PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

CORPORATION TAX (NORTHERN IRELAND) BILL

Second Sitting

Thursday 5 February 2015

(Morning)

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Monday 9 February 2015

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: Sir David Amess, †Sandra Osborne

† Barwell, Gavin *(Lord Commissioner of Her Majesty's Treasury)*
† Dakin, Nic *(Scunthorpe)* (Lab)
† Durkan, Mark *(Foyle)* (SDLP)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Gauke, Mr David *(Financial Secretary to the Treasury)*
Johnson, Gareth *(Dartford)* (Con)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† McDonald, Andy *(Middlesbrough)* (Lab)
† Mahmood, Shabana *(Birmingham, Ladywood)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Mills, Nigel *(Amber Valley)* (Con)
Pound, Stephen *(Ealing North)* (Lab)
† Rutley, David *(Macclesfield)* (Con)
† Swales, Ian *(Redcar)* (LD)
† Wilson, Sammy *(East Antrim)* (DUP)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 5 February 2015

(Morning)

[Sandra Osborne *in the Chair*]

Corporation Tax (Northern Ireland) Bill

11.30 am

The Chair: We now begin line-by-line consideration of the Bill. If Members wish, they may remove their jackets in Committee, but if anyone does I will be very surprised at this temperature. Please ensure that all your electronic devices are switched off or in silent mode.

The selection list for today's sittings is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue. A Member who has put his or her name to the leading amendment in a group is called first. Other Members are then free to catch my eye to speak on all or any of the amendments in the group. A Member may speak more than once in a single debate.

I will work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments. Please note that decisions on amendments take place not in the order in which they are debated, but in the order in which they appear in the amendment paper. In other words, debate occurs according to the grouping in the selection list and decisions are taken when we come to the clause that the amendment affects. I hope that explanation is helpful.

I will use my discretion to decide whether to allow a separate stand-part debate on individual clauses and schedules following the debates on the relevant amendments.

Clause 1

Trading profits taxable at the Northern Ireland rate

Nigel Mills (Amber Valley) (Con): I beg to move amendment 1, in clause 1, page 9, line 26, at end insert—

'(3A) If an election by an SME under this subsection has effect the large company condition shall be treated as satisfied in relation to an accounting period and the SME condition shall be treated as not satisfied in relation to the same accounting period.

(3B) An election under subsection (3A) can only be made by a company that in an accounting period—

(a) is an SME for the purposes of section 357KC;

(b) is not a Northern Ireland employer for the purposes of section 357KD; and

(c) has a NIRE.

(3C) An election for the purposes of subsection (3A)—

(a) must be made by notice to an officer of Revenue and Customs;

(b) must specify the accounting period in relation to which it is to have effect; and

(c) must be made before the end of the period of 12 months beginning with the end of the specified accounting period."

It is a pleasure to serve under your chairmanship this morning, Mrs Osborne, at the start of the Bill Committee debates. It is a slightly unusual Bill, since we have six clauses and the first covers most of the Bill.

I am working on the assumption that we will have a separate clause stand-part debate, so my remarks do not need to cover the whole Bill. The amendment is an attempt to sort out an omission in the Bill that involves treatment of small or medium-sized companies and large companies, and what happens if the former do not quite meet all the conditions for such a company under the Bill. A small or medium-sized company could end up being in a worse position than if it was a large company.

The Government have tried to be sensible. We obviously need to be careful that only companies operating in Northern Ireland get a benefit from the lower corporation tax rate, which is why the large company rules set out that a large company has to divide its activity between what is taking place on the mainland and what is taking place in Northern Ireland, so the lower tax rate is only for the Northern Ireland share of its profits. That has to be the right approach.

It is entirely fair to give a more simple regime to small and medium-sized companies in the UK, so that they do not have go through the whole compliance horror of trying to split their activities if they know that they are really trading only in Northern Ireland or trading only a small amount. For a small or medium-sized company, the rules should give a lighter compliance burden, which is to be welcomed greatly.

In some situations, however, a company might drop out of the rules without realising and end up in a worse position. The rules for small and medium-sized companies set out that they must meet the European Union size criteria—some of which, helpfully, are in euros, which can cause a bit of volatility in whether they are met. For clarity, the rules state that a small or medium-sized company must have fewer than 250 employees and either turnover of less than €50 million or balance sheet assets of less than €43 million.

At the start of the Parliament, the €50 million turnover level would have been equivalent to about £45 million; at today's exchange rate, that is about £38 million. A company could have been small or medium sized at the start of the Parliament, but now that the euro has weakened in recent weeks, it might have fallen out of the criteria without expecting it. A company might think it is covered by the simplified rules but suddenly might not be because of exchange rate movements, so it might not realise that that is how the rules are applied.

Another situation might arise whereby a small or medium-sized company won a contract on the mainland late in the year. The hon. Member for East Antrim used the example of a construction company in the evidence session the other day. The company might undertake the project as a useful way of splitting its income—it might provide employment for people in Northern Ireland who are sent over to the mainland to do the work, which is all sensible. However, if the value of those mainland contracts was more than 25% of its activity, the company would miss the 75% test in the Northern Ireland work force conditions, and its whole profit for that year would attract the higher mainland rate, not the lower Northern Ireland rate. The company might not know that until right at the end of year, when it was trying to work out which of its contracts had been completed and which had been paid for.

That could lead to a real compliance burden. It could lead to a company not wanting to take on work that might take it over the threshold, because the amount it

earned could be less than the extra corporation tax it ended up having to pay. This looks like an unfortunate situation, and it would leave a small or medium-sized business with, say, 70% of its activity in Northern Ireland having to pay the mainland UK rate of 20%, whereas a large company in the same situation would get the lower Northern Ireland rate for the 70% of its profit it made in Northern Ireland. That does not strike me as entirely fair or as what we probably intend.

The question is how we strike a balance between an easier regime for small and medium-sized companies and one that does not unduly penalise them if they happen to have split activity. We could argue that a company that knows it has a reasonably sized mainland operation and a Northern Ireland one could choose to have two separate companies and do all its mainland work in a separate company. It would not then risk tainting its Northern Ireland operations and losing the lower tax rate—if the rate is indeed lower after the powers before us are granted. Normally in the tax system, however, we do not want to distinguish between the ways in which groups operate—whether they operate through separate companies or just one legal entity. Doing so creates a whole new burden for those companies, which then have to decide whether to have two separate legal entities, manage them separately and allocate contracts and employees between them. That in itself risks creating a compliance burden in trying to get around these rules.

Amendment 1 would therefore provide that a small or medium-sized company that meets all the rules for being small or medium-sized, but that does not meet the Northern Ireland work force condition for a year—I accept there is a look-back year, so companies would actually have to miss the condition for two years before they lost the lower rate—can choose for that accounting period to elect into the large company rules. They can then separate their activity out and still get the lower Northern Ireland rate on the share of their profits that they have earned in Northern Ireland.

