



HM Revenue
& Customs



HM Treasury

DRAFT CLAUSES &
EXPLANATORY NOTES
for
FINANCE BILL 2016

9 December 2015

If using an electronic version of the document, please consider the environment and only print the pages which you need and recycle them when you have finished.

© Crown Copyright 2015

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit

<http://www.nationalarchives.gov.uk/doc/open-government-licence/>

or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or

e-mail: psi@nationalarchives.gsi.gov.uk

Introduction

This document contains draft clauses and explanatory notes to be included in Finance Bill 2016. Accompanying draft secondary legislation is provided alongside the relevant clause, where available.

The consultation on this legislation is open until 3 February 2016.

Comments on the draft legislation should be sent to the policy lead named at the end of the relevant explanatory note.

The Overview of Legislation in Draft, which contains Tax Information and Impact Notes for each measure, and further supporting documents, including consultation responses, are available on the GOV.UK website.

1 Savings allowance, and savings nil rate etc

- (1) ITA 2007 is amended in accordance with subsections (2) to (12).
- (2) In section 6(3)(a) (other rates: savings), after “starting rate for savings” insert “and savings nil rate”.
- (3) In section 7 (starting rate for savings) –
 - (a) the existing text becomes subsection (1),
 - (b) after that subsection insert –
 - “(2) The savings nil rate is 0%.”, and
 - (c) in the heading, after “starting rate for savings” insert “and savings nil rate”.
- (4) In section 10(4) (provisions displacing charge at basic, higher and additional rates), before the entry relating to section 13 insert –
 - “section 12A (savings income charged at the savings nil rate),”.
- (5) After section 12 insert –

12A Savings income charged at the savings nil rate

- (1) This section applies in relation to an individual who has savings income above the starting rate limit for savings.
- (2) In this section –
 - £A is the amount of the individual’s savings allowance (see section 12B),
 - “the excess” is so much of the individual’s income above the starting rate limit for savings as is savings income, and
 - £X is the amount of the excess.
- (3) If £X is less than or equal to £A, income tax is charged at the savings nil rate (rather than the basic, higher or additional rate) on the excess.
- (4) If £X is more than £A, income tax is charged at the savings nil rate (rather than the basic, higher or additional rate) on the lowest £A of the excess.
- (5) Subsections (3) and (4) are subject to any provisions of the Income Tax Acts (apart from section 10) which provide for income to be charged at different rates of income tax in some circumstances.
- (6) Section 16 has effect for determining the extent to which a person’s income above the starting rate limit for savings consists of savings income.

12B Individual’s entitlement to a savings allowance

- (1) Subsections (2) to (4) determine the amount of an individual’s savings allowance for a tax year.
- (2) If any of the individual’s income for the year is additional-rate income, the individual’s savings allowance for the year is nil.
- (3) If –
 - (a) any of the individual’s income for the year is higher-rate income, and

-
- (b) none of the individual's income for the year is additional-rate income,
the individual's savings allowance for the year is £500.
- (4) If none of the individual's income for the year is higher-rate income, the individual's savings allowance for the year is £1,000.
- (5) The Treasury may by regulations substitute a different amount for the amount for the time being specified in subsection (2), (3) or (4); and regulations under this subsection that have effect for a tax year may be made at any time before the end of that tax year.
- (6) If regulations under subsection (5) reduce any amount, the regulations may not be made unless a draft of the instrument containing them (whether alone or together with regulations under subsection (5) which increase any amount) has been laid before, and approved by a resolution of, the House of Commons.
- (7) Section 1014(4) (negative procedure) does not apply to regulations under subsection (5) which increase any amount if—
- (a) the instrument containing them also contains regulations under subsection (5) which reduce any amount, and
 - (b) a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (8) For the purposes of this section—
- (a) each of the following is “additional-rate income”—
 - (i) income on which income tax is charged at the additional rate or dividend additional rate,
 - (ii) income on which income tax would be charged at the dividend additional rate but for section 13A (income charged at dividend nil rate), and
 - (iii) income of an individual who is a Scottish taxpayer or Welsh taxpayer which would, if the individual were not a Scottish taxpayer or Welsh taxpayer (as the case may be), be income on which income tax is charged at the additional rate, and
 - (b) each of the following is “higher-rate income”—
 - (i) income on which income tax is charged at the higher rate or dividend upper rate,
 - (ii) income on which income tax would be charged at the higher rate but for section 12A (income charged at savings nil rate),
 - (iii) income on which income tax would be charged at the dividend upper rate but for section 13A (income charged at dividend nil rate), and
 - (iv) income of an individual who is a Scottish taxpayer or Welsh taxpayer which would, if the individual were not a Scottish taxpayer or Welsh taxpayer (as the case may be), be income on which income tax is charged at the higher rate.”
- (6) In section 16(1) (purposes of rules about highest part of income), before the “and” at the end of paragraph (a) insert—

-
- “(aa) the extent to which a person’s income above the starting rate limit for savings consists of savings income.”
- (7) In section 17 (repayment where tax paid at basic rate instead of starting rate for savings) –
- (a) after subsection (1) insert –
- “(1A) This section also applies if income tax at the basic rate or higher rate has been paid on income on which income tax is chargeable at the savings nil rate.”, and
- (b) in the heading –
- (i) after “basic” insert “or higher”, and
- (ii) after “savings” insert “or savings nil rate”.
- (8) In sections 55B(2)(b) and 55C(1)(c) (individual liable to tax only at certain rates), after “dividend ordinary rate” insert “, the savings nil rate”.
- (9) In section 745(1) (transfer of assets abroad: same rate of tax not to be charged twice), after “the starting rate for savings” insert “when that rate is more than 0%”.
- (10) In section 828B(5) (individual liable to tax only at certain rates), after “basic rate” insert “, the savings nil rate”.
- (11) In section 989 (definitions for the purposes of the Income Tax Acts) –
- (a) at the appropriate places insert –
- ““savings allowance” has the meaning given by section 12B,”, and
- ““savings nil rate” means the rate of income tax specified in section 7(2),” and
- (b) in the entry for “starting rate of savings”, for “has the meaning given by section 7” substitute “means the rate of income tax specified in section 7(1)”.
- (12) In Schedule 4 (index of defined expressions), at the appropriate places insert –
- “savings allowance section 12B”, and
- “savings nil rate section 7”.
- (13) In section 669 of ITTOIA 2005 (preventing charge to both income and inheritance tax) –
- (a) in subsection (3) (meaning of “extra liability”), in paragraph (a), before the “and” at the end of sub-paragraph (i) insert –
- “(ia) in the case of nil-rated savings income, at the savings nil rate,”, and
- (b) after subsection (3) insert –
- “(3A) In subsection (3)(a)(ia) “nil-rated savings income” means –
- (a) the amount (“£X”) of income above the starting rate limit for savings that is savings income, but

-
- (b) if £X is more than the amount (“£A”) of the person’s savings allowance for the tax year, only the lowest £A of savings income above the starting rate limit for savings.”
- (14) In section 7(6) of TMA 1970 (cases where person not required to give notice of being chargeable to income tax), after “dividend ordinary rate” insert “, the savings nil rate”.
- (15) In section 91(3)(c) of TMA 1970 (interest adjustments where reliefs given: when to ignore relief from higher rates on income paid subject to deduction of tax) after “basic rate” insert “, the savings nil rate”.
- (16) Subject to subsection (17), the amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.
- (17) The amendments in section 669 of ITTOIA 2005 have effect where the tax year mentioned in subsection (1)(b) of that section is the tax year 2016-17 or a later tax year.
- (18) The Treasury may, by regulations made by statutory instrument, make such provision amending, repealing or revoking any provision made by or under the Taxes Acts as the Treasury considers appropriate in consequence of the amendments made by this section; and regulations under this subsection that have effect for the tax year 2016-17 may be made at any time before the end of that tax year.
- (19) In subsection (18) “the Taxes Acts” means –
- (a) the Tax Acts,
 - (b) TMA 1970, and
 - (c) TCGA 1992 and all other enactments relating to capital gains tax.
- (20) A statutory instrument containing regulations under subsection (18) is subject to annulment in pursuance of a resolution of the House of Commons.

Explanatory Note

Clause 1: Savings allowance, and savings nil rate etc

Summary

1. This clause introduces a new nil rate of tax for savings income (such as interest) within an individual's savings allowance. Each individual will have an annual savings allowance of £1,000, unless they have any higher-rate income for the year (in which case their allowance will be £500) or any additional-rate income (in which case their allowance will be nil). The clause will have effect for savings income paid or credited on and after 6 April 2016.

Details of the clause

2. Subsection (2) adds the new savings nil rate to the rates of income tax listed in section 6 of the Income Tax Act 2007 (ITA).
3. Subsection (3) amends section 7 of ITA to set the new savings nil rate.
4. Subsection (5) introduces new section 12A and new section 12B of ITA.

Section 12A Savings income charged at the savings nil rate

5. New Section 12A provides the basis for calculating how much of an individual's savings income is eligible for the new savings nil rate, with reference to their savings allowance.

Section 12B Individual's entitlement to a savings allowance

6. New Section 12B determines the amount of an individual's savings allowance for a tax year - which may be £1,000, £500 or nil - with reference to whether they have any higher-rate or additional-rate income in the year. Subsection (8) of this new section defines higher-rate and additional-rate income for these purposes. This new section also enables HM Treasury to make regulations that change the amount of savings allowance, and includes provisions in relation to such regulations.
7. Subsection (6) of the clause provides that the income ordering rules at section 16 of ITA will apply for the purposes of determining the extent to which an individual's income is savings income, and therefore potentially eligible for the savings nil rate.
8. Subsection (7) amends section 17 of ITA (concerning repayment claims) to allow such claims to be made where tax has been paid on income that is chargeable at the savings nil rate.

9. Subsection (8) amends sections 55B and 55C of ITA (concerning the transferable tax allowance for married couples and civil partners) to take account of the savings nil rate within the eligibility conditions for a tax reduction, where the other party to a marriage or civil partnership has elected to reduce their personal allowance.
10. Subsection (9) updates section 745 of ITA to clarify the exemption from income tax for income treated as arising to an individual as a result of certain transactions relating to the transfer of assets abroad. This amendment is consequential to the reduction of the starting rate of savings to 0% from April 2014.
11. Subsections 10 to 15 provide consequential amendments to ITA and other legislation to take into account the savings nil rate and savings allowance. Subsection (13) amends section 669 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) to provide that income subject to the savings nil rate is included for the purposes of calculating a reduction in the residuary income of an estate.
12. Subsections 16 to 20 provide for the commencement of the provisions within this clause and also set out powers for HM Treasury to amend, repeal or revoke other tax legislation in consequence of this clause.

Background note

13. At Budget 2015, the government announced the introduction of a new Personal Savings Allowance (PSA). This change enables most individuals to receive up to £1,000 of savings income (such as interest on a bank or building society account) tax-free each year. However, where an individual has any higher-rate income in the year, their PSA will be £500, and individuals with additional-rate income in the year will have a PSA of nil. The PSA provides a new nil rate for savings income in addition to the 0% starting rate for savings which has applied since 6 April 2014, or the tax-advantages that apply for ISA savings.
14. Alongside the PSA, banks, building societies and National Savings and Investments (NS&I) will cease to deduct income tax from the interest they pay on savings accounts.
15. Savings income is defined at section 18 of ITA and includes a number of different types of payments, such as interest; certain purchased life annuity payments; profits from deeply discounted securities; gains from certain contracts for life insurance and certain accrued income profits.
16. If you have any questions about this change, or comments on the legislation, please contact Helen Williams on 03000 585204 (email: savings.audit@hmrc.gsi.gov.uk).

2 Dividend nil rate

- (1) ITA 2007 is amended in accordance with subsections (2) to (7).
- (2) In section 6(3)(b) (other rates: dividends), before “dividend ordinary rate,” insert “dividend nil rate,”.
- (3) In section 8 (dividend ordinary, upper and additional rates) –
 - (a) in the heading, after “The” insert “dividend nil rate,”, and
 - (b) before subsection (1) insert –

“(A1) The dividend nil rate is 0%.”
- (4) After section 13 insert –

“13A Income charged at the dividend nil rate

- (1) Subsection (2) applies if, ignoring this section, at least some of a UK-resident individual’s income would be charged to income tax at the dividend ordinary rate, the dividend upper rate or the dividend additional rate.
- (2) Income tax is charged at the dividend nil rate (rather than the dividend ordinary rate, dividend upper rate or dividend additional rate) on one or more amounts of the individual’s income as follows –

Step 1

Identify the amount (“D”) of the individual’s income which would, ignoring this section, be charged at the dividend ordinary rate.

Rule 1A: If D is more than £5,000, the first £5,000 of D is charged at the dividend nil rate (rather than the dividend ordinary rate), and is the only amount charged at the dividend nil rate.

Rule 1B: If D is equal to £5,000, D is charged at the dividend nil rate (rather than the dividend ordinary rate), and is the only amount charged at the dividend nil rate.

Rule 1C: If D is less than £5,000 but more than nil, D is charged at the dividend nil rate (rather than the dividend ordinary rate).

Step 2

If D is less than £5,000, identify the amount (“U”) of the individual’s income which would, ignoring this section, be charged at the dividend upper rate.

Rule 2A: If the total of D and U is more than £5,000 –

- (a) the first £M of U is charged at the dividend nil rate (rather than the dividend upper rate), where £M is the difference between £5,000 and D, and
- (b) the amounts charged under this Rule and Rule 1C are the only amounts charged at the dividend nil rate.

Rule 2B: If the total of D and U is equal to £5,000, U is charged at the dividend nil rate (rather than the dividend upper rate), and the amounts charged under this Rule and Rule 1C are the only amounts charged at the dividend nil rate.

Rule 2C: If the total of D and U is less than £5,000 but more than nil, U is charged at the dividend nil rate (rather than the dividend upper rate).

Step 3

If the total of D and U is less than £5,000, identify the amount (“A”) of the individual’s income which would, ignoring this section, be charged at the dividend additional rate.

Rule 3A: If the total of D, U and A is more than £5,000, the first £X of A is charged at the dividend nil rate (rather than the dividend additional rate), where £X is the difference between—

£5,000, and

the total of D and U,

and the amounts charged under this Rule, and Rules 1C and 2C, are the amounts charged at the dividend nil rate.

Rule 3B: If the total of D, U and A is less than or equal to £5,000, A is charged at the dividend nil rate (rather than the dividend additional rate), and the amounts charged under this Rule, and Rules 1C and 2C, are the amounts charged at the dividend nil rate.”

- (5) In section 55B(2) (transferable allowance: conditions for entitlement to tax reduction)—
- (a) in paragraph (b) (individual liable to tax only at certain rates), after “the basic rate,” insert “the dividend nil rate,” and
 - (b) after paragraph (b) insert—
 - “(ba) if for the tax year the individual is liable to tax at the dividend nil rate, the individual would for that year neither be liable to tax at the dividend upper rate, nor be liable to tax at the dividend additional rate, if section 13A (dividend nil rate) were omitted,”.
- (6) In section 55C(1) (transferable allowance: conditions for entitlement to elect for reduced personal allowance)—
- (a) in paragraph (c) (individual would be liable to tax only at certain rates), after “the basic rate,” insert “the dividend nil rate,” and
 - (b) before the “and” at the end of paragraph (c) insert—
 - “(ca) where on that assumption the individual would for the tax year be liable to tax at the dividend nil rate, the individual on that assumption would for that year neither be liable to tax at the dividend upper rate, nor be liable to tax at the additional rate, if section 13A (dividend nil rate) were omitted,”.
- (7) In section 989 (definitions for the purposes of the Income Tax Acts), after the entry for “dividend income” insert—
““dividend nil rate” means the rate of income tax specified in section 8(A1),”.
- (8) In section 7 of TMA 1970 (duty to notify HMRC of liability to tax)—
- (a) in subsection (6) (exception for net payments etc)—
 - (i) after paragraph (a) insert “or”,
 - (ii) at the end of paragraph (b), for “; or” substitute a comma,
 - (iii) omit paragraph (c), and
 - (iv) in the words after paragraph (c), after “the basic rate” insert “, the dividend nil rate”, and
 - (b) after subsection (6) insert—
 - “(6A) A source of income falls within this subsection in relation to any person and any year of assessment if for that year —

-
- (a) all income from the source is dividend income (see section 19 of ITA 2007), and
 - (b) the person—
 - (i) is UK-resident,
 - (ii) is not liable to tax at the dividend ordinary rate,
 - (iii) is not liable to tax at the dividend upper rate,
 - (iv) is not liable to tax at the dividend additional rate, and
 - (v) is not charged to tax under section 832 of ITTOIA 2005 (relevant foreign income charged on remittance basis) on any dividend income.”
- (9) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

Explanatory Note

Clause 2: Dividend nil rate

Summary

1. This measure introduces a new dividend allowance, which will apply to the first £5,000 of an individual's dividend income. The allowance will operate as a 0% tax rate inserted into the Income Tax Act 2007 (ITA 2007). The new rate will apply for tax years 2016-17 and subsequent tax years.

Details of the clause

2. Subsection (1) provides for the amendments of ITA 2007.
3. Subsection (2) adds "the dividend nil rate" to the list of rates at which tax is charged.
4. Subsection (3) introduces a new 0% rate for dividend income, called "the dividend nil rate".
5. Subsection (4) introduces new section 13A into ITA 2007, which provides the rules for the new 0% rate.

New section 13A: Income charged at the dividend nil rate

6. New section 13A(1) explains when the dividend nil rate will apply.
7. New section 13A(2) identifies the dividend income to be charged at the dividend nil rate. Where an individual receives dividend income that would otherwise be chargeable at the dividend ordinary, upper or additional rate, and the income is less than or equal to £5,000, the dividend nil rate will apply to all of the dividend income. Where the dividend income is above £5,000, the lowest part of the dividend income will be chargeable at 0%, and anything received above £5,000 is taxed at the rate that would apply to that amount if the dividend nil rate did not exist.
8. Subsections (5) and (6) amend the conditions that apply to the transferable tax allowance for married couples and civil partners.
9. Subsection (7) adds "dividend nil rate" to the list of definitions for the purposes of the Income Tax Acts.
10. Subsection (8) amends section 7 of the Taxes Management Act 1970, which governs when a person must notify HMRC of a liability to tax. The amendments continue to ensure a person need not notify receipt of dividend income when they have no liability to tax on it.
11. Subsection (9) provides for commencement.

Background note

12. The Chancellor announced at the Summer Budget 2015 that the way that dividends are taxed is to be reformed, with a new dividend allowance replacing the existing dividend tax credit. Clause 3 repeals the dividend tax credit, and makes consequential adjustments. The clause introduces the new allowance.
13. If you have any questions about this change, or comments on the legislation, please contact Adrian Coates on 03000 586041 (email: Adrian.Coates@hmrc.gsi.gov.uk).

3 Dividend tax credits etc

The Schedule contains provision for, and connected with, the abolition of dividend tax credits etc.

SCHEDULE TO CLAUSE 3

ABOLITION OF DIVIDEND TAX CREDITS ETC

Main repeals

- 1 (1) In ITTOIA 2005 omit sections 397 to 398, 400, 414 and 421 (distributions: tax credits, and tax treated as paid).
- (2) In CTA 2010 omit section 1109 (tax credits for certain distributions).

Further amendments in ITTOIA 2005

- 2 ITTOIA 2005 is further amended as follows.
- 3 In the heading of Chapter 3 of Part 4, for “credits etc” substitute “treated as paid”.
- 4 In section 382(2) (other contents of Chapter 3 of Part 4) –
 - (a) omit “tax credits,” and
 - (b) for “397” substitute “399”.
- 5 Omit section 384(3) (which refers to section 398).
- 6 Omit section 393(5) (determining entitlement to tax credit).
- 7 In section 394 (which deems a distribution to be made) –
 - (a) omit subsection (5) (determining entitlement to tax credit), and
 - (b) in subsection (6), for “But for” substitute “For”.
- 8 In section 395(3) (interpretation of section 395(2)) omit the words from “after” to the end.
- 9 For section 396A(2)(b) (alternative receipt treated as qualifying distribution for the purposes of sections 397 and 399 and for the purposes of section 1100 of CTA 2010) substitute –
 - “(b) for the purposes of sections 1100 to 1103 of CTA 2010 (statements and returns of details of distributions) it is treated as a distribution that –
 - (i) is so made, and
 - (ii) is one to which section 1100 of CTA 2010 applies.”
- 10 In the italic heading before section 397, omit “Tax credits and”.
- 11 (1) Section 399 (qualifying distribution received by person not entitled to tax credits) is amended as follows.
 - (2) For subsection (1) substitute –
 - “(1) This section applies if –
 - (a) a person’s income for a tax year includes a distribution of a company, and

-
- (b) the person is non-UK resident.”
- (3) In subsection (2) omit “(but see subsection (7))”.
- (4) Omit subsections (3) to (5) (amount of dividend received by non-UK resident to be treated as its grossed-up amount).
- (5) Omit subsection (5A) (amounts treated as qualifying distributions for purposes of the section).
- (6) Omit subsection (7) (which provides for subsection (2) to be subject to repealed provisions).
- (7) For the heading substitute “Tax treated as paid on distributions received by non-UK resident persons”.
- 12 (1) Section 401 (relief: qualifying distribution after linked non-qualifying distribution) is amended as follows.
- (2) For subsections (1) to (6) substitute –
- “(1) Where a person is liable to income tax on a CD distribution, the person’s liability to income tax on a subsequent non-CD distribution is reduced in accordance with this section if the non-CD distribution consists of a repayment of –
- (a) the share capital, or
- (b) the principal of the security,
- which constituted the CD distribution.
- (1A) The reduction is –
- (a) the amount of income tax to which the person is liable on the CD distribution, or
- (b) if lower, the amount of income tax to which the person is liable on the non-CD distribution.
- (1B) For the purposes of calculating the amounts mentioned in subsection (1A)(a) and (b) assume –
- (a) that the CD distribution is the lowest part of the person’s dividend income in the tax year (“year 1”) in which it is made,
- (b) that the non-CD distribution, if it is made in year 1, is the part of the person’s dividend income in year 1 that is next lowest after the CD distribution, and
- (c) that the non-CD distribution, if it is made after year 1, is the lowest part of the person’s dividend income in the tax year in which it is made.”
- (3) In subsection (7) (interpretation), for ““security”” substitute “–
- “CD distribution” means a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) of CTA 2010 (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company),
- “non-CD distribution” means a distribution which is not a CD distribution, and
- “security””.

-
- (4) In the heading, for “qualifying distribution after linked non-qualifying distribution” substitute “distribution repaying shares or security issued in earlier distribution”.
- 13 Omit section 401A (recovery of overpaid tax credit etc).
- 14 In section 401B (power to obtain information for the purposes of section 397), for “section 397”, in each place it occurs, substitute “this Chapter”.
- 15 Omit sections 406(4A) and 407(4A) (determining entitlement to tax credit).
- 16 In section 408(2A) (interpretation of section 408(2)) omit the words from “after” to the end.
- 17 In section 411(2) (stock dividends: amount on which tax charged) omit “, grossed up by reference to the dividend ordinary rate for the tax year”.
- 18 In section 416 (released debts: amount on which tax charged) –
(a) in subsection (1) (tax charged on gross amount) omit “gross”, and
(b) omit subsection (2) (meaning of “gross amount”).
- 19 In section 418(3) (release of loan: tax only on grossed-up amount of excess where part previously charged) omit “, grossed up by reference to the dividend ordinary rate”.
- 20 Omit section 858(3) (partnerships with foreign element: entitlement to tax credit).

Further amendments in CTA 2010

- 21 CTA 2010 is further amended as follows.
- 22 (1) Section 279F (ring fence profits: related 51% group company) is amended as follows.
- (2) In subsection (7)(c) (conditions to be met by a company’s dividend income in order for company to be a passive company), in sub-paragraph (ii) (dividends must be franked investment income) for “franked investment income” substitute “exempt ABGH distributions”.
- (3) After subsection (9) insert –
“(10) In subsection (7)(c) “exempt ABGH distribution” means a distribution which –
(a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and
(b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions).”
- 23 (1) Section 279G (ring fence profits: meaning of “augmented profits”) is amended as follows.
- (2) In subsection (1)(b) (franked investment income is part of augmented profits unless excluded) –
(a) for “franked investment income” substitute “exempt ABGH distributions”, and
(b) for “is” substitute “are”.

-
- (3) In subsection (3) (exclusion of franked investment income received from certain subsidiaries etc), for “franked investment income” substitute “exempt ABGH distribution”.
- (4) After subsection (4) insert –
- “(5) In this section “exempt ABGH distribution” means a distribution which –
- (a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and
- (b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions).”
- 24 (1) Section 549 (distributions: supplementary) is amended as follows.
- (2) Omit subsection (2) (which excludes entitlement to tax credits).
- (3) In subsection (2A) (which disapplies sections 409 to 414 of ITTOIA 2005) for “414” substitute “413A”.
- 25 (1) Section 751 (interpretation of Part 15 (transactions in securities)) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) In that subsection, in the definition of “dividends”, omit “qualifying”.
- (4) After that subsection insert –
- “(2) In the definition of “dividends” given by subsection (1), “other distributions” does not include a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company).”
- 26 Omit section 814D(8) (which excludes entitlement to tax credits).
- 27 Omit section 997(5) (which introduces sections 1109 to 1111).
- 28 In sections 1026(1)(b) and 1027(2)(b) (cases where amount paid up in respect of bonus shares does not fall to be treated as a qualifying distribution) omit “qualifying”.
- 29 (1) Section 1070 (distributions by company carrying on mutual business) is amended as follows.
- (2) In subsection (2) (provisions about distributions apply to company’s distributions only where made out of taxed profits or franked investment income), for paragraph (b) (franked investment income) substitute –
- “(b) income of the company consisting of exempt ABGH distributions.”
- (3) After subsection (5) insert –
- “(5A) In subsection (2) “exempt ABGH distribution” means a distribution which –

-
- (a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and
- (b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions).”
- 30 (1) Section 1071 (company not carrying on business) is amended as follows.
- (2) In subsection (5) (provisions about distributions apply to company’s distributions only where made out of taxed profits or franked investment income), for paragraph (b) (franked investment income) substitute –
- “(b) income of the company consisting of exempt ABGH distributions.”
- (3) After subsection (5) insert –
- “(5A) In subsection (5) “exempt ABGH distribution” means a distribution which –
- (a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and
- (b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions).”
- 31 (1) Section 1100 (qualifying distribution: right to request a statement) is amended as follows.
- (2) In subsection (1) (requests for statement) –
- (a) for “qualifying distribution” substitute “distribution to which this section applies”, and
- (b) omit paragraph (b) (amount of any tax credit), and the “and” preceding it., and
- (3) After subsection (4) insert –
- “(4A) This section applies to any distribution other than one which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company).”
- (4) Omit subsections (2) and (5) (interpretation of subsection (1)(b)).
- (5) In subsection (7) (section to be read with section 396A(2) of ITTOIA 2005) –
- (a) for “needs” substitute “, and sections 1101 to 1103, need”, and
- (b) for “as “qualifying distributions” for the purposes of this section” substitute “as distributions to which this section applies”.
- (6) In the heading, for “Qualifying” substitute “Certain”.
- 32 (1) Section 1101 (non-qualifying distributions etc: returns and information) is amended as follows.
- (2) In subsection (1) (duty to make return), for “which is not a qualifying distribution” substitute “to which section 1100 does not apply”.

-
- (3) In subsection (4) (duty to make return where not clear whether distribution is non-qualifying), for “which is not a qualifying distribution” substitute “to which section 1100 does not apply”.
- (4) In the heading, and in the heading of section 1102, for “Non-qualifying” substitute “Other”.
- 33 In section 1103 (regulations about information about non-qualifying distributions) –
- (a) in subsection (2) (purpose for which sections 1101 and 1102 may be rewritten), for “which are not qualifying distributions” substitute “to which section 1100 does not apply”,
 - (b) in subsection (4) (special arrangements about matters specified in subsection (5)), for “matters” substitute “matter”, and
 - (c) in subsection (5) –
 - (i) for “Those matters are” substitute “That matter is”, and
 - (ii) omit paragraph (b) (tax credits), and the “and” preceding it.
- 34 (1) Section 1106 (interpretation of sections 1104 and 1105) is amended as follows.
- (2) In subsection (4) (meaning of “tax certificate”) –
 - (a) after paragraph (a) insert “and”, and
 - (b) omit paragraph (c) (tax credits), and the “and” preceding it.
 - (3) Omit subsections (5) and (6) (interpretation of subsection (4)(c)).
- 35 Omit sections 1110 and 1111 (recovery of overpaid tax credits etc).
- 36 (1) Section 1115 (meaning of “new consideration” in Part 23) is amended as follows.
- (2) In subsections (5)(a) and (6)(b) for “qualifying” substitute “non-CD”.
 - (3) After subsection (6) insert –
 - “(7) In this section “non-CD distribution” means any distribution other than one which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company).”
- 37 In section 1119 (definitions for the purposes of the Corporation Tax Acts) omit the entries for “franked investment income”, “qualifying distribution” and “tax credit”.
- 38 Omit section 1126 (meaning of “franked investment income”).
- 39 Omit section 1136 (meaning of “qualifying distribution”).
- 40 Omit section 1139(4) (“relief” includes tax credit).
- 41 In Schedule 2 (transitionals and savings etc) omit paragraph 106(1) (operation of sections 1026 and 1027 in relation to share capital issued before 7 April 1973).
- 42 In Schedule 4 (index of defined expressions) omit the entries for “franked investment income”, “qualifying distribution” and “tax credit”.

Other amendments

- 43 (1) TMA 1970 is amended as follows.
- (2) In section 8(1AA)(b) (payable income tax is chargeable amount less tax deducted at source and tax credits) omit the words after “source”.
 - (3) In section 8A(1AA)(b) (payable income tax is chargeable amount less tax deducted at source and tax credits) omit the words after “source”.
 - (4) In section 9(1) (self-assessment) –
 - (a) in paragraph (b) (payable income tax is assessed amount less tax deducted at source and tax credits) omit the words after “source”, and
 - (b) in the words after paragraph (b) omit “, 400(2), 414(1), 421(1)”.
 - (5) In section 12AA(1A)(b) (partner’s payable income tax is chargeable amount less tax deducted at source and tax credits) omit the words after “source”.
 - (6) In section 12AB (partnership statement in partnership return) –
 - (a) in subsection (1)(a) –
 - (i) after sub-paragraph (ia) insert “and”, and
 - (ii) omit sub-paragraph (iii) (tax credits), and the “and” preceding it,
 - (b) in subsection (1)(b) for “, tax or credit” substitute “or tax”, and
 - (c) in subsection (5) omit the definition of “tax credit”.
 - (7) In section 12B(4A)(a)(i) (statements themselves must be preserved if of amount of qualifying distribution and tax credit), after “amount” insert “of distribution, formerly amount”.
 - (8) In section 59A(8)(b) (amounts included in annual total of deductions at source) omit “or are tax credits to which section 397(1) or 397A(1) of ITTOIA 2005 applies,”.
 - (9) In section 59B (payment of income tax and capital gains tax) –
 - (a) in subsection (1) omit “, 400(2), 414(1), 421(1)”, and
 - (b) in subsection (2)(b) omit “or is a tax credit to which section 397(1) or 397A(1) of ITTOIA 2005 applies,”.
 - (10) Omit section 87A(5) (interest on assessments under section 1110 of CTA 2010 on overpaid tax credits etc).
 - (11) In section 98 (special returns), in the first column of the table omit the entry for section 1109 of CTA 2010.
- 44 (1) ICTA is amended as follows.
- (2) Omit section 231B (arrangements to pass on value of tax credit).
 - (3) Omit section 824(2) (repayment supplements: tax credits).
 - (4) In section 824(4A) omit paragraph (b) (repayment supplements: tax credit treated as income tax deducted at source), and the “and” preceding it.
 - (5) In section 825(1) (repayment supplements: companies) omit paragraph (c) (tax credits comprised in franked investment income), and the “or” preceding it.

-
- (6) In section 826 (interest on tax overpaid by companies) –
- (a) omit paragraph (c) (tax credits), including the “or” at the end, and
 - (b) in subsection (3) –
 - (i) omit “or a payment of the whole or part of a tax credit falling within subsection (1)(c) above”, and
 - (ii) omit “or, as the case may be, the franked investment income referred to in subsection (1)(c) above”.
- 45 In FA 1988, in Schedule 13 omit paragraph 7(c) (post-consolidation amendment of section 824(2) of ICTA).
- 46 In FA 1989 –
- (a) omit section 115 (double taxation: tax credits), and
 - (b) in section 179(1)(b)(i) (amendments of provisions of TMA 1970 including section 87A(1) and (5)) omit “and (5)”.
- 47 In FA 1993 omit section 171(2B) (which excludes entitlement to tax credits).
- 48 In FA 1994 omit section 219(4B) (which excludes entitlement to tax credits).
- 49 (1) F(No.2)A 1997 is amended as follows.
- (2) Omit section 22(1) (which inserted section 171(2B) of FA 1993).
 - (3) Omit section 28 (which inserted section 231B of ICTA).
 - (4) Omit section 30(9) and (10) (effect of double taxation arrangements in relation to tax credits).
 - (5) In Schedule 6 (repeal of provisions relating to foreign income dividends), in paragraph 23 (transitional provision for certain foreign income dividends paid before 6 April 1999 but received on or after that date) omit –
 - (a) “qualifying”, and
 - (b) “nine tenths of”.
- 50 (1) FA 1998 is amended as follows.
- (2) Omit section 76(3) (regulations about tax credits where non-UK residents have invested in individual savings accounts).
 - (3) In Schedule 18 (company tax returns etc) –
 - (a) omit paragraph 9(3) (certain claims by companies for payment of tax credits),
 - (b) in paragraphs 22(3)(a)(i) and 23(3)(a)(i) (which relate to a statement as to amount of qualifying distribution and tax credit), after “amount” insert “of distribution, but formerly amount”, and
 - (c) in paragraph 52(2)(a) omit “or payment of a tax credit”.
- 51 In the Commonwealth Development Corporation Act 1999, in Schedule 3 omit paragraph 6(2)(b) (provisions about tax credits do not apply in relation to distributions by the Corporation).
- 52 In the Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629) –
- (a) omit article 82(a), and
 - (b) in article 87(a) omit “and (4B)”.
- 53 (1) ITEPA 2003 is amended as follows.

-
- (2) Omit sections 58(6) and 61H(6) (tax credits to be reduced in line with reductions in distributions).
- (3) In Part 2 of Schedule 1 (index of defined expressions) omit the entry for “tax credit”.
- 54 In ITTOIA 2005, in Schedule 1 (minor and consequential amendments) omit paragraphs 116, 331(2), 359, 360, 361(a), 363, 364, 376, 377(3), 464(3), 496, 503 and 510(2).
- 55 (1) ITA 2007 is amended as follows.
- (2) In section 26(1)(b) (list of provisions giving tax reductions), in the entry for section 401 of ITTOIA 2005, for “qualifying distribution after linked non-qualifying distribution” substitute “distribution repaying shares or security issued in earlier distribution”
- (3) In section 31 (calculation of total income) –
- (a) omit subsection (3) (dividend etc treated as increased by amount of tax credit), and
 - (b) in subsection (4), for “Subsections (2) and (3) apply” substitute “Subsection (2) applies”.
- (4) In section 425(5) (deductions in calculating total amount of income tax for gift aid purposes) –
- (a) in paragraph (a) –
 - (i) in sub-paragraph (i) omit “or 400(2)”, and
 - (ii) omit sub-paragraphs (ii) and (iii),
 - (b) after paragraph (a) insert “and”, and
 - (c) omit paragraph (c), and the “and” before it.
- (5) In section 482 (types of amount charged at special rates for trustees), in the entry for Type 1 amounts, omit “qualifying”.
- (6) In section 487(6) (non-UK resident trustees: disregarded income which is not included in untaxed income) –
- (a) after paragraph (a) insert “or”, and
 - (b) omit paragraph (c) (income in respect of which there is a tax credit), and the “or” preceding it.
- (7) In section 502(3) (non-UK resident beneficiaries: disregarded income which is not included in untaxed income) –
- (a) after paragraph (a) insert “or”, and
 - (b) omit paragraph (c) (income in respect of which there is a tax credit), and the “or” preceding it.
- (8) In section 614ZD (treatment of recipient of manufactured payment) –
- (a) in subsection (3), for “to (6)” substitute “and (5)”, and
 - (b) omit subsection (6) (which excludes entitlement to tax credits).
- (9) In section 687 (transactions in securities: meaning of “income tax advantage”) –
- (a) omit “qualifying” in each place, and
 - (b) in subsection (4), after “In this section” insert “ –
 - (a) “distribution” does not include a distribution which is a distribution for the purposes of the Corporation Tax

Acts only because it falls within paragraph C or D in section 1000(1) of CTA 2010 (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company), and

(b) ”.

- (10) In section 713 (interpretation of Chapter 1 (transactions in securities)) –
- (a) the existing text becomes subsection (1),
 - (b) in that subsection, in the definition of “dividends”, omit “qualifying”, and
 - (c) after that subsection insert –
 - “(2) In the definition of “dividends” given by subsection (1), “other distributions” does not include a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company).”
- (11) In section 809S(4) (meaning of “income tax advantage”) omit the words after paragraph (d).
- (12) In section 811(4) (limit on liability to income tax of non-UK residents) –
- (a) after paragraph (a) insert “and”, and
 - (b) omit paragraph (c) (tax credits), and the “and” preceding it.
- (13) In section 815(3) (limit on liability to income tax of non-UK resident companies) –
- (a) after paragraph (a) insert “and”, and
 - (b) omit paragraph (c) (tax credits), and the “and” preceding it.
- (14) In section 989 (definitions for the purposes of the Income Tax Acts) omit the entries for “qualifying distribution” and “tax credit”.
- (15) In section 1026 (“non-qualifying income” includes income on which tax treated as paid) –
- (a) in paragraph (a) (deemed payment under sections 399 and 400 of ITTOIA 2005) –
 - (i) omit “or 400(2)”, and
 - (ii) for “from UK resident companies on which there is no tax credit” substitute “to non-UK resident persons”, and
 - (b) omit paragraphs (b) and (c) (deemed payment under sections 414 and 421 of ITTOIA 2005).
- (16) In Schedule 1 (minor and consequential amendments) omit paragraphs 26, 245(2)(a) and (3), 446(27), 515(3), 516, 517(2), 520 and 522.
- (17) In Schedule 4 (index of defined expressions) omit the entries for “qualifying distribution” and “tax credit”.
- 56 In FA 2008, in Schedule 12 (amendments relating to tax credits) omit paragraphs 3, 5 to 16, 19, 20, 24(b) and 31.
- 57 (1) CTA 2009 is amended as follows.

-
- (2) In section 1222 (company with investment business: amount deductible for management expenses to be reduced by income from sources not charged to tax) –
- (a) in subsection (1) (UK resident company), for paragraph (c) (franked investment income does not reduce deductibles) substitute –
 - “(c) the income does not consist of exempt ABGH distributions.”,
 - (b) in subsection (2) (non-UK resident company), for paragraph (d) (franked investment income does not reduce deductibles) substitute –
 - “(d) the income does not consist of exempt ABGH distributions.”, and
 - (c) after subsection (3) insert –
 - “(4) In this section “exempt ABGH distribution” means a distribution which –
 - (a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1) of CTA 2010, and
 - (b) is exempt for the purposes of Part 9A (company distributions).”
- (3) Omit section 1266(3) (partnerships with foreign element: entitlement to tax credit).
- (4) In Schedule 4 (index of defined expressions) omit the entry for “qualifying distribution”.
- 58 (1) FA 2009 is amended as follows.
- (2) In Schedule 19 (amendments relating to tax credits) omit paragraphs 2(2) and (3), 3, 5, 6(2)(a), (3) and (4), 7, 9, 10(a), 11, 12 and 13(c).
 - (3) In paragraph 14 of Schedule 19 (amendments made by the Schedule have effect in relation to distributions etc arising or paid on or after 22 April 2009), after sub-paragraph (2) insert –
 - “(3) Section 873(4) of ITTOIA 2005 (inserted by paragraph 8), so far as relating to any order or regulations made after the passing of FA 2016 under any provision of ITTOIA 2005 other than section 397BA of that Act, has effect as if sub-paragraph (1) did not apply in relation to it.”
 - (4) In Schedule 53 (late payment interest), omit –
 - (a) paragraph 6 (late payment interest start date in relation to assessments of overpaid tax credits etc under section 1110 of CTA 2010), and
 - (b) the italic heading preceding it.
 - (5) In paragraph 9B of Schedule 54 (repayment interest start date: companies: income tax and certain tax credits) –
 - (a) in sub-paragraph (1) omit paragraph (b) (tax credit comprised in franked investment income), and the “and” preceding it, and
 - (b) in sub-paragraph (2) –
 - (i) omit “or payment”, and

-
- (ii) omit “or the franked investment income mentioned in sub-paragraph (1)(b)”.
- (6) In paragraph 14 of Schedule 54 (interpretation) omit paragraph (b) (tax deducted at source treated as including tax credits), and the “and” preceding it.
- 59 In Schedule 1 to CTA 2010 (minor and consequential amendments) omit paragraphs 19, 153, 156(3), 282, 303(2), 456, 562(7), 704(27) and 722.
- 60 (1) TIOPA 2010 is amended as follows.
- (2) In section 6(2) (effect of double taxation arrangements) –
- (a) after paragraph (e) insert “or”, and
- (b) omit paragraph (g) (tax credits), and the “or” preceding it.
- (3) In section 187A (excess interest treated as a qualifying distribution), in subsection (2), and the heading, omit “qualifying”.
- (4) Omit section 234(2) (“relief” includes tax credit).
- (5) In Schedule 8 (minor and consequential amendments) omit paragraphs 38, 51, 52, 66 and 67.
- 61 In FA 2011 –
- (a) in Part 6 of Schedule 23 (consequential provisions) omit paragraph 64(3), and
- (b) in Schedule 26 omit paragraph 1(2)(a)(i) (which amended section 231B of ICTA), including the “and” at the end.
- 62 In FA 2012, in section 169(2) (payments by certain friendly societies treated as qualifying distributions) omit “qualifying”.
- 63 In FA 2013 –
- (a) in paragraph 6(2) of Schedule 19 (which amends section 549 of CTA 2010) for “subsections (2) and” substitute “subsection”, and
- (b) in Part 3 of Schedule 29 (manufactured dividends: consequential etc amendments) omit paragraphs 13, 14(a) and 44(3).
- 64 In FA 2015, in section 19 –
- (a) in subsection (1) for “credits etc” substitute “treated as paid”, and
- (b) omit subsections (5) and (6) (which insert sections 397(5A) and 399(5A) of ITTOIA 2005).

Commencement

- 65 (1) Subject to the following sub-paragraphs of this paragraph, the amendments made by this Schedule have effect in relation to distributions [arising/made] (or treated as made) in the tax year 2016-17 or at any later time.
- (2) The amendment in paragraph 23 of Schedule 6 to F(No.2)A 1997 has effect in relation to foreign income dividends received on or after 6 April 2016.
- (3) The amendment in section 393 of ITTOIA 2005 has effect in relation to cash dividends paid over in the tax year 2016-17 or at any later time.
- (4) Sub-paragraph (1) does not apply in relation to the amendment in paragraph 14 of Schedule 19 to FA 2009.

Explanatory Note

Clause 3 and its Schedule: Dividend tax credits etc.

Summary

1. This measure abolishes the dividend tax credit and makes consequential amendments. It is part of the changes proposed to dividend taxation, including abolition of the dividend tax credit, changes to dividend tax rates and the introduction of a new dividend allowance. The new rules will apply to dividends paid (and other distributions made) on or after 6 April 2016. Related changes are made by clause 2.

Details of the Clause

2. Clause 3 introduces the Schedule to Clause 3.

Details of the Schedule

3. Paragraph 1(1) amends the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005). It repeals the sections that entitle a UK resident (or eligible non-UK resident) person to a tax credit in respect of dividends received from UK resident and non-UK resident companies (sections 397 and 397A of ITTOIA 2005). Section 398 of ITTOIA 2005 increases a person's taxable income by the amount of the dividend tax credit and is repealed.
4. Paragraph 1(1) also repeals the sections in ITTOIA 2005 that treat tax as paid at the dividend ordinary rate on "non-qualifying distributions", stock dividends from UK resident and non-UK resident companies, and loans to participators that are released or written off, all of which are treated as distributions (sections 400, 414 and 421 of ITTOIA 2005).
5. Paragraph 1(2) repeals tax credits for certain distributions received by companies (or that are treated as the income of a company).

Further amendments in Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005)

6. Paragraphs 2 to 10, 13 to 20 and 54 make consequential amendments following the abolition of the dividend tax credit.
7. Paragraph 11 rewrites section 399 ITTOIA 2005. A non-UK resident person who receives a distribution from a UK resident company is treated as having paid tax on that distribution at the dividend ordinary rate. This amendment makes the consequential adjustments necessary following the abolition of the dividend tax credit. It also restores the meaning of the legislation to what it was before an inadvertent amendment was made under the Tax Law Rewrite project.
8. Paragraph 12 amends section 401 of ITTOIA 2005, which provides relief where a person receives a distribution that is linked to an earlier distribution of a special type. The amendment introduces the concept of a "CD distribution", which means a distribution that is

only a distribution because of section 1000(1) paragraphs C or D of the Corporation Tax Act 2010 (CTA 2010). The phrase "CD distribution" replaces "non-qualifying distribution", and accordingly "non-CD distribution" replaces the term "qualifying distribution" (see paragraph 14 below).

Further amendments in CTA 2010

9. Paragraphs 21, 24 to 28, 35, 37, 40 to 42 and 59 make consequential amendments following the abolition of the dividend tax credit.
10. Paragraphs 22 and 23 amend sections 279F and 279G of CTA 2010, which use the definition of "franked investment income" to determine when a company has ring fenced income. The concept of franked investment income is repealed (see paragraph 13 below), and a new definition introduced in its place.
11. Paragraphs 29 and 30 make similar amendment to sections 1070 and 1071 of CTA 2010, which deal with distributions made by a company carrying on mutual business.
12. Paragraphs 31 to 34 amend sections 1100 to 1106 of CTA 2010, which set out when a company must provide a certificate following a distribution. The amendments retain the requirement for a certificate, but remove the obligation to show the dividend tax credit and make minor consequential adjustments.
13. Paragraph 36 replaces "qualifying distribution" with "non-CD distribution".
14. Paragraph 38 repeals section 1126 of CTA 2010, the meaning of "franked investment income". This term was used to describe a dividend that had been "franked" with a dividend tax credit.
15. Paragraph 39 repeals section 1136 of CTA 2010, the meaning of "qualifying distribution". A qualifying distribution was one which qualified for a dividend tax credit, meaning a distribution under section 1000(1) but excluding paragraphs C and D.

Other Amendments

16. Paragraph 43 to 56, 58 and 60 to 64 make consequential amendments following the abolition of the dividend tax credit to a number of Acts.

Amendments to Corporation Tax Act 2009 (CTA 2009)

17. Paragraph 57(1) makes consequential amendments following the abolition of the dividend tax credit.
18. Paragraph 57(2) amends section 1222 of CTA 2009, which deals with reductions in amounts deductible as management expenses. The amendments are similar to those described at paragraph 9 above.

Commencement

19. Paragraph 65 provides for commencement. Paragraph 65(4) provides that paragraph 14 of Schedule 19 to Finance Act 2009, which deals with the commencement of provisions relating to income tax credits for foreign distributions, is not affected.

Background note

20. The Chancellor announced at the Summer Budget 2015 that the way that dividends are taxed

is to be reformed, with a new dividend allowance replacing the existing dividend tax credit. Clause 2 introduces the new allowance. This Schedule repeals the dividend tax credit, and deals with the consequential amendments.

21. If you have any questions about this change, or comments on the legislation, please contact Adrian Coates on 03000 586041 (email: Adrian.Coates@hmrc.gsi.gov.uk).

4 Deduction of income tax at source

The Schedule contains provisions about deduction of income tax at source.

SCHEDULE TO CLAUSE 4

DEDUCTION OF INCOME TAX AT SOURCE

PART 1

ABOLITION OF DUTY TO DEDUCT TAX FROM INTEREST ON CERTAIN INVESTMENTS

- 1 In Chapter 2 of Part 15 of ITA 2007 (deduction of income tax at source by deposit-takers and building societies) omit –
 - (a) section 851 (duty to deduct when making payment of interest on relevant investment), and
 - (b) the italic heading preceding it.

PART 2

DEDUCTION OF TAX FROM YEARLY INTEREST: EXCEPTION FOR DEPOSIT-TAKERS

- 2 In section 876 (interest paid by deposit-takers), for subsections (1) and (2) substitute –
 - “(1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on an investment if –
 - (a) the payment is made by a deposit-taker, and
 - (b) when the payment is made, the investment is a relevant investment.
 - (1A) In this section “deposit-taker”, “investment” and “relevant investment” have the meaning given by Chapter 2.”

PART 3

AMENDMENTS OF OR RELATING TO CHAPTER 2 OF PART 15 OF ITA 2007

Amendments of Chapter 2 of Part 15 of ITA 2007

- 3 Chapter 2 of Part 15 of ITA 2007 (deduction of income tax at source by deposit-takers and building societies) is amended in accordance with paragraphs 4 to 18.
- 4 For the Chapter heading substitute “Meaning of “relevant investment” for purposes of section 876”.
- 5 (1) Section 850 (overview of Chapter) is amended as follows.
 - (2) For subsection (1) substitute –
 - “(1) This Chapter has effect for the purposes of section 876 (duty under section 874 to deduct tax from payments of yearly interest: exception for deposit-takers).”

-
- (3) Omit subsection (2) (which introduces sections 851 and 852).
- (4) In subsection (4)(b) (which introduces sections 858 to 870), for “858” substitute “863”.
- (5) In subsection (5) (which introduces sections 871 to 873), for “871 to” substitute “872 and”.
- (6) In subsection (6) (interpretation), for the words from “Chapter—” to “crediting” substitute “Chapter, crediting”.
- 6 Omit section 852 (power to disapply section 851).
- 7 In section 853(1) (meaning of “deposit-taker”), after “In this Chapter” insert “and section 876”.
- 8 In section 854(3) (meaning of “relevant investment” in section 851(1)(b)), for “851(1)(b)” substitute “876(1)(b)”.
- 9 For section 855(1) (meaning of “investment”) substitute—
- “(1) In this Chapter, and section 876, “investment” means a deposit with a deposit-taker.”
- 10 (1) Section 856 (meaning of “relevant investment”) is amended as follows.
- (2) In subsection (1), for “this Chapter” substitute “section 876”.
- (3) In subsection (2) (exceptions), for “858” substitute “863”.
- 11 In section 857 (treating investments as being or not being relevant investments) omit “or building society” in each place.
- 12 Omit—
- (a) sections 858 to 861 (investments which are not relevant investments and in relation to which duty under section 874 does not apply), and
- (b) the italic heading preceding section 858.
- 13 In the italic heading preceding section 863, for “Other investments” substitute “Investments”.
- 14 In sections 863, 864, 865 and 868(4) (investments with deposit-takers or building societies) omit “or building society” in each place.
- 15 Omit sections 868(3), 869 and 870(2) (investments with building societies).
- 16 Omit section 871 (power to make regulations to give effect to Chapter).
- 17 In section 872 (power to amend Chapter)—
- (a) in subsection (2) (different provision for different deposit-takers)—
- (i) for “which amends this Chapter in its application to deposit-takers may do so” substitute “may amend this Chapter”, and
- (ii) in each of paragraphs (a) and (b), for “relation” substitute “its application”, and
- (b) omit subsections (4) and (5) (which refer to provisions repealed by this Act).
- 18 Omit section 873(3) to (6) (interpretation of section 861).

Amendments relating to Chapter 2 of Part 15 of ITA 2007

- 19 In Schedule 12 to FA 1988 (transfer of building society's business to a company), in paragraph 6(1) (treatment for tax purposes of benefits conferred in connection with a transfer) omit –
- (a) “either”, and
 - (b) paragraph (b) (benefit not to be subject to deduction of tax under Chapter 2 of Part 15 of ITA 2007), and the “or” preceding it.
- 20 (1) In section 564Q(1) of ITA 2007 (alternative finance return: deduction of income tax at source under Chapter 2 of Part 15) –
- (a) after “Chapter 2 of Part 15” insert “and section 876”,
 - (b) for “deduction by deposit-takers and building societies” substitute “exception for deposit-takers”, and
 - (c) after “Chapter 2 of that Part” insert “and section 876”.
- (2) In section 564Q(5) of ITA 2007 (alternative finance return: deduction of income tax at source under Chapters 3 to 5 of Part 15) –
- (a) after “of Part 15” insert “except section 876”, and
 - (b) for “those Chapters” substitute “those provisions”.
- 21 In section 847 of ITA 2007 (overview of Part 15) –
- (a) in subsection (2) omit paragraph (a) (which introduces Chapter 2), and
 - (b) in subsection (5) (which introduces Chapters containing provision connected with the duties to deduct), before paragraph (a) insert –
 - “(za) Chapter 2 (interpretation of section 876 in Chapter 3: exception for deposit-takers),”.
- 22 In section 946 of ITA 2007 (collection of tax deducted at source: payments to which Chapter applies) omit paragraph (a) (payments from which deductions required to be made under section 851).
- 23 In Schedule 2 to ITA 2007 omit paragraphs 154 to 156 (transitional provisions related to Chapter 2 of Part 15 of ITA 2007).
- 24 In Schedule 4 to ITA 2007 (index of defined expressions) –
- (a) omit the entry for “beneficiary under a discretionary or accumulation settlement (in Chapter 2 of Part 15)”,
 - (b) in the entry for “deposit-taker (in Chapter 2 of Part 15)”, after “Part 15” insert “and section 876”,
 - (c) omit the entry for “dividend (in Chapter 2 of Part 15)”,
 - (d) in the entry for “investment (in Chapter 2 of Part 15)”, after “Part 15” insert “and section 876”, and
 - (e) omit the entry for “relevant investment (in Chapter 2 of Part 15)”.
- 25 In consequence of the amendments made by Part 1 of this Schedule and the preceding provisions of this Part of this Schedule –
- (a) in Schedule 1 to ITA 2007 omit paragraph 277,
 - (b) in Schedule 1 to FA 2008 omit paragraph 25,
 - (c) in Schedule 46 to FA 2013 –
 - (i) in paragraph 68(1) omit paragraph (a) including the “and” at the end,

-
- (ii) in paragraph 69(1) omit paragraph (a) including the “and” at the end,
 - (iii) omit paragraph 70(1), and
 - (iv) in paragraph 71(3) omit paragraph (a) and the “and” preceding it, and
- (d) in FA 2014 omit section 3(4).

PART 4

DEDUCTION OF TAX FROM UK PUBLIC REVENUE DIVIDENDS

- 26 In section 877 of ITA 2007 (duty to deduct under section 874: exception relating to UK public revenue dividends) –
- (a) for “in respect of” substitute “that is”, and
 - (b) after “dividend” insert “(as defined by section 891)”.
- 27 (1) Chapter 5 of Part 15 of ITA 2007 (deduction from payments of UK public revenue dividends) is amended as follows.
- (2) In section 893(2) (securities which are gross-paying government securities) –
- (a) before the “or” at the end of paragraph (a) insert –
 - “(aa) securities, so far as they are not gilt-edged securities, issued or treated as issued under –
 - (i) the National Loans Act 1939, or
 - (ii) the National Loans Act 1968,” and
 - (b) in paragraph (b), for “894(1) or (3)” substitute “894(3)”.
- (3) In section 894 (power to direct that securities are gross-paying government securities) –
- (a) omit subsections (1) and (2) (power in relation to securities within the new section 893(2)(aa)), and
 - (b) in subsection (5) omit “(1) or”.

PART 5

COMMENCEMENT

- 28 (1) The amendments made by Parts 1 and 3 of this Schedule have effect in relation to –
- (a) interest paid or credited on or after 6 April 2016, and
 - (b) dividends or other distributions paid by a building society on or after that date.
- (2) Sub-paragraph (1) does not apply to –
- (a) the repeals in Schedule 12 to FA 1988;
 - (b) the amendments in section 564Q of ITA 2007;
 - (c) the repeal of paragraph 277 of Schedule 1 to ITA 2007.
- (3) The repeals mentioned in sub-paragraph (2)(a) and (c) have effect in relation to benefits conferred on or after 6 April 2016.
- (4) The amendments mentioned in sub-paragraph (2)(b) have effect in relation to alternative finance return paid on or after 6 April 2016.

-
- (5) The amendments made by Part 2 of this Schedule, and the amendments made by this Schedule in sections 893 and 894 of ITA 2007, have effect in relation to interest paid on or after 6 April 2016.

Explanatory Note

Clause 4 and Schedule: Deduction of Income Tax at source

Summary

1. This clause and Schedule amend Part 15 of the Income Tax Act 2007 (ITA) to remove the requirement upon deposit-takers (such as banks), building societies and other institutions to deduct sums representing income tax from the interest or other returns they pay on certain savings, investments and alternative finance arrangements. The changes have effect in relation to interest paid or credited on and after 6 April 2016.

Details of the clause and Schedule

2. Clause 4 introduces Schedule x.
3. Schedule x amends Part 15 of ITA concerning the deduction of income tax at source.

Part 1: Abolition of duty to deduct tax from interest on certain investments

4. Paragraph 1 removes section 851 of ITA, which requires deposit-takers and building societies to deduct a sum representing income tax at the basic rate from the interest they pay on certain investments.

Part 2: Deduction of tax from yearly interest: exception for deposit-takers

5. Paragraph 2 amends section 876 of ITA to provide that the duty (under section 874 of ITA) to deduct a sum representing income tax from certain payments of yearly interest will not apply to interest paid by deposit-takers on 'relevant investments' (as defined in Chapter 2 of Part 15 of ITA).

Part 3: Amendments of or relating to Chapter 2 of Part 15 of ITA 2007

6. Part 3 of the Schedule amends or omits various provisions in, or relating to, Chapter 2 of Part 15 of ITA as a consequence of changes made elsewhere in this Schedule. These changes include the removal of the duty on deposit-takers and building societies to deduct sums representing income tax from certain interest payments. Following these amendments, Chapter 2 of Part 15 of ITA will apply to determine the scope of the exception (provided at

section 876 of ITA) to the duty to deduct from certain payments of yearly interest.

7. Paragraphs 20 and 21 update section 564Q of ITA, consequential to other changes in this Schedule. These changes will also ensure that, where relevant, returns from alternative finance arrangements are treated in the same way as interest for the purposes of tax deduction.

Part 4: Deduction of tax from UK Public Revenue Dividends

8. Part 4 of the Schedule amends section 877 and Chapter 5 of Part 15 of ITA, concerning deduction of tax from payments of public revenue dividends.
9. Paragraph 27 amends section 893 of ITA to ensure that interest payments on securities issued by National Savings and Investments (the National Savings Bank) are excluded from the duty to deduct tax set out in section 892 of ITA and makes consequential amendment to section 894 of ITA.

Part 5: Commencement

10. Part 5 of the Schedule sets out commencement provisions for these amendments.

Background note

11. Deposit-takers (such as banks) and building societies, currently deduct 20% from the account interest they pay, under the Tax Deduction Scheme for Interest (TDSI). Similarly, National Savings and Investments (NS&I) currently deducts sums representing income tax at the basic rate from the interest it pays on certain bonds. For these purposes, returns on certain alternative finance arrangements are treated in the same way as interest.
12. At Budget 2015, the government announced the introduction of a new Personal Savings Allowance (PSA) from 6 April 2016. Once the PSA is implemented, most individual savers will no longer be liable for tax on any of the savings interest they receive. The government therefore also announced that, alongside the introduction of the PSA, it would end the duty on banks, building societies and other institutions (including NS&I) to deduct sums representing income tax from account interest paid or credited to customers.
13. If you have any questions about this change, or comments on the legislation, please contact Helen Williams on 03000 585204 (email: savings.audit@hmrc.gsi.gov.uk).

5 Income tax relief for irrecoverable peer-to-peer loans

- (1) ITA 2007 is amended as follows.
- (2) After section 412 insert –

“CHAPTER 1A

IRRECOVERABLE PEER-TO-PEER LOANS

The relief

412A Relief for irrecoverable peer-to-peer loans

- (1) A person (“L”) is entitled to relief under this section if –
 - (a) L has made a peer-to-peer loan (“the relevant loan”),
 - (b) the loan was made through an operator,
 - (c) L has not assigned the right to recover the principal of the loan, and
 - (d) any outstanding amount of the principal of the loan has, on or after 6 April 2015, become irrecoverable.
- (2) But if the outstanding amount became irrecoverable before 6 April 2016 L is entitled to relief under this section only on the making of a claim.
- (3) The relief is given by deducting the outstanding amount in calculating L’s net income for the tax year in which the amount became irrecoverable (see Step 2 of the calculation in section 23).
- (4) The deduction under this section is to be made only from income arising from the payment to L of interest on –
 - (a) the relevant loan, and
 - (b) any other loan within subsection (5) or (6).
- (5) A loan is within this subsection if –
 - (a) it is a peer-to-peer loan made by L, and
 - (b) it was made through the operator through whom the relevant loan was made.
- (6) A loan is within this subsection if –
 - (a) the loan was made by someone other than L,
 - (b) the right to receive interest on the loan has been assigned to L,
 - (c) the right was assigned through the operator through whom the relevant loan was made, and
 - (d) either –
 - (i) L is a person within paragraph (a), (b) or (c) of section 412H(4), or
 - (ii) the recipient of the loan is a person within one of those paragraphs and the loan is a personal or small loan.
- (7) The amount deducted under this section is limited in accordance with section 25(4) and (5).
- (8) In this section “irrecoverable” means irrecoverable other than by the exercise of any right granted by way of security for the loan.

412B Claims for additional relief: sideways relief

- (1) A person (“L”) may make a claim for relief under this section if –
 - (a) L is entitled to relief under section 412A in respect of any outstanding amount of the principal of a loan (“the relevant loan”), but
 - (b) in the tax year in relation to which L is entitled to that relief (“the relevant year”) –
 - (i) L has no income of the kind mentioned in section 412A(4) from which to deduct the outstanding amount, or
 - (ii) L has insufficient income of that kind to enable the outstanding amount to be deducted in full under that section.
- (2) The claim is for the outstanding amount or (in a case within subsection (1)(b)(ii)) the part of the outstanding amount not capable of being deducted under section 412A to be deducted under this section in calculating L’s net income for the relevant year.
- (3) The deduction under this section is to be made only from income arising from the payment to L of interest on loans within subsection (4) or (5).
- (4) A loan is within this subsection if –
 - (a) it is a peer-to-peer loan made by L, and
 - (b) it was made through an operator who is not the operator through whom the relevant loan was made.
- (5) A loan is within this subsection if –
 - (a) the loan was made by someone other than L,
 - (b) the right to receive interest on the loan has been assigned to L,
 - (c) that right was assigned through an operator who is not the operator through whom the relevant loan was made, and
 - (d) either –
 - (i) L is a person within paragraph (a), (b) or (c) of section 412H(4), or
 - (ii) the recipient of the loan is a person within one of those paragraphs and the loan is a personal or small loan.
- (6) The amount deducted under this section is limited in accordance with section 25(4) and (5).

412C Claims for additional relief: carry-forward relief

- (1) A person (“L”) may make a claim for relief under this section if –
 - (a) L is entitled to relief under section 412A in respect of any outstanding amount of the principal of a loan (“the relevant loan”), but
 - (b) in the tax year in relation to which L is entitled to that relief (“the relevant year”) –
 - (i) L has no income of the kind mentioned in section 412A(4) or section 412B(3) from which to deduct the outstanding amount, or

-
- (ii) L has insufficient income of that kind to enable the outstanding amount to be deducted in full under those sections.
- (2) The claim is for the outstanding amount or (in a case within subsection (1)(b)(ii)) the part of the outstanding amount not capable of being deducted under sections 412A and 412B to be deducted under this section in calculating L's net income for the four tax years following the relevant year.
 - (3) The deduction under this section is to be made only from income arising from the payment to L of interest on—
 - (a) the relevant loan, and
 - (b) any other loan within subsection (4) or (5).
 - (4) A loan is within this subsection if—
 - (a) it is a peer-to-peer loan made by L, and
 - (b) it was made through an operator (whether or not that operator is the operator through whom the relevant loan was made).
 - (5) A loan is within this subsection if—
 - (a) the loan was made by someone other than L,
 - (b) the right to receive interest on the loan has been assigned to L,
 - (c) that right was assigned through an operator (whether or not that operator is the operator through whom the relevant loan was made), and
 - (d) either—
 - (i) L is a person within paragraph (a), (b) or (c) of section 412H(4), or
 - (ii) the recipient of the loan is a person within one of those paragraphs and the loan is a personal or small loan.
 - (6) This section needs to be read with section 412D (how relief works).

412D How carry-forward relief works

- (1) This subsection explains how deductions are to be made under section 412C.

The amount to be deducted at any step is limited in accordance with section 25(4) and (5).

Step 1 Deduct the outstanding amount or (in a case within section 412C(1)(b)(ii)) the part of the outstanding amount not capable of being deducted under sections 412A and 412B from the lending income for the first tax year following the relevant year.

Step 2 Deduct from the lending income for the second tax year following the relevant year any part of the outstanding amount not previously deducted.

Step 3 Apply Step 2 in relation to the lending income for the third and fourth tax years following the relevant year, stopping if all of the outstanding amount is deducted.
- (2) In this section—
 - “lending income” means income of a kind mentioned in section 412C(3);
 - “relevant year” has the meaning given by section 412C(1)(b).

Supplementary provisions

412E Unexpected recovery of peer-to-peer loans

- (1) This section applies where—
 - (a) any amount of the principal of a loan has been deducted under this Chapter in calculating a person's net income for a tax year, and
 - (b) the person subsequently recovers that amount or any part of it.
- (2) The amount recovered is to be treated for the purposes of this Act as if it were interest on the loan paid to the person at the time it was recovered.
- (3) For the purposes of this section, a person is to be treated as recovering an amount if the person (or any other person at his or her direction) receives any money or money's worth—
 - (a) in satisfaction of the person's right to recover that amount, or
 - (b) in consideration of the person's assignment of the right to recover it;

and where a person assigns such a right otherwise than by way of a bargain made at arm's length the person shall be treated as receiving money or money's worth equal to the market value of the right at the time of the assignment.

412F Assigned loans treated as made by the assignee etc

- (1) This section applies where—
 - (a) a person ("A") is assigned the right to recover the principal of a loan,
 - (b) the right is assigned through an operator ("O"),
 - (c) A makes a payment in consideration of the assignment, and
 - (d) A does not further assign the right.
- (2) The loan is to be treated for the purposes of section 412A(1) as—
 - (a) having been made by A, and
 - (b) having been made through O.
- (3) The amount (if any) of the principal of the loan which is treated as irrecoverable may not exceed the amount which is arrived at by—
 - (a) taking the amount of the payment mentioned in subsection (1)(c), and
 - (b) deducting any amount of the principal of the loan previously recovered by A.

412G Nominees etc

For the purposes of this Chapter—

- (a) a loan or a payment made by or to a nominee or bare trustee for a person is treated as made by or to that person, and
- (b) a right assigned by or to a nominee or bare trustee for a person is treated as assigned by or to that person.

Interpretation

412H Meaning of “loan”, “peer-to-peer loan” and related terms

- (1) This section applies for the purposes of this Chapter.
- (2) “Loan” means a loan of money which –
 - (a) is made on genuine commercial terms, and
 - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is to obtain a tax advantage.
- (3) A loan is a “peer-to-peer loan” only if it meets –
 - (a) Condition A or B, and
 - (b) Condition C.
- (4) Condition A is that the person who made the loan is –
 - (a) an individual,
 - (b) a partnership which consists of –
 - (i) two or three persons, and
 - (ii) at least one person who is not a body corporate, or
 - (c) an unincorporated body of persons which –
 - (i) is not a partnership, and
 - (ii) consists of at least one person who is not a body corporate.
- (5) Condition B is that –
 - (a) the recipient of the loan is a person within paragraph (a), (b) or (c) of subsection (4), and
 - (b) the loan is a personal or small loan.
- (6) Condition C is that, assuming interest were paid on the loan, the person who made the loan would (except for this Chapter) be liable for income tax charged on the interest.
- (7) “Personal loan” means a loan which is not used wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the recipient of the loan.
- (8) “Small loan” means a loan of £25,000 or less.

412I Meaning of “operator” and related terms

- (1) This section applies for the purposes of this Chapter.
- (2) “Operator” means a person who –
 - (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity specified in Article 36H(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (operating an electronic system in relation to lending), or
 - (b) has been granted equivalent permission under the law of a territory outside the United Kingdom that is within the European Economic Area.
- (3) A loan is “made through” an operator if the person who makes the loan and the recipient of the loan enter the agreement under which the loan is made at the invitation of the operator.

-
- (4) A right is “assigned through” an operator if the person who assigns the right and the person to whom the right is assigned enter the agreement under which the assignment takes effect at the invitation of the operator.
- (5) A person is not to be treated as having entered an agreement at the invitation of an operator if the operator made the invitation otherwise than in the course of carrying on the activity to which the permission mentioned in subsection (2)(a) or (b) relates.”
- (3) In section 24(1) (list of reliefs deductible at Step 2 of the calculation of income tax liability), in paragraph (b), at the appropriate place insert –
“Chapter 1A of Part 8 (irrecoverable peer-to-peer loans),”.
- (4) In section 25(3) (list of provisions requiring reliefs to be deducted from particular components of income etc) at the appropriate place insert –
“sections 412A(4), 412B(3) and 412C(3) (relief for irrecoverable peer-to-peer loans only against interest on certain loans),”.

Explanatory Note

Clause 5: Income tax relief for irrecoverable peer-to-peer loans

Summary

1. This measure introduces a new tax relief that will allow lenders subject to Income Tax on interest that they receive from peer to peer (P2P) loans to set losses from irrecoverable loans against other P2P interest that they receive. This tax relief will allow lenders to claim relief on P2P loans that become irrecoverable from 6 April 2015, and will apply automatically to set losses from P2P loans that become irrecoverable on or after 6 April 2016 against other P2P interest received through the same platform.

Details of the clause

2. Subsection 1 introduces new Chapter 1A to Income Tax Act (ITA) 2007.

Chapter 1A: Irrecoverable peer-to-peer loans

3. Chapter 1A contains sections 412A to 412I which introduce the new tax relief.

Relief for irrecoverable peer-to-peer loans

4. Section 412A outlines the new tax relief and details what conditions must be met for the tax relief to apply.
5. Subsection 412A(1) outlines the conditions which must be met for an irrecoverable loan to be eligible for relief. This relief applies to loans that become irrecoverable on or after 6 April 2015.
6. Subsection 412A(2) states that a loan that becomes irrecoverable before 6 April 2016 will only be eligible for relief if the lender makes a claim to that relief. This means that if a claim is not made then the irrecoverable loan will not be eligible for relief under the Income Tax Acts.
7. This means that for a P2P loan that become irrecoverable between 6 April 2015 and 5 April 2016, if no claim is made the loss may be eligible for relief as a Capital Loss under Taxation of Chargeable Gains Act (TCGA) 1992, if it meets the relevant conditions.
8. From 6 April 2016 relief is given on irrecoverable P2P loans whether or not a claim is made. This means that a loss arising from a loan that becomes irrecoverable on or after 6 April 2016 will no longer be eligible for any relief under TCGA 1992.
9. Subsection 412A(3) states that this relief is only given against income received in the same tax year as the loan becomes irrecoverable.
10. Subsections 412A(4-6) state that relief for irrecoverable loans is only given against receipts of

interest from other qualifying P2P loans held through the same platform.

11. Subsection 412A(7) outlines how the relief is given against income.
12. Subsection 412A(8) states that in the case of a loan security has been granted, the presence of that security will be disregarded when considering whether the loan is "irrecoverable" for the purposes of this relief.

Sideways relief

13. Section 412B allows lenders to make a claim for additional relief for irrecoverable loans against receipts of interest from P2P loans that are held through other P2P platforms.
14. Subsections 412B(1-2) restrict the maximum amount of relief available to be set sideways against interest received through other platforms to irrecoverable losses in excess of amounts which can be set against interest received through the same platform.
15. Subsections 412B(3-5) specify that sideways relief for irrecoverable P2P loans may only be set sideways against interest received on other qualifying P2P loans.
16. Subsection 412B(6) outlines how the relief is given against income.

Carry-forward relief

17. Section 412C allows lenders to make a claim for additional relief for irrecoverable loans against receipts of interest from P2P loans received in future tax years.
18. Subsection 412C(1) restricts the maximum amount of relief available to be carried forward to irrecoverable losses in excess of amounts which can be set against interest received through other P2P platforms in the same tax year.
19. Subsection 412C(2) states that relief may be carried forward for the next four tax years following the year in which the loan becomes irrecoverable.
20. Subsections 412C(3-5) specify that sideways relief for irrecoverable P2P loans may only be carried forward against interest received on other qualifying P2P loans.
21. Subsection 412C(6) outlines how the relief is given against income.
22. Subsection 412D outlines how relief carried forward should be calculated.

Supplementary provisions

23. Section 412E outlines the treatment of any amount that the lender may recover in respect of a loan that has previously been treated as irrecoverable for the purposes of this relief.
24. Section 412F acts to treat loans that a lender acquires by way of assignment in the same way as loans that they make as the original lender.
25. Section 412G states that in the case of loans held by a nominee or bare trustee for a beneficiary these should be treated as being held by the beneficiary for the purposes of this relief.

Interpretation

26. Section 412H outlines the types of loan which may qualify for this relief. These will be loans that are defined as "article 36H agreements" in Chapter 6B of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, are made on

commercial terms and not for the purposes of obtaining a tax advantage.

27. Section 412I defines an operator for the purposes of this relief as a P2P platform who is either authorised by the Financial Conduct Authority to carry on the business of P2P lending, or who has been granted equivalent permissions by another territory within the European Economic Area.

Background note

28. This tax relief has been introduced to put the taxation of income received on P2P loans on a comparable basis to the taxation of income received from other economically similar forms of investment. P2P lending sites are in essence an intermediary service that connects investors with money to lend with individuals or small businesses that need to borrow. The lender invests a lump sum using the platform which is then lent in small sub-loans to a number of borrowers.
29. It is this breakdown of the investment into multiple small sub-loans spreading the risk of default across several borrowers which is the new aspect P2P lending brings to retail investment. The ability to lend directly to a diverse portfolio of borrowers gives an individual with a P2P portfolio access to diversified lending opportunities which were previously only available to retail investors via collective investment vehicles. Provision of these products is regulated by the Financial Conduct Authority. P2P loans that will be eligible for this relief are those loans that would be also available to retail investors, from a provider (platform) which is regulated by the Financial Conduct Authority.
30. This new tax relief will act to allow investors to set losses that they incur on loans that become irrecoverable against the interest they receive on loans that are repaid. This will result in the investor being taxed on the amount that they receive on their portfolio, in a similar manner to the way that they would be taxed if those loans were held through a collective investment vehicle.
31. If you have any questions about this change, or comments on the legislation, please contact Charlotte Hopwood on 03000 585 950 (email: p2p.consultation@hmrc.gsi.gov.uk)

6 EIS, SEIS and VCTs: exclusion of energy generation

- (1) In section 192(1) of ITA 2007 (meaning of “excluded activities”: EIS and SEIS), for paragraphs (ka) to (kc) substitute –
 - “(ka) generating or exporting electricity or making electricity generating capacity available,
 - (kb) generating heat,
 - (kc) generating any form of energy not within paragraph (ka) or (kb),
 - (kd) producing gas or fuel, and”.
- (2) In section 303(1) of ITA 2007 (meaning of “excluded activities”: VCTs), for paragraphs (ka) to (kc) substitute –
 - “(ka) generating or exporting electricity or making electricity generating capacity available,
 - (kb) generating heat,
 - (kc) generating any form of energy not within paragraph (ka) or (kb),
 - (kd) producing gas or fuel, and”.
- (3) In consequence of subsection (1), ITA 2007 is amended as follows –
 - (a) in section 192(2) –
 - (i) for paragraph (g) substitute “and
(g) section 198A (export of electricity).”;
 - (ii) omit paragraph (h);
 - (b) in section 198A –
 - (i) in the heading, omit “subsidised generation or”;
 - (ii) omit subsections (3) to (9);
 - (c) omit section 198B.
- (4) In consequence of subsection (2), ITA 2007 is amended as follows –
 - (a) in section 303(2) –
 - (i) for paragraph (g) substitute “and
(g) section 309A (export of electricity).”;
 - (ii) omit paragraph (h);
 - (b) in section 309A –
 - (i) in the heading, omit “subsidised generation or”;
 - (ii) omit subsections (3) to (9);
 - (c) omit section 309B.
- (5) The amendments made by subsections (1) and (3) have effect in relation to shares issued on or after 6 April 2016.
- (6) The amendments made by subsections (2) and (4) have effect in relation to relevant holdings issued on or after 6 April 2016.

