

HMRC Statement

On the 31 May 2011 HM Revenue & Customs published a consultation document on '*Changes to the capital allowances anti-avoidance rules for plant and machinery*', inviting comments on a number of proposals by 31 August 2011.

One of the proposed changes was the repeal of the 'exception for manufacturers and suppliers' provided by section 230 of the Capital Allowances Act 2001 ("CAA 2001"). This exception currently disapplies anti-avoidance rules set out in Chapter 17 of Part 2 to CAA 2001 when certain conditions are met. The consultation document explained that the proposed repeal is because there was evidence that the exception is being used to side step the anti-avoidance rules. This undermines the effectiveness of those anti-avoidance rules which are designed to stop tax avoidance through the acceleration or inflation of relief for capital allowances. The purpose of the consultation in respect of this aspect is to identify whether the proposed repeal will have any adverse impacts on genuine commercial activities. Subject to the outcome of the consultation the intention had been that the repeal would have effect from April 2012.

The Government has very recently become aware that an avoidance scheme is being promoted that seeks to take advantage of the section 230 CAA 2001 exception before it is repealed. The scale of the tax potentially put at risk by the scheme is such that the Government has decided to announce the repeal of section 230 CAA 2001, to the extent that it provides an exception from section 217 CAA2001. Legislation will be included in the next Finance Bill repealing section 230, to the extent that it disapplies section 217, with effect from today. The repeal will have effect in relation to expenditure incurred on or after the beginning of today 12 August 2011. HMRC have today published draft legislation for this repeal.

Although the Government is acting swiftly today to put a stop to the scheme before it is known to have been used or implemented, should it emerge subsequently that the scheme or similar schemes exploiting the section 230 CAA 2001 exception have been used causing a loss of tax then the Government will consider whether the repeal needs to have effect in relation to time prior to the date of this announcement.

As yet no formal consultation responses have been received on whether this repeal would have any adverse impacts on genuine commercial activities. There is still an opportunity to make such representations through the original consultation, which closes on 31 August 2011, and these will be taken into account when finalising the legislative changes required to give effect to the repeal announced today.

Further details of the repeal are contained in a Technical Note which is published today.

12 August 2011