That would not impose a burden on any company that did not make that election. Any company that thought that that was too hard, that the savings were not worth the effort or that it just did not have the relevant information could choose not to make that election, and they would, effectively, fall out of the rules for that year. I cannot see that that would impose a burden on anyone—unless they chose to impose one on themselves—but it would maintain fairness. A company that just misses out on the small and medium-sized company rule and on the lower rate could get into the large company rate and then have the lower rate on the proportion of the profits it has earned in Northern Ireland. That strikes me as fairer. It takes away the risk—I accept it is probably quite small—that a small or medium-sized business could end up in a worse tax position than a large business, which is not what we normally intend in the tax rules.

There are other scenarios we need to be a little careful about. What happens if I am a small or medium-sized enterprise operating on the mainland with a small operation in Northern Ireland? Under the rules as drafted, unless I have 75%, I cannot take advantage of the lower Northern Ireland rate. That means I am probably at a big commercial disadvantage if I try to operate in Northern Ireland. However, if, by allowing the Northern Ireland Assembly to set the rate, we are trying to attract investment into Northern Ireland, we probably want small and medium-sized businesses on the mainland to say, "Actually, I do want to open another site. I want to open some more shops in my chain. I want to extend my business somewhere else. Northern Ireland is quite an attractive place. I would like to work there. I would like to employ people there. I will put my next outlet in Northern Ireland." However, such businesses cannot qualify under the rules as drafted.

There are certain attractions, such as fairness for small and medium-sized businesses and encouraging medium-sized businesses on the mainland to invest in Northern Ireland, in allowing such businesses to opt into the large company rules and get the share of their profits they fairly earn in Northern Ireland at the Northern Ireland rate, rather than the mainland rate. I am not the only person to think so.

We had written evidence from Eamonn Donaghy at KPMG in Belfast, where he is the head of tax and also head of Grow NI, which has been campaigning for the introduction of the Northern Ireland corporation tax rate. He comments that it would be helpful for small and medium-sized companies to be able to elect to get into the large company regime.

I hope the Minister will look favourably at the matter. I have been tabling amendments to finance Bills and tax issues a lot in this Parliament. I have never quite managed to convince the Minister to come over the line and accept one of my amendments, although I remember one day when we thought we might have done that, but we will gloss over that unfortunate incident.

I am not attempting to derail or criticise the Bill. I am merely attempting to sort out a small gap that will probably hit some companies only in a rare set of circumstances. The data show that there are not many companies in danger of dropping out of the SME exemption. If we want this new regime to work for the long term, we need to try to close some of the gaps. The amendment would be a fair addition and add no extra burden. It would simply create the right conditions for a small or medium-sized company.

Mark Durkan (Foyle) (SDLP): It is great to serve under your chairmanship again, Mrs Osborne. I rise to indicate sympathy with the points made by the hon. Member for Amber Valley. It is important to ensure that the measures in the Bill are conducive to helping businesses—not only businesses that site themselves in Northern Ireland—without jeopardy to other regional economies in the UK, and it is important to help grow our own indigenous businesses. Obviously, businesses in Northern Ireland will not succeed to their fullest purely within the context of the Northern Ireland market. They will want to trade elsewhere on the island of Ireland, elsewhere in the UK, and indeed beyond.

The provisions, as they apply to the portion of a company's trade in the UK, could cause particular wrinkles. We want to ensure that companies that export goods or services—they will have people working in sales or in labour-led services such as construction—are not in the position of having to decide at a given point in the year whether they can take a certain contract that might come their way, because it might just put them over the line. We do not want them to say, "Sorry, can we shovel that off to another accounting period?" We

[Mark Durkan]

do not want people to have that difficulty with the work that they might bid for or potentially be awarded in a UK market, as opposed to the work that they can get in the market in the south of Ireland or elsewhere outside the UK.

The Financial Secretary indicated in the evidence session the other day that the Government feel they have built enough elasticity into the Bill and that the measures will have all the room for movement that firms need, so that nobody will find themselves on an absolute knife edge. We know that that is the intent and that that is what is surmised for now, but it may not be people's experience later. There are flexibilities. Things can be carried forward for a year and then rounded off later, but that still gives rise to choices being made by companies and professional advice having to be sought as to whether they can afford to take certain business opportunities, and whether they will have fundamentally to change issues around the standing of their company in terms of corporation tax. We must ensure that we are not leaving any invidious wrinkle whereby small and medium-sized enterprises would find themselves at a disadvantage compared with bigger companies in the sector that are competing in the same market.

11.45 am

The hon. Member for Amber Valley has made the point well. I am conscious of companies in my own constituency—some in construction, including some fairly specialised ones in construction and engineering—competing for contracts, some of which are a result of capital spending by the Government here and through various parts of local government. Some of those companies have found themselves in a difficult situation when dealing with the tax authorities, perhaps because the company was taken over and there were other problems or tax debts. I want to ensure that I will not be talking to those same companies again about a different version of the same problem with their corporation tax standing.

This is also about ensuring that people do not inadvertently put themselves in any difficulty that would place them in a questionable standing with Revenue and Customs. We need to ensure that this is all seemly, if not quite seamless, from everyone's point of view. Revenue and Customs will then not find itself questioning firms, and firms will not find that, after successful work and having won and discharged contracts, their tax status is undermined and contrasts with their business plans and assumptions.

Shabana Mahmood (Birmingham, Ladywood) (Lab): It is a pleasure to serve under your chairmanship, Mrs Osborne. I welcome Members to the Committee. We have already had a high-quality Second Reading debate and oral evidence session. I look forward to that continuing today.

The hon. Member for Amber Valley always brings a huge amount of technical expertise to these debates, which is welcome and appreciated. He gave a good summary of what he is trying to achieve. The Financial Secretary will remember that I asked him a similar question when we took oral evidence, and I was persuaded by his answer. He explained that he and his officials had considered this point but that they felt, in the end, that it was perhaps more theoretical. They felt that it would not lead to practical difficulty of the kind envisaged in the amendment and the written evidence submitted by KPMG.

The Financial Secretary said in his answer to my question that he did not feel that many businesses close to the boundary would benefit from opting in to the large business rules. Given that he and his officials have looked at this, it would be helpful to understand how many businesses we might be talking about and the nature of those businesses. I was persuaded that this point is perhaps more theoretical than practical, but will he give a bit more information about the number of businesses? That would be helpful.

The Financial Secretary to the Treasury (Mr David Gauke): It is a great pleasure to serve under your chairmanship, Mrs Osborne. It is always a happy moment when I begin a speech having just heard that my arguments persuaded the hon. Member for Birmingham, Ladywood. That is not always my experience. I hope that my hon. Friend the Member for Amber Valley will also find my arguments persuasive today. Time will tell on that front.