Explanatory Note

Clause 6: EIS, SEIS and VCTs: exclusion of energy generation

Summary

1. This clause excludes all energy generating activities, including the production of gas or other fuel, from the tax-advantaged venture capital schemes - the Seed Enterprise Scheme (SEIS), the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs) - for investments in companies made on or after 6 April 2016.

Details of the clause

2. Clause 6 removes all energy generating activities from the tax-advantaged venture capital schemes. It substitutes the existing subsidised renewable energy and reserve capacity exclusions with new broader exclusions that cover any form of energy generating activities and include all electricity generating and storage activities (including making capacity available), any activities generating heat and those producing gas or fuel.
3. These changes will take effect for the EIS, SEIS and VCTs in relation to shares or holdings issued on or after 6 April 2016.

Background note

4. The tax-advantaged venture capital schemes are intended to incentivise investment in smaller companies carrying on qualifying trades. A trade is qualifying if it is carried on commercially, with a view to profit, and if it does not consist to a substantial extent in "excluded activities".
5. The legislation listing the activities which are "excluded" for the purpose of the schemes can be found at sections 192 to 199 Income Tax Act 2007 (ITA) for the EIS (and the SEIS by virtue of section 257DA ITA). The equivalent VCT provisions are at sections 303 to 310 ITA.
6. Legislation already exists to exclude the subsidised generation of electricity or heat, the subsidised production of gas or other fuel and the provision of reserve electricity generating capacity.
7. The changes made by Clause 6 follow previous amendments limiting the use of the venture capital schemes by those companies undertaking energy generating activities and supersede those made during the passage of the Finance (No.2) Act 2015. The new exclusions will apply to both non-renewable and renewable sources of energy generation and are without exception to whether a subsidy is received or to the nature of the company carrying on the activities.
8. It is intended that these energy generation activities will also be withdrawn from the Social

Investment Tax Relief when this scheme is enlarged at a later date.

9. If you have any questions about this change, or comments on the legislation, please contact Alex Buckley on 03000 586048 (email: alex.buckley@hmrc.gsi.gov.uk).

7 Diesel cars: the appropriate percentage

- (1) In section 24 of FA 2014 (cars: the appropriate percentage), omit the following (“the repealing provisions”) –
 - (a) subsection (2),
 - (b) subsection (6),
 - (c) subsection (10),
 - (d) subsection (11), and
 - (e) subsection (15).
- (2) Any provision of ITEPA 2003 amended or omitted by the repealing provisions has effect for the tax year 2016-17 and subsequent tax years as if the repealing provisions had not been enacted.

Explanatory Note

Clause 7: Diesel cars: the appropriate percentage

Summary

1. This legislation has the effect of retaining the diesel supplement of 3 percentage points that was to be abolished with effect from 6 April 2016. The decision to retain the diesel supplement was announced at Autumn Statement 2015 and will be legislated in Finance Bill 2016. The provisions of the clause amend section 24 of the Finance Act 2014 so that section 141 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 continues to apply for 2016 to 2017 and subsequent tax years. Section 141 ITEPA provides that the appropriate percentage for diesel cars is calculated by adding an additional 3 percentage points to what would otherwise be the appropriate percentage, up to an overall maximum of 37%.

Details of the clause

2. Subsection (1) repeals various subsections of section 24 of the Finance Act 2014. These would have repealed section 141 in its entirety and removed all references to that section from other provisions relating to the computation of the cash equivalent of the car benefit charge. The effect is that section 141 will continue to apply and will not be repealed from 6 April 2016.
3. Subsection (2) explains that those sections which would have been amended or omitted by section 24 of the Finance Act 2014 are in effect unchanged for the tax years 2016 to 2017 and subsequent tax years.

Background note

4. Section 139 ITEPA sets out the basis for calculating the appropriate percentage for cars with CO₂ emissions registered on or after 1 January 1998. A chargeable car benefit arises when an employee is provided by an employer with a car that they can use for their private journeys. For most employees, the cash equivalent of the benefit is calculated by multiplying the appropriate percentage (set by the level of CO₂ emissions of the car) by the list price of the car (including VAT and accessories). The cash equivalent of the benefit is treated as earnings of the employee's employment and is subject to income tax at the employee's marginal rate of tax. In addition, employers will pay Class 1A National Insurance contributions. The appropriate percentage for diesel cars ranges from 8% in 2015 to 2016, but this will increase to 10% from 6 April 2016 for 2016 to 2017 to a maximum appropriate percentage of 37%.
5. Section 140 ITEPA provides an appropriate percentage for those cars which do not have a CO₂ emissions figure and is based on the engine capacity of the car.
6. Section 141 ITEPA sets out the steps for calculating the appropriate percentage for diesel cars.

It provides that for diesel cars, a supplement of 3 percentage points is added to the appropriate percentage calculated by reference to section 139 or 140 up to a maximum.

7. The government announced at Budget 2012 that the diesel supplement would be abolished in April 2016. This was legislated for in the Finance Act 2014.
8. At Autumn Statement 2015, the government announced the diesel supplement was to be retained until the point at which new EU-wide testing procedures come into effect. These procedures aim to ensure that diesel cars meet NO₂ and other air quality standards even under strict real world driving conditions. Further provisions to remove the diesel supplement, to take effect from 6 April 2021, are currently expected to be made in a future Finance Bill.
9. If you have any questions about this change, or comments on the draft legislation, please contact the Employment Income team on 03000 521589 (email: employmentincome.policy@hmrc.gsi.gov.uk).

8 Exemption for trivial benefits provided by employers

(1) ITEPA 2003 is amended as follows.

(2) After section 323 insert –

“323A Trivial benefits provided by employers

- (1) No liability to income tax arises in respect of a benefit provided by, or on behalf of, an employer to an employee or a member of the employee’s family or household if –
 - (a) conditions A to D are met, or
 - (b) in a case where subsection (2) applies, conditions A to E are met.
- (2) This subsection applies where –
 - (a) the employer is a close company, and
 - (b) the employee is –
 - (i) a person who is a director or other office-holder of the employer, or
 - (ii) a member of the family or household of such a person.
- (3) Condition A is that the benefit is not cash or a cash voucher within the meaning of section 75.
- (4) Condition B is that the benefit cost of the benefit does not exceed £50.
- (5) In this section “benefit cost”, in relation to a benefit, means –
 - (a) the cost of providing the benefit, or
 - (b) if the benefit is provided to more than one person and the nature of the benefit or the scale of its provision means it is impracticable to calculate the cost of providing it to each person to whom it is provided, the average cost per person of providing the benefit.
- (6) For the purposes of subsection (5)(b), the average cost per person of providing a benefit is found by dividing the total cost of providing the benefit by the number of persons to whom the benefit is provided.
- (7) Condition C is that the benefit is not provided pursuant to relevant salary sacrifice arrangements or any other contractual obligation.
- (8) “Relevant salary sacrifice arrangements”, in relation to the provision of a benefit to an employee or to a member of an employee’s family or household, means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the benefit.
- (9) Condition D is that the benefit is not provided in recognition of particular services performed by the employee in the course of the employment or in anticipation of such services.
- (10) Condition E is that –
 - (a) the benefit cost of the benefit provided to the employee, or
 - (b) in a case where the benefit is provided to a member of the employee’s family or household who is not an employee of the employer, the amount of the benefit cost allocated to the employee in accordance with section 323B(4),

does not exceed the employee's available exempt amount (see section 323B).

323B Section 323A: calculation of available exempt amount

- (1) The "available exempt amount", in relation to an employee of an employer, is the amount found by deducting from the annual exempt amount the aggregate of—
 - (a) the benefit cost of eligible benefits provided earlier in the tax year by, or on behalf of, the employer to the employee, and
 - (b) any amounts allocated to the employee in accordance with subsection (4) in respect of eligible benefits provided earlier in the tax year by, or on behalf of, the employer to a member of the employee's family or household who was not at that time an employee of the employer.
- (2) The annual exempt amount is £300.
- (3) For the purposes of subsection (1) "eligible benefits" means benefits in respect of which conditions A to D in section 323A are met.
- (4) The amount allocated to an employee of an employer in respect of a benefit provided to a person ("P") who—
 - (a) is a member of the employee's family or household, and
 - (b) is not an employee of the employer,is the benefit cost of that benefit divided by the number of persons who meet the condition in subsection (5) and are members of P's family or household.
- (5) This condition is met if the person is—
 - (a) a director or other office-holder of the employer,
 - (b) an employee of the employer who is a member of the family or household of a person within paragraph (a), or
 - (c) a former employee of the employer who—
 - (i) was a director or other office-holder at any time when the employer was a close company, or
 - (ii) is a member of the family or household of such a person.
- (6) In this section "benefit cost" has the same meaning as in section 323A.

323C Power to amend sections 323A and 323B

- (1) The Treasury may by regulations amend section 323A so as to alter the conditions which must be met for the exemption conferred by section 323A(1) to apply.
 - (2) Regulations under subsection (1) may include any amendment of section 323B that is appropriate in consequence of an amendment made under subsection (1).
 - (3) The Treasury must not make regulations under subsection (1) unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons."
- (3) In section 716 (alteration of amounts by Treasury order) in subsection (2), after paragraph (f) insert—

-
- “(fa) section 323A(4) (trivial benefits provided by employers: cost of providing benefit),
 - (fb) section 323B(2) (trivial benefits provided by employers: annual exempt amount),”.
 - (4) In section 717(4) (negative procedure not to apply to certain statutory instruments) after “other care: meaning of “eligible employee”),” insert “section 323C(1) (trivial benefits provided by employers),”.
 - (5) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

Explanatory Note

Clause 8: Exemption for income tax for trivial benefits provided by employers

Summary

1. This clause introduces a statutory exemption from income tax for trivial benefits in kind (BiKs) provided by employers to employees. BiKs that qualify for the exemption will not incur a charge to income tax nor a liability for National Insurance contributions (NICs), and will not need to be reported to HM Revenue & Customs (HMRC). The exemption is capped at £300 a year where the employer is a close company and the BiK is provided to a director or other office holder of that company. The £300 annual cap also applies where BiKs are provided to an employee who is a member of the family or household of the director or other office holder of a close company. The change comes into effect on and after 6 April 2016.

Details of the clause

2. Subsection (1) provides for the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) to be amended.
3. Subsection (2) inserts new sections 323A to 323C into Chapter 11 of Part 4 of ITEPA 2003 (Miscellaneous Exemptions).

Section 323A: Trivial benefits provided by employers

4. New Subsection (1) removes the liability to income tax for a BiK provided by, or on behalf of, an employer to an employee or a member of their family or household. It sets out that the income tax liability will only be removed if conditions A to D, set out in subsections (3), (4), (7) and (9), are all met. It also provides that where new subsection (2) applies an additional condition E, as set out in subsection (10), also has to be met.
5. New Subsection (2) sets out the circumstances when condition E also has to be met for the exemption to apply. These are where the BiK is provided by an employer that is a close company to an employee who is:
 - a director or other office holder of that company; or
 - a member of the family or household of the director or office holder.
6. New Subsection (3) defines Condition A which provides that the exemption applies only if the trivial BiK is not cash or a cash-voucher as defined in section 75 ITEPA 2003.
7. New Subsection (4) defines Condition B which provides that the exemption only applies if the

cost of providing the BiK does not exceed £50.

8. New Subsection (5) defines “benefit cost” for the purposes of determining whether Condition B is met. This is either the cost of providing the BiK or the average cost of doing so. It also sets out the circumstances in which average cost may be used.
9. New Subsection (6) sets out how the average cost per person of any BiK provided to more than one person should be calculated for determining whether Condition B is met.
10. New Subsection (7) defines Condition C which provides that the BiK cannot be provided as part of a contractual obligation or relevant salary sacrifice arrangements as defined in new subsection (8).
11. New Subsection (8) defines “relevant salary sacrifice arrangements” for the purposes of determining whether Condition C is met.
12. New Subsection (9) defines Condition D which provides that the exemption only applies if the BiK is given for a non-work reason, for example, a birthday or social event. It cannot be given in recognition of a job well done, or for any other work related reason.
13. New Subsection (10) defines Condition E which provides that in the case of a close company the exemption only applies where:
 - the cost of providing the BiK to an employee; or
 - the cost of providing the BiK to a member of the employee’s family or household who is not employed by the company;

does not exceed the employee's annual cap, known as the "available exempt amount"..

Section 323B: calculation of available exempt amount

14. Section 323B sets out the details of the annual cap that applies where the employer is a close company and the employee is a director or other office-holder of the employer or a member of the family or household of the director or other office-holder.
15. New Subsection (1) defines the meaning of “available exempt amount” for the purposes of new section 323A as the "annual exempt amount" less:
 - the total cost of any BiKs that have already been treated as trivial in that tax year in accordance with new subsection (3) and have been provided to the employee; and
 - the total costs allocated to the employee in respect of trivial BiKs provided earlier in the tax year to a member of the employee's family or household.
16. New Subsection (2) sets the annual exempt amount for the purposes of new subsection (1) at £300.
17. New Subsection (3) defines “eligible benefits” for the purposes of new subsection (1).
18. New Subsections (4) and (5) set out how to allocate an amount to an employee in respect of a trivial BiK provided to a person who is not an employee but is a member of the employee’s family or household. The allocated amount is calculated as the cost of the benefit divided by

the number of persons who are:

- directors or other office-holders of the employer;
 - employees of the employer and members of the family or household of the directors or office holders; or
 - former employees of the employer who have been directors or other office-holders at any time when the employer was a close company; or
 - former employees of the employer who are members of the family or household of someone who has been a director or other office-holder at any time when the employer was a close company.
19. New Subsection (6) defines the meaning of “benefit cost” for the purposes of new subsection 1 as having the same meaning as in new section 323A.

Section 323C: Power to amend sections 323A and 323B

20. New Subsections (1) to (3) provide an affirmative power for HM Treasury to amend by regulations the qualifying conditions in new section 323A, and any consequential changes to new section 323B.
21. Subsection (3) adds new sections 323A(4) and 323B(2) to the provisions listed in section 716 ITEPA 2003. Section 716 provides that sums of money specified in those provisions may be increased by an order from HM Treasury. This allows the amounts provided for in sections 323A(4) (cost of providing benefit) and 323B(2) (annual exempt amount) to be amended by Treasury order.
22. Subsection (4) amends Section 717(4) to ensure that any regulations made under the new power in new section 323C(1) must be subject to the affirmative resolution procedure.
23. Subsection (5) provides that the exemption is effective from the start of the 2016/17 tax year.

Background note

24. This change has been introduced to provide an exemption from income tax for qualifying trivial benefits in kind where the cost of providing the benefit does not exceed £50. There are special provisions for directors or other office holders of close companies and employees of the same, who are members of their family or household. In these circumstances there is an annual exempt amount of £300.
25. The trivial benefits exemption replaces a concessionary practice, whereby an employer is required to agree with HMRC whether a benefit can be treated as trivial and so not reported to HMRC. A corresponding disregard will be introduced to remove any liability for Class 1 NICs for any qualifying non-cash vouchers provided under the exemption.
26. If you have any questions about this change, or comments on the legislation, please contact Lynn Meikle on 03000 521589 (email: employmentincome.policy@hmrc.gsi.gov.uk).

9 Travel expenses of workers providing services through intermediaries

- (1) In Chapter 2 of Part 5 of ITEPA 2003 (deductions for employee's expenses), after section 339 insert –

“339A Sections 338 and 339: employment intermediaries

- (1) This section applies where an individual (“the worker”) –
- (a) personally provides services (which are not excluded services) to another person (“the client”), and
 - (b) the services are provided not under a contract directly between the client and the worker but under arrangements involving an employment intermediary.
- (2) But this section does not apply if it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person.
- (3) In the case of an engagement consisting of such provision of services as is mentioned in section 49(1) (services provided under arrangements made by intermediaries), this section applies –
- (a) only if the conditions specified in section 51, 52 or 53 are met in relation to the intermediary (but disregarding the words “that is not employment income” in section 50(1)(b)), and
 - (b) in such a case, as if subsection (2) of this section were omitted.
- (4) Where this section applies, each engagement is for the purposes of sections 338 and 339 to be regarded as a separate employment.
- (5) In determining whether this section applies, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that this section does not to any extent apply.
- (6) Subsection (7) applies if –
- (a) the client or a relevant person provides the employment intermediary (whether before or after the worker begins to provide the services) with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2), this section does not or will not apply in relation to the services,
 - (b) this section is taken not to apply in relation to the services, and
 - (c) in consequence, the employment intermediary does not under PAYE regulations deduct and account for an amount that would have been deducted and accounted for under those regulations if this section been taken to apply in relation to the services.
- (7) For the purpose of recovering the amount referred to in subsection (6)(c) (“the unpaid tax”) –
- (a) the worker is to be treated as having an employment with the client or relevant person who provided the document, the duties of which consist of the services, and
 - (b) the client or relevant person is under PAYE regulations to account for the unpaid tax as if it arose in respect of earnings from that employment.

-
- (8) In subsections (6) and (7) “relevant person” means a person, other than the client, the worker or a person connected with the client or with the employment intermediary, who –
- (a) is resident, or has a place of business, in the United Kingdom, and
 - (b) is party to a contract with the employment intermediary or a person connected with the employment intermediary under or in consequence of which –
 - (i) the services are provided, or
 - (ii) the employment intermediary, or a person connected with the employment intermediary, makes payments in respect of the services.

- (9) In this section –
- “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not enforceable, and any associated operations;
 - “employment intermediary” means a person, other than the worker or the client, who carries on a business (whether or not with a view to profit and whether or not in conjunction with any other business) of supplying labour;
 - “engagement” means any such provision of service as is mentioned in subsection (1)(a);
 - “excluded services” means services provided wholly in the client’s home.”

- (2) After section 688A of ITEPA 2003 insert –

“688B Travel expenses of workers providing services through intermediaries: recovery of unpaid tax

- (1) PAYE regulations may make provision for, or in connection with, the recovery from a director or officer of a company, in such circumstances as may be specified in the regulations, of amounts within any of subsections (2) to (5).
- (2) An amount within this subsection is an amount that the company is to account for in accordance with PAYE regulations by virtue of section 339A(6) to (8) (persons providing fraudulent documents).
- (3) An amount within this subsection is an amount which the company is to deduct and pay in accordance with PAYE regulations by virtue of section 339A in circumstances where –
 - (a) the company is an employment intermediary,
 - (b) on the basis that section 339A does not apply by virtue of subsection (2) of that section, the company has not deducted and paid the amount, but
 - (c) the company has not been provided with evidence from any other person to show the matters referred to in that subsection.
- (4) An amount within this subsection is an amount that the company is to deduct and pay in accordance with PAYE regulations by virtue of section 339A in circumstances where subsection (3) of that section applies (services provided under arrangements made by intermediaries).

-
- (5) An amount within this subsection is any interest or penalty in respect of an amount within any of subsections (2) to (4) for which the company is liable.
 - (6) In this section –
 - “company” includes a limited liability partnership;
 - “director” has the meaning given by section 67;
 - “employment intermediary” has the same meaning as in section 339A;
 - “officer”, in relation to a company, means any manager, secretary or other similar officer of the company, or any person acting or purporting to act as such.”
 - (3) In Part 4 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (payments, returns and information), after Chapter 3A insert –

“CHAPTER 3B

CERTAIN DEBTS OF COMPANIES UNDER SECTION 339A OF ITEPA (TRAVEL EXPENSES OF WORKERS PROVIDING SERVICES THROUGH EMPLOYMENT INTERMEDIARIES)

97ZG Interpretation of Chapter 3B: “relevant PAYE debt” and “relevant date”

- (1) In this Chapter “relevant PAYE debt”, in relation to a company means an amount within any of paragraphs (2) to (5).
- (2) An amount within this paragraph is an amount that the company is to account for in accordance with these Regulations by virtue of section 339A(6) to (8) of ITEPA (persons providing fraudulent documents).
- (3) An amount within this paragraph is an amount which a company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in circumstances where –
 - (a) the company is an employment intermediary,
 - (b) on the basis that section 339A of ITEPA does not apply by virtue of subsection (2) of that section the company has not deducted and paid the amount, but
 - (c) the company has not been provided with evidence from any other person to show the matters referred to in that subsection.
- (4) An amount within this paragraph is an amount that the company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in circumstances where subsection (3) of that section applies (services provided under arrangements made by intermediaries).
- (5) An amount within this paragraph is any interest or penalty in respect of an amount within any of paragraphs (2) to (4) for which the company is liable.
- (6) In this Chapter “the relevant date” in relation to a relevant PAYE debt means the date on which the first payment is due on which PAYE is not accounted for.

97ZH Interpretation of Chapter 3B: general

In this Chapter –

- “company” includes a limited liability partnership;
- “director” has the meaning given by section 67 of ITEPA;
- “personal liability notice” has the meaning given by regulation 97ZI(2);
- “the specified amount” has the meaning given by regulation 97ZI(2)(a).

97ZI Liability of directors for relevant PAYE debts

- (1) This regulation applies in relation to an amount of relevant PAYE debt of a company if the company does not deduct that amount by the time by which the company is required to do so.
- (2) HMRC may serve a notice (a “personal liability notice”) on any person who was, on the relevant date, a director of the company –
 - (a) specifying the amount of relevant PAYE debt in relation to which this regulation applies (“the specified amount”), and
 - (b) requiring the director to pay to HMRC –
 - (i) the specified amount, and
 - (ii) specified interest on that amount.
- (3) The interest specified in the personal liability notice –
 - (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of TMA, and
 - (b) is to run from the date the notice is served.
- (4) A director who is served with a personal liability notice is liable to pay to HMRC the specified amount and the interest specified in the notice within 30 days beginning with the day the notice is served.
- (5) If HMRC serve personal liability notices on more than one director of the company in respect of the same amount of relevant PAYE debt, the directors are jointly and severally liable to pay to HMRC the specified amount and the interest specified in the notices.

97ZJ Appeals in relation to personal liability notices

- (1) A person who is served with a personal liability notice in relation to an amount of relevant PAYE debt of a company may appeal against the notice.
- (2) A notice of appeal must –
 - (a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and
 - (b) specify the grounds of the appeal.
- (3) The grounds of appeal are –
 - (a) that all or part of the specified amount does not represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies, or
 - (b) that the person was not a director of the company on the relevant date.

-
- (4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal by the company, that—
 - (a) the specified amount is a relevant PAYE debt of the company, and
 - (b) the company did not deduct, account for, or (as the case may be) pay the debt by the time by which the company was required to do so.
 - (5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal is to uphold or quash the personal liability notice.
 - (6) In a case in which the ground of appeal mentioned in paragraph (3)(a) is raised, the tribunal may also reduce or increase the specified amount so that it does represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies.

97ZK Withdrawal of personal liability notices

- (1) A personal liability notice is withdrawn if the tribunal quashes it.
- (2) An officer of Revenue and Customs may withdraw a personal liability notice if the officer considers it appropriate to do so.
- (3) If a personal liability notice is withdrawn, HMRC must give notice of that fact to the person upon whom the notice was served.

97ZL Recovery of sums due under personal liability notice: application of Part 6 of TMA

- (1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—
 - (a) the personal liability notice were an assessment, and
 - (b) the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), were income tax charged on the director upon whom the notice is served,and that Part of that Act applies with the modification in paragraph (2) and any other necessary modifications.
- (2) Summary proceedings for the recovery of the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), may be brought in England and Wales or Northern Ireland at any time before the end of the period of 12 months beginning with the day after the day on which personal liability notice is served.

97ZM Repayment of surplus amounts

- (1) This regulation applies if—
 - (a) one or more personal liability notices are served in respect of an amount of relevant PAYE debt of a company, and
 - (b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under regulation 97ZI(2)(b)(ii).
- (2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.

-
- (3) HMRC is to pay interest on any sum repaid.
 - (4) The interest—
 - (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA, and
 - (b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in subsection (1)(b).”
 - (4) The amendment made by subsection (3) is to be treated as having been made by the Commissioners for Her Majesty’s Revenue and Customs in exercise of the power conferred by section 688B of ITEPA 2003 (inserted by subsection (2)).
 - (5) The amendment made by subsection (1) has effect in relation to the tax year 2016-17 and subsequent tax years.
 - (6) The amendment made by subsection (3) has effect in relation to relevant PAYE debts that are to be deducted, accounted for or paid on or after 6 April 2016.

Explanatory Note

Clause 9: travel expenses of workers providing services through intermediaries

Summary

1. This clause amends the rules in the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) on deductions from earnings made for travel and subsistence expenses, where a worker is engaged through an employment intermediary. The amended rules come into effect from 6 April 2016.

Details of the clause

Clause 9

2. This clause introduces two new sections (339A and 688B) into ITEPA and a new chapter (Chapter 3B) into Part 4 of the Income Tax (Pay As You Earn) Regulations 2003:

Section 339A

3. Clause 9(1) inserts new section 339A
4. Subsection (1) sets out that the section will apply to workers who are personally providing services through an employment intermediary.
5. The effect of subsection (2) is that the section will not apply when the worker (identified in subsection (1)) does not carry out their work in a manner that is under the supervision, direction or control of another person.
6. The effect of subsection (3) is that where a contract is within the scope of the intermediaries legislation (commonly known as IR35) this section will only apply to those contracts which fall within IR35, or would do so if all the individual's remuneration was not being taken as employment income. Where this subsection applies to such a contract, subsection 2 of this clause does not apply. This means this section will apply even if the manner in which the person carries out the work is not to subject to supervision, direction or control.
7. Subsection (4) sets out that where this section applies each engagement a worker undertakes will be considered a separate employment for the purposes of the travel and subsistence rules in sections 338-339.
8. Subsection (5) provides that in determining whether the section applies where the parties have entered into arrangements in order to ensure this section does not apply those arrangements are to be disregarded for the purposes of this section.

9. Subsection (6) makes provision for cases where a client or another relevant person provides a fraudulent document intended to mislead the employment intermediary into thinking that subsection (2) does not apply, and as a result tax relief for travel and subsistence is deducted incorrectly. In such a case subsection (7) applies.
10. Subsection (7) provides that where the conditions set out in subsection (6) are met, it is the party who provides the fraudulent document which will be liable for the tax which was not deducted as a consequence of the actions of that person.
11. Subsection (8) defines "relevant person" for the purposes of subsections (6) and (7).
12. Subsection (9) provides a definition of "arrangements" "employment intermediary", "engagement" and "excluded services".

Section 688B

13. Clause 9(2) inserts new section 688B.
14. This section gives the Commissioners for HMRC powers to make provision in the Income Tax (Pay As You Earn) Regulations 2003 (the PAYE Regulations) for, or in connection with, the recovery from a director or officer of a company of debt owed as a result of section 339A.

Chapter 3B of the PAYE Regulations

15. Clause 9(3) inserts new regulations 97ZG to 97ZM into the PAYE Regulations.
16. 97ZG and 97ZH contain definitions of relevant terms for the purposes of Chapter 3B, including a definition of "PAYE debt" and "relevant date".
17. Regulation 97ZI provides that where a company has not paid the relevant PAYE debt, by the relevant date, then HMRC may serve a personal liability notice on those who were directors of the company on the relevant date in respect of the relevant PAYE debt.
18. Regulation 97ZJ sets out the conditions and grounds for appealing a personal liability notice served by HMRC under 97ZI.
19. Regulation 97ZK sets out the circumstances in which a personal liability notice can be withdrawn.
20. Regulation 97ZL provides that Part 6 of the Taxes Management Act 1970, which makes provision as to collection and recovery of sums due to HMRC, applies to personal liability notices. Regulation 97ZM makes provision for the case where the amounts paid to HMRC under a personal liability notice exceed the aggregate of the relevant PAYE debt and the specified interest, including payment of interest.

Background note

21. The amendments to ITEPA 2003 have been introduced to ensure the tax system provides a focused relief for travel and subsistence expenses by preventing workers engaged through an employment intermediary, and their employers, from benefiting from relief for home-to-work travel expenses. It is an established principle in the UK tax system that people should not be able to claim relief on their regular commute from home-to-work, therefore this relief is not generally available to other workers.

22. If you have any questions about this change, or comments on the legislation, please contact Philip Horswill on 03000 518361 (email: philip.horswill@hmrc.gsi.gov.uk).

10 Employee share schemes

The Schedule contains miscellaneous minor amendments relating to employee share schemes.

SCHEDULE TO CLAUSE 10

EMPLOYEE SHARE SCHEMES: MINOR AMENDMENTS

Enterprise management incentives and employee ownership trusts

- 1 (1) In section 534 of ITEPA 2003 (disqualifying events relating to relevant company), at the end insert –
 - “(7) Subsection (1) does not apply where the relevant company is subject to an employee-ownership trust (within the meaning of paragraph 27(4) to (6) of Schedule 2).”
- (2) The amendment made by this paragraph is treated as having come into force on 1 October 2014.

Share incentive plan

- 2 (1) Schedule 2 to ITEPA 2003 (share incentive plans) is amended as follows.
- (2) In paragraph 1 (introduction), after sub-paragraph (4) insert –
 - “(5) Sub-paragraph (A1) is also subject to Part 10A of this Schedule (disqualifying events).”
- (3) After Part 10 insert –

“PART 10A

DISQUALIFYING EVENTS

- 85A (1) A SIP ceases to be a Schedule 2 SIP if (and with effect from the time when) a disqualifying event occurs.
- (2) The following are disqualifying events –
 - (a) an alteration being made in –
 - (i) the share capital of a company any of whose shares are subject to the plan trust, or
 - (ii) the rights attaching to any shares of such a company,
that materially affects the value of the shares that are subject to the plan trust;
 - (b) shares of a class of which shares are subject to the plan trust receiving different treatment in any respect from the other shares of that class.
- (3) Sub-paragraph (2)(b) applies in particular to different treatment in respect of –
 - (a) the dividend payable,
 - (b) repayment, or
 - (c) any offer of substituted or additional shares, securities or rights of any description in respect of the shares.

-
- (4) Sub-paragraph (2)(b) does not however apply where the difference in treatment arises from—
 - (a) a key feature of the plan, or
 - (b) any of the participants' shares being subject to any restriction.
 - (5) Nor does sub-paragraph (2)(b) apply as a result only of the fact that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which they were issued, treatment less favourable than that accorded to shares issued before that date.
 - (6) For the purposes of this paragraph a “key feature” of a plan is a provision of it that is necessary to meet the requirements of this Schedule.
 - (7) This paragraph does not affect the operation of the SIP code in relation to shares awarded to participants in the plan before the disqualifying event occurred.”
- (4) The amendments made by this paragraph have effect in relation to disqualifying events occurring on or after the day on which this Act is passed.

Notification of plans and schemes to HMRC

- 3 (1) In Schedule 2 to ITEPA 2003 (share incentive plans), Part 10 (notification of plans etc) is amended as follows.
 - (2) In paragraph 81A (notice of SIP to be given to HMRC), after sub-paragraph (5) insert—
 - “(5A) Sub-paragraph (5) does not apply if the company satisfies HMRC (or, on an appeal under paragraph 81K, the Tribunal) that there is a reasonable excuse for failing to give notice on or before the initial notification deadline.
 - (5B) Paragraph 81C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).
 - (5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the company of their decision within the period of 45 days beginning with the day on which HMRC received the company's request to consider the excuse.
 - (5D) Where HMRC are required to notify the company as specified in sub-paragraph (5C) but do not do so—
 - (a) HMRC are to be treated as having decided that there was no reasonable excuse, and
 - (b) HMRC must notify the company of the decision which they are treated as having made.”
 - (3) In paragraph 81K (appeals)—
 - (a) at the beginning insert—
 - “(A1) The company may appeal against a decision of HMRC under paragraph 81A(5A) that there was no reasonable

-
- excuse for its failure to give notice on or before the initial notification deadline.”;
- (b) in sub-paragraph (6), before paragraph (a) insert –
- “(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC’s decision is given to the company;”;
- (c) in sub-paragraph (7), after “sub-paragraph” insert “(A1),”.
- (4) The amendments made by this paragraph have effect in relation to notices given under paragraph 81A of Schedule 2 to ITEPA 2003 on or after 6 April 2016.
- 4 (1) In Schedule 3 to ITEPA 2003 (SAYE option schemes), Part 8 (notification of schemes etc) is amended as follows.
- (2) In paragraph 40A (notice of scheme to be given to HMRC), after sub-paragraph (5) insert –
- “(5A) Sub-paragraph (5) does not apply if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the Tribunal) that there is a reasonable excuse for the failure to give notice on or before the initial notification deadline.
- (5B) Paragraph 40C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).
- (5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the scheme organiser of their decision within the period of 45 days beginning with the day on which HMRC received the scheme organiser’s request to consider the excuse.
- (5D) Where HMRC are required to notify the scheme organiser as specified in sub-paragraph (5C) but do not do so –
- (a) HMRC are to be treated as having decided that there was no reasonable excuse, and
- (b) HMRC must notify the scheme organiser of the decision which they are treated as having made.”
- (3) In paragraph 40K (appeals) –
- (a) at the beginning insert –
- “(A1) The scheme organiser may appeal against a decision of HMRC under paragraph 40A(5A) that there was no reasonable excuse for the failure to give notice on or before the initial notification deadline.”;
- (b) in sub-paragraph (5), before paragraph (a) insert –
- “(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC’s decision is given to the scheme organiser;”;
- (c) in sub-paragraph (6), after “sub-paragraph” insert “(A1),”.
- (4) The amendments made by this paragraph have effect in relation to notices given under paragraph 40A of Schedule 3 to ITEPA 2003 on or after 6 April 2016.

-
- 5 (1) In Schedule 4 to ITEPA 2003 (CSOP schemes), Part 7 (notification of schemes etc) is amended as follows.
- (2) In paragraph 28A (notice of scheme to be given to HMRC), after sub-paragraph (5) insert—
- “(5A) Sub-paragraph (5) does not apply if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 28K, the Tribunal) that there is a reasonable excuse for the failure to give notice on or before the initial notification deadline.
- (5B) Paragraph 28C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).
- (5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the scheme organiser of their decision within the period of 45 days beginning with the day on which HMRC received the scheme organiser’s request to consider the excuse.
- (5D) Where HMRC are required to notify the scheme organiser as specified in sub-paragraph (5C) but do not do so—
- (a) HMRC are to be treated as having decided that there was no reasonable excuse, and
- (b) HMRC must notify the scheme organiser of the decision which they are treated as having made.”
- (3) In paragraph 28K (appeals)—
- (a) at the beginning insert—
- “(A1) The scheme organiser may appeal against a decision of HMRC under paragraph 28A(5A) that there was no reasonable excuse for the failure to give notice on or before the initial notification deadline.”;
- (b) in sub-paragraph (5), before paragraph (a) insert—
- “(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC’s decision is given to the scheme organiser;”;
- (c) in sub-paragraph (6), after “sub-paragraph” insert “(A1),”.
- (4) The amendments made by this paragraph have effect in relation to notices given under paragraph 28A of Schedule 4 to ITEPA 2003 on or after 6 April 2016.

Price for acquisition of shares under share option

- 6 (1) In Schedule 3 to ITEPA 2003 (SAYE option schemes), paragraph 28 (requirements as to price for acquisition of shares) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in paragraph (b), for “at that time” substitute “—
- (i) at that time, or
- (ii) at such earlier time as may be determined in accordance with guidance issued by the Commissioners for Her Majesty’s Revenue and Customs.”

-
- (b) for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (3)”
- (3) Omit sub-paragraph (2).
- 7 (1) In Schedule 4 to ITEPA 2003 (CSOP schemes), paragraph 22 (requirements as to price for acquisition of shares) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) in paragraph (b), for “at the time when the option was granted” substitute “ –
- (i) at the time the option was granted, or
- (ii) at such earlier time as may be determined in accordance with guidance issued by the Commissioners for Her Majesty’s Revenue and Customs.”;
- (b) for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (3)”.
- (3) Omit sub-paragraph (2).

Tag-along rights

- 8 (1) In Schedule 5 to ITEPA 2003 (enterprise management incentives), in paragraph 39 (company re-organisations: introduction), in sub-paragraph (2)(c), after “982” insert “or 983 to 985”.
- (2) The amendment made by this paragraph is treated as having come into force on 17 July 2013.

Exercise of EMI options after disqualifying event

- 9 (1) In Schedule 7D to TCGA 1992 (share schemes and share incentives), in paragraph 14(4) (time limit for exercise of option after disqualifying event), for “40” substitute “90”.
- (2) The amendment made by this paragraph has effect in relation to disqualifying events occurring on or after the day on which this Act is passed.

Explanatory Note

Clause 10 and Schedule: Employee Share Schemes: Minor Amendments

Summary

1. This clause and Schedule introduce several changes to simplify the tax rules and administrative processes for employee share schemes, including permitting late notification of tax-advantaged share schemes where the taxpayer had a reasonable excuse.

Details of the clause and Schedule

2. Clause 10 introduces the Schedule.
3. Paragraph 1 amends section 534 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), backdated to 1 October 2014. This amendment allows a company controlled by an Employee Ownership Trust to operate an Enterprise Management Incentive (EMI) scheme.
4. Paragraph 2 introduces amendments to Schedule 2 of ITEPA, which sets out the rules for Share Incentive Plans (SIP) by way of a new Part 10A. A SIP is a tax-advantaged share scheme which must be offered to all employees on a similar basis. A Schedule 2 SIP is one which meets criteria set out in Schedule 2 to ITEPA.
5. New Paragraph 85A within new Part 10A sets out certain events in consequence of which a scheme ceases to qualify as a Schedule 2 SIP. These disqualifying events enforce the principle that preferential shares in a SIP cannot be issued to select employees.
6. New sub-paragraph 85A(7) has the effect that any shares issued prior to the date of the disqualifying event will retain the SIP tax advantages.
7. Paragraphs 3 to 5 amend the rules in Schedules 2, 3 and 4 ITEPA for SIP, Save As You Earn Option Schemes (SAYE) and Company Share Option Plans (CSOP) respectively. Currently, the rules relating to a SIP, SAYE or CSOP require HMRC to be notified of the scheme by a specified date. Late notification means that the tax advantages will be lost for earlier tax years and will only apply for future tax years. The changes introduce a reasonable excuse provision. If the company or share scheme organiser satisfies HMRC that they had a reasonable excuse for the late notification the tax advantage will not be lost. The provisions also provide a right of appeal against a decision of HMRC that the excuse was not reasonable and impose time limits for making the decision.
8. Paragraph 6 makes changes to Schedule 3 ITEPA, which sets out the rules for SAYE. Paragraph 7 makes identical changes to Schedule 4 ITEPA, which sets out the rules for CSOP. These changes provide for HMRC to publish guidance to specify acceptable ways in which a company could value share options by reference to the value at a time before the option was

granted. These new provisions remove the need for specific HMRC agreement to the methodology.

9. Paragraph 8 introduces a change to paragraph 39 of Schedule 5 ITEPA, which sets out the rules for EMI schemes. This will preserve tax advantages of an EMI where minority shareholders in an EMI scheme exercise so-called "tag-along" rights. These are rights in a takeover to have their share options acquired by the offeror and exchanged for share options in the offeror company. This amendment is backdated to 17 July 2013.
10. Paragraph 9 amends section 14(4) of Schedule 7D of the Taxation of Chargeable Gains Act 1992 to increase the time limit for capital gains tax purposes for employees to exercise EMI options following a disqualifying event from 40 days to 90 days. This change will align the deadline for capital gains tax purposes with that contained in section 532(1)(b) ITEPA which states that if a disqualifying event occurs, EMI options can be exercised within 90 days and continue to enjoy tax advantages. This takes effect in relation to disqualifying events occurring on or after the day on which this Act is passed.

Background note

11. The measures give effect to a number of changes to the rules for employment-related securities (ERS) and ERS options. They take further the government's response to the Office of Tax Simplification report on employee share schemes by simplifying and clarifying the law as well as making some minor technical corrections.
12. There are four types of tax-advantaged employee share schemes.
 - An employee that obtains shares through a SIP and keeps them in the plan for 5 years will not pay Income Tax or National Insurance on their value. They will not pay Capital gains Tax on shares they sell if they keep them in the plan until they sell them. An employer can give an employee a limited amount of free shares in a SIP in any tax year. Employees can also buy a limited number of shares to put in the SIP. Matching shares and dividend shares are also available.
 - SAYE is a savings-related share scheme where the employee can buy shares with their savings within the scheme for a fixed price. The interest and any bonus at the end of the scheme is tax-free. The employee does not pay Income Tax or National Insurance on the difference between what they pay for the shares and what they are worth, within certain parameters set out in the legislation.
 - In a CSOP an employee may have the option to buy up to £30,000 worth of shares at a fixed price. They do not pay Income Tax or National Insurance contributions on the difference between what they pay for the shares and what they are actually worth when the option is exercised.
 - A company with assets of £30m or less that does not work in certain excluded activities may be able to offer EMIs. In EMIs an employee may be granted an option to buy shares worth up to £250,000 without paying Income Tax or National Insurance on the difference between what they pay for the shares and

what they are worth when the option is exercised.

13. If you have any questions about this change, or comments on the legislation, please contact Tom Rollinson on 03000 585167 (email: tom.rollinson@hmrc.gsi.gov.uk).

11 Securities options

- (1) In section 418 of ITEPA 2003 (provisions related to Part 7 of ITEPA), in subsection (1), omit “(but not securities options)”.
- (2) In that section, after subsection (1) insert –
 - “(1A) But Chapters 1 and 10 of Part 3 do not have effect in relation to –
 - (a) the acquisition of employment-related securities options (within the meaning of Chapter 5 of Part 7), or
 - (b) chargeable events (within the meaning given by section 477) occurring in relation to such options.”
- (3) In section 227 of that Act (scope of Part 4), in subsection (4), before paragraph (a) insert –
 - “(za) section 418(1A) (acquisition of, and chargeable events occurring in relation to, employment-related securities options);”.
- (4) The amendments made by this section come into force on 6 April 2016.

Explanatory Note

Clause 11: Securities Options

Summary

1. This measure deals with employment related securities options held outside one of the four types of tax-advantaged share schemes. From 6 April 2016 their acquisition or events such as exercise are charged to tax under the rules that deal with securities options, rather than those that deal with earnings.

Details of the clause

2. Subsections (1) and (2) amend section 418 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Under new sub-section 418(1A), the acquisition of an option, or a chargeable event within the meaning of section 477, (such as the exercise of the option), is now to be charged to tax solely under the rules that deal with securities options, and not under the rules that deal with earnings.
3. Section 227(4) is a list of provisions that confer exemption from liability to income tax in respect of earnings. Subsection (3) provides a minor consequential change by adding sub-section 418(1A) to this list.

Background note

4. This change has been introduced to put beyond doubt the tax treatment in non tax-advantaged schemes of Restricted Stock Units (RSUs). RSUs are arrangements particularly used by companies in the United States to incentivise their employees, including Internationally Mobile Employees (IMEs) over the long term via reward linked to shares and other securities. Under the existing legislation, there is uncertainty regarding whether, on the acquisition of shares under an RSU, the charge to tax is under part of the legislation that deals with income tax on *earnings* or the specific rules that deal with *securities options*. These changes make it clear that the charge to tax will arise under the rules relating to securities options. As a result of these changes the position in relation to National Insurance Contributions (NICs) will also be clarified. Employer's and Employee's NICs liabilities will arise from the RSU award for the period where the IME was subject to UK social security contributions.
5. If you have any questions about this change, or comments on the legislation, please contact Tom Rollinson on 03000 585167 (email: tom.rollinson@hmrc.gsi.gov.uk).

12 Standard lifetime allowance from 2016-17

- (1) Section 218 of FA 2004 (pension schemes etc: lifetime allowance) is amended in accordance with subsections (2) to (4).
- (2) For subsections (2) and (3) (standard lifetime allowance is £1,250,000 but may be increased by Treasury order) substitute –
 - “(2) The standard lifetime allowance for the tax years 2016-17 and 2017-18 is £1,000,000.
 - (2A) The standard lifetime allowance for any later tax year (“the subsequent tax year”) is the same as the standard lifetime allowance for the tax year immediately preceding the subsequent tax year, unless subsection (2C) provides for it to be higher.
 - (2B) Subsection (2C) applies if –
 - (a) the consumer prices index for the month of September in any tax year (“the prior tax year”) is higher than it was for the previous September, and
 - (b) the prior tax year is the tax year 2017-18 or a later tax year.
 - (2C) The standard lifetime allowance for the tax year following the prior tax year is the standard lifetime allowance for the prior tax year –
 - (a) increased by the percentage increase in the index, and
 - (b) if the result is not a multiple of £100, rounded up to the nearest amount which is such a multiple.
 - (2D) The Treasury must before the tax year 2018-19, and before each subsequent tax year, make regulations specifying the amount given by subsections (2A) to (2C) as the standard lifetime allowance for the tax year concerned.”
- (3) After subsection (5BB) insert –
 - “(5BC) Where the operation of a lifetime enhancement factor is provided for by any of sections 220, 222, 223 and 224 and the time mentioned in the definition of SLA in the section concerned fell within the period consisting of the tax year 2014-15 and the tax year 2015-16, subsection (4) has effect as if the amount to be multiplied by LAEF were £1,250,000 if that is greater than SLA.
 - (5BD) Where more than one lifetime enhancement factor operates, subsection (5BC) does not apply if any of subsections (5A), (5B) and (5BA) applies.”
- (4) After subsection (5D) insert –
 - “(5E) Where benefit crystallisation event 7 occurs on or after 6 April 2016 by reason of the payment of a relevant lump sum death benefit in respect of the death of the individual during the period consisting of the tax year 2014-15 and the tax year 2015-16, the standard lifetime allowance at the time of the benefit crystallisation event is £1,250,000.”
- (5) In section 280 of FA 2004 (abbreviations and general index for Part 4), in the entry for “standard lifetime allowance” for “and (3)” substitute “to (2C)”.
- (6) In section 282 (orders and regulations under Part 4), after subsection (2) (negative procedure applies to instruments not approved in draft) insert –

“(3) Subsection (2) does not apply to an instrument containing only regulations under section 218(2D).”

- (7) The amendments made by subsections (2) to (4) have effect for the tax year 2016-17 and subsequent tax years.
- (8) The Schedule contains transitional and connected provision (including provision for “fixed protection 2016” and “individual protection 2016”).

SCHEDULE TO CLAUSE 12

PENSIONS: LIFETIME ALLOWANCE: TRANSITIONAL PROVISION

PART 1

“FIXED PROTECTION 2016”

The protection

- 1 (1) Sub-paragraph (2) applies at any particular time on or after 6 April 2016 in the case of an individual if –
 - (a) each of the conditions specified in paragraph 2 is met,
 - (b) at the particular time, the individual has a reference number (see Part 3 of this Schedule) for the purposes of sub-paragraph (2), and
 - (c) there is no protection-cessation event (see paragraph 3) in the period beginning with 6 April 2016 and ending with that time.
- (2) Part 4 of FA 2004 has effect in relation to the individual as if the standard lifetime allowance were the greater of the standard lifetime allowance and £1,250,000.

The initial conditions

- 2 The conditions mentioned in paragraph 1(1)(a) are –
 - (a) that, on 6 April 2016, the individual has one or more arrangements under –
 - (i) a registered pension scheme, or
 - (ii) a relieved non-UK pension scheme of which the individual is a relieved member,
 - (b) that paragraph 7 of Schedule 36 to FA 2004 (primary protection) does not make provision for a lifetime allowance enhancement factor in relation to the individual,
 - (c) that paragraph 12 of that Schedule (enhanced protection) does not apply in the individual’s case on 6 April 2016,
 - (d) that paragraph 14 of Schedule 18 to FA 2011 (transitional provision relating to new standard lifetime allowance for the tax year 2012-13) does not apply in the individual’s case on 6 April 2016, and
 - (e) that paragraph 1 of Schedule 22 to FA 2013 (“fixed protection 2014” relating to new standard lifetime allowance for the tax year 2014-15) does not apply in the individual’s case on 6 April 2016.

Protection-cessation events

- 3 There is a protection-cessation event if –
 - (a) there is benefit accrual in relation to the individual under an arrangement under a registered pension scheme,

-
- (b) there is an impermissible transfer into any arrangement under a registered pension scheme relating to the individual,
 - (c) a transfer of sums or assets held for the purposes of, or representing accrued rights under, any such arrangement is made that is not a permitted transfer, or
 - (d) an arrangement relating to the individual is made under a registered pension scheme otherwise than in permitted circumstances.

Protection-cessation events: interpretation: "benefit accrual"

- 4 (1) For the purposes of paragraph 3(a) there is benefit accrual in relation to the individual under an arrangement –
- (a) in the case of money purchase arrangement that is not a cash balance arrangement, if a relevant contribution is paid under the arrangement on or after 6 April 2016,
 - (b) in the case of a cash balance arrangement or defined benefits arrangement, if there is an increase in the value of the individual's rights under the arrangement at any time on or after that date (but subject to sub-paragraph (5)), and
 - (c) in the case of a hybrid arrangement –
 - (i) where the benefits that may be provided to or in respect of the individual under the arrangement include money purchase benefits other than cash balance benefits, if a relevant contribution is paid under the arrangement on or after 6 April 2016, and
 - (ii) in any case, if there is an increase in the value of the individual's rights under the arrangement at any time on or after that date (but subject to sub-paragraph (5)).
- (2) For the purposes of sub-paragraphs (1)(b) and (c)(ii) and (5) whether there is an increase in the value of the individual's rights under an arrangement (and its amount if there is) is to be determined –
- (a) in the case of a cash balance arrangement (or a hybrid arrangement under which cash balance benefits may be provided to or in respect of the individual under the arrangement), by reference to whether there is an increase in the amount that would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual (and, if there is, the amount of the increase), and
 - (b) in the case of a defined benefits arrangement (or a hybrid arrangement under which defined benefits may be provided to or in respect of the individual under the arrangement), by reference to whether there is an increase in the benefits amount.

- (3) For the purposes of sub-paragraph (2)(b) "the benefits amount" is –

$$(P \times RVF) + LS$$

where –

LS is the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension),

P is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement, and

RVF is the relevant valuation factor.

-
- (4) Paragraph 14 of Schedule 36 to FA 2004 (when a relevant contribution is paid under an arrangement) applies for the purposes of sub-paragraph (1)(a) and (c)(i).
- (5) Increases in the value of the individual's rights under an arrangement are to be ignored for the purposes of sub-paragraph (1)(b) or (c)(ii) if in no tax year do they exceed the relevant percentage.
- (6) The relevant percentage, in relation to a tax year, means –
- (a) where the arrangement (or a predecessor arrangement) includes provision for the value of the rights of the individual to increase during the tax year at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 9 December 2015 –
 - (i) that percentage (or, where more than one arrangement includes such provision, the higher or highest of the percentages specified), plus
 - (ii) the relevant statutory increase percentage;
 - (b) otherwise –
 - (i) the percentage by which the consumer prices index for the month of September in the previous tax year is higher than it was for the September before that (or 0% if it is not higher), or
 - (ii) if higher, the relevant statutory increase percentage.
- (7) In sub-paragraph (6)(a) –
- “predecessor arrangement”, in relation to an arrangement, means another arrangement (under the same or another registered pension scheme) from which some or all of the sums or assets held for the purposes of the arrangement directly or indirectly derive;
 - “predecessor registered pension scheme”, in relation to a registered pension scheme, means another registered pension scheme from which some or all of the sums or assets held for the purposes of the arrangement under the pension scheme directly or indirectly derive.
- (8) In sub-paragraph (6) “the relevant statutory increase percentage”, in relation to a tax year, means the percentage increase in the value of the individual's rights under the arrangement during the tax year so far as it is attributable solely to one or more of the following –
- (a) an increase in accordance with section 15 of the Pension Schemes Act 1993 or section 11 of the Pension Schemes (Northern Ireland) Act 1993 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed);
 - (b) a revaluation in accordance with section 16 of the Pension Schemes Act 1993 or section 12 of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earnings factors);
 - (c) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of accrued benefits);
 - (d) a revaluation in accordance with Chapter 3 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: protection of increases in guaranteed minimum pensions);
 - (e) the application of section 67 of the Equality Act 2010 (sex equality rule for occupational pension schemes).

-
- (9) Sub-paragraph (10) applies in relation to a tax year if –
- (a) the arrangement is a defined benefits arrangement which is under an annuity contract treated as a registered pension scheme under section 153(8) of FA 2004,
 - (b) the contract provides for the value of the rights of the individual to be increased during the tax year at an annual rate specified in the contract, and
 - (c) the contract limits the annual rate to the percentage increase in the retail prices index over a 12 month period specified in the contract.
- (10) Sub-paragraph (6)(b)(i) applies as if it referred instead to the annual rate of the increase in the value of the rights during the tax year.
- (11) For the purposes of sub-paragraph (9)(c) the 12 month period must end during the 12 month period preceding the month in which the increase in the value of the rights occurs.

Protection-cessation events: interpretation: “impermissible transfer”

- 5 Paragraph 17A of Schedule 36 to FA 2004 (impermissible transfers) applies for the purposes of paragraph 3(b) but as if –
- (a) the references to a relevant existing arrangement were to the arrangement, and
 - (b) the reference in sub-paragraph (2) to 5 April 2006 were to 5 April 2016.

Protection-cessation events: interpretation: “permitted transfer”

- 6 Sub-paragraphs (7) to (8B) of paragraph 12 of Schedule 36 to FA 2004 (when there is a permitted transfer) apply for the purposes of paragraph 3(c).

Protection-cessation events: interpretation: “permitted circumstances”

- 7 Sub-paragraphs (2A) to (2C) of paragraph 12 of Schedule 36 to FA 2004 (“permitted circumstances”) apply for the purposes of paragraph 3(d).

Protection-cessation events: interpretation: relieved non-UK pension schemes

- 8 (1) Subject to sub-paragraphs (2) to (4), paragraph 3 applies in relation to an individual who is a relieved member of a relieved non-UK pension scheme as if the relieved non-UK pension scheme were a registered pension scheme; and the other paragraphs of this Part of this Schedule apply accordingly.
- (2) Sub-paragraphs (3) and (4) apply for the purposes of paragraph 3(a) (instead of paragraph 4(1)) in determining if there is benefit accrual in relation to an individual under an arrangement under a relieved non-UK pension scheme of which the individual is a relieved member.
- (3) There is benefit accrual in relation to the individual under the arrangement if there is a pension input amount under sections 230 to 237 of FA 2004 (as applied by Schedule 34 to that Act) greater than nil in respect of the arrangement for a tax year; and, in such a case, the benefit accrual is treated as occurring at the end of the tax year.
- (4) There is also benefit accrual in relation to the individual under the arrangement if –

-
- (a) in a tax year there occurs a benefit crystallisation event in relation to the individual (whether in relation to the arrangement or to any other arrangement under any pension scheme or otherwise), and
- (b) had the tax year ended immediately before the benefit crystallisation event, there would have been a pension input amount under sections 230 to 237 of FA 2004 greater than nil in respect of the arrangement for the tax year,
- and, in such a case, the benefit accrual is treated as occurring immediately before the benefit crystallisation event.

PART 2

“INDIVIDUAL PROTECTION 2016”

The protection

- 9 (1) Sub-paragraph (2) applies at any particular time on or after 6 April 2016 in the case of an individual if –
- (a) the individual has one or more relevant arrangements (see sub-paragraph (3)) on 5 April 2016,
 - (b) the individual’s relevant amount at the particular time is greater than £1,000,000 (see sub-paragraphs (4) and (7)),
 - (c) paragraph 7 of Schedule 36 to FA 2004 (primary protection) does not make provision for a lifetime enhancement factor in relation to the individual,
 - (d) none of the provisions listed in sub-paragraph (5) applies in the individual’s case at the particular time, and
 - (e) at that time, the individual has a reference number (see Part 3 of this Schedule) for the purposes of sub-paragraph (2).
- (2) Part 4 of FA 2004 has effect in relation to the individual as if the standard lifetime allowance were –
- (a) if the individual’s relevant amount at the particular time is greater than £1,250,000, the greater of the standard lifetime allowance and £1,250,000, or
 - (b) otherwise, the greater of the individual’s relevant amount at the particular time and the standard lifetime allowance.
- (3) “Relevant arrangement”, in relation to an individual, means an arrangement relating to the individual under –
- (a) a registered pension scheme of which the individual is a member, or
 - (b) a relieved non-UK pension scheme of which the individual is a relieved member.
- (4) An individual’s “relevant amount” is the sum of amounts A, B, C and D (see paragraphs 10 to 13, but see also sub-paragraph (7)).
- (5) The provisions mentioned in sub-paragraph (1)(d) are –
- (a) paragraph 12 of Schedule 36 to FA 2004 (enhanced protection);
 - (b) paragraph 14 of Schedule 18 to FA 2011 (fixed protection 2012);
 - (c) paragraph 1 of Schedule 22 to FA 2013 (fixed protection 2014);
 - (d) paragraph 1(2) of Schedule 6 to FA 2014 (individual protection 2014);
 - (e) paragraph 1(2) of this Schedule (fixed protection 2016).

(6) Sub-paragraph (7) applies if rights of an individual under a relevant arrangement become subject to a pension debit where the transfer day falls on or after 6 April 2016.

(7) For the purpose of applying sub-paragraph (2) in the case of the individual on and after the transfer day, the individual's relevant amount is reduced (or further reduced) by the following amount –

$$X - (Y \times Z)$$

where –

X is the appropriate amount,

Y is 5% of X, and

Z is the number of tax years beginning after 5 April 2016 and ending on or before the transfer day.

(If the formula gives a negative amount, it is to be taken to be nil.)

(8) In sub-paragraphs (6) and (7) “appropriate amount” and “transfer day”, in relation to a pension debit, have the same meaning as in section 29 of WRP(A 1999 or Article 26 of WRP(NI)O 1999 (as the case may be).

Amount A (pre-6 April 2006 pensions in payment)

10 (1) To determine amount A –

- (a) apply sub-paragraph (2) if a benefit crystallisation event has occurred in relation to the individual during the period beginning with 6 April 2006 and ending with 5 April 2016;
- (b) otherwise, apply sub-paragraph (6).

(2) If this sub-paragraph is to be applied, amount A is –

$$25 \times \text{ARP} \times \frac{\pounds 1,250,000}{\text{SLT}}$$

where –

ARP is (subject to sub-paragraph (3)) an amount equal to –

- (a) the annual rate at which any relevant existing pension was payable to the individual at the time immediately before the benefit crystallisation event occurred, or
- (b) if more than one relevant existing pension was payable to the individual at that time, the sum of the annual rates at which each of the relevant existing pensions was so payable, and

SLT is an amount equal to what the standard lifetime allowance was at the time the benefit crystallisation event occurred.

(3) Paragraph 20(4) of Schedule 36 to FA 2004 applies for the purposes of the definition of “ARP” in sub-paragraph (2) (and, for this purpose, in paragraph 20(4) any reference to “the time” is to be read as a reference to the time immediately before the benefit crystallisation event occurred).

(4) If the time immediately before the benefit crystallisation event occurred falls before 6 April 2015, in sub-paragraph (3) references to paragraph 20(4) are to be read as references to that provision as it had effect in relation to benefit crystallisation events occurring at that time.

(5) If more than one benefit crystallisation event has occurred, in sub-paragraphs (2) to (4) references to the benefit crystallisation event are to be read as references to the first benefit crystallisation event.

-
- (6) If this sub-paragraph is to be applied, amount A is –
$$25 \times \text{ARP}$$
where ARP is (subject to sub-paragraph (7)) an amount equal to –
- (a) the annual rate at which any relevant existing pension is payable to the individual at the end of 5 April 2016, or
 - (b) if more than one relevant existing pension is payable to the individual at the end of 5 April 2016, the sum of the annual rates at which each of the relevant existing pensions is so payable.
- (7) Paragraph 20(4) of Schedule 36 to FA 2004 applies for the purposes of the definition of “ARP” in sub-paragraph (6) (and, for this purpose, in paragraph 20(4) any reference to “the time” is to be read as a reference to 5 April 2016).
- (8) In this paragraph “relevant existing pension” means (subject to sub-paragraph (9)) a pension, annuity or right –
- (a) which was, at the end of 5 April 2006, a “relevant existing pension” as defined by paragraph 10(2) and (3) of Schedule 36 to FA 2004, and
 - (b) to the payment of which the individual had, at the end of 5 April 2006, an actual (rather than a prospective) right.
- (9) If –
- (a) before 6 April 2016, there was a recognised transfer of sums or assets representing a relevant existing pension, and
 - (b) those sums or assets were, after the transfer, applied towards the provision of a scheme pension (“the new scheme pension”),
- the new scheme pension is also to be a “relevant existing pension” (including for the purposes of this sub-paragraph).

Amount B (pre-6 April 2016 benefit crystallisation events)

- 11 (1) To determine amount B –
- (a) identify each benefit crystallisation event that has occurred in relation to the individual during the period beginning with 6 April 2006 and ending with 5 April 2016,
 - (b) determine the amount that was crystallised by each of those benefit crystallisation events (applying paragraph 14 of Schedule 34 to FA 2004 if relevant), and
 - (c) multiply each crystallised amount by the following fraction –
$$\frac{1,250,000}{\text{SLT}}$$

where SLT is an amount equal to what the standard lifetime allowance was at the time when the benefit crystallisation event in question occurred.

- (2) Amount B is the sum of the crystallised amounts determined under sub-paragraph (1)(b) as adjusted under sub-paragraph (1)(c).

Amount C (uncrystallised rights at end of 5 April 2016 under registered pension schemes)

- 12 Amount C is the total value of the individual’s uncrystallised rights at the end of 5 April 2016 under arrangements relating to the individual under registered pension schemes of which the individual is a member as determined in accordance with section 212 of FA 2004.

Amount D (uncrystallised rights at end of 5 April 2016 under relieved non-UK schemes)

- 13 (1) To determine amount D—
- (a) identify each relieved non-UK pension scheme of which the individual is a relieved member at the end of 5 April 2016, and
 - (b) in relation to each such scheme—
 - (i) assume that a benefit crystallisation event occurs in relation to the individual at the end of 5 April 2016, and
 - (ii) in accordance with paragraph 14 of Schedule 34 to FA 2004, determine what the untested portion of the relevant relieved amount would be immediately before the assumed benefit crystallisation event.
- (2) Amount D is the sum of the untested portions determined under subparagraph (1)(b)(ii).

PART 3

REFERENCE NUMBERS ETC

Issuing of reference numbers for fixed or individual protection 2016

- 14 (1) An individual has a reference number for the purposes of paragraph 1(2), or for the purposes of paragraph 9(2), if a reference number—
- (a) has been issued by or on behalf of the Commissioners in respect of the individual for the purposes concerned, and
 - (b) has not been withdrawn.
- (2) Such a reference number—
- (a) may include, or consist of, characters other than figures, and
 - (b) may be issued only if a valid application for its issue is received by or on behalf of the Commissioners.
- (3) A valid application is an application—
- (a) made by or on behalf of the individual concerned,
 - (b) made on or after 6 April 2016,
 - (c) made by means of a digital service provided for the purpose by or on behalf of the Commissioners, or by other means authorised in a particular case by an officer of Revenue and Customs,
 - (d) containing—
 - (i) the following details for the individual and, where the individual is not the applicant, also for the applicant: title, full name, full postal address and e-mail address,
 - (ii) the individual's date of birth,
 - (iii) the individual's national insurance number, or the reason why the individual does not qualify for a national insurance number, and
 - (iv) a declaration that everything stated in the application is true and complete to the best of the applicant's knowledge and belief,
 - (e) containing also in the case of an application for a reference number for the purposes of paragraph 1(2)—

-
- (i) a declaration that the conditions specified in paragraph 2 are met in the individual's case, and
 - (ii) a declaration that there has been no protection-cessation event (see paragraph 3) in the individual's case in the period beginning with 6 April 2016 and ending with the making of the application, and
 - (f) containing also in the case of an application for a reference number for the purposes of paragraph 9(2) –
 - (i) the individual's relevant amount (see paragraph 9(4) and (7)),
 - (ii) amounts A, B, C and D for the individual (see paragraphs 10 to 13),
 - (iii) if rights of the individual under a relevant arrangement have become subject to a relevant pension debit, the appropriate amount and transfer day for each such pension debit,
 - (iv) a declaration that the condition in paragraph 9(1)(c) is met in the individual's case, and
 - (v) a declaration that paragraph 1(2) of Schedule 6 to FA 2014 (individual protection 2014) does not apply in the individual's case.
 - (4) Where an application for a reference number for the purposes of paragraph 1(2) or 9(2) is unsuccessful, or where an application for a reference number for the purposes of paragraph 9(2) is successful on a dormant basis, that must be notified to the applicant by or on behalf of the Commissioners.
 - (5) In sub-paragraph (3)(f)(iii) and this sub-paragraph –
 - “relevant arrangement” has the meaning given by paragraph 9(3);
 - “relevant pension debit”, in relation to an application for a reference number, means a pension debit where –
 - (a) the transfer day falls on or after 6 April 2016 and before the day on which the application is made, and
 - (b) the individual has, before the day on which the application is made, received notice under regulation 8(2) or (3) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048) relating to discharge of liability in respect of the pension credit corresponding to the pension debit;
 - “appropriate amount” and “transfer day”, in relation to a pension debit, have the same meaning as in paragraph 9(6) and (7) (see paragraph 9(8)).
 - (6) Sub-paragraph (3)(c) is not to be read as requiring a digital service to be provided and available for the purpose referred to.
 - (7) For the purposes of this Part of this Schedule, an application for a reference number for the purposes of paragraph 9(2) is successful on a dormant basis if the decision on the application is that –
 - (a) the application would have been unconditionally successful but for the fact that a prior provision applies in the case of the individual concerned, and
 - (b) a reference number for the purposes of paragraph 9(2) will be issued in response to the application but only when no prior provision applies in the individual's case.

-
- (8) For the purposes of sub-paragraph (7), the prior provisions are—
- (a) paragraph 12 of Schedule 36 to FA 2004 (enhanced protection),
 - (b) paragraph 14 of Schedule 18 to FA 2011 (fixed protection 2012),
 - (c) paragraph 1 of Schedule 22 to FA 2013 (fixed protection 2014), and
 - (d) paragraph 1(2) of this Schedule (fixed protection 2016).

Withdrawal of reference numbers

- 15 (1) This paragraph applies where a reference number for the purposes of paragraph 1(2) or 9(2) has been issued by or on behalf of the Commissioners in respect of an individual.
- (2) The number may be withdrawn by an officer of Revenue and Customs.
- (3) The number may be withdrawn only if—
- (a) something contained in the application for the number was incorrect, or
 - (b) where the number was for the purposes of paragraph 1(2), there has been a protection-cessation event (see paragraph 3) in the individual's case since the making of the application, or
 - (c) where the number was for the purposes of paragraph 9(2)—
 - (i) a provision listed in paragraph 9(5) has come to apply in the individual's case, or
 - (ii) paragraph 9(2) has ceased to apply in the individual's case as a result of the operation of paragraph 9(7), or
 - (d) the individual—
 - (i) has been given a notice under paragraph 1 of Schedule 36 to FA 2008 (information and inspection powers: taxpayer notice) in connection with (as the case may be) Part 1 or 2 of this Schedule, and
 - (ii) fails to comply with the notice within the period specified in the notice.
- (4) Where the number is withdrawn—
- (a) notice of the withdrawal, and
 - (b) reasons for the withdrawal,
- are to be given by an officer of Revenue and Customs to the individual.

Appeals against non-issue or withdrawal of reference numbers

- 16 (1) Where—
- (a) an application is made for a reference number for the purposes of paragraph 1(2) or 9(2) in respect of an individual, and
 - (b) the application is unsuccessful (see sub-paragraph (7)),
- the individual may appeal against the decision on the application.
- (2) Where a reference number issued in respect of an individual for the purposes of paragraph 1(2) or 9(2) is withdrawn, the individual may appeal against the withdrawal.
- (3) Where an appeal under sub-paragraph (1) is notified to the tribunal, the tribunal—
- (a) must allow the appeal if satisfied—

-
- (i) that the application was a valid application,
 - (ii) that everything in the application was correct, and
 - (iii) that, at the time of deciding the appeal, paragraph 15(3)(b), (c) or (d) does not authorise withdrawal of the requested number (assuming it had been issued), and
 - (b) must otherwise dismiss the appeal.
- (4) Where an appeal under sub-paragraph (2) is notified to the tribunal, the tribunal—
- (a) must allow the appeal if satisfied that the withdrawal was not authorised by paragraph 15(3), and
 - (b) must otherwise dismiss the appeal.
- (5) Notice of an appeal under this paragraph must be given to Her Majesty’s Revenue and Customs before the end of 30 days beginning with the date on which notice under paragraph 14(4) or 15(4) (as the case may be) is given.
- (6) In this paragraph “the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.
- (7) The references in sub-paragraph (1) and paragraph 17(3)(b)(ii) to an application being unsuccessful do not include a case where an application for a reference number for the purposes of paragraph 9(2) is successful on a dormant basis (see paragraph 14(7)).

Notification of subsequent protection-cessation events

- 17 (1) Sub-paragraph (2) applies if, in the case of an individual, there is a protection-cessation event (see paragraphs 3 to 8) at a time when—
- (a) the individual has a reference number for the purposes of paragraph 1(2),
 - (b) there is a pending application for a reference number for those purposes in respect of the individual, or
 - (c) an appeal under paragraph 16(2) is in progress against withdrawal of a reference number issued for those purposes in respect of the individual.
- (2) The individual—
- (a) must notify the Commissioners of the event, and
 - (b) must do so—
 - (i) before the end of 90 days beginning with the day on which the individual could first reasonably be expected to have known that the event had occurred, and
 - (ii) by means of a digital service provided for the purpose by or on behalf of the Commissioners, or by other means authorised in a particular case by an officer of Revenue and Customs.
- (3) For the purposes of this paragraph—
- (a) an application is pending if—
 - (i) it has been made,
 - (ii) no reference number has been issued in response to the application, and

-
- (iii) the applicant has not been notified that the application has been unsuccessful;
 - (b) an application is also pending if –
 - (i) it has been made,
 - (ii) it has been unsuccessful, and
 - (iii) an appeal under paragraph 16(1) is in progress against the decision on the application;
 - (c) an appeal under paragraph 16(1) or (2) is in progress until one of the following happens –
 - (i) it, or any further appeal, is withdrawn, or
 - (ii) it and any further appeal brought has been determined, and there is no prospect of further appeal.

Notification of subsequent pension debits

- 18 (1) Sub-paragraph (2) applies if an individual receives a discharge notice related to a pension debit at a time when –
- (a) the individual has a reference number for the purposes of paragraph 9(2),
 - (b) there is a pending application for a reference number for those purposes in respect of the individual, or
 - (c) an appeal under paragraph 16(2) is in progress against withdrawal of a reference number issued for those purposes in respect of the individual.
- (2) The individual –
- (a) must notify the Commissioners of the appropriate amount and transfer day for the pension debit, and
 - (b) must do so –
 - (i) before the end of 60 days beginning with the date of the discharge notice related to the pension debit, and
 - (ii) by means of a digital service provided for the purpose by or on behalf of the Commissioners, or by other means authorised in a particular case by an officer of Revenue and Customs.
- (3) For the purposes of this paragraph –
- (a) a notice is a discharge notice related to a pension debit if it is notice under regulation 8(2) or (3) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048) relating to discharge of liability in respect of the pension credit corresponding to the pension debit;
 - (b) an application is pending if –
 - (i) it has been made,
 - (ii) no reference number has been issued in response to the application,
 - (iii) the applicant has not been notified that the application has been unsuccessful, and
 - (iv) the applicant has not been notified that the application has been successful on a dormant basis (see paragraph 14(7));
 - (c) an application is also pending if –
 - (i) it has been made,

-
- (ii) it has been unsuccessful, and
 - (iii) an appeal under paragraph 16(1) is in progress against the decision on the application;
 - (d) an appeal under paragraph 16(1) or (2) is in progress until one of the following happens –
 - (i) it, or any further appeal, is withdrawn, or
 - (ii) it and any further appeal brought has been determined, and there is no prospect of further appeal.

Personal representatives

- 19 If an individual dies –
- (a) anything which could have been done under or by virtue of this Part of this Schedule by the individual may be done by the individual's personal representatives,
 - (b) paragraph 14(3)(d)(ii) has effect in relation to an application made in respect of the individual after the individual's death as if it also required a valid application to contain the individual's date of death, and
 - (c) any notice or reasons given under paragraph 15(4) after the individual's death are to be given to the individual's personal representatives.

PART 4

INFORMATION

Preservation of records in connection with individual protection 2016

- 20 If an individual is issued with a reference number for the purposes of paragraph 9(2), the individual must preserve, for the period of 6 years beginning with the date the application for the reference number was made, all such records as were required for the purpose of enabling the individual's relevant amount (see paragraph 9), and amounts A, B, C and D for the individual (see paragraphs 10 to 13), to be correctly calculated.

Amendments of regulations

- 21 (1) The Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) are amended in accordance with paragraphs 22 to 25.
- (2) The amendments made by those paragraphs are to be treated as having been made by the Commissioners under such of the powers cited in the instrument containing the Regulations as are applicable.
- 22 In regulation 2(1) (interpretation) –
- (a) after the entry for “fixed protection 2014” insert –
 - ““fixed protection 2016” means protection under paragraph 1(2) of the Schedule to section 12 of FA 2016;”, and
 - (b) after the entry for “individual protection 2014” insert –
 - ““individual protection 2016” means protection under paragraph 9(2) of the Schedule to section 12 of FA 2016;”.

-
- 23 (1) In the table in regulation 3(1) (provision of event reports by scheme administrators to HM Revenue and Customs), the entry for reportable event 6 (report where benefit crystallisation event occurs in relation to member of scheme) is amended as follows.
- (2) In column 1 of the entry, in paragraph (b) –
- (a) omit the “or” at the end of sub-paragraph (iv), and
 - (b) after sub-paragraph (v) insert “, or
 - (vi) fixed protection 2016 or individual protection 2016.”
- (3) In column 2 of the entry –
- (a) in the words before paragraph (a), before “the Commissioners” insert “or on behalf of”,
 - (b) omit the “or” at the end of paragraph (c), and
 - (c) after paragraph (d) insert “, or
 - (e) the Schedule to section 12 of the Finance Act 2016 (where the member relies on fixed protection 2016 or individual protection 2016).”
- (4) In the heading of the entry, for the words after “Benefit crystallisation events and” substitute “non-standard lifetime allowances”.
- 24 (1) Regulation 11 (information provided to scheme administrator by member intending to rely on transitional protection in connection with lifetime allowance) is amended as follows.
- (2) In paragraph (1) –
- (a) omit the “or” at the end of sub-paragraph (b),
 - (b) after sub-paragraph (c) (but before the closing words of paragraph (1)) insert “, or
 - (d) fixed protection 2016 by virtue of Part 1 of the Schedule to section 12 of the Finance Act 2016,” and
 - (c) in those closing words –
 - (i) before “the Commissioners” insert “or on behalf of”, and
 - (ii) before “in respect of that entitlement” insert “or the Schedule to section 12 of the Finance Act 2016”.
- (3) After paragraph (2) insert –
- “(3) If the member of a registered pension scheme intends to rely on individual protection 2016 by virtue of Part 2 of the Schedule to section 12 of the Finance Act 2016, the member must notify the scheme administrator of –
- (a) the reference number in respect of the member issued by or on behalf of the Commissioners for the purposes of paragraph 9(2) of that Schedule, and
 - (b) the member’s relevant amount calculated in accordance with Part 2 of that Schedule.”
- (4) In the heading –
- (a) for the “or” substitute a comma, and
 - (b) at the end insert “, fixed protection 2016 or individual protection 2016”.

25 After regulation 14B insert—

“14C Individual protection 2016: provision of information by scheme administrator to member on request

(1) Where—

- (a) an individual is a member of a registered pension scheme on 5 April 2016,
- (b) the individual makes a written request to the scheme administrator for the information mentioned in paragraph (2), and
- (c) the request is received by the scheme administrator before 6 April 2020,

the scheme administrator must provide the individual with the information within 3 months following receipt of the request.

(2) The information is such information relating to the member’s rights under the scheme as is necessary for calculating, in accordance with Part 2 of the Schedule to section 12 of the Finance Act 2016 (individual protection 2016), the member’s relevant amount for the purposes of paragraph 9(2) of that Schedule.”

26 In consequence of paragraph 23(4), in each of—

- (a) the Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2013 (S.I. 2013/1742), and
- (b) the Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2014 (S.I. 2014/1843),

omit regulation 4(2)(a).

