidance note explaining precisely the purpose of the legislation, in which I believe my hon. Friend's point is addressed. I would, however, have to confirm that specific point.

The changes made by clause 30 will ensure that when profits are transferred from one company in a group to another for tax avoidance reasons, such profits will be taxed as though the transfer had not been made. Clause 29 targets arrangements involving financial derivatives; clause 30 goes wider and targets schemes using any possible mechanism when transactions are entered into to avoid tax. That will be achieved by adding back in diverted profits and any deduction claimed for a transfer of profits.

Concerns have been expressed that normal commercial arrangements could be affected by the measure, especially those relating to reinsurance, so the Government have published a guidance note explaining the purpose of the legislation. I should emphasise that the measure will affect only arrangements with a tax avoidance motive.

The information that amendment 11 would require was published in the tax information and impact note that was published on 19 March. The figures show that the measure is expected to raise £360 million over the next five years. Those figures were subject to scrutiny by the Office for Budget Responsibility, and I confirm that they were certified by the OBR following the rigorous procedures that the Government have put in place. The report proposed in amendment 11 is therefore unnecessary.

I will try to answer the many questions of the hon. Member for Birmingham, Ladywood, which I thought were some kind of IQ test, especially when she asked where the HMRC officials are located. I wondered whether she was testing my knowledge of Treasury seating arrangements—

The Financial Secretary to the Treasury (Nicky Morgan): They are hot-desking.

Andrea Leadsom: Exactly. I shall endeavour to tell the hon. Member for Birmingham, Ladywood where the coffee shop is as well.

My hon. Friend the Member for Redcar asked whether all schemes will be included under clause 30. I assure him that if avoidance of any sort is involved, it will fall within the scope of the clause.

The hon. Member for Birmingham, Ladywood asked why it was necessary to introduce the measure. Clause 29 is aimed at an avoidance scheme that uses derivatives. It was spreading steadily, so the Government took action took action to close it down at the autumn statement. HMRC then found out that other schemes were being marketed that, it was claimed, could avoid the effects of that clause. They were being marketed in a blatant way, so we are now taking action to close down such new schemes with a broader and more comprehensive measure to prevent any further loss of tax.

The hon. Lady then asked why the measure was introduced just after the derivatives measure and if that meant that we got this wrong. Not at all. The derivatives scheme appeared first, so we took action to close it down as quickly as possible. That demonstrates how determined the Government are to take decisive action to protect public revenue.

The hon. Lady asked how many companies are using such schemes and how much tax is at risk. We are taking action to stay ahead of tax avoiders. We do not know of any individual company using such a scheme, but HMRC is aware that schemes are being developed to try to get around the effects of our measures effective from the autumn statement. The scheme on which we took action was being used by at least five companies, involving a tax loss of about £40 million in 2012-13 and £120 million in the first full year. The measure before us will protect that tax from further risk of loss and also against other schemes involving the transfer of profits.

The hon. Lady asked whether the situation is now too complicated. As she knows, a review of loan relationships and derivatives legislation is in progress, and that is subject to a big consultation. We have the opportunity to simplify tax, not complicate it. The general anti-abuse rule will close down a wide range of schemes that might arise in future.

The hon. Lady asked whether the figures on tax were too high or perhaps not reliable. I mentioned earlier that the revenue estimates are subject to the scrutiny of the Office for Budget Responsibility, and I can confirm that the figures were certified by the OBR following the rigorous procedures that the Government put in place. She suggests that the measure's effects are broad, but, on the contrary, it has only a narrow effect—it is aimed at specific schemes that involve the transfer of profits. That is made clear in guidance and in the wording of the measure itself. It applies only to the transfer of profits, not to the payment of expenses, and the tax avoidance-purpose test means that normal business arrangements will not be caught.

[Andrea Leadsom]

I was asked where HMRC sits. I know that it sits on the second floor of the Treasury building but, specifically, it can sit in the large business team or in specialist positions. Various specialists are reporting on this work. There has been a good, co-ordinated effort by the hard-working teams in HMRC. That shows their dedication to the cause of protecting Exchequer revenues, for which we should be extremely grateful.

The hon. Lady asked whether the Government were acting unilaterally regarding BEPS and why we should not wait for the outcome of that action plan. As she would expect, the Government want to take swift and decisive action to clamp down on avoidance when it is identified. It was important to act quickly, as I have indicated, because of the numbers of pounds that we were losing due to such schemes. It was important to act quickly to prevent the schemes from spreading, which would have led to the loss of significant amounts of tax. Acting now to address this particular problem shows that the Government are taking domestic action while we are supporting longer-term international work to prevent arrangements that inappropriately shift profits to low-tax jurisdictions. Fundamental reform to the international tax rules necessarily requires multilateral action, which is why the Government have fully committed to working with our international partners through the G20-OECD BEPS project. She should be pleased, as I think we all are, that the Government are taking a leading role in that multinational work.

The hon. Lady asked why this clause is needed now that we have the general anti-abuse rule and if it means that the GAAR will not work. In fact, the GAAR will address a range of offensive schemes, but HMRC has made it clear, as have I, a number of times, that we will when possible challenge all types of avoidance. We will continue to introduce targeted measures aimed at particular schemes, some of which might not otherwise meet the high threshold required for the GAAR to apply.

The hon. Lady asked whether the clause might affect charities, but I assure her that the legislation will not apply if a company pays its profits for charitable purposes unless avoidance is present. It is not avoidance if taxpayers use statutory relief for charities in the way intended by Parliament.