Amendment 1, which was tabled by my hon. Friend the Member for Amber Valley, seeks to allow SMEs that do not qualify for the Northern Ireland corporation tax rate because they do not meet the 75% employment threshold the option to elect into the rules for large companies. I am sympathetic towards the intent behind my hon. Friend's amendment, but I do not believe that allowing SMEs to elect into the large company regime is the best approach. The rules are designed to deliver two key things for SMEs: simplification and reduced administrative burdens. I hope that hon. Members agree that those are two important objectives that we should bear in mind when designing reforms such as this. The rules mean that the majority of SMEs are subject to a simple in/out test. A company is classified as an SME on the basis of a slightly amended version of the EU SME definition boundary, because it aligns with the UK corporation tax exemption for SMEs from transfer pricing. That alignment is a simplification in itself, as the definition will be familiar to many companies.

Nigel Mills: I am sorry to interrupt the Minister so early in his speech, but he mentioned the exemption from transfer pricing. Medium-sized companies have the option to elect into the transfer pricing rules if they think that to do so would suit their interests.

Mr Gauke: That is true, but the fact that there is such a definition and alignment here is helpful, particularly given the relevance of transfer pricing rules in the context of Northern Ireland corporation tax. It is helpful to make use of that definition.

SMEs are subject to an employment test. If an SME has 75% or more of its UK employment in Northern Ireland, it qualifies for the Northern Ireland rate. If it has less than that, it remains within the main UK rate on all its UK trading profits. That employment test takes into account both employee time in the UK and UK work force costs. It means that companies are taxed based on objective criteria, and only SMEs that have a substantial part of their employment in Northern Ireland

will have their profits taxed there. The test also means that for the majority of SMEs, all their profits will be subject to only one rate of tax. In many cases, SMEs will not have experience of the international profit allocation principles of the large regime or the capacity to handle them, so our approach keeps administrative burdens proportionate for all SMEs. Furthermore, SMEs that have failed the employment test will not have the administrative burden of estimating their tax take under both regimes before deciding whether to elect into the large regime.

Given the complexity and additional burdens that the amendment would create for SMEs, it is worth considering the numbers involved—a point that the hon. Member for Birmingham, Ladywood touched on. HMRC analysis indicates that there are approximately 26,500 SMEs active in Northern Ireland, and under our current rules, 97% of those are eligible for the Northern Ireland corporation tax rate. That leaves only 3% of SMEs unable to access the Northern Ireland rate. However, the majority of those have less than 10% of their employment in Northern Ireland. As the vast majority of SMEs active in Northern Ireland have either nearly all, or very little, employment in Northern Ireland, they will not need to consider in great detail what rate of tax they should pay. The data support our conclusion that the simplification and reduced burden of not having election in the regime outweigh the potential reduction in tax liability for a very small number of companies.

We have included a grace period for SMEs so that they will continue to qualify for the Northern Ireland rate during the first year in which they dip below the 75% threshold or no longer meet the SME size definition. They would have to fail one of the tests for two periods in succession to move out of the SME regime. If a Northern Ireland SME construction company wins a contract in Liverpool, for example, which results in a shift in location of its employees, even if it no longer passes the 75% work force test, it will continue to benefit from the Northern Ireland rate for at least a year. Temporary shifts in employee demographics will not penalise such companies.

I hope that hon. Members agree that the evidence does not support the need for the amendment, which would add a disproportionate level of complexity into the regime for SMEs, as I said during the evidence session earlier this week. However, I agree that that area should be monitored, in case the demographic changes that I have mentioned cause problems.

I recognise that some concerns might be of particular issue to the construction industry. To aid in that, HMRC officials have asked interested parties for evidence of instances in which there might be a problem.

Sammy Wilson (East Antrim) (DUP): The Financial Secretary has outlined the safeguards for such temporary movements of work by firms that might operate outside Northern Ireland. Will he explain the process, if a firm drops out of the Northern Ireland regime for a period, for getting back into the regime? Will firms simply have to show in the next year that they are now back within the 75% threshold, because the contract has ended or whatever? Will they automatically drop in, or will there be a transition period or a complicated process to elect back into the regime?

Mr Gauke: The hon. Gentleman makes a helpful point. As I mentioned, there is a grace period for those companies that qualified for the Northern Ireland rate in one year, but did not in the next. Things are not symmetrical. If a company qualifies as a Northern Irish company, it qualifies as a Northern Irish company and for the relevant rate of corporation tax. I hope that I am reassuring him on that front. In short, companies are back in for every year that they pass the test. There is a year of grace if they fall outside the test.

As I said earlier, it is worth keeping the matter under review and I appreciate that there are particular issues for the construction industry. There are discussions on that.

Mark Durkan: It is clear from what the Financial Secretary has said that there is flexibility on work carried out in the UK. Will he also assure us that for companies whose work in Northern Ireland is in the southern Irish market there will be no new jaundiced look at the degree to which their work serving markets in the south is counted as Northern Ireland work? Many firms are working in the south of Ireland, as well as elsewhere in the UK. When those companies show their 75% in Northern Ireland, will there not be some check on how far the people in Northern Ireland are working purely within Northern Ireland, or are carrying out contracts just over the border? I am in a border constituency and such activity is natural for many firms.

Mr Gauke: The first point to make returns to what I was saying earlier. That is likely to be an issue for relatively few companies. The vast majority of SMEs have, in essence, all or nearly all their activity in Northern Ireland, or little of their activity in Northern Ireland.

On the tests that we have in place, the test in this case is to do with the activity that occurs within the United Kingdom. Time that is counted as occurring in Northern Ireland must be in Northern Ireland—the work must physically be in Northern Ireland. Activities that are not in Northern Ireland—ones that occur in the Republic of Ireland, to take the particular example of the hon. Member for Foyle—cannot count as time contributing towards the 75% test.

I am not sure whether that is the reassurance that the hon. Gentleman sought, but the measure applies to activities in Northern Ireland—the test is whether 75% of the employees are in Northern Ireland. I suspect that in many cases the types of firms that he is talking about, ones that guest-conduct activities in the Republic of Ireland, might well not be doing much on the mainland. In those circumstances, there will not be too much of an issue. Some of those firms may be doing something on the mainland, but I suspect many will not. As I say, however, we will continue to speak to interested parties.

12 noon

Mark Durkan: To clarify, firms in Northern Ireland cannot count work going into the southern Irish market—work that they have competed for as Northern Ireland firms and so on—as part of their 75% in relation to the assessment of the bulk of their UK activity.

Mr Gauke: Yes, that is correct. That would not count towards the 75%.

[Mr Gauke]

As I said, the earliest the regime could take effect is April 2017, so there is time properly to assess any representations, rather than unnecessarily complicating the regime now.

I accept some of the points about the challenge for the construction industry, although, taken as a whole, the data suggest relatively few businesses are likely to be affected by the inability to make an election.