PART 5

AMENDMENTS IN CONNECTION WITH PROTECTION OF PRE-6 APRIL 2006 RIGHTS

27 (1) In Part 1 of Schedule 29 to FA 2004 (pension schemes: interpretation of the lump sum rule), in paragraph 2 (permitted maximum amount of pension commencement lump sums, calculated in certain cases by deducting adjusted value of previously crystallised amounts from current standard lifetime allowance), in sub-paragraph (10) (modified adjustments where member has protection under paragraph 7 or 12 of Schedule 36 by reference to pre-6 April 2006 rights), after “have effect” insert “—

- (a) where the member becomes entitled to the lump sum on or after 6 April 2014, as if PSLA in the case of any previous benefit crystallisation event which occurs on or after 6 April 2014 were £1,500,000 if that is greater than PSLA in that case, and
- (b) ”.

(2) In paragraph 28(3) of Schedule 36 to FA 2004 (transitional provision for pre-6 April 2006 rights: modified version of paragraph 2 of Schedule 29 that applies in certain cases), in the sub-paragraph (7) treated as substituted in paragraph 2 of Schedule 29 to FA 2004, in the definition of “PSLA”, after “became entitled to the lump sum” insert “if that occurred before 6 April 2012 but, if that occurred on or after 6 April 2012, PSLA is the greater of £1,800,000 and the standard lifetime allowance at the time the individual became entitled to the lump sum”.

-
- (3) The amendment made by sub-paragraph (1) is treated as having come into force on 6 April 2014.
 - (4) The amendment made by sub-paragraph (2) is treated as having come into force on 6 April 2012.

PART 6

INTERPRETATION AND REGULATIONS

Interpretation of Parts 1, 2 and 3

- 28 (1) Expressions used in Part 1, 2 or 3 of this Schedule, and in Part 4 of FA 2004 (pension schemes), have the same meaning in that Part of this Schedule as in that Part of that Act.
- (2) In particular, references to a relieved non-UK pension scheme or a relieved member of such a scheme are to be read in accordance with paragraphs 13(3) and (4) and 18 of Schedule 34 to FA 2004 (application of lifetime allowance charge provisions to members of overseas pension schemes).

Interpretation of Parts 3 and 4 and this Part

- 29 In Parts 3 and 4, and this Part, of this Schedule “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

Regulations

- 30 (1) The Commissioners may by regulations amend Part 1, 2 or 3 of this Schedule.
- (2) Regulations under this paragraph may (for example) –
 - (a) add to the cases in which paragraph 1(2) is to apply or is to cease to apply;
 - (b) add to the cases in which paragraph 9(2) is to apply.
- (3) Regulations under this paragraph may include provision having effect in relation to a time before the regulations are made, but –
 - (a) the time must not be earlier than 6 April 2016, and
 - (b) the provision must not increase any person’s liability to tax.
- (4) Regulations under this paragraph may include supplementary or incidental provision.
- (5) Power to make regulations under this paragraph is exercisable by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

Explanatory Note

Clause 12 and Schedule: Standard lifetime allowance from 2016 to 2017

Summary

1. This clause amends the Finance Act 2004 (FA2004), as it relates to the lifetime allowance for UK tax relieved pension savings and provides for it to be increased in line with increases in the consumer prices index.
2. The Schedule to Clause 12 introduces transitional provisions to protect pension savers affected by this reduction to the lifetime allowance and makes a number of consequential amendments to FA 2004 relating to the reduction in the lifetime allowance.

Details of the clause and schedule

Clause 12

3. Subsection (2) replaces sections 218(2) and (3) FA 2004 to provide for the standard lifetime allowance to be £1,000,000 for the tax year 2016 to 2017 onwards and replaces the power to make regulations at section 281(3) with a requirement for the Treasury to make regulations before the start of tax year 2018-19 and each subsequent tax year, specifying the amount of the standard lifetime allowance for the year. The amount of the standard lifetime allowance will be, where the consumer prices index (CPI) for the year to the previous September is higher than it was 12 months earlier, the standard lifetime allowance for the earlier year, increased by CPI, but rounded up to the nearest £100. If CPI is not higher in that 12 month period, then the standard lifetime allowance for the tax year will be same as the standard lifetime allowance for the previous tax year.
4. Subsection (3) inserts new subsections 5BC and 5BD into section 218 of FA 2004.
5. New subsection 5BC provides that where an individual has a lifetime allowance enhancement factor under sections 220, 222, 223 or 224 FA2004, (which apply a lifetime enhancement factor in respect of pension credits, relevant overseas individuals and transfers from recognised overseas pension schemes), and a benefit crystallisation event ("BCE") occurs between 6 April 2014 and 5 April 2016, then in calculating the individual's lifetime allowance the lifetime allowance enhancement factor is multiplied by £1,250,000 if this is greater than the standard lifetime allowance.
6. New subsection 5BD provides the order of precedence where an individual has more than one lifetime allowance enhancement factor.
7. Subsection (4) inserts new subsection 5E into section 218 FA 2004, which provides for the

reference to the standard lifetime allowance to be replaced by a figure of £1,250,000 where certain lump sum death benefits are paid (a 'benefit crystallisation event 7' occurs) on or after 6 April 2016 in respect of the death of the individual in either tax year 2014-15 or 2015-16.

8. Subsection (6) inserts new subsection 3 into section 282 FA 2004. Subsection 3 provides that regulations made under the power in subsection 2D of section 218 FA 2004 are not subject to affirmative resolution procedures before the House of Commons.
9. Subsection (7) provides for the amendments made in subsections 2 to 4 of this clause to have effect for the tax year 2016-17 onwards.
10. Subsection (8) introduces the Schedule to Clause 12 which contains provision for transitional protection from the lifetime allowance charge.

The Schedule to Clause 12

Part 1: Fixed Protection 2016

11. Part 1 introduces a new type of transitional protection ("fixed protection 2016") for individuals who believe they may be effected by the reduction in the lifetime allowance from 6 April 2016.
12. Paragraphs 1 and 2 set out that individuals with fixed protection 2016 will have a protected lifetime allowance of £1.25 million and the general conditions of when this protection will apply. Individuals with fixed protection under paragraph 14 of Schedule 18 to FA 2011, fixed protection 2014 under paragraph 1 of Schedule 22 to FA 2013, primary protection or enhanced protection at any date on or after 6 April 2016 will not be able to hold fixed protection 2016 at that date, as these other transitional protections, if maintained, will always provide the individual with a higher protected lifetime allowance..
13. Paragraph 3 sets out certain events known as "protection cessation events". Where any of these events occur on or after 6 April 2016, the individual will not be entitled to fixed protection 2016 from the date of the event. The events are:
 - where there is benefit accrual (as defined in paragraph 4)
 - where there is an impermissible transfer (as defined in paragraph 5)
 - where there is a transfer of sums or assets that is not a permitted transfer (as defined in paragraph 6)
 - where a new pension arrangement relating to the individual is made otherwise than in permitted circumstances (as defined in paragraph 7)
14. Subparagraph 4(1) provides definitions of benefit accrual for each type of arrangement and that for money purchase arrangements other than cash balance arrangements, any relevant contribution will mean there is benefit accrual.
15. Subparagraphs 4(2) and (3) provide how to determine the increase in the value of the individual's rights under a cash balance or defined benefit arrangement, and a hybrid arrangement under which cash balance or defined benefits may be provided.
16. Subparagraph 4(4) provides a definition of when a relevant contribution is paid.

17. Subparagraph 4(5) provides that increases in an individual's rights under an arrangement are to be ignored for the purposes of determining whether benefit accrual has occurred if they don't exceed the relevant percentage in a tax year. This applies for defined benefits and cash balance arrangements as well as hybrid arrangements where the benefits to be provided may be defined benefits or cash balance benefits.
18. Subparagraph 4(6) provides that the relevant percentage is an annual rate of increase specified in the scheme rules (predecessor scheme rules if this is more favourable to the individual) as at 9 December 2015, plus any relevant statutory increase percentage as defined in paragraph 4(8) that may apply. Where there isn't a rate of increase specified in the scheme rules, the relevant percentage is either the annual percentage increase in the consumer prices index ('CPI') for September in the previous tax year, or if it is higher, the relevant statutory increase percentage.
19. Subparagraph 4(7) provides a definition of "predecessor arrangement" and "predecessor registered pension scheme".
20. Subparagraph 4(8) provides a definition of "relevant statutory percentage increase".
21. Subparagraph 4(9) provides that paragraph 4(10) applies when the individual's rights are under a deferred annuity contract and that contract limits increases in rights to annual increases in the retail prices index (RPI).
22. Subparagraph 4(10) provides that where paragraph 4(9) applies, the relevant percentage in subparagraph (6)(b)(i), which allows for CPI increases, is replaced by the annual rate of increase in the value of the individual's rights during the tax year.
23. Subparagraph 4(11) provides further detail on the calculation of the annual increase in RPI for the purposes of paragraph 4(9).
24. Paragraph 5 defines impermissible transfers.
25. Paragraph 6 defines permitted transfers.
26. Paragraph 7 defines permitted circumstances.
27. Subparagraph 8(1) provides that paragraph 3 applies in relation to individuals who receive UK tax relief on pension savings in non-UK schemes, as if the non-UK scheme were a registered pension scheme, but that this is subject to sub-paragraphs (2) to (4).
28. Subparagraph 8(2) provides that where the individual has an arrangement under a non-UK pension scheme, then the definition of benefit accrual is set out in sub-paragraphs (3) and (4) for the purposes of paragraph 3(a), and paragraph 4(1) does not apply.
29. Subparagraph 8(3) provides that benefit accrual occurs at the end of the tax year where the pension input amount for a tax year is greater than nil.
30. Subparagraph 8(4) provides that there is also benefit accrual if an individual takes some or all of their benefits during a tax year and the pension input amount for the period up to the time the benefits were taken is greater than nil.

Part 2: Individual Protection 2016

31. Part 2 introduces a further type of transitional protection for those who think they may be

effected by the reduction in the lifetime allowance from 6 April 2016. This is known as individual protection 2016.

32. Paragraph 9 sets out who can rely on individual protection 2016, how their pension rights are valued and the level of protected lifetime allowance that they will be entitled to.
33. Subparagraph 9(1) provides that individuals can rely on individual protection 2016 if they have pension rights (their "relevant amount"), as defined in paragraph 9(4) of greater than £1 million on 5 April 2016 and they do not have primary protection as set out in paragraph 7 of Schedule 36 to FA2004, and they have a reference number issued by HMRC for the purposes of sub-paragraph 2.
34. Subparagraph 9(2) provides that where an individual has individual protection 2014 their standard lifetime allowance is the greater of their relevant amount (subject to an overall limit of £1.25 million) and the standard lifetime allowance at that time.
35. Subparagraph 9(3) provides a definition of relevant arrangement for the purposes of paragraph 9(1).
36. Subparagraph 9(4) defines the relevant amount as the sum of amounts A to D which are defined in paragraphs 10 to 13. This is the value on 5 April 2016 of the individual's pensions in payment plus their pension savings, not yet taken, that have benefited from UK tax relief.
37. Subparagraph 9(5) provides that where an individual who has notified HMRC that they intend to rely on individual protection 2016 has one of five specified existing protections, individual protection 2014 does not apply.
38. Subparagraphs 9(6) to (9) deal with the position where the pension rights of an individual with individual protection 2016 are subject to a pension debit, as a result of the sharing of the individual's pension rights following a divorce, on or after, 6 April 2016. In such a case, the individual's relevant amount is reduced by the amount of the debit. However, for individual protection 2016 purposes the amount of debit is reduced by 5 per cent for each complete tax year between 5 April 2016 and the date of the pension debit. The reduction is intended to reflect any increase in the individual's total pension rights between 5 April 2016 and the time of the pension debit. Where the individual's relevant amount is reduced below £1 million as a result of the pension debit, they will no longer be entitled to rely on individual protection 2016.
39. Paragraph 10 sets out how to calculate amount A, which is the value of the pensions that the individual was receiving on 6 April 2006 (A-day), which is the day when Finance Act 2004 including the lifetime allowance first applied from.
40. Subparagraphs 10(2) to (5) apply where a BCE has occurred, in respect of the individual on or before 5 April 2016, for example when an individual has taken some of their pension benefits. In this case Amount A is 25 times the annual rate of the pre A-day pension immediately before the BCE, multiplied by a factor of £1.25 million (the standard lifetime allowance for 2014-15) over the standard lifetime allowance at the date of the BCE. The factor is applied to take account of any change in the standard lifetime allowance since the BCE, so that that percentage of the standard lifetime allowance used up by the pre A-day pension is the same on 5 April 2016 as it was on the date of the BCE.
41. Subparagraphs 10(6) and (7) apply where no BCE has occurred in respect of the individual

since A-day, in which case amount A is 25 times the annual rate at which the pre A-day pension is payable on 5 April 2016.

42. Subparagraphs 10(8) and (9) define expressions used in sub-paragraphs (2) to (7).
43. Paragraph 11 sets out how to calculate amount B, which is the value of any BCEs in respect of the individual occurring on or before 5 April 2016. Amount B is the aggregate of the value of each BCE, multiplied by a factor of £1.25 million (the standard lifetime allowance for 2015-16) over the standard lifetime allowance at the date of the BCE.
44. Paragraph 12 sets out how to calculate amount C, which is the value of any uncrystallised pension rights that the individual has in a registered pension scheme on 5 April 2016. Amount C is calculated in accordance with the method set out in section 212 of Finance Act 2004.
45. Paragraph 13 sets out how to calculate amount D, which is the value of any uncrystallised pension rights that the individual has under relieved non-UK pension schemes on 5 April 2016. To calculate amount D, it is assumed that there is a BCE in respect of those rights at that date and the amount that would have been crystallised in accordance with paragraph 14 of Schedule 36 to Finance Act 2004.

Part 3: Reference numbers

46. Part 3 sets out when a valid application for fixed protection 2016 or individual protection 2016 is made, and the issue by HM Revenue and Customs (HMRC) of a reference number that the individual can use to prove that they are entitled to that protection when they take any benefits on or after 6 April 2016.
47. Paragraph 14 makes provision for individuals to apply for a reference number, and the form of that application, for fixed protection 2016 and individual protection 2016, and for HM Revenue and Customs (HMRC) to issue a reference number.
48. Subparagraph 14(1) defines that an individual has a reference number for the purposes of fixed protection 2016 or individual protection 2016 if one has been issued by HMRC and it has not been withdrawn.
49. Subparagraph 14(2) defines the form of the reference number and when it will be issued.
50. Subparagraph 14(3) sets out what information is required in order for an application to be a valid application.
51. Subparagraph 14(4) requires HMRC to notify the individual if their application for a reference number for fixed protection 2016 or individual protection 2016 is unsuccessful or, in the case of individual protection 2016 the application was successful but a reference number is not being issued because the protection is dormant.
52. Subparagraph 14(5) defines the terms relevant arrangement, appropriate amount and transfer day for the purposes of paragraph sub-paragraph (3)(f)(iii).
53. Subparagraph 14(7) defines what is meant by "dormant basis" for the purposes of individual protection 2016, that is the application would have been successful but for the fact that the individual held another form of transitional protection at the time of the application. Where an application is on a dormant basis, should the other protection become invalid, then the

individual protection 2016 will cease to be dormant and a reference number will be issued.

54. Subparagraph 14(8) sets out the prior provisions which would result in the dormant basis.
55. Paragraph 15 sets out the circumstances in which HMRC may withdraw a reference number and requires HMRC to tell the individual the reasons for doing so.
56. Paragraph 16 provides for an appeal against the non-issue or the withdrawal of a reference number.
57. Paragraph 17 sets out the requirement for individuals who have a reference number, or a pending application for a reference number, for the purposes of fixed protection 2016 or individual protection 2016 to notify HMRC within 90 days if a protection-cessation event, as set out in paragraphs 3 to 8, occurs. Paragraph 17(3) sets out when an application is pending for the purposes of this paragraph, which is intended to cover the period between an application being submitted and a decision being made by HMRC, or where there is an appeal against a decision by HMRC.
58. Paragraph 18 sets out the requirement for individuals who have a reference number, or a pending application, for the purposes of individual protection 2016, to notify HMRC within 60 days if they receive a discharge notice related to a pension debit. Paragraph 18(3) defines what a discharge notice is.
59. Paragraph 19 provides for personal representatives of deceased individuals to apply for fixed protection 2016 and individual protection 2016.

Part 4: Information

60. Part 4 sets out the information requirements in connection with fixed protection 2016 and individual protection 2016 through changes to existing secondary legislation.
61. Paragraph 20 sets out that individuals who have a reference for the purposes of individual protection 2016 are required to preserve the documents that have been used in the calculation of their relevant amount, for 6 years from the date of application.
62. Paragraphs 21 to 24 make various amendments to The Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) to include references to fixed protection 2016 and individual protection 2016. These changes ensure that where an individual relies on fixed protection 2016 or individual protection 2016 then similar information is required to be provided by the member to the scheme administrator and from the scheme administrator to HMRC as for the similar existing lifetime allowance protection regimes.
63. Paragraph 25 inserts new paragraph 14C into S.I. 2006/567 which sets out that scheme administrators of registered pension schemes are required to provide information to enable a member to calculate their relevant amount, if they request it as long as the request is received by the scheme administrator before 6 April 2020. Scheme administrators may if they choose to provide this information for requests received, after this date but there is no requirement to do so.

Part 5: Amendments in connection with protection of pre-6 April 2006 rights

64. Part 5 sets out changes to FA2004 in respect of primary protection and enhanced protection to ensure that certain individuals with one of these protections are able to receive the right amount of tax free lump sums intended by legislation.
65. Subparagraph 27(1) amends paragraph 2(10) of Schedule 29 to FA 2004 and applies where an individual has primary protection under paragraph 7 of Schedule 36 to FA2004 or enhanced protection under paragraph 12 of Schedule 36 to FA2004, but no lump sum protection. In these circumstances, if the member becomes entitled to a pension commencement lump sum after 6 April 2014, when making the adjustment to the relevant amount for a previous BCE that also occurred after 6 April 2014, where £1.5 million is greater than the standard lifetime allowance at the time of the previous BCE, PSLA (the standard lifetime allowance at the time of the earlier BCE) is treated as being £1.5 million.
66. Subparagraph 27(2) amends paragraph 28(3) of Schedule 36 to FA 2004 and applies where an individual has primary protection under paragraph 7 of Schedule 36 to FA 2004 with lump sum protection. If this applies, where more than one BCE occurs after 6 April 2012, and a further BCE occurs on or after 6 April 2014, the definition of PSLA for the purposes of revaluing the earlier BCEs is the greater of £1.8 million and the standard lifetime allowance at the time the individual became entitled to the lump sum.

Part 6: Interpretation and Regulations

67. Part 6 sets out the interpretation of expressions used in the Schedule and provides a power to make regulations amending Parts 1, 2 and 3 of the Schedule.
68. Paragraph 30 provides power to make changes to Parts 1, 2 and 3 of this Schedule by regulations. Such regulations may be retrospective providing they do not increase any person's liability to tax and do not have effect before 6 April 2016.

Background note

69. Individuals can save as much as they like in a registered pension scheme subject to overall limits on the amount of tax relief their pension savings can benefit from. These limits are the lifetime and annual allowances. The lifetime allowance is the maximum amount of pension and/or lump sum that an individual can take from pension schemes that benefit from UK tax relief, including any tax relieved savings the individual has in a relieved non-UK pension scheme.
70. When an individual becomes entitled to their pension benefits, these benefits are tested to see if they exceed the individual's lifetime allowance. If they do, the excess is subject to the lifetime allowance charge. The rate of the charge will depend on how the individual takes their benefits. Any amount over the lifetime allowance taken as a lump sum is taxable at 55 per cent, whilst any amount taken as a pension is taxable at 25 per cent, and the income will be taxable at the individual's marginal rate.
71. The government announced at March Budget 2015, and confirmed at Summer Budget 2015, that legislation would be introduced to reduce the standard lifetime allowance to £1 million for the tax year 2016 to 2017 onwards. It also announced that two transitional protections would be introduced to protect individuals from potentially retrospective tax charges arising from the reduction.

72. Clause 12 and the Schedule to Clause 12 restrict tax relief for pension savings by reducing the level of the lifetime allowance provided for in section 218 of FA2004.
73. The level of the standard lifetime allowance is reduced to £1 million with effect from 6 April 2016. Two new transitional protections 'fixed protection 2016' and 'individual protection 2016' come into force on the same date. Individuals with fixed protection 2016 have a lifetime allowance of the greater of £1.25 million and the standard lifetime allowance. Individuals with individual protection 2016 will have a lifetime allowance of the greater of the value of their pension savings at 5 April 2016, subject to an overall maximum of £1.25 million, and the standard lifetime allowance.
74. The Schedule to Clause 12 also makes a number of consequential changes to the existing pensions legislation in FA2004.
75. If you have any questions about this change, or comments on the legislation, please contact Samantha Skill on 03000 564149 (email: pensions.policy@hmrc.gsi.gov.uk).

13 Pensions bridging between retirement and state pension

- (1) In Part 1 of Schedule 28 to FA 2004 (registered pension schemes: the pension rules), paragraph 2 (meaning of “scheme pension”) is amended in accordance with subsections (2) to (5).
- (2) In sub-paragraph (4) (which specifies circumstances in which amount of scheme pension may go down and gives power to specify additional circumstances) omit paragraph (c) (reduction by reference to state retirement pensions for persons reaching pensionable age before 6 April 2016).
- (3) Omit sub-paragraphs (4B), (5) and (5A) (interpretation of sub-paragraph (4)(c)).
- (4) In sub-paragraph (8) (regulations under certain sub-paragraphs may make back-dated provision) omit “or (5)”.
- (5) In consequence of the amendments made by subsections (2) and (3) –
 - (a) in FA 2006, in Schedule 23 omit paragraph 20(2) and (3), and
 - (b) in FA 2013, omit section 51(2).
- (6) Regulations under paragraph 2(4)(h) of Schedule 28 to FA 2004 (power to prescribe permitted reductions of scheme pensions, and to do so with back-dated effect) may provide for the coming into force of the amendments made by subsections (2) to (5), and –
 - (a) those amendments have effect in accordance with regulations under paragraph 2(4)(h) of that Schedule, and
 - (b) paragraph 2(8) of that Schedule (back-dating) applies for the purposes of regulations bringing the amendments into force only so as to permit the amendments to be given effect in relation to times not earlier than 6 April 2016.

Explanatory Note

Clause 13: Pensions bridging between retirement and state pensions

Summary

1. This measure removes existing legislation at paragraph 2(4)(c) of Schedule 28 of the Finance Act 2004 regarding bridging pensions. In place of this provision, regulations will be made under paragraph 2(4)(h) of Schedule 28 in connection with bridging pensions to align pensions tax legislation with the Pensions Act 2014 and allow the payment of bridging pensions to continue as set out in current legislation.

Details of the clause

2. Subsection 1 provides that the clause amends paragraph 2 of Schedule 28 of the Finance Act 2004.
3. Subsection 2 omits sub-paragraph (4)(c) which sets out the current circumstances in which a scheme pension may be reduced when a bridging pension ceases to be paid.
4. Subsections 3 to 5 are consequential amendments to the omission of sub-paragraph (4)(c).
5. Subsection 6 provides for the amendments made by subsections 2 to 5 to be commenced by regulations made under paragraph 2(4)(h) and that pursuant to paragraph 2(8), will have effect from 6 April 2016.

Background note

6. A pension from a registered pension scheme is not normally allowed to be reduced when in payment. There are some exceptions to this rule, one of which is where a bridging pension is being paid. A bridging pension describes a pension that is higher at the outset and then reduced when the individual reaches state pension age.
7. The Department for Work and Pensions introduced a single tier state pension from 6 April 2016. This measure supports the government's objective of promoting fairness in the tax system by ensuring that pension schemes can continue to pay a bridging pension up to a member's state pension age following the introduction of the single tier state pension.
8. HM Revenue & Customs will consult with industry representatives on the drafting of new regulations and to clarify the exact implications of the single tier state pension on the legislation relating to bridging pensions.
9. If you have any questions about this change, or comments on the legislation, please contact

Karen Bishop on 03000 562533 (email: pensions.policy@hmrc.gsi.gov.uk).

14 Dependants' scheme pensions

- (1) Part 2 of Schedule 28 to Part 4 of FA 2004 (pension death benefit rules) is amended as follows.
- (2) In paragraph 16A(1) (dependants' scheme pension: when limits in paragraphs 16B and 16C apply) –
 - (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “, and
 - (d) the threshold test (see paragraph 16AA) is met.”
- (3) In paragraph 16A, after sub-paragraph (1) insert –

“(1A) But paragraphs 16B and 16C do not apply if –

 - (a) each benefit crystallisation event that has occurred in relation to the member by reference to arrangements relating to the member under the scheme is benefit crystallisation event 5B (having unused funds under a money purchase arrangement at age 75), or
 - (b) paragraph 12 of Schedule 36 (enhanced protection by reference to pre-6 April 2006 rights) applies in the case of the member immediately before the member's death.”
- (4) In paragraph 16A(2) (certain pre-6 April 2006 pensions treated as scheme pensions), for “paragraph”, in the second place it occurs, substitute “paragraphs 16AA and”.
- (5) After paragraph 16A insert –

“16AA(1) The threshold test is met if the amount given by –

$$(SP \times 20) + (DSP \times 20) + LS + CBV + MPV$$

is greater than the threshold.

 - (2) The following provisions of this paragraph have effect for the purposes of sub-paragraph (1).
 - (3) “The threshold” is 25% of the standard lifetime allowance at the time immediately before the member's death, except that, if the result of that calculation is not a multiple of £100, the threshold is that result rounded up to the nearest amount that is a multiple of £100.
 - (4) SP is calculated by –
 - (a) finding, for each scheme pension to which the member is actually entitled at the time immediately before the member's death in respect of a defined benefits arrangement relating to the member under the pension scheme, the rate at that time of that scheme pension, and
 - (b) finding, for each scheme pension to which the member is prospectively entitled at the time immediately before the member's death in respect of a defined benefits arrangement relating to the member under the pension scheme, the annual rate that was DP (see paragraph 14 of Schedule 32) in the case of that scheme pension for the purposes of the benefit crystallisation event 5 that occurred in relation to the member by reference to the arrangement, and
 - (c) then adding together those annual rates.

-
- (5) DSP is calculated by –
- (a) finding, for each dependants' scheme pension –
 - (i) in respect of a defined benefits arrangement relating to the member under the pension scheme, and
 - (ii) to which at the time immediately after the member's death a dependant is actually or prospectively entitled,
the rate which (ignoring paragraphs 16B and 16C) is, or at that time is expected to be, the initial annual rate of that dependants' scheme pension, and
 - (b) adding together those rates.
- (6) LS is the total of any lump sum death benefits expected to be paid in respect of any defined benefits arrangements relating to the member under the pension scheme.
- (7) CBV is calculated by –
- (a) finding, for each cash balance arrangement relating to the member under the pension scheme, the amount that would immediately before the relevant valuation point have been available for the provision of benefits to or in respect of the member if entitlement had arisen immediately before the relevant valuation point to all benefits under the arrangement to which entitlement had not previously arisen, and
 - (b) then finding the total of all those amounts.
- (8) MPV is calculated by finding for each money purchase arrangement relating to the member under the pension scheme that is not a cash balance arrangement –
- (a) the amount of the sums held for the purposes of the arrangement immediately before the relevant valuation point, and
 - (b) the amount that is the market value, at the time immediately before the relevant valuation point, of the assets held at that time for the purposes of the arrangement,
- and then finding the total of all those amounts.
- (9) In sub-paragraphs (7) and (8) –
- (a) if the member is actually entitled to one or more scheme pensions under the pension scheme immediately before the member's death, "the relevant valuation point" means the time when the member –
 - (i) became actually entitled to that scheme pension, or
 - (ii) (as the case may be) first became actually entitled to any of those scheme pensions, and
 - (b) otherwise, "the relevant valuation point" means the member's death."
- (6) The amendments made by this section –
- (a) are treated as having come into force on 6 April 2016,
 - (b) have effect in relation to paragraph 16B of Schedule 28 to FA 2004 where the last day of "the post-death year" (see sub-paragraph (1) of that paragraph) is 6 April 2016 or any later day, and

-
- (c) have effect in relation to paragraph 16C of that Schedule where the last day of “the 12 months in question” (see sub-paragraph (1) of that paragraph) is 6 April 2016 or any later day.

Explanatory Note

Clause 14: Dependants' scheme pensions

Summary

1. This measure introduces three exceptions from the tests that must otherwise be carried out in respect of dependants' scheme pensions where the member died age 75 or over. The change has effect for dependants' scheme pensions payable on or after 6 April 2016.

Details of the clause

2. Subsection 2 introduces the threshold test for scheme pensions which provides for an exception from the test on dependants' scheme pensions if the pension values exceed a specified threshold.
3. Subsection 3 inserts new sub-paragraph 1A into paragraph 16A of Schedule 28 to the Finance Act 2004.
4. New subparagraph 16A(1A)(a) disapplies the tests in paragraphs 16B and 16C if every benefit crystallisation event in relation to an individual member under a particular pension scheme relates to having unused funds under a money purchase arrangement at age 75.
5. New subparagraph 16A(1A)(b) disapplies the tests in paragraphs 16B and 16C if enhanced protection applied to an individual's pension rights immediately before the individual member's death.
6. Subsection 4 applies the exception set out in paragraph 16AA to pensions payable before 6 April 2006 that are treated as scheme pensions.
7. Subsection 5 inserts new paragraph 16AA into Schedule 28.
8. New subparagraph 16AA(1) sets out the component parts of the threshold test. They are, for defined benefits arrangements, the scheme pension and all dependants' scheme pensions multiplied by a valuation factor of 20 plus any lump sum death benefits, for cash balance arrangements the promised amount and for other money purchase arrangements, the amount of the sums and the market value of the assets.
9. New sub-paragraph 16AA(3) sets out the threshold which is 25% of the standard lifetime allowance applying immediately before the member's death.
10. New sub-paragraphs 16AA(4), (5) and (6) set out how scheme pension, dependants' scheme pensions and lump sums respectively under defined benefits arrangements are calculated for use in in sub-paragraph (1).
11. New sub-paragraphs 16AA(7) and (8) set out how the value of cash balance arrangements and other money purchase arrangements respectively are calculated for use in sub-paragraph (1).

12. New sub-paragraph 16AA(9) provides that the arrangements in sub-paragraphs (7) and (8) should be valued at the member's death unless the member actually became entitled to the scheme pension during their lifetime. In that case the arrangements should be valued when the member first actually became entitled to the scheme pension.
13. Subsection 6 sets out that the provisions will come into force from 6 April 2016 and have effect for periods ending on or after that date when determining
 - whether the test in paragraph 16B must be carried out in relation to the year following the member's death, and
 - whether the test in paragraph 16C must be carried out for each new 12-month period following that year.

Background note

14. This measure has been introduced to make the administration of dependants' scheme pensions simpler to support the Government's policy to reduce the administrative burden on UK industry.
15. If an individual who is a member of a registered pension scheme and in receipt of a scheme pension or prospectively entitled to a scheme pension dies with dependants then dependants' scheme pensions may be payable.
16. If that scheme pensioner had reached age 75 at the time of their death, the total amount of any dependants' scheme pensions have to be tested against the amount of the member's scheme pension so that excessive amounts from the member's pension savings cannot be set aside to pay benefits for dependants so that the member can avoid paying a lifetime allowance charge.
17. These tests are to be carried out annually for all dependants' scheme pensions regardless of the size of the member's pension savings.
18. This measure introduces exceptions from those tests. If the member had enhanced protection or the scheme had only money purchase pension savings that were all tested against the lifetime allowance on reaching age 75 (under benefit crystallisation event 5B) the tests on the dependants' scheme pensions do not need to be carried out.
19. There is a further exception. The tests on the dependants' scheme pensions do not need to be carried out if 25% of the appropriate standard lifetime allowance is more than the total, under a scheme, of a member's:
 - money purchase pension savings (including cash balance and other money purchase pension savings) and
 - defined benefits scheme pension and dependants' scheme pensions multiplied by the relevant valuation factor (in this case, 20) plus any lump sum death benefits.
20. The pension savings are to be valued immediately before the member's death unless the member was actually entitled to a money purchase scheme pension immediately before their death. In that case the money purchase pension savings will be valued when the member first became actually entitled to that scheme pension or the first scheme pension under the pension

scheme if there is more than one.

21. The level of the appropriate standard lifetime allowance will depend on the date of the test and in certain cases, the member's protected level of lifetime allowance.
22. If you have any questions about this change, or comments on the legislation, please contact Beverley Davies on 03000 585266 (email: pensions.policy@hmrc.gsi.gov.uk).

15 Netherlands Benefit Act for Victims of Persecution 1940-1945

- (1) After section 642 of ITEPA 2003 insert –

“642ANetherlands Benefit Act for Victims of Persecution 1940-1945

No liability to income tax arises on a pension, annuity, allowance or other payment provided in accordance with the provisions of the scheme established under the law of the Netherlands and known as *Wet uitkeringen vervolgingslachtoffers 1940-1945.*”

- (2) The amendment made by this section has effect for the tax year 2016-17 and subsequent tax years.

Explanatory Note

Clause 15: Netherlands Benefit Act for Victims of Persecution 1940-1945

Summary

1. This clause exempts from income tax payments to individuals made by the Netherlands Government under the 'Wet uitkeringen vervolgingslachtoffers 1940 – 1945' (Wuv) scheme.

Details of the clause

2. Part 9, Chapter 17 inserts a new Section 642A to the Income Tax (Employment and Pensions) Act (ITEPA) 2003.

Section 642A

3. Section 642A provides that any payments received by individuals under the Wuv scheme will be exempt from income tax.

Background note

4. The Netherlands' Wuv scheme makes payments to eligible individuals that were victims of persecution in Europe or Asia during the Second World War. In order to benefit from the scheme, recipients must either have had Dutch nationality, have been a Dutch subject or persecuted on Dutch territory and later acquired Dutch nationality.
5. Payments from the Netherlands government through the scheme are currently included in the calculation of an individual's Income Tax liability.
6. In April 2014, an Upper Tribunal Administrative Appeal Chamber ruled on a Housing Benefit claim, where a victim of National Socialist persecution who received payments from a Netherlands scheme contended that the failure to treat the payments in the same way as pensions and annuities from Germany or Austria amounted to unlawful discrimination.
7. This measure will therefore bring payments to victims of national-socialist and Japanese aggression, made through the scheme, into line with those made by the Federal Republic of Germany or Austria by removing the income tax liability of those payments.
8. The exemption from income tax of any such payment will apply from April 2016.
9. If you have any questions about this change, please contact Claire Ritchie on 03000 586813 (email: claire.ritchie@hmrc.gsi.gov.uk).

16 Transactions in securities: company distributions

- (1) Chapter 1 of Part 13 of ITA 2007 (transactions in securities) is amended as follows.
- (2) In section 684 (person liable to counteraction), in subsection (1) –
 - (a) in paragraph (c), omit “the person in being a party to”;
 - (b) in paragraph (d), for “the person” substitute “any person”.
- (3) In that section, in subsection (2) –
 - (a) in paragraph (c), omit the final “and”;
 - (b) after paragraph (d) insert –
 - “(e) a repayment of share capital or share premium, and
 - (f) a distribution in respect of securities in a winding up.”
- (4) In section 685 (receipt of consideration in connection with distribution by or assets of close company) –
 - (a) omit subsection (6);
 - (b) after subsection (7) insert –
 - “(7A) The references in subsection (4)(a)(i) and (ii) to assets do not include assets shown to represent return of sums paid by subscribers on the issue of securities merely because the law of the country in which the company is incorporated allows assets of that description to be available for distribution by way of dividend.
 - (7B) The references in subsections (4)(a)(i) and (5)(a) to assets which are available for distribution by way of dividend by the company include assets which are available for distribution to the company by way of dividend by any other company it controls.”
- (5) In section 686 (excluded circumstances: fundamental change of ownership), for subsections (2) to (5) substitute –
 - “(2) There is a fundamental change of ownership of the close company if, as a result of the transaction or transactions in securities, the condition in subsection (3) is met.
 - (3) The condition in this subsection is that the original shareholder or original shareholders taken together with any associate or associates –
 - (a) do not directly or indirectly hold more than 25% of the ordinary share capital of the close company,
 - (b) do not directly or indirectly hold shares in the close company carrying an entitlement to more than 25% of the distributions which may be made by the close company, and
 - (c) do not directly or indirectly hold shares in the close company carrying more than 25% of the total voting rights in the close company.
 - (4) In this section “original shareholder” means a person who, immediately before the transaction in securities (or the first of the transactions in securities), held any ordinary share capital of the close company.

-
- (5) For the purposes of this section, shares of or share capital in the close company which are held by a person controlled by an original shareholder, or by two or more original shareholders taken together, count as shares or share capital held by that original shareholder or those original shareholders.”
- (6) In section 687 (income tax advantage), in subsection (2)–
- (a) after “to the person” insert “or an associate of the person”;
 - (b) for “the relevant consideration is received” substitute “Condition A or B in section 685 is met”.
- (7) In section 713 (interpretation), at the appropriate place insert –
- ““associate” is to be construed in accordance with section 681DL, but as if subsection (4) of that section also included, as persons associated with each other, a person as trustee of a settlement and an individual, where one or more beneficiaries of the settlement are connected or associated with the individual;”.
- (8) The amendments made by this section have effect in relation to –
- (a) a transaction occurring on or after 6 April 2016, or
 - (b) a series of transactions any one or more of which occurs on or after that date.
- (9) Accordingly, Chapter 1 of Part 13 of ITA 2007 has effect without the amendments made by this section in relation to a tax advantage obtained on or after 6 April in consequence of –
- (a) a transaction occurring before that date, or
 - (b) a series of transactions all of which occur before that date.
- (10) Where –
- (a) before 6 April 2016 a person provides particulars to the Commissioners for Her Majesty’s Revenue and Customs under section 701 of ITA 2007 in respect of a transaction or transactions,
 - (b) on the basis of Chapter 1 of Part 13 of ITA 2007 as it has effect apart from this section, notification is given under section 701 of that Act that no counteraction notice ought to be served about the transaction or transactions,
 - (c) the transaction, or any one or more of the transactions, occurs on or after 6 April 2016, and
 - (d) the person would, but for the notification, be liable for counteraction of an income tax advantage from the transaction or transactions under Chapter 1 of Part 13 of ITA 2007 as amended by this section,
- the notification is void and section 702(2) of ITA 2007 does not apply in relation to the transaction or transactions.

Explanatory Note

Clause 16: Transactions in securities: company distributions

Summary

1. This measure introduces amendments to the Transactions in Securities rules In Part 13 of Income Tax Act 2007 (ITA 2007). The changes clarify and improve a number of aspects of these rules. The amendments have effect for transactions occurring on or after 6 April 2016. Related changes are made by clause 17

Details of the clause

2. Subsection (1) provides for the amendment of Part 13 of ITA 2007.
3. Subsection (2) amends section 684(1) ITA 2007. From 6 April 2016 it will consider "the purpose of the transactions" in place of "the purpose of a person being party to a transaction". Section 684(1) will also apply to a tax advantage obtained by any person, not just the person who is a party to the transaction.
4. Subsection (3) clarifies that a repayment of share capital or share premium is a transaction in securities by adding it to the particular examples listed in the section. It also extends the definition of transaction in securities to include a distribution in respect of securities in a winding up.
5. Subsection (4) introduces two new subsections of section 685 ITA 2007. New section 685(7A) replaces old subsection (6), which is repealed. It will now be explicit that the assets of a company that are available for distribution are only disregarded where an amount is distributable solely because the laws of the country in which the company is incorporated allow It to be distributed.
6. New section 685(7B) provides that the assets of a company that are available for distribution include assets which can be distributed to the company by a subsidiary under the company's control.
7. Subsection (5) changes the way that the "fundamental change of ownership" applies. The new rule considers what the original shareholders of the company still hold after the transaction or transactions, rather than considering the new ownership structure.
8. Subsection (6) amends section 687 of ITA 2007 so that an income tax advantage can be obtained where a distribution could have been paid to an associate of the person. It also clarifies when to consider the value of a distribution that could have been paid.
9. Subsection (7) introduces the definition of "associate" to be used in section 687.

10. Subsection (8) provides that the amendments will apply to transactions occurring on or after 6 April 2016 or, where there is a series of transaction, any one or more of the series occurs on or after that date.
11. Subsection (9) clarifies that the existing rules will apply to transactions occurring before 6 April 2016.
12. Subsection (10) explains that where HMRC have issued a clearance notice in respect of a transaction before 6 April 2016, but the transaction occurs on or after 6 April 2016, the clearance will not be valid where the transaction ought to be counteracted only because of the amendments made by this clause.

Background note

13. The Transactions in Securities legislation in Part 13 of ITA 2007 aims to prevent amounts extracted from companies being treated as capital transactions when their effect is in substance the same as a distribution.
14. These amendments are being made to rationalise the treatment of payments by companies to their members. The clause implements the announcement made by the Chancellor of the Exchequer in his statement of 25 November 2015.
15. If you have any questions about this change, or comments on the legislation, please contact Adrian Coates on 03000 586041 (email: Adrian.Coates@hmrc.gsi.gov.uk)

17 Transactions in securities: procedure for counteraction of advantage

(1) Chapter 1 of Part 13 of ITA 2007 (transactions in securities) is amended as follows.

(2) For section 695 (preliminary notification) substitute –

“695 Notice of enquiry

(1) An officer of Revenue and Customs may enquire into a transaction or transactions if –

- (a) the officer has reason to believe that section 684 (person liable to counteraction of income tax advantage) may apply to a person (“the taxpayer”) in respect of the transaction or transactions, and
- (b) the officer notifies the taxpayer of his intention to do so.

(2) The notification may be given at any time not more than 6 years after the end of the tax year to which the income tax advantage in question relates.”

(3) Omit sections 696 and 697 (opposed notifications).

(4) In section 698 (counteraction notices), for subsection (1) substitute –

“(1) If on an enquiry under section 695 an officer of Revenue and Customs determines that section 684 applies to the taxpayer, the income tax advantage in question is to be counteracted by adjustments, unless the officer is of the opinion that no counteraction is required.”

(5) In that section, for subsection (5) substitute –

“(5) An assessment may be made in accordance with a counteraction notice at any time (without regard to any time limit on making the assessment that would otherwise apply).”

(6) After that section insert –

“698A No-counteraction notices

(1) If on an enquiry under section 695 an officer of Revenue and Customs is of the opinion that no counteraction is required, the officer must serve notice on the person (a “no-counteraction notice”) stating that no counteraction is required and why.

(2) The taxpayer may apply to the tribunal for a direction requiring an officer of Revenue and Customs to issue one of the following within a specified period –

- (a) a counteraction notice;
- (b) a no-counteraction notice.

(3) Any such application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).

(4) The tribunal must give the direction applied for unless satisfied that there are reasonable grounds for not serving either a counteraction notice or a no-counteraction notice with a specified period.”

(7) In section 684 (person liable to counteraction), for subsection (4) substitute –

“(4) This section is subject to no-counteraction notices issued under section 698A.”

- (8) The amendments made by this section have effect in relation to—
- (a) a transaction occurring on or after 6 April 2016, or
 - (b) a series of transactions any one or more of which occurs on or after that date.
- (9) Accordingly, Chapter 1 of Part 13 of ITA 2007 has effect without the amendments made by this section in relation to a tax advantage obtained on or after 6 April in consequence of—
- (a) a transaction occurring before that date, or
 - (b) a series of transactions all of which occur before that date.

Explanatory Note

Clause 17: Transactions in securities: procedure for counteraction of advantage

Summary

1. This measure amends Part 13 of Income Tax Act 2007 (ITA 2007) to align the counteraction process for the Transactions in Securities legislation more closely with the process for compliance checks under self-assessment. The new procedure has effect for transactions occurring on or after 6 April 2016. Related changes are made by clause 16.

Details of the clause

2. Subsection (1) provides for the amendment of Part 13 of ITA 2007.
3. Subsection (2) changes the process required for an officer of HM Revenue & Customs (HMRC) to begin proceedings to counteract a tax advantage. The officer will serve a notice of enquiry in place of issuing a preliminary notification that a counteraction notice ought to be served.
4. Subsection (3) omits sections 696 and 697 of ITA 2007, which provided further procedural rules under the old counteraction provisions.
5. Subsections (4) and (5) amend section 698, the legislation that provides for a "counteraction notice" to be served, so that a notice can be issued following a notice of enquiry rather than a preliminary notice.
6. Subsection (6) introduces new section 698A into ITA 2007. This enables the recipient of an enquiry notice to apply to the tribunal to direct that the enquiry should be concluded. It also introduces a requirement for an enquiry to conclude either with the issue of a counteraction notice or a "no-counteraction notice" where no counteraction is required.
7. Subsection (7) amends section 684(d) so that it is subject to "no-counteraction notices". This replaces rules that consider when an officer determines that no further action is necessary or the tribunal determines that there is no prima facie case that section 684 applies.
8. Subsection (8) provides that the new procedure will apply to transactions occurring on or after 6 April 2016, or where there is a series of transactions, where any one or more of the transactions occurs on or after that date.
9. Subsection (9) makes clear that where the transaction occurs before that date, the existing procedure will continue to apply.

Background note

10. The Transactions in Securities legislation in Part 13 of ITA 2007 aims to prevent amounts extracted from companies being treated as capital transactions when their effect is in substance the same as a distribution. Its compliance and counteraction rules were not updated to take account of the introduction of Self-Assessment. These changes make improvements to the counteraction rules.
11. These amendments are being made to strengthen and rationalise the Transactions in Securities provisions.
12. If you have any questions about this change, or comments on the legislation, please contact Adrian Coates on 03000 586041 (email: Adrian.Coates@hmrc.gsi.gov.uk)

18 Distributions in a winding up

- (1) In Chapter 3 of Part 4 of ITTOIA 2005 (dividends and other distributions from UK resident companies), after section 396A insert –

“396B Distributions in a winding up

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in the winding up of a UK resident company is a distribution of the company if –
- (a) Conditions A to C are met, and
 - (b) the distribution is not excluded (see subsection (6)).
- (2) Condition A is that the company –
- (a) is a close company when it is wound up, or
 - (b) was a close company at any time in the period of two years ending with the start of the winding up.
- (3) Condition B is that, at any time within a period of two years beginning with the date on which the distribution is made –
- (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company,
 - (b) the individual, or a person connected with him or her, is a participator in a company which at that time –
 - (i) carries on such a trade or activity, or
 - (ii) is connected with a company which carries on such a trade or activity, or
 - (c) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
- (4) Condition C is that it is reasonable to assume, having regard to all the circumstances, that –
- (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
 - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
- (5) The circumstances referred to in subsection (4) include in particular the fact that Condition B is met.
- (6) A distribution to an individual is excluded if or to the extent that –
- (a) it represents a repayment of an amount of share capital originally subscribed, or
 - (b) the distribution is a distribution of irredeemable shares in a company which is an effective 51% subsidiary of the company which is wound up.
- (7) Section 170(7) of TCGA 1992 (meaning of effective 51% subsidiary) applies for the purposes of subsection (6)(b).
- (8) In subsection (3)(b), “participator” has the meaning given by section 454 of CTA 2010.”
- (2) In Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies), after section 404 insert –

“404A Distributions in a winding up

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in a winding up of a non-UK resident company is a dividend of the company if –
 - (a) Conditions A to C are met, and
 - (b) the distribution is not excluded (see subsection (6)).
 - (2) Condition A is that the company –
 - (a) is a close company when it is wound up, or
 - (b) was a close company at any time in the period of two years ending with the start of the winding up.
 - (3) Condition B is that, at any time within a period of two years beginning with the date on which the distribution is made –
 - (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company,
 - (b) the individual, or a person connected with him or her, is a participator in a company which at that time –
 - (i) carries on such a trade or activity, or
 - (ii) is connected with a company which carries on such a trade or activity, or
 - (c) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
 - (4) Condition C is that it is reasonable to assume, having regard to all the circumstances, that –
 - (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
 - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
 - (5) The circumstances referred to in subsection (4) include in particular the fact that Condition B is met.
 - (6) A distribution to an individual is excluded if or to the extent that –
 - (a) it represents a repayment of an amount of share capital originally subscribed, or
 - (b) the distribution is a distribution of irredeemable shares in a company which is an effective 51% subsidiary of the company which is wound up.
 - (7) Section 170(7) of TCGA 1992 (meaning of effective 51% subsidiary) applies for the purposes of subsection (5)(c).
 - (8) In this section –

“close company” includes a company which would be a close company if it were a UK resident company;

“participator” has the meaning given by section 454 of CTA 2010.”
- (3) The amendments made by this section have effect in relation to distributions made on or after 6 April 2016.

Explanatory Note

Clause 18: Distributions in a winding up

Summary

1. This measure introduces a new Targeted Anti-Avoidance Rule (TAAR) that will apply to certain company distributions in respect of share capital in a winding up. This TAAR will treat the distribution from a winding-up as if it were a distribution chargeable to Income Tax, where certain conditions are met. The TAAR applies to distributions made on or after 6 April 2016.

Details of the clause

2. Subsection (1) introduces new section 396B into the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

New section 396B: Distributions in a winding up

3. New section 396B(1) explains that a distribution in respect of shares in the winding up of a UK-resident company is a distribution where conditions A to C are met.
4. New section 396B(2) sets out condition A: the company has to be a close company (as defined by section 439 Corporation Tax Act 2010), or to have been a close company at some point in the two years prior to the winding up.
5. New section 396B(3) sets out condition B: that the person who receives the distribution is involved with the carrying on of a trade or activity that is similar to that of the trade or activity carried on by the wound up company. The individual may carry out the trade directly, through a company he or she controls, or through a person with whom he or she is connected.
6. New section 396B(4) and (5) set out condition C: that it is reasonable to assume that the winding up forms part of arrangements designed to reduce the person's income tax liability. The legislation makes clear that condition C will address in particular the question whether the person continues in some way the same or a similar trade or activity.
7. New section 396B(6) provides an exemption from the TAAR where the distribution received by the individual is either a repayment of share capital originally subscribed, or where it comprises only shares in a subsidiary of the wound up company, as would be the case in a "liquidation de-merger".
8. New subsections 396B(7) and (8) define "subsidiary" and "participator" as used in the section.

New section 404A: Distributions In a winding up

9. Subsection (2) introduces new section 404A into Chapter 4, Part 4 of ITTOIA, which mirrors

the provisions of new section 396B for distributions in respect of shares from a non-UK resident company (treating the non-UK resident company as close if it would have been close had it been resident in the UK).

10. The new section refers to a "dividend" rather than a "distribution", reflecting differences in the way dividends and distributions from non-UK resident companies are taxed.
11. Subsection (3) provides for commencement.

Background note

12. This new TAAR is being introduced to rationalise and improve the tax treatment of payments to members from companies. It will help ensure that the treatment of what is received better reflects the nature of the payments.
13. If you have any questions about this change, or comments on the legislation, please contact Adrian Coates on 03000 586041 (email: Adrian.Coates@hmrc.gsi.gov.uk)

19 Averaging profits of farmers etc

- (1) Chapter 16 of Part 2 of ITTOIA 2005 (averaging profits of farmers and creative artists) is amended as specified in subsections (2) to (7).
- (2) In section 221 (claim for averaging of fluctuating profits) –
 - (a) in subsection (2), at the beginning insert “For the purposes of section 222 (two-year averaging)”;
 - (b) after that subsection insert –

“(2A) For the purposes of section 222A (five-year averaging), a trade, profession or vocation is a “qualifying trade, profession or vocation” if it falls within subsection (2)(a) or (b).”;
 - (c) in subsection (3), for “this purpose” substitute “the purpose of subsection (2)”.
- (3) After section 222 insert –

“222A Circumstances in which claim for five-year averaging may be made

- (1) An averaging claim may be made under this section in relation to five consecutive tax years in which a taxpayer is or has been carrying on the qualifying trade, profession or vocation if the volatility condition in subsection (2) is met.
 - (2) The volatility condition is that –
 - (a) one of the following is less than 75% of the other –
 - (i) the average of the relevant profits of the first four tax years to which the claim relates;
 - (ii) the relevant profits of the last of the tax years to which the claim relates; or
 - (b) the relevant profits of one or more (but not all) of the five tax years to which the claim relates are nil.
 - (3) Any of the first four tax years to which an averaging claim under this section relates may be a tax year in relation to which a averaging claim under this section or section 222 has already been made.
 - (4) An averaging claim (“the subsequent claim”) may not be made under this section if an averaging claim in respect of the trade, profession or vocation has already been made under this section or section 222 in relation to a tax year which is later than the last of the tax years to which the subsequent claim relates.
 - (5) An averaging claim may not be made under this section in relation to the tax year in which the taxpayer starts, or permanently ceases, to carry on the trade, profession or vocation.
 - (6) An averaging claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the last of the tax years to which the claim relates.
 - (7) But see section 225(4) (extended time limit if profits adjusted for some other reason).”
- (4) In section 222 (circumstances in which claim may be made) –
 - (a) in the heading, after “claim” insert “for two-year averaging”;
 - (b) in subsection (1), after “made” insert “under this section”;

-
- (c) for subsection (2) substitute –
- “(2) The earlier of the two years to which an averaging claim under this section relates may be a tax year in relation to which an averaging claim under this section or section 222A has already been made.”;
- (d) in subsection (3) –
- (i) after “made”, in the first place, insert “under this section”;
- (ii) after “made”, in the second place, insert “under this section or section 222A”;
- (e) in subsection (4), after “made” insert “under this section”;
- (f) in subsection (5), after “claim” insert “under this section”.
- (5) In section 223 (adjustment of profits) –
- (a) in subsection (2), for “second of the two tax years” substitute “last of the two or five tax years”;
- (b) for subsection (3) substitute –
- “(3) The amount of the adjusted profits of each of the tax years to which the claim relates is the average of the relevant profits of those tax years.”;
- (c) omit subsection (4).
- (6) In section 224 (effect of adjustment) –
- (a) in subsection (4), for “either” substitute “any”;
- (b) in subsection (6), for “second of the two tax years” substitute “last of the two or five tax years”.
- (7) In section 225 (effect of later adjustment of profits), in subsection (1), for “either or both” substitute “any one or more”.
- (8) In paragraph 3 of Schedule 1B to TMA 1970 (relief for fluctuating profits of farmers etc) –
- (a) in sub-paragraph (1), for the words from “for two” to the end substitute –
- “(a) in the case of a two-year claim, for two consecutive years of assessment, and
- (b) in the case of a five-year claim, for five consecutive years of assessment.”;
- (b) in sub-paragraph (2), for “the later year” substitute “the last of the two or five years”;
- (c) in sub-paragraph (3), for “the earlier year”, where it occurs first, substitute “an earlier year”;
- (d) in sub-paragraph (5) –
- (i) for “the earlier year” substitute “an earlier year”;
- (ii) for “the later year” substitute “the last of the two or five years”;
- (e) after sub-paragraph (6) insert –
- “(7) In this paragraph –
- “two-year claim” means a claim under section 222 of ITTOIA 2005;
- “five-year claim” means a claim under section 222A of ITTOIA 2005.”

-
- (9) In paragraph 4 of Schedule 1B to TMA 1970 (relief claimed by virtue of section 224(4) of ITTOIA 2005) –
- (a) in sub-paragraph (1) –
 - (i) after “for two” insert “or five”;
 - (ii) omit (“the earlier year” and “the later year”);
 - (iii) for “either” substitute “any”;
 - (b) in sub-paragraph (2), for “the later year” substitute “the last of the two or five years”;
 - (c) in sub-paragraph (3), for “the earlier year”, where it occurs first, substitute “an earlier year”;
 - (d) in sub-paragraph (5) –
 - (i) for “the earlier year” substitute “an earlier year”;
 - (ii) for “the later year” substitute “the last of the two or five years”.
- (10) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

Explanatory Note

Clause 19: Averaging profits of farmers etc

Summary

1. This clause provides for an extension to the period over which an individual carrying on a qualifying trade of farming, market gardening, or intensive rearing of livestock or fish, can average fluctuating trading profits. For 2016 to 2017 and subsequent years they will be able to claim to average trading profits for income tax purposes over two or five consecutive tax years. The clause also removes marginal relief from the two-year averaging rules for farmers and creative artists, so that from 2016 to 2017 full two-year averaging relief will be available where the profits of one year are 75% or less of the profits of the other year.

Details of the clause

2. Subsection (2)(b) provides the definition of "qualifying trade, profession or vocation" for the purposes of new section 222A.
3. Subsection (3) inserts new section 222A into Chapter 16 of Part 2 of Income Tax (Trading and Other Income) Act (ITTOIA) 2005. This section sets out the circumstances in which a claim for five-year averaging may be made.
4. Subsection (1) of new section 222A provides that a claim for 5 year averaging may be made if the "volatility" condition is met.
5. Subsection (2) of new section 222A details the circumstances when the volatility condition is met because of a difference in the amount of the relevant profits being compared or because the relevant profits of one or more of the years is nil. For these purposes references to the relevant profits of a tax year being nil includes where the individual makes a loss, as detailed in section 221(5) of ITTOIA 2005.
6. Subsection (4) makes consequential changes to section 222 of ITTOIA 2005.
7. Subsections (5) amends section 223 of ITTOIA 2005. The effect of the amendments is to remove the marginal relief that was provided by that section, so that from 2016 to 2017 full two-year averaging relief will be available where the profits of one year are 75% or less of the profits of the other year.
8. Subsection (6) makes consequential changes to section 224 of ITTOIA.
9. Subsection (7) makes consequential changes to section 225 of ITTOIA.
10. Subsection (8) makes consequential changes to paragraph 3 of Schedule 1B of the Taxes Management Act (TMA) 1970.
11. Subsection (9) makes consequential changes to paragraph 4 of Schedule 1B of TMA 1970.

12. Subsection (10) provides for commencement. New section 222A of ITTOIA has effect from tax year 2016 to 2017 meaning that a five-year averaging claim with 2016 to 2017 as the final year would involve averaging the profits of the years 2012 to 2013 to 2016 to 2017. The amendments to the two-year averaging rules also have effect where the latest year is 2016 to 2017 or a subsequent year.

Background note

13. At Budget 2015, the government announced that it would extend the period for which self-employed farmers can average their profits for income tax purposes from two years to five years.
14. Following consultation, the government decided to retain the existing framework providing for averaging of fluctuating profits over two years and to provide an additional option of averaging over five years, for an individual carrying on a qualifying trade of farming. The changes take effect for the tax year 2016 to 17 and subsequent years.
15. If you have any questions about this change, or comments on the legislation, please contact Mark Bingham on 03000 511496 (email: fa.consultation@hmrc.gsi.gov.uk).

20 Fixed-rate deductions for use of home for business purposes

- (1) In Part 2 of ITTOIA 2005 (trading income), Chapter 5A (trade profits: deductions allowable at a fixed rate) is amended as follows.
- (2) Section 94H (use of home for business purposes) is amended as follows.
- (3) In subsection (1), for the words from “in respect of” to the end substitute “in respect of—
 - (a) the use of the person’s home for the purposes of the trade, or
 - (b) where the person is a firm, the use of a partner’s home for those purposes.”
- (4) In subsection (4), for the words from “work done” to the end substitute “qualifying work”.
- (5) After subsection (4) insert—

“(4A) “Qualifying work” means—
 - (a) work done by the person, or any employee of the person, in the person’s home wholly and exclusively for the purposes of the trade, or
 - (b) where the person is a firm, work done by a partner, or any employee of the firm, in the partner’s home wholly and exclusively for those purposes.

(4B) Where more than one person does qualifying work in the same home at the same time, any hour spent wholly and exclusively on that work is to be taken into account only once for the purposes of subsection (4).”
- (6) In subsection (5), after “person” insert “, or, where the person is a firm, a partner of the firm,”.
- (7) After subsection (5) insert—

“(5A) Where a firm makes a deduction for a period under this section in respect of the use of a partner’s home for the purposes of a trade, the only deduction which the firm may make for the period in respect of the use of any other partner’s home for those purposes is a deduction under this section.”
- (8) Section 94I (premises used both as a home and as business premises) is amended as follows.
- (9) In subsection (1)(b), for “used by the person as a home,” substitute “used as a home by—
 - (i) the person carrying on the trade, or
 - (ii) where that person is a firm, a partner of the firm,”.
- (10) After subsection (6) insert—

“(6A) Where a person makes a deduction for a period under this section in respect of expenses incurred in relation to premises falling within subsection (1)(b), the only deduction which the person may make for the period in respect of expenses incurred in relation to any other premises falling within subsection (1)(b) is a deduction under this section.”

-
- (11) The amendments made by this section have effect for the tax year 2016-17 and subsequent tax years.

Explanatory Note

Clause 20: Fixed-rate deductions for use of home for business purposes

Summary

1. This measure introduces amendments to the simplified expenses provisions contained in the Income Tax (Trading and Other Income) Act (ITTOIA) 2005. The purpose of the amendments is to clarify how those provisions should be applied for partnerships in respect of the use of home and where business premises are also a home.

Details of the clause

2. Clause 20 introduces amendments to Chapter 5A, Part 2 of the Income Tax (Trading and Other Income) Act 2005 - sections 94H and 94I.
3. Subsections (3) and (6) of Clause 20 amend subsections (1) and (5) of section 94H ITTOIA 2005 to ensure that, when considering a home used for the purposes of a trade, then the provision applies to a partner's home in the same way as it does to an individual's home.
4. Subsection (4) amends subsection (4) and Subsection (5) introduces new subsections (4A) and (4B) to section 94H to define qualifying work. The new subsections also ensure that where work is undertaken by more than one individual in the home, then any hour spent wholly and exclusively for the purposes of the trade is counted only once.
5. Subsection (7) of the clause introduces a new subsection (5A) to section 94H to ensure that, when a firm makes a claim to use a simplified expense deduction for a partner's home, it must consistently use the same rules for deductions for other partners' homes.
6. Subsections (8) and (9) amend section 94I(1)(b) to ensure that where premises are used, both as a home and as business premises, the provisions apply equally to situations where it is a partner that occupies the premises as a home.
7. Subsection (10) introduces a new subsection (6A) to section 94I. This is to ensure that where an individual or partnership has more than one premises, that are used both for business and as a home, then any claim to use the simplified expense deduction in respect of the expenses of these premises must be applied to all such premises.
8. Subsection (11) confirms that the amendments introduced by this clause will apply for the tax year 2016 to 2017 and subsequent years.

Background note

9. The government is committed to making tax easier, quicker and simpler for small business. Simplified expenses was one of the measures introduced in 2013 as a consequence of a report by the Office of Tax Simplification and a formal consultation. It was always intended that the provisions would apply equally to most partnerships and individuals and the purpose of these amendments is to clarify two of the provisions and thus ensure they are in line with the policy objectives.
10. These amendments have been introduced to ensure that partnerships can fully access the simplified expenses regime that was introduced by Finance Act 2013. They will also ensure that where an individual or partnership has more than one premises that are used both for business and as a home then any claim to use the simplified expense deduction in respect of the expenses of these premises must be applied to all such premises. These changes will come into effect for the 2016 to 2017 and following years.
11. If you have any questions about this change, or comments on the legislation, please contact Steven Phillips on 03000 575485 (email: steven.phillips@hmrc.gsi.gov.uk).

21 Individual investment plans of deceased investors

- (1) In Chapter 3 of Part 6 of ITTOIA 2005 (power to exempt income from individual investment plans from income tax), after section 694 insert –

“694A Deceased investors

- (1) In section 694(1) “income of an individual from investments under a plan” includes –
- (a) income (of any person) from administration-period investments under a plan, and
 - (b) income (of any person) from the estate of a deceased person (“D”) where the whole or any part of the income of D’s personal representatives is income from administration-period investments under a plan.
- (2) For the purposes of sections 694(3)(a) and (4) and 695(1) “individual”, in relation to investments that are administration-period investments, includes –
- (a) the personal representatives of the deceased individual concerned, and
 - (b) any other person on whose directions plan managers agree to act in relation to the investments.
- (3) In sections 699 and 701 “investor” includes a person entitled to an exemption given by investment plan regulations by virtue of subsection (1) of this section.
- (4) Investments are “administration-period investments” if –
- (a) an individual dies, and
 - (b) immediately before the individual’s death –
 - (i) the investments were held under a plan,
 - (ii) the individual was entitled to the income from the investments, and
 - (iii) as a result of investment plan regulations, the individual’s income from investments under the plan was exempt from income tax (either wholly or to an extent specified in the regulations).
- (5) Investments are also “administration-period investments” if (directly or indirectly) they represent investments that are administration-period investments as a result of subsection (4).
- (6) Investment plan regulations may provide that investments are administration-period investments as a result of subsection (4) or (5) only at times specified in, or ascertained in accordance with, the regulations.
- (7) Provision under subsection (6) may (in particular) be framed by reference to the completion of the administration of a deceased individual’s estate.
- (8) In the application of subsection (7) in relation to Scotland, the reference to the completion of the administration is to be read in accordance with section 653(2).”

-
- (2) In section 151(2) of TCGA 1992 (Chapter 3 of Part 6 of ITTOIA 2005 applies with modifications in relation to regulations giving relief from capital gains tax in respect of investments under plans) –
- (a) in the words before paragraph (a), for “section 694(1) to (2)” substitute “sections 694(1) to (2) and 694A(1)”, and
 - (b) after paragraph (a) insert –
 - “(aa) section 694A(2) applies also for the purposes of subsection (1) of this section,
 - (ab) the reference in section 694A(3) to section 694A(1) is to be read as a reference to paragraph (aa) of this subsection,
 - (ac) the reference in section 694A(4)(b)(iii) to the individual’s income from investments under the plan being exempt from income tax is to be read as a reference to the individual being entitled to relief from capital gains tax in respect of the investments,”.
- (3) In section 62 of TCGA 1992 (death: general provisions), after subsection (4) (acquisition of asset as legatee) insert –
- “(4A) The Treasury may by regulations make provision having effect in place of subsection (4)(b) above in a case where there has been a time when the personal representatives –
- (a) held the asset acquired by the legatee, and
 - (b) would, if they had disposed of the asset at that time –
 - (i) by way of a bargain at arm’s length, and
 - (ii) otherwise than to a legatee,have been entitled as a result of regulations under section 151 (investments under plans) to relief from capital gains tax in respect of any chargeable gain accruing on the disposal.
- (4B) Provision made by regulations under subsection (4A) above may (in particular) treat a person who acquires an asset as legatee as doing so at a time or for a consideration, or at a time and for a consideration, ascertained as specified by the regulations.”
- (4) In consequence of subsection (2)(a), in FA 2011 omit section 40(6)(a).

Explanatory Note

Clause 21: Individual investment plans of deceased investors

Summary

1. This clause will allow regulations made by HM Treasury to provide that Individual Savings Accounts (ISA) can retain their tax-advantaged status following the death of the account holder.

Details of the clause

2. Subsection (1) adds new section 694A, concerning deceased investors, to Chapter 3 of Part 6 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). This Chapter enables HM Treasury to make regulations for the establishment and operation of individual investment plans, such as ISAs, and for the exemption from income tax of income arising from such plans.

Section 694A Deceased Investors

3. New section 694A(1) enables regulations to exempt from income tax the income of any person from 'administration-period investments' under a plan. It also allows regulations to exempt income from an estate that contains such investments. These provisions will allow regulations to exempt ISA income received by, for example, the personal representative of a deceased account holder or the beneficiary to whom that ISA income is distributed.
4. New sections 694A(2) and (3) modify the meanings of 'individual' and 'investor' for certain provisions within Chapter 3 of Part 6 of ITTOIA, when these apply to administration-period investments.
5. New sections 694A(4) and (5) define 'administration-period investments'.
6. New sections 694A(6) to (8) will allow regulations to set out when investments are administration-period investments, and allow these regulations to be framed with reference to the completion of the administration of an estate.
7. Subsection (2) of the clause amends section 151(2) of the Taxation of Chargeable Gains Act 1992 (TCGA), to allow regulations to be made which provide relief from capital gains tax in connection with individual investment plans (referred to in TCGA as 'personal equity plans'). The regulations correspond to those concerning income tax provided for by new section 694A of ITTOIA.
8. Subsection (3) amends section 62 of TCGA to allow regulations to be made which apply in place of section 62(4)(b) when an asset is acquired by a legatee in certain circumstances. Such regulations may, for example, make provision concerning the time that a legatee is treated as

having acquired a former ISA asset, or the consideration the legatee is treated as having given for the asset, or both.

9. Subsection (4) makes consequential amendment to the Finance Act 2011.

Background note

10. ISA tax advantages currently cease when an account holder dies. Autumn Statement 2015 included an announcement that these tax advantages would be extended into the administration of the ISA saver's estate. The effect of regulations made under this clause will be that, subject to certain time limits, personal representatives and beneficiaries or legatees should not face tax on any income or gains from investments retained in an ISA during the administration of a deceased saver's estate.
11. Since 6 April 2015, the surviving spouses or civil partners of ISA savers have benefited from an additional ISA allowance, equal to the value held in ISA when the deceased saver died. These changes will complement this additional allowance for surviving spouses and civil partners.
12. The government intend to use the powers within this clause to amend the Individual Savings Account Regulations 1998 (S.I. 1998/1870) during 2016 to 2017, following consultation.
13. If you have any questions about this change, or comments on the legislation, please contact Helen Williams on 03000 585204, email: savings.audit@hmrc.gsi.gov.uk

22 Carried interest

- (1) In Chapter 5E of Part 13 of ITA 2007 (tax avoidance: disguised investment management fees), in section 809EZB(1) (meaning of “management fee”), for paragraph (c) substitute –
 - “(c) carried interest which is not income-based carried interest (see sections 809EYC and 809EYD for carried interest, and Chapter 5F for income-based carried interest).”
- (2) After Chapter 5E of Part 13 of ITA 2007 insert –

“CHAPTER 5F

INCOME-BASED CARRIED INTEREST

Income-based carried interest

809FZA Overview

- (1) This Chapter determines when carried interest arising to an individual from an investment scheme is “income-based carried interest” for the purposes of Chapter 5E (and, in particular, section 809EZB(1)(c)).
- (2) Section 809FZB contains the general rule, under which the extent to which carried interest is income-based carried interest depends on the average holding period of the investment scheme.
- (3) Sections 809FZC to 809FZJ contain further provision relating to average holding periods.
- (4) Sections 809FZK and 809FZL contain an exception to the general rule for carried interest which is conditionally exempt from income tax.
- (5) Sections 809FZM and 809FZN contain a particular rule for direct lending funds.
- (6) Sections 809FZO to 809ZS contain supplementary and interpretative provision.
- (7) This Chapter does not apply in relation to carried interest arising to an individual in respect of employment-related securities as defined by section 421B(8) of ITEPA 2003.
- (8) Nothing in this Chapter affects the liability to any tax of –
 - (a) the investment scheme, or
 - (b) external investors in the investment scheme.

809FZB Income-based carried interest: general rule

- (1) “Income-based carried interest” is the relevant proportion of a sum of carried interest arising to an individual from an investment scheme.
- (2) The relevant proportion is determined by reference to the investment scheme’s average holding period as follows.

<i>Average holding period</i>	<i>Relevant proportion</i>
Less than 36 months	100%
At least 36 months but less than 39 months	75%
At least 39 months but less than 45 months	50%
At least 45 months but less than 48 months	25%
48 months or more	0%

- (3) This section is subject to the following provisions of this Chapter.

Average holding period

809FZC Average holding period

- (1) The average holding period of an investment scheme is the average length of time for which relevant investments have been held for the purposes of the scheme
- (2) In this section, “relevant investments” means investments –
 - (a) which are made for the purposes of the scheme, and
 - (b) by reference to which the carried interest is calculated.
- (3) In relation to any sum of carried interest, the average holding period is calculated by reference to the time the carried interest arises.
- (4) It is calculated as follows.

Step 1

For each relevant investment, multiply the value invested at the time the investment was made by the length of time for which the investment has been held.

Step 2

Add together the amounts produced under *step 1* in respect of all relevant investments.

Step 3

Divide the amount produced under *step 2* by the total value invested in all relevant investments.
- (5) Disregard intermediate holdings or intermediate holding structures by or through which investments are made or held –
 - (a) when identifying, for the purpose of determining the average holding period of an investment scheme, what relevant investments are held for the purposes of an investment scheme, and
 - (b) for any other purpose relating to the determination of that period.
- (6) In this section, references to the length of time for which a relevant investment has been held are –

-
- (a) in the case of an investment which has been disposed of before the carried interest arises, references to the time for which it was held before being disposed of, and
 - (b) in any other case, references to the time for which it has been held up to the time the carried interest arises.
 - (7) For the purposes of this Chapter carried interest which is deferred carried interest in relation to a person within the meaning of section 103KG of TCGA 1992 is to be treated as arising to that person at the time it would have arisen had it not been deferred as specified in section 103KG(3)(a) or (b) of that Act.
 - (8) Sections 809FZD to 809FZJ apply for the purposes of determining the average holding period of an investment scheme.

809FZD Disposals

- (1) An investment or part of an investment is disposed of where—
 - (a) there is a disposal of the investment or the part of the investment for the purposes of the investment scheme which is a disposal for the purposes of TCGA 1992, or
 - (b) in any other case, there is a deemed disposal under subsection (2).
- (2) There is a deemed disposal of an investment or part of an investment under this subsection where—
 - (a) under any arrangements—
 - (i) the scheme in substance closes its position on the investment or the part of the investment, or
 - (ii) the scheme ceases to be exposed to risks and rewards in the respect of the investment or the part of the investment, and
 - (b) it is reasonable to suppose that the arrangements were designed to secure that result.
- (3) In the case of a disposal of part of a holding of securities in a company which are of the same class, suppose for the purposes of determining which investments have been disposed of that the disposal affects the securities in the order in which they were acquired (that is, on a first in first out basis).
- (4) For the purposes of subsection (1)(a), disregard section 116 of TCGA 1992 (which disapplies sections 127 to 130 of that Act in relation to qualifying corporate bonds).

809FZE Part disposals

- (1) Where there is a disposal of a part of an investment, the part disposed of and the part not disposed of are to be treated as two separate investments which were made at the same time.
- (2) The value of each of those two separate investments is the appropriate proportion of the value first invested in the whole investment.
- (3) The appropriate proportion is the proportion of the value of the part in question to the value of the whole investment at the time of the disposal.

-
- (4) The disposal of part of an asset includes the disposal of an interest in or right over the asset (and “part disposed of” is to be construed accordingly).

809FZF Derivatives

- (1) A derivative contract entered into for the purposes of an investment scheme is an investment, subject to the following provisions of this section.
- (2) The value invested in the derivative contract is –
- (a) where the contract is an option, the cost of acquiring the option (whether from the grantor or another person),
 - (b) where the contract is a future, the price specified in the contract for the underlying subject matter, or
 - (c) where the contract is a contract for differences, the notional principal of the contract.
- (3) But where entering into a derivative contract constitutes a deemed disposal of an investment or part of an investment by virtue of section 809FZD(2)(a)(ii) –
- (a) the derivative contract is not an investment for the purposes of this Chapter, and
 - (b) the subsequent disposal of the derivative contract without a corresponding disposal of the investment or part investment is to be regarded as the making of a new investment to the extent that the scheme becomes materially exposed to risks and rewards in respect of the investment or part investment.
- (4) For the purposes of this Chapter, references to disposal, in the case of a derivative contract, include any of the following events (to the extent that the event is not otherwise a disposal under section 809FZD(1) or (2)) –
- (a) the expiry of the contract,
 - (b) the termination of the contract (whether or not in accordance with its terms),
 - (c) the disposal, substantial variation, loss or cancellation of the investment scheme’s rights under the contract, and
 - (d) in the case of a derivative contract which is an option, the exercise of the option,
- but do not include the renewal of the contract with the same counterparty on substantially the same terms.
- (5) The substantial variation of an investment scheme’s rights under a derivative contract constitutes (in addition to the disposal of the contract as originally entered into (see subsection (4)(c)) a new investment consisting of the contract as varied.

809FZG Hedging: exchange gains and losses

- (1) This section applies where –
- (a) an investment scheme has a hedging relationship between –
 - (i) a derivative contract or a liability representing a loan relationship on the one hand (“the hedging instrument”), and

-
- (ii) an investment made for the purposes of the scheme (“the hedged investment”), and
 - (b) the hedging relationship relates to exchange gains or losses.
 - (2) An investment scheme has a hedging relationship between a hedging instrument and a hedged investment if or to the extent that—
 - (a) the hedged instrument and the hedged investment are designated by the scheme as a hedge, or
 - (b) in any other case, the hedging instrument is intended to act as a hedge of—
 - (i) the exposure to changes in fair value of the investment or an identified portion of the investment that is attributable to exchange gains or losses and that could affect profit or loss of the investment scheme, or
 - (ii) the exposure to variability in cash flows that is attributable to exchange gains or losses and that could affect profit or loss of the investment scheme.
 - (3) Entering into the hedging relationship is not a deemed disposal of the hedged investment under section 809FZD(2).
 - (4) The hedging instrument is not an investment for the purposes of the investment scheme to the extent that the conditions in subsection (2)(a) and (b) are met.
 - (5) But the termination of the hedging relationship is the making of an investment constituting the hedging instrument if or to the extent that the hedging instrument continues to subsist.

