

## Finance Bill 2021

### Representation from the Association of Taxation Technicians (ATT)

#### Clause 7 and Schedule 1: Small profits rate for non-ring fence profits

##### Executive Summary

1. Clause 7 and Schedule 1 introduce a new small profits rate of corporation tax with effect from 1 April 2023 and provide for consequential amendments.
2. Our primary concerns and suggested amendments are as follows:
  - The lower limit of £50,000 above which the small profits rate ceases to apply is significantly lower than that which applied under the small profits rate abolished in 2015. As a result, many relatively small companies will fall within complex marginal relief provisions, and have profits which will be subject to tax at an effective rate of 26.5%.
  - The introduction of a new definition of ‘associated companies’ results in additional complexity when existing provisions could have been used instead.
  - New s18G, which only applies when two companies do not have *substantial commercial interdependence*, should be amended to use an existing definition of that term and so that the title of the section better reflects its purpose.

We expand upon these below.

##### A. Level of lower limit

1. Paragraph 4 of Schedule 1 inserts a new s18A into CTA 2010. This establishes that the small profits rate of 19% is charged on augmented profits which do not exceed the lower limit (set by new s18D at £50,000). New s18B goes on to say that profits which exceed this lower limit of £50,000, but do not exceed the upper limit (set by new s18D at £250,000) will be subject to corporation tax at the full rate of 25%, but reduced by an amount of marginal relief.
2. The UK’s previous small profits rate was abolished with effect from 1 April 2015. At that time, the lower limit and upper limit were £300,000 and £1.5m respectively – six times higher than the £50,000 and £250,000 limits set out in s18D. As a result, fewer companies will qualify for the small profits rate under the new regime than the previous regime, and more companies will fall within the scope of the marginal relief provisions.
3. These marginal relief rules are relatively complex, and make estimating future tax liabilities difficult. In addition, due to the nature of the calculation, profits which fall into the marginal relief band of between £50,000 and £250,000 will be subject to an effective tax rate of around 26.5%, higher than the main rate of 25%.<sup>1</sup>

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<sup>1</sup> This effective rate of 26.5% is calculated by comparing the tax payable by a company with profits of £250,000 (£250,000 \* 25% = £62,500) with that payable by a company with profits of £50,000 (£50,000 \* 19% = £9,500). This amounts to an extra £53,000 of tax (i.e., £62,500 - £9,500) payable on extra profits of £200,000 (£250,000 - £50,000) – an effective rate of 26.5%.

### B. Definition of associated company

1. New s18D sets out that the lower and upper limits have to be adjusted where a company has one or more *associated companies*. The definition of *associated company* for these purposes is set out in new s18E to 18J.
2. These provisions largely mirror those which existed for the previous small profits regime, which was abolished in April 2015. However, the rules remain complicated, and it is disappointing that the opportunity has not been taken to simplify them, or apply an already existing definition of related or group companies.
3. In particular, we note that the existing definition of *related 51% group company* in s279F CTA 2010 (which is applied for the purposes of adjusting the lower and upper limits for ring fence profits) is not being used here and will, in fact, be replaced by the *associated company* definition in new s18D. As a result of the withdrawal of s279F, amendments are also required to s99 CAA 2001 (long-life assets: the monetary limit), s357BN CTA 2010 (profits arising from the exploitation of patents etc.: small claims treatment) and s357BNB CTA 2010 (profits arising from the exploitation of patents etc.: small claims figure election) which import this definition of *related 51% group company* from the ring fence regime.
4. Replacing the (simpler) *related 51% group company* definition therefore not only introduces a new and more complex definition of *associated company*, but also has an unexpected knock on effect for the capital allowances and patent box regimes. It would have been a simpler solution to instead import the existing rule in s279F CTA 2010 into the new small profits regime, or at a minimum allow it to continue to apply in the way it currently does.

### C. Associated companies and *substantial commercial interdependence*

1. New s18G CTA 2010 addresses when the rights and powers of other parties have to be attributed to an individual under s451 CTA 2010 when determining whether or not two companies are associated.
2. S18G only applies if the relationship between the two companies is 'not one of substantial commercial interdependence'. Under s18G(3), the Treasury may, by regulations, prescribe the factors to be taken into account in determining whether a relationship is one of substantial commercial interdependence.
3. In the interests of avoiding the introduction of another new defined term and adding further complexity to the marginal relief rules, we would recommend that the existing definition of *substantial commercial interdependence* in Sch 1 of the National Insurance Contributions Act 2014 (which applies for the purposes of the employment allowance) be used here also.
4. We further believe that the current title of s18G (Association to persons of rights and powers of their partners) should be amended to read 'Association to persons of rights and powers of their associates' to better reflect the purpose of that section.

## **Finance Bill 2021 ATT Representation**

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**Note:**

**The Association of Taxation Technicians**

The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.