It remains the case that, where we give companies a choice, they will feel obliged to seek advice to calculate how much tax they would pay under either regime, and that will result in additional complexity. There must be a concern that, in some circumstances, the cost of making that assessment could be greater than any financial benefit they would gain from acting on it.

It is also worth drawing the Committee's attention, as I have done, to the grace period for those who temporarily fall outside the Northern Ireland regime. However, with all that, as I say, there is the ability properly to assess representations with a view to coming back to the issue if a persuasive case is made.

To provide further clarity to the hon. Member for Foyle, time spent in the Republic of Ireland will not be relevant to either side of the equation, because the 75% test relates to time spent in the UK, whether in Northern Ireland or the rest of the UK.

With those points of clarification—and, I hope, assurance—I hope my hon. Friend the Member for Amber Valley can be persuaded to withdraw his amendment.

Nigel Mills: I am grateful for the assurance that this issue will be kept under review. I am not totally convinced that having an election that can be completely ignored adds a great deal of complexity. I am not sure how many small companies out there spend their days pondering whether they should elect themselves into the transfer pricing rules, which is an option they have had since those rules came into force for UK entities. I am not totally sold on that argument, but I accept the clause will probably cause a problem for only relatively few companies. If evidence does come forward that some entities will be affected, I hope the Government will keep that under review. There is an annual opportunity in the Finance Bill to sort out any issues that do arise, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Nigel Mills: I beg to move amendment 3, in clause 1, page 9, line 38, at end insert ", and

> (c) the sole or main purpose of carrying on the trade in Northern Ireland rather than in England, Scotland or Wales is not to achieve a reduction in Corporation Tax."

On a slightly different tack, the purpose of this amendment is to test whether the provisions to prevent companies from moving to Northern Ireland for tax reasons—effectively fleeing the mainland to reduce their tax bill by quite a large amount, rather than for good commercial purposes—are sufficient to do that. The Committee is at a slight disadvantage, because I need to convince it that those provisions are not sufficient, even though we have not been through all the clauses that contain them—perhaps I could go through the next 66 pages of the Bill and try to explain those clauses myself.

However, the point I am trying to make is that there are, quite sensibly, a lot of safeguards in the Bill. No one wanted allowing Northern Ireland to have a lower corporation tax rate to mean that every large multinational company could effectively halve its tax bill on its financing activities around the UK or Europe by having one man doing half a day's work a week on a spreadsheet in Belfast. It is pretty clear from the excluded activity on lending and investment that that cannot happen.

Sammy Wilson: Does the hon. Gentleman accept that that is also the aim of the Northern Ireland Executive? The last thing that they wanted was an arrangement that did not create employment, give the opportunity to generate more wealth or grow the private sector. A lot of work has been done on compliance and the resources for it to ensure that the scenario he has painted will not come about.

Nigel Mills: I entirely accept that the desire of the Assembly and the Executive is not to enable companies' portable income to be plonked in Belfast solely to achieve a tax advantage without generating employment. The amendment is to make sure that the rules stop such activity and that no clever large corporates can find a way past them.

I am already happy that financing cannot be used in such a way. The next portable income source most commonly used for tax planning would be royalties and intellectual property. If someone could move their IP into a Northern Ireland company, would their royalties be taxed at a rate much lower than the mainland one? The Bill has complicated provisions on intangible assets; I shall leave the Minister to try to explain those to us later. However, it is pretty clear that if someone just moved already existing IP from a mainland company into a Northern Ireland one, or tried to allocate it to their Northern Ireland operation, they would not get the lower tax rate. It looks as if the easiest ways of doing such things will be covered.

However, what is the next line of things that people could do? Real trading income, rather than investment income for tax purposes, would have to be involved. A principal company could be sat in Belfast with very few staff, dealing, perhaps, with the final signing of contracts agreed on the mainland; we have been trying to tackle such structures through the diverted profits tax. Alternatively, companies might try to place their internet sales for the whole UK or wider in Belfast. Again, that would require only some servers and a couple of IT people to manage.

In theory, under the Bill, if only a very small proportion of an organisation's internet customers were from Northern Ireland, and most were from the mainland, yet all the sales were booked through a company based in Northern Ireland that had no staff or assets on the mainland, there would be no apportionment between the mainland and Northern Ireland: all the income would be taxed at the lower Northern Ireland rate.

Ian Swales (Redcar) (LD): Does the hon. Gentleman share my concern that the Bill does not specifically address the internet—a big issue that we are trying to deal with on a wider front? The Bill leaves such situations open. Companies such as Marks & Spencer are already exploiting Dublin as an offshore, online sales centre.

Nigel Mills: Yes. One of the reasons for tabling the amendment was to see whether there were any further gaps in the Bill that we could try to close. A large corporate for which there is a much lower rate within the same territory and tax code will understandably try to get its portable activities into that lower rate. That will be attractive. It is not easy to move between countries: there are various exit provisions, different legal rules, and, possibly, different currencies. Furthermore, employees would have to change the regime they were taxed in. If a company can move within one territory, many of those downsides do not apply.

Andy McDonald (Middlesbrough) (Lab): I am listening carefully to the hon. Gentleman. Has he applied his mind to whether his amendment could, perversely, have a paradoxical effect? Might it not conflict with other provisions in the Bill? Which provision would predominate? People might point to the clause resulting from the hon. Gentleman's amendment and say that that is the one that must not be fallen foul of.

Nigel Mills: That is an interesting question and I am grateful to the hon. Gentleman for asking it. My intent was to add an extra test that would not say that if someone met this condition but not the one on excluded trade, they would somehow be back into the Northern Ireland rate. It was meant to be an additional hurdle.

We currently have many tax divisions that have a targeted anti-avoidance rule; I think that almost every new provision that is introduced now contains some kind of anti-avoidance rule to try to stop the planning before it starts. By no means was I trying to lower the hurdles that must be cleared. I accept that there is always a risk with Back-Bench amendment drafting that one can trigger unfortunate unintended consequences, but I was trying to explore the issues relating to companies doing what looks like, and is taxed like, perfectly good commercial trading activity, but in reality has much higher profit levels than employment levels and so would not fall within the various exclusions for lending, oil activity, investment management, insurance, re-insurance or the exploitation of pre-existing intellectual property. I was trying to ensure that, anything that was trading and solely tax-motivated, which we are already trying to prevent multinational corporations from moving into low tax regimes to do, we can try from the start to prevent from taking place in Northern Ireland.

By lowering the corporation tax rate in Northern Ireland—assuming that the Assembly chooses to do that—we are trying to get companies to go to Northern Ireland that otherwise would not have gone. I presume that the lower corporation tax rate is intended to influence their decision-making process. There is a risk that if we said, "You can't just go to Northern Ireland to get a tax advantage"—would that run counter to the whole principle of their going to Northern Ireland if the thing that is stopping them from going to Dublin now is the corporation tax? If that is the thing that changes their mind and makes them go to Belfast, would the amendment I am proposing effectively render the tax rate pretty useless in attracting investment? I suspect that the answer is no.