809FZH Hedging: interest rates

- (1) This section applies where an investment scheme has a hedging relationship between—
 - (a) an interest rate contract, and
 - (b) a qualifying investment held for the purposes of the fund.
- (2) An investment scheme has a hedging relationship between an interest rate contract and a qualifying investment if or to the extent that—
 - (a) the interest rate contract and the investment are designated by the scheme as a hedge, or
 - (b) in any other case, the interest rate contract is intended to act as a hedge of—
 - (i) the exposure to changes in fair value of the investment or an identified portion of the investment that is attributable to interest rates and that could affect profit or loss of the investment scheme, or
 - (ii) the exposure to variability in cash flows that is attributable to interest rates and that could affect profit or loss of the investment scheme.
- (3) Entering into the hedging relationship is not a deemed disposal of the relevant investment under section 809FZD(2).
- (4) The interest rate contract is not an investment for the purposes of the investment scheme to the extent that the conditions in subsection (2)(a) and (b) are met.

-
- (5) But the termination of the hedging relationship is the making of an investment constituting the interest rate contract if or to the extent that the interest rate contract continues to subsist.
 - (6) In this section “qualifying investment” means –
 - (a) money placed at interest,
 - (b) securities (excluding shares issued by companies), and
 - (c) alternative finance arrangements.

809FZI Significant interest in a company: further investment

- (1) Where an investment scheme has a relevant interest in a trading company or the holding company of a trading group, any further investment for the purposes of the scheme in that company is to be regarded as having been made at the time the relevant interest was acquired.
- (2) In this section “relevant interest” means –
 - (a) in the case of a controlling equity stake fund, a 25% interest, and
 - (b) in any other case, a controlling interest.
- (3) In this Chapter, “controlling equity stake fund” means an investment scheme in relation to which the condition in subsection (4) is met.
- (4) The condition is that it is reasonable to suppose that, when investments cease to be held for the purposes of the scheme, more than 50% of the total value invested for the purposes of the scheme will have been invested in investments which –
 - (a) are controlling interests in trading companies or trading groups, and
 - (b) have been held for more than four years.

809FZJ Significant interest in a company: disposals of investments

- (1) Where an investment scheme has a relevant interest in a trading company or the holding company of a trading group, any disposal for the purposes of the scheme of an investment in the company is to be regarded as not being made until the a relevant disposal is made.
- (2) In this section “relevant interest” means –
 - (a) in the case of a controlling equity stake fund, a 25% interest, and
 - (b) in any other case, a 40% interest.
- (3) In this section “relevant disposal”, in relation to a company, means a disposal which (apart from subsection (1)) has the effect that the scheme ceases to have a relevant interest in the company.

Conditionally exempt carried interest

809FZK Conditionally exempt carried interest

- (1) Carried interest which –
 - (a) arises to an individual from an investment scheme, and
 - (b) is conditionally exempt from income tax,is to be treated as if it were not income-based carried interest to any extent.

-
- (2) Carried interest is conditionally exempt from income tax if Conditions A to D are met.
 - (3) Condition A is that the carried interest arises to the individual in the period of four years beginning with the day on which investments first start to be made for the purposes of the scheme.
 - (4) Condition B is that the carried interest would, apart from this section, be income-based carried interest to any extent.
 - (5) Condition C is that it is reasonable to suppose that, were the carried interest to arise to the individual at the relevant time (but by reference to the same relevant investments), it would not be income-based carried interest to any extent.
 - (6) The “relevant time” referred to in subsection (5) is whichever is the earliest of—
 - (a) the time when it is reasonable to suppose that the investment scheme will be wound up;
 - (b) the end of the period of four years beginning with the time when it is reasonable to suppose that investments will cease to be made for the purposes of the scheme;
 - (c) the end of the period of four years beginning with the day on which the sum of carried interest arose to the individual;
 - (d) the end of the period of four years beginning with the end of the period by reference to which the amount of the carried interest was determined.
 - (7) Subsection (5) does not affect what would otherwise be the time at which an investment is disposed of for the purposes of this Chapter.
 - (8) Condition D is that the individual makes a claim under this section for the carried interest to be conditionally exempt from income tax.

809FZL Carried interest which ceases to be conditionally exempt

- (1) Carried interest which is conditionally exempt from income tax ceases to be conditionally exempt from income tax at whichever is the earliest of—
 - (a) the time when the investment scheme is wound up;
 - (b) the end of the period of four years beginning with the time investments cease to be made for the purposes of the scheme;
 - (c) the end of the period of four years beginning with the day on which the sum of carried interest arises to the individual;
 - (d) the end of the period of four years beginning with the end of the period by reference to which the amount of the carried interest is determined;
 - (e) the time at which Condition C in section 809FZK(5) ceases to be met.
- (2) Carried interest which ceases to be conditionally exempt from income tax is to be treated as having been income-based carried interest at the time it arose to the individual if or to the extent that, had it arisen to the individual at the time it ceased to be conditionally exempt (but in relation to the same relevant investments) it would have been income-based carried interest.

-
- (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (2).
 - (4) Any amount paid by way of capital gains tax in respect of carried interest which is conditionally exempt from income tax is to be treated as if it had been paid in respect of any income tax liability arising under subsection (2).

Direct lending funds

809FZM Direct lending funds

- (1) Carried interest arising from an investment scheme which is a direct lending fund is income-based carried interest in its entirety.
- (2) For the purposes of this Chapter, a direct lending fund is an investment scheme in relation to which it is reasonable to suppose that, when investments cease to be made for the purposes of the scheme, a majority of the investments made for the purposes of the scheme (calculated by reference to value invested) will have been direct loans made by the scheme.
- (3) For the purposes of this Chapter, an investment scheme makes a direct loan if for the purposes of the scheme money is advanced at interest to a company where—
 - (a) the company is not connected with the investment scheme,
 - (b) the money is advanced under a genuine commercial loan agreement negotiated at arm's length,
 - (c) repayments are fixed and determinable,
 - (d) maturity is fixed, and
 - (e) the scheme has the positive intention and ability to hold the loan to maturity.
- (4) For the purposes of this Chapter the acquisition of a direct loan is to be regarded as a direct loan if it is made within the period of 120 days beginning with the day on which the money is first advanced.

809FZN Direct lending funds: exception

- (1) Section 809FZM does not apply to carried interest arising from a direct lending fund if—
 - (a) it is reasonable to suppose that, when the investments cease to be made for the purposes of the fund, the relevant term of at least 75% of the direct loans made by the fund (calculated by reference to value advanced) will have been at least four years,
 - (b) the fund is a limited partnership, and
 - (c) the carried interest is a sum falling within section 809EZF(2) or (3).
- (2) Section 809FZB applies to carried interest to which, by virtue of subsection (1), section 809FZM does not apply.
- (3) In this section “relevant term” means the period which—
 - (a) begins with the time when the money is advanced, and
 - (b) ends with the time by which, under the terms of the loan, at least 75% of the principal due under the loan must be repaid.

-
- (4) For the purposes of this Chapter, where –
- (a) a direct loan made by an investment scheme has a relevant term of at least four years,
 - (b) the loan is repaid by the borrower to any extent before the end of four years from the time the loan is made,
 - (c) the borrower is not connected with the investment scheme, and
 - (d) it is reasonable to suppose that the borrower’s decision to repay was not affected by considerations relating to the application of section 809FZM,
- the loan is to be treated as held for four years.

Supplementary

809FZO Anti-avoidance

- (1) For the purposes in subsection (2), no regard is to be had to any arrangements the main purpose of which, or one of the main purposes of which, is to reduce the proportion of carried interest which is income-based carried interest.
- (2) Those purposes are –
- (a) determining the average holding period, or
 - (b) determining whether an investment scheme is a controlling equity stake fund.
- (3) In determining to what extent carried interest is income-based carried interest, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that section 809EZA(1) does not apply in relation to some or all of the carried interest.

809FZP Treasury regulations

- (1) The Treasury may by regulations make provision relating to the calculation of the average holding period in some or all cases.
- (2) That provision includes in particular –
- (a) provision for a method of calculating that period which is different from that in section 809FZC;
 - (b) provision as to what is and is not to be regarded as an investment;
 - (c) provision as to when an investment is to be regarded as made or disposed of;
 - (d) anti-avoidance provision.
- (3) Regulations under this section may –
- (a) amend this Chapter;
 - (b) make different provision for different purposes;
 - (c) contain incidental, supplemental, consequential and transitional provision and savings.

809FZQ “Reasonable to suppose”

- (1) For the purposes of this Chapter, in determining what it is reasonable to suppose in relation to an investment scheme, regard is to be had to all the circumstances.

-
- (2) Those circumstances include in particular any prospectus or other document which –
- (a) is made available to external investors in the investment scheme, and
 - (b) on which external investors may reasonably be supposed to have relied or been able to rely.

Interpretation

809FZR Controlling, 40% and 25% interests

- (1) For the purposes of this Chapter, an investment scheme has a “controlling interest” in a company if share capital of the company is held for the purposes of the scheme which –
- (a) amounts to at least 50% of the ordinary share capital of the company, and
 - (b) carries an entitlement to at least 50% of –
 - (i) voting rights in the company,
 - (ii) profits available for distribution to shareholders, and
 - (iii) assets of the company available for distribution to shareholders in a winding-up.
- (2) For the purposes of this Chapter, an investment scheme has a “40% interest” or “25% interest” in a company if share capital of the company is held for the purposes of the scheme which –
- (a) amounts to at least 40% or 25% respectively of the ordinary share capital of the company, and
 - (b) carries an entitlement to at least 40% or 25% respectively of –
 - (i) voting rights in the company,
 - (ii) profits available for distribution to shareholders, and
 - (iii) assets of the company available for distribution to shareholders in a winding-up.
- (3) For the purposes of this section any share capital held by a company controlled by an investment scheme is to be regarded as held for the purposes of the investment scheme.

809FZS General interpretation of Chapter 5F

- (1) In this Chapter –
- “25% interest” and “40% interest” have the meanings given in section 809FZR;
 - “alternative finance arrangements” has the same meaning as in Part 6 of CTA 2009 (see section 501(2) of that Act);
 - “arrangements” has the same meaning as in Chapter 5E (see section 809EZE);
 - “carried interest” has the same meaning as it in section 809EZB (see sections 809EZC and 809EZD);
 - “contract for differences” has the same meaning as in Part 7 of CTA 2009;
 - “controlling equity stake fund” has the meaning given in section 809FZI;
 - “controlling interest” has the meaning given in section 809FZR;

“derivative contract” has the same meaning as in Part 7 of CTA 2009 (but see below);

“designated” has the same meaning as for accounting purposes;

“direct lending fund” and “direct loan” have the meanings given in section 809FZM;

“exchange gain or loss” has the same meaning as in section 475 of CTA 2009;

“external investor” has the same meaning as in Chapter 5E (see section 809EZE);

“future” has the same meaning as in Part 7 of CTA 2009;

“interest rate contract” means –

- (a) a derivative contract whose underlying subject-matter is, or includes, interest rates, or
- (b) a swap contract in which payments fall to be made by reference to a rate of interest;

“investment” does not include –

- (a) cash awaiting investment, or
- (b) cash representing the proceeds of the disposal of an investment, where the cash is to be distributed as soon as reasonably practicable to investors in the scheme;

“investment scheme” has the same meaning as in Chapter 5E (see section 809EZA(6));

“limited partnership” means –

- (a) a limited partnership registered under the Limited Partnerships Act 1907,
- (b) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships (Northern Ireland) Act 2002, or
- (c) a firm or entity of a similar character to any of those mentioned in paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom;

“loan relationship” has the same meaning as in section 302 of CTA 2009 (but see below);

“option” has the same meaning as in Part 7 of CTA 2009, disregarding section 580(2) of that Act;

“sum” has the same meaning as in Chapter 5D (see section 809EZB(3));

“trading company” and “trading group” have the meanings given by paragraphs 20 and 21 of Schedule 7AC to TCGA 1992;

“underlying subject matter” has the same meaning as in Part 7 of CTA 2009.

- (2) For the purposes of the definition of “derivative contract”, read Part 7 of CTA 2009 as if –
 - (a) references to a company were references to an investment scheme, and
 - (b) references to a contract of a company were references to a contract for the purposes of an investment scheme.
- (3) For the purposes of the definition of “loan relationship”, read Part 5 of CTA 2009 as if –

-
- (a) references to a company were references to an investment scheme, and
 - (b) references to a loan relationship of a company were references to a loan relationship for the purposes of an investment scheme.”
 - (3) In section 809EZA of ITA 2007 (disguised investment management fees: charge to income tax), in subsection (3) –
 - (a) in paragraph (a), for “performs” substitute “at any time performs or is to perform”;
 - (b) omit paragraph (b);
 - (c) in paragraph (c), for “the scheme” substitute “an investment scheme”.
 - (4) In section 2 of ITA 2007 (overview), in subsection (1), after paragraph (hb) insert –
 - “(hc) income-based carried interest (Chapter 5F),”.
 - (5) The amendments made by this section have effect in relation to sums of carried interest arising on or after on or after 6 April 2016 (whenever the arrangements under which the sums arise were made).

Explanatory Note

Clause 22: Carried Interest

Summary

1. This measure introduces a new test to determine whether performance-based rewards (or 'carried interest') paid to asset managers should be taxed as income or as chargeable gains. The new legislative test replaces the case law tests based around the 'badges of trade'.

Details of the clause

2. Clause 22 amends Chapter 5E of Part 13 of the Income Tax Act 2007 (ITA), which contains the Disguised Investment Management Fee Rules ("DMF Rules").
3. Subsection (1) amends section 809EZB(1) of ITA, so that the exclusion from the DMF Rules for carried interest does not apply where the carried interest is "income-based carried interest", as defined in new Chapter 5F of Part 13. This has the effect of ensuring that carried interest which does not arise from long-term investment activity will be charged to income tax under the DMF Rules (where it is not already charged to tax as trading or employment Income of the relevant individual).
4. Subsection (2) inserts new Chapter 5F into Part 13 of ITA. Chapter 5F consists of new sections 809FZA to 809FZS inclusive.
5. New section 809FZA provides an overview of the provisions in Chapter 5F.
6. Section 809FZA(7) provides that these rules do not apply to carried interest which arises in respect of an employment-related security within Part 7 of the Income Tax (Earnings and Pensions) Act 2003.
7. Section 809FZA(8) puts beyond doubt that these rules do not affect the taxation of either the investment scheme itself or external investors in the scheme.
8. New section 809FZB introduces the concept of the 'relevant proportion' of a sum of carried interest being classified as "income-based carried interest". The 'relevant proportion' is determined by the average time for which the fund giving rise to the carried interest holds its investments. It is then applied to the carried interest to determine what proportion is taxable as income.
9. New section 809FZC explains how to calculate the average holding period for the purposes of the Chapter. Only those investments by reference to which the carried interest arises are included when determining the average holding period (see subsection (2)(b)). Where carried interest is calculated by reference to the "fund as a whole", this will include all investments made by the fund. Where carried interest is calculated by reference to the performance of a

portfolio over a given period, the relevant investments will be those disposed of during that period and those which remain held at the close of the period.

10. Section 809FZC(3) explains that the calculation is made when the carried interest arises.
11. Section 809FZC(4) sets out the detail of the calculation of the average holding period. A weighted arithmetic mean is calculated, taking the sum total of all relevant investments multiplied by the length of time held, and dividing that total by the total value invested. The value of the investment is determined as at the time it was made, and not at the time the carried interest is calculated.
12. For example. A fund holds three investments of £10,000, £8,000 and £6,000 and it holds them for 3, 4 and 5 years respectively. The calculation is $(10,000 \times 3) + (8,000 \times 4) + (6,000 \times 5)$, equals 92,000 which is then divided by £24,000 to give an average of 46 months.
13. Section 809FZC(5) directs that any intermediate holding structures are to be disregarded for the purposes of determining the average holding period.
14. Section 809FZC(6) explains how to determine the length of time for which an investment is held. If the investment is disposed of before the carried interest arises, the investment is treated as held for the time period it was owned by the fund. Otherwise the time period is taken as the time from which the investment is acquired to the time the carried interest arises.
15. Section 809FZC(7) makes clear that, in calculating the average holding period, any deferral of the carried interest is to be disregarded.
16. New Section 809FZD determines when an investment is disposed of. The starting point is that there will be a disposal of an investment if there is a disposal for the purposes of the Taxation of Chargeable Gains Act 1992 (TCGA) (see subsection (1)), or a deemed disposal (see subsection (2)).
17. Section 809FZD(2) explains what is meant by a deemed disposal. In essence, it involves a fund entering into arrangements to either (i) in substance, close its position in relation to an investment or (ii) no longer have any genuine economic exposure to the investment. There will only be a deemed disposal where it is reasonable to suppose that the arrangements in question were put in place to achieve that result. There will not be a deemed disposal, therefore, where a fund accidentally closes out a position by taking a reciprocal position. Regard must be had to all the circumstances in determining what it is reasonable to suppose (see section 809FZQ).
18. Section 809FZD(3) directs that, when a fund holds investments which comprise shares or securities in a company of the same class, a 'first in first out' basis is to be used in deciding which investments have been disposed of.
19. Section 809FZD(4) directs that section 116 of TCGA is to be disregarded for the purposes of this section. This means that sections 127 to 130 of TCGA will be able to apply to transactions involving qualifying corporate bonds.
20. New section 809FZE sets out the rules governing part disposals. The part disposed of and the part retained are treated as two separate assets (subsection (1)). The value of each part is calculated in accordance with subsections (2) and (3).
21. New section 809FZF sets out the treatment of derivative contracts. The value invested for the

- purposes of the weighted average holding period is determined by subsection (2) depending on the type of derivative contract in question. A substantial alteration to the terms of a derivative is treated as a disposal and new acquisition at the time of the alteration (subsection (5)).
22. New Section 809FZG sets out the treatment of instruments that hedge exchange gains and losses, defined in subsection (2). Such instruments are not treated as investments for the purpose of this legislation (subsection (4)), and entering into such an instrument is not treated as a deemed disposal of the hedged asset(s) for these purposes (subsection (3)).
 23. New Section 809FZH sets out the treatment of instruments that hedge interest rates, defined in subsection (2). Such instruments are not treated as investments for the purpose of this legislation (subsection (4)), and entering into such an instrument is not treated as a deemed disposal of the hedged asset(s) for these purposes (subsection (3)).
 24. New Section 809FZI applies where an investment scheme holds a relevant interest in a company and makes a further investment in that company. Where the conditions apply, any further investment by the scheme in the company is treated as made at the time that it met the conditions for holding a 'relevant interest' (subsection (1)).
 25. Section 809FZI(2) to (4) sets out the definition of 'relevant interest'. Where the scheme is a 'controlling equity stake fund', then a relevant interest will comprise a 25% interest in the company. Otherwise, it must hold a controlling interest in the company. This means that any fund will be able to aggregate further investments into trading companies or groups where it holds a majority stake, and that where the fund is a 'controlling equity stake fund' this treatment will apply even where the fund owns a minority interest in the company (provided the fund holds at least a 25% stake). A 'controlling equity stake fund' is one where it is reasonable to assume that when the fund ceases to hold investments, more than half of the total value of investments will have been controlling stakes held for more than four years.
 26. New Section 809FZJ sets out when a disposal of a 'relevant interest' is made. Any disposals are treated as not being made until such time as the fund no longer has a relevant interest (subsection(1)), which for this purpose is defined as a 25% interest for a 'controlling equity stake fund' and a 40% interest otherwise (subsection (2)).
 27. New section 809FZK sets out the treatment of 'conditionally exempt carried interest'. Where certain conditions are met, that carried interest is conditionally taxed under the chargeable gains rules and not as income (subsection (1)). This prevents carried interest being charged to income tax under these rules in the early years of a fund's existence (when the calculation required by new section 809FZC will necessarily produce an average holding period of below four years) when the fund expects to hold the relevant investments for a period which would exceed four years.
 28. Section 809FZK(2) to (5) sets out the required conditions. These are that: (i) the carried interest arises no later than four years after the fund first makes an investment, (ii) the carried interest would be taxed as income by applying the new rules at the time the carried interest arises, but (iii) it is reasonable to suppose that, if the carried interest had arisen at a later time in the fund's life, it would be treated by the legislation as derived from assets that meet the test for being treated as long term investments.
 29. Section 809FZK(6) and (7) set out the relevant time at which the carried interest is assumed to

arise for the purposes of the test in subsections (2) to (5). This is the earliest of: (i) the period of four years after the fund is expected to cease to make investments; (ii) the period of four years after the carried interest arose to the individual; and (iii) the end of the period of four years from the end of the period by reference to which the carried interest was determined.

30. New section 809FZL sets out how 'conditionally exempt carried interest' is subsequently to be treated.
31. Section 809FZL(1) provides that conditionally exempt carried interest ceases to be exempt at the earliest of: (a) the time the scheme is wound up; (b) four years after the firm ceases to make investments; (c) four years from the day the carried interest arose to the individual; (d) four years from the end of the period by reference to which the carried interest was calculated and (e) any time at which it is no longer to reasonable to suppose that the carried interest would not be income-based carried interest if it arose at the relevant time (i.e. if it becomes apparent at any time that the carried interest will be chargeable to tax as income under these rules)..
32. Section 809FZL(2) to (4) sets out the consequences. The carried interest is reviewed at that time to determine whether it should be taxed as income or capital. Any necessary tax adjustments are made, and where there is now to be a charge to income tax any capital gains tax paid in respect of the same carried interest is set off against that income tax.
33. New Section 809FZM treats carried interest arising from direct lending funds as chargeable to income tax, unless new section 809FZN applies.
34. New section 809FZN exempts certain direct lending funds from the scope of section 809FZM. . Where those conditions apply, the general rules of Chapter 5F will apply to the carried interest instead of section 809FZM, although certain loans repaid before maturity will be treated as held for four years. .
35. New Section 809FZO puts in place an anti-avoidance rule to prevent manipulation of average holding periods or whether a scheme is a 'controlling equity stake fund'.
36. New section 809FZP provides a regulation making power to vary how the average holding period is calculated.
37. New section 809FZO defines what is meant by 'reasonable to suppose' for the purposes of Chapter 5F.
38. New Section 809FZR defines 'controlling interest', '40% interest', and '25% interest' for the purposes of Chapter 5F.
39. New section 809FZS provides definitions of various terms used in Chapter 5F.
40. Sub-section (3) amends section 809EZA of ITA to (i) make clear that the DMF Rules apply to an individual who has performed or will, in the future, perform investment management services; (ii) to remove the requirement that the arrangements involve a partnership; and (iii) to make clear that the rules apply to sums arising to an investment manager from any investment scheme.
41. Sub-section (5) provides that these provisions will apply to all sums of carried interest arising on or after 6 April 2016.

Background note

42. Managers of investment funds are rewarded in a variety of ways. Management Fees are charged to tax as income, and legislation in FA 2015 ensured that fee income could not be disguised as a form of capital receipt.
43. Managers also receive performance-based rewards, sometimes known as 'carried interest'. This is based on the performance of the funds that they manage and can take the form of a share in the fund's total return. Legislation in Finance (no 2) Act 2015 ensured that where carried interest is taxable as a chargeable gain, the full amount would be taxable without reduction through arrangements such as 'base cost shift'.
44. In the 2015 Summer Budget the government also announced that it would consult on a new legislative test to determine when carried interest should be taxed as income or as chargeable gains. The intention is that this test should replace the current test, which is based on case law and is centred around the so-called 'badges of trade'. The case law underlying the test has mainly considered trades connected with areas such as manufacturing and retail. The test is more difficult to apply to a business such as asset management. The government has therefore decided to put in place a legislative test.
45. If you have any questions about this change, or comments on the legislation, please contact James Coward on 03000 579560 (email: james.coward@hmrc.gsi.gov.uk).

23 Loan relationships: non-market loans

- (1) In Chapter 15 of Part 5 of CTA 2009 (loan relationships: tax avoidance), after section 446 insert –

“Non-market loans

446A Non-market loans

- (1) This section applies as respects any accounting period if –
- (a) a company has a debtor relationship in the period,
 - (b) the amount recognised in the company’s accounts in respect of the debt at the time the company became party to the debtor relationship was less than the transaction price,
 - (c) credits in respect of the whole or part of the discount were not brought into account under this Part, and
 - (d) in a case where the creditor is a company, the non-qualifying territory condition is met.
- (2) The debits which are to be brought into account for the accounting period for the purposes of this Part by the debtor company in respect of the loan relationship are not to include debits relating to the relevant discount amount, to the extent that that amount is referable to the accounting period.
- (3) In this section “relevant discount amount” means –
- (a) in a case where credits in respect of the whole of the discount were not brought into account under this Part, an amount equal to the whole discount, and
 - (b) in a case where credits in respect of part of the discount were not brought into account under this Part, an amount equal to that part of the discount.
- (4) The non-qualifying territory condition referred to in subsection (1)(d) is that the creditor company is –
- (a) resident for tax purposes in a non-qualifying territory at any time in the accounting period, or
 - (b) effectively managed in a non-taxing non-qualifying territory at any such time.
- (5) In this section –
- “discount” means the difference between the two amounts referred to in subsection (1)(b);
 - “non-qualifying territory” has the meaning given in section 173 of TIOPA 2010;
 - “non-taxing non-qualifying territory” means a non-qualifying territory under whose law companies are not liable to tax by reason of domicile, residence or place of management;
 - “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”
- (2) The amendment made by this section has effect in relation to accounting periods beginning on or after 1 April 2016.

- (3) For the purposes of subsection (2), where the accounting period of a company begins before 1 April 2016 and ends on or after that date (the “straddling period”), so much of the straddling period as falls before that date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods.

Explanatory Note

Clause 23: Loan relationships: non-market loans

Summary

1. This measure restricts the corporation tax deductions for the notional finance costs that can arise on interest-free loans and other loans on non-market terms where they would otherwise give rise to asymmetrical tax treatment between the borrower and lender. The measure has effect from 1 April 2016.

Details of the clause

2. Subsection 1 introduces new section 446A to Corporation Tax Act (CTA) 2009, concerning the treatment of interest-free loans and other loans on non-market terms.
3. New section 446A applies where a loan liability is initially recognised in the borrowing company's accounts at an amount less than the amount borrowed, and the accounting discount arising on inception is not brought into account. It will apply where the lender is an individual (or other non-corporate) or where there is a corporate lender which is resident in a non-qualifying territory
4. Where this section applies, the debits resulting from the unwind of the discount over the term of the loan are restricted for tax purposes. Where the discount on inception is partly brought into account, the restriction applies to the part of the discount which is not brought into account (referred to as the 'relevant discount amount').
5. Subsection 2 explains that the section has effect for accounting periods beginning on or after 1 April 2016.
6. Subsection 3 provides that where an accounting period straddles 1 April 2016, it is treated, for this purpose only, as two separate accounting periods. In this case section 446A has effect for the accounting period that is treated as beginning on 1 April 2016.

Background note

7. At Budget 2013, the government announced consultation on a package of proposals to modernise the Corporation Tax rules governing the taxation of corporate debt and derivative contracts. The main changes made as a result of the consultation are contained in Schedule 7 to Finance (No.2) Act 2015.
8. As a result of recent changes to UK accounting standards, companies can now be required to recognise interest-free loans and other non-market loans in their accounts at a value lower than the actual amount of the loan. This discount unwinds progressively in later periods'

accounts. This can create a notional interest cost in the accounts of the borrower which does not reflect any real interest paid. Normally there would also be an accounting credit entry arising for the borrower on inception of the loan. Following the wider changes made in Finance (No.2) Act 2015, these accounting credit entries may not be taxable.

9. In some cases this could result in a tax deduction in the borrower, but no matching UK tax liability for the lender. In particular, the accounting treatment can create an asymmetry where the lender is an individual or where interest is paid cross-border.
10. This measure therefore restores the borrower, in appropriate cases, to the position that would have arisen before the accounting changes. In particular, it restricts tax relief for the borrower's notional interest expense where the borrower's corresponding accounting credit entry on inception of the loan is not taxed.
11. If you have any questions about this change, or comments on the legislation, please contact Richard Daniel on 03000 569 408 (email: richard.daniel@hmrc.gsi.gov.uk).

24 Loan relationships and derivative contracts: transfer-pricing rules

- (1) In section 446 of CTA 2009 (loan relationships: bringing transfer-pricing adjustments into account), after subsection (7) insert –
 - “(8) No credit is to be brought into account for the purposes of this Part to the extent that it corresponds to an amount which, as a result of the preceding provisions of this section, has not previously been brought into account as a debit.”
- (2) In section 693 of CTA 2009 (derivative contracts: bringing transfer-pricing adjustments into account), after subsection (5) insert –
 - “(6) No credit is to be brought into account for the purposes of this Part to the extent that it corresponds to an amount which, as a result of the preceding provisions of this section, has not previously been brought into account as a debit.”
- (3) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2016.
- (4) For the purposes of subsection (2), where the accounting period of a company begins before 1 April 2016 and ends on or after that date (the “straddling period”), so much of the straddling period as falls before that date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods.

Explanatory Note

Clause 24: Loan relationships and derivative contracts: transfer-pricing rules

Summary

1. This measure ensures that companies are not taxed under the corporate debt or derivative contract rules on credits arising where debits, previously denied for tax under the transfer pricing rules, later reverse. The measure has effect from 1 April 2016.

Details of the clause

2. Subsection 1 amends section 446 of Corporation Tax Act (CTA) 2009, which governs how amounts under a loan relationship are to be brought into account as a result of adjustments made under Part 4 of Taxation (International and Other Provisions) Act 2010. It inserts a new subsection (8) which excludes amounts from being taxed to the extent that they represent a reversal of, or otherwise correspond with, an amount for which a corporation tax deduction was previously restricted under this section as a result of the application of the transfer pricing provisions.
3. Subsection 2 makes an equivalent amendment to section 693 CTA 2009, which governs how amounts under a derivative contract are to be brought into account as a result of adjustments made under Part 4 of Taxation (International and Other Provisions) Act 2010.
4. Subsection 3 explains that these changes have effect for accounting periods beginning on or after 1 April 2016.
5. Subsection 4 provides that where an accounting period straddles 1 April 2016, it is treated as two separate accounting periods for this purpose only. In this case the changes have effect for the accounting period that is treated as beginning on 1 April 2016.

Background note

6. At Budget 2013, the government announced consultation on a package of proposals to modernise the CT rules governing the taxation of corporate debt and derivative contracts. The main changes made as a result of the consultation are contained in Schedule 7 to Finance (No.2) Act 2015.
7. Typically amounts of profits and losses arising from loan relationships and derivative contracts are brought into account for corporation tax in line with the company's accounts. However, the transfer pricing rules apply where the loan or derivative is not on arm's length terms and there is a potential tax advantage. In such a case, the profits and losses are to be

calculated as if the loan or derivative had been on arm's length terms.

8. As a result of recent changes to UK accounting standards, there are now more occasions where companies can be required to recognise amounts in their financial statements which subsequently reverse. Where the transfer pricing rules apply, this can result in a restriction of corporation tax deductions for the amounts of debits, while the corresponding credits on reversal in subsequent periods could remain taxable.
9. This measure prevents that unintended outcome by ensuring that credits are not taxed to the extent that debits have been restricted under sections 446 or 693 as a result of the application of the transfer pricing provisions.
10. If you have any questions about this change, or comments on the legislation, please contact Richard Daniel on 03000 569 408 (email: richard.daniel@hmrc.gsi.gov.uk).

25 Loan relationships and derivative contracts: exchange gains and losses

- (1) CTA 2009 is amended as follows.
- (2) In section 447 (exchange gains and losses on debtor relationships: loans disregarded under Part 4 of TIOPA 2010), after subsection (4) insert –
 - “(4A) If the debtor relationship is to any extent matched, subsections (2) and (3) apply to leave out of account only the lesser of –
 - (a) the amount of the exchange gain or loss (in the case of subsection (2)) or the proportion of the exchange gain or loss (in the case of subsection (3)) which would be left out of account apart from this subsection, and
 - (b) the amount of the exchange gain or loss arising in respect of a liability representing the debtor relationship to the extent that the debtor relationship is unmatched (an amount which may be nil).”
- (3) In section 448 (exchange gains and losses on debtor relationships: equity notes where holder associated with issuer), at the end insert –
 - “(3) If the debtor relationship is to any extent matched, subsection (2) applies to leave out of account only the amount of the exchange gain or loss arising in respect of a liability representing the debtor relationship to the extent that the debtor relationship is unmatched (an amount which may be nil).
- (4) In section 449 (exchange gains and losses on creditor relationships: no corresponding debtor relationship), after subsection (4) insert –
 - “(4A) If the creditor relationship is to any extent matched, subsection (4) applies to leave out of account only the amount of the exchange gain or loss arising in respect of an asset representing the creditor relationship to the extent that the creditor relationship is unmatched (an amount which may be nil).”
- (5) In section 451 (exception to section 449 where loan exceeds arm’s length amount), after subsection (4) insert –
 - “(4A) If the creditor relationship is to any extent matched, subsection (4) applies to leave out of account only the lesser of –
 - (a) the proportion of the exchange gain or loss which would be left out of account apart from this subsection, and
 - (b) the amount of the exchange gain or loss arising in respect of an asset representing the creditor relationship to the extent that the creditor relationship is unmatched (an amount which may be nil).”
- (6) After section 475A insert –

“Meaning of “matched”

475B Meaning of “matched”

- (1) This section applies for the purposes of this Part.
- (2) A loan relationship is matched if and to the extent that –

- (a) it is in a matching relationship with another loan relationship or derivative contract, or
 - (b) exchange gains or losses arising in relation to an asset or liability representing the loan relationship are excluded from being brought into account under regulations under section 328(4),and “unmatched” is to be construed accordingly.
- (3) A loan relationship is in a matching relationship with another loan relationship or derivative contract if one is intended by the company to act to eliminate or substantially reduce the economic risk of the other.
- (4) In this section “economic risk” means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time.
- (5) In this section “derivative contract” has the same meaning as in Part 7 (see section 576).”
- (7) In section 694 (derivative contracts: exchange gains and losses), after subsection (3) insert –
 - “(3A) If the contract is to any extent matched, subsection (3) applies to leave out of account only the lesser of –
 - (a) the amount of the exchange gains or losses which would be left out of account apart from this subsection, and
 - (b) the amount of the exchange gains or losses arising to the company in relation to the contract to the extent that the derivative contract is unmatched (an amount which may be nil).”
- (8) In that section, after subsection (10) insert –
 - “(11) For the purposes of this section a derivative contract is matched if and to the extent that –
 - (a) it is in a matching relationship with another derivative contract or loan relationship, or
 - (b) exchange gains or losses arising in relation to the derivative contract are excluded from being brought into account under regulations under section 606(4),and “unmatched” is to be construed accordingly.
 - (12) A derivative contract is in a matching relationship with another derivative contract or loan relationship if one is intended by the company to act to eliminate or substantially reduce the economic risk of the other.
 - (13) In this section “economic risk” means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time.
 - (14) In this section “loan relationship” has the same meaning as in Part 5 (see section 302).”
- (9) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2016.
- (10) For the purposes of subsection (9), where the accounting period of a company begins before 1 April 2016 and ends on or after that date (the “straddling period”), so much of the straddling period as falls before that date, and so

much of the straddling period as falls on or after that date, are to be treated as separate accounting periods.

Explanatory Note

Clause 25: Loan relationships and derivative contracts: exchange gains and losses

Summary

1. This measure amends provisions dealing with companies' exchange gains and losses from loan relationships or derivative contracts that are not at arm's length. It limits the amounts excluded from taxation by those provisions in cases where a loan or derivative is part of a hedging relationship intended to mitigate foreign currency risk. The measure has effect from 1 April 2016.

Details of the clause

2. Subsection 2 inserts new subsection 447(4A) into the Corporation Tax Act (CTA) 2009, concerned with debtor relationships not at arm's length. This limits the application of section 447 where the loan is matched. As a result, the amount of exchange gain or loss excluded by the section cannot exceed the exchange gain or loss arising on the unmatched element of the loan. This ensures that section 447 does not exclude any exchange gain or loss arising on the matched element of the loan.
3. Subsection 3 makes a corresponding amendment to section 448, concerned with debtor relationships that are 'equity notes' under section 1015(6) CTA 2010.
4. Subsection 4 and 5 make corresponding amendments to each of sections 449 and 451, concerned with creditor relationships not at arm's length.
5. Subsection 6 introduces new section 475B which sets out the circumstances in which a loan relationship is considered to be matched. A loan is matched to the extent to which either (i) the loan is in a matching relationship with another loan or derivative, or (ii) the exchange gains and losses on the loan are disregarded under regulations made under section 328(4) CTA 2009.
6. Subsection 7 and 8 make corresponding amendments to section 694 CTA 2009 in respect of derivative contracts not at arm's length.
7. Subsection 9 explains that the changes have effect for accounting periods beginning, on or after 1 April 2016.
8. Subsection 10 provides that where an accounting period straddles 1 April 2016, it is treated, for this purpose only, as two separate accounting periods. In this case section 446A has effect for the accounting period that is treated as beginning on 1 April 2016.

Background note

9. At Budget 2013, the government announced consultation on a package of proposals to modernise the corporation tax rules governing the taxation of corporate debt and derivative contracts. The main changes made as a result of the consultation are contained in Schedule 7 to Finance (No.2) Act 2015.
10. Sections 447, 449, 451 and 694 CTA 2009 operate to restrict amounts of exchange gains and losses brought into account for corporation tax on loans and derivatives in cases where the loan or derivative are not at arm's length. Section 448 operates in a similar way where the loan is as 'equity note' under section 1015(6) Corporation Tax Act 2010.
11. A particular concern has been identified with those provisions, as a result of which they can introduce a foreign currency exposure for corporation tax purposes even though none exists commercially or in the accounts.
12. This measure ensures that those provisions do not apply to the extent to which the loan or derivative in question is matched. Loans and derivatives are in a matching relationship when one is intended by the company to hedge foreign currency risk on the other.
13. In addition, the measure ensures that those provisions do not apply to the extent to which exchange gains and losses are disregarded under the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (SI 2004/3256) (known as the 'Disregard Regulations').
14. If you have any questions about this change, or comments on the legislation, please contact Richard Daniel on 03000 569 408 (email: richard.daniel@hmrc.gsi.gov.uk).

26 Loans to participators etc: trustees of charitable trusts

- (1) In section 456 of CTA 2010 (exceptions to the charge to tax in case of loan to participator), after subsection (2) insert—
 - “(2A) Section 455 does not apply to a loan or advance made to a trustee of a charitable trust if the loan or advance is applied to the purposes of the charitable trust only.”
- (2) The amendment made by subsection (1) has effect in relation to a loan or advance made on or after 25 November 2015.

Explanatory Note

Clause 26: Loans to participators – trustees of charitable trusts

Summary

1. This measure introduces a partial exemption from the loans to participator rules for certain charity transactions.

Details of the clause

2. Subsection 1 inserts new subsection 2A into section 456 Corporation Tax Act 2010 (CTA 2010).
3. New subsection 2A provides an exemption from the section 455 charge to tax for loans or advances to trustees of charitable trusts where the loan or advance is applied for the purposes of the charitable trust.

Commencement

4. Subsection 2 provides that the exemption applies to loans or advances made on or after 25 November 2015.

Background note

5. The loans to participator rules exist to ensure that value is not extracted by individuals from close companies (broadly companies owned by 5 or fewer shareholders) in ways which minimise their personal taxes.
6. The rules applied to charities in relevant circumstances. Whilst 2013 changes to the rules did not bring charities within the rules for the first time, they raised awareness that certain financing transactions that charities entered into could be caught by the rules and this was brought to the government's attention.
7. The transactions in question do not meet the purpose of the loans to participator rules. The exemption will ensure that such loans are no longer caught, but at the same time it will provide that the charge can continue to apply to charity transactions which do meet the purpose of the rules.
8. If you have any questions about this change, or comments on the legislation, please contact Lorraine Coster on 03000 585676 (email: lorraine.coster@hmrc.gsi.gov.uk)

27 Tax relief for production of orchestral concerts

The Schedule contains provision about relief in respect of the production of orchestral concerts.

SCHEDULE TO CLAUSE 27

TAX RELIEF FOR PRODUCTION OF ORCHESTRAL CONCERTS

PART 1

AMENDMENT OF CTA 2009

1 After Part 15C of CTA 2009 insert –

“PART 15D

ORCHESTRA TAX RELIEF

CHAPTER 1

INTRODUCTION

Overview

1217P Overview

- (1) This Part is about the production of orchestral concerts, and applies for corporation tax purposes.
- (2) This Chapter explains what is meant by “orchestral concert” and how a company comes to be treated as the production company in relation to a concert.
- (3) Chapter 2 is about the taxation of the activities of a production company and includes –
 - (a) provision for the company’s activities in relation to its concert, or its concert series, to be treated as a separate trade, and
 - (b) provision about the calculation of the profits and losses of that trade.
- (4) Chapter 3 is about relief (called “orchestra tax relief”) which may be given to a production company in relation to its concert or concert series –
 - (a) by way of additional deductions to be made in calculating the profits or losses of the company’s separate trade, or
 - (b) by way of a payment (an “orchestra tax credit”) to be made on the company’s surrender of losses from that trade,and describes the conditions a company must meet to qualify for orchestra tax relief.

-
- (5) Chapter 4 contains provision about the use of losses of the separate trade (including provision about relief for terminal losses).
 - (6) Chapter 5 provides –
 - (a) for relief under Chapters 3 and 4 to be given on a provisional basis, and
 - (b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Interpretation

1217PA “Orchestral concert”

- (1) In this Part “orchestral concert” means a concert by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the concert.
- (2) But a concert is not an orchestral concert if –
 - (a) the main purpose, or one of the main purposes, of the concert is to advertise or promote any goods or services,
 - (b) the concert is to consist of or include a competition or contest, or
 - (c) the making of a relevant recording is the main object of the production company’s activities in relation to the concert.
- (3) A recording of a concert is a “relevant recording” if the recording is made for the purpose of using it (or an edited version of it) in any of the following ways –
 - (a) broadcast, at the time of the concert or later, to the general public;
 - (b) release, at the time of the concert or later, to the paying public (by digital or other means);
 - (c) use as a soundtrack (or part of a soundtrack) to a television, radio, theatre, video game or similar production for broadcast, exhibition or release to the general public;
 - (d) use in a film (or part of a film) for exhibition to the paying public at the commercial cinema.
- (4) In this section –

“broadcast” means broadcast by any means (including television, radio or the internet);

“film” has the same meaning as in Part 15 (see section 1181).

1217PB Production company

- (1) A company is the production company in relation to a concert if the company (acting otherwise than in partnership) –
 - (a) is responsible for putting on the concert from the start of the production process to the finish, including employing or engaging the performers,
 - (b) is actively engaged in decision-making in relation to the concert,
 - (c) makes an effective creative, technical and artistic contribution to the concert, and

-
- (d) directly negotiates for, contracts for and pays for rights, goods and services in relation to the concert.
 - (2) No more than one company can be the production company in relation to a concert.
 - (3) If more than one company meets the conditions in subsection (1) in relation to a concert, the company that is most directly engaged in the activities mentioned in that subsection is the production company.
 - (4) If no company meets the conditions in subsection (1), there is no production company in relation to the concert.

CHAPTER 2

TAXATION OF ACTIVITIES OF PRODUCTION COMPANY

Separate orchestral trade

1217Q Separate orchestral trade

- (1) Subsection (2) applies to a company in relation to a concert if—
 - (a) the company qualifies for orchestra tax relief in relation to the production of the concert (see section 1217RA(2)), and
 - (b) the concert is not included in a concert series in relation to which the company has made an election under subsection (4).
- (2) The company's activities in relation to the production of the concert are treated as a trade separate from any other activities of the company (including activities in relation to the production of any other concert).
- (3) Subsections (4) and (5) apply to a company in relation to concerts in a series if the conditions in section 1217RA(4)(a), (b), (c) and (d) are met in relation to the company and the concert series.
- (4) The company may, for the purposes of this Part, make an election in relation to the concert series.
See section 1217QA for provision about making an election.
- (5) Where the company makes an election in relation to a concert series (and accordingly qualifies for orchestra tax relief in relation to the production of the series), the company's activities in relation to the production of the concert series are treated as a trade separate from any other activities of the company (including activities in relation to the production of any other concert).
- (6) In this Part the separate trade mentioned in subsection (2) or (5) is called the "separate orchestral trade".
- (7) If the separate orchestral trade relates to a single concert, the company is treated as beginning to carry on that trade—
 - (a) at the beginning of the pre-performance stage of the concert,
or

-
- (b) if earlier, at the time of the first receipt by the company of any income from the production of the concert.

1217QA Election for concert series

- (1) An election under section 1217Q(4) must be made by the company by notice in writing to an officer of Her Majesty's Revenue and Customs before the date of the first concert in the series.
- (2) An election has effect in relation to the orchestral concerts specified in it, and must also specify which of those concerts (if any) are not to be qualifying orchestral concerts (see section 1217RA(3)).
- (3) An election—
 - (a) may have effect in relation to concerts in two or more accounting periods, and
 - (b) is irrevocable.
- (4) If the separate orchestral trade relates to a concert series, the company is treated as beginning to carry on that trade—
 - (a) at the beginning of the pre-performance stage of the first concert in the series, or
 - (b) if earlier, at the time of the first receipt by the company of any income from the production of the concert series.

Profits and losses of separate orchestral trade

1217QB Calculation of profits or losses of separate orchestral trade

- (1) This section applies for the purpose of calculating the profits or losses of the separate orchestral trade.
- (2) For the first period of account during which the separate orchestral trade is carried on, the following are brought into account—
 - (a) as a debit, the costs of the production of the concert or concert series incurred to date;
 - (b) as a credit, the proportion of the estimated total income from that production treated as earned at the end of that period.
- (3) For subsequent periods of account the following are brought into account—
 - (a) as a debit, the difference between the amount ("C") of the costs of the production of the concert or concert series incurred to date and the amount corresponding to C for the previous period, and
 - (b) as a credit, the difference between the proportion ("PI") of the estimated total income from that production treated as earned at the end of that period and the amount corresponding to PI for the previous period.
- (4) The proportion of the estimated total income treated as earned at the end of a period of account is—

$$\frac{C}{T} \times I$$

where—

C is the total to date of costs incurred;

T is the estimated total cost of the production of the concert or concert series;

I is the estimated total income from the production of the concert or concert series.

1217QC Income from the production

- (1) References in this Chapter to income from a production of a concert or concert series are to any receipts by the company in connection with the production or exploitation of the concert or concert series.
- (2) This includes—
 - (a) receipts from the sale of tickets or of rights in the concert or concert series;
 - (b) royalties or other payments for use of the concert or concert series;
 - (c) payments for rights to produce merchandise;
 - (d) receipts by the company by way of a profit share agreement.
- (3) Receipts that (apart from this subsection) would be regarded as being of a capital nature are treated as being of a revenue nature.

1217QD Costs of the production

- (1) References in this Chapter to the costs of a production of a concert or concert series are to expenditure incurred by the company on—
 - (a) activities involved in developing and putting on the concert or concert series, or
 - (b) activities with a view to exploiting the concert or concert series.
- (2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.
- (3) Expenditure which, apart from this subsection, would be regarded as being of a capital nature only because it is incurred on the creation of an asset (the concert or concert series) is treated as being of a revenue nature.

1217QE When costs are taken to be incurred

- (1) For the purposes of this Chapter, the costs that have been incurred on a production of a concert or concert series at a given time do not include any amount that has not been paid unless it is the subject of an unconditional obligation to pay.
- (2) Where an obligation to pay an amount is linked to income being earned from the production of the concert or concert series, the obligation is not treated as having become unconditional unless an appropriate amount of income is or has been brought into account under section 1217QB.
- (3) In determining for the purposes of this Chapter the amount of costs incurred on a production of a concert or concert series at the end of a period of account, any amount that has not been paid 4 months after the end of that period is to be ignored.

1217QF Pre-trading expenditure

- (1) This section applies if, before the company begins to carry on the separate orchestral trade, it incurs expenditure on activities falling within section 1217QD(1)(a).
- (2) The expenditure may be treated as expenditure of the separate orchestral trade and as if incurred immediately after the company begins to carry on that trade.
- (3) If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return accordingly.
- (4) Any amendment or assessment necessary to give effect to subsection (3) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1217QG Estimates

Estimates for the purposes of section 1217QB must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

CHAPTER 3

ORCHESTRA TAX RELIEF

Introduction

1217R Overview of orchestra tax relief

- (1) Relief under this Chapter (“orchestra tax relief”) is given by way of—
 - (a) additional deductions (see sections 1217RD to 1217RF), and
 - (b) orchestra tax credits (see sections 1217RG to 1217RJ).
- (2) See Schedule 18 to FA 1998 (in particular, Part 9D) for provision about the procedure for making claims for orchestra tax relief.

Companies qualifying for orchestra tax relief

1217RA Companies qualifying for orchestra tax relief

- (1) Subsection (2) applies in the case of an orchestral concert which is not included in a concert series in relation to which an election has been made under section 1217Q(4).
- (2) A company qualifies for orchestra tax relief in relation to the production of a concert if—
 - (a) the concert is a qualifying orchestral concert,
 - (b) the company is the production company in relation to the concert,
 - (c) the company intends that the concert should be performed live—
 - (i) before the paying public, or
 - (ii) for educational purposes, and

-
- (d) the EEA expenditure condition is met in relation to the concert (see section 1217RB).
- (3) In this Part “qualifying orchestral concert” means an orchestral concert—
- (a) in which the instrumentalists number at least 12, and
 - (b) in which none of the musical instruments to be played, or a minority of those instruments, is electronically or directly amplified.
- (4) A company qualifies for orchestra tax relief in relation to the production of a concert series if—
- (a) the concert series is a qualifying orchestral concert series,
 - (b) the company is the production company in relation to every concert in the series,
 - (c) the company intends that all or a high proportion of the concerts in the series should be performed live—
 - (i) before the paying public, or
 - (ii) for educational purposes,
 - (d) the EEA expenditure condition is met in relation to the series, and
 - (e) the company has made an election under section 1217Q(4) in relation to the series.
- (5) In this section “qualifying orchestral concert series” means two or more orchestral concerts, all or a high proportion of which are qualifying orchestral concerts.
- (6) For the purposes of this section a concert is “live” if it is to an audience before whom the musicians are actually present.
- (7) A concert is not regarded as performed for educational purposes if the production company is, or is associated with, a person who—
- (a) has responsibility for the beneficiaries, or
 - (b) is otherwise connected with the beneficiaries (for instance, by being their employer).
- (8) For the purposes of subsection (7), a production company is associated with a person (“P”) if—
- (a) P controls the production company, or
 - (b) P is a company which is controlled by the production company or by a person who also controls the production company.
- (9) In this section—
- “the beneficiaries” means persons for whose benefit the concert will or may be performed;
 - “control” has the same meaning as in Part 10 of CTA 2010 (see section 450 of that Act).
- (10) There is further related provision in section 1217RK (tax avoidance arrangements).

1217RB The EEA expenditure condition

- (1) The “EEA expenditure condition” is that at least 25% of the core expenditure on the production of the concert or concert series incurred by the company is EEA expenditure.
- (2) In this Part “EEA expenditure” means expenditure on goods or services that are provided from within the European Economic Area.
- (3) Any apportionment of expenditure as between EEA and non-EEA expenditure for the purposes of this Part is to be made on a just and reasonable basis.
- (4) The Treasury may by regulations –
 - (a) amend the percentage specified in subsection (1);
 - (b) amend subsection (2).
- (5) See also sections 1217T and 1217TA (which are about the giving of relief provisionally on the basis that the EEA expenditure condition will be met).

1217RC “Core expenditure”

- (1) In this Part “core expenditure”, in relation to the production of a concert or concert series, means expenditure on the activities involved in producing the concert or concert series.
- (2) The reference in subsection (1) to “expenditure on the activities involved in producing the concert or concert series” includes expenditure on travel to and from a venue other than the usual venue for concerts produced by the company.
- (3) But that reference does not include –
 - (a) expenditure on any matters not directly involved with putting on the concert or concerts (for instance, financing, marketing, legal services or storage),
 - (b) speculative expenditure on activities not involved with putting on the concert or concerts, and
 - (c) expenditure on the actual performance or performances (for instance, payments to musicians for their performances in the concert or concert series).

Additional deduction

1217RD Claim for additional deduction

- (1) A company which qualifies for orchestra tax relief in relation to the production of a concert or concert series may claim an additional deduction in relation to the production.
- (2) A claim under subsection (1) is made with respect to an accounting period.
- (3) Where a company has made a claim, the company is entitled to make an additional deduction, in accordance with section 1217RE, in calculating the profit or loss of the separate orchestral trade for the accounting period concerned.

-
- (4) Where the company tax return in which a claim is made is for an accounting period later than that in which the company begins to carry on the separate orchestral trade, the company must make any amendments of company tax returns for earlier periods that may be necessary.
 - (5) Any amendment or assessment necessary to give effect to subsection (4) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1217RE Amount of additional deduction

- (1) The amount of an additional deduction to which a company is entitled as a result of a claim under section 1217RD is calculated as follows.
- (2) For the first period of account during which the separate orchestral trade is carried on, the amount of the additional deduction is E, where E is –
 - (a) so much of the qualifying expenditure incurred to date as is EEA expenditure, or
 - (b) if less, 80% of the total amount of qualifying expenditure incurred to date.
- (3) For any period of account after the first, the amount of the additional deduction is –

$$E - P$$

where E is –

- (a) so much of the qualifying expenditure incurred to date as is EEA expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

- (4) The Treasury may by regulations amend the percentage specified in subsection (2) or (3).

1217RF “Qualifying expenditure”

- (1) In this Chapter “qualifying expenditure”, in relation to the production of a concert or concert series, means core expenditure (see section 1217RC) on the production that –
 - (a) falls to be taken into account under sections 1217QB to 1217QG in calculating the profit or loss of the separate orchestral trade for tax purposes, and
 - (b) is not expenditure which is otherwise relievable.
- (2) For the purposes of this section expenditure is otherwise relievable if it is expenditure in respect of which (assuming a claim were made) the company would be entitled to –
 - (a) film tax relief under Chapter 3 of Part 15,
 - (b) television tax relief under Chapter 3 of Part 15A,
 - (c) video games tax relief under Chapter 3 of Part 15B,

-
- (d) an additional deduction under Part 15C (theatrical productions), or
 - (e) a theatre tax credit under Part 15C.

Orchestra tax credits

1217RG Orchestra tax credit claimable if company has surrenderable loss

- (1) A company which qualifies for orchestra tax relief in relation to the production of a concert or concert series may claim an orchestra tax credit in relation to the production for an accounting period in which the company has a surrenderable loss.
- (2) Section 1217RH sets out how to calculate the amount of any surrenderable loss that the company has in the accounting period.
- (3) A company making a claim may surrender the whole or part of its surrenderable loss in the accounting period.
- (4) The amount of the orchestra tax credit to which a company making a claim is entitled for the accounting period is 25% of the amount of the loss surrendered.
- (5) The company's available loss for the accounting period (see section 1217RH(2)) is reduced by the amount surrendered.

1217RH Amount of surrenderable loss

- (1) The company's surrenderable loss in the accounting period is –
 - (a) the company's available loss for the period in the separate orchestral trade (see subsections (2) and (3)), or
 - (b) if less, the available qualifying expenditure for the period (see subsections (4) and (5)).
- (2) The company's available loss for an accounting period is –

$$L + RUL$$

where –

L is the amount of the company's loss for the period in the separate orchestral trade, and

RUL is the amount of any relevant unused loss of the company (see subsection (3)).

- (3) The "relevant unused loss" of a company is so much of any available loss of the company for the previous accounting period as has not been –
 - (a) surrendered under section 1217RG, or
 - (b) carried forward under section 45 of CTA 2010 and set against profits of the separate orchestral trade.
- (4) For the first period of account during which the separate orchestral trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1217RE(2).

-
- (5) For any period of account after the first, the available qualifying expenditure is –

$$E - S$$

where –

E is the amount that is E for that period for the purposes of section 1217RE(3), and

S is the total amount previously surrendered under section 1217RG.

- (6) If a period of account of the separate orchestral trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

1217RI Payment in respect of orchestra tax credit

- (1) If a company –
- (a) is entitled to an orchestra tax credit for an accounting period, and
 - (b) makes a claim,
- the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") must pay the amount of the credit to the company.
- (2) An amount payable in respect of –
- (a) an orchestra tax credit, or
 - (b) interest on an orchestra tax credit under section 826 of ICTA,
- may be applied in discharging any liability of the company to pay corporation tax.
- To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.
- (3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of an orchestra tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).
- In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.
- (4) No payment need be made in respect of an orchestra tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period –
- (a) under PAYE regulations,
 - (b) under section 966 of ITA 2007 (visiting performers), or
 - (c) in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (5) A payment in respect of an orchestra tax credit is not income of the company for any tax purpose.

1217RJ Limit on State aid

In accordance with Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market, the total amount of orchestra tax credits payable under section 1217RI in the case of any undertaking is not to exceed 50 million euros per year.

Anti-avoidance etc

1217RK Tax avoidance arrangements

- (1) A company does not qualify for orchestra tax relief in relation to the production of a concert or concert series if there are any tax avoidance arrangements relating to the production.
- (2) Arrangements are “tax avoidance arrangements” if their main purpose, or one of their main purposes, is the obtaining of a tax advantage.
- (3) In this section –
 - “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
 - “tax advantage” has the meaning given by section 1139 of CTA 2010.

1217RL Transactions not entered into for genuine commercial reasons

- (1) A transaction is to be ignored for the purpose of determining orchestra tax relief so far as the transaction is attributable to arrangements (other than tax avoidance arrangements) entered into otherwise than for genuine commercial reasons.
- (2) In this section “arrangements” and “tax avoidance arrangements” have the same meaning as in section 1217RK.

CHAPTER 4

LOSSES OF SEPARATE ORCHESTRAL TRADE

1217S Application of sections 1217SA to 1217SC

- (1) Sections 1217SA to 1217SC apply to a company which is treated under section 1217Q(2) or (5) as carrying on a separate trade in relation to the production of a concert or concert series.
- (2) In those sections –
 - (a) “the completion period” means the accounting period in which the company ceases to carry on the separate orchestral trade;
 - (b) “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which a company, or any other person, is chargeable to tax.

1217SA Restriction on use of losses before completion period

- (1) Subsection (2) applies if a loss is made by the company in the separate orchestral trade in an accounting period preceding the completion period.
- (2) The loss is not available for loss relief, except to the extent that the loss may be carried forward under section 45 of CTA 2010 to be set against profits of the separate orchestral trade in a subsequent period.

1217SB Use of losses in the completion period

- (1) Subsection (2) applies if a loss made in the separate orchestral trade is carried forward under section 45 of CTA 2010 to the completion period.
- (2) So much (if any) of the loss as is not attributable to orchestra tax relief (see subsection (4)) may be treated for the purposes of loss relief as if it were a loss made in the completion period.
- (3) If a loss is made in the separate orchestral trade in the completion period, the amount of the loss that may be –
 - (a) deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or
 - (b) surrendered as group relief under Part 5 of that Act,is restricted to the amount (if any) that is not attributable to orchestra tax relief (see subsection (4)).
- (4) The amount of a loss in any period that is attributable to orchestra tax relief is found by –
 - (a) calculating what the amount of the loss would have been if there had been no additional deduction under Chapter 3 in that or any earlier period, and
 - (b) deducting that amount from the total amount of the loss.
- (5) This section does not apply to loss surrendered, or treated as carried forward, under section 1217SC (terminal losses).

1217SC Terminal losses

- (1) This section applies if –
 - (a) the company ceases to carry on the separate orchestral trade, and
 - (b) if the company had not ceased to carry on that trade, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of that trade in a later period (“the terminal loss”).

Below in this section the company is referred to as “company A” and the separate orchestral trade is referred to as “trade 1”.

- (2) If company A –
 - (a) is treated under section 1217Q(2) or (5) as carrying on a separate trade in relation to the production of another concert or concert series (“trade 2”), and
 - (b) is carrying on trade 2 when it ceases to carry on trade 1,

-
- company A may (on making a claim) make an election under subsection (3).
- (3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade 2 of the first accounting period beginning after the cessation and so on.
 - (4) Subsection (5) applies if –
 - (a) another company (“company B”) is treated under section 1217Q(2) or (5) as carrying on a separate trade (“company B’s trade”) in relation to the production of another concert or concert series,
 - (b) company B is carrying on that trade when company A ceases to carry on trade 1, and
 - (c) company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).
 - (5) Company A may surrender the loss (or a part of it) to company B.
 - (6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of company B’s trade of the first accounting period beginning after the cessation and so on.
 - (7) The Treasury may by regulations make administrative provision in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6).
 - (8) “Administrative provision” means provision corresponding, subject to such adaptations or other modifications as appear to the Treasury to be appropriate, to that made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

1217T Provisional entitlement to relief

- (1) In relation to a company and the production of a concert or concert series, “interim accounting period” means any accounting period that –
 - (a) is one in which the company carries on a separate orchestral trade, and
 - (b) precedes the accounting period in which it ceases to do so.
- (2) A company is not entitled to orchestra tax relief for an interim accounting period unless –
 - (a) its company tax return for the period states the amount of planned core expenditure on the production of the concert or concert series that is EEA expenditure (see section 1217RB(2)), and
 - (b) that amount is such as to indicate that the EEA expenditure condition (see section 1217RB) will be met in relation to the production.

If those requirements are met, the company is provisionally treated in relation to that period as if the EEA expenditure condition were met.

1217TA Clawback of provisional relief

- (1) If a statement is made under section 1217T(2) but it subsequently appears that the EEA expenditure condition will not be met on the company's ceasing to carry on the separate orchestral trade, the company –
 - (a) is not entitled to orchestra tax relief for any period for which its entitlement depended on such a statement, and
 - (b) must amend accordingly its company tax return for any such period.
- (2) When a company ceases to carry on the separate orchestral trade, the company's company tax return for the period in which that cessation occurs must –
 - (a) state that the company has ceased to carry on the separate orchestral trade, and
 - (b) be accompanied by a final statement of the amount of the core expenditure on the production of the concert or concert series that is EEA expenditure.
- (3) If that statement shows that the EEA expenditure condition is not met –
 - (a) the company is not entitled to orchestra tax relief or to relief under section 1217SC (transfer of terminal losses) for any period, and
 - (b) must amend accordingly its company tax return for any period for which such relief was claimed.
- (4) Any amendment or assessment necessary to give effect to this section may be made despite any limitation on the time within which an amendment or assessment may normally be made.

CHAPTER 6

INTERPRETATION

1217U Interpretation

In this Part –

- “company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1) of that Schedule);
- “core expenditure” has the meaning given by section 1217RC;
- “costs”, in relation to a concert or concert series, has the meaning given by section 1217QD;
- “EEA expenditure” has the meaning given by section 1217RB(2);
- “EEA expenditure condition” has the meaning given by section 1217RB;
- “income”, in relation to a concert or concert series, has the meaning given by section 1217QC;

“orchestra tax relief” is to be read in accordance with Chapter 3 (see in particular section 1217R(1));
“orchestral concert” has the meaning given by section 1217PA;
“production company” has the meaning given by section 1217PB;
“qualifying expenditure” has the meaning given by section 1217RF;
“qualifying orchestral concert” has the meaning given by section 1217RA(3);
“qualifying orchestral concert series” has the meaning given by section 1217RA(5);
the “separate orchestral trade” is to be read in accordance with section 1217Q.”

PART 2

CONSEQUENTIAL AMENDMENTS

ICTA

- 2 (1) Section 826 of the Income and Corporation Taxes Act 1988 (interest on tax overpaid) is amended as follows.
 - (2) In subsection (1), after paragraph (fc) insert—

“(fd) a payment of orchestra tax credit falls to be made to a company; or”.
 - (3) In subsection (3C), for “or theatre tax credit” substitute “, theatre tax credit or orchestra tax credit”.
 - (4) In subsection (8A)—
 - (a) in paragraph (a), for “or (fc)” substitute “, (fc) or (fd)”, and
 - (b) in paragraph (b)(ii), after “theatre tax credit” insert “or orchestra tax credit”.
 - (5) In subsection (8BA), after “theatre tax credit” (in both places) insert “or orchestra tax credit”.

FA 1998

- 3 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.
- 4 In paragraph 10 (other claims and elections to be included in return), in sub-paragraph (4), for “or 15C” substitute “, 15C or 15D”.
- 5 (1) Paragraph 52 (recovery of excessive repayments etc) is amended as follows.
 - (2) In sub-paragraph (2), after paragraph (bg) insert—

“(bh) orchestra tax credit under Part 15D of that Act,”.
 - (3) In sub-paragraph (5)—
 - (a) after paragraph (ai) insert—

“(aj) an amount of orchestra tax credit paid to a company for an accounting period,” and
 - (b) in the words after paragraph (b), after “(ai)” insert “, (aj)”.

-
- 6 In Part 9D (certain claims for tax relief) –
- (a) in the heading, for “or 15C” substitute “, 15C or 15D”, and
 - (b) in paragraph 83S (introduction), after sub-paragraph (e) insert –
“(f) orchestra tax relief.”

CAA 2001

- 7 In Schedule A1 to CAA 2001 (first-year tax credits), in paragraph 11(4), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and
- (g) Chapter 3 of Part 15D of that Act (orchestra tax credits).”

FA 2007

- 8 In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa) (meaning of “corporation tax credit”), omit the “or” at the end of paragraph (ivc) and after that paragraph insert –
- “(ivd) an orchestra tax credit under Chapter 3 of Part 15D of that Act, or”.

CTA 2009

- 9 In Part 8 of CTA 2009 (intangible fixed assets), in Chapter 10 (excluded assets), after section 808C insert –

“808D Assets representing expenditure incurred in course of separate orchestral trade

- (1) This Part does not apply to an intangible fixed asset held by an orchestral concert production company so far as the asset represents expenditure on an orchestral concert or orchestral concert series that is treated under Part 15D as expenditure of a separate trade (see particularly sections 1217Q and 1217QF).
 - (2) In this section –
 - “orchestral concert” has the same meaning as in Part 15D (see section 1217PA);
 - “orchestral concert production company” means a company which, for the purposes of that Part, is the production company in relation to a concert (see section 1217PB).”
- 10 In section 1310 of CTA 2009 (orders and regulations), in subsection (4), after paragraph (em) insert –
- “(en) section 1217RB (EEA expenditure condition),
 - (eo) section 1217RE (amount of additional deduction),”.
- 11 In Schedule 4 to CTA 2009 (index of defined expressions), insert at the appropriate places –

“company tax return (in Part 15D)	section 1217U”
“core expenditure (in Part 15D)	section 1217RC”
“costs, in relation to a concert or concert series (in Part 15D)	section 1217QD”

“EEA expenditure (in Part 15D)	section 1217RB(2)”
“EEA expenditure condition (in Part 15D)	section 1217RB”
“income, in relation to a concert or concert series (in Part 15D)	section 1217QC”
“orchestra tax relief (in Part 15D)	section 1217R(1)”
“orchestral concert (in Part 15D)	section 1217PA”
“production company (in Part 15D)	section 1217PB”
“qualifying expenditure (in Part 15D)	section 1217RF”
“qualifying orchestral concert (in Part 15D)	section 1217RA(3)”
“qualifying orchestral concert series (in Part 15D)	section 1217RA(5)”
“separate orchestral trade (in Part 15D)	section 1217Q”.

FA 2009

- 12 In Schedule 54A to FA 2009 (which is prospectively inserted by F(No. 3)A 2010 and contains provision about the recovery of certain amounts of interest paid by HMRC), in paragraph 2 –
- (a) in sub-paragraph (2), omit the “or” at the end of paragraph (g) and after paragraph (h) insert “, or
 - (i) a payment of orchestra tax credit under Chapter 3 of Part 15D of CTA 2009 for an accounting period.”;
 - (b) in sub-paragraph (4), for “(h)” substitute “(i)”.

CTA 2010

- 13 In Part 8B of CTA 2010 (trading profits taxable at Northern Ireland rate), in section 357H(7) (introduction), after “Chapter 14 for provision about theatrical productions;” insert “Chapter 14A for provision about orchestra tax relief;”.
- 14 In Part 8B of CTA 2010, after section 357UI insert –

“CHAPTER 14A

ORCHESTRA TAX RELIEF

Introductory

357UJ Introduction and interpretation

- (1) This Chapter makes provision about the operation of Part 15D of CTA 2009 (orchestra tax relief) in relation to expenditure incurred by a company in an accounting period in which it is a Northern Ireland company.
- (2) In this Chapter –
 - (a) “Northern Ireland expenditure” means expenditure incurred in a trade to the extent that the expenditure forms part of the

-
- Northern Ireland profits or Northern Ireland losses of the trade;
- (b) the “separate orchestral trade” has the same meaning as in Part 15D of CTA 2009 (see section 1217Q(6) of that Act);
 - (c) “qualifying expenditure” has the same meaning as in Chapter 3 of that Part (see section 1217RF of that Act).
- (3) References in Part 15D of CTA 2009 to “orchestra tax relief” include relief under this Chapter.

Orchestra tax relief

357UK Northern Ireland additional deduction

- (1) In this Chapter “a Northern Ireland additional deduction” means so much of a deduction under section 1217RD of CTA 2009 (claim for additional deduction) as is calculated by reference to qualifying expenditure that is Northern Ireland expenditure.
- (2) A Northern Ireland additional deduction forms part of the Northern Ireland profits or Northern Ireland losses of the separate orchestral trade.

357UL Northern Ireland supplementary deduction

- (1) This section applies where—
 - (a) a company is entitled under section 1217RD of CTA 2009 to an additional deduction in calculating the profit or loss of the separate orchestral trade in an accounting period,
 - (b) the company is a Northern Ireland company in the period,
 - (c) the additional deduction is wholly or partly a Northern Ireland additional deduction, and
 - (d) any of the following conditions is met—
 - (i) the company does not have a surrenderable loss in the accounting period;
 - (ii) the company has a surrenderable loss in the accounting period, but does not make a claim under section 1217RG of CTA 2009 (orchestra tax credit claimable if company has surrenderable loss) for the period;
 - (iii) the company has a surrenderable loss in the accounting period and makes a claim under that section for the period, but the amount of Northern Ireland losses surrendered on the claim is less than the Northern Ireland additional deduction.
- (2) The company is entitled to make another deduction (“a Northern Ireland supplementary deduction”) in respect of qualifying expenditure.
- (3) See section 357UM for provision about the amount of the Northern Ireland supplementary deduction.
- (4) The Northern Ireland supplementary deduction—
 - (a) is made in calculating the profit or loss of the separate orchestral trade, and

(b) forms part of the Northern Ireland profits or Northern Ireland losses of the separate orchestral trade.

(5) In this section “surrenderable loss” has the meaning given by section 1217RH of CTA 2009.

357UM Northern Ireland supplementary deduction: amount

(1) This section contains provision for the purposes of section 357UL(2) about the amount of the Northern Ireland supplementary deduction.

(2) If the accounting period falls within only one financial year, the amount of the Northern Ireland supplementary deduction is –

$$(A - B) \times \left(\frac{(MR - NIR)}{NIR} \right)$$

where –

A is the amount of the Northern Ireland additional deduction brought into account in the accounting period;

B is the amount of Northern Ireland losses surrendered in any claim under section 1217RG of CTA 2009 for the accounting period;

MR is the main rate for the financial year;

NIR is the Northern Ireland rate for the financial year.

(3) If the accounting period falls within more than one financial year, the amount of the Northern Ireland supplementary deduction is determined by taking the following steps.

Step 1

Calculate, for each financial year, the amount that would be the Northern Ireland supplementary deduction for the accounting period if it fell within only that financial year (see subsection (2)).

Step 2

Multiply each amount calculated under step 1 by the proportion of the accounting period that falls within the financial year for which it is calculated.

Step 3

Add together each amount found under step 2.

357UN Orchestra tax credit: Northern Ireland supplementary deduction ignored

For the purpose of determining the available loss of a company under section 1217RH of CTA 2009 (amount of surrenderable loss) for any accounting period, any Northern Ireland supplementary deduction made by the company in the period (and any Northern Ireland supplementary deduction made in any previous accounting period) is to be ignored.

Losses of separate orchestral trade

357UO Restriction on use of losses before completion period

- (1) Section 1217SA of CTA 2009 (restriction on use of losses before completion period) has effect subject as follows.
- (2) The reference in subsection (1) of that section to a loss made in the separate orchestral trade in an accounting period preceding the completion period is, if the company is a Northern Ireland company in that period, a reference to—
 - (a) any Northern Ireland losses of the trade of the period, or
 - (b) any mainstream losses of the trade of the period;and references to losses in subsection (2) of that section are to be read accordingly.
- (3) Subsection (4) applies if a Northern Ireland company has, in an accounting period preceding the completion period—
 - (a) both Northern Ireland losses of the trade and mainstream profits of the trade, or
 - (b) both mainstream losses of the trade and Northern Ireland profits of the trade.
- (4) The company may make a claim under section 37 (relief for trade losses against total profits) for relief for the losses mentioned in subsection (3)(a) or (b).
- (5) But relief on such a claim is available only—
 - (a) in the case of a claim for relief for Northern Ireland losses, against mainstream profits of the trade of the same period;
 - (b) in the case of a claim for relief for mainstream losses, against Northern Ireland profits of the trade of the same period.
- (6) In this section “the completion period” has the same meaning as in section 1217SA of CTA 2009 (see section 1217S(2) of that Act).

357UP Use of losses in the completion period

- (1) Section 1217SB of CTA 2009 (use of losses in the completion period) has effect subject as follows.
- (2) The reference in subsection (1) of that section to a loss made in the separate orchestral trade is, in relation to a loss made in a period in which the company is a Northern Ireland company, a reference to—
 - (a) any Northern Ireland losses of the trade of the period, or
 - (b) any mainstream losses of the trade of the period;and references to losses in subsections (2) and (4) of that section are to be read accordingly.
- (3) The references in subsection (3) of that section to a loss made in the separate orchestral trade in the completion period are, where the company is a Northern Ireland company in the period, references to—
 - (a) any Northern Ireland losses of the trade of the period, or
 - (b) any mainstream losses of the trade of the period;and references to losses in subsection (4) of that section are to be read accordingly.

-
- (4) Subsection (4) of that section has effect, in relation to Northern Ireland losses, as if the reference to an additional deduction under Chapter 3 of Part 15D of CTA 2009 included a reference to a Northern Ireland supplementary deduction under this Chapter.

357UQ Terminal losses

- (1) Section 1217SC of CTA 2009 (terminal losses) has effect subject as follows.
- (2) Where—
- (a) a company makes an election under subsection (3) of that section (election to treat terminal loss as loss brought forward of different trade) in relation to all or part of a terminal loss, and
- (b) the terminal loss is a Northern Ireland loss, that subsection has effect as if the reference in it to a loss brought forward were to a Northern Ireland loss brought forward.
- (3) Where—
- (a) a company makes a claim under subsection (6) of that section (claim to treat terminal loss as loss brought forward by different company) in relation to part or all of a terminal loss, and
- (b) the terminal loss is a Northern Ireland loss, that subsection has effect as if the reference in it to a loss brought forward were to a Northern Ireland loss brought forward.”
- 15 (1) Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.
- (2) In the entry for “Northern Ireland expenditure”—
- (a) for “14” substitute “14A”, and
- (b) for “and 357U(2)” substitute “, 357U(2) and 357UJ(2)”.
- (3) Insert at the appropriate places—

“qualifying expenditure (in Chapter 14A of Part section 357UJ(2)”
8B)

“the separate orchestral trade (in Chapter 14A of section 357UJ(2)”
Part 8B)

PART 3

COMMENCEMENT

- 16 Any power to make regulations conferred on the Treasury by virtue of this Schedule comes into force on the day on which this Act is passed.
- 17 (1) The amendments made by the following provisions of this Schedule have effect in relation to accounting periods beginning on or after 1 April 2016—
- (a) Part 1, and
- (b) in Part 2, paragraphs 2 to 12.