Chris Williamson: I am interested in the Minister's point about international efforts. Is she able to give us more information about when it is expected that an international agreement will be in place to ensure that there is no hiding place for companies that try to minimise their tax liability—especially that to the UK, but also that to other countries in which they make their profits?

Andrea Leadsom: I cannot give the hon. Gentleman a specific date but, as he knows, that is a top priority for the Government. We are leading the discussion on multilateral tax avoidance obliteration, and he should be glad, as we all should be, that we are playing such a lead role. He will appreciate that it takes time to get multilateral agreement, but we are working as hard as we can to achieve it.

The clause will prevent avoidance through transfers of profits between companies, and it supports the Government's objective of fairness and certainty in the tax code. I therefore ask the hon. Member for Birmingham, Ladywood to withdraw amendment 11 and hope that the Committee will support clause 30.

Shabana Mahmood: I must apologise to the Minister for the number of questions that I put to her, but I feel that is my job to do so, given that the point of this Committee is to carry out line-by-line scrutiny of a very large Bill. I am not interested in the HMRC coffee shops, but I am interested that, as she noted, some of the HMRC specialists and officials who will engage with clause 30 sit within the large business service. I shall continue to put questions to the Exchequer Secretary about the constant delays that I hear about in relation to the large business service. The Minister may have missed that that was the thrust of my question, given that she does not cover the service on a day-to-day basis.

I am afraid to say that I did not hear from the Minister a compelling reason for the difference in the Exchequer impact between proposed new sections 695A and 1305A. Given her failure to address that point, I am minded to press amendment 11 to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 13, Noes 17.

Division No. 4]

AYES

Dakin, Nic	McKenzie, Mr Iain
Evans, Chris	McKinnell, Catherine
Gilmore, Sheila	Mahmood, Shabana
Glindon, Mrs Mary	Mearns, Ian
Jamieson, Cathy	Pearce, Teresa
Kane, Mike	Williamson, Chris
Leslie, Chris	

NOES

Burt, Lorely	Leadsom, Andrea
Dinenage, Caroline	Morgan, Nicky
Duddridge, James	Pincher, Christopher
Elphicke, Charlie	Rudd, Amber
Fuller, Richard	Rutley, David
Garnier, Mark	Shelbrooke, Alec
Hames, Duncan	Swales, Ian
Heaton-Harris, Chris	Wheeler, Heather
Kwarteng, Kwasi	

Question accordingly negatived.

Clause 30 ordered to stand part of the Bill.

Clause 31

R&D TAX CREDITS FOR SMALL OR MEDIUM-SIZED ENTERPRISES

Question proposed, That the clause stand part of the Bill.

Shabana Mahmood: Clause 31 applies to loss-making SMEs conducting research and development activities. SMEs are deliberately targeted for this kind of initiative. Risks and market failures are most pronounced for SMEs, which are still worthy of support given that they are in the main small, innovative companies with very high growth potential. Clause 31 amends Part 13 of the Corporation Tax Act 2009 to increase the rate of payable tax credit for small and medium-sized companies. The rate of payable tax credit is increased from 11% to

14.5% of the surrenderable loss. The SME research and development relief currently gives an additional deduction from profits at a rate of 125% of the qualifying expenditure. That is combined with the normal deduction for such expenditure to give a total deduction of 225%. A loss-making SME is able to obtain a payable R and D tax credit at a rate of 11% of the lower of its trading loss for the period and 225% of the qualifying R and D expenditure incurred. This gives a maximum payment of 24.75% of the original expenditure. The rate of payable credit as a result of this clause is to be increased to 14.5%, giving a maximum payment of 32.625% of the original expenditure.

The UK Government provide some significant tax incentives for companies undertaking research and development work. The aim is to encourage investment in R and D and make the UK an attractive place for overseas companies to undertake research and development. The R and D tax credits regime was introduced by the previous Labour Government. It was an important initiative to put right the decreasing amount of R and D taking place in this country, which had been the trend since the early 1990s. As a result of our historic interest in the area and of the changes that we made when in government, we support the clause and the increase from 11% to 14.5% therein.

5 pm

I have some questions for the Minister. Given the increase from 11%, I was interested in the rationale for staying at 14.5%. Exchequer impacts are important, but is there another formula-based reason for deciding on that figure? The numbers for the Exchequer impact go only to 2015-16. The measure is expected to cost £5 million in 2014-15 and £50 million in 2015-16. I wondered why there were no additional costings beyond that point, given that the change is not temporary, and will become a feature of the R and D tax reliefs regime.

What is the Government's view on benchmarking the effectiveness of the R and D tax credits regime and on that policy area in relation to Government policy on universities and science more generally? As the Minister is aware, there is a lot of debate in the science and innovation policy community on the effectiveness of the different ways in which R and D tax reliefs might be constructed. Although we support how things are done in our legislative framework, many questions have been asked by academics, and it would be interesting to know what the Government think, in particular about the so-called dead-weight cost—how do we decide what R and D would have occurred anyway, even without the relief being a feature of the taxation system? That is important to the reliefs being structured so as to ensure that more research and development takes place in this country. That is the broad thrust of our approach to the measure.

There are issues in relation to whether we are keeping up with competitor countries, not only those that carry out similar levels of research and development at the moment, in particular the US, Germany and France, but the emerging economies, especially China, which are putting vast sums of money into research and development at the public-funded, Government level—in universities—and in terms of what they are encouraging foreign multinationals to do in their country. How do the Government see that developing? Do they envisage further changes to the R and D taxation regime to keep up with the challenges posed by the emerging economies?