The formulation I have chosen to use—the sole or main purpose test—is pretty widely recognised in tax rules. If a company could show that it was going to Northern Ireland because of the quality of the employees, the strength of the market, the great infrastructure or the thriving sector there—if all those considerations were taken into account—the fact that the corporation tax reduction tipped it over the line would not mean that the test had been failed. It would be failed only if the sole reason why a company was going to Belfast with two men to do principal structure or monitoring servers was to get a tax advantage. That is the sort of thing that I was seeking to prevent, not any genuine commercial choice about Northern Ireland as a place to go.

All this is important because the assessment of the behavioural responses to Northern Ireland having a lower tax rate showed that by far the biggest effect was profit shifting from Great Britain to Northern Ireland. The Library paper that picks up all the relevant studies showed that, even by year 5, the profit shifting from the rest of the world to Northern Ireland would be only £30 million, while the profit shifting from GB to Northern Ireland would be £55 million—almost twice as much. In fact, tax-motivated incorporation would be another £50 million. The people who have looked at the matter think that one issue with a lower corporation tax rate will be that companies will surely try to shift profits purely for tax reasons.

I accept that those assessments may well have been undertaken before all the various drafting to prevent the most obvious ways of moving portable income solely for tax purposes. Nevertheless, as an MP for an English constituency, although I have no problem with tax competition or with Northern Ireland competing for investment with my area or with the whole of England, I want that to be real commercial investment by companies that are going to put real jobs, manufacturing and whatever else into Belfast. We do not want things to be shifted over there that do not really attract any investment, purely to take advantage of the lower tax rate.

The amendment proposes a fall-back position for HMRC if it started to see a lot of companies that had no commercial reason to go to Belfast moving their servers from the mainland to Northern Ireland, with no commercial advantage, no movement of employees, and no particular gain other than the tax rate going down from 20% to the new Northern Ireland rate. As far as I can tell, it would be quite hard to prevent that with the various measures that are already in the Bill. My amendment would give HMRC the tools to tackle that and would be a deterrent to people trying clever tax planning tricks.

12.15 pm

We know that a lot of corporates have been quite keen to plan carefully where they account for their profits to try to get lower tax rates, so some people out there will be looking to see what they can do that will not cost them very much, but will get them a nice tax saving. The amendment would be a deterrent. In Northern Ireland, we want things that create jobs and investment, and help to sort out the economy. We do not want artificial transfers from the mainland.

Ian Swales: The hon. Gentleman is making an interesting speech. On the wording of his amendment, does he see a possible difficulty with what "carrying on the trade" means, particularly with respect to the internet? The

[Ian Swales]

issues he is highlighting could be defined as carrying on a trade, and that is part of the problem that we all have in this area.

Nigel Mills: Yes. The proposed new section I was seeking to amend—357KB—starts with a qualifying trade. To get a lower tax rate, there needs to be a qualifying trade, and the section uses the phrase,

"means a trade carried on by a company",

so I was using the wording already in the Bill, rather than trying to insert a clever new provision.

There is probably an issue for Northern Ireland budget managers. The costs that the Northern Ireland Executive would have to take into account to lower the corporation tax rate are not simply, as mentioned in the evidence session on Tuesday, the impact of Northern Ireland businesses being charged at a lower rate. They would also take into account the costs of businesses transferring from the mainland to Northern Ireland to try to get the lower tax rate within the UK. Perhaps the Financial Secretary will correct me if I have misunderstood that.

If a large number of businesses move from the mainland to Northern Ireland to get the lower tax rate, the Executive will end up picking up the costs for the reduction in their corporation tax bill, even though that has added very little to the Northern Ireland economy, so I can fully see that there would be little desire in Northern Ireland to have such a situation. My amendment would help ensure that there would not be a big cost to Northern Ireland if such a situation started to occur.

I accept that there are alternatives. The Government could choose to introduce new clauses to tackle particular forms of avoidance. The HMRC officials who gave evidence on Tuesday talked about having provisions in the Bill to sort that out, but I think that those changes would normally be prospective, not retrospective, and they would take time to bring into force, whereas my amendment would apply right from the start of the tax being reduced. It would deter people from avoiding tax in the first place. It attempts to replicate what is done in nearly every new tax provision now, and I think it has a certain logic.

However, the purpose of tabling the amendment was to probe whether the Financial Secretary thinks the Bill is sufficiently robust to tackle all the predictable forms of avoidance. I am not seeking to formally add it to the Bill at this point. It is probably a little risky for a Back Bencher to try to add to measures such as this. I would probably open up as many loopholes as we close, but I hope the Financial Secretary will reassure us that the Government have thought through all the obvious tax planning opportunities and that such a provision is not needed at this time.

Mark Durkan: On the subject of opening loopholes, the wording of the hon. Gentleman's amendment could leave an indigenous company that has successfully grown a business in Northern Ireland open to the question of whether it continued to stay in Northern Ireland, or whether it should move elsewhere. It might stay because it wants to stick with the lower corporation tax. The hon. Gentleman's amendment would not apply only to companies coming into Northern Ireland; it could be used adversely to question why a company was remaining there as it grew.

Nigel Mills: I accept that that is a theoretical risk. I hope that companies would have sufficiently good reasons for being in Northern Ireland in the first place and that they could say that they have been long established there. I hope that a decent HMRC inspector would realise that a company that had been trading in Northern Ireland for a long time was not there to get the benefit of a tax that did not exist when it established itself. I can see that there is a risk that we could deter the activity that we are trying to encourage by reducing the tax. I accept that we have to be careful to get the balance right. That is why I said I was not proposing to push the amendment to a Division. I suspect that if we were to do a general anti-avoidance rule, it would need to be drafted and thought through quite carefully with the appropriate safeguards. I hope that the Minister can assure the Committee that we are not opening any doors to tax avoidance that we are trying to close on a multinational basis by having a back door within our domestic regime.

Shabana Mahmood: I thank the hon. Member for Amber Valley for his comments on his amendment. He is right to highlight the risk. The points that he made about not wanting to open up further avenues for potential tax avoidance were correct. The Committee and those who have followed the issues closely do not want to see anything other than genuine economic activity resulting from the proposed changes in Northern Ireland, so that its economy can rebalance, strengthen and result in more people being able to access higher-paid, decent jobs. That will be for the betterment of everybody.

They key question is: what behavioural changes will occur among companies if Northern Ireland chooses to have a rate of corporation tax as low as that of the Republic of Ireland? That issue is perhaps the most important, particularly the question of how we quantify those behavioural changes. That is why I wanted to probe the Minister on how the formula will be calculated and the methodology that will be applied to try to work out how much money the Northern Ireland Executive will have to pay back to the Treasury to account for its forgone corporation tax revenues, and to account for behavioural impact.