-
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2016 and ending on or after that date (“the straddling period”).
- (3) For the purposes of Part 15D of CTA 2009 –
- (a) so much of the straddling period as falls before 1 April 2016, and so much of that period as falls on or after that date, are separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a trade for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.
- 18 (1) The amendments made by paragraphs 13 to 15 of this Schedule have effect in relation to accounting periods beginning on or after the first day of the financial year appointed by the Treasury by regulations under section 5(3) of the Corporation Tax (Northern Ireland) Act 2015 (“the commencement day”).
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before the commencement day and ending on or after that day (“the straddling period”).
- (3) For the purposes of Chapter 14A of CTA 2010 –
- (a) so much of the straddling period as falls before the commencement day, and so much of that period as falls on or after that day, are separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a trade for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

Explanatory Note

Clause 27 and Schedule: Tax relief for the production of orchestral concerts

Summary

1. This clause and Schedule introduces a relief from corporation tax for qualifying orchestral concerts.

Details of the clause and Schedule

2. The clause brings in a Schedule which:
 - Introduces a new relief for orchestral concerts;
 - Provides for the consequential amendments to other parts of the Taxes Acts as a result of the new relief;
 - Provides for the commencement of the new orchestra relief.

Schedule 1: Part 1: Amendment of CTA 2009

3. Subsection 1 introduces Part 15D to Corporation Tax Act 2009 (CTA 2009).

Chapter 1

4. Chapter 1 contains sections 1217P to 1217PB which set out the overview of the relief and interpretation of "orchestral concert" and "production company".
5. Section 1217PA defines what is meant by "orchestral concert":
 - A concert by an orchestra, ensemble, group or band must consist wholly or mainly of instrumentalists who are the primary focus of the concert. For example, the instrumentalists are not just a backing band for a singer. Instrumentalists are not singers.
 - A concert will not be an 'orchestral concert' so not eligible for relief if it falls within the criteria set out at 1217PA(2) to (4). For example if a concert's main purpose is to advertise goods and services it will not qualify for relief.
 - A concert will not qualify for relief where the main purpose or one of the main purposes is to advertise goods and services, or it includes a competition or

contest, or the primary purpose is to make a recording.

6. Section 1217PB sets out the general rule that governs whether a company is a production company in relation to a qualifying concert.
 - The company must be actively engaged in decision-making, be responsible for putting on the concert from the start of the production process to the finish, and directly negotiate for and pay for rights, goods and services in relation to the concert. It must also employ and engage the performers.
 - There can be only one production company in relation to a concert. Partnerships and co-productions are therefore not eligible for the relief.
 - If there is more than one company that meets the conditions of a production company then it is that company most directly engaged in the activities set out in 1217PB(1) that is the production company. However, if no company meets those conditions then there is no production company in relation to the concert.

Chapter 2

7. Chapter 2 sets out the taxation of activities of the production company.
8. Section 1217Q sets out how a company may make a claim for the additional deduction. A company that makes a claim for relief must treat each qualifying concert as a separate trade. A company is treated as beginning to carry on the separate trade when the pre-performance stage begins or if earlier at the time of the first receipt by the company of any income from the production of the concert. Where a company makes an election in relation to a number of concerts in a series then that series is treated as a separate trade.
9. Section 1217QA sets out how a company may make an election for a concert series to be treated as a separate trade. The election must be in writing and is irrevocable once made. The election must also specify which of the concerts (if any) are not qualifying.
10. Section 1217QB sets out how the profits and losses of the separate orchestral trade are calculated for the first period of account and any subsequent periods.
11. Section 1217QC sets out what is income for the purposes of the calculation of the profits or losses of the separate orchestral trade. Income includes: receipts from the sale of tickets or of rights in the concert or concert series, royalties or other payments for use of other aspects of the concert or concert series, rights for merchandise and receipts by the company by way of any profit share agreements.
12. Section 1217QD sets out that for the purpose of the calculation of the profits or losses of the separate orchestral trade being the concert or the concert series. Costs incurred by the company will be those direct costs. Capital expenditure is treated as being of a revenue nature where it is on the creation of the concert or concert series.
13. Section 1217QE sets out the rules of when costs are taken to have been incurred for the purposes of the relief. For example that costs are incurred when they are represented in the state of completion of the work in progress or do not include any amount that has not been

paid unless it is the subject of an unconditional obligation to pay. Costs which remain unpaid by four months after the end of a period of account are ignored for that period.

14. Section 1217QF outlines the circumstances in which pre-trading expenditure, including expenditure on developing the concert or concert series before it was 'green-lit', may be treated as expenditure of the separate theatrical trade.
15. Section 1217QG provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must take into account all relevant circumstances.

Chapter 3

16. Section 1217RA provides for how a company qualifies for relief.
 - A company must be the production company in relation to the concert and intends that the concert must be performed live before paying members of the general public, in other words the musicians must be present before the audience. However, a concert may qualify if it is for genuine educational purposes (stating in a company's articles that it is set up for educational purposes is not sufficient evidence) and the production company is not associated, connected with, or has responsibility for, the beneficiaries of the concert.
 - There must be a minimum European Economic Area (EEA) expenditure (see 1217RB).
 - There must be a qualifying orchestral concert where the number of instrumentalists is at least 12 and none of those instruments played, or a minority, is electronically or directly amplified. Directly amplified instruments are those which are individually amplified rather than the use of separate, external microphones being used to pick up the overall sound of the concert generally.
17. Section 1217RB sets out the minimum EEA expenditure required by the company to qualify for the relief. At least 25 per cent of the qualifying core expenditure (see 1217RB) must be on goods or services that are provided from within the EEA.
18. Section 1217RC provides that core expenditure means expenditure on the activities directly involved in producing the concert or concert series, such as rehearsal costs. Core expenditure will not include indirect expenditure such as marketing the concert or concert series, financing, associated finance costs, legal fees, accountancy fees or storage of instruments. Costs incurred on the actual performance of the concert and each individual concert within the concert series, for example payments to musicians for their actual performances in the concert or concert series will not be eligible core expenditure. Development expenditure that precedes production will not be eligible if the production does not get 'green lit', in other words the production has permission and approval to proceed, (see also new section 1217QE for when costs are taken to have been incurred). The intention is to separate speculative expenditure from expenditure undertaken in the knowledge that the decision has been taken to go ahead with the production.

19. Section 1217RD sets out how a company may claim for the additional deduction. A company that makes a claim for relief must treat each qualifying concert or concert series as a separate trade. Claims are made in respect of an accounting period.
20. Section 1217RE provides that a company may claim an additional deduction based on its qualifying expenditure. For the first period of account in which the separate orchestral trade is carried on, the additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure, or 80 % of the total amount of qualifying expenditure. For subsequent periods of account, the amount of additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure or 80 per cent of the total amount of qualifying expenditure minus any additional deductions given for previous periods.
21. Section 1217RF defines “qualifying expenditure” and also provides that where relief has been given for other creative reliefs that expenditure is excluded, for example, film tax relief, television tax relief, video games tax relief or theatre tax relief.
22. Section 1217RF(1) also sets out that expenditure which is not otherwise relievable under other parts of the tax code, for example on entertainment, is not qualifying core expenditure. Furthermore where claims have been made on expenditure relating to the other creative reliefs (film, television, etc.) is not eligible for relief. This prevents a company claiming relief for the same expenditure under different regimes.
23. Section 1217RG provides that where a company qualifies for orchestra tax relief and has a surrenderable loss then that company may claim an orchestra tax credit for the period. The whole or part of the loss may be surrendered.
24. Section 1217RH defines a surrenderable loss and a relevant unused loss, and sets out how the available loss and any loss carried forward are to be calculated.
25. Section 1217RI provides that where a company is entitled to an orchestra tax credit for a period, and it claims that credit, the Commissioners for Her Majesty’s Revenue and Customs will pay the credit to the company. However where there are any other outstanding liabilities of the company (such as outstanding corporation tax, VAT or PAYE) then the credit is first applied against those outstanding liabilities. If the company's tax return is enquired into the no payment of the credit needs to be made before enquiries are complete.
26. Section 1217RJ sets out that for State aid purposes the total amount of any orchestra tax credits for each undertaking must not exceed 50 million Euros per year. “Undertaking” must be interpreted within the context of the General Block Exemption Regulation.
27. Section 1217RK sets out that a company does not qualify for relief where the main or one of the main purposes of the arrangements to claim the tax credit or otherwise benefit from the relief to obtain a tax advantage.
28. Section 1217RL sets out that where a transaction is attributable to arrangements entered into otherwise for genuine commercial reasons to inflate the amount of a claim then that transaction is disregarded when computing the additional deduction.

Chapter 4

29. Section 1217S sets out the application of the new section 1217SA to 1217SC.

30. Section 1217SA provides that losses made before the completion period of a separate trade are only available to be carried forward to be set against the profits of the separate orchestral trade.
31. Section 1217SB provides for how losses are to be treated in the completion period.
32. Section 1217SC provides for how terminal losses are to be treated and the circumstances in which terminal losses can be transferred.

Chapter 5

33. Section 1217T sets out the conditions for claiming provisional relief, such as, a company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for the period a statement of the planned amount of EEA expenditure and that amount of expenditure meets the condition in 1217RB.
34. Section 1217TA allows for the claw-back of provisional relief where it subsequently appears the EEA condition will not be met. It sets out what a company must do if it no longer qualifies for relief and also what to do when it ceases to carry on the orchestral trade.

Chapter 6

35. Section 1217U sets out the interpretation of certain expressions within Part 15D.

Part 2: Consequential amendments

36. Paragraph 2 sets out consequential amendments to ICTA
37. Paragraphs 3 to 6 set out the consequential amendments to FA1998 to accommodate orchestra tax relief
38. Paragraph 7 sets out an amendment to CAA2001
39. Paragraph 8 sets out an amendment to FA2007.
40. Paragraphs 9 to 11 set out the necessary amendments to CTA 2009
41. Paragraph 12 sets out amendments to FA 2009.
42. Paragraph 13 to 14 sets out the amendments to CTA 2010 in respect of the Northern Ireland rate.

Part 3: Commencement

43. Paragraphs 16 to 17 set out that all amendments made by the Schedule have effect in relation to accounting periods beginning on or after 1 April 2016. Where an accounting period straddles the 1 April date the profits of a trade are to be apportioned between a deemed accounting period ending on 31 March 2016 and one commencing on 1 April 2016 on a just and reasonable basis.
44. Paragraph 7 sets out the separate commencement provisions in respect of the Corporation Tax (Northern Ireland) Act 2015.

Background note

45. The new tax relief for orchestral production will allow qualifying companies engaged in the production of concerts to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.
46. Both the additional deduction and the payable credit are calculated on the basis of EEA core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered.
47. The credit is based on the company's qualifying expenditure on the production of a qualifying orchestral concert. This expenditure must be on activities directly involved in producing the concert, such as rehearsal costs. Qualifying expenditure will not include indirect costs such as financing, marketing and accountancy and legal fees.
48. At least 25% of the qualifying expenditure must be on goods or services that are provided for from within the EEA.
49. Concerts whose main purpose, or one of the main purposes, is to advertise goods and services, including a competition or the primary purpose is to make a recording will not qualify for relief.
50. The new relief is part of the government's support to the creative sector and aims to promote British culture in a sustainable way.
51. If you have any questions or comments about this legislation please contact Kerry Pope on 03000 585 740 (email: kerry.pope@hmrc.gsi.gov.uk) or Des Ryan on 03000 585895 (email: des.ryan@hmrc.gsi.gov.uk).

28 Television and video games tax relief: consequential amendments

In the following provisions, for “section 1218” substitute “section 1218B” –

- (a) paragraph 8(2)(c) of Schedule 7A to TCGA 1992,
- (b) section 63(1) of CTA 2010, and
- (c) section 729 of CTA 2010.

Explanatory Note

Clause 28: Television and videogames tax relief: consequential amendments

Summary

1. This clause makes minor consequential amendments amending references to section 1218 Corporation Tax Act 2009 (CTA 2009) (meaning of ‘company with investment business’ and ‘investment business’) to section 1218B CTA 2009 in the Taxation of Capital Gains Act 1992 (TCGA 1992) and Corporation Tax Act 2010 (CTA 2010).

Part 1: Consequential amendments

2. Paragraph 28 sets out consequential amendments to TCGA 1992 and CTA2010 amending the reference of section 1218 CTA 2009 to 1218B CTA 2009.

Background note

3. If you have any questions or comments about this legislation please contact Kerry Pope on 03000 585 740 (email: kerry.pope@hmrc.gsi.gov.uk) or Des Ryan on 03000 585895 (email: des.ryan@hmrc.gsi.gov.uk).

29 Intangible fixed assets: pre-FA 2002 assets

- (1) Chapter 16 of Part 8 of CTA 2009 (pre-FA 2002 assets) is amended as follows.
- (2) In section 882 (application of Part 8 to assets created or acquired on or after 1 April 2002), after subsection (5) insert—
 - “(5A) References in this section to one person being (or not being) a related party in relation to another person are to be read as including references to the participation condition being met (or, as the case may be, not met) as between those persons.
 - (5B) References in subsection (5A) to a person include a firm in a case where, for section 1259 purposes, references in this section to a company are read as references to the firm.
 - (5C) In subsection (5B) “section 1259 purposes” means the purposes of determining under section 1259 the amount of profits or losses to be allocated to a partner in a firm.
 - (5D) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (5A) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.”
- (3) In section 894 (preserved status condition etc), after subsection (6) insert—
 - “(6A) Section 882(5A) to (5D) applies for the purposes of section 893 and this section.”
- (4) In section 895 (assets acquired in connection with disposals of pre-FA 2002 assets), at the end insert—
 - “(5) Section 882(5A) to (5D) applies for the purposes of this section.”
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after 25 November 2015.
- (6) For the purposes of subsection (5), an accounting period beginning before and ending on or after 25 November 2015 is to be treated as if so much of the accounting period as falls before that date, and so much of the accounting period as falls on or after that date, were separate accounting periods.
- (7) An apportionment for the purposes of subsection (6) must be made—
 - (a) in accordance with section 1172 of CTA 2010 (time basis), or
 - (b) if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

Explanatory Note

Clause 29: Intangible fixed assets: pre-FA 2002 assets

Summary

1. This measure clarifies the rules for intangible fixed assets in Part 8 of the Corporation Tax Act 2009 (CTA 2009). The measure confirms that arrangements involving bodies such as partnerships or Limited Liability Partnerships (LLPs) cannot be used to move assets into the Part 8 rules in ways that were not intended by the legislation. Clause 30 makes a related change to the rules that establish the value to be taken into account on a transfer.

Details of the clause

2. Clause 29 amends sections 882, 894 and 895 of CTA 2009.
3. Subsection (2) inserts new subsections (5A) to (5D) into section 882 of CTA 2009. Section 882 is the provision that sets out the rules to determine whether assets fall within the Part 8 rules, or whether they remain within the pre 1 April 2002 rules.
4. New section 882(5A) adds to section 882 the requirement that a 'participation condition' must also be considered when determining whether assets fall within the Part 8 rules, or whether they remain within the pre 1 April 2002 rules.
5. New section 882(5B) applies section 882(5A) to a firm for the purposes of section 1259 of CTA 2009.
6. New section 882(5C) sets out what is meant by 'section 1259 purposes'. Section 1259 of CTA 2009 determines how profits or losses of a partnership or LLP are computed when the partnership or LLP contains at least one member that is a company.
7. New section 882(5D) brings in the 'participation condition' from section 148 of Taxation (International and Other Provisions) Act 2010.
8. Subsection (3) provides that new sections 882(5A) to (5D) also apply for the purposes of sections 893 and 894 of CTA 2009.
9. Subsection (4) provides that new sections 882(5A) to (5D) also apply for the purposes of sections 895 of CTA 2009.

10. Subsections (5) to (7) set out the time from when the changes apply. The new rules will apply to debits or credits arising in accounting periods beginning on or after 25 November 2015. For that purpose an accounting period is split into two notional accounting periods - one ending on 24 November 2015 and one beginning on 25 November 2015. The rules apply to debits and credits irrespective of when the relevant transfers of intangible fixed assets took place.

Background note

11. This measure confirms that the corporation tax regime for intangible fixed assets applies to those assets intended to be within its scope. Those rules, contained in Part 8 of CTA 2009, were introduced in FA 2002 to provide a modern set of tax rules for intangible assets. Broadly, the rules provide tax deductions for corporation tax that match the amounts amortised or written-off in the accounts year by year.
12. These rules only apply to assets created on or after 1 April 2002, or to assets acquired by a company from a third party after that date. Assets owned since before 1st April 2002 by a company or a party related to it should stay within the old rules, where relief for the cost of the asset is given when the asset is disposed of.
13. However, HMRC has identified arrangements that use bodies such as partnerships or LLPs to transfer assets in ways that aim to bring the assets within the new rules without an effective change of economic ownership.
14. HMRC does not consider that these arrangements work in the way that they are claimed to work. This measure widens the conditions that must be met for an asset to come within the Part 8 rules. This confirms that these arrangements are not effective to avoid the Part 8 commencement rules. A related change ensures that the correct value is used when assets which are within the Part 8 regime are transferred between companies and persons such as partnerships or LLPs.
15. If you have any questions about this change, or comments on the legislation, please contact Martin Trott on 03000 585619 (email: martin.trott@hmrc.gsi.gov.uk)

30 Intangible fixed assets: transfers treated as at market value

- (1) In section 845 of CTA 2009 (transfer between company and related party treated as at market value), after subsection (4) insert—
 - “(4A) References in subsection (1) to a related party in relation to a company are to be read as including references to a person in circumstances where the participation condition is met as between that person and the company.
 - (4B) References in subsection (4A) to a company include a firm in a case where, for section 1259 purposes, references in subsection (1) to a company are read as references to the firm.
 - (4C) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (4A) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.
 - (4D) Subsection (4E) applies where—
 - (a) a gain on the disposal of an intangible asset by a firm is a gain to be taken into account for section 1259 purposes, and
 - (b) for those purposes, references in subsection (1) to a company are read as references to the firm.
 - (4E) Where this subsection applies, the gain referred to in subsection (4D)(a) is to be treated for the purposes of this section as if it were a chargeable realisation gain for the purposes of section 741(1) (meaning of “chargeable intangible asset”).
 - (4F) In this section, “section 1259 purposes” means the purposes of determining under section 1259 the amount of profits or losses to be allocated to a partner in a firm.”
- (2) The amendment made by this section applies in relation to a transfer which takes place on or after 25 November 2015, unless it takes place pursuant to an obligation, under a contract, that was unconditional before that date.
- (3) For the purposes of subsection (2), an obligation is “unconditional” if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

Explanatory Note

Clause 30: Intangible fixed assets: transfers treated as at market value

Summary

1. This measure clarifies the rules for intangible fixed assets in Part 8 of the Corporation Tax Act 2009 (CTA 2009). The measure confirms that transfers of assets between companies and other bodies, such as partnerships or Limited Liability Partnerships (LLPs), in respect of which the participation condition is satisfied are brought into account at their market value. Clause 29 makes a related change to the rules that establish whether intangible fixed assets come within the rules in Part 8 of CTA 2009, or whether they come within the rules that apply to pre 1 April 2002 assets.

Details of the clause

2. Clause 2 amends section 845 of CTA 2009, which applies market value to transfers of intangible fixed assets between a company and a related party.
3. Subsection (1) inserts new subsections (4A) to (4F) into section 845 of CTA 2009.
4. New section 845(4A) enables section 845 to apply to transfers between companies and other bodies, such as partnerships or LLPs, in relation to whom the 'participation condition' is met.
5. New section 845(4B) provides that references to a company in section 845(4A) also include a reference to a firm where a computation needs to be made for the purposes of section 1259 of CTA 2009.
6. New section 845(4C) brings in the 'participation condition' from section 148 of Taxation (International and Other Provisions) Act 2010.
7. New section 845(4D) sets out the circumstances in which subsection (4E) applies. These are that, for the purposes of section 1259, both a gain on disposal of intangible fixed assets is to be taken into account in computing profits and that references to a company in section 845(1) are to be read as references to a firm.
8. New section 845(4E) provides that where those conditions apply, a gain on the disposal of those assets is brought within the rules of Part 8 of CTA 2009 as a 'chargeable realisation gain' and is therefore subject to the market value rule in section 845 of CTA 2009.
9. New section 845(4F) sets out what is meant by 'section 1259 purposes'. Section 1259 of CTA 2009 determines how profits or losses of a partnership or an LLP are computed when the partnership or LLP contains at least one member that is a company.

10. Subsections (2) and (3) set out the commencement provision. The new rules will apply to transfers made on or after 25 November 2015, unless the transfer is made in consequence of a contract that was unconditional before that date.

Background note

11. This measure confirms that the corporation tax regime for intangible fixed assets applies to those assets intended to be within its scope. Those rules, contained in Part 8 of CTA 2009, were introduced in FA 2002 to provide a modern set of tax rules for intangible assets. Broadly, the rules provide tax deductions for corporation tax that match the amounts amortised or written-off in the accounts year by year.
12. These rules only apply to assets created on or after 1st April 2002, or to assets acquired by a company from a third party after that date. Assets owned since before 1st April 2002, by a company or a party related to it, should stay within the old rules where relief for the cost of the asset is given when the asset is disposed of.
13. However, HMRC has identified arrangements that use entities such as partnerships or LLPs to transfer assets in ways that aim to bring the assets within the new rules without an effective change of economic ownership. These arrangements also seek to disapply the rules that ensure that these transfers are brought into account at market value for tax purposes.
14. HMRC does not consider that these arrangements work in the way that they are claimed to work. This measure confirms that these arrangements are not effective in preventing the correct value being used when assets within the Part 8 regime are transferred between companies and other bodies such as partnerships or LLPs, where the participation condition is satisfied.
15. If you have any questions about this change, or comments on the legislation, please contact Martin Trott on 03000 585619 (email: martin.trott@hmrc.gsi.gov.uk).

31 Profits arising from the exploitation of patents etc

- (1) Part 8A of CTA 2010 (profits arising from the exploitation of patents etc) is amended as follows.
- (2) In section 357A (election for special treatment of profits from patents etc) –
 - (a) for subsections (6) and (7) substitute –
 - “(6) Chapter 2A makes provision for determining the relevant IP profits or relevant IP losses of a trade of a company for an accounting period in a case where –
 - (a) the accounting period begins on or after 1 July 2021, or
 - (b) the company is a new entrant (see subsection (11)).
 - (7) Chapters 2B, 3 and 4 make provision for determining the relevant IP profits or relevant IP losses of a trade of a company for an accounting period in various cases where –
 - (a) the accounting period begins before 1 July 2021, and
 - (b) the company is not a new entrant.”, and
 - (b) after subsection (10) insert –
 - “(11) A company is a “new entrant” for the purposes of this Part if the first accounting period for which the company’s election (or most recent election) under subsection (1) has effect begins on or after 1 July 2016.”
- (3) After section 357BE insert –

“CHAPTER 2A

RELEVANT IP PROFITS: CASES MENTIONED IN SECTION 357A(6)

Steps for calculating relevant IP profits of a trade

357BF Relevant IP profits

- (1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where –
 - (a) the accounting period begins on or after 1 July 2021, or
 - (b) the company is a new entrant (see section 357A(11)).
- (2) To determine the relevant IP profits –
 - Step 1*

Take any amounts which are brought into account as credits in calculating the profits of the trade for the accounting period, other than any amounts of finance income (see section 357BG), and divide them

into two “streams”, amounts of relevant IP income (see sections 357BH to 357BHC) and amounts that are not amounts of relevant IP income.

The stream consisting of relevant IP income is “the relevant IP income stream”; the other stream is the “standard income stream”.

Step 2

Divide the relevant IP income stream into “relevant IP income sub-streams” so that each sub-stream is either –

- (a) a sub-stream consisting of income properly attributable to a particular qualifying IP right (an “individual IP right sub-stream”), or
- (b) a sub-stream consisting of income properly attributable to a particular kind of multi-IP item (a “product sub-stream”).

See subsection (5) for further provision in connection with product sub-streams.

Step 3

Take any amounts which are brought into account as debits in calculating the profits of the trade for the accounting period, other than any excluded debits (see section 357BI), and allocate them on a just and reasonable basis between the standard income stream and each of the relevant IP income sub-streams.

Step 4

Deduct from each relevant IP income sub-stream –

- (a) the amounts allocated to the sub-stream at Step 3, and
- (b) the routine return figure for the sub-stream (see section 357BJ).

Step 5

If the company has made an election under section 357BK for small claims treatment, deduct from each relevant IP income sub-stream which is greater than nil following Step 4 the small claims figure for the sub-stream (see section 357BKA).

Step 6

If the company has not made an election under section 357BK for small claims treatment, deduct from each relevant IP income sub-stream which is greater than nil following Step 4 the marketing assets return figure for the sub-stream (see section 357BL).

Step 7

Multiply the amount of each relevant IP income sub-stream (following the deductions required at Steps 4 to 6) by the R&D fraction for the sub-stream (see section 357BM).

Step 8

Add together the amounts of the relevant IP income sub-streams (following Step 7).

Step 9

If the company has made an election under section 357BN (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 8 any amount determined in accordance with subsection (3) of that section.

- (3) If the amount given by subsection (2) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.

-
- (4) If the amount given by subsection (2) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).
 - (5) Income may be allocated at Step 2 to a product sub-stream only if –
 - (a) it would not be reasonably practicable to apportion it between individual IP right sub-streams, or
 - (b) it would be reasonably practicable to do that but doing so would result in it not being reasonably practicable to apply any of the remaining steps in subsection (2).
 - (6) In this section “multi-IP item” means an item which incorporates two or more qualifying items.
 - (7) For the purposes of this section multi-IP items may be treated as being of a particular kind if they are substantially the same as each other, having regard to the qualifying items incorporated within them and the purposes of which they are intended to be used.
 - (8) In subsections (6) and (7) “qualifying item” has the same meaning as in section 357BH(2)(a).

Finance income

357BG Finance Income

- (1) For the purposes of this Part “finance income”, in relation to a trade of a company, means –
 - (a) any credits which are treated as receipts of the trade by virtue of –
 - (i) section 297 of CTA 2009 (credits in respect of loan relationships), or
 - (ii) section 573 of CTA 2009 (credits in respect of derivative contracts),
 - (b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and
 - (c) any return, in relation to an amount, which –
 - (i) is produced for the company by an arrangement to which it is a party, and
 - (ii) is economically equivalent to interest.
- (2) In subsection (1) –

“economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009, and

“financial asset” means a financial asset as defined for the purposes of generally accepted accounting practice.
- (3) For the purposes of subsection (1)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company’s chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as profit arising to the company from a loan relationship.

But, in calculating that profit for the purposes of this subsection, sections 486B(7) and 486C to 486E of that Act are to be ignored.

Relevant IP income

357BH Relevant IP Income

- (1) For the purposes of this Part “relevant IP income” means income falling within any of the Heads set out in –
- (a) subsection (2) (sales income),
 - (b) subsection (6) (licence fees),
 - (c) subsection (7) (proceeds of sale etc),
 - (d) subsection (8) (damages for infringement), and
 - (e) subsection (9) (other compensation).

This is subject to section 357BHB (excluded income).

- (2) Head 1 is income arising from the sale by the company of any of the following items –
- (a) items in respect of which a qualifying IP right held by the company has been granted (“qualifying items”);
 - (b) items incorporating one or more qualifying items;
 - (c) items that are wholly or mainly designed to be incorporated into items within paragraph (a) or (b).
- (3) For the purposes of this Part an item and its packaging are not to be treated as a single item, unless the packaging performs a function that is essential for the use of the item for the purposes for which it is intended to be used.
- (4) In subsection (3) “packaging”, in relation to an item, means any form of container or other packaging used for the containment, protection, handling, delivery or presentation of the item, including by way of attaching the item to, or winding the item round, some other article.
- (5) In a case where a qualifying item and an item that is designed to incorporate that item (“the parent item”) are sold together as, or as part of, a single unit for a single price, the reference in subsection (2)(b) to an item incorporating a qualifying item includes a reference to the parent item.
- (6) Head 2 is income consisting of any licence fee or royalty which the company receives under an agreement granting another person any of the following rights only –
- (a) a right in respect of any qualifying IP right held by the company,
 - (b) any other right in respect of a qualifying item or process, and
 - (c) in the case of an agreement granting any right within paragraph (a) or (b), a right granted for the same purposes as those for which that right was granted.

In this subsection “qualifying process” means a process in respect of which a qualifying IP right held by the company has been granted.

- (7) Head 3 is any income arising from the sale or other disposal of a qualifying IP right or an exclusive licence in respect of such a right.
- (8) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right held by the company at the time of the infringement or alleged infringement.

-
- (9) Head 5 is any amount of damages, proceeds of insurance or other compensation, other than an amount in respect of an infringement or alleged infringement of a qualifying IP right, which is received by the company in respect of an event and –
 - (a) is paid in respect of any items that fell within subsection (2) at the time of that event, or
 - (b) represents a loss of income which would, if received by the company at the time of that event have been relevant IP income.
 - (10) But income is not relevant IP income by virtue of subsection (8) or (9) unless the event in respect of which the income is received, or any part of that event, occurred at a time when –
 - (a) the company was a qualifying company, and
 - (b) an election under section 357A had effect in relation to it.
 - (11) In a case where the whole of that event does not occur at such a time, subsection (8) or (9) (as the case may be) applies only to so much of the amount received by the company in respect of the event as on a just and reasonable apportionment is properly attributable to such a time.
 - (12) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

357BHA Notional royalty

- (1) This section applies where –
 - (a) a company holds a qualifying IP right or an exclusive licence in respect of a qualifying IP right,
 - (b) the qualifying IP right falls within paragraph (a), (b) or (c) of section 357BB(1), and
 - (c) the income of a trade of the company for an accounting period includes income (“IP-derived income”) which –
 - (i) arises from things done by the company that involve the exploitation by the company of the qualifying IP right, and
 - (ii) is not relevant IP income or excluded income.
- (2) The company may elect that the appropriate percentage of the IP-derived income is to be treated for the purposes of this Part as if it were relevant IP income.
- (3) The “appropriate percentage” is the proportion of the IP-derived income which the company would pay another person (“P”) for the right to exploit the qualifying IP right in the accounting period concerned if the company were not otherwise able to exploit it.
- (4) For the purposes of determining the appropriate percentage, assume that –
 - (a) the company and P are dealing at arm’s length,
 - (b) the company, or the company and persons authorised by it, will have the right to exploit the qualifying IP right to the exclusion of any other person (including P),
 - (c) the company will have the same rights in relation to the qualifying IP right as it actually has,

-
- (d) the right to exploit the qualifying IP right is conferred on the relevant day,
 - (e) the appropriate percentage is determined at the beginning of the accounting period concerned,
 - (f) the appropriate percentage will apply for each succeeding accounting period for which the company will have the right to exploit the qualifying IP right, and
 - (g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the qualifying IP right.
- (5) In subsection (4)(d) “the relevant day” means—
- (a) the first day of the accounting period concerned, or
 - (b) if later, the day on which the company first began to hold the qualifying IP right or licence.
- (6) In determining the appropriate percentage, the company must act in accordance with—
- (a) Article 9 of the OECD Model Tax Convention, and
 - (b) the OECD transfer pricing guidelines.
- (7) In this section “excluded income” means any income falling within either of the Heads in section 357BHB.

357BHB Excluded income

- (1) For the purposes of this Part income falling within either of the Heads set out in the following subsections is not relevant IP income—
- (a) subsection (2) (ring fence income),
 - (b) subsection (3) (income attributable to non-exclusive licences).
- (2) Head 1 is income arising from oil extraction activities or oil rights. In this subsection “oil extraction activities” and “oil rights” have the same meaning as in Part 8 (see sections 272 and 273).
- (3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a licence (a “non-exclusive licence”) held by the company which—
- (a) is a licence in respect of an item or process, but
 - (b) is not an exclusive licence in respect of a qualifying IP right.
- (4) In a case where—
- (a) a company holds an exclusive licence in respect of a qualifying IP right, and
 - (b) the licence also confers on the company (or on the company and persons authorised by it) any right in respect of the invention otherwise than to the exclusion of all other persons,
- the licence is to be treated for the purposes of this Part as if it were two separate licences, one an exclusive licence that does not confer any such rights, and the other a non-exclusive licence conferring those rights.

357BHC Mixed sources of income

- (1) This section applies to any income that—
- (a) is mixed income, or
 - (b) is paid under a mixed agreement.

-
- (2) “Mixed income” means the proceeds of sale where an item falling within subsection (2) of section 357BH and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.
- (3) A “mixed agreement” is an agreement providing for –
- (a) one or more of the matters in paragraphs (a) to (c) of subsection (4), and
 - (b) one or more of the matters in paragraphs (d) to (g) of that subsection.
- (4) The matters are –
- (a) the sale of an item falling within section 357BH(2),
 - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6),
 - (c) a sale or disposal falling within section 357BH(7),
 - (d) the sale of any other item,
 - (e) the grant of any other right,
 - (f) any other sale or disposal,
 - (g) the provision of any services.
- (5) So much of the income as on a just and reasonable apportionment is properly attributable to –
- (a) the sale of an item falling within section 357BH(2),
 - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6), or
 - (c) a sale or disposal falling within section 357BH(7),
- is to be regarded for the purposes of this Part as relevant IP income.
- (6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraphs (d) to (g) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

Excluded debits

357BI Excluded debits

For the purposes of this Part “excluded debits” means –

- (a) the amount of any debits which are treated as expenses of a trade by virtue of –
 - (i) section 297 of CTA 2009 (debits in respect of loan relationships), or
 - (ii) section 573 of CTA 2009 (debits in respect of derivative contracts),
- (b) the amount of any additional deduction for an accounting period obtained by a company under Part 13 of CTA 2009 for expenditure on research and development in relation to a trade,
- (c) the amount of any additional deduction for an accounting period obtained by a company under Part 15A of CTA 2009 in respect of qualifying expenditure on a television programme,

-
- (d) the amount of any additional deduction for an accounting period obtained by a company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game, and
 - (e) the amount of any additional deduction for an accounting period obtained by a company under Part 15C of CTA 2009 in respect of qualifying expenditure on a theatrical production.

Routine return figure

357BJ Routine return figure

- (1) This section applies for the purpose of calculating the routine return figure for a relevant IP income sub-stream established at Step 2 in section 357BF(2) in determining the relevant IP profits of a trade of a company for an accounting period.
- (2) The routine return figure for the sub-stream is 10% of the aggregate of any routine deductions which—
 - (a) have been made by the company in calculating the profits of the trade for the accounting period, and
 - (b) have been allocated to the sub-stream at Step 3 in section 357BF(2).

For the meaning of “routine deductions”, see sections 357BJA and 357BJB.

- (3) In a case where—
 - (a) the company (“C”) is a member of a group,
 - (b) another member of the group has incurred expenses on behalf of C,
 - (c) had they been incurred by C, C would have made a deduction in respect of the expenses in calculating the profits of the trade for the accounting period,
 - (d) the deduction would have been a routine deduction, and
 - (e) the deduction would have been allocated to the sub-stream at Step 3 in section 357BF(2),

C is to be treated for the purposes of subsection (2) as having made such a routine deduction and as having allocated the deduction to the sub-stream.

- (4) Where expenses have been incurred by any member of the group on behalf of C and any other member of the group, subsection (3) applies in relation to so much of the amount of the expenses as on a just and reasonable apportionment may properly be regarded as incurred on behalf of C.

357BJA Routine deductions

- (1) For the purposes of this Part, “routine deductions” means deductions falling within any of the Heads set out in—
 - (a) subsection (2) (capital allowances),
 - (b) subsection (3) (costs of premises),
 - (c) subsection (4) (personnel costs),
 - (d) subsection (5) (plant and machinery costs),
 - (e) subsection (6) (professional services), and

-
- (f) subsection (7) (miscellaneous services).
This is subject to section 357BJB (deductions that are not routine deductions).
- (2) Head 1 is any allowances under CAA 2001.
- (3) Head 2 is any deductions made by the company in respect of any premises occupied by the company.
- (4) Head 3 is any deductions made by the company in respect of—
(a) any director or employee of the company, or
(b) any externally provided workers.
- (5) Head 4 is any deductions made by the company in respect of any plant or machinery used by the company.
- (6) Head 5 is any deductions made by the company in respect of any of the following services—
(a) legal services, other than IP-related services;
(b) financial services, including—
(i) insurance services, and
(ii) valuation or actuarial services;
(c) services provided in connection with the administration or management of the company’s directors and employees;
(d) any other consultancy services.
- (7) Head 6 is any deductions made by the company in respect of any of the following services—
(a) the supply of water, fuel or power;
(b) telecommunication services;
(c) computing services, including computer software;
(d) postal services;
(e) the transportation of any items;
(f) the collection, removal and disposal of refuse.
- (8) In this section—
“externally provided worker” has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),
“IP-related services” means services provided in connection with—
(a) any application for a right to which this Part applies, or
(b) any proceedings relating to the enforcement of any such right,
“premises” includes any land,
“telecommunication service” means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service), and
“telecommunication system” means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.
- (9) The Treasury may by regulations amend this section.

357BJB Deductions that are not routine deductions

- (1) For the purposes of this Part a deduction is not a “routine deduction” if it falls within any of the Heads set out in—
 - (a) subsection (2) (loan relationships and derivative contracts),
 - (b) subsection (3) (R&D expenses),
 - (c) subsection (4) (capital allowances for R&D or patents),
 - (d) subsection (5) (R&D-related employee share acquisitions),
 - (e) subsection (8) (television production expenditure),
 - (f) subsection (9) (video games development expenditure).
- (2) Head 1 is any debits which are treated as expenses of the trade by virtue of—
 - (a) section 297 of CTA 2009 (debits in respect of loan relationships),
or
 - (b) section 573 of CTA 2009 (debits in respect of derivative contracts).
- (3) Head 2 is—
 - (a) the amount of any expenditure on research and development in relation to the trade—
 - (i) for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, or
 - (ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009, and
 - (b) where the company obtains an additional deduction as mentioned in paragraph (a)(i), the amount of that additional deduction.
- (4) Head 3 is any allowances under—
 - (a) Part 6 of CAA 2001 (research and development allowances), or
 - (b) Part 8 of CAA 2001 (patent allowances).
- (5) Head 4 is the appropriate proportion of any deductions allowed under Part 12 of CTA 2009 (relief for employee share acquisitions) in a case where—
 - (a) shares are acquired by an employee or another person because of the employee’s employment by the company, and
 - (b) the employee is wholly or partly engaged directly and actively in relevant research and development (within the meaning of section 1042 of CTA 2009).
- (6) In subsection (5) “the appropriate proportion”, in relation to a deduction allowed in respect of an employee, is the proportion of the staffing costs in respect of the employee which are attributable to relevant research and development for the purposes of Part 13 of CTA 2009 (see section 1124 of that Act).
“Staffing costs” has the same meaning as in that Part (see section 1123 of that Act).
- (7) Subsections (5) and (6) of section 1124 of CTA 2009 apply for the purposes of subsection (5)(b) as they apply for the purposes of that section.

-
- (8) Head 5 is –
- (a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and
 - (b) the amount of that additional deduction.
- (9) Head 6 is –
- (a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and
 - (b) the amount of that additional deduction.
- (10) The Treasury may by regulations amend this section.

Election for small claims treatment

357BK Companies eligible to elect for small claims treatment

- (1) A company may make an election under this section for small claims treatment for an accounting period if –
- (a) Conditions A and B are met, and
 - (b) Condition C or D is met.
- (2) Condition A is that the company carries on only one trade during the accounting period.
- (3) Condition B is that section 357BF applies for the purposes of determining the relevant IP profits of the trade for the accounting period.
- (4) Condition C is that the qualifying residual profit of the trade for the accounting period does not exceed £1,000,000.
- (5) Condition D is that –
- (a) the qualifying residual profit of the trade for the accounting period does not exceed the relevant maximum, and
 - (b) the company did not take Step 6 in section 357BF(2), 357C(1) or 357DA(1) for the purpose of calculating the relevant IP profits of the trade for any previous accounting period beginning within the relevant 4-year period.

The “relevant 4-year period” means the period of 4 years ending immediately before the beginning of the accounting period mentioned in paragraph (a).

- (6) If no other company is a related 51% group company of the company in the accounting period, the relevant maximum is £3,000,000.
- (7) If one or more other companies are related 51% group companies of the company in the accounting period, the relevant maximum is –

$$\frac{\pounds 3,000,000}{1 + N}$$

where N is the number of those 51% group companies in relation to which an election under section 357A has effect for the accounting period.

-
- (8) For an accounting period of less than 12 months, the relevant maximum is proportionally reduced.
 - (9) For the purposes of this section and section 357BKA, the “qualifying residual profit” of a trade of a company for an accounting period is the aggregate of the relevant IP income sub-streams established at Step 2 in section 357BF(2) in determining the relevant IP profits of the trade for the accounting period, following the deductions required by Step 4 (ignoring the amount of any sub-stream which is not greater than nil following those deductions).

357BKA Small claims figure

- (1) This section applies for the purpose of calculating the small claims figure for a relevant IP income sub-stream established at Step 2 in section 357BF(2) in determining the relevant IP profits of a trade of a company for an accounting period.
- (2) If 75% of the qualifying residual profit of the trade for the accounting period is lower than the small claims threshold, the small claims figure for the sub-stream is 25% of the amount of the sub-stream following Step 4 in section 357BF(2).
- (3) If 75% of the qualifying residual profit of the trade for the accounting period is higher than the small claims threshold, the small claims figure for the sub-stream is the amount given by –

$$A - \left(\frac{A}{\text{QRP}} \times \text{SCT} \right)$$

where –

A is the amount of the sub-stream following Step 4 in section 357BF(2),

QRP is the qualifying residual profit of the trade of the company for the accounting period, and

SCT is the small claims threshold.

- (4) If no other company is a related 51% group company of the company in the accounting period, the small claims threshold is £1,000,000.
- (5) If one or more other companies are related 51% group companies of the company in the accounting period, the small claims threshold is –

$$\frac{\text{£1,000,000}}{1 + N}$$

where N is the number of those related 51% group companies in relation to which an election under section 357A has effect for the accounting period.

- (6) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.

Marketing assets return figure

357BL Marketing assets return figure

- (1) The marketing assets return figure for a relevant IP income sub-stream is –

$$\text{NMR} - \text{AMR}$$

where –

NMR is the notional marketing royalty in respect of the sub-stream (see section 357BLA), and

AMR is the actual marketing royalty in respect of the sub-stream (see section 357BLB).

- (2) Where –
- (a) AMR is greater than NMR, or
 - (b) the difference between NMR and AMR is less than 10% of the amount of the relevant IP income sub-stream following the deductions required by Step 4 in section 357BF(2),
- the marketing assets return figure for the sub-stream is nil.

357BLA Notional marketing royalty

- (1) The notional marketing royalty in respect of a relevant IP income sub-stream is the appropriate percentage of the income allocated to that sub-stream at Step 2 in section 357BF(2).
- (2) The “appropriate percentage” is the proportion of that income which the company would pay another person (“P”) for the right to exploit the relevant marketing assets in the accounting period concerned if the company were not otherwise able to exploit them.
- (3) For the purposes of this section a marketing asset is a “relevant marketing asset” in relation to a relevant IP income sub-stream if the sub-stream includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.
- (4) For the purpose of determining the appropriate percentage under this section, assume that –
- (a) the company and P are dealing at arm’s length,
 - (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant marketing assets to the exclusion of any other person (including P),
 - (c) the company will have the same rights in relation to the relevant marketing assets as it actually has,
 - (d) the right to exploit the relevant marketing assets is conferred on the relevant day,
 - (e) the appropriate percentage is determined at the beginning of the accounting period concerned,
 - (f) the appropriate percentage will apply for each succeeding accounting period for which the company will have the right to exploit the relevant marketing assets, and
 - (g) no income other than income within the relevant IP income sub-stream will arise from anything done by the company that

involves the exploitation by the company of the relevant marketing assets.

- (5) In subsection (4)(d) “the relevant day”, in relation to a relevant marketing asset, means—
 - (a) the first day of the accounting period concerned, or
 - (b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.
- (6) In determining the appropriate percentage, the company must act in accordance with—
 - (a) Article 9 of the OECD Model Tax Convention, and
 - (b) the OECD transfer pricing guidelines.
- (7) In this section “marketing asset” means any of the following (whether or not capable of being transferred or assigned) —
 - (a) anything in respect of which proceedings for passing off could be brought, including a registered trade mark (within the meaning of the Trade Marks Act 1994),
 - (b) anything that corresponds to a marketing asset within paragraph (a) and is recognised under the law of a country or territory outside the United Kingdom,
 - (c) any signs or indications (so far as not falling within paragraph (a) or (b)) which may serve, in trade, to designate the geographical origin of goods or services, and
 - (d) any information which relates to customers or potential customers of the company, or any other member of a group of which the company is a member, and is intended to be used for marketing purposes.

357BLB Actual marketing royalty

- (1) The actual marketing royalty for a relevant IP income sub-stream is the aggregate of any sums which—
 - (a) were paid by the company for the purposes of acquiring any relevant marketing assets or the right to exploit any such assets, and
 - (b) have been allocated to the sub-stream at Step 3 in section 357BF(2).
- (2) In this section “relevant marketing asset” has the same meaning as in section 357BLA.

R&D fraction

357BM Introduction

Sections 357BMA to 357BMG apply for the purpose of determining the R&D fraction for a relevant IP income sub-stream (referred to in those sections as “the sub-stream concerned”).

357BMA The R&D fraction

The R&D fraction for the sub-stream concerned is the lesser of 1 and —

$$\frac{(D + S1) \times 1.3}{D + S1 + S2 + A}$$

where –

D is the company's qualifying expenditure on relevant R&D undertaken in-house (see section 357BMB),

S1 is the company's qualifying expenditure on relevant R&D sub-contracted to unconnected persons (see section 357BMC),

S2 is the company's qualifying expenditure on relevant R&D sub-contracted to connected persons (see section 357BMD), and

A is the company's qualifying expenditure on the acquisition of relevant qualifying IP rights (see section 357BME).

357BMB Qualifying expenditure on relevant R&D undertaken in-house

- (1) In section 357BMA, the company's "qualifying expenditure on relevant R&D undertaken in-house" means the expenditure incurred by the company during the relevant period which meets conditions A, B and C.
- (2) Condition A is that the expenditure is –
 - (a) incurred on staffing costs,
 - (b) incurred on software or consumable items,
 - (c) qualifying expenditure on externally provided workers, or
 - (d) incurred on relevant payments to the subjects of clinical trials.
- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (4) In this section and sections 357BMC and 357BMD, "relevant research and development" means research and development (within the meaning of section 1138) which –
 - (a) in a case where the sub-stream concerned is an individual IP right sub-stream, relates to the qualifying IP right to which the income in the sub-stream is attributable, or
 - (b) in a case where the sub-stream concerned is a product sub-stream, relates to a qualifying IP right granted in respect of any qualifying item incorporated in a multi-IP item to which income in the sub-stream is attributable.
- (5) Research and development "relates" to a qualifying IP right for the purposes of subsection (4) if –
 - (a) it creates, or contributes to the creation of, the invention,
 - (b) it is undertaken for the purpose of developing the invention,
 - (c) it is undertaken for the purpose of developing ways in which the invention may be used or applied, or
 - (d) it is undertaken for the purpose of developing any item or process incorporating the invention.
- (6) The following provisions of CTA 2009 apply for the purposes of this section –
 - (a) section 1123 (meaning of "staffing costs"),
 - (b) section 1124 (when staffing costs are attributable to relevant research and development),
 - (c) section 1125 (meaning of "software or consumable items"),
 - (d) sections 1126 to 1126B (when software or consumable items are attributable to relevant research and development),

-
- (e) sections 1127 to 1131 (meaning of “qualifying expenditure on externally provided workers”),
 - (f) section 1132 (when qualifying expenditure on externally provided workers is attributable to relevant research and development), and
 - (g) section 1140 (meaning of “relevant payments to the subjects of clinical trials”),

and in the application of those provisions for the purposes of this section any reference to “relevant research and development” is to be read as a reference to relevant research and development within the meaning given by subsection (4).

357BMC Qualifying expenditure on relevant R&D sub-contracted to unconnected persons

- (1) In section 357BMA, the company’s “qualifying expenditure on relevant R&D sub-contracted to unconnected persons” means the expenditure incurred by the company during the relevant period which meets conditions A, B and C.
- (2) Condition A is that the expenditure is incurred in making the qualifying element of a sub-contractor payment.
- (3) Condition B is that the company and the sub-contractor are not connected.
- (4) Condition C is that the expenditure is attributable to relevant research and development (see section 357BMB(4)).
- (5) The following provisions apply for the purposes of this section –
 - (a) section 1133 of CTA 2009 (meaning of “sub-contractor payment” and “sub-contractor”);
 - (b) section 1136 of CTA 2009 (meaning of “qualifying element” of sub-contractor payment: unconnected persons);
 - (c) section 1122 of this Act (meaning of “connected” persons).
- (6) In its application for the purposes of this section, section 1136 of CTA 2009 has effect as if paragraph (c) of subsection (1) of the section was omitted.

357BMD Qualifying expenditure on relevant R&D sub-contracted to connected persons

- (1) In section 357BMA, the company’s “qualifying expenditure on relevant R&D sub-contracted to connected persons” means the expenditure incurred by the company during the relevant period in relation to which conditions A, B and C are met.
- (2) Condition A is that the expenditure is incurred in making the qualifying element of a sub-contractor payment.
- (3) Condition B is that the company and the sub-contractor are connected.
- (4) Condition C is that the expenditure is attributable to relevant research and development (see section 357BMB(4)).
- (5) The following provisions apply for the purposes of this section –

-
- (a) section 1133 of CTA 2009 (meaning of “sub-contractor payment” and “sub-contractor”);
 - (b) section 1134 of CTA 2009 (meaning of “qualifying element” of sub-contractor payment: connected persons);
 - (c) section 1122 of this Act (meaning of “connected” persons).
- (6) In its application for the purposes of this section, section 1134 of CTA 2009 has effect with the following modifications –
- (a) in subsection (3) –
 - (i) at the end of paragraph (b) insert “and”;
 - (ii) omit paragraph (d);
 - (b) in subsection (5) –
 - (i) in the words before paragraph (a) for “requirements of subsection (3)(c) and (d)” substitute “requirement of subsection (3)(c)”;
 - (ii) omit paragraph (c).

357BME Qualifying expenditure on acquisition of relevant qualifying IP right

- (1) In section 357BMA, the company’s “qualifying expenditure on the acquisition of relevant qualifying IP rights” means the expenditure incurred by the company during the relevant period for the acquisition of a relevant qualifying IP right or an exclusive licence in respect of a relevant qualifying IP right.
- (2) “Relevant qualifying IP right” means –
 - (a) in a case where the sub-stream concerned is an individual IP right sub-stream, the qualifying IP right to which the income in the sub-stream is attributable, and
 - (b) in a case where the sub-stream concerned is a product sub-stream, a qualifying IP right granted in respect of a qualifying item incorporated in a multi-IP item to which income in the sub-stream is attributable.

357BMF Meaning of the “relevant period”

- (1) This section defines the “relevant period” for the purposes of sections 357BMB to 357BME.
- (2) The “relevant period” is the period which –
 - (a) ends with the last day of the accounting period to which the sub-stream concerned relates (“the accounting period in question”), and
 - (b) begins with the relevant day or such earlier day as the company may elect.

This is subject to subsection (6).

- (3) The “relevant day” is 1 July 2013 in a case where –
 - (a) the accounting period in question begins before 1 July 2021, and
 - (b) the company is a new entrant (see section 357A(11)).
- (4) The relevant day is 1 July 2016 in any other case.
- (5) A day elected under subsection (2)(b) must not be more than 15 years before the last day of the accounting period in question.

-
- (6) If the last day of the accounting period in question is, or is after, 1 July 2031 the “relevant period” is the period of 15 years ending with that day.

357BMG New entrants with insufficient information about pre-enactment expenditure

- (1) This section applies to a company if –
- (a) it is a new entrant (see section 357A(11)), and
 - (b) it has insufficient information about its expenditure in the period which began with 1 July 2013 and ended with 30 June 2016 to be able to calculate the R&D fraction for a relevant IP income sub-stream which relates to an accounting period which begins before 1 July 2021.
- (2) If the accounting period to which the sub-stream relates begins on or after 1 July 2019, the company may elect that, for the purposes of determining the R&D fraction for the sub-stream, section 357BMF is to have effect as if in subsection (3) for “1 July 2013” there was substituted “1 July 2016”.
- (3) If the accounting period to which the sub-stream relates begins before 1 July 2019 the company may elect that, for the purposes of determining the R&D fraction for the sub-stream, sections 357BM to 357BME are to have effect as if –
- (a) any reference in those sections to the relevant period was to the period of three years ending with the last day of the accounting period,
 - (b) in section 357BMB, for subsections (4) and (5) there was substituted –
 - “(4) In this section and sections 357BMC and 357BMD, “relevant research and development” means research and development (within the meaning of section 1138) which relates to the trade concerned.”, and
 - (c) in section 357BME –
 - (i) in subsection (1) for the words from “a relevant qualifying IP right” to the end there was substituted “qualifying IP rights or exclusive licences in respect of qualifying IP rights”, and
 - (ii) subsection (2) was omitted.

Profits arising before grant of right

357BN Profits arising before grant of right

- (1) This section applies where a company –
- (a) holds a right mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or
 - (b) would hold such a right or licence but for the fact that the company disposed of any rights in the invention or (as the case may be) the licence before the right was granted.
- (2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period

in which the right is granted, there is to be added the amount determined in accordance with subsection (3) (the “additional amount”).

- (3) The additional amount is the difference between—
 - (a) the aggregate of the relevant IP profits of the trade for each relevant accounting period, and
 - (b) the aggregate of what the relevant IP profits of the trade for each relevant accounting period would have been if the right had been granted on the relevant day.
- (4) For the purposes of determining the additional amount, the amount of any relevant IP profits to which section 357A does not apply by virtue of Chapter 5 (relevant IP losses) is to be disregarded.
- (5) In this section “relevant accounting period” means—
 - (a) the accounting period of the company in which the right is granted, and
 - (b) any earlier accounting period of the company which meets the conditions in subsection (6).
- (6) The conditions mentioned in subsection (5)(b) are—
 - (a) that it is an accounting period for which an election made by the company under section 357A has effect,
 - (b) that it is an accounting period for which the company is a qualifying company, and
 - (c) that it ends on or after the relevant day.
- (7) In this section “the relevant day” is the later of—
 - (a) the first day of the period of 6 years ending with the day on which the right is granted, and
 - (b) the day on which—
 - (i) the application for the grant of the right was filed, or
 - (ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.
- (8) Where the company would be a qualifying company for an accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.
- (9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.

CHAPTER 2B

RELEVANT IP PROFITS: CASES MENTIONED IN SECTION 357A(7): INCOME FROM NEW IP

357BO Relevant IP profits

- (1) Section 357BF applies, with the modifications set out in section 357BQ, for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where –
 - (a) the accounting period begins before 1 July 2021,
 - (b) the company is not a new entrant (see section 357A(11)), and
 - (c) any amount of relevant IP income brought into account as a credit in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).
- (2) Where it is necessary for the purposes of section 357BF, as applied by this section, to determine the R&D fraction for a relevant IP income sub-stream, the company concerned is to be treated for the purposes of sections 357BMF and 357BMG as if it was a new entrant.

357BP Meaning of “new qualifying IP right”

- (1) For the purposes of this Part “new qualifying IP right”, in relation to a company, means a qualifying IP right which meets condition A, B or C.
- (2) Condition A is that the right was granted or issued to the company in response to an application filed on or after 1 July 2016.
- (3) Condition B is that the right was assigned to the company on or after the relevant date.
- (4) Condition C is that an exclusive licence in respect of the right was granted to the company on or after the relevant date.
- (5) In subsections (3) and (4) the “relevant date” means –
 - (a) 2 January 2016, if the person who assigned the right or (as the case may be) granted the licence was within subsection (6) or (7) at the time of the assignment or grant, and
 - (b) 1 July 2016, in any other case.
- (6) A person is within this subsection if the person –
 - (a) is a company,
 - (b) is connected with the company referred to in subsection (1),
 - (c) is either not a qualifying company or not a company in relation to which an election under section 357A has effect, and
 - (d) is not entitled to a reduced rate of tax under any provision of the law of a country or territory outside the United Kingdom designated by regulations made by the Treasury as being provision which corresponds to this Part of this Act.
- (7) A person is within this subsection if the person –
 - (a) is not a company, and
 - (b) is connected with the company referred to in subsection (1).

-
- (8) A company may elect that for the purposes of determining the relevant IP profits of a trade of the company for an accounting period a qualifying IP right which does not meet any of conditions A, B or C is to be treated as if it was a new qualifying IP right.
 - (9) An election under subsection (8) has effect –
 - (a) for the accounting period for which it is made, and
 - (b) for each subsequent accounting period which begins before 1 July 2021.
 - (10) Section 1122 (meaning of “connected” persons) applies for the purposes of this section.

357BQ The modifications

- (1) The modifications of section 357BF referred to in section 357BO(1) are as follows.
- (2) In subsection (2) –
 - (a) in Step 2 –
 - (i) before paragraph (a) insert –

“(aa) a sub-stream consisting of all the income properly attributable to qualifying IP rights which are not new qualifying IP rights (“the old IP rights sub-stream”),”
 - (ii) in paragraph (a) before “qualifying IP right” insert “new”,
 - (iii) in paragraph (b) before “multi-IP item” insert “new”,
 - (b) in Step 7, for “relevant IP income sub-stream” substitute “individual IP right sub-stream and each product sub-stream”, and
 - (c) for Step 8 substitute –

“*Step 8*
Add together –

 - (a) the amount of the old IP rights sub-stream (following Steps 4 to 6), and
 - (b) the amount of each of the individual IP right sub-streams and product sub-streams (following Step 7).”
- (3) In subsection (6) –
 - (a) for “multi-IP item” substitute “new multi-IP item”, and
 - (b) at the end insert “all of which are qualifying items in respect of which a new qualifying IP right has been granted”.
- (4) In subsection (7) before “multi-IP items” insert “new”.
- (4) The Schedule (which contains amendments consequential on this section) has effect.

SCHEDULE TO CLAUSE 31

EXPLOITATION OF PATENTS ETC: CONSEQUENTIAL AMENDMENTS

- 1 Part 8A of CTA 2010 is amended in accordance with this Schedule.
- 2 In the heading of Chapter 3, after “profits” insert “: cases mentioned in section 357A(7): no income from new IP”.
- 3 (1) Section 357C is amended as follows.
 - (2) Before subsection (1) insert—

“(A1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—

 - (a) the accounting period begins before 1 July 2021,
 - (b) the company is not a new entrant (see section 357A(11)), and
 - (c) none of the amounts of relevant IP income brought into account as credits in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).

But see also section 357D (alternative method of calculating relevant IP profits in such a case).”
 - (3) In subsection (1)—
 - (a) in the words before Step 1, omit “of a trade” to “an accounting period”,
 - (b) in Step 2, for “357CC and 357CD” substitute “357BH to 357BHC”,
 - (c) in Step 4, after “routine return figure” insert “in relation to the trade for the accounting period”,
 - (d) in Step 5, for “elected” substitute “made an election under section 357CL”, and
 - (e) in Step 6, after “marketing assets return figure” insert “in relation to the trade for the accounting period”.
- 4 In section 357CA(2) for “357CB” substitute “357BG”.
- 5 Omit sections 357CB to 357CF.
- 6 (1) Section 357CG is amended as follows.
 - (2) In subsection (1) after “determining” insert “under section 357C”.
 - (3) In subsection (4), in the words after paragraph (b), for “357CB” substitute “357BG”.
- 7 In section 357CI(1), in Step 1, for “357CJ and 357CK” substitute “357BJA and 357BJB”.

-
- 8 Omit sections 357CJ and 357CK.
- 9 In section 357CL(1) for “elect” substitute “make an election under this section”.
- 10 In section 357CM(1) for “elects” substitute “makes an election under section 357CL”.
- 11 For the heading of Chapter 4 substitute “Relevant IP profits: cases mentioned in section 357A(7): alternative method”
- 12 (1) Section 357D is amended as follows.
- (2) In subsection (1) at the end insert “in a case where—
- (a) the accounting period begins before 1 July 2021,
 - (b) the company is not a new entrant (see section 357A(11)), and
 - (c) none of the amounts of relevant IP income brought into account as credits in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).”
- (3) For subsection (4) substitute—
- “(4) A company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of a trade of the company for an accounting period in a case mentioned in subsection (1) if any of the mandatory streaming conditions in section 357DC is met in relation to the trade for the period.”
- 13 (1) Section 357DA is amended as follows.
- (2) In subsection (1)—
- (a) in Step 1—
 - (i) for “357CB” substitute “357BG”,
 - (ii) for “357CC and 357CD” substitute “357BH to 357BHC”,
 - (b) in Step 4, after “routine return figure” insert “in relation to the trade for the accounting period”,
 - (c) in Step 5, for “elected” substitute “made an election under section 357CL”, and
 - (d) in Step 6, after “marketing assets return figure” insert “in relation to the trade for the accounting period”.
- (3) In subsection (4), in the words after paragraph (b), for “357CJ and 357CK” substitute “357BJA and 357BJB”.
- 14 (1) Section 357DC is amended as follows.
- (2) In subsection (8)(a) for “357CC” substitute “357BH”.
 - (3) In subsection (9)(a) for “357CC(6)” substitute “357BH(6)”.
- 15 In section 357FA(2) for “357CC(2)” substitute “357BH(2)”.
- 16 (1) Section 357GB is amended as follows.
- (2) In subsection (11)—
- (a) in the words before paragraph (a), after “Sections” insert “357BK, 357BKA,”, and

(b) in paragraph (a) after “section” insert “357BK or”.

(3) In subsection (12) for “357CB(1)(c)” substitute “357BG(1)(c)”.

17 In section 357GC(3) for “357CB(1)(c)” substitute “357BG(1)(c)”.

Explanatory Note

Clause 31 and Schedule: Exploitation of patents etc - profits arising from the exploitation of patents etc

Summary

1. This clause amends the design of the Patent Box legislation in Part 8A of Corporation Tax Act (CTA) 2010. The Patent Box provides a reduced rate of Corporation Tax on profits from patents and similar intellectual property (IP). The changes are to ensure compliance with the new international framework developed by OECD (see Chapter 4 of "Countering harmful Tax Practices More Effectively, Taking Into account Transparency and Substance", OECD, Paris, 2015).
2. The amended rules will require profit for the purpose of the Patent Box to be calculated at the level of an IP asset (for example a patent), or a product or a product family relying on an IP asset or assets. The profit will be adjusted to reflect the proportion of the development activity on the asset (or product, or product category) undertaken by the company itself. The measure will have effect for new entrant companies to the Patent Box on or after 1 July 2016, and also for some IP assets acquired on or after 2 January 2016. The new rules are being phased in, with the current Patent Box rules applying to some companies and IP during a transitional period lasting until 2021. The new rules will apply to all companies and IP after 2021.

Details of the clause

3. Clause 31 introduces new Chapters 2A and 2B to CTA 2010.
4. Subsection 2(a) amends Section 357A to set out the circumstances in which new Chapter 2A or new Chapter 2B apply instead of the current provisions in Chapters 3 and 4.
5. New Chapter 2A contains the new rules in their default form, which applies to all accounting periods beginning on or after 1 July 2021 and to any company entering the Patent Box for the first time for an accounting period beginning on or after 1 July 2016 - a "new entrant" (but see also clause 32 which provides that periods straddling 1 July 2016 are to be split for this purpose).
6. New Chapter 2B provides modifications to the rules in new Chapter 2A to accommodate a company which has both new IP (defined in new section 357BP) and preexisting IP. Both new Chapter 2A and new Chapter 2B require profits to be calculated using the "streaming" method, currently optional.
7. The current Chapters 3 and 4, which set out how profits are to be calculated using the "proportional split" and "streaming" methods respectively, continue to apply during the transitional period but only to companies which are not new entrants and which have no new

IP.

8. Subsection (2)(b) inserts the definition of a new entrant company for this purpose into section 357A.

New Chapter 2A

New Chapter 2A contains sections 357BF to 357BN which provide new Patent Box rules applying to accounting periods beginning on or after 1 July 2021 and to companies making a Patent Box election first having application on or after 1 July 2016. (See also clause 32 which provides that accounting periods straddling 1 July 2016 and 1 July 2021 are, for Patent Box purposes, to be split). These are the default rules for the Patent Box which apply once the transitional period ends.

9. New Section 357BF provides the method of calculating the profit to which the reduced rate of Corporation Tax applies.
10. New Subsection 2 sets out 9 steps to be followed in calculating the relevant IP profit or the relevant IP loss of the trade for the period
 - Step 1 specifies that the company must separate its credits into two streams, those that are relevant IP income and those that are not. The definition of relevant IP income remains as in the current Patent Box rules at S357C;
 - Step 2 divides the relevant IP income stream into sub-streams corresponding either to individual IP assets (such as patents) or to particular kinds of multi-IP items (products or product families);
 - Step 3 allocates debits between the sub-streams;
 - Step 4 deducts from each sub-stream the debits allocated at Step 3 and a routine return. These are calculated in the same way as under the current Patent Box rules;
 - Step 5 deducts from each sub-stream the small claims figure where the company is eligible for, and has elected to use, small claims treatment. This is a simplified alternative to calculating the marketing assets return;
 - Step 6 deducts from each sub-stream the marketing assets return where the company is not eligible for or has not elected for small claims treatment;
 - Step 7 multiplies the figure for each sub-stream by the corresponding research and development (R&D) fraction, calculated at new section 357BM;
 - Step 8 adds together the amounts of the sub-streams;
 - Step 9 is the point at which a company includes in its relevant IP profits for the period any additional amount in respect of profits arising in the period where grant of a patent is pending when the patent is granted. The way in which this amount is calculated is set out at new section 357BN.
11. New Subsection 5 sets out when income may be allocated at Step 2 other than to an individual

IP right sub-stream (for example to a sub-stream representing a particular patent or other IP asset). There are two cases. The first is where it is not reasonably practicable to apportion income between individual IP rights. The second is where the income can be so apportioned, but it would not be reasonably practicable to apply any of the later steps in the calculation. This allows a company to track and trace expenditure to the level of a product (rather than an IP right) if it is not reasonably practicable for it to calculate its R&D fraction at the level of the IP right.

12. New Subsection 6 defines multi-IP items as items incorporating more than one qualifying item (defined in line with the existing Patent Box rules).
13. New Subsection 7 makes provision for similar multi-IP items to be of the same kind (and therefore streamed together) if they are substantially the same. This allows tracking and tracing at the level of product families.
14. New section 357BG defines finance income, excluded in Step 1 of new section 357BF. The definition follows that in the current Patent Box rules (see S357CB)
15. New sections 357BH to 357BHC define relevant IP income for the purpose of Step 1 in new section 357BF. The definition follows that in the current Patent Box rules (see S357CC - S357CF)
16. New section 357BI defines excluded debits for the purpose of Step 3 of new section 357BF. The definition follows that in the current Patent Box rules (see S357CG(3))
17. New section 357BJ defines the routine return figure for Step 4 of new section S357BF. The definition follows that in the current Patent Box rules (see S357DA(4)) but is modified to reflect its application to separate sub-streams.
18. New sections 357BJA and 357BJB define routine and non-routine deductions for new section 357BJ. The definitions follow those in the current Patent Box rules (see S357CJ and S357CK).
19. New section 357BK sets out eligibility for small claims treatment. This is broadly in line with the current Patent Box rules in S357CL, but as the provisions now need to be applied where profit is calculated across a number of sub-streams, an additional simplifying condition is applied, requiring that the company only carries on one trade in the period.
20. New section 357BKA provides rules for calculating the small claims figure for each sub-stream - the reduction in the sub-stream amount that takes the place of the marketing assets return. 75% of the qualifying residual profit (QPR) - defined in subsection 7 as the sum of the positive sub-stream amounts established after the deductions at Step 4 of section 357BF(2) - is compared to the small claims threshold.
 - If it is lower than that threshold, then the small claims figure is simply 25% of the amount of the sub-stream following Step 4 in S357BF;
 - Otherwise, the amount is obtained by distributing the small claims threshold between the different sub-stream figures following step 4 in proportion to those figures.
21. New sections 357BL, 357BLA and 357BLB contain the provisions needed to calculate the marketing assets return figures for relevant IP income sub-streams. They follow the same

principles as the current Patent Box rules (see S357CN - S357CP) but are modified to reflect their application to separate sub-streams.

22. New sections 357BM to 357BMG contain the rules for calculating the R&D fractions that apply to the separate sub-streams. The R&D fraction is what is referred to in the OECD document as the "nexus fraction" or "nexus ratio".
23. New section 357BMA defines the R&D fraction as the lesser of 1 and $(D + S1) * 1.3 / (D + S1 + S2 + A)$ where the various terms represent different sorts of expenditure potentially incurred by the company on developing or acquiring the IP.
 - D is the company's qualifying expenditure on in-house relevant R&D;
 - S1 is the company's qualifying expenditure on relevant R&D subcontracted to unconnected persons;
 - S2 is the company's qualifying expenditure on relevant R&D subcontracted to connected persons;
 - A is the company's qualifying expenditure on acquiring relevant qualifying IP rights.
24. The multiplication by 1.3 applies a 30% "uplift" to the numerator, which is permitted by the OECD rules, increasing the fraction to allow for various circumstances in which substantive activity by the company would not contribute to qualifying expenditure, for example because of its group structure.
25. New section 357BMB defines D, qualifying expenditure on R&D undertaken in-house. This is expenditure which is attributable to relevant R&D undertaken by the company and incurred on staffing costs, software or consumable items, externally provided workers or to the subjects of clinical trials. The definitions of these different types of expenditure follow those used in CTA2009 for the purposes of the R&D tax reliefs. Expenditure which must be included is that incurred in the relevant period - this is defined in new section S357BMF.
26. "Relevant research and development" is defined at new subsection (4) and (5). This is R&D which relates to the qualifying R&D right or rights in question - not to the company's trade as a whole.
27. New section 357BMC defines qualifying expenditure on R&D sub-contracted to unconnected persons. This is expenditure incurred making a payment within the relevant period to a sub-contractor with whom the company is not connected, the payment being attributable to relevant R&D.
28. New section 357BMD defines qualifying expenditure on R&D sub-contracted to connected persons. This is expenditure incurred within the relevant period on the qualifying element of a sub-contractor payment to a connected person to carry out R&D. The qualifying element is either the entire payment or, if less, the actual amount spent by the sub-contractor to carry out the R&D.
29. The rules for establishing the qualifying element of the payment and the definitions of "sub-contractor", "sub-contractor payment" and "connected" are the same as those used for the R&D tax reliefs, at section 1133 CTA2009 and section 1122CTA2010, except that in new section

357BMC the option for the company and the sub-contractor to jointly elect to be treated as "connected" persons is disapplied.

30. New section 357BME defines qualifying expenditure on acquisition of a relevant qualifying IP right, such as a patent, as expenditure incurred within the relevant period to acquire the right or rights or an exclusive licence to it or to them.
31. New section 357BMF defines "the relevant period" for the purpose of new sections 357BMB-357BME. This is the period from the "relevant day" up to the end of the accounting period in question. The "relevant day" is 1 July 2013 if the accounting period began before 1 July 2021 and the company is a new entrant, or 1 July 2016 otherwise until 2031, after which the relevant period is simply the 15 year period leading up to the end of the current accounting period. In either case the company may elect to use an earlier date, allowing it to include earlier data in the R&D fraction if they are available at an appropriate level of detail. The company may go back no more than 15 years.
32. New section 357BMG makes special provision for cases where a new entrant has insufficient data for the period 2013 to 2016 to enable it to calculate an R&D fraction in accordance with the usual rules. This is based on the transitional provision in paragraph 60 of Chapter 4 of the OECD document.
33. If the accounting period to which the sub-stream relates began on or after 1 July 2019 the company may make an election under subsection (2) of new section 357BMG.
34. The effect of an election under subsection (2) is that, for the purposes of determining the R&D fraction for the sub-stream, the "relevant period" will be treated as the period which runs from 1 July 2016 to the end of the accounting period concerned. This means that for accounting periods beginning on or after 1 July 2019, a new entrant will (where necessary) be able to calculate a R&D fraction even if it has no information about its expenditure from 1 July 2013 to 1 July 2016. (But new entrants will need to "track and trace" to individual IP/ multi-IP items from 1 July 2016).
35. If the accounting period to which the sub-stream relates began before 1 July 2019 the company may instead make an election under subsection (3) of new section 357BMG. The effect of an election under subsection (3) is that, for the purpose of determining the R&D fraction for the sub-stream, sections 357BM to 357BME are to have effect with 3 modifications.
 - The first modification is that any reference to "the relevant period" in sections 357BM to 357BME is to be read as a reference to the period of three years ending with the last day of the accounting period concerned. This means that if the accounting period concerned ended on, say, 10 July 2016 the company will have to take into account expenditure which was incurred between 11 July 2013 and 10 July 2016 (inclusive). If the accounting period concerned ended on, say, 10 July 2017 the company would instead have to take into account expenditure which was incurred between 11 July 2014 and 10 July 2017. Accordingly, for each subsequent accounting period one year's expenditure will drop off.
 - The second modification has the effect of altering the definition of "relevant research and development" so that any expenditure on R&D which relates to the trade (rather than to the particular qualifying IP right) will be taken into account.

This means that it will not matter that for the years during the three year period just described the company kept records about its “global” research and development expenditure but did not “track and trace”.

- The third modification has the effect that any expenditure on acquiring qualifying IP rights will be able to be taken into account. This means that it will not matter that during the three year period just described the company kept records about its “global” expenditure on acquiring qualifying IP rights.

36. New section 357BN allows a company to include profits arising before a right was granted (for example, during a period when a patent had been applied for, but not granted). This is a general provision that requires the company to rework the calculation set out at new section 357BF taking account of the additional income. It is similar to existing S357CQ which applies in similar circumstances.

New Chapter 2B

New Chapter 2B contains sections 357BO to 357BQ which modify the rules in Chapter 2A for accounting periods beginning before 1 July 2021 for companies which are not new entrants and with a new qualifying IP right. This provides rules that apply during the transitional period for companies that have both preexisting and new IP. The rules are based on streaming, so there is no option for the company's preexisting IP to be dealt with following the proportional split method, but no R&D fraction is applied to the sub-streams corresponding to the preexisting IP.

37. New subsection 357BO(2) provides that for the purposes of sections 357BMF and BMG (which determine the relevant day, from which R&D expenditure must be included in the R&D fraction) the company is to be treated as if it were a new entrant. This means that the relevant day will be 1 July 2013 or such earlier day as the company may elect, but also that the company will be able to make elections under new S357BMG(2) or (3) as appropriate.
38. New section 357BP defines a new qualifying IP right. This includes IP rights granted to the company in respect of applications made on or after 1 July 2016. It also includes any IP (or any exclusive licence to IP) acquired by the company on or after 1 July 2016.
39. New subsections (6) and (7) define circumstances in which IP, or an exclusive licence to IP, acquired on or after 2 January is also treated as a new qualifying IP right. This is IP (or a licence) acquired from a connected company which is neither within the UK Patent Box nor entitled to benefit from a similar regime elsewhere (new subsection(6)) or from a connected individual (new subsection (7)). The inclusion of individuals is intended to prevent acquisition of IP indirectly from a connected company, and to achieve this purpose the definition of "connected" for this purpose may be widened in final legislation. (See also clause 32).
40. New subsection (8) allows a company to elect that non-new IP may be treated as new and so immediately brought into the modified Patent Box rules.
41. New section 357BQ sets out the modifications to Chapter 2A required for it to apply both to existing IP and to new IP. The existing and new IP are placed in separate sub-streams and no R&D fraction is applied to the "old IP rights sub-stream" which corresponds to the existing rights.

Details of the Schedule

42. Schedule X makes modifications to existing Chapters 3 and 4 which continue to apply to preexisting IP ("grandfathered" IP that existed before 1 July 2016) of a company that has no new IP.
43. In these circumstances the rules that apply are substantially the same as those currently in force. Unless the company makes a streaming election, or satisfies the requirements for mandatory streaming, the profits are calculated according to the rules in Chapter 3.
44. If it makes a streaming election, or satisfies the requirements for mandatory streaming, the profits are calculated according to the rules in Chapter 4.