Finally, I was not clear on the position of EU state aid in relation to the change. My understanding is that the amount of payable credit for loss-making small and medium-sized enterprises has been capped at 25% of the qualifying expenditure. The increase to 14.5% will take things beyond that cap of 25%, because we are now looking at 32.63p of payable credit. What conversations have been had about the state aid regulations and with Europe more generally to ensure that we do not fall foul of those rules?

Nicky Morgan: It is a pleasure to serve under your chairmanship this afternoon, Mr Streeter.

I thank the hon. Member for Birmingham, Ladywood for her comments on the clause, which increases the rate of the credit payable to loss-making small and medium-sized companies investing in research and development from 11% to 14.5%. As we have heard, that provides additional support to innovative small firms undertaking research and development, thus incentivising increased levels of R and D investment by UK companies.

The measure has been welcomed by industry, with the EEF describing it as

"a welcome and important one for SMEs relying on their development of new products and services to generate growth and jobs."

The Scottish Chambers of Commerce further notes that the measure targets

"a key need for businesses".

As we have heard, research and development tax relief for small and medium-sized companies was introduced in 2000. It has been a valuable and useful relief. This Government have made a number of changes that have increased the generosity of the research and development tax relief offered to small businesses in the UK. At Budget 2011, the Government increased the rate of the R and D super-deduction for small and medium-sized enterprises from 175% to 200%, and then again to 225% at Budget 2012. The Government also made changes to simplify the scheme, removed barriers to early stage companies and start-ups claiming the credit, and provided greater certainty on the costs qualifying for relief.In 2011-12, the relief provided £420 million to 9,920 companies, with claims up 20% from the previous year.

I turn now to the changes made by the clause to increase the value of R and D tax relief, providing particular support for early stage companies and start-ups, which face the greatest risks and barriers to R and D investment. This will help to deliver the Government's commitment to making the UK the best place in Europe to start, finance and grow a business.

Small businesses are the lifeblood of our economy. Research by the Federation of Small Businesses shows that for every 10 unemployed people who find jobs in the private sector, nine of them do so through a start-up or small business. R and D tax credits support businesses across a range of industries located right across the UK.

Mr Iain McKenzie (Inverclyde) (Lab): We all know the significance of research and development, and we welcome any support or assistance that encourages small businesses to move into this field, because it not only assists them in the markets that they are operating in now but in those they will explore, develop and dominate in future. With that in mind, I met representatives from the Federation of Small Businesses only last week.

[Mr Iain McKenzie]

They told me that the FSB is still worried about the lack of lending from banks to enable businesses to move in that direction. Would the Minister say something about that?

Nicky Morgan: I thank the hon. Gentleman very much indeed for his intervention. I might not say anything about that, but only because the clause that we are discussing is very much related to R and D. However, I would generally agree with him, and the Government are very aware of the fact that lending to small businesses is still very much an area of concern. It is an issue that, as he said, is raised with hon. Members from all parties; it is certainly raised with Ministers when we visit businesses large and small, but particularly smaller ones. My hon. Friend the Economic Secretary covered it in Treasury questions last week. It is an issue that we are keeping under review. However, today we are talking about the importance of R and D tax credits to small and innovative start-up companies, whose importance to the economy the hon. Gentleman has highlighted.

The increase in the payable credit to 14.5% means that a company investing £100,000 in R and D will be able to claim a cash payment of £32,600, which is nearly £8,000 more than under the current rate. During the next five years, this increase will mean an extra £430 million in tax relief, which will support more than £1 billion worth of investment.

Before I conclude, let me address the questions put to me by the hon. Member for Birmingham, Ladywood. She asked about the rationale for the increase from 11% to 14.5%, but towards the end of her question she almost went on to answer the question because she raised the issue of state aid. I think it would be helpful if I said that we are able to offer a 25% effective rate of relief above the baseline of 8% that was already there, so we are taking the effective rate of relief to 33%. That corresponds to a payable credit of 14.5%, with a headline rate of 225%. That is because 25% is the maximum that we are able to offer under EU state aid rules. We are confident that the change is still within state aid rules on aid intensity and within our current clearance from the European Commission. The Commission is aware of this change, and we have already talked about the impact that it will have on innovative small businesses that want to invest and grow.

The hon. Lady asked about the Exchequer impact, and why the impact was only measured until 2015-16 in the information note. That is because the Office for Budget Responsibility forecast only goes up to the spending review of 2015-16, and we expect the next spending review to evaluate the impact on the Exchequer for future years. She also asked about competition from emerging economies. She will know that this Government, like all Governments, keep all tax policies under review, and reviewing other economies and other regimes is part of that ongoing review. However, as I have already set out, the Government have recently taken a number of steps to support innovative investment in the UK, and the R and D tax credit is very much part of that.

In conclusion, clause 31 gives additional support to firms working to innovate, grow and deliver the industries of the future. I commend the clause to the Committee.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Clause 32

Film tax relief

Question proposed, That the clause stand part of the Bill.

Catherine McKinnell (Newcastle upon Tyne North) (Lab): It is a pleasure to serve under your chairmanship, Mr Streeter. I congratulate the Minister on her appointment. It is wonderful to be debating with two Front Benches that are all female, except for our Whip.