Second-round effects are explicitly ruled out by the Stormont House agreement. That is well understood, but behavioural impact motivated only by the potential low corporation tax rate, which is what the hon. Member for Amber Valley was seeking to stop with his amendment, will be quite important. That could potentially be quite a big bill for the Northern Ireland Executive. I would like to hear more from the Minister on that. I appreciate that discussions about the formula may be at an early stage or are not advanced enough for him to give us an idea of what it will look like, but that will be an important additional cost that is not yet well understood if there is a lot of profit shifting from the rest of the UK to Northern Ireland.

I want to probe the Minister on whether he is keeping an open mind about the potential for having targeted anti-avoidance rules, which the hon. Member for Amber Valley mentioned. TAARs have been attached to pretty

much every bit of legislation that I have debated since I have been the shadow Minister responsible for this brief so it seems strange that something has not been added into this legislation straight away. That does not seem to fit the pattern so far.

TAARs are a useful catch-all provision, which have the benefit of preventing companies, particularly well-off businesses that have money to spend on high-quality legal and professional accounting advice, from having some of those early conversations. Did the Minister consider that for the Bill, and is he keeping an open mind that he or a future Government of a different political persuasion may wish to return to that in future finance Bills before we reach the 2017 deadline? We will return to some of those issues later. I appreciate what the hon. Member for Amber Valley is trying to achieve with his amendment, and I am sure that clarification and reassurance from the Minister would be welcomed by the whole Committee.

Mr Gauke: It is a great pleasure to respond to a probing amendment tabled by my hon. Friend the Member for Amber Valley—not for the first time today or, indeed, on other occasions. I hope that he will have many opportunities to table such amendments to future finance Bills and other tax measures in the years ahead.

Amendment 3 seeks to prevent companies from qualifying for the Northern Ireland rate if their "sole or main" aim for trading in Northern Ireland rather than the rest of the United Kingdom is to achieve a lower corporation tax bill. My hon. Friend's concern is profit shifting from the rest of the United Kingdom to Northern Ireland, with companies moving just to take advantage of a lower tax rate. I would like to explain why I believe that the amendment would have unintended consequences.

First, as I am sure Members know, tax is just one issue that businesses consider when making investment decisions. A lower corporation tax rate in Northern Ireland does not necessarily mean that companies will move out of the rest of the United Kingdom. Companies will weigh up all costs and benefits associated with running their business, including tax, before deciding where to base their activities. While I have sympathy for my hon. Friend's intention, it would be difficult to determine the main purpose of a company moving to Northern Ireland. It could lead to burdens associated with HMRC compliance work, as well as creating uncertainty for businesses.

The amendment could be triggered if companies from overseas chose to invest in Northern Ireland having considered investing in the rest of the United Kingdom. It is also possible, as the hon. Member for Foyle pointed out, that the amendment could catch existing Northern Ireland companies that choose to expand in Northern Ireland instead of in the rest of the United Kingdom. I appreciate that that would be an unintended impact, but it would certainly not be in keeping with the objectives of the regime, which are to help to rebalance the economy and encourage foreign direct investment into Northern Ireland.

My hon. Friend's concern is profit shifting and misuse of the regime through avoidance. Let me try to reassure him that the rules have been designed to protect against that. In addition to the general anti-abuse rule, the Northern Ireland rules are limited to trading profits and exclude higher-risk, more mobile activities such as lending and investment. Existing anti-avoidance provisions, including the new diverted profits tax rules, will protect against artificial arrangements and avoidance.

The rules also require larger businesses to use international principles for profit allocation, which will provide similar levels of protections to those we currently have for international avoidance. In the evidence session on Tuesday, Mike Williams from the Treasury made the interesting point that in those circumstances, HMRC is able to see both sides of the transaction because it deals with both elements.

The Northern Ireland regime also contains special features to address tax incentives that arise due to having two corporation tax rates within the United Kingdom. For example, the rules on losses have been modified to remove the incentive to gain a tax advantage from disproportionate use of Northern Ireland trading losses against UK main rate profits.

Ian Swales: The Financial Secretary has said more than once that HMRC will see both sides of the transaction. That is clearly the case, but has he taken account of the fact that some Northern Ireland activity will need to have a new corporate entity to benefit from these arrangements? At the moment, they do not need to because they can have one UK corporate entity. The entity that HMRC is looking at may not exist at the moment.

Mr Gauke: That may be the case. None the less, it would still be HMRC dealing with it. If there are two entities within the same group, it will be perfectly easy for HMRC to look at those in the context of one group, which occurs as a matter of course at present. As I mentioned, the diverted profits tax that will be put in place can deal with both international and UK arrangements and can be very relevant to the digital economy. The point my hon. Friend the Member for Redcar made could be significant here. We also have to bear in mind the work that is ongoing with the base erosion and profit shifting process with the OECD. Those recommendations should also help us ensure that economic activity is taxed where that activity takes place.

12.30 pm

Ian Swales: On a matter of detail, is the Minister satisfied that the wording of the new diverted profits tax legislation, which I support, will cover diverted profits inside the UK?

Mr Gauke: The diverted profits tax deals with both international and UK arrangements. That includes those in relation to the digital economy—the point my hon. Friend made earlier. There is no reason why that should not be relevant in this area.

I touched on the example that losses rules have been modified to remove the incentives to gain a tax advantage from disproportionately using Northern Ireland trading losses against UK main rate profits. Of course, it is difficult to pre-empt every single way in which businesses may seek to exploit the rules, but as we made clear at the oral evidence session, we would move to counter any attempts to manipulate the rules.

[Mr Gauke]

HMRC is continuing to proof the Bill, as it does for all legislation, and if it is deemed necessary, there is time and we can introduce further anti-avoidance rules to target any potential weaknesses before or after the regime comes into effect.

On the impact on the block grant, a good point was made that clearly the intention of the Northern Ireland Executive is to encourage genuine economic activity in Northern Ireland. It would bear a cost if there were profit shifting in an artificial movement from the rest of the UK to Northern Ireland, and experience little benefit in extra reward. Interests are aligned on that front.

My hon. Friend the Member for Amber Valley mentioned the House of Commons Library briefing paper, which had an estimate of the profit shifting from the rest of the UK to Northern Ireland. Those early costings were based on a provisional view of the regime design, under a different UK main rate and using initial methodologies that have been refined. For example, the exclusion of financial activities was not included in the earlier costings. To some extent those numbers are no longer up to date.

The hon. Member for Birmingham, Ladywood raised a point about the block grant: that the Stormont House agreement confirmed the terms for which an adjustment to the block grant would be made. It will reflect the tax revenues forgone by the UK Government due to both direct and behavioural effects, but it will not take into account second-round effects. I previously made the point that all the finer details still need to be confirmed, but I hope that that provides useful clarification.