Background note

45. The UK Patent Box gives companies a reduced rate of tax on their profits from patents and similar intellectual property (IP). It is intended to provide incentives for companies to patent IP developed in the UK and ensure new and existing patents are further developed and commercialised in the UK
46. The Organisation for Economic Cooperation and Development (OECD) has been coordinating a multinational effort to address Base Erosion and Profit Shifting (BEPS) - tax planning by multinational enterprises (MNEs) that exploits gaps and mismatches in tax rules to artificially shift profits to low tax locations where there is little or no economic activity. This has resulted in a new internationally harmonised framework for preferential IP regimes (like the UK's Patent Box). This framework is to apply from 1 July 2016.
47. The central point is that for a business to gain the benefit of a preferential regime, it should have conducted the substantial activities which generated the income benefiting from that regime. The agreed approach uses R&D expenditure as a proxy for substantial activity and links benefits to the requirement to have undertaken the R&D expenditure incurred to develop the IP. This is referred to as the nexus approach.
48. Following a consultation launched on 22 October 2015, the draft legislation sets out proposed modifications to the UK patent Box to implement this new approach. Final legislation, taking full account of the consultation responses and of comments on this draft, will be proposed in 2016.
49. The final legislation will include additional provisions relating to the calculation of the R&D fraction where
 - companies engage in collaborative development (such as a cost-contribution arrangement); or,
 - businesses with separate R&D histories combine (for example by acquisition of a trade).
50. It will also address the use of the "rebuttable presumption" allowed by the OECD framework.
51. If you have any questions about this change, or comments on the legislation, please contact David Harris on 03000 586834 (email: david.harris@hmrc.gsi.gov.uk).

32 Exploitation of patents etc: commencement and transitional provision

- (1) The amendments made by section 31 and the Schedule to that section have effect in relation to accounting periods beginning on or after 1 July 2016.
- (2) Subsection (3) applies where a company has an accounting period (“the straddling period”) which begins before, and ends on or after, 1 July 2016 or 1 July 2021 (“the relevant date”).
- (3) For the purposes of subsection (1) and Part 8A of CTA 2010—
 - (a) so much of the straddling period as falls before the relevant date, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.
- (4) Subsection (5) applies to an amount of relevant IP income of a company if—
 - (a) the company is not a new entrant,
 - (b) the income is properly attributable to a new qualifying IP right which was assigned to the company, or in respect of which an exclusive licence was granted to the company, during the period which began with 2 January 2016 and ended with 30 June 2016, and
 - (c) the income accrued to the company during the period which began with 1 July 2016 and ended with 31 December 2016.
- (5) The income is to be treated for the purposes of Part 8A of CTA 2010 as being properly attributable to a qualifying IP right which is not a new qualifying IP right.
- (6) Expressions used in this section and in Part 8A of CTA 2010 have in this section the meaning they have in that Part.

Explanatory Note

Clause 32: Exploitation of patents etc: commencement and transitional provision

Summary

1. This clause sets out how changes to the Patent Box legislation in Part 8A of Corporation tax Act (CTA) 2010, made by clause 31, take effect.
2. The Patent Box provides a reduced rate of Corporation Tax on profits from patents and similar intellectual property (IP). The changes are to ensure compliance with the new international framework developed by OECD (see Chapter 4 of "Countering harmful Tax Practices More Effectively, Taking Into account Transparency and Substance", OECD, Paris, 2015).
3. The amended rules will require profit for the purpose of the Patent Box to be calculated at the level of an IP asset (eg a patent), or a product or a product family relying on an IP asset or assets. The profit will be adjusted to reflect the proportion of the development activity on the asset (or product, or product category) undertaken by the company itself. The measure will have effect for new entrant companies to the Patent Box on or after 1 July 2016, and also for some IP assets acquired on or after 2 January 2016. The new rules are being phased in, with the current Patent Box rules applying to some companies and IP during a transitional period lasting until 2021. The new rules will apply to all companies and IP after 2021.

Details of the clause

4. Subsection 1 provides that the amendments made by Clause 31 and its Schedule have effect in relation to accounting periods beginning on or after 1 July 2016.
5. Subsections 2 and 3 address accounting periods that are split across either of both of 1 July 2016 and 1 July 2021. Where this is the case, the periods falling before those dates, and the periods on or after those dates, are treated as separate periods for Patent Box purposes.
6. If a company has an accounting period which straddles 1 July 2016 it will therefore have to determine the relevant IP profits for the notional accounting period which begins on 1 July 2016 using Part 8A as amended. It will use Part 8A as originally enacted to determine the relevant IP profits for the notional accounting period which ends on 30 June 2016.
7. Similarly, a non-new entrant company (see new subsection (11) of S357A) with an accounting period that straddles 1 July 2021 will apply section 357BF for the purpose of determining the relevant IP profits for the notional accounting period which begins on 1 July 2021 and will apply Chapter 2A, 3 or 4 to determine the relevant IP profits for the notional accounting period which ends on 30 June 2021.

8. If a company has an accounting period which straddles 1 July 2016 and has not yet elected into the Patent Box it will therefore have a choice. It will be able to make an election under section 357A in relation to the notional accounting period which ends on 30 June 2016 (in which case it will not be a new entrant) or it will be able to make an election under that section in relation to the notional accounting period which begins on that date (in which case it will be a new entrant).
9. Subsections (4) and (5) create a special rule in relation to relevant IP income of a non new entrant company attributable to a new qualifying IP right acquired by the company within the period beginning with 2 January 2016 and ending with 30 June 2016.
10. The effect of new section 357BP is that in certain circumstances such IP could be a "new qualifying IP right" (ie new IP). The effect of the special rule is that if the income accrued to the company between 1 July 2016 and the end of the calendar year the income is to be treated for the purposes of Part 8A as not attributable to a new qualifying IP right. This means that income arising before the end of the calendar year is "grandfathered", as the OECD rules allow, even where the IP right was acquired from a connected person which did not benefit from an IP regime

Background note

11. The UK Patent Box gives companies a reduced rate of tax on their profits from patents and similar intellectual property (IP). It is intended to provide incentives for companies to patent IP developed in the UK and ensure new and existing patents are further developed and commercialised in the UK
12. The Organisation for Economic Cooperation and Development (OECD) has been coordinating a multinational effort to address Base Erosion and Profit Shifting (BEPS) - tax planning by multinational enterprises (MNEs) that exploits gaps and mismatches in tax rules to artificially shift profits to low tax locations where there is little or no economic activity. This has resulted in a new internationally harmonised framework for preferential IP regimes (like the UK's Patent Box). This framework is to apply from 1 July 2016.
13. The central point is that for a business to gain the benefit of a preferential regime, it should have conducted the substantial activities which generated the income benefiting from that regime. The agreed approach uses R&D expenditure as a proxy for substantial activity and links benefits to the requirement to have undertaken the R&D expenditure incurred to develop the IP. This is referred to as the nexus approach.
14. Following a consultation launched on 22 October, the draft legislation sets out proposed modifications to the UK patent Box to implement this new approach. Final legislation, taking full account of the consultation responses and of comments on this draft, will be proposed in 2016.
15. The final legislation will include additional provisions relating to the calculation of the R&D fraction where
 - companies engage in collaborative development (such as a cost-contribution arrangement); or,

- businesses with separate R&D histories combine (eg by acquisition of a trade).
16. It will also address the use of the "rebuttable presumption" allowed by the OECD framework.
 17. If you have any questions about this change, or comments on the legislation, please contact David Harris on 03000 586834 (email: david.harris@hmrc.gsi.gov.uk)

33 Hybrid and other mismatches

The Schedule contains provision that counteracts, for corporation tax purposes, hybrid and other mismatches that would otherwise arise.

SCHEDULE TO CLAUSE 33

HYBRID AND OTHER MISMATCHES

PART 1

MAIN PROVISIONS

- 1 In TIOPA 2010, after Part 6 insert—

“PART 6A

HYBRID AND OTHER MISMATCHES

CHAPTER 1

INTRODUCTION

259A Overview of Part

- (1) This Part contains provision for the counteraction, for corporation tax purposes, of certain cases that would otherwise give rise to—
 - (a) an amount being deductible from a person’s ordinary income without a corresponding amount of ordinary income arising to another person (“deduction/non-inclusion mismatches”), or
 - (b) an amount being deductible from more than one person’s ordinary income or being deductible from a person’s ordinary income for the purposes of more than one tax (“double deduction mismatches”).
- (2) The cases with which this Part is concerned involve—
 - (a) payments or quasi-payments under or in connection with financial instruments or repos, stock lending arrangements or other transfers of financial instruments,
 - (b) hybrid entities, or
 - (c) dual resident companies.
- (3) Chapter 2 contains some key definitions for the purposes of this Part, see in particular—
 - (a) section 259B which provides that “tax” means income tax, corporation tax on income, the diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge,
 - (b) section 259BB which defines “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”,
 - (c) section 259BC which defines “ordinary income” and “taxable profits”, in relation to taxes other than the CFC charge and foreign CFC charges,

-
- (d) section 259BD which contains corresponding provision for the CFC charge and foreign CFC charges, and
 - (e) section 259BE which defines “hybrid entity” and other related terms.
- (4) Chapter 3 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments under, or in connection with, financial instruments.
 - (5) Chapter 4 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments and involving certain repos, stock lending arrangements or other arrangements for, or relating to, transfers of financial instruments.
 - (6) Chapter 5 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which the payer is a hybrid entity.
 - (7) Chapter 6 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a hybrid entity.
 - (8) Chapter 7 contains provision for the counteraction of certain double deduction mismatches arising from a company being a hybrid entity.
 - (9) Chapter 8 contains provision for the counteraction of certain double deduction mismatches involving dual resident companies.
 - (10) Chapter 9 contains provision about imported mismatches.
 - (11) Chapter 10 contains provision for adjustments to be made where a reasonable supposition made for the purposes of this Part turns out to be mistaken or otherwise ceases to be reasonable.
 - (12) Chapter 11 contains definitions and other provision about the interpretation of this Part.

CHAPTER 2

KEY DEFINITIONS

Meaning of “tax”

259B Tax means certain taxes on income and includes foreign tax etc

- (1) In this Part “tax” means –
 - (a) income tax,
 - (b) the charge to corporation tax on income,
 - (c) diverted profits tax,
 - (d) the CFC charge,
 - (e) foreign tax, or
 - (f) a foreign CFC charge.
- (2) In subsection (1) “foreign tax” means a tax chargeable under the law of a territory outside the United Kingdom so far as it –

-
- (a) is charged on income and corresponds to United Kingdom income tax, or
 - (b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.
 - (3) A tax is not outside the scope of subsection (2) by reason only that it—
 - (a) is chargeable under the law of a province, state or other part of a country, or
 - (b) is levied by or on behalf of a municipality or other local body.
 - (4) In this Part—
 - “CFC” and “the CFC charge” have the same meaning as in Part 9A (see section 371VA);
 - “foreign CFC charge” means a charge (by whatever name known) under the law of a territory outside the United Kingdom which is similar to the CFC charge (and reference to a “foreign CFC” is to be read accordingly).

Equivalent provision to this Part under foreign law

259BA References to equivalent provision to this Part under the law of a territory outside the United Kingdom

- (1) A reference in this Part to provision under the law of a territory outside the United Kingdom that is equivalent to—
 - (a) this Part, or
 - (b) a provision of this Part,is to be read in accordance with subsection (2).
- (2) The reference is to provision under the law of a territory outside the United Kingdom that it is reasonable to suppose—
 - (a) is also based on the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development (“OECD”) on 5 October 2015 or any replacement or supplementary publication, and
 - (b) has effect for the same, or similar, purposes to this Part or (as the case may be) the provision of this Part.
- (3) In paragraph (a) of subsection (2) “replacement or supplementary publication” means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that paragraph (or any replacement of, or supplement to, it).

Payments and quasi-payments etc

259BB Meaning of “payment”, “quasi-payment”, “payer”, “payee” etc

- (1) In this Part “payment” means any transfer—
 - (a) of money or money’s worth directly or indirectly from one person (“the payer”) to one or more other persons, and
 - (b) in relation to which (disregarding this Part and any equivalent provision under the law of a territory outside the

United Kingdom) an amount (a “relevant deduction”) may be deducted from the payer’s ordinary income for a taxable period (“the payment period”) for the purposes of calculating the payer’s taxable profits.

- (2) For the purposes of this Part, there is a “quasi-payment”, in relation to a taxable period (“payment period”) of a person (“the payer”), if (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) –
 - (a) an amount (a “relevant deduction”) may be deducted from the payer’s ordinary income for that period for the purposes of calculating the payer’s taxable profits, and
 - (b) making the assumptions in subsection (4), it would be reasonable to expect an amount of ordinary income to arise to one or more other persons as a result of the circumstances giving rise to the relevant deduction.
- (3) But a quasi-payment does not arise under subsection (2) if –
 - (a) the relevant deduction is an amount that is deemed, under the law of the payer jurisdiction, to arise for tax purposes, and
 - (b) the circumstances giving rise to the relevant deduction do not include any economic rights, in substance, existing between the payer and a person mentioned in subsection (2)(b).
- (4) The assumptions are that (so far as would not otherwise be the case) –
 - (a) any question as to whether an entity is a distinct and separate person from the payer is determined in accordance with the law of the payer jurisdiction,
 - (b) any persons to whom amounts arise, or potentially arise, as a result of the circumstances giving rise to the relevant deduction adopt the same approach to accounting for those circumstances as the payer, and
 - (c) any persons to whom amounts arise, or potentially arise, as a result of those circumstances are within the charge to a tax under the law of the payer jurisdiction.
- (5) In this Part –
 - (a) references to a quasi-payment include all the circumstances giving rise to the relevant deduction mentioned in subsection (2)(a), and
 - (b) references to a quasi-payment being made are to those circumstances arising.
- (6) In this Part “payee” means –
 - (a) in the case of a payment, any person –
 - (i) to whom the transfer is made as mentioned in subsection (1)(a), or
 - (ii) to whom an amount of ordinary income arises as a result of the payment, and
 - (b) in the case of a quasi-payment, any person –
 - (i) to whom it would be reasonable to expect an amount of ordinary income to arise as mentioned in subsection (2)(b), or

-
- (ii) to whom an amount of ordinary income arises as a result of the quasi-payment.
- (7) For the purposes of this Part, in the case of a quasi-payment, the payer is “also a payee” if—
- (a) an entity is not a distinct and separate person from the payer for the purposes of a tax charged under the law of the United Kingdom,
 - (b) that entity is a distinct and separate person from the payer for the purposes of a tax charged under the law of the payer jurisdiction, and
 - (c) it would be reasonable to expect an amount of ordinary income to arise to that entity as mentioned in subsection (2)(b).
- (8) In this section “payer jurisdiction” means the jurisdiction under the law of which the relevant deduction may (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) be deducted.

Ordinary income

259BC The basic rules

- (1) This section has effect for the purposes of this Part.
- (2) “Ordinary income” means income that is brought into account, before any deductions, for the purposes of calculating the income or profits on which a relevant tax is charged (“taxable profits”).
- (3) But an amount of income is not brought into account for those purposes to the extent that it is excluded, reduced or offset by any exemption, exclusion, relief or credit—
- (a) that applies specifically to all or part of the amount of income (as opposed to ordinary income generally), or
 - (b) that arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount of income.
- (4) If all the relevant tax charged on taxable profits is, or falls to be, refunded, none of the income brought into account in calculating those taxable profits is “ordinary income”.
- (5) If a proportion of the relevant tax charged on taxable profits is, or falls to be, refunded, the amount of any income brought into account in calculating those taxable profits that is “ordinary income” is proportionally reduced.
- (6) For the purposes of subsections (4) and (5) an amount of relevant tax is refunded if and to the extent that—
- (a) any repayment of relevant tax, or any payment in respect of a credit for relevant tax, is made to any person, and
 - (b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax,
- but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief.

-
- (7) In subsection (6) “qualifying loss relief” means –
- (a) any means by which a loss might be used for corporation tax or income tax purposes to reduce the amount in respect of which a person is liable to tax, or
 - (b) any corresponding means by which a loss corresponding to a relevant tax loss might be used for the purposes of a relevant tax other than corporation tax or income tax to reduce the amount in respect of which a person is liable to tax,
- (and in paragraph (b) “relevant tax loss” means a loss that might be used as mentioned in paragraph (a)).
- (8) References to an amount of ordinary income being “included in” taxable profits are to that amount being brought into account for the purposes of calculating those profits.
- (9) In this section “relevant tax” means a tax other than the CFC charge or a foreign CFC charge.
- (10) Section 259BD contains provision for ordinary income to arise to chargeable companies by virtue of the CFC charge or a foreign CFC charge.

259BD Chargeable companies in respect of CFCs and foreign CFCs

- (1) This section has effect for the purposes of this Part.
- (2) Subsections (3) to (7) apply where an amount of income arises to an entity (“C”) that is a CFC, a foreign CFC or both and all or part of that amount (“the relevant income”) –
- (a) is not ordinary income of C under section 259BC, or
 - (b) arises as a result of a payment or quasi-payment under, or in connection with, a financial instrument or hybrid transfer arrangement and –
 - (i) is (disregarding subsection (4)) ordinary income of C under section 259BC for a taxable period, but
 - (ii) under taxed.
- (3) The following steps determine whether, and to what extent, the relevant income is “ordinary income” of a chargeable company in relation to the CFC charge or a foreign CFC charge.

Step 1

Determine –

- (a) whether any of the relevant income is brought into account in calculating C’s chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
- (b) if so, the amount of the relevant income that is so brought into account for the purposes of each relevant charge.

If none of the relevant income is so brought into account, then none of it is “ordinary income” of a chargeable company and no further steps are to be taken.

See subsections (10) to (12) for further provision about how this step is to be taken.

For the purposes of this section –

-
- (a) “relevant chargeable profits” are chargeable profits in relation to the calculation of which, for the purposes of the CFC charge or a foreign CFC charge, any of the relevant income is brought into account, and
 - (b) a charge in relation to which any of the relevant income is brought into account in calculating chargeable profits is a “relevant charge”.

Step 2

In relation to each relevant charge, determine the proportion of C’s relevant chargeable profits, for the purposes of that charge, that is apportioned to each chargeable company.

For the purposes of this section, each chargeable company to which 25% or more of C’s relevant chargeable profits for the purposes of a relevant charge are apportioned is a “relevant chargeable company”.

If there are no relevant chargeable companies in relation to any relevant charges, then none of the relevant income is “ordinary income” of a chargeable company and no further steps are to be taken.

Step 3

In relation to each relevant chargeable company, the appropriate proportion of the relevant income brought into account in calculating relevant chargeable profits, for the purposes of the relevant charge concerned, is “ordinary income” of that company for the taxable period for which that charge is charged on it by reference to those profits.

For the purposes of this step, the “appropriate proportion”, in relation to a relevant chargeable company, is the same as the proportion of the relevant chargeable profits that is apportioned to it for the purposes of the relevant charge.

- (4) An amount of relevant income that is ordinary income of a relevant chargeable company in accordance with subsection (3) is not ordinary income of C (so far as it otherwise would be).
- (5) Relevant chargeable profits apportioned to a relevant chargeable company for the purposes of a relevant charge are “taxable profits” of that company for the taxable period for which the charge is charged on it by reference to those profits.
- (6) The amount of the relevant income that is ordinary income of that relevant chargeable company under subsection (3), by virtue of being brought into account in calculating those relevant chargeable profits, is “included in” those taxable profits.
- (7) References to tax charged on taxable profits include a relevant charge charged by reference to relevant chargeable profits that are taxable profits under subsection (5).
- (8) For the purposes of subsection (2)(b), an amount of ordinary income is “under taxed” if the highest rate at which tax is charged, for C’s taxable period, on the taxable profits in which the amount is included is less than C’s full marginal rate for that period.

-
- (9) In subsection (8), C’s “full marginal rate” means the highest rate at which the tax that is chargeable on those taxable profits could be charged on taxable profits, of C for the taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.
- (10) For the purposes of step 1 in subsection (3), section 259BC(3) applies for the purposes of determining the extent to which an amount of relevant income is brought into account in calculating chargeable profits as it applies for the purposes of determining the extent to which an amount of income is brought into account for the purposes of calculating taxable profits.
- (11) Subsection (12) applies for the purposes of step 1 in subsection (3), if –
- (a) the amount of income arising to C mentioned in subsection (1) –
 - (i) is not all relevant income, and
 - (ii) is only partly brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
 - (b) accordingly, it falls to be determined whether, and to what extent, the relevant income is brought into account in calculating those profits for the purposes of the charge concerned.
- (12) The relevant income is to be taken to be brought into account (if at all) only to the extent that the total amount of income mentioned in subsection (1) that is brought into account exceeds the amount of income mentioned in that subsection that is not relevant income.
- (13) In this section –
- “chargeable company” –
 - (a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and
 - (b) in relation to a foreign CFC charge, means an entity (by whatever name known) corresponding to a chargeable company within the meaning of that Part;
 - “chargeable profits” –
 - (a) in relation to the CFC charge, has the same meaning as in that Part (see that section), and
 - (b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part;
 - “hybrid transfer arrangement” has the meaning given by section 259DB.

Hybrid entity etc

259BE Meaning of “hybrid entity”, “investor” and “investor jurisdiction”

- (1) For the purposes of this Part, an entity is “hybrid” if it meets conditions A and B.

-
- (2) Condition A is that the entity is regarded as being a person for tax purposes under the law of any territory.
 - (3) Condition B is that the entity's income or profits are treated (or would be if there were any) for the purposes of a tax imposed under the law of any territory (the "investor jurisdiction"), as the income or profits of a person or persons other than the person mentioned in condition A.
 - (4) For the purposes of this Part, a person who is treated as having the income or profits of the entity is an "investor" in it.

Permitted reasons for deduction/non-inclusion mismatches

259BF Permitted reasons for deduction/non-inclusion mismatches

- (1) The following sections contain provision disregarding an amount that would otherwise give rise to a deduction/non-inclusion mismatch if it would have arisen in any event for a permitted reason—
 - (a) section 259CB (hybrid or otherwise impermissible deduction/non-inclusion mismatches from financial instruments and their extent),
 - (b) section 259DC (hybrid transfer deduction/non-inclusion mismatches and their extent),
 - (c) section 259EB (hybrid payer deduction/non-inclusion mismatches and their extent), and
 - (d) section 259FB (hybrid payee deduction/non-inclusion mismatches and their extent).
- (2) Each of these is a "permitted reason for a deduction/non-inclusion mismatch"—
 - (a) a person not being liable, under the law of any territory, to tax on any income or profits received by the person or received for the person's benefit,
 - (b) a person being subject to tax that is not charged on income or profits arising from a source outside the territory under the law of which the tax is imposed,
 - (c) a person not being liable for any tax on the ground of sovereign immunity, or
 - (d) a person being an offshore fund or authorised investment fund—
 - (i) which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect), or
 - (ii) at least 75% of the investors in which are, throughout the payment period, persons who cannot be liable for any tax on the ground of sovereign immunity.
- (3) In this section—

"authorised investment fund" means—

 - (a) an open-ended investment company within the meaning of section 613 of CTA 2010, or

-
- (b) an authorised unit trust within the meaning of section 616 of that Act;

“genuine diversity of ownership condition” means –

- (a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and
- (b) in the case of an authorised investment fund, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964);

“offshore fund” has the same meaning as in section 354 (see section 355).

CHAPTER 3

HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS

Introduction

259C Overview of Chapter

- (1) This Chapter contains provision that counteracts hybrid or otherwise impermissible deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments under, or in connection with, financial instruments.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259CA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259CB defines “hybrid or otherwise impermissible deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259CC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259CD contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259CC nor any equivalent provision under the law of a territory outside the United Kingdom counteracts the mismatch.
- (7) See also –
 - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
 - (b) section 259K for the meaning of “financial instrument”.

Application of Chapter

259CA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to D are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, a financial instrument.
- (3) Condition B is that –
 - (a) the payer is within the charge to corporation tax for the payment period, or
 - (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (4) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5), there would be a hybrid or otherwise impermissible deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259CB).
- (5) The provisions are –
 - (a) this Chapter and Chapters 5 to 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (6) Condition D is that –
 - (a) in the case of a quasi-payment, the payer is also a payee (see section 259BB(7)),
 - (b) the payer and a payee are related (see section 259KB) at any time in the period –
 - (i) beginning with the day on which any arrangement is made by the payer or a payee in connection with the financial instrument, and
 - (ii) ending with the last day of the payment period, or
 - (c) the financial instrument, or any arrangement connected with it, is a structured arrangement.
- (7) The financial instrument, or an arrangement connected with it, is a “structured arrangement” if it is reasonable to suppose that –
 - (a) the financial instrument, or arrangement, is designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch, or
 - (b) the terms of the financial instrument or arrangement share the economic benefit of the mismatch between the parties to the instrument or arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (8) The financial instrument or arrangement may be designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (9) Sections 259CC (cases where the payer is within the charge to corporation tax for the payment period) and 259CD (cases where a payee is within the charge to corporation tax) contain provision for

the counteraction of the hybrid or otherwise impermissible deduction/non-inclusion mismatch.

259CB Hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid or otherwise impermissible deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.
- (2) Case 1 applies where—
 - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
 - (b) all or part of that excess arises by reason of the terms, or any other feature, of the financial instrument.
- (3) Case 2 applies where—
 - (a) one or more amounts of ordinary income (“under-taxed amounts”) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
 - (b) the taxable profits in which each of those amounts is included are under taxed by reason of the terms, or any other feature, of the financial instrument.
- (4) But, for the purposes of this section, disregard any part of an excess mentioned in subsection (2) that would, regardless of the terms and any other features of the financial instrument, have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF).
- (5) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
 - (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that—
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
 - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.
- (6) Taxable profits, in which an amount of ordinary income for a permitted taxable period is included, are “under taxed” if the highest rate at which tax is charged on those profits, for that permitted taxable period, is less than the payee’s full marginal rate for that period.
- (7) The payee’s “full marginal rate” means the highest rate at which the tax that is chargeable on those profits could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

-
- (8) Where case 1 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (9) Where case 2 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by –

$$\frac{(\text{UTA} \times (\text{FMR} - \text{R}))}{\text{FMR}}$$

where –

“UTA” is the under-taxed amount;

“FMR” is the payee’s full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

“R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included.

- (10) Where cases 1 and 2 both apply, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is the sum of the amounts given by subsections (8) and (9).

Counteraction

259CC Counteraction where the payer is within the charge to corporation tax for the payment period

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer’s ordinary income for the payment period is reduced by an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

259CD Counteraction where a payee is within the charge to corporation tax

- (1) This section applies in relation to a payee where –
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
- (b) it is reasonable to suppose that –
- (i) neither section 259CC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
- (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259CC applies, but does not fully counteract the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

-
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259CC does not fully counteract that mismatch if (and only if) –
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
 - (b) the payer is still able to deduct some of the relevant deduction from ordinary income in calculating taxable profits.
- (3) In this section “the relevant amount” is –
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4), and
 - (b) in a case where subsection (1)(b)(ii) applies, the lesser of –
 - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259CC, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee’s share of the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (6) The payee’s share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular) –
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees,
 - (b) to whom any under-taxed amounts (within the meaning given by section 259CB(3)) arise, and
 - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means –
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
 - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 4

HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259D Overview of Chapter

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments as a consequence of hybrid transfer arrangements.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259DA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259DB defines “hybrid transfer arrangement”.
- (5) Section 259DC defines “hybrid transfer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (6) Section 259DD contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (7) Section 259DE contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259DD nor any equivalent provision under the law of a territory outside the United Kingdom counteracts the mismatch.
- (8) See also section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”.

Application of Chapter

259DA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that there is a hybrid transfer arrangement in relation to an underlying instrument (see section 259DB).
- (3) Condition B is that a payment or quasi-payment is made under or in connection with—
 - (a) the hybrid transfer arrangement, or
 - (b) the underlying instrument.
- (4) Condition C is that—
 - (a) the payer is within the charge to corporation tax for the payment period, or

-
- (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (5) Condition D is that it is reasonable to suppose that, disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom, there would be a hybrid transfer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259DC).
 - (6) Condition E is that –
 - (a) in the case of a quasi-payment, the payer is also a payee (see section 259BB(7)),
 - (b) the payer and a payee are related (see section 259KB) at any time in the period –
 - (i) beginning with the day on which the hybrid transfer arrangement is made, and
 - (ii) ending with the last day of the payment period, or
 - (c) the hybrid transfer arrangement is a structured arrangement.
 - (7) The hybrid transfer arrangement is a “structured arrangement” if it is reasonable to suppose that –
 - (a) the hybrid transfer arrangement is designed to secure a hybrid transfer deduction/non-inclusion mismatch, or
 - (b) the terms of the hybrid transfer arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.
 - (8) The hybrid transfer arrangement may be designed to secure a hybrid transfer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
 - (9) Sections 259DD (cases where the payer is within the charge to corporation tax for the payment period) and 259DE (cases where a payee is within the charge to corporation tax) make provision for the counteraction of the hybrid transfer deduction/non-inclusion mismatch.

259DB Meaning of “hybrid transfer arrangement”, “underlying instrument” etc

- (1) This section has effect for the purposes of this Chapter.
- (2) A “hybrid transfer arrangement” means –
 - (a) a repo,
 - (b) a stock lending arrangement, or
 - (c) any other arrangement,that is an arrangement within subsection (3).
- (3) An arrangement is within this subsection if it provides for, or relates to, the transfer of a financial instrument (“the underlying instrument”) and –
 - (a) the dual treatment condition is met in relation to the arrangement, or
 - (b) a substitute payment could be made under the arrangement.

-
- (4) The dual treatment condition is met in relation to the arrangement if –
- (a) in relation to a person, for the purposes of a tax –
 - (i) the arrangement is regarded as equivalent, in substance, to a transaction for the lending of money at interest, and
 - (ii) a payment or quasi-payment made under, or in connection with, the arrangement or the underlying instrument could be treated so as to reflect the fact the arrangement is so regarded, and
 - (b) in relation to another person, for the purposes of a tax (whether or not the same one), such a payment or quasi-payment would not be treated so as to reflect the arrangement being regarded as equivalent, in substance, to a transaction for the lending of money at interest.
- (5) A payment or quasi-payment is a “substitute payment” if –
- (a) it consists of or involves –
 - (i) an amount being paid, or
 - (ii) a benefit being given (including the release of the whole or part of any liability to pay an amount),
 - (b) that amount, or the value of that benefit, is representative of a return of any kind (“the underlying return”) that arises on, or in connection with, the underlying instrument, and
 - (c) the amount is paid, or the benefit is given, to someone other than the person to whom the underlying return arises.
- (6) For the purposes of subsection (3) where there is an arrangement, to which a person (“P”) and another person (“Q”) are party, under which –
- (a) a financial instrument (“the first instrument”) ceases to be owned by P (whether or not because it ceases to exist), and
 - (b) Q comes to own a financial instrument (“the second instrument”) under which Q has the same, or substantially the same, rights and liabilities as P had under the first instrument,
- the second instrument is to be treated as being transferred from P to Q.

259DC Hybrid transfer deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid transfer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.
- (2) Case 1 applies where –
 - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
 - (b) all or part of that excess arises for a reason mentioned in subsection (4).
- (3) Case 2 applies where –

-
- (a) one or more amounts of ordinary income (“under-taxed amounts”) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
 - (b) the taxable profits in which each of those amounts is included are under taxed for a reason mentioned in subsection (4).
 - (4) The reasons are –
 - (a) the dual treatment condition being met in relation to a hybrid transfer arrangement under, or in connection with, which the payment or quasi-payment is made (see section 259DB(4));
 - (b) the payment or quasi-payment being a substitute payment that –
 - (i) is treated, for the purposes of tax charged on a person, so as to reflect the fact that it is representative of the underlying return, and
 - (ii) is not so treated for the purposes of tax charged on another person.
 - (5) But for the purposes of this section, disregard –
 - (a) any part of an excess mentioned in subsection (2) that –
 - (i) arises as a result of a substitute payment in relation to which the financial trader exclusion applies, or
 - (ii) would, regardless of the reasons mentioned in subsection (4), have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF), and
 - (b) any under-taxed amount that is under taxed as a result of a substitute payment in relation to which the financial trader exclusion applies.
 - (6) The financial trader exclusion applies, in relation to a substitute payment, where –
 - (a) the difference in treatment mentioned in paragraph (b) of subsection (4) is solely the result of the person mentioned in sub-paragraph (ii) of that paragraph bringing the underlying return and the substitute payment into account in calculating the profits of a trade under –
 - (i) Part 3 of CTA 2009 (trading income), or
 - (ii) any equivalent provision of the law of a territory outside the United Kingdom, and
 - (b) the exclusion is not disapplied by subsection (7).
 - (7) The financial trader exclusion does not apply where –
 - (a) if the underlying return were to arise, and be paid directly, to the payee or payees in relation to the substitute payment, Chapter 3 (hybrid and other mismatches from financial instruments) or an equivalent provision under the law of a territory outside the United Kingdom would apply, or
 - (b) the hybrid transfer arrangement under, or connection with, which the substitute payment is made is a structured arrangement (within the meaning given by section 259DA(7)).

-
- (8) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if –
- (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that –
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
 - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.
- (9) Taxable profits, in which an amount of ordinary income for a permitted taxable period is included, are “under taxed” if the highest rate at which tax is charged on those profits, for that permitted taxable period, is less than the payee’s full marginal rate for that period.
- (10) The payee’s “full marginal rate” means the highest rate at which the tax that is chargeable on those profits could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.
- (11) Where case 1 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (12) Where case 2 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by –
- $$\frac{(UTA \times (FMR - R))}{FMR}$$
- where –
- “UTA” is the under-taxed amount;
 - “FMR” is the payee’s full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;
 - “R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included.
- (13) Where cases 1 and 2 both apply, the amount of the hybrid transfer deduction/non-inclusion mismatch is the sum of the amounts given by subsections (11) and (12).

Counteraction

259DD Counteraction where the payer is within the charge to corporation tax for the payment period

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.

-
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's ordinary income for the payment period is reduced by an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

259DE Counteraction where a payee is within the charge to corporation tax

- (1) This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
 - (b) it is reasonable to suppose that—
 - (i) neither section 259DD nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
 - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259DD applies, but does not fully counteract the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259DD does not fully counteract that mismatch if (and only if)—
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
 - (b) the payer is still able to deduct some of the relevant deduction from ordinary income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5), and
 - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
 - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259DD, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees,

-
- (b) to whom any under-taxed amounts (within the meaning given by section 259DC(3)) arise, and
 - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means –
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
 - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 5

HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259E Overview of Chapter

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments in relation to which the payer is a hybrid entity.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259EA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259EB defines “hybrid payer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259EC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259ED contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and the mismatch is not counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC.
- (7) See also –
 - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
 - (b) section 259BE for the meaning of “hybrid entity”.

Application of Chapter

259EA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that the payer is a hybrid entity (“the hybrid payer”).
- (4) Condition C is that –
 - (a) the hybrid payer is within the charge to corporation tax for the payment period, or
 - (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259EB).
- (6) The provisions are –
 - (a) this Chapter and Chapters 6 to 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (7) Condition E is that –
 - (a) in the case of a quasi-payment, the hybrid payer is also a payee (see section 259BB(7)),
 - (b) the hybrid payer and a payee are in the same control group (see section 259KA) at any time in the period –
 - (i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
 - (ii) ending with the last day of the payment period, or
 - (c) that arrangement is a structured arrangement.
- (8) The arrangement is “structured” if it is reasonable to suppose that –
 - (a) the arrangement is designed to secure a hybrid payer deduction/non-inclusion mismatch, or
 - (b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (9) The arrangement may be designed to secure a hybrid payer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (10) Sections 259EC (cases where the hybrid payer is within the charge to corporation tax for the payment period) and 259ED (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid payer deduction/non-inclusion mismatch.

259EB Hybrid payer deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid payer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if—
 - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
 - (b) all or part of that excess arises by reason of the hybrid payer being a hybrid entity.
- (2) The amount of the hybrid payer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- (3) But, for the purposes of this section, disregard any part of an excess mentioned in subsection (2) that would, regardless of the hybrid payer being a hybrid entity, have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF).
- (4) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
 - (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that—
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
 - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Counteraction

259EC Counteraction where the hybrid payer is within the charge to corporation tax for the payment period

- (1) This section applies where the hybrid payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction so far as it does not exceed the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5) (“the restricted deduction”) may not be deducted from the hybrid payer’s ordinary income for the payment period unless it is deducted from dual inclusion income for that period.
- (3) So much of the restricted deduction (if any) as, by virtue of subsection (2), cannot be deducted from the payer’s ordinary income for the payment period—
 - (a) is carried forward to subsequent accounting periods of the payer, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the payer for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

-
- (4) In this section “dual inclusion income” of the payer means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—
- (a) ordinary income of the payer for corporation tax purposes, and
 - (b) ordinary income of the payer for the purposes of any tax under the law of a territory outside the United Kingdom.

259ED Counteraction where a payee is within the charge to corporation tax

- (1) This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
 - (b) it is reasonable to suppose that—
 - (i) no provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC applies, or
 - (ii) such a provision does apply, but does not fully counteract the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC does not fully counteract that mismatch if (and only if)—
- (a) the amount of the relevant deduction that the provision prevents from being deducted from ordinary income of the hybrid payer, for the payment period, other than dual inclusion income is less than the amount of the mismatch, and
 - (b) the hybrid payer is still able to deduct some of the relevant deduction from ordinary income, for the payment period, that is not dual inclusion income.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5), and
 - (b) in case where subsection (1)(b)(ii) applies, the lesser of—
 - (i) the amount by which that mismatch exceeds the amount of the relevant deduction that it is reasonable to suppose is prevented, by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC, from being deducted from ordinary income of the hybrid payer, for the payment period, other than dual inclusion income, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, an amount equal to—
- (a) the relevant amount, less
 - (b) any dual inclusion income of the hybrid payer for the payment period,

-
- is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to –
- (a) the payee’s share of the relevant amount, less
 - (b) the relevant proportion of any dual inclusion income of the hybrid payer for the payment period,
- is to be treated as income arising to the payee for the counteraction period.
- (6) The payee’s share of the relevant amount is to be determined by apportioning the mismatch between all the payees on a just and reasonable basis, having regard (in particular) –
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees, and
 - (b) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) The “relevant” proportion of any dual inclusion income of the payer for the payment period is equal to the proportion of the relevant amount apportioned to the payee in accordance with subsection (6).
- (8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (9) In this section –
- “counteraction period” means –
 - (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
 - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period;
 - “dual inclusion income” means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both –
 - (a) ordinary income of the payer for the purposes of a tax under the law of one territory, and
 - (b) ordinary income of the payer for the purposes of a tax under the law of another territory.

CHAPTER 6

HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259F Overview of Chapter

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments in relation to which there is a payee that is a hybrid entity.

-
- (2) The Chapter counteracts mismatches by altering the corporation tax treatment of the payer for the payment period or treating income chargeable to corporation tax as arising to a payee that is a hybrid entity and a limited liability partnership.
 - (3) Section 259FA contains the conditions that must be met for this Chapter to apply.
 - (4) Section 259FB defines “hybrid payee deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
 - (5) Section 259FC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
 - (6) Section 259FD contains provision that counteracts the mismatch where a payee is a hybrid entity and limited liability partnership and the mismatch is not counteracted by section 259FC or any equivalent provision under the law of a territory outside the United Kingdom.
 - (7) See also –
 - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
 - (b) section 259BE for the meaning of “hybrid entity”.

Application of Chapter

259FA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that a payee is a hybrid entity (“a hybrid payee”).
- (4) Condition C is that –
 - (a) the payer is within the charge to corporation tax for the payment period, or
 - (b) a hybrid payee is a limited liability partnership.
- (5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259FB).
- (6) The provisions are –
 - (a) this Chapter and Chapters 7 and 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (7) Condition E is that –
 - (a) in the case of a quasi-payment, the payer is also a hybrid payee (see section 259BB(7)),

-
- (b) the payer and the hybrid payee or an investor in the hybrid payee are in the same control group (see section 259KA) at any time in the period –
 - (i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
 - (ii) ending with the last day of the payment period, or
 - (c) that arrangement is a structured arrangement.
- (8) The arrangement is “structured” if it is reasonable to suppose that –
 - (a) the arrangement is designed to secure a hybrid payee deduction/non-inclusion mismatch, or
 - (b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.
 - (9) The arrangement may be designed to secure a hybrid payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
 - (10) Sections 259FC (cases where the payer is within the charge to corporation tax for the payment period) and 259FD (cases where a hybrid payee is a limited liability partnership) contain provision for the counteraction of the hybrid payee deduction/non-inclusion mismatch.

259FB Hybrid payee deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid payee deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if –
 - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
 - (b) all or part of that excess arises by reason of one or more payees being hybrid entities.
- (2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- (3) But, for the purposes of this section, disregard any part of an excess mentioned in subsection (2) that would, regardless of the payee or payees being hybrid entities, have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF).
- (4) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if –
 - (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that –
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

-
- (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Counteraction

259FC Counteraction where the payer is within the charge to corporation tax for the payment period

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's ordinary income for the payment period is reduced by an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5).

259FD Counteraction where a hybrid payee is an LLP

- (1) This section applies in relation to a hybrid payee where—
 - (a) the hybrid payee is a limited liability partnership, and
 - (b) it is reasonable to suppose that—
 - (i) neither section 259FC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
 - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259FC applies, but does not fully counteract the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259FC does not fully counteract that mismatch if (and only if)—
 - (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
 - (b) the payer is still able to deduct some of the relevant deduction from ordinary income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
 - (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5), and
 - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
 - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259FC, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the hybrid payee is the only hybrid payee, an amount equal to the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

-
- (5) If there is more than one hybrid payee, an amount equal to the hybrid payee's share of the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.
 - (6) The hybrid payee's share of the relevant amount is to be determined by apportioning that amount between all the hybrid payees on a just and reasonable basis, having regard (in particular) to—
 - (a) any arrangements as to profit sharing that may exist between some or all of the hybrid payees, and
 - (b) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5) arises by reason of each hybrid payee being a hybrid entity.
 - (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable to corporation tax on the hybrid payee (as opposed to being chargeable to tax on any of its members) under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
 - (8) Section 863 of ITTOIA 2005 (treatment of certain limited liability partnerships for income tax purposes) and section 1273 of CTA 2009 (treatment of certain limited liability partnerships for corporation tax purposes) are disappplied in relation to the hybrid payee to the extent necessary for the purposes of subsection (7).
 - (9) This section is to be disregarded for the purposes of determining whether the hybrid payee is within the charge to corporation tax for the purposes of any other provision of this Part.

CHAPTER 7

HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

Introduction

259G Overview of Chapter

- (1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise by reason of a person being a hybrid entity.
- (2) The Chapter counteracts mismatches where the hybrid entity, or an investor in the hybrid entity, is within the charge to corporation tax and does so by altering the corporation tax treatment of the entity or investor.
- (3) Section 259GA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (4) of that section defines "hybrid entity double deduction amount".
- (5) Section 259GB contains provision that counteracts the mismatch where an investor in the hybrid entity is within the charge to corporation tax.

-
- (6) Section 259GC contains provision that, in certain circumstances, counteracts the mismatch where the hybrid entity is within the charge to corporation tax and the mismatch is not counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259GB.
 - (7) See also section 259BE for the meaning of “hybrid entity” and “investor”.

Application of Chapter

259GA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to C are met.
- (2) Condition A is that there is an amount or part of an amount that, disregarding the provisions mentioned in subsection (3), it is reasonable to suppose—
 - (a) could be deducted from the ordinary income of a hybrid entity for the purposes of calculating the taxable profits of that entity for a taxable period (“the hybrid entity deduction period”), and
 - (b) could also be deducted, under the law of the investor jurisdiction, from the ordinary income of an investor in the hybrid entity for the purposes of calculating the taxable profits of that investor for a taxable period (“the investor deduction period”).
- (3) The provisions are—
 - (a) this Chapter and Chapter 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (4) In this Chapter the amount or part of an amount mentioned in subsection (2) is referred to as “the hybrid entity double deduction amount”.
- (5) Condition B is that—
 - (a) the investor is within the charge to corporation tax for the investor deduction period, or
 - (b) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period.
- (6) Condition C is that—
 - (a) the hybrid entity and any investor in it are related (see section 259KB) at any time—
 - (i) in the hybrid entity deduction period, or
 - (ii) in the investor deduction period, or
 - (b) an arrangement, to which the hybrid entity or any investor in it is party, is a structured arrangement.
- (7) An arrangement is “structured” if it is reasonable to suppose that—
 - (a) the arrangement is designed to secure the hybrid entity double deduction amount, or
 - (b) the terms of the arrangement share the economic benefit of that amount being deductible by both the hybrid entity and

the investor between the parties to the arrangement or otherwise reflect the fact that the amount is expected to arise.

- (8) The arrangement may be designed to secure the hybrid entity double deduction amount despite also being designed to secure any commercial or other objective.
- (9) Sections 259GB (cases where the investor is within the charge to corporation tax for the investor deduction period) and 259GC (cases where the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period) contain provision for the counteraction of the hybrid entity double deduction amount.

Counteraction

259GB Counteraction where the investor is within the charge to corporation tax

- (1) This section applies in relation to the investor in the hybrid entity where the investor is within the charge to corporation tax for the investor deduction period.
- (2) For corporation tax purposes, the hybrid entity double deduction amount may not be deducted from the investor's ordinary income for the investor deduction period unless it is deducted from dual inclusion income of the investor for that period.
- (3) So much of the hybrid entity double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the investor's ordinary income for the investor deduction period –
 - (a) is carried forward to subsequent accounting periods of the investor, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the investor for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) If the Commissioners are satisfied that the investor will have no dual inclusion income –
 - (a) for an accounting period after the investor deduction period (“the relevant period”), nor
 - (b) for any accounting period after the relevant period,any of the hybrid entity double deduction amount that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (2) or (3) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period.
- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period –
 - (a) is carried forward to subsequent accounting periods of the investor, and

-
- (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
 - (6) Subsection (7) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from ordinary income of any person, for a taxable period, that is not dual inclusion income.
 - (7) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the investor in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the investor, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the investor.
 - (8) In this section “dual inclusion income” of the investor means an amount that is both—
 - (a) ordinary income of the investor for corporation tax purposes, and
 - (b) ordinary income of the hybrid entity for the purposes of any tax under the law of a territory outside the United Kingdom.

259GC Counteraction where the hybrid entity is within the charge to corporation tax

- (1) This section applies where—
 - (a) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period,
 - (b) it is reasonable to suppose that—
 - (i) no provision under the law of the investor jurisdiction that is equivalent to section 259GB applies, or
 - (ii) such a provision does apply, but the hybrid entity double deduction amount exceeds the amount that, under that provision, cannot be deducted from ordinary income, for the investor deduction period, other than dual inclusion income, and
 - (c) the secondary counteraction condition is met.
- (2) The secondary counteraction condition is met if—
 - (a) the hybrid entity and any investor in it are in the same control group (see section 259KA) at any time in—
 - (i) the hybrid entity deduction period, or
 - (ii) the investor deduction period, or
 - (b) there is an arrangement, to which the hybrid entity or any investor in it is party, that is a structured arrangement (within the meaning given by section 259GA(7)).
- (3) In this section “the restricted deduction” means—
 - (a) in a case where subsection (1)(b)(i) applies, the hybrid entity double deduction amount, and
 - (b) in a case where subsection (1)(b)(ii) applies, the hybrid entity double deduction amount so far as it exceeds the amount that, under a provision of the law of a territory outside the

United Kingdom that is equivalent to section 259GB, cannot be deducted from ordinary income, for the investor deduction period, other than dual inclusion income.

- (4) For corporation tax purposes, the restricted deduction may not be deducted from the hybrid entity's ordinary income for the hybrid entity deduction period unless it is deducted from dual inclusion income for that period.
- (5) So much of the restricted deduction (if any) as, by virtue of subsection (4), cannot be deducted from the hybrid entity's ordinary income for the hybrid entity deduction period –
 - (a) is carried forward to subsequent accounting periods of the hybrid entity, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the hybrid entity for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (6) If the Commissioners are satisfied that the hybrid entity will have no dual inclusion income –
 - (a) for an accounting period after the hybrid entity deduction period ("the relevant period"), nor
 - (b) for any accounting period after the relevant period,any of the restricted deduction that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (4) or (5) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period.
- (7) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (6), at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period –
 - (a) is carried forward to subsequent accounting periods of the hybrid entity, and
 - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (8) Subsection (9) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from ordinary income of any person, for a taxable period, that is not dual inclusion income.
- (9) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the hybrid entity in which the taxable period mentioned in subsection (8) ends, and any subsequent accounting periods of the hybrid entity, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the hybrid entity.
- (10) In this section "dual inclusion income" of the hybrid entity means an amount that is both –

-
- (a) ordinary income of the hybrid entity for corporation tax purposes, and
 - (b) ordinary income of an investor for the purposes of any tax under the law of a territory outside the United Kingdom.

CHAPTER 8

DUAL RESIDENT COMPANY DOUBLE DEDUCTION CASES

Introduction

259H Overview of Chapter

- (1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise as a result of a company being a dual resident company.
- (2) The counteraction operates by altering the corporation tax treatment of the company.
- (3) Section 259HA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (3) of that section defines “dual resident company”.
- (5) Subsection (4) of that section defines “dual residence double deduction amount”.
- (6) Section 259HB contains the provision that counteracts the mismatch.

Application of Chapter

259HA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A and B are met.
- (2) Condition A is that a company is a dual resident company.
- (3) For the purposes of this Chapter a company is a “dual resident company” if –
 - (a) it is UK resident, and
 - (b) it is also within the charge to a tax (“the non-UK tax”) under the law of a territory outside the United Kingdom because –
 - (i) it derives its status as a company from that law,
 - (ii) its place of management is in that territory, or
 - (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (4) Condition B is that there is an amount (“the dual residence double deduction amount”) that, disregarding this Chapter and any equivalent provision under the law of a territory outside the United Kingdom, it is reasonable to suppose could, by reason of the company being a dual resident company –
 - (a) be deducted from the company’s ordinary income for an accounting period (“the deduction period”) for corporation tax purposes, and

-
- (b) also be deducted from the company's ordinary income for the purposes of the non-UK tax.
- (5) Section 259HB counteracts the dual residence double deduction amount.

Counteraction

259HB Counteraction of dual residence double deduction amounts

- (1) For corporation tax purposes, the dual residence double deduction amount may not be deducted from the company's ordinary income for the deduction period unless it is deducted from dual inclusion income of the company for that period.
- (2) So much of the dual residence double deduction amount (if any) as, by virtue of subsection (1), cannot be deducted in calculating the company's ordinary income for the deduction period –
- (a) is carried forward to subsequent accounting periods of the company, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (3) If the Commissioners are satisfied that the company has ceased to be a dual resident company, any of the dual residence double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (1) or (2) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a dual resident company.
- (4) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (3), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a dual resident company –
- (a) is carried forward to subsequent accounting periods of the company, and
 - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (5) Subsection (6) applies if it is reasonable to suppose that all or part of the dual residence double deduction amount is deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from ordinary income of any person, for a taxable period, that is not dual inclusion income.
- (6) For the purposes of determining how much of the dual residence double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (5) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

-
- (7) In this section “dual inclusion income” of the company means an amount that is both –
- (a) ordinary income of the company for corporation tax purposes, and
 - (b) ordinary income of the company for the purposes of the non-UK tax (within the meaning given by section 259HA(3)(b)).

CHAPTER 9

IMPORTED MISMATCHES

Introduction

259I Overview of Chapter

- (1) This Chapter contains provision denying deductions in connection with payments and quasi-payments that are made under, or in connection with, imported mismatch arrangements where the payer is within the charge to corporation tax for the payment period.
- (2) Section 259IA contains the conditions that must be met for this Chapter to apply and defines “imported mismatch payment” and “imported mismatch arrangement”.
- (3) Section 259IB contains provision for denying some or all of a relevant deduction in relation to an imported mismatch payment.
- (4) See also section 259BB for the meaning of “payment”, “quasi-payment”, “relevant deduction”, “payment period” and “payer”.

Application of Chapter

259IA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to F are met.
- (2) Condition A is that a payment or quasi-payment (“the imported mismatch payment”) is made under, or in connection with, an arrangement (“the imported mismatch arrangement”).
- (3) Condition B is that, in relation to the imported mismatch payment, the payer (“P”) is within the charge to corporation tax for the payment period.
- (4) Condition C is that the imported mismatch arrangement is one of a series of arrangements.
- (5) A “series of arrangements” means a number of arrangements that are each entered into (whether or not one after the other) in pursuance of, or in relation to, another arrangement (“the over-arching arrangement”).
- (6) Condition D is that, under another arrangement in the series, there is a payment or quasi-payment (“the mismatch payment”) in relation to which it is reasonable to suppose that there is or will be –
 - (a) a hybrid or otherwise impermissible deduction/non-inclusion mismatch (see section 259CB),

-
- (b) a hybrid transfer deduction/non-inclusion mismatch (see section 259DC),
 - (c) a hybrid payer deduction/non-inclusion mismatch (see section 259EB),
 - (d) a hybrid payee deduction/non-inclusion mismatch (see section 259FB),
 - (e) a hybrid entity double deduction amount (see section 259GA(4)), or
 - (f) a dual resident company double deduction (see subsection (7)),

and in this Chapter “the relevant mismatch” means the mismatch, amount or deduction concerned.

- (7) In subsection (6)(f) “a dual resident company double deduction” means an amount that can be deducted by a company both—
 - (a) from ordinary income for the purposes of a tax charged under the law of one territory, and
 - (b) from ordinary income for the purposes of a tax charged under the law of another territory,by virtue of the company being dual resident.
- (8) For the purposes of subsection (7), the company is “dual resident” if—
 - (a) it is within the charge to the tax mentioned in paragraph (a) of subsection (7) because—
 - (i) it derives its status as a company from the law of the territory mentioned in that paragraph,
 - (ii) its place of management is in that territory, or
 - (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax, and
 - (b) it is within the charge to the tax mentioned in paragraph (b) of that subsection because—
 - (i) it derives its status as a company from the law of the territory mentioned in that paragraph,
 - (ii) its place of management is in that territory, or
 - (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (9) Condition E is that it is reasonable to suppose that—
 - (a) no provision of Chapters 3 to 7 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of any person in respect of the mismatch payment, but
 - (b) a provision mentioned in paragraph (a) would apply in relation to the tax treatment of P in respect of the mismatch payment, if P were—
 - (i) the payer in relation to the mismatch payment,
 - (ii) a payee in relation to the mismatch payment, or
 - (iii) if the relevant mismatch is a hybrid entity double deduction amount, an investor in the hybrid entity concerned.

-
- (10) Condition F is that –
- (a) P is in the same control group as the payer, or a payee, in relation to the mismatch payment, at any time in the period –
 - (i) beginning with the day the over-arching arrangement is made, and
 - (ii) ending with the last day of the payment period in relation to the imported mismatch payment, or
 - (b) the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.
- (11) The imported mismatch arrangement, or the over-arching arrangement, is a “structured arrangement” if it is reasonable to suppose that –
- (a) the arrangement concerned is designed to secure the relevant mismatch, or
 - (b) the terms of the arrangement concerned share the economic benefit of the relevant mismatch between the parties to that arrangement or otherwise reflect the fact that the relevant mismatch is expected to arise.
- (12) An arrangement may be designed to secure the relevant mismatch despite also being designed to secure any commercial or other objective.
- (13) Section 259IB contains provision for denying all or part of the relevant deduction in relation to the imported mismatch payment by reference to the relevant mismatch.

Counteraction

259IB Denial of the relevant deduction in relation to the imported mismatch payment

- (1) If, in addition to the imported mismatch payment, there are, or will be, one or more relevant payments in relation to the relevant mismatch, subsection (3) applies.
- (2) Otherwise, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P’s ordinary income for the payment period is to be reduced by the amount of the relevant mismatch.
- (3) Where this subsection applies, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P’s ordinary income for the payment period is to be reduced by P’s share of the relevant mismatch.
- (4) P’s share of the relevant mismatch is to be determined by apportioning the relevant mismatch between P and every payer in relation to a relevant payment on a just and reasonable basis, having regard (in particular) to the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the mismatch payment.
- (5) For the purposes of subsection (4), the imported mismatch payment is to be taken to fund the mismatch payment to the extent that the

mismatch payment is not instead funded (directly or indirectly) by one or more relevant payments.

- (6) For the purposes of this section, a payment or quasi-payment, other than the imported mismatch payment and the mismatch payment, is a “relevant payment” in relation to the relevant mismatch if –
 - (a) it is made under an arrangement in the series of arrangements mentioned in section 259IA(4), and
 - (b) it funds (directly or indirectly) the mismatch payment.
- (7) In proceedings before a court or tribunal in connection with this section –
 - (a) in relation to subsection (1), it is for P to show that, in addition to the imported mismatch payment, there are one or more relevant payments in relation to the relevant mismatch, and
 - (b) in relation to subsection (5), it is for P to show that the mismatch payment is funded (directly or indirectly) by one or more relevant payments instead of by the imported mismatch payment.

CHAPTER 10

ADJUSTMENT OF REASONABLE SUPPOSITIONS

259J Adjustments where suppositions cease to be reasonable

- (1) Where –
 - (a) a reasonable supposition is made for the purposes of any provision of this Part, and
 - (b) the supposition turns out to be mistaken or otherwise ceases to be reasonable,such consequential adjustments as are just and reasonable may be made.
- (2) The adjustments may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (3) But the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.

CHAPTER 11

INTERPRETATION

Financial instruments

259K Meaning of “financial instrument”

- (1) A “financial instrument” means –
 - (a) an arrangement profits or deficits arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into

-
- account for corporation tax purposes in accordance with Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships),
- (b) a contract profits or losses arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 7 of CTA 2009 (derivative contracts),
 - (c) a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 of CTA 2010 (factoring of income etc: finance arrangements),
 - (d) a share forming part of a company's issued share capital or any arrangement that provides a person with economic rights corresponding to those provided by holding such a share, or
 - (e) anything else that is a financial instrument.
- (2) In subsection (1)(e) "financial instrument" has the meaning that it has for the purposes of UK generally accepted accounting practice.
- (3) But "financial instrument" does not include—
- (a) a hybrid transfer arrangement (within the meaning given by section 259DB), or
 - (b) anything that is a regulatory capital security for the purposes of the Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209) (as amended from time to time).
- (4) Subsection (3)(b) is subject to any provision to the contrary that may be made by regulations under section 221 of FA 2012 (tax consequences of financial sector regulation).

Control groups and related persons

259KA Control groups

- (1) A person ("A") is in the same control group as another person ("B")—
- (a) throughout any period for which they are consolidated for accounting purposes,
 - (b) on any day on which the participation condition is met in relation to them, or
 - (c) on any day on which the 50% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
- (a) their financial results for the period are required to be comprised in group accounts,
 - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
 - (c) their financial results for the period are in fact comprised in group accounts.
- (3) In subsection (2), "group accounts" means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or

-
- (b) any corresponding provision of the law of a territory outside the United Kingdom.
 - (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with the day –
 - (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
 - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.
 - (5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (4) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).
 - (6) The 50% investment condition is met in relation to A and B if –
 - (a) A has a 50% investment in B, or
 - (b) a third person has a 50% investment in each of A and B.
 - (7) Section 259KC applies for the purposes of determining whether a person has a “50% investment” in another person.

259KB Related persons

- (1) Two persons are “related” on any day that –
 - (a) they are in the same control group (see section 259KA), or
 - (b) the 25% investment condition is met in relation to them.
- (2) The 25% investment condition is met in relation to a person (“A”) and another person (“B”) if –
 - (a) A has a 25% investment in B, or
 - (b) a third person has a 25% investment in each of A and B.
- (3) Section 259KC applies for the purposes of determining whether a person has a “25% investment” in another person.

259KC Meaning of “50% investment” and “25% investment”

- (1) Where this section applies for the purposes of determining whether a person has a “50% investment” in another person for the purposes of section 259KA(6), references in this section to X% are to be read as references to 50%.
- (2) Where this section applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of section 259KB(2), references in this section to X% are to be read as references to 25%.
- (3) A person (“P”) has an X% investment in a company (“C”) if it is reasonable to suppose that –
 - (a) P possesses or is entitled to acquire X% or more of the share capital or issued share capital of C,
 - (b) P possesses or is entitled to acquire X% or more of the voting power in C, or

-
- (c) if the whole of C's share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) X% or more of the proceeds of the disposal.
- (4) A person ("P") has an X% investment in another person ("Q") if it is reasonable to suppose that—
- (a) if the whole of Q's income were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) X% or more of the distributed amount, or
 - (b) in the event of a winding-up of Q or in any other circumstances, P would receive (directly or indirectly and whether or not at the time of the winding-up or other circumstances or later) X% or more of Q's assets which would then be available for distribution.
- (5) In this section, references to a person receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for that person's benefit.
- (6) For the purposes of subsections (3) and (4), in determining what percentage investment a person ("P") has in another person ("U"), where P acts together with a third person ("T") in relation to U, P is to be taken to have all of T's rights and interests in relation to U.
- (7) P is to be taken to "act together" with T in relation to U if (and only if)—
- (a) P and T are connected (within the meaning given by section 163),
 - (b) P is able to secure that T acts in accordance with the wishes of P, or T is able to secure that P acts in accordance with the wishes of T, for the purpose of influencing the conduct of U's affairs,
 - (c) P and T are party to any arrangement that—
 - (i) it is reasonable to suppose is designed to affect the value of any of T's rights or interests in relation to U, or
 - (ii) relates to the exercise of any of T's rights in relation to U, or
 - (d) the same person manages—
 - (i) some or all of P's rights or interests in relation to U, and
 - (ii) some or all of T's rights or interests in relation to U.
- (8) But P does not "act together" with T in relation to U under paragraph (d) of subsection (7) where—
- (a) the person who manages the rights or interests of P mentioned in sub-paragraph (i) of that paragraph, does so as the operator of a collective investment scheme,
 - (b) that person manages the rights or interests of T mentioned in sub-paragraph (ii) of that paragraph as the operator of a different collective investment scheme, and
 - (c) the Commissioners are satisfied that the management of the schemes is not coordinated for the purpose of influencing the conduct of U's affairs.

-
- (9) In subsection (8) “collective investment scheme” and “operator” have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237 of that Act).

Partnerships

259KD Treatment of a person who is a member of a partnership

- (1) This section applies where a person is a member of a partnership.
- (2) Any reference in this Part to income, profits or an amount of the person includes a reference to the person’s share of (as the case may be) income, profits or an amount of the partnership.
- (3) For this purpose “the person’s share” of income, profits or an amount is determined by apportioning the income, profits or amount between the partners on a just and reasonable basis.
- (4) In this section –
- (a) “partnership” includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership, and
 - (b) “member” of a partnership is to be read accordingly.

Definitions

259KE Definitions

In this Part –

“arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“CFC” and “CFC charge” have the meaning given by section 259B(4);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“control group” has the meaning given by section 259KA;

“financial instrument” has the meaning given by section 259K;

“foreign CFC” and “foreign CFC charge” have the meaning given by section 259B(4);

“hybrid entity” has the meaning given by section 259BE;

“investor”, in relation to a hybrid entity, has the meaning given by section 259BE(4);

“investor jurisdiction” has the meaning given by section 259BE(3);

“ordinary income” is to be read in accordance with sections 259BC and 259BD;

“payee” –

(a) in relation to a payment, has the meaning given by section 259BB(6)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(6)(b);

“payer” –

-
- (a) in relation to a payment, has the meaning given by section 259BB(1)(a), and
 - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
- “payment” has the meaning given by section 259BB(1);
- “payment period” –
- (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
 - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
- “permitted reason for a deduction/non-inclusion mismatch” has the meaning given by section 259BF;
- “quasi-payment” has the meaning given by section 259BB(2) and (3);
- “related” has the meaning given by section 259KB;
- “relevant deduction” –
- (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
 - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2)(a);
- “tax” has the meaning given by section 259B;
- “taxable period” means –
- (a) in relation to corporation tax, an accounting period,
 - (b) in relation to income tax, a tax year,
 - (c) in relation to the CFC charge, a relevant corporation tax accounting period (within the meaning given by section 371BC(3)),
 - (d) in relation to a foreign CFC charge, a period (by whatever name known) that corresponds to a relevant corporation tax accounting period, and
 - (e) in relation to any other tax, a period for which the tax is charged;
- “taxable profits” is to be read in accordance with sections 259BC(2) and 259BD(5).”

PART 2

CONSEQUENTIAL AMENDMENTS

FA 1998

- 2 Schedule 18 to FA 1998 (company tax returns) is amended as follows.
- 3 In paragraph 25(3) –
 - (a) insert “or” at the end of paragraph (b), and
 - (b) omit paragraph (d) and the “or” preceding it.
- 4 In paragraph 42(4) –
 - (a) insert “or” at the end of paragraph (a), and
 - (b) omit paragraph (c) and the “or” preceding it.

CTA 2009

- 5 In section A1 of CTA 2009 (overview of the Corporation Tax Acts), in subsection (2) –
- (a) omit paragraph (h), and
 - (b) after that paragraph insert –
 - “(ha) Part 6A of that Act (hybrid and other mismatches);”.

CTA 2010

- 6 CTA 2010 is amended as follows.
- 7 In section 938N (group mismatch schemes: priority) –
- (a) omit paragraph (d), and
 - (b) after that paragraph insert –
 - “(da) Part 6A of that Act (hybrid and other mismatches);”.
- 8 In section 938V (tax mismatch schemes: priority) –
- (a) omit paragraph (c), and
 - (b) after that paragraph insert –
 - “(ca) Part 6A of TIOPA 2010 (hybrid and other mismatches);”.

TIOPA 2010

- 9 TIOPA 2010 is amended as follows.
- 10 In section 1 (overview of Act), in subsection (1) –
- (a) omit paragraph (c), and
 - (b) after that paragraph insert –
 - “(ca) Part 6A (hybrid and other mismatches);”.
- 11 In section 157 (direct participation), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “; and
 - (d) in Part 6A, section 259KA(4).”
- 12 In section 158 (indirect participation: defined by sections 159 to 162), in subsection (4) –
- (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “; and
 - (d) in Part 6A, section 259KA(4).”
- 13 In section 159 (indirect participation: potential direct participant), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “; and
 - (d) in Part 6A, section 259KA(4).”
- 14 In section 160 (indirect participation: one of several major participants), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b), and

-
- (b) after paragraph (c) insert “, and
 - (d) in Part 6A, section 259KA(4).”

15 Omit Part 6 (tax arbitrage).

PART 3

COMMENCEMENT

16 Chapters 3 to 6 of Part 6A of TIOPA 2010 (counteraction of deduction/non-inclusion mismatches arising from payments and quasi-payments) have effect in relation to –

- (a) payments made on or after the commencement date, and
- (b) quasi-payments in relation to which the payment period begins on or after the commencement date.

17 Chapters 7 and 8 of Part 6A of TIOPA 2010 (counteraction of double deduction mismatches) have effect for accounting periods beginning on or after the commencement date.

18 Chapter 9 of Part 6A of TIOPA 2010 (imported mismatch payments) has effect in relation to imported mismatch payments that are –

- (a) payments made on or after the commencement date, or
- (b) quasi-payments in relation to which the payment period begins on or after the commencement date.

19 The following provisions of this Schedule have effect in relation to accounting periods beginning on or after the commencement date –

- (a) paragraphs 2 to 4, and
- (b) paragraphs 5(a), 7(a), 8(a), 10(a) and 15.

20 For the purposes of paragraph 16 and 18, where a payment period begins before the commencement date and ends on or after that date (“the straddling period”) –

- (a) so much of the straddling period as falls before the commencement date, and so much of that period as falls on or after that date, are to be treated as separate taxable periods, and
- (b) where it is necessary to apportion an amount for the straddling period to the two separate taxable periods, it is to be apportioned –
 - (i) on a time basis according to the respective length of the separate taxable periods, or
 - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

21 For the purposes of paragraphs 17 and 19(b), where a company has an accounting period beginning before the commencement date and ending on or after that date (“the straddling period”) –

- (a) so much of the straddling period as falls before the commencement date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods, and
- (b) where it is necessary to apportion an amount for the straddling period to the two separate accounting periods, it is to be apportioned –
 - (i) in accordance with section 1172 of CTA 2010 (time basis), or

(ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

22 In this Part of this Schedule “the commencement date” means 1 January 2017.

Explanatory Note

Clause 33: Hybrid and other mismatches

Summary

1. This Schedule introduces new rules to counteract tax avoidance through hybrid and other mismatch arrangements which result in a deduction for various payments where there is no corresponding inclusion in ordinary income, or in double deductions from ordinary income. These new hybrid mismatch rules will effectively replace the existing anti-arbitrage rules in Part 6 TIOPA 2010.

Introduction

2. The new rules introduced by this Schedule deal with hybrid mismatch arrangements. These mismatches can involve either double deductions for the same expense (double deduction mismatches), or deductions for an expense without any corresponding receipt being taxable (deduction/non-inclusion mismatches). Typically, such arrangements occur cross-border, as they seek to exploit the differences in tax treatment between two jurisdictions. However, in the case of hybrid financial instruments, mismatches can occur within jurisdictions.
3. Hybrid mismatch outcomes can arise from both hybrid financial instruments and hybrid entities.
4. An example of a hybrid financial instrument would be one which allowed the payer to deduct a payment as interest, but allowed the payee to treat the receipt as an exempt dividend.
5. An example of a hybrid entity would be a partnership which is treated as transparent by one jurisdiction, but treated as opaque by another jurisdiction. The effect would be that one jurisdiction would apply its tax rules to the partnership, whilst the other would look through the partnership and apply its tax rules to the partners.
6. These new hybrid mismatch rules seek to neutralise the tax mismatch created by the hybrid arrangement by changing the tax treatment of either the payment or the receipt, depending on the circumstances. The rules are designed to work whether both the countries affected by a cross-border hybrid arrangement have introduced hybrid mismatch rules, or just one.
7. In the case of double deductions, the primary response is to deny a deduction to the parent company. If this does not occur (because the tax law in the country in which the parent company is resident does not provide for this), the secondary response is to deny the deduction to the hybrid entity.
8. In the case of deduction/non-inclusion, the primary response is to deny a deduction to the payer. If this does not occur, the secondary response is to bring the receipt into charge for

the recipient.

9. The new rules targets hybrid mismatches in the following circumstances.
10. Deduction/non-inclusion outcomes involving:
 - Hybrid Financial Instruments
 - Hybrid Transfers
 - Hybrid Entity Payers
 - Hybrid Entity Payees
11. Double deduction outcomes involving:
 - Hybrid Entity Payers
 - Dual Resident Companies
12. The measure also includes rules to deter arrangements which attempt to circumvent the main hybrid mismatch rules by transferring a mismatch into a third jurisdiction - such arrangements are known as "imported" mismatches.

Structure of the legislation

13. Chapters 3 to 9 deal with various types of mismatches. A common structure has been employed in those chapters, for ease of reference. Each chapter is divided into three parts, as follows :
 - Introduction, which sets out the scope of the chapter,
 - Application, which sets out the conditions which need to be met in order for the chapter to apply, and how to identify and measure particular mismatches and
 - Counteraction, which sets out how the mismatches that fall within that chapter are to be dealt with. Depending on the type of mismatch and the circumstances of the counterparties, the counteraction will either be the restriction or denial of a tax deduction, or the charging of an amount of income to tax.

Schedule 1:

14. Schedule 1 inserts new Part 6A into Taxation International and Other Provisions Act (TIOPA) 2010

Chapter 1 – Introduction

15. Chapter 1 provides an overview of the new rules for counteracting certain mismatches arising from arrangements involving hybrid entities and hybrid financial instruments. .
16. New section 259A sets out the structure of new Part 6A TIOPA 2010.
17. Subsection 1 explains that Part 6A is intended to counteract certain mismatches which fall into two categories : cases which involve a tax deduction but no corresponding receipt, and those which involve more than one deduction.

18. Subsection 2 provides that Part 6A will cover three types of mismatches : those involving financial instruments (including hybrid transfers), those involving hybrid entities and those involving dual resident companies.
19. Subsections 3 to 12 summarise the content of each Chapter in Part 6A.

Chapter 2 –Key Definitions

20. Chapter 2 sets out key definitions in relation to the hybrid rules.
21. New Section 259B sets out certain key definitions
22. Subsection 1 defines "tax" for the purposes of Part 6A as income tax, corporation tax on income, diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge.
23. Subsection 2 defines foreign tax by reference to whether it is charged on income and corresponds to UK income or corporation tax.
24. Subsection 3 provides that provincial and state taxes are included within the definition of foreign tax.
25. Subsection 4 says that the meaning of "CFC", "CFC charge" Is the same as for Part 9A and gives a definition of a "foreign CFC charge"
26. New Section 259BA is about how to construe references to an equivalent provision to this Part under the law of a territory outside the UK
27. Subsections 1 and 2 provide that such a reference is one that it is reasonable to suppose is based on the OECD Final Report on Hybrid Mismatches published on 5th October 2015. This includes any replacement or supplementary publication.
28. Subsection 3 provides a definition of replacement or supplementary publication.
29. New Section 259BB defines the terms "payment", "payer", "payee" and "quasi-payment" and other key terms for the purposes of Part 6A.
30. Subsection 1 defines "payment" as any transfer of money or money's worth, for which a tax deduction can be claimed for a taxable period. Such deductions are referred to as "relevant deductions" and taxable periods are referred to as "payment periods".
31. Subsection 2 defines a "quasi-payment" for the purposes of Part 6A. Disregarding Part 6A or any equivalent non-UK law, a quasi-payment is where the payer may deduct an amount from ordinary income in calculating taxable profits, and (based on the assumption in subsection (4)) it may reasonably be assumed that an amount of ordinary income arises to another person or persons as a result.
32. Subsection 3 provides that a quasi-payment does not arise if the deduction is a deemed deduction for tax purposes, and the circumstances that gave rise to the deduction do not include the creation of any economic rights between the counterparties.
33. Subsection 4 sets out the assumptions required to apply subsection (2), which are that it is the law of the payer's jurisdiction that determines whether an entity is a separate and distinct entity from the payer, that any person to whom amounts arise adopts the same accountancy approach as the payer, and that any payees or potential payees are within the charge to tax in the payer jurisdiction.

34. Subsection 5 provides that references to quasi-payments, and to quasi-payment being made, refer to the circumstances which give rise to the relevant deduction, per subsection (2).
35. Subsection 6 defines "Payee" in the case of payments within subsection (1) as either a person to whom a transfer has been made, or a person to whom an amount of ordinary income arises as a result of that payment.
36. In relation to quasi-payments within subsection (2), a payee is either a person to whom it would be reasonable to expect an amount of ordinary income to arise, or a person to whom ordinary income actually arises due to the quasi-payment.
37. Subsection 7 sets out the circumstances in which a payer can also be a payee with regard to quasi-payments. This can arise, for example, where the payer is a branch of the payee company.
38. Subsection 8 defines a "payer jurisdiction" as the territory in which the relevant deduction may be made.
39. New Section 259BC Sets out the basic rules relating to "Ordinary income".
40. Subsection 2 defines ordinary income as gross income brought into account when calculating taxable profits
41. Subsection 3 excludes from ordinary income amounts that are excluded, reduced or offset by an exemption, exclusion, relief or credit that either applies specifically to all or part of the income, or that arises from a payment or quasi-payment that generates that income.
42. Subsection 4 and 5 provide that if the relevant tax charged on profits is refunded in whole or in part, the income that is brought into account in calculating the taxable profit, or a proportional part of it, is not ordinary income.
43. Subsection 6 defines when an amount of relevant tax is refunded but provides that an amount of tax that is refunded as a result of qualifying loss relief is to be ignored.
44. Subsection 7 gives the meaning of qualifying loss relief
45. Subsection 8 provides that ordinary income is included in taxable profits when it is brought into account in calculating taxable profits.
46. Subsection 9 excludes the CFC charge or the foreign CFC charge from the definition of "relevant tax", as they are dealt with separately in the following section.
47. New Section 259BD provides for amounts to be taken into account as ordinary income in relation to UK or foreign Controlled Foreign Company ("CFC") charges.
48. Subsection 2 provides that this section applies to a CFC, when certain amounts are not included in ordinary income, or, in relation to payments and quasi-payments linked to financial instruments or hybrid transfer arrangements, are included but under-taxed. The section then considers to what extent those amounts have been taken into account in computing a CFC charge. These amounts are termed "the relevant income" of the CFC.
49. Subsection 3 sets out the three steps to be taken in determining whether the relevant income of that company is ordinary income of any other companies which are subject to a CFC charge ("chargeable companies"). It does so by assessing whether and to what extent

the relevant income has been taken into account in calculating chargeable profits which create a CFC charge for one or more chargeable companies.