Clause 32 introduces additional changes to the highly successful film tax relief, introduced in 2007 under the last Labour Government, to promote the sustainable production of British films. It is clear that the tax relief has been an enormous success in attracting and supporting the production of films here, not just by British but by worldwide companies. An HMRC note from last July summarised the headline benefits of the relief to date: 1,390 film productions have become eligible to claim the new tax relief; the total production expenditure by films claiming the relief was £9.8 billion, of which 72% was incurred in the UK; production expenditure averaged £86.6 million per film for large-budget films, or £2.3 million for limited-budget films.

The British Film Institute told the House of Commons Select Committee on Culture, Media and Sport:

> "The film tax relief has been an undisputed success story, supporting the UK film industry and the UK economy."

In its report, "Supporting the creative economy", the Select Committee highlighted the benefits of the film tax relief in attracting big-budget promotions, principally from the US. The Committee concluded:

> "We strongly support the film tax credit. The benefits it has brought in terms of film production have spread across the country, from Glasgow to Chatham, from London to Liverpool."

The Opposition wholeheartedly support those sentiments, and we therefore welcome any measures that build on the success of the film tax relief introduced under the last Government.

I have one or two questions to put to the Minister for clarification. The second key provision in the clause provides for the UK expenditure requirement in section 1198(1) of the Corporation Tax Act 2009, the minimum UK core expenditure, to be reduced from 25% to 10%. For the purposes of clarity, "expenditure" includes that spent on filming activities such as pre-production, principal photography and post-production, 10% of which must take place in the UK for the film tax relief to apply. Can she say how many more film productions might benefit from the relaxation of the minimum spending requirement within the UK, and what assessment has been made of that? HMRC has published a detailed note on who, what films and what companies have benefited to date from the relief, so I presume that the Government have also assessed the potential future impacts of extending the relief. It would be useful if she could comment on that.

That said, the policy costings document published alongside the Green Book and autumn statement 2013 suggests that the cost of modernising film tax relief will rise to £25 million a year by 2016-17, yet concedes that there are many areas of uncertainty:

> "The main areas of uncertainty in the costing relate to the number of films that will claim FTR in future years and the level of inward investment following the policy change."

Can the Minister give any Treasury estimates of how much additional inward investment the UK can expect as a result of the additional film tax reliefs?

I appreciate that we have discussed tax avoidance at great length in many Finance Bill Committees, including this one, but it is worth briefly mentioning some reported instances in which investment schemes have been set up apparently to exploit the UK's film tax reliefs. The list of such schemes runs potentially into the hundreds, some of which, such as Eclipse 35, have already been shut down. They often involve "sale and leaseback", whereby clients are encouraged to invest money—supposedly to support the UK film industry—and then loaned that money back to exploit the film tax reliefs that we are discussing.

5.15 pm

HMRC is rightly concerned about that and has taken action to close down some of those schemes. The Public Accounts Committee has returned to this issue in the last few weeks as part of its inquiry into tax reliefs and their administration. In the light of the risks associated with those schemes, has the Minister made any provision to ensure that such a successful, valuable and well-intentioned tax relief is not further exploited for alternative ends? What action have the Government taken to ensure that the welcome provisions to extend availability will not be exploited? The tax information and impact note does not appear to make any reference to anti-avoidance measures; indeed, the permanent secretary to the Treasury has suggested that HMRC has seen no evidence of such schemes. None the less, given the growing public awareness of such schemes in the past couple of years, it would be helpful if the Minister clarified those points.

Nicky Morgan: I thank the hon. Lady for her remarks. The clause sets out two changes, which modernise the existing film tax relief and encourage the production of culturally relevant British and EEA films. Indeed, the Palace of Westminster has been host to a film production recently: I returned here on a Friday afternoon to find New Palace Yard overrun by suffragettes—and very welcome it was, too, to see all those additional ladies in the bounds of the Palace of Westminster. I do not know whether that film will benefit from the tax relief, but I am sure it will be good when it comes out.

The clause makes film tax relief available at 25% on the first £20 million of qualifying production expenditure and 20% thereafter for all productions. The minimum UK expenditure requirement will be reduced from 25% to 10%. There was previously a cliff edge in the film tax relief scheme between small and large productions. A 25% rate was available for films with qualifying core expenditure of £20 million or less and 20% for all other films. That meant that a film spending £21 million received less relief than one spending £20 million. In addition, one of the qualifying criteria for film tax relief was that at least 25% of the qualifying core expenditure must be UK expenditure. That requirement had become outdated, as the way in which films are made has developed and cross-border productions are much more commonplace.

The global film market has seen large changes in its production methods and many mobile elements of film production, such as visual effects and digital film making, have started to migrate to jurisdictions outside the EEA. As we have seen from recent award-winning British films, those techniques and the skills they require are where the UK can excel, which adds significant cultural contributions to those films.

The changes made by the clause will ensure that film tax relief is available at 25% on the first £20 million of qualifying production expenditure and 20% thereafter for all productions. That removes the distinction and the cliff edge between limited-budget films and other films. The clause also reduces the minimum UK expenditure requirement to 10%, which will encourage further investment in the UK and benefit visual effects and the wider industry. It will also help UK independent production companies to work internationally and encourage minority co-production where the UK spend is less than 25%. Elsewhere, we have complemented these changes by modernising the film tax relief cultural test. That test has been expanded to allow for European as well as British culture. We have also increased the points available for principal photography, which I think the hon. Lady mentioned, special effects, visual effects and the use of a European language.

Let me turn to the hon. Lady's questions. She mentioned that US productions might benefit from these tax breaks. It is worth putting it on record—I was not previously aware of this—that approximately 90% of the films made in the UK are small-budget films, for which this tax relief is very important.