I recognise the concerns raised about avoidance. However, I believe the amendment would have unintended consequences in creating uncertainty for businesses conducting themselves in a legitimate way. The existing anti-avoidance measures are sufficient. Therefore, not for the first time, I urge my hon. Friend to withdraw his amendment.

Nigel Mills: It was always meant to be a probing amendment, so I beg to ask leave to withdraw it.

Amendment, by leave, withdrawn.

Mark Durkan: I beg to move amendment 4, in clause 1, page 64, line 27, after "activity,", insert "(other than a lending activity by a Northern Ireland credit union),"

The Chair: With this it will be convenient to discuss amendment 5, in clause 1, page 65, line 2, at end insert—

'(3A) In this section, "Northern Ireland credit union" has the same meaning as that given in section 2(2) of the Credit Unions (Northern Ireland) Order 1985."

Mark Durkan: The two amendments concern the position of credit unions in Northern Ireland. I simply seek assurance and clarification that financial services in broad terms will be excluded from being able to benefit from a lower devolved corporation tax rate. My aim is to ensure that credit unions should not inadvertently be part of that exclusion. I have chosen this particular form of amendment, rather than trying to put credit unions into the SME category. The intention is to ensure that for corporation tax purposes credit unions are treated on a par with small and medium-sized enterprises.

Credit unions pay corporation tax. I have credit unions in my constituency with very large memberships and a strong savings base built up over many years. They pay a significant amount of corporation tax and they notice the difference between themselves and their counterparts in the south of Ireland in what they pay.

In circumstances where a new devolved tax rate could be set, obviously credit unions in Northern Ireland look forward to being able to benefit from that. As hon. Members will know, credit unions are not-for-profit organisations, and they are community based. Credit unions were specifically exempted from being categorised as financial services in the Northern Ireland Act 1998, which put the Good Friday agreement into legislation. Financial services and regulation of financial services were not then being devolved. To ensure that there was a devolved window into the affairs of credit unions, the provision was made that the Credit Unions (Northern Ireland) Order 1985 would be devolved. That was how those drafting the legislation ensured that credit unions were not treated the same as other financial services.

Of course, there have been complications since then because we have moved both in this House and in the Northern Ireland Assembly. I chaired an inquiry as Chair of an Assembly Committee into the matter. That was to bring about a situation where credit unions in Northern Ireland would be regulated by the Financial Services Authority, now the Prudential Regulation Authority and the Financial Conduct Authority. That was not due to any malpractice, malfeasance or instability of the Northern Ireland credit unions, but simply because being regulated as financial services was the only way in which the very strong credit unions could offer the range of services to members that much smaller credit unions can offer on this island. Essentially, credit unions in Northern Ireland were disadvantaged in the range of services they could offer compared with their counterparts in the south of Ireland or Great Britain.

The way to ensure that they could offer more services was to have them regulated by the FSA and now its successors, the FCA and PRA. There are problems with that, though I will not bore the Committee with some of the difficulties that arise around that regulation and interpretations. However, there is concern that credit unions could be inadvertently caught in the interpretations under the Bill.

Clearly, credit unions are not going to place themselves in Northern Ireland for any undue purpose. All the legal requirements of the common bond and others have to be met. Nothing egregious would be done by any of the credit unions. However, more credit unions in Northern Ireland could find themselves caught by corporation tax liabilities, because more of them are merging to take account of regulation under version 2 requirements, if they opt for that. In that instance, some credit unions that have previously not had an issue could find themselves in that position as a result of mergers. The amendment is about ensuring that we take care of this now.

Further credit union legislation is currently going through the Assembly. The hon. Member for East Antrim is probably aware of that from his role in the Assembly. We have an arrangement whereby the registration of credit unions in Northern Ireland essentially takes place

under devolved legislation. Of course, the regulation of credit unions takes place under financial services legislation here. Credit unions are a bit different, and this is about ensuring that that difference is protected when it comes to corporation tax.

Nigel Mills: While we are debating excluded lending activities, I want to ask the Financial Secretary another question. I hear the points made by the hon. Member for Foyle. If an ordinary trading company makes a profit and ends up with some cash in hand, it would not be uncommon in a group situation to lend that money into the group if the company had no immediate use for it. Under normal principles, we would obviously expect interest to be received on that money being lent around a group, but we would not count that as a financing activity. We treat it as a normal part of the trade for a company to keep some cash in the bank to earn interest on it or to lend it somewhere until it has a need for it.

There is a bit of a risk in the definition. The consequence seems to be that a trade is an "excluded trade" if it consists of or includes "a lending activity". It is hard to say that a company has not carried out a lending activity if it has lent money somewhere, I suspect. Does that mean that any company with cash earning interest in the bank or that has lent money to somewhere else in its group for a short-term purpose has somehow blown its whole trade out of these rules? I suspect that that is not what is intended. If the cash being provided is purely incidental to the trading activity, if there is no attempt to set the company up as some kind of financing business and if it is a short-term arrangement, that should be okay.

Ian Swales: I raised the point in my speech in the House that unless we tighten up the Bill, it will be perfectly possible for the arrangements that the hon. Gentleman describes to be encouraged and possibly become larger. Interest rates could be extremely high and yet be out of sight because they are in the name of a legitimate manufacturing entity, for example.

Nigel Mills: I accept that this is quite hard. These principles have been looked at when dealing with our controlled foreign companies rules, in terms of whether a proper trading company overseas happens to be using whatever cash it has incidentally or whether it has somehow become part trader, part financer.

I accept that it is quite hard to draw the line. However, we need some assurance that HMRC will not seek to disregard a whole trade because of a small amount of money that is interest free for a short period. There may be an argument that, when allocating a large company's presence between the mainland and Northern Ireland, all the cash and so on will normally be allocated to the head office bit in the mainland rather than the trading activity in Northern Ireland. That might be a way out of this, but I am not sure how that kind of allocation would be achieved in a situation where there is no presence on the mainland and only a presence in Northern Ireland.

It would be helpful if the Financial Secretary gave us some assurance that a trading business trying to do something sensible and not trying to get a tax advantage will either only get charged a 20% mainland rate on any interest income or will be okay for small, incidental activity in that situation.

Ian Swales: In seeking clarity on this, the hon. Gentleman gives an example of cash generated within the business. Does he recognise the risk in terms of how a subsidiary in Northern Ireland would be financed and how much money was put into that subsidiary? Even though it might be a legitimate manufacturing subsidiary, for example, it could be over-financed to encourage profit shifting through the activity that he described.

