



The Law Society

Manufactured Payments

Response of the Law Society of England and Wales

February 2013



Manufactured Payments

Comments of the Law Society's Corporation Tax Sub-Committee

Introduction

1. The Law Society is the representative body for over 166,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others.
2. This response has been prepared on behalf of the Society by members of its Corporation Tax Sub-Committee, which is made up of senior and specialist lawyers practising in this field.
3. We are pleased to have the opportunity to comment on the draft legislation to be included in the Finance Bill 2013 entitled "Manufactured Payments".

Specific Comments

4. We have the following comments on the draft legislation.

Section 263D

5. We believe that genuine consideration should be given to whether section 263D TCGA 1992 fulfils a valuable objective that is different from the income tax reliefs that the draft legislation will repeal as regards individuals.
6. Our point here is that section 263D does not provide a generally applicable income tax relief in relation to manufactured payments but a specially honed adjustment in the context of capital gains tax that is intended to avoid unfairness – individuals having to bring into account a cum-dividend price for shares they sell, for example, when economically they only ever receive the ex-dividend amount (see section 263D(4)).
7. The section merits special treatment, in other words, and has not been exploited in any tax avoidance scheme as far as we are aware. Overall, therefore, we feel that the section should be retained, albeit in slightly amended form.

Consequential Amendments

8. As well as the other repeals that are proposed as part of the draft legislation, we consider that section 597 ITA 2007 and the associated provisions in section 596(5), 598, 599 and 600 ITA 2007 should be repealed. The draft legislation does not currently propose this.
9. One important reason for this suggested repeal is that section 597 ITA 2007 can only apply if the applicable borrower under a stock lending arrangement is treated as making a manufactured payment under section 596(2) ITA 2007 (see section 597(1)(a)). Importantly, however, section 596(2) will be repealed under

the draft legislation (see paragraph 17 of “Part 3 Consequential Etc Amendments”).

Section 596 ITA 2007 and Section 812 CTA 2010

10. As a final observation, it was not clear to us how the proposed repeal of section 596 ITA 2007 and its counterpart provision for corporation tax purposes, section 812 CTA 2010, are intended to interact with the perceived need to amend those provisions elsewhere in the Finance Bill - that is, with effect from 5th December 2012 (see under “Manufactured payments: stock lending arrangements” in the Finance Bill published in December 2012).
11. The point being that these provisions, as amended, would only apply until their proposed repeal with effect from 1st January 2014, whereupon we infer that the arrangements targeted by the amendments might again be capable of achieving their intended aim.
12. We acknowledge here, incidentally, that section 596 and section 812 were originally designed to prevent avoidance of withholding tax on manufactured payments. It may seem logical, therefore, to repeal the provisions given the proposal that withholding tax on manufactured payments should be abolished in most circumstances.
13. Based on the commentary in the applicable Explanatory Note, however, the arrangements at which the amended sections 596 and 812 are aimed did not necessarily avoid withholding tax. Their purpose instead seemed to be the avoidance of a deemed and potentially taxable receipt in the hands of the person who would otherwise have been the recipient of that deemed payment.