The hon. Lady also asked about anti-avoidance measures. Recent coverage of high-profile tax avoidance schemes using the film industry related to a series of cases involving film investment tax relief, which was repealed in 2006, since when anti-avoidance legislation has been introduced. Film investment tax relief was replaced by film tax relief—that is what we are discussing today—which provides targeted support for film production in the UK. That targeting is important. Film tax relief is no longer given on investment. The new rules apply only to expenditure on film production by a film production company. The Government support and encourage genuine business investment through the tax system—that is why we have tax reliefs. However, we have made it clear that we will not stand for abuse of those reliefs and HMRC will come down hard on anyone who tries to use them for tax avoidance.

The move from 25% to 10% is intended to allow more productions to benefit from film tax relief. Tax relief is available only on UK expenditure, including goods and services used or consumed in the United Kingdom. The change will have a positive impact on activity in the UK.

The hon. Lady asked how much more inward investment the changes will generate. I cannot give her an exact number—I am not in the film business—but gathering together the finance for a film, pulling it together and making it all happen is incredibly complicated and, from everything I have read, takes an awfully long time. It is difficult to predict the impact, but given the positive reaction she outlined in her speech—there is plenty of support for the changes—we expect there to be a positive impact on film production. It is difficult, because there are a number of other factors that will affect the numbers, including rate change, but the change in the Bill is important and has been widely welcomed. The film tax relief makes a valuable cultural contribution to the UK.

[Nicky Morgan]

Ian Swales: Will the Minister join me in welcoming the fact that, following work by the Public Accounts Committee on the previous scheme, HMRC now has to give prior approval before the tax reliefs are given, rather than post approval, which in some cases was heavily abused?

Nicky Morgan: My hon. Friend is right. That change is important and was valuably highlighted by the Public Accounts Committee, of which he is a member.

Since the introduction of film tax relief in 2007, direct employment in the sector has almost doubled and 1,050 film productions have made 1,900 claims for a total of £1.1 billion. The changes in the clause modernise existing film tax relief to encourage the production of culturally relevant British and EEA films.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

[MARTIN CATON *in the Chair*]

Clause 33

TELEVISION TAX RELIEF: ACTIVITIES TO BE TREATED AS SEPARATE TRADE

Question proposed, That the clause stand part of the Bill.

Catherine McKinnell: It is a pleasure to serve under your chairmanship this afternoon, Mr Caton. May I ask permission to deal with clauses 33 and 34 together?

The Chair: An amendment has been tabled to clause 34, so it will be more straightforward to deal with clause 33 separately.

Catherine McKinnell: Thank you, Mr Caton. Clause 33 relates to other tax reliefs for the creative industries, based, as we have discussed, on Labour's highly successful film tax relief. The Finance Act 2013 introduced a new tax relief for the production of high-end television animation, as well as for video games development, allowing companies engaged in the production of qualifying high-end television productions

"to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit."

It is of course welcome that the Government recognise the incredibly important role that the creative industries play. As the tax information and impact note on the measures in last year's Finance Bill made clear, high-end television animation and video games tax reliefs are all based on Labour's successful film tax relief.

Sections 1216A and 1216B of part 15A of the Corporation Tax Act 2009 specify that a specific programme or production eligible for tax relief is treated as a separate trade to the rest of the company. Clause 33 therefore seeks to clarify that legislation. HMRC published data on its website on the impact of the film tax relief since its introduction in 2007. However, there does not appear to be any similar information, if any, on the television tax relief, which has been in existence for a year. Can the Minister confirm the relief's impact? How many television production companies have been claiming the relief? How many high-end television productions within the remit of the relief are currently eligible or benefiting? Equally, has the Treasury estimated how many jobs are in the high-end television sector and whether that has increased over the past few years? Finally, it would be helpful if the Minister could provide figures for how much the high-end television relief is currently costing the Exchequer.

Nicky Morgan: I shall be brief, because there is broad agreement on the importance of these tax reliefs and how welcome they have been, as the hon. Lady says, to important cultural industries. Clause 33 makes changes to clarify that any animation or high-end television programme qualifying for tax relief is treated as a separate trade for the purposes of tax relief. Last year, the Government introduced new tax reliefs for companies involved in the production of animation and high-end television programmes. Just one year on, the relief has proven to be highly popular, attracting inward investment to the UK and benefiting many programmes that are already being broadcast on our screens, with many more in production.

The hon. Lady asked for an estimate of the impact of the relief so far. I can tell her that since April 2013 over £276 million of investment was made in high-end television and animation programmes. I am unable to confirm the cost, because the relief has been in place only since last April and we are waiting for HMRC to release data. Accounting periods vary, so the data are taking time to come in. It is therefore too early for me to predict exactly how many jobs have been created as a result of the relief, but we can highlight the £276 million invested thus far.

The current legislation already ensures that high-end television programmes are treated as separate trades. Some concerns exist in the industry, however, about whether only those animation programmes benefitting from the relief are treated as separate trades. We want to put that position beyond doubt, to ensure that television production companies with several programmes or animations in production are not potentially subject to an unintended cost and administrative burden by having to treat all their programmes, qualifying or not, as separate trades. No one has approached HMRC to say that they have been affected, but the clause clarifies what was previously understood. The changes introduced by the clause ensure that, for the purposes of the relief, only those programmes qualifying for the relief will be treated as separate trades.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

VIDEO GAMES DEVELOPMENT

Nicky Morgan: I beg to move amendment 1, in clause 34, page 32, line 13, at end insert—

'( ) section 1217CG(1)(a) and (2)(a);'.