Nigel Mills: Yes. As I say, finding the balance here is not easy. We could just say that any interest income is taxed at the mainland rate and is not regarded as part of the trading activity. That, I suspect, would be an acceptable fix in that situation to take away that risk. I was just trying to work out from the drafting what the situation would be for an innocent trading business that has cycles of trade: for part of the year, it builds up cash, which it needs to spend later in the year to build up its stock again. We would not want it to be purely commercially holding that cash for a few months, earning some interest, and then cease to be a Northern Ireland trade in that situation. Whatever we do, we do not want to create financing companies by the back door.

12.45 pm

Shabana Mahmood: I have just a short additional question following the speech from hon. Member for Foyle. I bow to his much greater knowledge of the detail and historical development of regulation of credit unions in Northern Ireland. It would be helpful if the Minister explained the treatment of credit unions in relation to financial services and with respect to other regulation in the rest of the UK, particularly in England. Is it normal practice to carve out exclusions for credit unions from other regulation that impacts on finance and banking, given that this is an attempt to do so from the general exclusion already in the legislation?

Mr Gauke: As we have heard, amendments 4 and 5, tabled by the hon. Member for Foyle, relate to credit unions, so I will respond to them together.

I recognise and share the hon. Gentleman's support for credit unions, which offer an important service to their members. That is why the Government have taken a number of actions lately to support them. As legislation for credit unions is already devolved to the Northern Ireland Assembly, many of those actions have a rest-of-the-UK focus. However, one action is particularly relevant for this forum: the decision in 2012 to bring credit unions in Northern Ireland under the remit of the Prudential Regulation Authority and the Financial Conduct Authority. That means that credit unions in Northern Ireland are now regulated alongside credit unions in the rest of the UK and depositors are protected under the Financial Services Compensation Scheme.

While I fully share the hon. Gentleman's support for credit unions, I do not support his amendments. The Bill excludes certain activities, which are predominantly carried out by the finance sector, from the Northern Ireland corporation tax rate because profits of such activities are highly mobile and could present opportunities for profit shifting from the rest of the UK without generating genuine employment activity.

The hon. Gentleman may have taken that to mean that credit unions are also excluded from the new rate. Importantly, credit unions do not pay tax on their

[Mr Gauke]

income from loans that they make to their members because they have a specific exemption. To charge them at the Northern Ireland rate would therefore put them in a less favourable tax position than they currently enjoy, which is not his intention.

Credit unions pay corporation tax on investment income and on capital gains, but those are not covered by the Northern Ireland regime. As credit unions do not have a trade of lending money for corporation tax purposes, they are therefore neither explicitly included nor excluded from the Northern Ireland rate and as such are in no worse a position because of it.

Let me turn to the points raised by my hon. Friends the Members for Amber Valley and for Redcar. On the issue of corporate financing operations and whether that would qualify for the lower rate, we have a restriction on intra-company interest payments—section 357 of the Corporation Tax Act 2009—so that neither receipts nor inductions are taken into account in computing Northern Ireland profits. That mirrors the approach taken for intra-company royalties. We do not have a connected party or intra-group interest restriction. The general restriction to trading profits should cut out most interest transactions as an excluded trade can consist of, or include, a lending activity. That should pick up intra-group lending that is claiming to be part of a trade, rather than investment activity.

Corporate financing operations and related profit-shifting activity will not qualify for the Northern Irish rate. The regime applies only to trading profits, and future group finance payments will normally generate investment profits rather than trading profits. To the extent that interest payments fall within trading income, the profits of such trades will not qualify for the Northern Irish rate.

Another point made was about what happens if a company is engaged in lending as an incidental part of what it does. Lending and investing and other excluded activities will not constitute an excluded trade or activity if the excluded activity is purely incidental to the main trade. This will be made clear in the guidance.

As I said earlier, trading profits for credit unions do not involve corporation tax. Investment profits and capital gains do, but those areas, in terms of investment profits, are excluded from the Bill altogether, so credit unions will be no worse off. I hope that clarifies the matter for the hon. Member for Foyle. The amendment is not necessary and may even work against what it is intended to do, so I urge him to withdraw it.

Mark Durkan: I have heard what the Financial Secretary said about hazards, and I am certainly cognisant of those. However, I have some difficulty in understanding exactly what he means when he says words to the effect that the Northern Ireland credit unions would neither be in the devolved rate nor out of it. It is not specified in the Bill, and my amendment was trying to get some clarity. Notwithstanding the points made about credit unions being regulated alongside other financial services, including their counterparts here in Great Britain, it needs to be understood that there is a different legal basis for the credit unions in Northern Ireland, because they are a part of devolved legislation. As well as regulation under financial services legislation from Westminster, there is also devolved legislation that pertains to credit unions in Northern Ireland.

Credit unions in Northern Ireland do not have access to things such as the growth fund and the modernisation fund, which have been used to support the development of credit unions here in Great Britain over the past couple of years. The credit unions have to meet the costs of the new compliance regimes for the PRA and the FCA, including costs in relation to IT and training. All these are costs for which there is no financial support available to credit unions. They have to meet the costs out of their own resources. That is why investment income is important to them. There are other difficulties, to do with the restrictions on the investment income and the fact that they are no longer allowed to invest for five years at attractive rates, because of the new regulatory status that hampers them. There are larger credit unions, including sizeable credit unions in my constituency, that count corporation tax as having a significant marginal impact on their affairs.

One of our local papers, the *Derry Journal*, runs a weekly feature called "Friday's Child" in which people are asked questions. One of the questions relates to favourite books, and the most popular answer is the credit union book, because that is how well grounded credit unions are in a place like Derry. The feature was founded originally by my predecessor, John Hume, many years ago.

Because credit unions have moved to the new regulatory regime as a way of being able to offer more services to members—though they are struggling with some of the interpretations—they are concerned that there would be a lack of sympathy for them being able to benefit from a devolved rate of corporation tax. It seems sensible to me that if the Assembly is to legislate for credit unions—creating rules and requirements on them over and above those arising from financial regulation here—and be responsible for legally registering them, a devolved corporation tax rate set by the Assembly should be available to them, rather than an otherwise higher rate.

It seems strange that credit unions in Northern Ireland, given their size and scale, would not be treated like for like with the small and medium-sized enterprises that are neighbouring them. That was the main point of the amendments. I take the Financial Secretary's warning that the amendments might not be complete and might raise other questions. I was trying to ensure that the previously used formula of differentiating Northern Ireland credit unions from other financial services that was in the 1998 Act was carried through in this legislation. The Assembly is allowed to legislate for credit unions through the reference to the 1985 order. If that is where the Assembly gets power over credit unions, it should extend to this legislation; then it would be compatible. There is nothing inconsistent or artificial about that.

I hope the Financial Secretary will continue to look at the matter. I know that credit unions in Northern Ireland will be on the case as well, because they do not see why they should be excluded from a devolved rate. Although it does not set the issue aside, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration of the Bill be now adjourned.—*(Gavin Barwell.)*

12.57 pm

Adjourned till this day at Two o'clock.