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## AVOIDANCE USING EMPLOYMENT INCOME LEGISLATION

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### Who is likely to be affected?

1. Individuals who seek to abuse reliefs for deductions and/or losses connected to employment to avoid tax. This measure will have no impact on those using the reliefs who are not attempting to avoid tax.

### General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to close down avoidance schemes that seek to abuse reliefs available for employment-related liabilities and losses incurred by employees and former employees during the course of employments established for the purposes of the schemes.
3. The schemes concerned rely on the creation of highly artificial liabilities and losses through a series of arrangements which have been established for the purposes of the schemes connecting individuals and companies or trusts, some of which may be offshore. A common feature is that liabilities and losses are created through intentional acts of default in the context of contrived employments.

### Operative dates

4. The measure will have effect on the tax liabilities of affected persons on and after 12 January 2009.
5. Individuals who have made a claim under section 128 of the Income Tax Act 2007 (ITA) between 12 January 2009 and 1 April 2009 inclusive that is precluded by the proposed change to section 128 of ITA will not be liable to penalties under section 95 of the Taxes Management Act 1970 (TMA).
6. Individuals who have made a claim under section 128 of ITA between 12 January 2009 and 1 April 2009 inclusive that is precluded by the proposed changes to section 128 of ITA will not be liable to surcharges under section 59C of TMA provided they re-order their affairs and pay any additional tax due in accordance with the proposed change on or before 28 April 2009.

## **Current law and proposed revisions**

7. Legislation will be introduced in Finance Bill 2009 to amend section 346 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), to insert a new section 556A into ITEPA and to amend section 128 of ITA.

### Sections 346 and 555 of ITEPA

8. Sections 346 and 555 of ITEPA provide deductions respectively for employees and for former employees for:
  - a. insurance to indemnify employees against employment related liabilities such as damages relating to their jobs or legal costs to defend against such damages; and
  - b. payments for such liabilities in circumstances where they are uninsured.
9. The new subsection (2A) of section 346 and new section 556A will provide that no deduction will be allowed for arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.

### Section 128 of ITA

10. Section 128 of ITA enables a person to make a claim for employment loss relief to be set against their taxable general income for the loss-making year, the previous tax year or both years. This will be amended by inserting a new subsection (5A). This will provide that no claim is allowed under section 128 of ITA for arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.

## **Further advice**

11. The changes introduced by this measure were announced by the Financial Secretary to the Treasury in Written Ministerial Statements covering this measure on 13 January and 1 April 2009. Technical Notes explaining who would be affected and how were published on the HM Revenue & Customs website on 12 January and 1 April 2009.
12. If you have any questions about this change, please contact David McDowell on 020 7147 0175 (email: david.mcdowell@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)