The Chair: With this it will be convenient to discuss clause stand part.

Nicky Morgan: Clause 34 makes minor changes to the video games tax relief to make it compliant with state aid approval and to clarify that only those games qualifying for relief need to be treated as separate trades. The changes will ensure that UK games companies are able to benefit from the tax relief from 1 April 2014.

Video games tax relief legislation was introduced by the Government in the Finance Act 2013 as part of a package to support our creative industries, along with the reliefs for animation and high-end television that we have just discussed. As with other successful creative sector tax reliefs, video games required state aid approval from the European Commission before the relief could be implemented. The Commission took the decision to open a formal investigation into the scheme for video games and the Government worked closely with industry and the Commission throughout the investigation to ensure that state aid approval was received as quickly as possible.

State aid approval from the European Commission was received in March and is subject to some minor changes to the games legislation in the Finance Act 2013. The changes made by clause 34 will amend the video games tax relief to replace the "used or consumed rule" by a definition that encompasses expenditure on goods or any services provided anywhere within the European economic area. To ensure that the relief benefits those games producers in the UK there will be a cap on subcontracting of £1 million. That ensures that games developers do not place the majority of work outside the UK, and protects UK businesses.

5.30 pm

As some games developers may have many games in production, we are also clarifying that only those video games that benefit from this relief are treated as separate trades for tax purposes. That removes a potential cost and administrative burden on those successful companies. The tax relief plays an important role in enabling companies within the video games industry to make valuable economic and cultural contributions to the UK as part of a dynamic and diversified economy. This tax relief will have a substantial impact on our UK video games industry, benefiting companies across the UK, from Dundee to Brighton.

Chris Evans (Islwyn) (Lab/Co-op): As the Minister knows, this industry is highly competitive and is facing massive pressures from north America, particularly Canada. We have seen the export of jobs from Scotland to Canada. How does this regime compare with those in north America? Does it allow British companies to compete before they think of offshoring?

Nicky Morgan: The hon. Gentleman is right. It is worth recognising that the UK is regarded as having a world-leading video games industry, and long may that continue. I have not done an analysis of how we compare with other regimes, but there is no doubt that in keeping this regime under review, the Government would be conscious, as any Government would, of what other regimes around the world offered. As I have already set out, we need to be cognisant of state aid rules from the European Community. I have already mentioned that one of the changes made by the clause, which amends the tax relief, will ensure that games developers do not place the majority of work outside the UK, and therefore protects UK businesses. I am sure we would all welcome that.

I will also outline one change to be made. To be eligible for tax relief a video game must be certified as culturally British. Schedule 16 to the Finance Act 2013 included the power to introduce a points-based cultural test for the relief. The purpose of the test is to determine whether a video game may be certified as a culturally British game by the Secretary of State for Culture, Media and Sport.

A statutory instrument to that effect will be introduced through the negative procedure immediately after the Bill receives Royal Assent. We will also keep the new relief under review alongside other measures in the Government package of corporate tax reform, to ensure that they benefit businesses in the way intended, and to ensure that the new regime is not exploited for tax avoidance or fraudulent purposes.

Government amendment 1 is a minor drafting amendment to replace the words "UK expenditure" with "EEA expenditure". A number of changes in drafting from UK to EEA were required and unfortunately that is a typographical error in the Bill. We need to make the change to ensure that the legislation works as intended.

In conclusion, the new video game relief will help maintain the UK's position as a world leader in producing video games, so encouraging investment.

Ian Mearns: I wonder whether the Minister can flesh out what is a culturally British game in an international context. As my hon. Friend the Member for Islwyn pointed out, there is an awful lot of competition. A games company in my constituency has been established for the best part of 20 years but has offices in Hong Kong, mainland China and the USA. I am not convinced that there would be an international market for "Grand Theft Croquet".

Nicky Morgan: I thank the hon. Gentleman for that very good observation. I am told that video games can be cultural in the same way as films and TV programmes. He may be interested to know that video game music is becoming popular and mainstream, in the way that we listen to film scores. I understand that the cultural test considers the game's content, cultural contribution, where the production takes place and the nationality and residency of the people involved in the production, to ensure that support is targeted at culturally British and European games. I think that is as far as I can go for the hon. Gentleman at this stage, but I am happy to continue the discussion and my education on the matter.

As I was saying, as a world leader in producing video games, we want to encourage investment and promote sustainability in the industry. I therefore hope that the amendment will be made, and that the amended clause stands part of the Bill.

Catherine McKinnell: I will keep my comments brief, because the Opposition strongly support the video games relief. The relief was announced in the final Budget of the previous Government in 2010, and we were disappointed when the current Chancellor decided against implementing

[Catherine McKinnell]

what he described as "poorly targeted" proposals. We are pleased that there has been a U-turn on the issue and that we are debating the nuances of the relief today rather than its substance.

There have been some setbacks for companies that are awaiting the benefits of the relief, in terms of negotiations regarding state aid. I had one or two queries about the definitions of "culturally British", but I think my hon. Friend the Member for Gateshead has shot my fox. The Minister has provided a helpful response to that query.

Will the Minister confirm that Government amendment 1 will conclude the deliberations with the European Commission, and that the matter is now resolved? In that case, in light of the EU competition chief's comments, particularly in relation to distinctive culturally British games, do we now have a greater degree of clarity than in last year's Finance Bill Committee, when we were left quite unsure whether the video games industry would begin to see this much needed and welcome relief, considering that it has now been in place for more than a month? What has been the initial impact assessment?

Nicky Morgan: Given that the relief has been in place for only a month, it is difficult to assess at this stage quite how many companies are benefiting immediately. However, as we have heard from hon. Members, the interest in the clause stems from the fact that hon. Members across the House have companies in their constituencies that will benefit. That is why it was important to get matters resolved with the European Commission and to introduce the relief.

The hon. Lady asked whether the state aid process is at an end. I am able to say that yes, the matter is now resolved. We were able to bring the relief into effect only on 1 April this year, when we received state aid approval from the EU.

Video games tax relief is estimated to cost £10 million in 2014-15, but, as I have already said, indications from the industry are that it will have a valuable impact on it, and reactions so far to its introduction have been extremely positive.

Amendment 1 agreed to.

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35

COMMUNITY AMATEUR SPORTS CLUBS

Catherine McKinnell: I beg to move amendment 12, in clause 35, page 36, line 18, at end insert—

'(16) The Chancellor of the Exchequer shall, within three months of Royal Assent, undertake a review into the impact of the changes made by this section to the number of community amateur sports clubs in the UK.

(17) The report referred to in subsection (1) above must in particular examine—

(a) the value of company profit donations to community amateur sports clubs over the last four years;

(b) the amount of Class 1 national insurance contributions paid by community amateur sports clubs, and

(c) the average cost to community amateur sports clubs in order to retain their CASC status.

(18) The Chancellor of the Exchequer must publish the report of the review and lay the report before the House.'.

The Chair: With this it will be convenient to discuss clause stand part.

Catherine McKinnell: I want to set out briefly the provisions of clause 35, in order to set the context for the Opposition's amendment.

Clause 35 extends corporate gift aid on qualifying gifts of money to charities to gifts of money to community amateur sports clubs. It also amends the legislation governing CASCs to include donations from companies within tax relief provisions and inserts an anti-abuse rule into part 6 of the Corporation Tax Act 2010.

Extending corporate gift aid to community amateur sports clubs has been widely welcomed. Following the autumn statement of 2013, the Association of Taxation Technicians stated:

"This brings such donations into line with those from companies to charities and properly recognises the role of CASCs as a key guardian of the Olympic and Paralympic legacy. We have previously called for a widening of the CASC scheme."

The Association of Taxation Technicians also signalled a word of caution on the wider changes to the rules governing CASCs, to which I will return.

I am trying to shorten my comments as much as possible in the interests of brevity, but it is difficult to put our amendment in context without going into some of the clause's background. In essence, clause 35 puts the tax treatment of company profits that are donated to CASCs on a par with company profits that are donated to charity, but it is worth reminding Committee members that the National Insurance Contributions Act 2014, which received Royal Assent on 13 March, provides for similar parity between CASCs and charities by introducing the employment allowance.

The employment allowance enables sports clubs, among others, to reduce their employer class 1 national insurance contributions, which means that from 6 April 2014, businesses and charities, as employers—and by extension CASCs—can claim the employment allowance if they pay employer class 1 NICs on the earnings of their employees or directors. As we know, the employment allowance will be worth up to £2,000 a year per business, charity or sports club.

Given those two provisions, amendment 12 seeks to shed additional light on the potential impact on CASCs and calls for the Government to examine: the value of company profit donations to CASCs over the past four years; the amount of class 1 NICs paid by CASCs; and the average cost to CASCs of retaining their CASC status. Providing clarity on those points will enable us better to understand the true impact on CASCs of the measures contained in this clause.

On the clause's anti-abuse provision, I know that such measures, specifically with regard to sports clubs, were the subject of much debate in last year's Finance Bill Committee, and I believe they were also the subject of controversy in the media, with one *Times* headline reading "Village green sports clubs are taxman's latest target". The story reported that dozens of local golf, tennis and cricket clubs were potentially at risk of closure after "aggressive" investigations by the taxman.

HMRC had written to thousands of clubs suggesting that they owed thousands of pounds in tax.

Although anti-abuse provisions are clearly important, particularly given the growing salience of issues of avoidance and tax evasion over the past few years, I would be grateful if, in light of the anti-abuse provisions contained in this clause, the Minister could reassure volunteers, organisers and members of CASCs about the approach that the Treasury and HMRC are likely to take in enforcing those rules.

The Association of Taxation Technicians has raised some queries on the clause that are worth highlighting and for which I would be grateful if the Minister could respond. The clause extends corporate gift aid in relation to gifts to CASCs. Chapter 2 of part 6 of the Corporation Tax Act 2010 relates only to payments of money by a company to a charity, and chapter 3 separately treats disposals of investments, including land, by a company to a charity as if they were qualifying charitable donations. The clause makes provision only in respect of the definition in chapter 2 by amending section 202. In contrast, the clause makes no changes to section 217, which provides for the extended definition of a charity for the purposes of chapter 3 on the disposal of certain investments, such as land.

As a result, there are concerns that the clause may result in the gift of certain investments—including, significantly in the context of sports clubs, land—by a company to a CASC being denied the corporate gift aid relief that would be available if the gift were made to a charity. I would be grateful if the Minister would respond to those queries and clarify whether she is aware of the discrepancy between CASCs and charities when it comes to gifts of land, particularly given that sports clubs may find such donations far more valuable than gifts of capital. If so, perhaps she could set out why that is the case.

5.45 pm

The tax information and impact note describes a wide array of changes to the rules for CASCs, although the provisions contained in clause 35 and the accompanying explanatory notes appear to relate only to corporate gift aid for CASCs. None the less, the tax information and impact note describes amending by regulations the current eligibility conditions that apply to all CASCs, to build on the success of the scheme originally introduced in 2002 by the last Labour Government and to provide greater clarity and certainty.

The former Economic Secretary, the hon. Member for Loughborough, who is now the Financial Secretary, announced changes that included specifying a maximum amount for costs associated with the membership of a club, whether that is on the use of facilities, full participation in activities, or membership fees. In addition, the Government increased the amount that CASCs can earn tax-free from club bars, cafés and venue hire. In other words, CASCs will be eligible to generate up to £50,000 from trading, which has increased from £30,000, and up to £30,000 from rental income—that has increased from £20,000—from non-members before paying corporation tax.

I briefly mentioned the comments of the Association of Taxation Technicians. Although that organisation welcomed the provisions in clause 35, it signalled caution about the wider changes, saying:

"Sports clubs will need to check very carefully the draft regulations…in order to check whether they will remain eligible for CASC status. If a lot of clubs are excluded by the new regulations, the availability of corporate Gift Aid to those that remain eligible will be of little consolation."

Indeed, the tax information and impact note that outlines the changes seems to confirm some of the organisation's worst fears:

"Some clubs may need to make changes to their structure or their operations in order to retain their CASC status. There are around 6,000 existing CASCs that may have limited one-off costs as a result of complying with the new rules."

That is why in amendment 12 we call on the Government to review the financial impact that those regulatory changes will have, or are having, on previously eligible CASCs. Perhaps the Minister will elaborate on those points in her response to provide some reassurance that the issues have been taken on board.

Will the Minister confirm whether concerns raised by the Lawn Tennis Association and the Rugby Football Union have been taken into consideration? One of the main concerns of the RFU was the plans concerning social income, which it said

"would preclude the vast majority of rugby clubs from remaining in the scheme or registering as new CASCs."

The clause is designed to expand the ways in which CASCs can generate revenue. The RFU highlighted during last year's Finance Bill Committee the fact that all sorts of different sports clubs rely on diversified income—social or non-sporting—from a variety of income sources. The vast majority of clubs are run on a not-for-profit basis, and that revenue is invested back in the club. The Lawn Tennis Association also expressed concerns that the unintended consequences of the proposed changes could make it difficult for some existing community and amateur sports clubs to comply or would undermine their sustainability. For example, the plans to limit the amount of income that sports clubs could receive from non-members often represents a sizable proportion of a club's turnover and thus affects their ability to subsidise other activities.

Will the Minister confirm that the concerns expressed by a range of sporting governing bodies and associations have been adequately addressed? Will she confirm that the new regulations are not going to preclude amateur sports clubs that are already registered or are in the process of registering from retaining their CASC status? Will the regulations mean that amateur sports clubs reduce the income that they receive from certain income streams, whether from non-members or from social activities and establishments? Can she explain the likely effects of the CASC changes on the numbers of registered clubs under the scheme and the likely impact on the Government's goal to continue the 2012 Olympic legacy with increased participation numbers?

The Government have rightly made the London 2012 Olympic legacy one of their key priorities. CASCs are part of a scheme introduced under the previous Government. There are more than 6,000 registered across the UK, and they have an integral role to play in achieving those goals. Amendment 12 seeks further clarity on measures concerning CASCs so that we can be sure that those clubs are supported in the best way possible. I urge the Committee to back amendment 12.

Ian Mearns: It is a pleasure to serve under your chairmanship, Mr Caton. I want to make a brief

[Ian Mearns]

contribution about the importance of community amateur sports clubs to our local communities and to local society. I do not think that the contribution of these clubs, largely run by volunteers, can be overestimated. They make a huge contribution to the community, with an input for children, young people and adults. They make a significant contribution to overall community health and they have a rich and culturally diverse impact on the way in which young people and adults mix together in sporting activities.

In my constituency, we have a rich heritage of sporting clubs. It is possible to think of lots of current and past premiership footballers from the north-east of England who have come through clubs such as Redheugh boys, as it was, now Redheugh youth football club. Many of these clubs run 15 to 20 teams for different age ranges and make a huge contribution to the life of our community, particularly by imposing real self- discipline on young people, who learn good character through sporting activity.

It is difficult to cost the financial benefits of that. I urge Ministers to do all that they can to assist community amateur sports clubs through taxation: in my constituency, Redheugh boys club, Rutherford juniors, Gateshead juniors, Cleveland Hall, Felling Magpies, and Leam Rangers football teams. Those are many different football teams operating within the same club settings. I attended Gateshead rugby club's excellent beer festival for a brief period on Saturday. It needs revenue to come in because running a sports club is a very expensive operation. The upkeep of pitches and playing surfaces is expensive. It is not only about cutting grass, but about making sure that the pitch is drainable to a good level and can be played on in adverse weather.

Gateshead Fell cricket club and Felling cricket club manage to put games on when others cannot do so. They make a huge contribution to our community. Within Gateshead, we have the very successful Gateshead and Saltwell Harriers. Running an athletics club is not cheap. The equipment required for running athletics clubs is very expensive indeed. They are assisted by the council, but they have to do a lot of income generation so, from that perspective, I urge Ministers to do all that they can to assist community amateur sports clubs.

Ordered, That the debate be now adjourned.—(*Amber Rudd.)*

5.55 pm

Adjourned till Thursday 8 May at half-past Eleven o'clock.