50. Subsection 4 ensures that relevant income amounts can only be treated as ordinary income by one company, so that amounts that are ordinary income of a relevant chargeable company cannot also be ordinary income of the CFC.
51. Subsections 5 and 6 include apportioned CFC profits within the definition of "taxable profits" for the purposes of Part 6A.
52. Subsection 7 provides that tax charged on taxable profits includes a relevant charge charged by reference to relevant chargeable profits.
53. Subsection 8 defines an "under-taxed" amount as one where the highest rate of tax charged on that amount is less than the full marginal rate.
54. Subsection 9 defines "full marginal rate".
55. Subsection 10 applies the definition of ordinary income in Section 259BC(3) for the purposes of this section.
56. Subsections 11 and 12 ensure that relevant income amounts are not counted twice when determining the ordinary income of a CFC and the relevant chargeable companies.
57. Subsection 13 provides definitions of "chargeable companies", "chargeable profits" and "hybrid transfer arrangement".
58. New Section 259BE sets out definitions of "hybrid entity", "investor" and "investor jurisdiction".
59. New Section 259BF sets out permitted reasons for deduction/non-inclusion mismatches - so that certain mismatches will be disregarded for the purposes of the hybrid mismatch rules in Part 6A.
60. Subsection 1 sets out the types of mismatches to which this section applies.
61. Subsection 2 sets out "permitted reasons" for deduction/non-inclusion mismatches. They include a person not being liable to tax in any territory, a person not being charged to tax on income arising outside a territory, and a person not liable to tax because of sovereign immunity.
62. Subsection 3 sets out certain definitions in relation to the permitted reasons.

Chapter 3 –Hybrid and other mismatches from financial instruments

63. New Section 259C provides an overview of the Chapter 3 rules, which counteract hybrid or otherwise Impermissible deduction/non-inclusion mismatches.
64. New Section 259CA sets out four conditions (A to D) which need to be met in order for this Chapter to apply.
65. Subsection 2 sets out Condition A, which requires that a payment or quasi-payment is made in relation to a financial instrument.
66. Subsection 3 sets out Condition B which requires either the payer or the payee to be within the charge to corporation tax for the payment period.

67. Subsections 4 and 5 set out Condition C which asks whether it would be reasonable to assume a hybrid mismatch would occur, in the absence of this Chapter and Chapters 5 to 8, or any equivalent non-UK tax law.
68. Subsection 6 sets out Condition D which is met if the payer is also a payee (applies to quasi-payments only), the payer and payee are related or if the financial instrument, or any arrangement connected with it, is a structured arrangement.
69. Subsection 7 defines a structured arrangement for this section.
70. Subsection 8 provides that an arrangement may be a structured arrangement whether or not there is also a commercial or other purpose.
71. New Section 259CB provides that there is a "hybrid or otherwise impermissible deduction/non-inclusion mismatch" if either or both of Cases 1 or 2 apply.
72. Subsection 2 provides for Case 1 to apply where deductions exceed the total payments or quasi-payments recognised as taxable income, and where the excess arises from the terms or features of a financial instrument.
73. Subsection 3 provides for Case 2 to apply where payments or quasi-payments result in amounts being included as taxable income, but under-taxed as a result of the terms or features of a financial instrument. Such amounts are "under-taxed amounts."
74. Subsection 4 disregards mismatches which arise for a permitted reason (see section 259BF).
75. Subsection 5 defines a permitted taxable period for a payee.
76. Subsections 6 and 7 define "undertaxed" taxable profits and "full marginal rate".
77. Subsection 8 sets the amount of a Case 1 mismatch as the excess that arises as a result of the hybrid transfer arrangement.
78. Subsection 9 sets the amount of a Case 2 mismatch amount by reference to a formula which takes into account the under-taxed amount, the full marginal tax rate and the actual tax rate applied.
79. Subsection 10 provides that where there is both a Case 1 and a Case 2 amount, the mismatch amount is the sum of the Case 1 and Case 2 amounts.
80. New Section 259CC provides the primary response : the counteraction if a payer is within the charge to corporation tax is that the relevant deduction is reduced by the mismatch amount.
81. New Section 259CD provides the secondary response : the counteraction if a payee is within the charge to corporation tax, and it is reasonable to suppose that the mismatch is not fully counteracted under section 259CC or any equivalent non-UK tax law. The amount calculated in accordance with subsection 3 is treated as income arising to the payee, or payees, for the counteraction period, and is charged to tax as income not otherwise charged to tax. This amount is "the relevant amount."
82. Subsections 5 and 6 allocate the relevant amount between multiple payees on a just and reasonable basis.

83. Subsection 7 charges the relevant amount to tax under Chapter 8 Part 10 CTA 2009.
84. Subsection 8 defines the "counteraction period."

Chapter 4 – Hybrid transfer deduction/non-inclusion mismatches

85. Chapter 4 provides the detailed rules for countering certain mismatches arising from hybrid transfer arrangements.
86. New Section 259D provides an overview of Chapter 4.
87. New Section 259DA sets out the circumstances in which the Chapter applies.
88. Subsection 1 sets out five conditions (A to E) which need to be met for the hybrid mismatch rules to apply. All five conditions need to be met in order for this Chapter to apply.
89. Subsection 2 sets out Condition A, which requires there to be a hybrid transfer arrangement in relation to an underlying instrument.
90. Subsection 3 sets out Condition B, which requires a payment or quasi-payment to be made in relation to that arrangement or instrument.
91. Subsection 4 sets out Condition C, which requires that either the payer or the payee is within the charge to corporation tax.
92. Subsection 5 sets out Condition D, which is that it is reasonable to assume that in the absence of Part 6A or any equivalent non-UK rules, there would be a hybrid transfer deduction/non-inclusion mismatch.
93. Subsection 6 sets out Condition E, which is met if the payer is also a payee (applies to quasi-payments only), the payer and payee are related, or if the hybrid transfer arrangement is a structured arrangement.
94. Subsection 7 defines a structured arrangement for this section.
95. Subsection 8 provides that an arrangement may be a structured arrangement whether or not there is also a commercial or other purpose.
96. New Section 259DB provides definitions for "hybrid transfer arrangements" and related terms.
97. Subsections 2 and 3 define a "hybrid transfer arrangement" by reference to the transfer of an "underlying instrument" where either the "dual treatment" condition is met, or a "substitute payment" could be made.
98. Subsection 4 defines the "dual treatment" condition. The condition is met if, for the purposes of a tax charged on a person, the arrangement is treated as equivalent, in substance, to the lending of money at interest, and is not so treated for the purposes of a tax charged on another person.
99. Subsection 5 defines a "substitute payment". The definition covers, for example, a manufactured dividend.
100. Subsection 6 includes within the definition circumstances where an arrangement involves a financial instrument effectively being replaced by a second financial instrument, so that

the second instrument is treated as being transferred between the two parties.

101. New Section 259DC sets out two types of hybrid transfer deduction/non-inclusion mismatch which fall within Chapter 4 - denoted as Case 1 and Case 2.
102. Subsection 2 provides for Case 1 to apply where deductions exceed the total payments or quasi-payments recognised as taxable income, and where the excess is a result of either the dual treatment condition or substitute payment condition set out in subsection (4).
103. Subsection 3 provides for Case 2 to apply where amounts are included as taxable income, but under-taxed, as a result of either the dual treatment condition or substitute payment condition being met as set out in subsection (4).
104. Subsection 4 sets out whether the dual treatment condition is met, and the whether a payment or quasi-payment is a substitute payment, for the purposes of Case 1 and Case 2 above.
105. Subsection 5 disregards Case 1 and Case 2 mismatches which either fall within the financial trader exclusion, or which arise for a permitted reason (as defined in Section 259BF).
106. Subsection 6 sets out the financial trader exclusion, which applies for substitute payments where the difference in treatment is the result of a person recognising both the underlying return and the substitute payment as trading income.
107. Subsection 7 disapplies the financial trader exclusion in cases where, if the payees had received the underlying return, Chapter 3 or equivalent non-UK rules would apply, or where the relevant hybrid transfer arrangement is a structured arrangement.
108. Subsection 8 sets out the time period for a payee, within which amounts of ordinary income can be considered - the "permitted taxable period". This period has to either begin within 12 months of the end of the payment period, or, if later, a claim is made on a just and reasonable basis.
109. Subsection 9 defines "under-taxed"
110. Subsection 10 defines "full marginal rate"
111. Subsection 11 sets the amount of a Case 1 mismatch as the excess that arises as a result of the terms of the financial instrument.
112. Subsection 12 sets the amount of a Case 2 mismatch by reference to a formula which takes into account the under-taxed amount, the full marginal tax rate and the actual tax rate applied.
113. Subsection 13 provides that where there is both a Case 1 and a Case 2 amount, the mismatch amount is the sum of the Case 1 and Case 2 amounts.
114. New Sections 259DD and 259DE set out the counteractions to be applied in relation to Chapter 4.
115. New Section 259DD provides the primary response : where the UK is the payer jurisdiction and the payer is liable to UK corporation tax, the relevant deduction is reduced by the mismatch amount.

116. New Section 259DE provides the secondary response : countering the hybrid mismatch arrangement where the UK is a payee jurisdiction, the payee is liable to UK corporation tax, and it is reasonable to suppose that the mismatch is not fully counteracted under section 259DD or any equivalent non-UK tax law. The amount calculated in accordance with subsection 3 is treated as income arising to the payee, or payees, for the counteraction period, and is charged to tax as income not otherwise charged to tax. This amount is "the relevant amount."
117. Subsections 5 and 6 allocate the relevant amount between multiple payees on a just and reasonable basis.
118. Subsection 7 charges the relevant amount to tax under Chapter 8 Part 10 CTA 2009.
119. Subsection 8 defines the "counteraction period."

Chapter 5 – Hybrid deduction/non-inclusion mismatches

120. Chapter 5 provides the detailed rules for countering certain mismatches arising from payments or quasi-payments where the payer is a hybrid entity, which result in a deduction with no matching inclusion of income.
121. New Section 259E provides an overview of the Chapter.
122. New Section 259EA sets out the five conditions (A to E) for the Chapter to apply.
123. Subsections 2 to 7 set out conditions A to E. All of these conditions must be met for the Chapter to apply.
124. Condition A requires a payment or quasi-payment to be made in connection with an arrangement.
125. Condition B requires that the payer is a hybrid entity.
126. Condition C requires either the hybrid payer or the payee to be within the charge to corporation tax.
127. Condition D requires that it is reasonable to assume that there would be a hybrid mismatch in the absence of Chapters 5 to 8, or any equivalent non-UK tax law.
128. Condition E which is met if the payer is also a payee (applies to quasi-payments only), the hybrid payer and payee are related, or if the arrangement is a structured arrangement.
129. Subsection 8 defines a structured arrangement for this section.
130. Subsection 9 provides that an arrangement may be a structured arrangement whether or not there is also a commercial or other purpose.
131. New Section 259EB defines hybrid payer mismatches, and their quantum. There is a mismatch where a deduction exceeds the total amounts included in the ordinary income of the payees, and where some or all of the excess is as a result of the hybridity of the payer.
132. Subsection 2 provides that the size of the mismatch is determined by the extent to which it is caused by hybridity.
133. Subsection 3 disregards mismatches which arise for a permitted reason (see section

- 259BF).
134. Subsection 4 defines a permitted taxable period of a payee.
135. New Section 259EC provides the primary response : counteraction of hybrid payer mismatches where the UK is the payer jurisdiction.
136. Subsection 2 provides that the relevant deduction equal to the mismatch amount (the "restricted deduction") cannot be deducted unless it is deducted from dual inclusion income.
137. Subsection 3 provides that restricted deductions can be carried forward at set against dual inclusion income in future accounting periods.
138. Subsection 4 defines "dual inclusion income" as amounts which arise due to an arrangement which are included as ordinary income of the payer for tax purposes in both the UK and another territory, so that such amounts are brought into charge twice.
139. New Section 259ED provides the secondary response : counteraction of hybrid payer mismatches where the payee is within the charge to corporation tax.
140. Subsection 1 applies the section where the payee is within the charge to corporation tax and it is reasonable to suppose that either no non-UK law equivalent to Section 259EC applies.
141. Subsection 2 determines whether, despite a non-UK tax law equivalent to Section 259EC , a mismatch still exists.
142. Subsection 3 defines "the relevant amount".
143. Subsection 4 provides that an amount equal to the relevant amount, less any dual inclusion income of the hybrid payer, is treated as income of the payee for that period.
144. Subsections 5 , 6 and 7 allocate the relevant amount between multiple payees on a just and reasonable basis, and allocate the relevant proportion of any dual inclusion income of the hybrid payer on the same basis.
145. Subsection 8 provides that the amount given by the calculation in subsection (4) is treated as income of the payee for the counteraction period and charged to tax under Chapter 8, Part 10 CTA 2009.
146. Subsection 9 defines the counteraction period and "dual inclusion income".

Chapter 6 – Hybrid payee deduction/non-inclusion mismatches

147. New Section 259F provides an overview of Chapter 6, which deals with mismatches in relation to hybrid entity payees. Mismatches are counteracted either by amending the corporation tax treatment of the payer, or by charging corporation tax on hybrid entity limited liability partnership payees.
148. New Section 259FA sets out five conditions (A to E) which all have to be met for this Chapter to apply.
149. Condition A Is that there is a payment or quasi-payment linked to an arrangement.
150. Condition B is that a payee is a hybrid entity.

151. Condition C is that either the payer is within the charge to corporation tax during the payment period, or that a hybrid payee is a limited liability partnership.
152. Condition D is that it is reasonable to assume that in the absence of Chapters 6,7 or 8, or any equivalent non-UK rules, there would be a hybrid payee deduction/non-inclusion mismatch.
153. Condition E which is met if the payer is also the hybrid payee (applies to quasi-payments only), the payer and hybrid payee are related, or if the arrangement is a structured arrangement.
154. Subsection 8 defines a structured arrangement for this section.
155. Subsection 9 provides that an arrangement may be a structured arrangement whether or not there is also a commercial or other purpose.
156. New Section 259FB defines hybrid payee deduction/non-inclusion mismatches, and their quantum.
157. Subsection 1 provides that there is a mismatch where a deduction exceeds the total amounts included in the ordinary income of the payees, and where some or all of the excess is as a result of the hybridity of one or more of the payees.
158. Subsection 2 provides that the size of the mismatch is determined by the extent to which it is caused by hybridity.
159. Subsection 3 disregards mismatches which arise for a permitted reason (see section 259BF)
160. Subsection 4 defines a permitted taxable period for a payee.
161. New Section 259FC sets out the counteraction where the payer is within the charge to corporation tax. The relevant deduction of the payer must be reduced by an amount equal to the hybrid payee mismatch.
162. New Section 259FD sets out the counteraction where the hybrid payee is a limited liability partnership ("LLP")
163. Subsection 1 applies the section to a hybrid payee where it is reasonable to suppose that either no non-UK tax law equivalent to Section 259FC applies, or that it does, but a mismatch still exists.
164. Subsection 2 determines whether a non-UK tax law does not fully counteract the mismatch.
165. Subsection 3 defines "the relevant amount."
166. Subsection 4 provides that if the hybrid payee is the only hybrid payee, an amount equal to the mismatch is treated as income arising to the hybrid payee on the last day of the payment period.
167. Subsections 5 and 6 allocate the relevant amount between multiple payees on a just and reasonable basis .
168. Subsection 7 provides that the amount given by the calculation in subsections (4) or (5) is treated as income of the hybrid payee and charged to tax under Chapter 8, Part 10 CTA

2009.

169. Subsection 8 disapplies section 863 ITTOIA 2005 and section 1273 CTA 2009 so far as is necessary to apply the charge under subsection (7).
170. Subsection 9 disregards Section 259FD when considering whether the hybrid payee is within the charge to corporation tax in relation to the rest of the hybrid mismatch rules in Part 6A.

Chapter 7 – Hybrid Entity Double Deduction Mismatches

171. New Section 259G provides an overview of Chapter 7.
172. New Section 259GA sets out three conditions (A to C), all of which need to be met for the Chapter to apply.
173. Condition A is that, disregarding Chapters 7 and 8, and any equivalent non-UK tax law, an amount could be deducted both from the ordinary income of a hybrid payer, and from the ordinary income of an investor in a different jurisdiction. This amount is the "hybrid entity double deduction amount".
174. Condition B is that either the hybrid entity or the investor is within the charge to corporation tax during the relevant deduction period.
175. Condition C is that the investor and the hybrid entity are related at any time during either the hybrid entity deduction period, or the investor deduction period. Alternatively, that there is a structured arrangement.
176. Subsection 7 defines a structured arrangement for this section.
177. Subsection 8 provides that an arrangement may be a structured arrangement whether or not there is also a commercial or other purpose.
178. New Section 259GB sets out the counteraction where the investor is within the charge to corporation tax.
179. Subsection 2 provides that the hybrid entity double deduction amount can only be deducted from the dual inclusion income of the investor, so that the deduction can only be used to cancel out any dual inclusion income.
180. Subsection 3 allows for any investor deduction that cannot be set against ordinary income to be carried forward to future accounting periods.
181. Subsection 4 allows for circumstances where investors will not have any future dual inclusion income. In those circumstances, the "stranded deduction" can be deducted from the investor's taxable total profits.
182. Subsection 5 allows for any unrelieved stranded deductions to be carried forward and set against future profits.
183. Subsections 6 and 7 provide that if it is reasonable to suppose that a hybrid entity double deduction amount is deducted from ordinary income (other than dual inclusion income) for any person for non-UK tax purposes, that amount is termed an "illegitimate overseas deduction" and any amounts that may be deducted by the investor for UK tax purposes is reduced by that amount. An amount equal to the illegitimate overseas deduction is

deemed to have already been deducted in a previous accounting period, so that amount is no longer available for the current taxable period.

184. Subsection 8 defines "dual inclusion income" as an amount which is ordinary income for the investor in the UK, and also ordinary income for the hybrid entity in another territory, so that such amounts are brought into charge twice.
185. New Section 259GC sets out the counteraction where the hybrid entity is within the charge to corporation tax.
186. Subsection 1 applies this section where the hybrid entity is within the charge to corporation tax, and it is reasonable to suppose that either no non-UK provision equivalent to Section 259GB applies, or that if it does, a mismatch still remains, and the condition in subsection (2) is met.
187. Subsection 2 sets out the second counteraction condition. This requires that either the hybrid entity and an investor are within the same control group, or that the hybrid entity or any investor are party to a structured arrangement.
188. Subsection 3 provides that the "restricted deduction" is either the hybrid entity double deduction amount, or the remaining amount after any non-UK law has been applied.
189. Subsection 4 provides that the restricted deduction can only be deducted from the dual inclusion income of the hybrid entity.
190. Subsection 5 provides for restricted deductions to be carried forward and set against dual inclusion income of later periods.
191. Subsection 6 allows for circumstances where the hybrid payer will not have any future dual inclusion income. In those circumstances, the "stranded deduction" can be deducted from total profits.
192. Subsection 7 allows for any unrelieved stranded deductions to be carried forward and set against future profits.
193. Subsections 8 and 9 provide that if it is reasonable to suppose that a hybrid entity double deduction amount ("the illegitimate overseas deduction") is deducted from ordinary income for any person for non-UK tax purposes, that amount is not dual inclusion income. As a result, amounts that may be deducted by the hybrid entity are reduced by that amount. An amount equal to the illegitimate overseas deduction is deemed to have already been deducted in a previous accounting period.
194. Subsection 10 defines "dual inclusion income".

Chapter 8 –Dual Resident Company Double Deduction Cases

195. New Section 259H provides an overview of Chapter 8.
196. New Section 259HA sets out two conditions (A and B) which both have to be met for the Chapter to apply.
197. Condition A is that a company is a dual resident company.
198. Subsection 3 defines a dual resident company for the purposes of this Chapter.

199. Condition B is that it is reasonable to assume, in the absence of Chapter 8 and any equivalent non-UK law, that an amount can be deducted for both UK and non-UK tax purposes. This amount is the "dual residence double deduction amount".
200. New Section 259HB sets out the counteraction to dual residence double deduction mismatches.
201. Subsection 1 provides that the dual residence double deduction amount can only be deducted against dual inclusion income.
202. Subsection 2 provides that any surplus mismatch can be carried forward to subsequent accounting periods, and set against dual inclusion income.
203. Subsection 3 allows for any stranded deduction to be set against taxable total income, if the company ceases to be dual resident.
204. Subsection 4 allows surplus stranded deductions to be carried forward.
205. Subsections 5 and 6 provide that if it is reasonable to suppose that a dual residence double deduction amount is deducted from ordinary income (other than dual inclusion income) for any person for non-UK tax purposes, that amount (the illegitimate overseas deduction) is deemed to have already been deducted in a previous accounting period. As a result, any dual residence double deduction amounts or stranded amounts that could otherwise be deducted in the UK are reduced by that amount.
206. Subsection 7 defines "dual inclusion income".

Chapter 9 – Imported Mismatches

207. New Section 259I contains an overview of Chapter 9, which denies deductions in relation to imported mismatch payments.
208. New Section 259IA sets out six conditions (A to F) which all have to be met in order for this Chapter to apply.
209. Condition A is that the payment or quasi-payment is made under, or in connection with, an arrangement. These are termed "imported mismatch payments" and "imported mismatch arrangements".
210. Condition B is that the payer ("P") is within the charge to corporation tax.
211. Condition C is that the imported mismatch arrangement is part of a series of arrangements.
212. Subsection 5 defines a series of arrangements as a number of arrangements which are part of a wider, overall arrangement ("the over-arching arrangement").
213. Condition D is that under another arrangement in the series, there is a payment or quasi-payment which it is reasonable to assume involves another hybrid mismatch. This can be any of the various mismatches detailed in the rest of Part 6A.
214. The "relevant mismatch" is defined in subsection 6 as the mismatch which may arise under another arrangement in the series.
215. Condition E requires that it is reasonable to assume that none of Chapters 3 to 7, or any

overseas equivalents, apply, but that such provisions would apply if the Payer (P) was a payer, a payee, or, where appropriate, an investor.

216. Condition F is that P and the payer, or a payee, are members of the same group, or alternatively that either the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.
217. Subsection 9 defines a structured arrangement for this section.
218. Subsection 10 provides that an arrangement may be a structured arrangement whether or not there is also a commercial or other purpose.
219. New Section 259IB sets out the counteraction for an imported mismatch payment, which is the denial of relevant deductions.
220. Subsection 2 provides that a relevant deduction for P is reduced by the amount of the relevant mismatch.
221. Subsection 3 applies where there are one or more relevant payments in relation to the relevant mismatch - in which case, the deduction from P's ordinary income is reduced by P's share of the mismatch.
222. Subsections 4 and 5 determine the share of the relevant mismatch by reference to the extent to which the imported mismatch payment funds the mismatch, as opposed to being funded by the relevant payments.
223. Subsection 6 defines a relevant payment.
224. Subsection 7 sets out that in relation to formal court or tribunal proceedings, P will need to demonstrate that there are relevant payments in relation to the relevant mismatch, and demonstrate that a mismatch payment is funded by relevant payments rather than by an imported mismatch payment.

Chapter 10 – Adjustment of Reasonable Suppositions

225. New Section 259J sets out the circumstances when it is possible for taxpayers to amend or correct the position where further facts indicate that a reasonable supposition on which the application of Part 6A was based no longer applies.
226. Subsection 1 refers to cases where a reasonable supposition is mistaken, or is no longer reasonable, and allows for just and reasonable adjustments to correct the position.
227. Subsection 2 enables such adjustments to be made.
228. Subsection 3 provides that the normal UK time limits apply to this section.

Chapter 11 – Interpretation

229. This chapter provides a number of definitions for the purposes of Part 6A.
230. New Section 259K provides a definition of "financial instrument".
231. Subsection 3(a) excludes hybrid transfer arrangements from the definition of financial instruments.

232. Subsection 3(b) excludes regulated capital securities in relation to banking and insurance (as defined by the Taxation of Regulatory Capital Securities Regulations 2013) from the definition of financial instruments, so that, subject to subsection 4, such securities are not within the scope of the new hybrid mismatch rules.
233. Subsection 4 provides that subsection 3(b) is subject to regulations made under section 221 of FA 2012. This will enable the new hybrid mismatch rules to be applied to any securities that are specified in those regulations.
234. New Section 259KA provides a definition of Control Groups.
235. New Section 259KB provides a definition of Related Persons.
236. New Section 259KC provides a definition of 50% and 25% investment.
237. New Section 259KD sets out the treatment of partnership members.
238. New Section 259KE sets out a number of definitions in relation to the new hybrid mismatch rules.

Part 2 Consequential amendments

239. Part 2 sets out various amendments to other UK legislation, including the omitting of Part 6, to take account of Part 6A.

Part 3 Commencement

240. This part provides the commencement provisions for Part 6A.
241. Paragraph 16 provides that, in relation to Chapter 3 to 6, the rules will have effect for payments made on or after the commencement date, and for quasi-payments where the payment period begins on or after the commencement date.
242. Paragraph 17 provides that, in relation to Chapter 7 and 8, the rules will have effect for accounting periods beginning on or after the commencement date.
243. Paragraph 18 provides that, in relation to Chapter 9, the rules will have effect for imported mismatch payments made on or after the commencement date, and for quasi-payments where the payment period begins on or after the commencement date.
244. Paragraph 19 provides for commencement in relation to various consequential amendments.
245. Paragraph 20 sets out the treatment in relation to Chapters 3 to 6 and Chapter 9 where a payment period begins before the commencement date and ends on or after that date (straddling periods)
246. Paragraph 21 sets out the treatment in relation to Chapters 7 and 8 where a company has an accounting period that begins before the commencement date and ends on or after that date (straddling periods)
247. Paragraph 22 sets the commencement date as 1 January 2017.

Background note

248. Hybrid mismatch arrangements can be used to achieve double non-taxation and erode the UK tax base. These new rules replace the arbitrage rules in Part 6 TIOPA 2010 and will ensure that deduction/non-inclusion and double deduction mismatch arrangements are counteracted. From 1st January 2017 the new provisions will put an end to multiple deductions for a single expense and for deductions in one country without a corresponding taxation in another.
249. New rules are being introduced multilaterally and the UK legislation contains provisions for counteraction in the UK where exceptionally the other country does not counteract the mismatch.
250. If you have any questions about this change, or comments on the legislation, please contact Yasmin Ali on 03000 543326 (email: Yasmin.Ali@hmrc.gsi.gov.uk)

34 Insurance companies carrying on long-term business

- (1) Part 2 of FA 2012 (insurance companies carrying on long-term business) is amended as follows.
- (2) In section 73 (the I-E basis), in step 4—
 - (a) for “(but not below nil) by the” substitute “by the relievable”, and
 - (b) at the end of the step insert—

“In this step, “the relievable amount” of a non-trading deficit means so much of the deficit as does not exceed the total of—

 - (a) the amount given by the calculation required by step 1,
 - (b) the amount given by the calculation required by step 2, and
 - (c) any amount of an I-E receipt under section 92 brought into account under step 3.”
- (3) In section 88 (loan relationships, derivative contracts and intangible fixed assets), in subsection (6), for “excess—” and paragraphs (a) and (b), substitute “excess is treated for the purposes of section 76 as a deemed BLAGAB management expense for that period.”
- (4) In section 126 (restrictions in respect of non-trading deficit), in subsection (2), for “would have under section 388” to the end substitute “has, calculated by reference only to credits and debits—
 - (a) arising in respect of such of the company’s loan relationships as are debtor relationships (see section 302(6) of CTA 2009), and
 - (b) referable, in accordance with Chapter 4, to the company’s basic life assurance and general annuity business.”
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after the day on which this Act is passed.

Explanatory Note

Clause 34: Insurance companies carrying on long-term business

Summary

1. This measure amends the corporation tax rules introduced by Finance Act 2012 so that they produce the appropriate policy result for the taxation of long-term business carried on by insurance companies. The amendments have effect for accounting periods beginning on or after the day on which the Act is passed.

Details of the clause

2. Subsection (2) provides that when calculating the I-E profit (or excess expense arising from a company's basic life assurance and general annuity business) a company's non-trading deficit from its loan relationships cannot be set against any minimum profits charge arising under section 93 of Finance Act 2012.
3. Subsection (3) allows an excess of intangible fixed asset debits over credits to be a management expense of the period in which they arise rather than in the following period.
4. Subsection (4) provides that a trade loss arising from a company's basic life assurance and general annuity business is not reduced by the company's net position on derivatives contracts prior to being group relieved or set against other company profits.

Background note

5. Finance Act 2012 introduced a new regime for the taxation of insurance companies carrying on long-term business.
6. HMRC and industry, working together, have identified areas where the legislation in its current form does not deliver the expected policy results. These amendments rectify that position.
7. The government intends to amend Finance Act 2012 in Finance Bill 2016 to provide the necessary solutions.
8. If you have any questions about this change, or comments on the legislation, please contact Darryl Wall on 03000 585977 (email: darryl.wall@hmrc.gsi.gov.uk)

35 Consideration for taking over payment obligations as lessee under a lease of plant or machinery taxed as income

- (1) In Part 20 of CTA 2010 (tax avoidance involving leasing plant or machinery), after section 894 insert –

“CHAPTER 3

CONSIDERATION FOR TAKING OVER PAYMENT OBLIGATIONS AS LESSEE TREATED AS INCOME

“894A Consideration for taking over payment obligations as lessee treated as income

- (1) This section applies where under any arrangements –
- (a) a company chargeable to corporation tax (C) agrees to take over obligations of another person (D) as lessee under a lease of plant or machinery,
 - (b) as a result of that agreement C, or a person connected with C, becomes entitled to income deductions (whether deductions in calculating income or from total profits), and
 - (c) a payment is payable to C, or a person connected with C, by way of consideration for that agreement.
- (2) The payment is treated for the purposes of corporation tax as income received by C in the period of account in which C takes over the obligations mentioned in subsection (1)(a).
- (3) Subsection (2) does not apply if and to the extent that the payment is (apart from this section) –
- (a) charged to tax on C, or a person connected with C, as an amount of income,
 - (b) brought into account in calculating for tax purposes any income of C or a person connected with C, or
 - (c) brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of C or a person connected with C.
- (4) It does not matter how C takes over the obligations of D (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise).
- (5) In this section –
- “arrangements” include any scheme, arrangement, understanding, transaction or series of transactions (whether or not legally enforceable),
 - “lease of plant or machinery” means any kind of agreement or arrangement under which sums are paid for the use of, or otherwise in respect of, plant or machinery,
 - “payment” includes the provision of any benefit, the assumption of any liability or the transfer of money or money’s worth (and “payable” is to be construed accordingly), and
 - “payment by way of consideration” means any payment made, directly or indirectly, in consequence of or otherwise in connection with, the agreement mentioned in subsection (1)(a),

where it is reasonable to assume the agreement would not have been made unless the arrangements included provision for the payment.

- (6) Any priority rule (other than section 212(1) of FA 2013 (general anti-abuse rule to have priority over other rules)) has effect subject to this section, despite the terms of the priority rule.
 - (7) For that purpose “priority rule” is a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
 - (8) Examples of priority rules are section 464 of CTA 2009 (priority of loan relationships rules) and s. 6(1) TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).”
- (2) In Chapter 6 of Part 13 of ITA 2007 (avoidance involving leases of plant or machinery), after section 809ZF insert –

“809ZG Consideration for taking over payment obligations as lessee treated as income

- (1) This section applies where under any arrangements –
 - (a) a person within the charge to income tax (P) agrees to take over obligations of another person (Q) as lessee under a lease of plant or machinery,
 - (b) as a result of that agreement P, or a person connected with P, becomes entitled to income deductions (whether deductions in calculating income or from total profits), and
 - (c) a payment is payable to P, or a person connected with P, by way of consideration for that agreement.
- (2) The payment is treated for the purposes of income tax as income received by P in the tax year in which P takes over the obligations mentioned in subsection (1)(a).
- (3) Subsection (2) does not apply if and to the extent that the consideration is (apart from this section) –
 - (a) charged to tax on P, or a person connected with P, as an amount of income,
 - (b) brought into account in calculating for tax purposes any income of P or a person connected with P, or
 - (c) brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of P or a person connected with P.
- (4) It does not matter how P takes over the obligations of Q (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise).
- (5) In this section –

“arrangements” include any scheme, arrangement, understanding, transaction or series of transactions (whether or not legally enforceable),

“lease of plant or machinery” means any kind of agreement or arrangement under which sums are paid for the use of, or otherwise in respect of, plant or machinery,

“payment” includes the provision of any benefit, the assumption of any liability or the transfer of money or money’s worth (and “payable” is to be construed accordingly), and

“payment by way of consideration” includes a payment made, directly or indirectly, in consequence of or otherwise in connection with, the agreement mentioned in subsection (1)(a), where it is reasonable to assume the agreement would not have been made unless the arrangements included provision for the payment.

- (6) Any priority rule (other than section 212(1) of FA 2013 (general anti-abuse rule to have priority over other rules)) has effect subject to this section, despite the terms of the priority rule.
 - (7) For that purpose “priority rule” is a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
 - (8) An example of a priority rule is section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).”
- (3) This section applies to agreements of the kind mentioned in section 894A(1)(a) of CTA 2010 or section 809ZG of ITA 2007 that are made on or after 25 November 2015.

Explanatory Note

Clause 35: Consideration for taking over payment obligations as lessee under a lease of plant or machinery taxed as income

Summary

1. This measure tackles tax avoidance schemes that seek to generate non-taxable income in return for taking on liabilities under a lease that give rise to tax deductible amounts. It amends legislation for both corporation tax and income tax purposes.

Details of the clause

Corporation Tax

2. Subsection (1) introduces new Chapter 3 into Part 20 of Corporation Tax Act 2010 (CTA 2010).
3. Chapter 3 contains new section 894A of CTA 2010.
4. New section 894A(1) details the circumstances in which the section applies. Three conditions must be satisfied:
 - a company must agree to take over obligations under a lease of plant or machinery,
 - the assumption of those obligations results in tax deductible expenditure for the company, or a connected person,
 - consideration is payable to the company, or a connected person, for agreeing to take over the obligations.
5. New section 894A(2) provides that, in those circumstances, the consideration is treated as income of the company for corporation tax purposes received at the time of the agreement to take over the lease obligations.
6. New section 894A(3) disapplies section 894A(2) to the extent that the consideration is otherwise charged to tax as an amount of income, or is brought into account as income or in respect of the capital allowances of C, or a connected person.
7. New section 894A(4) clarifies that section 894A(1) may be satisfied regardless of how C takes over D's obligations under the lease.
8. New section 894A(5) provides relevant definitions.

9. New section 894A(6) and (7) ensures that any priority rule contained in the Taxes Acts, other than the General Anti-Abuse Rule in Part 5 of Finance Act 2013, has effect subject to new section 894A. A priority rule is a rule, however expressed, whereby particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
10. New section 894A(8) provides examples of priority rules.

Income Tax

11. Subsection (2) inserts new section 809ZG into Chapter 6 of Part 13 of the Income Tax Act 2007.
12. New section 809ZG replicates for persons chargeable to income tax the provisions of section 894ZA of CTA 2010, making necessary adjustments to refer to the appropriate taxes.

Commencement for both taxes

13. Subsection (3) sets out the commencement provision for both taxes. The new rules apply to agreements entered into on or after 25 November 2015.

Background note

14. HMRC has received disclosures of tax avoidance schemes that involve arrangements whereby non-taxable consideration is received when taking over tax deductible lease obligations. To the extent that such consideration is received, the person taking over those obligations incurs no real expenditure. The legislation addresses this form of avoidance by ensuring that all of the consideration payable to that person or connected persons is taxable as income.
15. If you have any questions about this change, or comments on the legislation, please contact Paul Hindley on 03000 585576 (email: paul.hindley@hmrc.gsi.gov.uk)

36 Capital allowances: anti-avoidance relating to disposals

- (1) Chapter 17 (other anti-avoidance) of Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.
- (2) Section 213 (relevant transactions: sale, hire purchase etc. and assignment) is amended in accordance with subsections (3) and (4).
- (3) In subsection (1) for the words from “enters” to “(“S”)” substitute “and another person (“S”) enter into a relevant transaction”.
- (4) After subsection (3) insert –
 - “(4) For the purposes of this Chapter, references to the disposal value of the plant or machinery under a relevant transaction are references to the disposal value that is to be brought into account by S as a result of the sale, contract or assignment in question.”
- (5) Section 215 (transactions to obtain tax advantages) is amended in accordance with subsections (6) to (8).
- (6) In subsection (1) –
 - (a) after “restricted” insert “, and balancing charges are imposed or increased,”,
 - (b) for the words from “B” to “S” substitute “B and S enter into a relevant transaction”.
- (7) In subsection (4) –
 - (a) after “includes” insert “ –
 - (a) ”, and
 - (b) at end insert “, and
 - (b) avoiding liability for the whole or part of a balancing charge to which a person would otherwise be liable.”
- (8) After subsection (4) insert –
 - “(4A) If the tax advantage relates to the disposal value of the plant or machinery under the relevant transaction (whether by obtaining a more favourable allowance or by avoiding the whole or part of a balancing charge) then –
 - (a) the applicable section is section 218ZB, and
 - (b) the tax advantage is to be disregarded for the purposes of subsection (6) and (8)(b).”
- (9) After section 218ZA (restrictions on writing down allowances: section 215) insert –

“218ZB Disposal values: section 215

- (1) If –
 - (a) this section applies as a result of section 215,
 - (b) a payment is payable to any person under the transaction, scheme or arrangement mentioned in that section,
 - (c) some or all of the payment would not (apart from this section) be taken into account in determining the disposal value of the plant or machinery under the relevant transaction, and

-
- (d) as a result of the matters mentioned in paragraphs (b) and (c) S would otherwise obtain a tax advantage as mentioned in section 215(3) and (4),
the disposal value of the plant or machinery under the relevant transaction is to be adjusted in a just and reasonable manner so as to include an amount representing so much of the payment as would or would in effect cancel out the tax advantage.
- (2) In subsection (1) “payment” includes the provision of any benefit, the assumption of any liability and any other transfer of money or money’s worth, and “payable” is to be construed accordingly.”
- (10) In section 66 (list of provisions outside this Chapter about disposal values) insert at the appropriate place –
- “section 218ZB disposal of plant or machinery in avoidance cases”.
- (11) The amendments made by this section have effect in relation to transactions mentioned in section 213(1)(a), (b) or (c) of CAA 2001 that take place on or after 25 November 2015.

Explanatory Note

Clause 36: Capital allowances: anti-avoidance relating to disposals

Summary

1. This measure counters tax avoidance schemes which seek to reduce disposal values of plant or machinery for capital allowances purposes below the actual full value attributable to the disposal of those assets.

Details of the clause

2. Subsection (1) introduces the amendments to Chapter 17 of Part 2 of the Capital Allowances Act 2001.
3. Subsection (2) explains that section 213 CAA 2001 is to be amended as set out in subsections (3) and (4).
4. Subsection (3) amends section 213(1) to clarify that Chapter 17 applies to both parties to a relevant transaction - "S" (the transferor) as well as "B" (the transferee).
5. Subsection (4) inserts new section 213(4) which defines the disposal values relevant for the purposes of Chapter 17 as being those arising from the different types of relevant transaction identified in section 213(1).
6. Subsection (5) explains that section 215 CAA 2001 is to be amended as set out in the three following subsections. Section 215 sets out when certain anti-avoidance rules apply for the purposes of Part 2 of CAA 2001 and, depending on the tax advantage sought by the arrangements, which other section within Chapter 17 will apply to counteract that tax advantage.
7. Subsection (6) amends section 215(1) in two respects. The first is to extend the section to the imposition of balancing charges, new or increased, as well as restriction of allowances. The second is to put beyond doubt the section applies potentially to either party to a relevant transaction.
8. Subsection (7) makes an amendment to section 215(4) to include as obtaining a tax advantage where a person seeks to avoid liability for all or part of a balancing charge.
9. Subsection (8) inserts new subsection (4A) into section 215. New subsection (4A) identifies the applicable section to counteract the tax advantage relating to disposal value of plant or machinery that is the subject of the relevant transaction as being section 218ZB CAA 2001. There are already two other applicable sections, referred to in section 215(5) and (6), being sections 217 and 218ZA CAA 2001. Those other applicable sections deal with instances where

the tax advantage in question relates to allowances that B can claim on qualifying expenditure and the amount of the qualifying expenditure.

10. Subsection (9) inserts new section 218ZB into Chapter 17 as the applicable section referred to in new section 215(4A).
11. New section 218ZB(1) provides for cancellation of the tax advantage in defined circumstances. These are that S would otherwise obtain a tax advantage in the form of a higher allowance or a reduced or no balancing charge as a consequence of a payment payable to any person where section 215 applies. The cancellation of the tax advantage takes the form of adjustment of the disposal value of the plant or machinery in a just and reasonable manner.
12. New section 218ZB(2) provides that payment is to have a wide definition.
13. Subsection (10) adds section 218ZB to the list of sections about disposal values in section 66 CAA 2001.
14. Subsection (11) provides the amendments will have effect in relation to transactions within section 213(1) that take place on or after 25 November 2015.

Background note

15. This measure addresses a number of avoidance schemes that have been disclosed to HMRC. The fact pattern differs in each scheme. However, the common theme is that the amount to be taken into account under the scheme as disposal value for capital allowances purposes is significantly less than the actual value of the plant or machinery being disposed of. The difference is received, directly or indirectly, in such a way as to not form part of the disposal value and does not otherwise attract any actual tax liability. Consequently, the disposer receives capital allowances significantly in excess of the actual economic depreciation of the plant or machinery whilst it was being used for qualifying activities.
16. If you have any questions about this change, or comments on the legislation, please contact Paul Hindley on 03000 585576 (email: paul.hindley@hmrc.gsi.gov.uk)

37 Payments from a sporting testimonial treated as earnings

- (1) After section 226D of ITEPA 2003 (shareholder or connected person having material interest in company) insert—

“Sporting testimonial payments

226E Sporting testimonial payments

- (1) This section applies in relation to an individual who is or has been employed as a professional sportsperson (“S”).
- (2) In this section “sporting testimonial” means—
- (a) a series of relevant events or activities to which subsection (4) applies, or
 - (b) a single relevant event or activity not forming part of a series.
- (3) An event or activity is (subject to subsection (5)) a relevant event or activity if—
- (a) its purpose (or one of its purposes) is to raise money for or for the benefit of S in S’s capacity as a person who is or has been employed as a professional sportsperson,
 - (b) the disbursement of any proceeds raised for that purpose will be under of the control of a person other than—
 - (i) S or a person connected with S,
 - (ii) an employer or former employer of S or a person connected with an employer or former employer of S, or
 - (iii) a person acting for or on behalf of a person mentioned in sub-paragraph (i) or (ii); and
 - (c) one or more sporting testimonial payments are expected to be made out of those proceeds.
- (4) A series of relevant events or activities is only to be regarded as a sporting testimonial if the same person controls the disbursement of the proceeds raised for or for the benefit of S from each activity or event.
- (5) An activity that meets the requirements of subsection (3) and consists solely of collecting (and, if applicable, inviting) donations for or for the benefit of S—
- (a) may be one of a series of relevant events or activities for the purposes of subsection (2)(a), but
 - (b) is not to be regarded as a relevant activity for the purposes of subsection (2)(b) so long as both of the conditions mentioned in subsection (6) are met while the activity takes place.
- (6) The conditions are—
- (a) that the person responsible for collecting the donations and controlling their disbursement is an individual who is not—
 - (i) S,
 - (ii) a person who is, has been or becomes the controller of, any other relevant event or activity for or for the benefit of S,
 - (iii) a person connected with S or a person mentioned in sub-paragraph (ii),

-
- (iv) a person acting for or on behalf of a person mentioned in sub-paragraphs (i) to (iii), and
 - (b) that the donations collected do not include any sums made (directly or indirectly) out of the proceeds of any other relevant event or activity for or for the benefit of S;and in this subsection “controller” means the person who controls the disbursement of the proceeds raised for or for the benefit of S from a relevant event or activity.
 - (7) A “sporting testimonial payment” is a payment which—
 - (a) is made by or on behalf of the person who controls the proceeds raised for or for the benefit of S from a sporting testimonial,
 - (b) is made (out of those proceeds) to S or a member of S’s family or household, to S’s order or otherwise for S’s benefit, and
 - (c) does not (apart from this section) constitute earnings from the employment or former employment to which the sporting testimonial is most closely linked.
 - (8) A sporting testimonial payment is to be treated as earnings of S from the employment or former employment to which the sporting testimonial is most closely linked.
 - (9) For the purposes of this section if at any material time S is dead—
 - (a) anything done for or for the benefit of S’s estate is to be regarded as done for or for the benefit of S; and
 - (b) a payment made to S’s personal representatives or to their order is to be treated as a payment to S or to S’s order.
 - (10) In this section “money” includes money’s worth and “payment” includes the transfer of money’s worth or the provision of any benefit.”
 - (2) The amendment made by subsection (1) has effect in relation to a sporting testimonial payment made out of the proceeds of a sporting testimonial if—
 - (a) the sporting testimonial was made public on or after 25 November 2015, and
 - (b) the payment is made out of the proceeds of relevant events or activities which take place on or after 6 April 2017.
 - (3) Terms used in subsection (2) and in section 226E (as inserted by this section) have the same meaning as in that section.

Explanatory Note

Clause 37: Payments from a sporting testimonial treated as earnings

Summary

1. This clause introduces the Income Tax charging provisions for income from sporting testimonials for employed sportsmen and sportswomen which are not otherwise earnings from their employment. It provides for new section 226E in Chapter 12 Part 3 ITEPA to clarify that such income is to be treated as earnings from the employment or former employment.
2. Where there is either a contractual right or a customary expectation that an employee who is a sportsman or sportswoman receives a sporting testimonial, that income already falls within section 62 ITEPA as earnings from the employment no matter who arranges the testimonial. This clause sets out the treatment of income from sporting testimonials where no such right or expectation exists.

Details of the clause

3. Subsection (1) introduces new section 226E into ITEPA.
4. Subsection 2 provides that the new section will only come into effect where a sporting testimonial is made public on or after 25 November 2015 and the relevant events and activities take place on or after 6 April 2017.

Section 226E

5. Subsection (1) provides that new section 226E applies to individuals who are employed or were formerly employed as professional sportsmen or sportswomen. It should be read with subsection (3)(a). The provisions apply only where they are linked to a current or former employment as a professional sportsman or sportswoman. They do not apply in the context of a self-employment as a professional sportsman or sportswoman.
6. Subsection (2) defines "sporting testimonial" for the purposes of this legislation. Sporting testimonials may relate to a single event, or may encompass a number of events stretching over a "testimonial year". Paragraphs (a) and (b) of the subsection provide for each contingency in reference to relevant events or activities.
7. Subsection (3) provides the meaning of "relevant event or activity" by setting out a number of conditions in paragraphs (a) - (c). To be a relevant event or activity the purpose (as provided for in paragraph (a)) of the testimonial must be to raise funds for the individual (S) in their capacity as a professional sportsman or sportswoman. Testimonials are widely understood as a means for the public to recognise S's contribution to a sport. Paragraph (b) provides that S or a representative of S cannot control the disbursement of income from a testimonial.

8. Subsection (4) prevents a number of different testimonials from being treated as a single one. In order to be a single testimonial, the same person must control the proceeds from all of the events. This may have implications for the application of the exemption which is being introduced under a separate clause as new section 306B ITEPA. Person, in this context, is the legal entity controlling the proceeds and may include an independent testimonial committee.
9. Subsection (5) provides that where the fund-raising is carried out by an individual, as long as certain conditions are met, the income raised will not be brought into the charge to tax under this section. This carves out minor fund-raising activities by individuals which provide nothing in return for donations from the public. The conditions are set out in subsection (6).
10. Subsection (7) provides the meaning of a "sporting testimonial payment" and subsection (8) provides that those payments are to be treated as earnings from the employment or former employment to which the testimonial is most closely linked.
11. Subsection (9) provides how income from a sporting testimonial is to be treated if S has died. For example, a testimonial arranged for the purposes of supporting S's surviving family members would not be brought into charge under this section if it is neither paid into S's estate nor paid to S's personal representatives.
12. Subsection (10) provides that the payment may be made in forms other than money, for example, an easily liquefiable asset such as jewellery.

Background note

13. The current tax treatment of income from sporting testimonials which take place where the employee has neither a contractual right or customary expectation to receive one has been identified as an extra statutory concession which goes beyond the strict statutory provisions. Following consultation, the government announced at the Spending Review and Autumn Statement 2015 (paragraph 3.18), that it would legislate to put the tax treatment beyond doubt.
14. Separate provisions for an Income Tax exemption as announced, and for Corporation Tax deductions as appropriate, are also being published on 9 December 2015.
15. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Team on 03000 521589 (email: employmentincome.policy@hmrc.gsi.gov.uk)

38 Limited exemption from income tax for sporting testimonial payments

After section 306A of ITEPA 2003 (exemption for carers) insert—

“Professional sportsmen and sportswomen

306B Professional sportsmen and sportswomen: limited exemption for sporting testimonial payments

- (1) This section applies to any sporting testimonial payments which are—
 - (a) made out of the proceeds of a sporting testimonial (“the sporting testimonial”), and
 - (b) treated by virtue of section 226E as earnings of a person (“S”).
- (2) No liability to income tax in respect of earnings arises by virtue of section 226E in relation to sporting testimonial payments to which this section applies.
- (3) Subsection (2) only applies subject to and in accordance with the following provisions.
- (4) It does not apply where S has already benefitted from an exemption under this section in relation to sporting testimonial payments paid out of the proceeds of another sporting testimonial.
- (5) It only applies to the first £50,000 of sporting testimonial payments made out of the proceeds of the sporting testimonial.
- (6) If sporting testimonial payments are made out of the proceeds of the sporting testimonial in two or more tax years, any part of the exempt amount that is not used in the first of those years is to be carried forward to the next tax year (and so on).
- (7) Where the sporting testimonial consists of a series of events or activities taking place over more than a year, it only applies to sporting testimonial payments made out of the proceeds of events or activities taking place within the period of one year beginning with—
 - (a) where the day on which the first of those events or activities took place is after 5 April 2017, that day, or
 - (b) where that day is on or before 5 April 2017, 6 April 2017.”
- (8) This section applies to sporting testimonial payments made to or to the order of the personal representatives of S (where S has died) but only if the payments are made within the period of 12 months beginning with the date of death.
- (9) Terms used in this section and section 226E have the same meaning as in that section.”

Explanatory Note

Clause 38: Limited exemption from income tax for sporting testimonial payments

Summary

1. This clause introduces a limited exemption from the charge to income tax which is being introduced as section 226A of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA). It provides for new section 306B in Chapter 9 Part 4 ITEPA which allows a single life-time exemption of £50,000 to be set against the earnings from a sporting testimonial.

Details of the clause

2. Subsection (1) provides that new section 306B applies where a payment from a sporting testimonial would fall within the provisions of new section 226A for income tax purposes. This means that where a sporting testimonial is the result of a contractual right or of customary expectation, the exemption will not apply. Subsection (2) removes the income tax liability for the exempt amount.
3. Subsection (3) introduces the relevant conditions. Subsection (4) provides that the exemption is only available in relation to one testimonial, and subsection (5) provides for the maximum level of the exemption at £50,000.
4. Subsection (6) provides that the exemption can be used over more than one tax year. As long as all the events qualify under section 226(2) as being either a series of events forming one testimonial, or a single event forming one testimonial as appropriate, the exemption can apply to the relevant sporting testimonial payments made even when those may be staggered over a period of time.
5. Subsection (7) provides that the exemption only applies where a sporting testimonial has been announced on or after 25 November 2015 for income from events taking place on or after 6 April 2017. This means that for a testimonial year announced on or after 25 November 2015 with events taking place, say, between September 2016 and September 2017, only the payments from events taking place after 5 April 2017 can be taken into account for the exemption to apply. The payments for events taking place before 6 April 2017 will not be subject to the charge to tax in any event.
6. Subsection (8) limits the timing of the availability of the exemption if the professional sports person has died to 12 months from the date of death. There is precedent for this elsewhere in Part 4 ITEPA.

Background note

7. The government recognises that sporting testimonial payments may be an important part of the transition from a career as a professional sportsperson to a new career or retirement, especially for those in the lower echelons of professional sport who might have had more modest incomes. As a result, they have decided to introduce a limited exemption. This clause sets out the circumstances in which that exemption can apply.
8. Following consultation, the government announced at the Spending Review and Autumn Statement 2015 (paragraph 3.18), that it would legislate to put the tax treatment of sporting testimonial payments beyond doubt and would also legislate for an exemption from income tax for part or all of the amount given to the sportsperson or a third party at his or her request up to a maximum of £50,000.
9. Separate provisions for the Income Tax charging provisions as announced, and for Corporation Tax deductions as appropriate are also being published on 9 December 2015.
10. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Team on 03000 521589 (email: employmentincome.policy@hmrc.gsi.gov.uk)

39 Corporation tax: sporting testimonial payments and associated payments

- (1) After section 996 of CTA 2010 (miscellaneous provisions: use of different accounting periods within a group of companies) insert –

“Sporting testimonial payments and associated payments

996A Deductions from total profits for sporting testimonial payments and associated payments

- (1) This section applies where a company, in any accounting period –
- (a) is the controller of a sporting testimonial, and
 - (b) makes a relevant sporting testimonial payment out of the proceeds of the sporting testimonial.
- (2) In this section “relevant sporting testimonial payment” means a sporting testimonial payment that is (or so much of it as is) made out of proceeds of a relevant event or activity which are brought into account in determining the company’s total profits or any component of its total profits.
- (3) In calculating the amount of corporation tax chargeable for the accounting period, an amount equal to the aggregate of the following amounts is allowed as a deduction from the company’s total profits –
- (a) so much of the relevant sporting testimonial payment as is paid to or for the benefit of the sportsperson to whom the sporting testimonial relates,
 - (b) any income tax or employee’s national insurance contributions deducted at source from that payment, and
 - (c) any employer’s national insurance contributions relating to that payment.
- (4) The amount is deducted –
- (a) from the company’s total profits for the accounting period in which the relevant sporting testimonial payment is made, and
 - (b) if a claim by the company for relief so requires, previous accounting periods.
- (5) A claim under subsection (4)(b) must be made within 2 years after the end of the accounting period in which the relevant sporting testimonial payment is made.
- (6) If for an accounting period deductions under subsection (4) are to be made for relevant sporting testimonial payments made in more than one accounting period, the deductions are to be made in the order in which the payments were made (starting with the earliest of them).
- (7) The amount of the deduction to be made under subsection (4) for an accounting period is the amount that cannot be deducted under that subsection for a subsequent accounting period.
- (8) The amount of the deduction to be made for any accounting period is limited to the amount that reduces the company’s taxable total profits for that period to nil.

-
- (9) The deduction is only available if and to the extent that the amount mentioned in subsection (3) is not otherwise deductible in calculating the company's total profits or any component of its total profits.
 - (10) In this section "controller of a sporting testimonial" means the person who is responsible for the disbursement of the proceeds of the sporting testimonial (see section 226E(3)(b) of ITEPA 2003).
 - (11) Terms used in this section and in section 226E of ITEPA 2003 have the same meaning as in that section."
- (2) The amendment made by subsection (1) has effect in relation to a relevant sporting testimonial payment made out of the proceeds of a sporting testimonial if—
 - (a) the sporting testimonial was made public on or after 25 November 2015, and
 - (b) the payment is made out of the proceeds of relevant events or activities which take place on or after 6 April 2017.
 - (3) Terms used in subsection (2) and in section 226E of ITEPA (as inserted by section 37) have the same meaning as in that section.

Explanatory Note

Clause 39: Corporation Tax: sporting testimonial payments and associated payments

Summary

1. This clause introduces a Corporation Tax deduction for sporting testimonial payments and associated payments.

Details of the clause

2. Subsection (1) inserts new section 996A into Part 22 of the Corporation Tax Act (CTA) 2010.
3. Subsection (1) of new section 996A provides that the section applies where a company is the controller of a sporting testimonial and makes a relevant sporting testimonial payment out of the proceeds of the sporting testimonial. The term "controller of a sporting testimonial" is defined in subsection (10) of new section 996A. A "sporting testimonial" is as defined in new section 226E of the Income Tax (Earnings & Pensions) Act (ITEPA) 2003.
4. Subsection (2) of new section 996A defines the term "relevant sporting testimonial payment".
5. Subsection (3) of new section 996A details the amounts that are taken into account in calculating the amount of the deduction in relation to the relevant sporting testimonial payment.
6. Subsection (4) of new section 996A details how a deduction is given.
7. Subsection (6) of new section 996A provides the order for allowing deductions within an accounting period where a deduction is allowable for relevant sporting testimonial payments made in more than one accounting period.
8. Subsections (7) to (9) of new section 996A provide further details about the amount of the deduction.

Background note

9. Following consultation, the government announced at the Spending Review and Autumn Statement 2015 (paragraph 3.18), that it would legislate to put the tax treatment of sporting testimonial payments beyond doubt. This clause provides a Corporation Tax deduction for relevant sporting testimonial payments to the extent that they are not otherwise deductible.
10. Separate clauses containing Income Tax charging provisions and a limited Income Tax exemption were published on 9 December 2015.

11. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Team on 03000 521589 (email: employmentincome.policy@hmrc.gsi.gov.uk)

40 Property business deductions

The Schedule contains provision about property business deductions.

SCHEDULE TO CLAUSE 40

PROPERTY BUSINESS DEDUCTIONS

PART 1

DEDUCTION FOR REPLACEMENT OF FURNITURE ETC

- 1 In Chapter 5 of Part 3 of ITTOIA 2005 (property income), after section 311 insert –

“Deduction for replacement of furniture etc

311A Replacement furniture relief

- (1) This section applies if conditions A to D are met.
- (2) Condition A is that a person (“P”) carries on a property business in relation to land which consists of or includes a dwelling-house.
- (3) Condition B is that –
 - (a) a domestic item has been provided for use in the dwelling-house (“the old item”),
 - (b) P incurs expenditure on a domestic item for use in the dwelling-house (“the new item”),
 - (c) the new item is provided solely for the use of the lessee, and
 - (d) the new item replaces the old item.
- (4) Condition C is that a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (13)).
- (5) Condition D is that no allowance under CAA 2001 may be claimed in respect of the expenditure.
- (6) In calculating the profits of the business, a deduction for the expenditure is allowed.
But this is subject to subsections (7) and (8).
- (7) No deduction is allowed for expenditure in a tax year if –
 - (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
 - (b) the dwelling-house constitutes some or all of that accommodation for the tax year.
- (8) No deduction is allowed if –
 - (a) the person derives rent-a-room receipts from the dwelling-house, and

(b) those receipts are brought into account in calculating the profits of the business in accordance with section 793 or 797 (rent-a-room relief).

- (9) The basic amount of the deduction is as follows –
- (a) where the new item is substantially the same as the old item, the deduction is equal to the expenditure incurred by P on the new item;
 - (b) where the new item is not substantially the same as the old item, the deduction is equal to so much of the expenditure incurred by P on the new item as does not exceed the expenditure which P would have incurred on an item which is substantially the same as the old item.

Subsections (10) and (11) provide for variations in the amount of the deduction in certain cases.

(10) If P incurs incidental expenditure of a capital nature in connection with the disposal of the old item or the purchase of the new item, the deduction is increased by the amount of the incidental expenditure.

(11) If the old item is disposed of, the deduction is reduced by the amount of any consideration in money or money's worth which P or a person connected with P receives, or is entitled to receive, in respect of the disposal.

(12) In this section, "domestic item" means an item for domestic use (such as furniture, furnishings, household appliances and kitchenware), and does not include anything that is a fixture.

"Fixture" –

- (a) means any plant or machinery that is so installed or otherwise fixed in or to a dwelling-house as to become, in law, part of that dwelling-house, and
- (b) includes any boiler or water-filled radiator installed in a dwelling-house as part of a space or water heating system.

"Plant or machinery" here has the same meaning as in Part 2 of CAA 2001.

(13) In this section –

"the capital prohibition rule" means the rule in section 33 (capital expenditure), as applied by section 272, and

"the wholly and exclusively rule" means the rule in section 34 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 272."

2 In Chapter 5 of Part 4 of CTA 2009 (property income), after section 250 insert –

"Deduction for replacement of furniture etc

250A Replacement furniture relief

- (1) This section applies if conditions A to D are met.
- (2) Condition A is that a company ("C") carries on a property business in relation to land which consists of or includes a dwelling-house.

-
- (3) Condition B is that—
 - (a) a domestic item has been provided for use in the dwelling-house (“the old item”),
 - (b) C incurs expenditure on a domestic item for use in the dwelling-house (“the new item”),
 - (c) the new item is provided solely for the use of the lessee, and
 - (d) the new item replaces the old item.
 - (4) Condition C is that a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (12)).
 - (5) Condition D is that no allowance under CAA 2001 may be claimed in respect of the expenditure.
 - (6) In calculating the profits of the business, a deduction for the expenditure is allowed.
 - (7) But no deduction is allowed for expenditure in an accounting period if—
 - (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
 - (b) the dwelling-house constitutes some or all of that accommodation for the accounting period.
 - (8) The basic amount of the deduction is as follows—
 - (a) where the new item is substantially the same as the old item, the deduction is equal to the expenditure incurred by C on the new item;
 - (b) where the new item is not substantially the same as the old item, the deduction is equal to so much of the expenditure incurred by C on the new item as does not exceed the expenditure which C would have incurred on an item which is substantially the same as the old item.

Subsections (9) and (10) provide for variations in the amount of the deduction in certain cases.

- (9) If C incurs incidental expenditure of a capital nature in connection with the disposal of the old item or the purchase of the new item, the deduction is increased by the amount of the incidental expenditure.
- (10) If the old item is disposed of, the deduction is reduced by the amount of any consideration in money or money’s worth which C or a person connected with C receives, or is entitled to receive, in respect of the disposal.
- (11) In this section, “domestic item” means an item for domestic use (such as furniture, furnishings, household appliances and kitchenware), and does not include anything that is a fixture.
“Fixture”—
 - (a) means any plant or machinery that is so installed or otherwise fixed in or to a dwelling-house as to become, in law, part of that dwelling-house, and
 - (b) includes any boiler or water-filled radiator installed in a dwelling-house as part of a space or water heating system.

“Plant or machinery” here has the same meaning as in Part 2 of CAA 2001.

(12) In this section—

“the capital prohibition rule” means the rule in section 53 (capital expenditure), as applied by section 210, and

“the wholly and exclusively rule” means the rule in section 54 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 210.”

3 In section 41 of TCGA 1992 (restriction of losses by reference to capital allowances and renewals allowances), in subsection (4), after paragraph (a) insert—

“(aa) any deduction under section 311A of ITTOIA 2005 or section 250A of CTA 2009 (replacement furniture relief),”.

4 In section 308 of ITTOIA 2005 (furnished lettings), in subsection (1)(b), after “expenses” insert “of a revenue nature”.

5 In section 322 of ITTOIA 2005 (commercial letting of furnished holiday accommodation), before paragraph (a) in subsections (2) and (2A) insert—

“(za) section 311A (replacement furniture relief: see subsection (7)),”.

6 In section 248 of CTA 2009 (furnished lettings), in subsection (1)(b), after “expenses” insert “of a revenue nature”.

7 In section 264 of CTA 2009 (commercial letting of furnished holiday accommodation), before paragraph (a) in subsections (2) and (2A) insert—

“(za) section 250A (replacement furniture relief: see subsection (7)),”.

PART 2

REPEAL OF WEAR AND TEAR ALLOWANCE

8 In ITTOIA 2005—

(a) omit sections 308A to 308C and the italic heading before section 308A (wear and tear allowance), and

(b) in section 327 (capital allowances and loss relief: UK property business), in subsection (2), omit paragraph (c) and the “or” before that paragraph.

9 In CTA 2009—

(a) omit sections 248A to 248C of CTA 2009 and the italic heading before section 248A (wear and tear allowance), and

(b) in section 269 (capital allowances and loss relief: UK property business), in subsection (2), omit paragraph (c) and the “or” before that paragraph.

PART 3

REPEAL OF RENEWALS ALLOWANCE FOR PROPERTY BUSINESSES

10 In section 272 of ITTOIA 2005 and section 210 of CTA 2009 (profits of a property business: application of trading income rules), in subsection (2),

omit the entry in the table relating to section 68 (replacement and alteration of trade tools).

PART 4

COMMENCEMENT

- 11 (1) The amendments made by Parts 1 and 3 of this Schedule have effect in relation to expenditure incurred on or after the date in sub-paragraph (2).
- (2) The date is –
- (a) for corporation tax purposes, 1 April 2016, and
 - (b) for income tax purposes, 6 April 2016.
- 12 (1) The amendments made by paragraph 8 of Part 2 of this Schedule have effect for the tax year 2016-17 and subsequent tax years.
- (2) The amendments made by paragraph 9 of Part 2 of this Schedule have effect in relation to accounting periods beginning on or after 1 April 2016.
- (3) Sub-paragraph (4) applies where a company has an accounting period beginning before 1 April 2016 and ending on or after that date (“the straddling period”).
- (4) For the purposes of paragraph 9 of Part 2 and sub-paragraph (2) –
- (a) so much of the straddling period as falls before 1 April 2016, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a property business for the straddling period are apportioned to the two separate accounting periods in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

Explanatory Note

Clause 40 and Schedule: Property business deductions

Summary

1. This measure introduces a new deduction for capital expenditure incurred by a lessor on replacing furnishings, appliances and kitchenware provided for the use of a lessee in a dwelling-house. The deduction has effect for expenditure incurred on or after 6 April 2016 for income tax and 1 April 2016 for corporation tax. The measure also repeals the wear and tear allowance and the renewals allowance for property businesses.

Details of the clause and Schedule

Part 1: Deduction for replacement of furniture etc

2. Paragraph 1 introduces new Section 311A to Income Tax (Trading and Other Income) Act (ITTOIA) 2005.
3. Subsection 1 provides that new Section 311A of ITTOIA 2005 applies if conditions A to D are met.
4. Subsections 2 to 5 set out conditions A to D:
 - Condition A is that a person ("P") carries on a property business that includes a dwelling-house.
 - Condition B is that P incurs expenditure on a replacement domestic item provided solely for the lessee for use in the dwelling-house.
 - Condition C is that the expenditure is of a capital nature and is incurred wholly and exclusively for the purposes of the property business.
 - Condition D is that no capital allowances are available in respect of the expenditure.
5. Subsection 6 provides for a deduction to be given for the expenditure when calculating the profits of the property business.
6. Subsection 7 prohibits a deduction if the dwelling-house is qualifying furnished holiday accommodation within Chapter 6 of Part 3 of ITTOIA 2005.
7. Subsection 8 prohibits a deduction if rent-a-room relief is claimed in respect of the dwelling-

house.

8. Subsection 9 provides that the amount of the deduction is the expenditure incurred on the replacement item, except where it is not substantially the same as the old item. Where the replacement item is not substantially the same as the old item, the deduction is limited to the amount of the expenditure that would have been incurred on an item that is substantially the same.
9. Subsection 10 increases the deduction by any incidental capital expenditure incurred on disposing of the old item or purchasing the new item.
10. Subsection 11 reduces the deduction by any disposal proceeds that P is entitled to receive for the old item, including where the proceeds are given in money's worth or where the proceeds are received by a person connected with P.
11. Subsection 12 defines domestic item as an item for domestic use, including furniture, furnishings, household appliances and kitchenware, but excluding fixtures.
12. Paragraph 2 introduces new Section 250A to Corporation Tax Act (CTA) 2009.
13. Subsection 1 provides that new Section 250A of CTA 2009 applies if conditions A to D are met.
14. Subsections 2 to 5 set out conditions A to D:
 - Condition A is that a company ("C") carries on a property business that includes a dwelling-house.
 - Condition B is that C incurs expenditure on a replacement domestic item provided solely for the lessee for use in the dwelling-house.
 - Condition C is that the expenditure is of a capital nature and is incurred wholly and exclusively for the purposes of the property business.
 - Condition D is that no capital allowances are available in respect of the expenditure.
15. Subsection 6 provides for a deduction to be given for the expenditure when calculating the profits of the property business.
16. Subsection 7 prohibits a deduction if the dwelling-house is qualifying furnished holiday accommodation within Chapter 6 of Part 4 of CTA 2009.
17. Subsection 8 provides that the amount of the deduction is the expenditure incurred on the replacement item, except where it is not substantially the same as the old item. Where the replacement item is not substantially the same as the old item, the deduction is limited to the amount of the expenditure that would have been incurred on an item that is substantially the same.
18. Subsection 9 increases the deduction by any incidental capital expenditure incurred on disposing of the old item or purchasing the new item.
19. Subsection 10 reduces the deduction by any disposal proceeds that C is entitled to receive for the old item, including where the proceeds are given in money's worth or where the proceeds are received by a person connected with C.

20. Subsection 11 defines domestic item as an item for domestic use, including furniture, furnishings, household appliances and kitchenware, but excluding fixtures.
21. Paragraph 3 restricts capital losses that arise on replacement items by providing that deductions under section 311A of ITTOIA 2005 and section 250 of CTA 2009 are a capital allowance for the purpose of section 41 of Taxation of Chargeable Gains Act 1992.
22. Paragraph 4 clarifies that in subsection (1)(b) of section 308 of ITTOIA 2005, the expenses allowable in connection with the provision of furniture must be of a revenue nature.
23. Paragraph 5 inserts section 311A of ITTOIA 2005 into the list of provisions in section 322 of ITTOIA 2005 for which it matters whether a UK or overseas property business consists of or includes the commercial letting of furnished holiday accommodation.
24. Paragraph 6 clarifies that in subsection (1)(b) of section 248 of CTA 2009, the expenses allowable in connection with the provision of furniture must be of a revenue nature.
25. Paragraph 7 inserts section 250A of CTA 2009 into the list of provisions in section 264 of CTA 2009 for which it matters whether a UK or overseas property business consists of or includes the commercial letting of furnished holiday accommodation

Part 2: Repeal of wear and tear allowance

26. Paragraphs 8 and 9 repeal the wear and tear allowance provisions in ITTOIA 2005 and CTA 2009 respectively.

Part 3: Repeal of renewals allowance for property businesses

27. Paragraph 10 repeals the renewals allowance in section 68 of both ITTOIA 2005 and CTA 2009, by removing it from the list of trading income provisions that apply to property businesses.

Part 4: Commencement

28. Paragraph 11 provides that the new deduction for the replacement of furniture in Part 1 applies in relation to expenditure incurred on or after 1 April 2016 for corporation tax and on or after 6 April 2016 for income tax. It also provides that the renewals allowance is repealed for property businesses for expenditure incurred on or after 1 April 2016 for corporation tax and on or after 6 April 2016 for income tax.
29. Sub-paragraph 1 of paragraph 12 repeals the wear and tear allowance for income tax purposes for the tax year 2016-17 onwards.
30. Sub-paragraph 2 repeals the wear and tear allowance for corporation tax purposes for accounting periods beginning on or after 1 April 2016.
31. Sub-paragraphs 3 and 4 provide for accounting periods that begin before 1 April 2016 but end after that date. The accounting period is treated as if it were two separate accounting periods for the purpose of sub-paragraph 2. The profits of the property business are apportioned between the two notional accounting periods on a time basis, unless that produces an unjust or unreasonable result.

Background note

32. The measure has been introduced to give relief for the cost of replacing furnishings to a wider range of property businesses as well as a more consistent and fairer way of calculating taxable profits.
33. This measure was announced at Summer Budget 2015. A consultation was held from 17 July 2015 to 9 October 2015.
34. HM Revenue & Customs (HMRC) has published a summary of responses to the consultation today.
35. If you have any questions about this change, or comments on the legislation, please contact Megan Shaw on 03000 585628 (email: wearandtear.replacement@hmrc.gsi.gov.uk)

41 CGT: addition to Provisional Collection of Taxes Act 1968

In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax etc), in subsection (1), after “income tax,” insert “capital gains tax,”.

Explanatory Note

Clause 41: Addition of CGT to Provisional Collection of Taxes Act 1968

Summary

1. This clause amends the Provisional Collection of Taxes Act 1968 (PCTA 1968) to include Capital Gains Tax.

Details of the clause

2. Clause 41 inserts Capital Gains Tax into PCTA 1968 from Royal Assent.

Background note

3. PCTA 1968 gives temporary statutory force to resolutions of the House of Commons that renew, vary or abolish certain taxes and duties. The principal practical application of this is to allow the government to collect taxes on a provisional basis between Budget day (or a day after Budget), and the coming into operation of the Finance Act.
4. Capital Gains Tax is ordinarily payable after the end of the tax year. Since 6 April 2015, non-resident persons disposing of UK residential property must (subject to certain exceptions) make a payment on account within 30 days of the property being conveyed.
5. At Autumn Statement 2015, the government announced the intention to extend payment on account of CGT to UK residents from April 2019.
6. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk)

42 CGT: disposals of UK residential property by non-residents etc

- (1) In Schedule 4ZZA to TCGA 1992 (relevant high value disposals: gains and losses), in paragraph 2(1), for “paragraph 6” substitute “paragraph 6A”.
- (2) In Schedule 4ZZB to TCGA 1992 (non-resident CGT disposals: gains and losses), in paragraph 17 –
 - (a) omit sub-paragraph (2), and
 - (b) in sub-paragraph (3), omit the words from “If” to “applies”.
- (3) In section 12ZB of TMA 1970 (NRCGT return), after subsection (5) insert –

“(5A) Subsection (1) also does not apply in such circumstances as the Commissioners for Her Majesty’s Revenue and Customs may by regulations prescribe.”
- (4) The amendment made by subsection (1) has effect in relation to disposals made on or after 6 April 2015.
- (5) The amendment made by subsection (2) has effect in relation to disposals made on or after 26 November 2015.

Explanatory Note

Clause 42: CGT: disposals of UK residential property by non-residents etc

Summary

1. This clause amends Capital Gains Tax (CGT) provisions in relation to disposals of UK residential property by non-residents (NRCGT). It corrects how to compute the amount of chargeable gain or loss that accrues on a disposal; and gives HMRC powers to prescribe circumstances when an NRCGT return is not required to be made.

Details of the clause

2. Subsections (1) and (4) correct from 6 April 2015 paragraph 2(1) of Schedule 4ZZA to the Taxation of Chargeable Gains Act 1992 (TCGA 1992) to ensure that where paragraph 6A applies that paragraphs 3 and 4 don't also apply.
3. Subsections (2) and (5) correct from 26 November 2015 paragraph 17 of Schedule 4ZZB to TCGA 1992 to ensure that any notional pre-April 2013 gain or loss is identified as part of the balancing gain in all circumstances.
4. Subsection (3) gives HMRC power to prescribe from Royal Assent circumstances when an NRCGT return is not required to be made.

Background note

5. Since 6 April 2015, gains accruing on the disposal of UK residential property by non-resident persons are subject to CGT.
6. The gain accruing on the disposal of a residential property can, in certain circumstances, be divided into different components with each being chargeable under different rules to different persons at different rates. The components are, in priority order, first, the amount of post-April 2013, 2015 or 2016 (as the case may be) gain that is chargeable at 28% because the property is also chargeable to the annual tax on enveloped dwellings (ATED). Second, the amount of post-April 2015 gain that is chargeable on non-residents. Third, the amount of balancing gain that is neither of the first two components. This balancing gain is potentially chargeable under anti-avoidance rules that attribute gains accruing to non-UK resident companies to participators in the company and trusts to UK residents. The relevant provisions are intended to ensure there is neither double-counting nor under-counting.
7. A non-resident person is currently required to notify HMRC in all circumstances when they dispose of a UK residential property interest by making and delivering to HMRC an 'NRCGT

return'. This includes circumstances when no CGT is due.

8. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk)

43 Inheritance tax: domicile

- (1) In section 267 of IHTA 1984 (persons treated as domiciled in the United Kingdom), in subsection (1) –
 - (a) in paragraph (a), omit the final “or”;
 - (b) after that paragraph insert –
 - “(aa) he is a formerly domiciled resident for the tax year in which the relevant time falls, or”;
 - (c) in paragraph (b), for the words from “in not less than” to “the year of assessment” substitute “for at least fifteen of the twenty tax years immediately preceding the tax year”.
- (2) In that section, in subsection (4), for “in any year of assessment” substitute “for any tax year”.
- (3) In that section, at the end insert –
 - “(6) For the purposes of this Act, a person is a “formerly domiciled resident” for a tax year if –
 - (a) he was born in the United Kingdom,
 - (b) his domicile of origin at the time of his birth was in the United Kingdom,
 - (c) he was resident in the United Kingdom for that tax year, and
 - (d) he was resident in the United Kingdom for at least one of the two tax years immediately preceding that tax year.”
- (4) In section 48 of that Act (settlements: excluded property) –
 - (a) in subsection (3)(b), for “and (3D)” substitute “to (3E)”;
 - (b) in subsection (3A)(b), for “subsection (3B)” substitute “subsections (3B) and (3E)”;
 - (c) after subsection (3D) insert –
 - “(3E) In a case where the settlor of property comprised in a settlement is not domiciled in the United Kingdom at the time the settlement is made, the property is not excluded property by virtue of subsection (3) or (3A) above at any time in a tax year if the settlor was a formerly domiciled resident for that tax year.”
- (5) In section 64 of that Act (charge at ten-year anniversary), in subsection (1B), after “was made” insert “and is not a formerly domiciled resident for the tax year in which the ten-year anniversary falls”.
- (6) In section 65 of that Act (charge at other times), after subsection (7A) insert –
 - “(7B) Tax shall not be charged under this section by reason only that property comprised in a settlement becomes excluded property by virtue of section 48(3E) ceasing to apply in relation to it.”
- (7) In section 82 of that Act (excluded property) –
 - (a) for subsection (1) substitute –
 - “(1) In a case where, apart from this section, property to which section 80 or 81 applies would be excluded property by virtue of section 48(3)(a) above, that property shall not be taken to be excluded property at any time (“the relevant time”) for the purposes of this Chapter (except sections 78 and 79) unless Conditions A and B are satisfied.”;

-
- (b) in subsection (2), for “the condition in subsection (3) below” substitute “Condition A”;
- (c) in subsection (3), for “The condition” substitute “Condition A”;
- (d) after subsection (3) insert –
- “(4) Condition B referred to in subsection (1) above is –
- (a) in the case of property to which section 80 above applies, that the person who is the settlor in relation to the settlement first mentioned in that section, and
- (b) in the case of property to which subsection (1) or (2) of section 81 above applies, that the person who is the settlor in relation to the first or second of the settlements mentioned in the subsection concerned,
- was not a formerly domiciled resident for the tax year in which the relevant time falls.”
- (8) In section 267ZB of that Act (section 267ZA: further provision about election), in subsection (10), for “four” substitute “six”.
- (9) In section 272 of that Act (interpretation) –
- (a) for the definition of “foreign-owned” substitute –
- ““foreign-owned”, in relation to property at any time, means property –
- (a) in the case of which the person beneficially entitled to it is at that time domiciled outside the United Kingdom, or
- (b) if the property is comprised in a settlement, in the case of which the settlor –
- (i) is not a formerly domiciled resident for the tax year in which that time falls, and
- (ii) was domiciled outside the United Kingdom when the property became comprised in the settlement;”;
- (b) at the appropriate place insert –
- ““formerly domiciled resident”, in relation to a tax year, has the meaning given by section 267(6);”.
- (10) In Schedule 45 to FA 2013 (statutory residence test), in paragraph 154 (transitional and saving provision), after sub-paragraph (4) insert –
- “(4A) A notice under sub-paragraph (4) does not have effect for the purposes of determining whether an individual was resident in the United Kingdom for a tax year for the purposes of section 267(1)(b) of IHTA 1984.”
- (11) The amendments made by this section have effect in relation to times after 5 April 2017.

Explanatory Note

Clause 43: Inheritance tax: domicile

Summary

1. Clause 43 amends the inheritance tax (IHT) legislation relating to individuals who will be treated as domiciled in the United Kingdom. The amendment will provide that an individual will be treated as domiciled for IHT purposes if they have been resident in the UK for at least 15 out of the previous 20 tax years rather than 17 out of the 20 tax years ending with the tax year in question. The clause also introduces a separate rule to provide that an individual born in the UK with a UK domicile of origin who has acquired a domicile of choice elsewhere will be treated as domiciled for IHT purposes if at any time they are resident in the UK and have been resident in the UK in at least one out of the two previous tax years.

Details of the clause

2. Subsection 1 amends section 267(1) of the Inheritance Tax Act (IHTA) 1984 to insert new paragraph (aa). This sets out another situation in which an individual is treated as being domiciled in the UK. It relates to individuals who are formerly domiciled residents, a phrase that is explained in paragraph 5 below.
3. Subsection 1 also makes an amendment to section 267(1)(b). The amendment reduces the time for which an individual has to be resident in the UK in order to be treated as being domiciled here for the tax year in which a relevant time falls. Rather than being resident in the UK in not less than 17 of the 20 years of assessment ending with that in which the relevant time falls, an individual will have to be resident in the UK only for at least 15 of the 20 tax years immediately preceding the tax year in question.
4. Subsection 2 makes an amendment to section 267(4) by substituting "any year of assessment" for "any tax year".
5. Subsection 3 defines the term "formerly domiciled resident" by setting out the conditions that must be met before an individual who was formerly domiciled in the UK is treated as being domiciled in the UK for a tax year. Those conditions are that the individual was born in the UK, that their domicile of origin at the time of their birth was in the UK, and that they were resident in the UK for the tax year and at least one of the two immediately preceding tax years.
6. Subsection 4 makes amendments to section 48(3) of the Inheritance Tax Act (1984). New section 48(3E) provides that any foreign assets settled into trust by a formerly domiciled resident while they were domiciled outside the UK will, no longer be treated as excluded property for a tax year in which the formerly domiciled resident is resident in the UK.
7. Subsection 5 makes an amendment to section 64 of the Inheritance Tax Act (1984) to ensure that the provision at section 64(1B) does not apply if the settlor meets the conditions in new

section 48(3E). This means that long-retained income that is invested abroad (or in authorised unit trusts or open ended investment companies) cannot be excluded property while the settlor is a formerly domiciled resident.

8. Subsection 6 makes an amendment to section 65 of the Inheritance Tax Act (1984) to ensure that tax is not charged under this section if property that was settled by an individual who then became a formerly domiciled resident subsequently becomes excluded property once more by virtue of the fact the settlor is no longer resident in the UK.
9. Subsection 7 makes an amendment to section 82 of the Inheritance Tax Act (1984) so that the tests in s82 are aligned with the test under new section 48(3E). This will ensure that where there is property to which section 80 or section 81 applies then not only must the settlor of the first or second settlement as appropriate not have been a UK domiciliary when the settlement was made, but they must also not be a formerly domiciled resident in the tax year concerned in order for foreign property to benefit from excluded property status.
10. Subsection 8 amends the number of years from 4 to 6 that an individual making a spousal election under section 267ZB must be non UK resident before the election is revoked.
11. Subsection 9 makes an amendment to the definition of "foreign owned" in section 272 of the Inheritance Tax Act (1984). Property settled by a formerly domiciled resident cannot be foreign owned.
12. Subsection 10 makes an amendment to Schedule 45 to FA 2013 (statutory residence test) and inserts new subsection (4A) which states that the saving provision does not have effect for the purposes of determining whether an individual was resident in the UK for a tax year for the purposes of the deemed domicile test under section 267(1)(b) Inheritance Tax Act (1984).
13. Subsection 11 contains the commencement provision and provides that the amendments will take effect in relation to events after 5 April 2017.

Background note

14. The clause is related to a series of reforms announced at the Summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law. It will broadly align the existing Inheritance Tax deemed domicile provisions for individuals with the proposed changes for income tax and capital gains tax.
15. The new rules will also ensure that individuals who are born in the UK, with a UK domicile of origin at birth and who reside in the UK are treated for tax purposes in the same way as an individual domiciled in the UK under general law. It also means that when an individual who was born in the UK and who had a UK domicile of origin has created a trust whilst they were non domiciled, that trust will be subject to IHT, whilst they are UK resident, in the same way as a trust which had been created by somebody who was domiciled in the UK.
16. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

44 Inheritance tax: increased nil-rate band

The Schedule contains provision in connection with the increased nil-rate band provided for by section 8D of IHTA 1984 (extra nil-rate band on death if interest in home goes to descendants etc).

SCHEDULE TO CLAUSE 44

INHERITANCE TAX: INCREASED NIL-RATE BAND

- 1 IHTA 1984 is amended as follows.
- 2 In section 8D(9) (interpretation of section 8D), before the definition of “tax year” insert –
 - ““consumer prices index” means the all items consumer prices index published by the Statistics Board,”.
- 3 (1) Section 8E is amended as follows.
 - (2) In subsection (6) (subsections (2) to (5) are subject to subsection (7)), after “(7)” insert “and section 8FC”.
 - (3) In subsection (7) (modifications of subsections (2) to (5)), for paragraphs (a) and (b) substitute –
 - “(a) the person’s residence nil-rate amount is equal to VT,
 - (b) where E is less than or equal to TT, an amount, equal to the difference between VT and the person’s default allowance, is available for carry-forward, and
 - (c) where E is greater than TT, an amount, equal to the difference between VT and the person’s adjusted allowance, is available for carry-forward.”
 - (4) In subsection (8) (list of other relevant sections), before the entry for section 8H insert –
 - “section 8FC (modifications of this section where there is entitlement to a downsizing addition),”.
- 4 In section 8F(4) (list of other relevant sections), before the entry for section 8H insert –
 - “section 8FD (which applies instead of this section where there is entitlement to a downsizing addition),”.
- 5 After section 8F insert –

“8FA Downsizing addition: entitlement: low-value death interest in home

- (1) There is entitlement to a downsizing addition in calculating the person’s residence nil-rate amount if each of conditions A to F is met (see subsection (8) for the amount of the addition).
- (2) Condition A is that –
 - (a) the person’s residence nil-rate amount is given by section 8E(2) or (4), or
 - (b) the person’s estate immediately before the person’s death includes a qualifying residential interest but none of the interest is closely inherited, and –

-
- (i) where E is less than or equal to TT, so much of VT as is attributable to the person's qualifying residential interest is less than the person's default allowance, or
 - (ii) where E is greater than TT, so much of VT as is attributable to the person's qualifying residential interest is less than the person's adjusted allowance.

Section 8E(6) and (7) do not apply, and any entitlement to a downsizing addition is to be ignored, when deciding whether paragraph (a) of condition A is met.

- (3) Condition B is that not all of VT is attributable to the person's qualifying residential interest.
- (4) Condition C is that the person has a qualifying former residential interest (see section 8H(4A)).
- (5) Condition D is that the value of the qualifying former residential interest exceeds so much of VT as is attributable to the person's qualifying residential interest.
Section 8FE(2) explains what is meant by the value of the qualifying former residential interest.
- (6) Condition E is that at least some of the remainder is closely inherited, where "the remainder" means everything included in the person's estate immediately before the person's death other than the person's qualifying residential interest.
- (7) Condition F is that a claim is made for the addition in accordance with section 8L(1) to (3).
- (8) Where there is entitlement as a result of this section, the addition—
 - (a) is equal to the lost relievable amount (see section 8FE) if that amount is less than so much of VT as is attributable to so much of the remainder as is closely inherited, and
 - (b) otherwise is equal to so much of VT as is attributable to so much of the remainder as is closely inherited.

- (9) See also—
 - section 8FC (effect of an addition: section 8E case),
 - section 8FD (effect of an addition: section 8F case),
 - section 8H (meaning of "qualifying residential interest" and "qualifying former residential interest"),
 - section 8J (meaning of "inherit"),
 - section 8K (meaning of "closely inherited"), and
 - section 8M (cases involving conditional exemption).

8FB Downsizing addition: entitlement: no residential interest at death

- (1) There is also entitlement to a downsizing addition in calculating the person's residence nil-rate amount if each of conditions G to K is met (see subsection (7) for the amount of the addition).
- (2) Condition G is that the person's estate immediately before the person's death ("the estate") does not include a residential property interest.

“Residential property interest” has the same meaning as in section 8H (see section 8H(2)).

- (3) Condition H is that VT is greater than nil.
- (4) Condition I is that the person has a qualifying former residential interest (see section 8H(4A)).
- (5) Condition J is that at least some of the estate is closely inherited.
- (6) Condition K is that a claim is made for the addition in accordance with section 8L(1) to (3).
- (7) Where there is entitlement as a result of this section, the addition –
 - (a) is equal to the lost relievable amount (see section 8FE) if that amount is less than so much of VT as is attributable to so much of the estate as is closely inherited, and
 - (b) otherwise is equal to so much of VT as is attributable to so much of the estate as is closely inherited.
- (8) See also –
 - section 8FD (effect of an addition: section 8F case),
 - section 8H (meaning of “qualifying residential interest” and “qualifying former residential interest”),
 - section 8J (meaning of “inherit”),
 - section 8K (meaning of “closely inherited”), and
 - section 8M (cases involving conditional exemption).

8FC Downsizing addition: effect: section 8E case

- (1) Subsection (2) applies if –
 - (a) as a result of section 8FA, there is entitlement to a downsizing addition in calculating the person’s residence nil-rate amount, and
 - (b) the person’s residence nil-rate amount is given by section 8E.
- (2) Section 8E has effect as if, in subsections (2) to (5) of that section, each reference to NV/100 were a reference to the total of –
 - (a) NV/100, and
 - (b) the downsizing addition.

8FD Downsizing addition: effect: section 8F case

- (1) This section applies if –
 - (a) as a result of section 8FA or 8FB, there is entitlement to a downsizing addition in calculating the person’s residence nil-rate amount, and
 - (b) apart from this section, the person’s residence nil-rate amount is given by section 8F.
- (2) This section applies instead of section 8F.
- (3) The person’s residence nil-rate amount is equal to the downsizing addition.
- (4) Where –

-
- (a) E is less than or equal to TT, and the downsizing addition is equal to the person's default allowance, or
 - (b) E is greater than TT, and the downsizing addition is equal to the person's adjusted allowance,
- no amount is available for carry-forward.
- (5) Where—
 - (a) E is less than or equal to TT, and
 - (b) the downsizing addition is less than the person's default allowance,

an amount, equal to the difference between the downsizing addition and the person's default allowance, is available for carry-forward.
 - (6) Where—
 - (a) E is greater than TT, and
 - (b) the downsizing addition is less than the person's adjusted allowance,

an amount, equal to the difference between the downsizing addition and the person's adjusted allowance, is available for carry-forward.

8FE Calculation of lost relievable amount

- (1) This section is about how to calculate the person's lost relievable amount for the purposes of sections 8FA(8) and 8FB(7).
- (2) For the purposes of this section and section 8FA(5), the value of the person's qualifying former residential interest is the value of the interest at the time of completion of the disposal of the interest.
- (3) In this section, the person's "former allowance" is the total of—
 - (a) the residential enhancement at the time of completion of the disposal of the qualifying former residential interest,
 - (b) any brought-forward allowance that the person would have had if the person had died at that time, having regard to the circumstances of the person at that time (see section 8G as applied by subsection (4)), and
 - (c) if the person's allowance on death includes an amount of brought-forward allowance which is greater than the amount of brought-forward allowance given by paragraph (b), the difference between those two amounts.
- (4) For the purposes of calculating any brought-forward allowance that the person ("P") would have had as mentioned in subsection (3)(b)—
 - (a) section 8G (brought-forward allowance) applies, but as if references to the residential enhancement at P's death were references to the residential enhancement at the time of completion of the disposal of the qualifying former residential interest, and
 - (b) assume that a claim for brought-forward allowance was made in relation to an amount available for carry-forward from a related person's death if, on P's death, a claim was in fact made in relation to the amount.
- (5) For the purposes of subsection (3)(c), where the person's allowance on death is equal to the person's adjusted allowance, the amount of

brought-forward allowance included in the person's allowance on death is calculated as follows.

Step 1

Express the person's brought-forward allowance as a percentage of the person's default allowance.

Step 2

Multiply –

$$\frac{E - TT}{2}$$

by the percentage given by step 1.

Step 3

Reduce the person's brought-forward allowance by the amount given by step 2.

The result is the amount of brought-forward allowance included in the person's allowance on death.

- (6) If completion of the disposal of the qualifying former residential interest occurs before 6 April 2017 –
- (a) for the purposes of subsection (3)(a), the residential enhancement at the time of completion of the disposal is treated as being £100,000, and
 - (b) for the purposes of subsection (3)(b), the amount of brought-forward allowance that the person would have had at that time is treated as being nil.
- (7) In this section, the person's "allowance on death" means –
- (a) where E is less than or equal to TT, the person's default allowance, or
 - (b) where E is greater than TT, the person's adjusted allowance.
- (8) For the purposes of this section, "completion" of the disposal of a residential property interest occurs at the time of the disposal or, if the disposal is under a contract which is completed by a conveyance, at the time when the interest is conveyed.
- (9) Where, as a result of section 8FA, there is entitlement to a downsizing addition in calculating the person's residence nil-rate amount, take the following steps to calculate the person's lost relievable amount.

Step 1

Express the value of the person's qualifying former residential interest as a percentage of the person's former allowance, but take that percentage to be 100% if it would otherwise be higher.

Step 2

Express QRI as a percentage of the person's allowance on death, where QRI is so much of VT as is attributable to the person's qualifying residential interest, but take that percentage to be 100% if it would otherwise be higher.

Step 3

Subtract the percentage given by step 2 from the percentage given by step 1, but take the result to be 0% if it would otherwise be negative. The result is P%.

Step 4

The person's lost relievable amount is equal to P% of the person's allowance on death.

- (10) Where, as a result of section 8FB, there is entitlement to a downsizing addition in calculating the person's residence nil-rate amount, take the following steps to calculate the person's lost relievable amount.

Step 1

Express the value of the person's qualifying former residential interest as a percentage of the person's former allowance, but take that percentage to be 100% if it would otherwise be higher.

Step 2

Calculate that percentage of the person's allowance on death.

The result is the person's lost relievable amount."

- 6 In section 8G (meaning of "brought-forward allowance"), in subsection (3)(a), for "and 8F" substitute ", 8F and 8FD".

- 7 (1) Section 8H (meaning of "qualifying residential interest") is amended as follows.

(2) In the heading, at the end insert "and "qualifying former residential interest"".

(3) In subsection (1), for "and 8F" substitute "to 8FE".

(4) After subsection (4) insert –

“(4A) Subsection (4B) or (4C) applies where –

(a) a person disposes of a residential property interest in a dwelling-house on or after 8 July 2015 (and before the person dies), and

(b) the person's personal representatives nominate –

(i) where there is only one such dwelling-house, that dwelling-house, or

(ii) where there are two or more such dwelling-houses, one (and only one) of those dwelling-houses.

(4B) Where the person disposes of just one residential property interest in the nominated dwelling-house at a post-occupation time (and before the person dies), that interest is a qualifying former residential interest in relation to the person.

(4C) Where –

(a) the person disposes of two or more residential property interests in the nominated dwelling-house at post-occupation times (and before the person dies), and

(b) the person's personal representatives nominate one (and only one) of those interests,

the nominated interest in the nominated dwelling-house is a qualifying former residential interest in relation to the person.

(4D) In subsections (4B) and (4C) "post-occupation time" means a time –

(a) on or after 8 July 2015, and

(b) after the nominated dwelling-house first became the person's residence.

-
- (4E) For the purposes of subsections (4A) to (4C), if the disposal is under a contract which is completed by a conveyance, the disposal occurs at the time when the interest is conveyed.”
- 8 In section 8J (meaning of “inherited”), in subsection (1), for “and 8F” substitute “, 8F, 8FA and 8FB”.
- 9 In section 8K (meaning of “closely inherited”), in subsection (1), for “and 8F” substitute “, 8F, 8FA and 8FB”.
- 10 In section 8L (claims for brought-forward allowance) –
- (a) in the heading, at the end insert “and downsizing addition”, and
 - (b) in subsection (1), after “(see section 8G)” insert “or for a downsizing addition for a person (see sections 8FA to 8FD)”.

Explanatory Note

Clause 44 and Schedule: Inheritance tax: Increased nil-rate band

Summary

1. This measure ensures that an estate will continue to qualify for an increased residence nil-rate band for inheritance tax when an individual downsizes from a higher value residence to a lower value one or ceases to own a residence and other assets are left on death to direct descendants. The Schedule sets out the conditions for the entitlement to the additional amount (the downsizing addition), the effect of the addition, and how the amount of the residence nil-rate band that has been lost as a result of downsizing or disposal should be calculated. The change will apply for deaths on or after 6 April 2017 and for downsizing moves or disposals on or after 8 July 2015.

Details of the clause and Schedule

Schedule 1: Inheritance tax: Increased nil-rate band

2. Paragraph 1 amends Inheritance Tax Act (IHTA) 1984.
3. Paragraph 2 explains the meaning of "consumer prices index" in section 8D(9) IHTA 1984.
4. Paragraph 3 makes consequential amendments to section 8E IHTA 1984 to take into account the new provisions introduced by the Schedule. It also amends section 8E(7) IHTA 1984 to ensure that this works as intended to give the correct amount of residence nil-rate band and carry-forward amounts to transfer to a spouse or civil partner's estate.
5. Paragraph 4 makes consequential amendments to section 8F IHTA 1984 as a result of new section 8FD.
6. Paragraph 5 inserts new sections 8FA to 8FE into IHTA 1984.

Section 8FA: Downsizing addition: entitlement: low-value death interest in home

7. New section 8FA applies where a person has downsized from a more valuable residence and there is a less valuable residence left in the estate on death. It gives the conditions that have to be met for an estate to be entitled to the increased amount of the residence nil-rate band (downsizing addition) in these circumstances and how that amount is calculated.
8. Subsection (1) provides that the downsizing addition will be taken into account when calculating the amount of the residence nil-rate band if all the conditions in this section are

met. This gives the entitlement to the downsizing addition.

9. Subsection (2) sets out Condition A, which is that either
- a. there is a residence in the estate on death which qualifies for the residence nil-rate band (a qualifying residential interest) but the full amount is not due because the value of the residence, or the proportion inherited by direct descendants (i.e. closely inherited), is below the maximum residence nil-rate band available for that person, or
 - b. there is a residence in the estate on death but none of it is closely inherited and the value of the residence is less than the maximum residence nil-rate band available for that person.

For the purposes of paragraph (a), sections 8E(6) and 8E(7) and the entitlement to the downsizing addition are ignored because Condition A only tests whether there is scope for any downsizing addition but does not give effect to it.

10. Subsection (3) sets out Condition B, which is that the value transferred by the chargeable transfer on death (VT) is more than the value of the residence (the person's qualifying residential interest).
11. Subsection (4) gives Condition C, which is that the person previously had a residence which could have qualified for the residence nil-rate band (the qualifying former residential interest).
12. Subsection (5) gives Condition D, which is that the value of the former residence has to be more than the chargeable value of the residence in the estate at death.
13. Subsection (6) sets out Condition E which is that at least some of the other assets in the estate must be inherited by direct descendants (closely inherited).
14. Subsection (7) gives Condition F which is that a claim has to be made for the downsizing addition.
15. Subsection (8) gives the amount of the downsizing addition. This is equal to the lost residence nil-rate band (the lost relievable amount) as a result of the downsizing move, which is calculated in accordance with section 8FE IHTA 1984. However, the amount is limited to the value of other assets, or proportion of that value, which is closely inherited.
16. Subsection (9) identifies other provisions which explain the effect of this section or which give the meaning of the terms used in this section.

Section 8FB: Downsizing addition: entitlement: no residential interest at death

17. New section 8FB applies where a person no longer owns a residence so that there is no residence in the estate on death. It sets out the qualifying conditions for an estate to be entitled to the downsizing addition in these circumstances and how that amount is calculated.
18. Subsection (1) provides that the downsizing addition will be taken into account when calculating the amount of the residence nil-rate band if all the conditions in this section are met. This gives the entitlement to the downsizing addition.
19. Subsection (2) sets out Condition G which is that there is no residence in a person's estate at the date of death. Residence in this context means a house which the person has lived in at

some stage while they owned it.

20. Subsection (3) gives Condition H, which is that the value transferred by the chargeable transfer on death (VT) has to be greater than nil.
21. Subsection (4) gives Condition I, which is that the person previously had a residence which could have qualified for the residence nil-rate band (the qualifying former residential interest).
22. Subsection (5) gives Condition J, which is that at least some of the other assets in the estate are inherited by direct descendants (closely inherited).
23. Subsection (6) gives Condition K which is that a claim has to be made for the downsizing addition.
24. Subsection (7) gives the amount of the downsizing addition. This is equal to the lost residence nil-rate band (the lost relievable amount) as a result of disposing of the residence, which is calculated in accordance with section 8FE IHTA 1984. The amount is limited to the value of other assets, or proportion of that value, which is closely inherited.
25. Subsection (8) identifies other provisions which explain the effect of this section or which give the meaning of the terms used in this section.

Section 8FC: Downsizing addition: effect: section 8E case

26. New section 8FC gives the effect of the entitlement to the downsizing addition where some or all of the residence in the estate is left to direct descendants.
27. Subsection (1) provides that the effect applies if there is an entitlement to the downsizing addition because a person has downsized and the residence in their estate, or a part of it, is left to direct descendants.
28. Subsection (2) has the effect that the downsizing addition is added to the amount of the residence nil-rate band that would otherwise be due to arrive at the total residence nil-rate band for the estate.

Section 8FD: Downsizing addition: effect: section 8F case

29. New section 8FD gives the effect of the entitlement to the downsizing addition where there is no residence left to direct descendants.
30. Subsection (1) provides that the effect applies if there is an entitlement to the downsizing addition because a person has downsized but none of the residence has been inherited by direct descendants, or has disposed of a residence so that it cannot be inherited by direct descendants.
31. Subsection (2) provides that this section applies instead of section 8F so that the downsizing addition will still apply even if no part of the residence is inherited by direct descendants.
32. Subsection (3) provides that in these cases the residence nil-rate band will be equal to the downsizing addition.
33. Subsection (4) sets out the circumstance where there is no carry-forward amount. This is where the downsizing addition is equal to the residence nil-rate band plus any transferred residence nil-rate band (the default allowance where the value of the estate is below the taper threshold, or adjusted allowance if it is above the taper threshold). In that case, the

downsizing addition is fully used and nothing is available to be transferred to a spouse or civil partner's estate.

34. Subsection (5) determines the carry-forward amount where the value of the estate is equal to or below the taper threshold and the downsizing addition is less than the residence nil-rate band plus any transferred residence nil-rate band (the default allowance). In that case, the difference between the downsizing addition and the default allowance is available for transfer to a spouse or civil partner's estate.
35. Subsection (6) determines the carry-forward amount where the value of the estate is above the taper threshold and the downsizing addition is less than the residence nil-rate band plus any transferred residence nil-rate band (the adjusted allowance). In that case, the difference between the downsizing addition and the adjusted allowance is available for transfer to a spouse or civil partner's estate.

Section 8FE: Calculation of lost relievable amount

36. New section 8FE sets out how the value of the residence nil-rate band which has been lost as a result of downsizing or disposal of a residence (the lost relievable amount) should be calculated.
37. Subsection (1) specifies the purpose of the section, which is to show how to calculate the lost relievable amount
38. Subsection (2) defines the value of a person's former residence which could have qualified for the residence nil-rate band (the former qualifying residential interest). This is the open market value of the residence, or interest in it, at the time when the disposal of it was completed.
39. Subsection (3) gives a person's "former allowance". This is the total of
 - a. the maximum residence nil-rate band available at the time of the disposal,
 - b. any transferred residence nil-rate band (brought-forward allowance) that would have been due if the person had died at the time of the disposal, and
 - c. any difference between the brought-forward allowance which would have been due at the time of disposal and the actual brought-forward allowance at the time of the person's death.
40. Subsection (4) gives further rules for calculating the brought-forward allowance that would have been due had the person died at the time of disposal of the former residence.
41. Subsection (5) gives steps for calculating the brought-forward allowance for the purposes of section 8FE(3)(c) where the estate on death exceeds the taper threshold. It reduces the brought-forward allowance, ensuring that the taper reduction applies proportionally to the residential enhancement and the brought-forward allowance.
42. Subsection (6) explains what the maximum residence nil-rate band (the residential enhancement) and the brought-forward allowance should be if the residence was disposed of before 6 April 2017. The residence nil-rate band is treated as £100,000 and there is no brought-forward allowance.
43. Subsection (7) defines a person's "allowance on death" as their default allowance if the value of the estate is less than or equal to the taper threshold, or their adjusted allowance if the

value of the estate is above the taper threshold.

44. Subsection (8) defines the time of completion of the disposal of the residence, or interest in it.
45. Subsection (9) sets out the steps in the calculation of the lost residence nil-rate band as a result of downsizing to a less valuable residence (the lost relievable amount). Step 1 calculates the percentage of the residence nil-rate band that was 'lost' at the time of the disposal. Step 2 calculates the percentage of the residence nil-rate band at death that is used up by the residence at death. Step 3 calculates the difference between these percentages and Step 4 multiplies the person's allowance on death by this percentage to determine the lost relievable amount.
46. Subsection (10) sets out the steps in the calculation of the lost residence nil-rate band as a result of the disposal of the residence (the lost relievable amount). Step 1 calculates the percentage of the residence nil-rate band that was 'lost' at the time of the disposal. Step 2 multiplies the person's allowance on death by this percentage to determine the lost relievable amount.
47. Paragraph 6 of the Schedule makes a consequential amendment to the provisions dealing with the transfer of the residence nil-rate band (the brought-forward allowance) in section 8G to include a reference to new section 8FD in the calculation of the amount transferred.
48. Paragraph 7 makes various consequential amendments to provisions in section 8H defining the residence qualifying for the residence nil-rate band so that they also include the former residence (the qualifying former residential interest) which has been disposed of before the person's death.
49. Sub-paragraph (4) inserts new subsections (4A) to (4E) in section 8H.
50. Subsection (4A) states that new subsection (4B) or (4C) apply where a person has disposed of their former house(s) on or after 8 July 2015 and the person's personal representatives nominate one such house. This means that personal representatives can nominate only one disposal of a residence, or of an interest in it, to qualify for the downsizing addition.
51. Subsection (4B) provides that where a person disposes of only one nominated residence, or interest in it, that residence or interest will be the qualifying one for the purposes of any downsizing addition.
52. Subsection (4C) provides that where a person disposes of two or more interests in the nominated residence, the person's personal representatives can only nominate one of those interests. That nominated former interest will be qualifying one for the purposes of the downsizing addition.
53. Subsection (4D) ensures that the person must have lived in the house at some point before disposal of it in order for it to be treated as a qualifying former residence. A house which the person has never lived in, such as a property bought solely as an investment or rental property, would not qualify.
54. Subsection (4E) clarifies that if a residence is disposed of under the two-stage exchange of contract followed by completion process, the disposal time for these purposes is the completion date.
55. Paragraphs 8, 9 and 10 make minor amendments to sections 8J, 8K and 8M respectively to

include references to new sections 8FA, 8FB, 8FD and the downsizing addition.

Background note

56. The Summer Budget 2015 announced the introduction of an additional nil-rate band when a residence is passed on death to a direct descendant. This would be £100,000 in 2017 to 2018, £125,000 in 2018 to 2019, £150,000 in 2019 to 2020, and £175,000 in 2020 to 2021. It will then increase in line with CPI for 2021 to 2022 onwards. Any unused nil-rate band will be transferred to a surviving spouse or civil partner. For estates with a net value of more than £2m there will be a tapered withdrawal of the additional nil-rate band at a rate of £1 for every £2 over this threshold.
57. In addition, the announcement also said that the new residence nil-rate band will be available when a person downsizes or ceases to own a home on or after 8 July 2015 and assets of an equivalent value, up to the value of the additional nil-rate band, are passed on death to direct descendants. This clause and Schedule provide for this extension of the residence nil-rate band.
58. If you have any questions about this change, or comments on the legislation, please contact the HM Revenue & Customs Assets and Residence policy team (email: ihtandtrustsconsult.car@hmrc.gsi.gov.uk)

45 Inheritance tax: pension drawdown funds

- (1) IHTA 1984 is amended as follows.
- (2) In the italic heading before section 10, at the end insert “(and omissions that do not give rise to deemed dispositions)”.
- (3) In section 12(2G) (interpretation of section 12(2ZA)), in the definition of “entitled”, for “166(2)” substitute “167(1A), or section 166(2),”.
- (4) After section 12 insert –

“12A Pension drawdown fund not used up: no deemed disposition

- (1) Where a person has a drawdown fund, section 3(3) above does not apply in relation to any omission that results in the fund not being used up in the person’s lifetime.
- (2) For the purposes of subsection (1) above, a person has a drawdown fund if the person has –
 - (a) a member’s drawdown pension fund,
 - (b) a member’s flexi-access drawdown fund,
 - (c) a dependant’s drawdown pension fund,
 - (d) a dependant’s flexi-access drawdown fund,
 - (e) a nominee’s flexi-access drawdown fund, or
 - (f) a successor’s flexi-access drawdown fund, andin respect of a money purchase arrangement under a registered pension scheme.
- (3) For the purposes of subsection (1) above, a person also has a drawdown fund if sums or assets held for the purposes of a money purchase arrangement under a corresponding scheme would, if that scheme were a registered pension scheme, be the person’s –
 - (a) member’s drawdown pension fund,
 - (b) member’s flexi-access drawdown fund,
 - (c) dependant’s drawdown pension fund,
 - (d) dependant’s flexi-access drawdown fund,
 - (e) nominee’s flexi-access drawdown fund, or
 - (f) successor’s flexi-access drawdown fund,in respect of the arrangement.
- (4) In this section –
 - “corresponding scheme” means –
 - (a) a qualifying non-UK pension scheme (see section 271A below), or
 - (b) a section 615(3) scheme that is not a registered pension scheme;

“money purchase arrangement” has the same meaning as in Part 4 of the Finance Act 2004 (see section 152 of that Act);

“member’s drawdown pension fund”, “member’s flexi-access drawdown fund”, “dependant’s drawdown pension fund”, “dependant’s flexi-access drawdown fund”, “nominee’s flexi-access drawdown fund” and “successor’s flexi-access drawdown fund” have the meaning given, respectively, by

paragraphs 8, 8A, 22, 22A, 27E and 27K of Schedule 28 to that Act.”

- (5) The amendment made by subsection (4) –
- (a) so far as relating to a fund within the new section 12A(2)(a) or (c) (drawdown pension funds), or to a fund within the new section 12A(3) that corresponds to a fund within the new section 12A(2)(a) or (c) –
 - (i) has effect where the person who has the fund dies on or after 6 April 2011, and
 - (ii) is to be treated as having come into force on 6 April 2011, and
 - (b) so far as relating to a fund mentioned in the new section 12A(2)(b), (d), (e) or (f) (flexi-access drawdown funds), or to a fund within the new section 12A(3) that corresponds to a fund within the new section 12A(2)(b), (d), (e) or (f) –
 - (i) has effect where the person who has the fund dies on or after 6 April 2015, and
 - (ii) is to be treated as having come into force on 6 April 2015.
- (6) Where an amount paid by way of –
- (a) inheritance tax, or
 - (b) interest on inheritance tax,
- is repayable as a result of the amendment made by subsection (4), section 241(1) of IHTA 1984 applies as if the last date for making a claim for repayment of the amount were 5 April 2020 if that is later than what would otherwise be the last date for that purpose.

Explanatory Note

Clause 45: Inheritance tax: pension drawdown funds

Summary

1. This measure introduces an exemption so that an inheritance tax (IHT) charge will not arise where a person has failed to exercise their rights to draw designated funds from a drawdown pension fund or a flexi-access drawdown fund during their lifetime and so has left unused funds when they die.

Details of the clause

2. Subsection 1 amends Inheritance Act (IHTA) 1984.
3. Subsection 2 amends the heading for sections 10 to 17, which deal with dispositions that are not transfers of value for IHT purposes, to include a reference to deemed dispositions.
4. Subsection 3 makes a minor consequential amendment to the definition of "entitled" in section 12(2G) to include when a beneficiary becomes entitled to income withdrawal as a result of new section 167(1A) of Finance Act 2004.
5. Subsection 4 inserts new section 12A into IHTA1984.

Section 12A: Pension drawdown fund not used up: no deemed disposition

6. New section 12A applies where a person has become entitled to a drawdown pension fund or flexi-access drawdown fund but has omitted to exercise their right to draw down all of the designated funds in their lifetime and as a result there are undrawn funds at the time they die in that drawdown fund.
7. Subsection (1) provides that a person who omits to exercise a right to draw down, or use up, their drawdown funds during their lifetime is not to be treated as making a disposition. This means that the value of their estate is not reduced by the omission to draw down all the funds, so the omission is not treated as a transfer of value and is therefore not liable to IHT.
8. Subsection (2) clarifies the meaning of a drawdown fund for the purposes of subsection (1) in relation to registered pension schemes.
9. Subsection (3) clarifies the meaning of a drawdown funds for the purposes of subsection (1) in relation to similar "corresponding schemes" that are not registered pension schemes.
10. Subsection (4) defines "corresponding schemes", "money purchase arrangement" and the various types of drawdown funds.
11. Subsection 5 of the clause sets out when new section 12A of IHTA will apply. For member's

and dependants' drawdown pension funds, the provisions will have effect where a person with the unused funds dies on or after 6 April 2011 and the provisions will be treated as coming into force on 6 April 2011. For flexi-access drawdown funds, which came into existence for tax purposes from 6 April 2015, the date that new section 12A comes into effect and is treated as coming into force is modified to take into account that later commencement date.

12. Subsection 6 provides for the extension of the normal time limit for a claim to repayment of any IHT or interest overpaid as a result of the retrospective commencement of new section 12A.

Background note

13. An IHT charge may arise if a person reduces the value of their estate by failing to exercise rights they have over property. This general rule does not apply to funds held in pension schemes to which a person fails to become entitled. When a person takes their pension benefits, or elects to draw down all or part of their pension, they become entitled to those funds. Having become entitled, if they fail to exercise their rights over those drawdown funds leaving funds undrawn on their death, the general rule applies and an IHT charge may arise.
14. From April 2015 the government introduced changes to the pension tax rules that allowed more people to flexibly access their money purchase pension funds from age 55. This flexibility and an increase in drawdown arrangements means the IHT charge could potentially apply to more people when they leave undrawn funds in their pension scheme when they die. It was not intended that an IHT charge should arise in these circumstances and this measure ensures that it does not do so.
15. If you have any questions about this change, or comments on the legislation, please contact Danka Wigley on 03000 585277 (email: danka.wigley@hmrc.gsi.gov.uk).

46 Inheritance tax: victims of persecution during Second World War era

- (1) After section 153 of IHTA 1984 insert –

“Payments to victims of persecution during Second World War era

153ZA Qualifying payments

- (1) This section applies where –
- (a) a person (“P”) has at any time received a qualifying payment, or
 - (b) the personal representatives of P have received a qualifying payment on P’s behalf.
- (2) The tax chargeable on the value transferred by the transfer made on P’s death (the “value transferred”) is to be reduced by an amount equal to –
- (a) the relevant percentage of the amount of the qualifying payment, or
 - (b) if lower, the amount of tax that would, apart from this section, be chargeable on the value transferred.
- (3) In subsection (2) “relevant percentage” means the percentage specified in the last row of the third column of the Table in Schedule 1.
- (4) For the purposes of this section, a “qualifying payment” is a payment that meets Condition A or Condition B.
- (5) Condition A is that the payment –
- (a) is of a kind specified in Part 1 of Schedule 5A, and
 - (b) is made to a person, or the personal representatives of a person, who was –
 - (i) a victim of National-Socialist persecution, or
 - (ii) the spouse or civil partner of a person within paragraph (i).
- (6) Condition B is that the payment is of a kind listed in Part 2 of Schedule 5A.
- (7) The Treasury may by regulations made by statutory instrument add a payment of a specified kind to the list in Part 1 of Schedule 5A.
- (8) A statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) After Schedule 5 to IHTA 1984 insert –

QUALIFYING PAYMENTS: VICTIMS OF PERSECUTION DURING SECOND WORLD WAR
ERA

PART 1

COMPENSATION PAYMENTS

- 1 A payment of a fixed amount from the German foundation known as “Remembrance, Responsibility and Future” (*Stiftung EVZ*) in respect of a person who was a slave or forced labourer.
- 2 A payment of a fixed amount in accordance with the arrangements made under the Swiss Bank Settlement (Holocaust Victim Assets Litigation) in respect of the slave or forced labourers qualifying for compensation under the Remembrance, Responsibility and Future scheme.
- 3 A payment of a fixed amount from the Hardship Fund established by the Government of the Federal Republic of Germany.
- 4 A payment of a fixed amount from the National Fund of the Republic of Austria for Victims of National-Socialism under the terms of the scheme as at June 1995.
- 5 A payment of a fixed amount in respect of a slave or forced labourer from the Austrian Reconciliation Fund.
- 6 A payment of a fixed amount by the Swiss Refugee Programme in accordance with the arrangements made under the Swiss Bank Settlement (Holocaust Victim Assets Litigation) in respect of refugees.
- 7 A payment of a fixed amount under the foundation established in the Netherlands and known as the Dutch Maror Fund (*Stichting Maror-Gelden Overheid*).
- 8 A one-off payment of a fixed amount from the scheme established by the Government of the French Republic and known as the French Orphan Scheme.
- 9 A payment of a fixed amount from the Child Survivor Fund established by the Government of the Federal Republic of Germany.

PART 2

EX-GRATIA PAYMENTS

- 10 A payment of a fixed amount made from the scheme established by the United Kingdom Government and known as the Far Eastern Prisoners of War Ex Gratia Scheme.”
- (3) The amendments made by this section have effect in relation to deaths occurring on or after 1 January 2015.

Explanatory Note

Clause 46 and Schedule: Inheritance tax: victims of persecution during Second World War era

Summary

1. This clause puts on a statutory footing and extends Extra Statutory Concession (ESC) F20 which deals with certain one-off late financial compensation and ex-gratia payments for World War II era claims. The clause extends the scope of the existing concession to include a one-off compensation payment of €2,500 made under a recently created scheme known as the Child Survivor Fund. The clause also provides a power for the Treasury to add subsequent payments to the current list of exempted payments by way of regulations. The legislation will apply in respect of deaths on or after 1 January 2015.
2. The clause provides that the tax on the amount of the qualifying compensation or ex-gratia payment that are currently listed in the ESC and the payment from the Child Survivor Fund should be allowed as credit against the Inheritance tax (IHT) tax arising on the chargeable value of the recipient's estate.

Details of the clause

3. Paragraph 1 subsection (1) inserts new section 153ZA into IHTA 1984, which provides for an IHT relief for certain late financial compensation payments received by the victims of National Socialist persecution, or ex-gratia payments received by British groups interned or imprisoned by the Japanese during the Second World War era. This new section stipulates that the compensation or ex-gratia payments must be one of the qualifying payments listed in either Part 1 or 2 of Schedule 5A and also made to specific individuals set out in Section 153ZA(5).

New section 153ZA

4. New subsection (1) provides that the relief is to apply where a person ("P") has died and either the deceased at any time in his life or his personal representatives on P's behalf has received a qualifying payment.
5. New subsection (2) makes provision for a tax credit to be given on the tax chargeable on the value transferred on the persons death of an amount equal to the relevant percentage of the amount of the qualifying payment, or if lower, the amount of tax that would without this provision be chargeable on the value received by the deceased estate.
6. New subsection (3) defines the relevant percentage as the percentage specified in the last row of the third column of the Table 1 in Schedule 1 IHTA 1984, which is currently 40%.
7. New subsection (4) defines a "qualifying payment" as a payment that meets the conditions set

out in subsection 5 (condition A) or 6 (condition B).

8. New subsection (5) sets out the criteria for condition A. Those conditions include:
 - that the payment is of a kind listed in Part 1 of Schedule 5A, and
 - is made to a person, or the personal representatives of a person who was a victim of National Socialist persecution, or the spouse or civil partner of a victim of National Socialist persecution.
9. New subsection (6) provides that in order to be a "qualifying payment" the payment is of a kind listed in Part 2 Schedule 5A, which are payments of a fixed amount from the scheme established by the UK government in 2000 and known as the Far Eastern Prisoners of War Ex Gratia Scheme.
10. New subsection (7) allows the Treasury to make regulations adding further payments to the current list of exempt qualifying payments in Part 1 of Schedule 5A.
11. New subsection (8) provides that a statutory instrument made under subsection 7 to add new payments to the qualifying list as set out in Part 1 Schedule 5A is subject to the negative resolution procedure.
12. Paragraph 1 subsection (2) inserts new schedule 5A to the IHTA 1984 and lists the compensation and ex-gratia payments which qualify for relief. The schedule is split into two parts, with part 1 dealing with payments to victims of National Socialist persecution, and Part 2 dealing with the ex-gratia payment that are made to the British groups interned or imprisoned by the Japanese.
13. Paragraph 1 subsection (3) contains commencement provisions and provides that the provisions will have effect for deaths occurring on or after 1 January 2015. The existing ESC F20 will have effect until 1 January 2015, after which new provisions in this clause will apply.

Background note

14. Under the present IHT rules, rights to compensation or ex-gratia payments, or the compensation or ex-gratia payment itself, would normally increase the value of a deceased person's chargeable estate at death and would form part of the claimant's estate for IHT purposes.
15. ESC F20 allows the amount of compensation or ex-gratia payment that fall within the terms of the concession not to be subject to IHT, whether the payment is made to the claimant before their death or is made subsequently to their personal representatives.
16. Schemes continue to be established in the UK and abroad which provide late compensation payments for personal hurt suffered during World War II era. The feature that singled these payments out for the concessionary IHT treatment was their timing. That is, they were being made more than 50 years after the event. When this is received by the original victims, or their surviving spouse or civil partner, this often comes late in life when plans for the disposal of their wealth have already been made.

17. The concessionary treatment for the payments detailed in ESC F20 has been given because of the special circumstances in which these particular payments came to be paid, rather than simply the nature of the hurt suffered.
18. If you have any questions about this change, or comments on the legislation, please contact the Assets and Residence Policy Team on 03000 558 551 (email: ihtandtrustsconsult.car@hmrc.gsi.gov.uk).

47 VAT: power to provide for persons to be eligible for refunds

In Part 2 of VATA 1994 (reliefs, exemptions and repayments), after section 33D insert—

“33E Power to extend refunds of VAT to other persons

- (1) This section applies where—
 - (a) VAT is chargeable on—
 - (i) the supply of goods or services to a specified person,
 - (ii) the acquisition of any goods from another member State by a specified person, or
 - (iii) the importation of any goods from a place outside the member States by a specified person, and
 - (b) the supply, acquisition or importation is not for the purpose of—
 - (i) any business carried on by the person, or
 - (ii) a supply by the person which, by virtue of section 41A, is treated as a supply in the course or furtherance of a business.
- (2) If and to the extent that the Treasury so direct, the Commissioners shall, on a claim made by the specified person at such time and in such form and manner as the Commissioners may determine, refund to the person the amount of the VAT so chargeable.
This is subject to subsection (3) below.
- (3) A specified person may not make a claim under subsection (2) above unless it has been agreed with the Treasury that, in the circumstances specified in the agreement, the amount of the person’s funding is to be reduced by all or part of the amount of the VAT so chargeable.
- (4) A claim under subsection (2) above in respect of a supply, acquisition or importation must be made on or before the relevant day.
- (5) The “relevant day” is—
 - (a) in the case of a person who is registered, the last day on which the person may make a return under this Act for the prescribed accounting period containing the last day of the financial year in which the supply is made or the acquisition or importation takes place;
 - (b) in the case of a person who is not registered, the last day of the period of 3 months beginning immediately after the end of the financial year in which the supply is made or the acquisition or importation takes place.
- (6) Subsection (7) applies where goods or services supplied to, or acquired or imported by, a specified person otherwise than for the purpose of—
 - (a) any business carried on by the person, or
 - (b) a supply falling within subsection (1)(b)(ii) above,cannot be conveniently distinguished from goods or services supplied to, or acquired or imported by, the person for such a purpose.
- (7) The amount to be refunded under this section is such amount as remains after deducting from the whole of the VAT chargeable on any supply to, or acquisition or importation by, the specified person such

proportion of that VAT as appears to the Commissioners to be attributable to the carrying on of the business or (as the case may be) the making of the supply.

- (8) In this section, “specified person” means a person specified in an order made by the Treasury.
- (9) An order under subsection (8) may make transitional provision or savings.
- (10) References in this section to VAT do not include any VAT which, by virtue of an order under section 25(7), is excluded from credit under section 25.”

Explanatory Note

Clause 47: VAT: Power to provide for persons to be eligible for refunds

Summary

1. This clause allows non-departmental public bodies, and similar arms-length bodies, to recover the VAT they incur when they enter into cost-sharing arrangements. Refunds of VAT are subject to certain funding agreements with the Treasury. This will commence from the date of Royal Assent to the Finance Bill.

Details of the clause

2. Subsection (1) of the clause adds a new section 33E into the Value Added Tax Act 1994.
3. Subsections (1) and (2) of section 33E provide for refunds to be made to specified persons (non-departmental public bodies and similar arms-length bodies specified in an order) of the VAT they incur on purchases made, and goods imported or acquired, for non-business purposes in so far as the Treasury directs for this to happen. Subsection (2) of section 33E allows for HMRC to determine how and when claims are to be made.
4. Because the specified persons will all be publicly funded bodies, subsection (3) of section 33E requires that they enter into agreements with the Treasury to adjust their overall funding by the amount of VAT now recoverable.
5. Subsections (4) and (5) of section 33E determine the latest time at which a claim may be made.
6. Subsections (6) and (7) of section 33E require an apportionment to be made where goods and services are purchased both for business and for non-business purposes.
7. Subsections (8) and (9) of section 33E provide for the Treasury to make orders naming the specified persons who will be entitled to reclaim VAT under this measure.
8. Subsection (10) of section 33E excludes certain purchases from credit under this measure.
9. Subsections (2) to (4) of the clause make consequential amendments to the Value Added Tax Act 1994.

Background note

10. The purpose of this measure is to allow departmental public bodies and similar arms-length bodies to benefit from refunds of VAT when they enter into certain cost-sharing arrangements, in the same way that government departments and NHS bodies already do.

This will be so whether they enter into such arrangements between themselves or with government departments, or whether they purchase eligible services from third parties.

11. The eligible services are those listed in a Treasury direction which presently applies to government departments and the NHS.
12. To prevent double-funding of those bodies which will benefit from this measure, they must first agree with the Treasury whether their existing public funding needs to be reduced on account of the VAT now recoverable. Once this has happened the Treasury will name the bodies in an order.
13. Because the measure is aligned with the overall funding of the public sector, the bodies in question will be required to make their claims within the financial year in which the VAT has been incurred.
14. If you have any questions about this change, or comments on the legislation, please contact David Ogilvie on 03000 585990 (email: David.Ogilvie@hmrc.gsi.gov.uk)

48 VAT: installation of energy-saving materials

- (1) In Part 2 of Schedule 7A to VATA 1994, Group 2 (installation of energy-saving materials) is amended as follows.
- (2) For items 1 and 2 substitute –
 - “1 The supply of services of installing energy-saving materials in residential accommodation, where the energy-saving materials are not supplied by the person supplying the services.
 - 2 The supply of services of installing energy-saving materials in residential accommodation, including the energy-saving materials installed, where –
 - (a) the supply is made to a qualifying person,
 - (b) the supply is made to a relevant housing association, or
 - (c) the residential accommodation is a building, or part of a building, used solely for a relevant residential purpose.
 - 3 The supply, in a case not falling within item 2, of services of installing energy-saving materials in residential accommodation, including the energy-saving materials installed (but see note A1).”
- (3) After “NOTES:” (and before the italic heading “Meaning of “energy-saving materials””) insert –

“Restriction on item 3

- A1 (1) Item 3 does not apply to a supply so far as relating to the energy-saving materials installed if the cost of those materials to the person to whom they are supplied exceeds the cost to that person of the service of installing them.
- (2) In sub-paragraph (1), references to costs are to costs net of VAT.”
- (4) In note 1 (meaning of “energy-saving materials”) omit paragraphs (e) to (g).
- (5) After note 3 insert –

“Meaning of “qualifying person”

- 4 For the purposes of this Group “qualifying person” has the same meaning as it has for the purposes of Group 3 (see paragraph 6 of the Notes to that Group).

Meaning of “relevant housing association”

- 5 For the purposes of this Group “relevant housing association” has the meaning given by Note 21 of Group 5 in Part 2 of Schedule 8.”
- (6) The amendments made by this section have effect in relation to supplies made on or after 1 August 2016, except for –
 - (a) supplies paid for before that date, and
 - (b) supplies made pursuant to a contract entered into before that date.

Explanatory Note

Clause 48: VAT: installation of energy saving materials

Summary

1. This clause amends the reduced rate of VAT for energy saving materials ('ESM's) following a decision of the European Court ('CJEU') as a result of an infraction by the European Commission ('EC'). It maintains the relief for those customers over the age of 60 years or on certain benefits, for supplies to relevant housing associations and for buildings used solely for a relevant residential purpose. It excludes the installation of solar panels, wind and water turbines from the reduced rate of VAT. For all other customers who live in residential accommodation, the relief is also retained except where the cost of the goods element of the supply is greater than the labour cost of installing those goods. In that situation, the labour element of the supply will be subject to the reduced rate and the goods element of the supply will be standard rated.

Details of the clause

2. Subsection (1) amends Group 2 of Schedule 7a of the VAT Act 1994
3. Subsection (2) amends Items 1 and 2 of Group 2 and introduces a new Item 3. Item 1 confirms that services of installing ESMs in residential accommodation are reduced rated. Item 2 confirms that the installation together with the supply of ESMs in residential accommodation is reduced rated where the customer is a qualifying person (as determined by Note 6 to Group 3 of Schedule 7A of the VAT Act 1994) or a relevant housing association (as determined by Note 21 to Group 5 of Schedule 8 of the VAT Act 1994) and where the residential accommodation is a building is used solely for a relevant residential purpose. Item 3 confirms that the installation of ESMs in residential accommodation not covered by Item 2 is also reduced rated subject to the restriction in new Note A1.
4. Subsection (3) inserts new Note A1. This confirms that the reduced rate does not apply to the goods element of an installation falling within new Item 3 if the net cost of those goods is greater than the net cost of the labour element of the supply. In such a case, the reduced rate of VAT will only apply to the labour element of the supply and the standard rate of VAT will apply to the goods element of the supply.
5. Subsection (4) withdraws the VAT reduced rate from supplies of solar panels, water turbines and wind turbines.
6. Subsection (5) inserts definitions of 'qualifying person' and 'relevant housing association'.
7. Subsection (6) confirms that the changes apply to supplies made on or after 1 August 2016 and

do not apply to supplies paid for, or subject to a contract signed, before that date.

Background note

8. This clause has been introduced following a judgment of the CJEU which held that the UK had failed to apply the reduced rate relief for supplies of services of installing ESMs correctly. These changes are designed to ensure that UK law is fully EU law compliant whilst seeking to retain as much of the existing relief as is possible.
9. The CJEU ruled that the UK had had failed to restrict the relief to certain social groups or those with certain social needs and to installations that constitute the provision, construction, renovation or alteration of housing as required by the European VAT Directive.
10. If you have any questions about this change, or comments on the legislation, please contact Michael McRae 03000 585639 (michael.mcrae@hmrc.gsi.gov.uk),

49 VAT: Isle of Man charities

In Schedule 6 to FA 2010 (charities etc), in paragraph 2(2) (jurisdiction condition: meaning of “a relevant UK court”), after paragraph (c) (and on a new line) insert “(and, for enactments relating to value added tax, includes the High Court of the Isle of Man).”

Explanatory Note

Clause 49: VAT: Isle of Man charities

Summary

Details of the clause

1. For enactments relating to Value Added Tax, the clause amends paragraph 2(2) of Schedule 6 to the Finance Act 2010 to make it clear that the High Court of the Isle of Man is a relevant UK court. This has the effect of ensuring that organisations on the Isle of Man that are subject to the jurisdiction of the High Court of the Isle of Man are capable of being recognised as charities for Value Added Tax purposes and can benefit from the Value Added Tax relief that is available to charities subject to the jurisdiction of a UK Court.

Background note

2. This amendment will put it beyond doubt that charities subject to the jurisdiction of the High Court of the Isle of Man are capable of qualifying for UK Value Added Tax reliefs for charities. Isle of Man organisations are entitled to this treatment by virtue of the Principal VAT Directive and the 1979 Customs and Excise Agreement between the Isle of Man and United Kingdom.
3. If you have any questions about this change, or comments on the legislation, please contact Michelle Stokell on 03000 585127 (email: michelle.stokell@hmrc.gsi.gov.uk)

50 SDLT: property authorised investment funds and co-ownership authorised contractual schemes

The Schedule contains provision about—

- (a) the stamp duty land tax treatment of co-ownership authorised contractual schemes, and
- (b) relief from stamp duty land tax for certain acquisitions by such schemes and by property authorised investment funds.

SCHEDULE TO CLAUSE 50

PROPERTY AUTHORISED INVESTMENT FUNDS AND CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

PART 1

CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

1 In FA 2003, after section 102 insert –

“102A Co-ownership authorised contractual schemes

- (1) This section has effect for the purposes of this Part.
- (2) This Part, with the exception of Schedule 7 (see subsection (10)), applies in relation to a co-ownership authorised contractual scheme as if –
 - (a) the scheme were a company, and
 - (b) the rights of the persons entitled to a share of the investments subject to the scheme were shares in the company.
- (3) An “umbrella COACS” means a co-ownership authorised contractual scheme –
 - (a) whose arrangements provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them (“pooling arrangements”), and
 - (b) under which the participants are entitled to exchange rights in one pool for rights in another.
- (4) A “sub-scheme”, in relation to an umbrella COACS, means such of the pooling arrangements as relate to a separate pool.
- (5) Each of the sub-schemes of an umbrella COACS is regarded as a separate co-ownership authorised contractual scheme, and the umbrella COACS as a whole is not so regarded.
- (6) In relation to a sub-scheme of an umbrella COACS –
 - (a) references to chargeable interests are references to such of the chargeable interests as under the pooling arrangements form part of the separate pool to which the sub-scheme relates, and
 - (b) references to documents of the scheme are references to such parts of the documents as apply to the sub-scheme.
- (7) References to a co-ownership authorised contractual scheme are taken to include a collective investment scheme which –
 - (a) is constituted under the law of an EEA State other than the United Kingdom by a contract,

-
- (b) is managed by a body corporate incorporated under the law of an EEA State, and
 - (c) is authorised under the law of the EEA State mentioned in paragraph (a) in a way which makes it, under that law, the equivalent of a co-ownership authorised contractual scheme as defined in subsection (8),

provided that, apart from this section, no charge to tax is capable of arising to the scheme under this Part.

- (8) Subject to any regulations under subsection (9) –
 - “co-ownership authorised contractual scheme” means a co-ownership scheme which is authorised for the purposes of the Financial Services and Markets Act 2000 by an authorisation order in force under section 261D(1) of that Act;
 - “co-ownership scheme” has the same meaning as in the Financial Services and Markets Act 2000 (see section 235A of that Act).
- (9) The Treasury may by regulations provide that a scheme of a description specified in the regulations is to be treated as not being a co-ownership authorised contractual scheme for the purposes of this Part.

Any such regulations may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.
- (10) A co-ownership authorised contractual scheme is not to be treated as a company for the purposes of Schedule 7 (group relief, reconstruction relief or acquisition relief).
- (11) In relation to a chargeable transaction in respect of which a co-ownership authorised contractual scheme is treated as the purchaser by virtue of this section –
 - (a) in sections 76, 80, 81, 81A and 108(2) and Schedule 10 (provisions about land transaction returns and further returns, enquiries, assessments and related matters), references to the purchaser or the taxpayer are to be read as references to the operator of the scheme, and
 - (b) in sections 85 (liability for tax) and 90 (application to defer payment in case of contingent or unascertained consideration) and Schedule 11A (claims not included in returns), references to the purchaser are to be read as references to the operator of the scheme.”

PART 2

SEEDING RELIEF FOR PROPERTY AUTHORISED INVESTMENT FUNDS AND CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

2 FA 2003 is amended in accordance with this Part.

3 After section 65 insert –

“65A PAIF seeding relief and COACS seeding relief

- (1) Schedule 7A provides for relief from stamp duty land tax.

-
- (2) In that Schedule –
- (a) Part 1 makes provision for seeding relief for property authorised investment funds (PAIF seeding relief), and
 - (b) Part 2 makes provision for seeding relief for co-ownership authorised contractual schemes (COACS seeding relief).
- (3) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return, and must be accompanied by a notice to HMRC referring to the claim.
- (4) In the case of a claim for PAIF seeding relief, the notice must confirm that the purchaser is –
- (a) a property AIF as defined in paragraph 2(2) of Schedule 7A, or
 - (b) a company treated as a property AIF by virtue of paragraph 2(7) of Schedule 7A (equivalent EEA funds).
- (5) In the case of a claim for COACS seeding relief, the notice must confirm that the purchaser is –
- (a) a co-ownership authorised contractual scheme as defined in section 102A(8), or
 - (b) an entity treated as a co-ownership authorised contractual scheme by virtue of section 102A(7) (equivalent EEA schemes).
- (6) The notice must be in such form, and contain such further information, as HMRC may require.”

4 After Schedule 7 insert –

“SCHEDULE 7A

Section 65A

SEEDING RELIEF

PART 1

PROPERTY AUTHORISED INVESTMENT FUNDS

PAIF seeding relief

- 1 (1) A land transaction is exempt from charge if conditions A to D are met.
Relief under this paragraph is called PAIF seeding relief.
- (2) Condition A is that the purchaser is a property AIF (see paragraph 2).
- (3) Condition B is that the main subject-matter of the transaction is one or more major interests in land.
- (4) Condition C is that the only consideration for the transaction is the issue of units in the property AIF to a person who is the vendor.
- (5) Condition D is that the effective date of the transaction is a day within the seeding period (see paragraph 3).
- (6) This paragraph is subject to paragraph 4 (restrictions on availability of relief) and paragraphs 5 to 8 (withdrawal of relief).

Meaning of “property AIF”

- 2 (1) This paragraph has effect for the purposes of this Schedule.
- (2) A “property AIF” is an open-ended investment company to which Part 4A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) applies.
- (3) An “umbrella fund” means a property AIF –
 - (a) whose instrument of incorporation provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them (“pooling arrangements”), and
 - (b) under which the participants are entitled to exchange rights in one pool for rights in another.
- (4) A “sub-fund”, in relation to an umbrella fund, means such of the pooling arrangements as relate to a separate pool.
- (5) Each of the sub-funds of an umbrella fund is regarded as a separate property AIF, and the umbrella fund as a whole is not so regarded.
- (6) In relation to a sub-fund of an umbrella fund, references to chargeable interests are references to such of the chargeable interests as under the pooling arrangements form part of the separate pool to which the sub-fund relates.
- (7) References to a property AIF are taken to include a collective investment scheme which –
 - (a) is a company incorporated under the law of an EEA State other than the United Kingdom, and
 - (b) is authorised under the law of that EEA State in a way which makes it, under that law, the equivalent of a property AIF as defined in sub-paragraph (2).

Meaning of “seeding period”

- 3 (1) In this Part of this Schedule, the “seeding period” means –
 - (a) the period beginning with the first property seeding date and ending with the date of the first external investment into the property AIF, or
 - (b) if shorter, the period of 18 months beginning with the first property seeding date.
- (2) In sub-paragraph (1), “the first property seeding date” means the earliest effective date of a transaction in respect of which conditions A to C in paragraph 1 are met.
- (3) In sub-paragraph (1) –

“external investment” means a non-land transaction in which the vendor is an external investor;

“external investor” means a person other than a person who has been a vendor in a transaction –

 - (a) the effective date of which is on or before the date of the non-land transaction, and

(b) in respect of which conditions A to C in paragraph 1 are met;

“non-land transaction” means a transaction by which the property AIF acquires assets which do not consist of or include a chargeable interest.

Restrictions on availability of relief

- 4 (1) This paragraph restricts the availability of PAIF seeding relief for a transaction in respect of which conditions A to D in paragraph 1 are met.
- (2) PAIF seeding relief is not available unless, at the effective date of the transaction, the property AIF has arrangements in place requiring a person who is the vendor to notify the property AIF of the following matters –
- (a) the beneficial owner of the units in the property AIF received in consideration of the transaction, and
 - (b) any disposal of units in the property AIF by the beneficial owner to a person other than the property AIF, in the period beginning with the effective date of the transaction and ending with the last day of the control period.
- (3) PAIF seeding relief is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person who is the vendor makes or could make a disposal of units in the property AIF which is or could be a relevant disposal (see paragraph 7).
- (4) PAIF seeding relief is not available if the transaction –
- (a) is not effected for bona fide commercial reasons, or
 - (b) forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

“Tax” here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.

Withdrawal of relief: ceasing to be property AIF

- 5 (1) Where PAIF seeding relief has been allowed in respect of a transaction (“the relevant transaction”), and the purchaser ceases to be a property AIF –
- (a) at any time after the effective date of that transaction but within the seeding period,
 - (b) at any time in the control period, or
 - (c) in pursuance of, or in connection with, arrangements made before the end of the control period,
- then, subject to sub-paragraph (2), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.
- (2) Relief is only withdrawn if, at the time when the purchaser ceases to be a property AIF, the purchaser holds a chargeable interest –
- (a) that was acquired by the purchaser under the relevant transaction, or

-
- (b) that is derived from an interest so acquired.
- (3) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for PAIF seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (4) In sub-paragraphs (1) and (3) an “appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the purchaser at the time it ceases to be a property AIF.

Withdrawal of relief: portfolio test not met

- 6 (1) Where PAIF seeding relief has been allowed in respect of a transaction, and the portfolio test is not met immediately before the end of the seeding period, the relief is withdrawn and tax is chargeable in accordance with sub-paragraph (2).
- (2) The amount chargeable is the amount that would have been chargeable in respect of the transaction but for PAIF seeding relief.
- (3) Where PAIF seeding relief has been allowed in respect of a transaction (“the relevant transaction”), and the portfolio test is met immediately before the end of the seeding period, but is not met—
- (a) at a time in the control period, or
- (b) at a time after the end of the control period, where the failure is pursuant to or in connection with arrangements made before the end of that period,
- then, subject to sub-paragraph (4), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with sub-paragraph (5).
- A time at which the relief is withdrawn and tax is so chargeable is referred to in this paragraph as “the relevant time”.
- (4) Relief is only withdrawn under sub-paragraph (3) if, at the relevant time, the property AIF holds a chargeable interest—
- (a) that was acquired by the property AIF under the relevant transaction, or
- (b) that is derived from an interest so acquired.
- (5) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for PAIF seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (6) In sub-paragraphs (3) and (5) an “appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the property AIF at the relevant time.
- (7) The portfolio test is a requirement that the property AIF meets—
- (a) the non-residential portfolio test (see sub-paragraph (8)), or
- (b) the residential portfolio test (see sub-paragraph (9)).

-
- (8) The “non-residential portfolio test” is met at any time if—
- (a) the property AIF holds at least 10 seeded interests at that time,
 - (b) so much of the total chargeable consideration as is attributable to all the seeded interests held by the property AIF at that time (“the seeded portfolio”) is at least £100 million, and
 - (c) so much of the total chargeable consideration as is attributable to so many of those seeded interests as are interests in or over residential property (if any) does not exceed 10% of the seeded portfolio.
- (9) The “residential portfolio test” is met at any time if—
- (a) so much of the total chargeable consideration as is attributable to all the seeded interests held by the property AIF at that time is at least £100 million, and
 - (b) at least 100 of the seeded interests held by the property AIF at that time are interests in or over residential property.
- (10) In sub-paragraphs (8) and (9)—
- “seeded interest” means a chargeable interest acquired by the property AIF in a transaction for which PAIF seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent) (a “seeding transaction”), and
 - “total chargeable consideration” means the total of the chargeable consideration for all seeding transactions.
- (11) For the purposes of this paragraph, section 116(7) does not apply (modification of what counts as residential property).

Withdrawal of relief: units disposed of

- 7 (1) Where PAIF seeding relief has been allowed in respect of a transaction (“the relevant transaction”), and a person who was the vendor in that transaction (“V”) makes a relevant disposal of one or more units in the property AIF—
- (a) at any time after the effective date of that transaction but within the seeding period,
 - (b) at any time in the control period, or
 - (c) in pursuance of, or in connection with, arrangements made before the end of the control period,
- the relief is withdrawn to the extent set out in this paragraph, and tax is chargeable in accordance with this paragraph.
- (2) A disposal is a “relevant disposal” for the purposes of this paragraph if, in relation to the disposal, SU exceeds TU.
- (3) In this paragraph, in relation to a disposal of units in the property AIF—
- “SU” means—
 - (a) where the total number of units in the property AIF held by V immediately before the disposal is equal to or greater than the number of seeded units received by V up to that time, the number of seeded units received by V up to that time, or

-
- (b) where the total number of units in the property AIF held by V immediately before the disposal is less than the number of seeded units received by V up to that time, the number of units in the property AIF held by V immediately before the disposal;

“TU” means the total number of units in the property AIF held by V immediately after the disposal.

- (4) The amount chargeable is –

$$\frac{U}{SNU} \times SDLT$$

where –

“U” means the difference between SU and TU;

“SNU” means the number of seeded units received by V up to the time of the disposal;

“SDLT” means the amount of tax that would have been chargeable in respect of the relevant transaction but for PAIF seeding relief, ignoring any amount of tax that has been charged under this paragraph in respect of the relevant transaction in relation to an earlier disposal of units by V.

- (5) In this paragraph, “the number of seeded units received by V” up to a certain time means the number of units in the property AIF received by V before that time in consideration of a transaction for which PAIF seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent).

Withdrawal of relief: dwelling occupied by non-qualifying individual

- 8 (1) This paragraph applies to a transaction (“the relevant transaction”) if –
- PAIF seeding relief has been allowed in respect of the transaction,
 - the main subject-matter of the transaction consists of or includes a chargeable interest in or over a dwelling, and
 - a non-qualifying individual (see paragraph 9) is permitted to occupy such a dwelling at any time.

The dwelling which a non-qualifying individual is permitted to occupy is referred to as “the disqualifying dwelling”.

- The relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph. This is subject to sub-paragraphs (3) and (4).
- Relief is only withdrawn if, at the time a non-qualifying individual is permitted to occupy the disqualifying dwelling, the property AIF holds –
 - a chargeable interest in or over that dwelling (“the relevant chargeable interest”), or
 - a chargeable interest that is derived from the relevant chargeable interest.

-
- (4) Where a non-qualifying individual is first permitted to occupy the disqualifying dwelling at a time after the end of the control period, relief is only withdrawn if, at that time, the purchaser in the relevant transaction fails to meet the genuine diversity of ownership condition set out in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964).
For the purposes of this sub-paragraph, regulation 9A(2)(a) of those Regulations is to be read as if the words “throughout the accounting period” were omitted.
- (5) The amount chargeable is –
- (a) the amount that would have been chargeable in respect of the relevant transaction but for PAIF seeding relief if the chargeable consideration for that transaction had been so much of the chargeable consideration as is attributable to the relevant chargeable interest, or
 - (b) (as the case may be) an appropriate proportion of the amount that would have been so chargeable.
- (6) In sub-paragraphs (2) and (5), an “appropriate proportion” means an appropriate proportion having regard to the extent to which the relevant chargeable interest is an interest in or over property other than the disqualifying dwelling.
- 9 (1) In paragraph 8 “non-qualifying individual”, in relation to a land transaction and a property AIF, means any of the following –
- (a) an individual who is a major participant in the property AIF;
 - (b) an individual who is connected with a major participant in the property AIF;
 - (c) an individual who is connected with the property AIF;
 - (d) a relevant settlor;
 - (e) the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);
 - (f) a relative of an individual falling within paragraph (b), (c) or (d), or the spouse or civil partner of a relative of an individual falling within paragraph (b), (c) or (d);
 - (g) a relative of the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);
 - (h) the spouse or civil partner of an individual falling within paragraph (g).
- (2) An individual who participates in the property AIF is a “major participant” in it if the individual –
- (a) is entitled to a share of at least 50% either of all the profits or income arising from the property AIF or of any profits or income arising from it that may be distributed to participants, or
 - (b) would in the event of the winding up of the property AIF be entitled to 50% or more of the assets of the property AIF that would then be available for distribution among the participants.
- (3) The reference in sub-paragraph (2)(a) to profits or income arising from the property AIF is to profits or income arising from the

acquisition, holding, management or disposal of the property subject to the property AIF.

- (4) In this paragraph—
“relative” means brother, sister, ancestor or lineal descendant;
“relevant settlor”, in relation to a land transaction, means an individual who is a settlor in relation to a relevant settlement (as defined in sub-paragraph (5));
“settlement” has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).
- (5) Where a person, in the capacity of trustee of a settlement, is connected with a person who is the purchaser under a land transaction, that settlement is a “relevant settlement” in relation to the transaction.
- (6) In sub-paragraph (5) “trustee” is to be read in accordance with section 1123(3) of CTA 2010 (“connected” persons: supplementary).
- (7) Section 1122 of CTA 2010 (connected persons) has effect for the purposes of this paragraph, but for those purposes, subsections (7) and (8) of that section (application of rules about connected persons to partnerships) are to be disregarded.

PART 2

CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

COACS seeding relief

- 10 (1) A land transaction is exempt from charge if conditions A to D are met.
Relief under this paragraph is called COACS seeding relief.
- (2) Condition A is that the purchaser is a co-ownership authorised contractual scheme (see section 102A).
- (3) Condition B is that the main subject-matter of the transaction is one or more major interests in land.
- (4) Condition C is that the only consideration for the transaction is the issue of units in the co-ownership authorised contractual scheme to a person who is the vendor.
- (5) Condition D is that the effective date of the transaction is a day within the seeding period (see paragraph 11).
- (6) This paragraph is subject to paragraph 12 (restrictions on availability of relief) and paragraphs 13, 14, 16, 17 and 18 (withdrawal of relief).

Meaning of “seeding period”

- 11 (1) In this Part of this Schedule, the “seeding period” means—

-
- (a) the period beginning with the first property seeding date and ending with the date of the first external investment into the co-ownership authorised contractual scheme, or
 - (b) if shorter, the period of 18 months beginning with the first property seeding date.
 - (2) In sub-paragraph (1), “the first property seeding date” means the earliest effective date of a transaction in respect of which conditions A to C in paragraph 10 are met.
 - (3) In sub-paragraph (1) –
 - “external investment” means a non-land transaction in which the vendor is an external investor;
 - “external investor” means a person other than a person who has been a vendor in a transaction –
 - (a) the effective date of which is on or before the date of the non-land transaction, and
 - (b) in respect of which conditions A to C in paragraph 10 are met;
 - “non-land transaction” means a transaction by which the scheme acquires assets which do not consist of or include a chargeable interest.

Restrictions on availability of relief

- 12 (1) This paragraph restricts the availability of COACS seeding relief for a transaction in respect of which conditions A to D in paragraph 10 are met.
- (2) COACS seeding relief is not available unless, at the effective date of the transaction, the arrangements constituting the co-ownership authorised contractual scheme require a person who is the vendor to notify the operator of the scheme of the following matters –
 - (a) the beneficial owner of the units in the scheme received in consideration of the transaction, and
 - (b) any disposal of units in the scheme by the beneficial owner to a person other than the scheme in the period beginning with the effective date of the transaction and ending with the last day of the control period.
- (3) COACS seeding relief is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person who is the vendor makes or could make a disposal of units in the co-ownership authorised contractual scheme which is or could be a relevant disposal (see paragraph 17).
- (4) COACS seeding relief is not available if the transaction –
 - (a) is not effected for bona fide commercial reasons, or
 - (b) forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

“Tax” here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.

Withdrawal of relief: ceasing to be co-ownership authorised contractual scheme

- 13 (1) Where COACS seeding relief has been allowed in respect of a transaction (“the relevant transaction”), and the purchaser ceases to be a co-ownership authorised contractual scheme –
- (a) at any time after the effective date of that transaction but within the seeding period,
 - (b) at any time in the control period, or
 - (c) in pursuance of, or in connection with, arrangements made before the end of the control period,
- then, subject to sub-paragraph (2), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.
- (2) Relief is only withdrawn if, at the time when the purchaser ceases to be a co-ownership authorised contractual scheme, the purchaser holds a chargeable interest –
- (a) that was acquired by the purchaser under the relevant transaction, or
 - (b) that is derived from an interest so acquired.
- (3) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (4) In sub-paragraphs (1) and (3) an “appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the purchaser at the time it ceases to be a co-ownership authorised contractual scheme.

Withdrawal of relief: genuine diversity of ownership condition not met

- 14 (1) Where COACS seeding relief has been allowed in respect of a transaction (“the relevant transaction”), and the genuine diversity of ownership condition (see paragraph 15) is not met –
- (a) immediately before the end of the seeding period,
 - (b) at a time in the control period, or
 - (c) at a time after the end of the control period, where the failure is pursuant to or in connection with arrangements made before the end of that period,
- then, subject to sub-paragraph (2), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.
- A time at which the relief is withdrawn and tax is so chargeable is referred to in this paragraph as “the relevant time”.
- (2) The relief is only withdrawn if, at the relevant time, the co-ownership authorised contractual scheme holds a chargeable interest –
- (a) that was acquired by the scheme under the relevant transaction, or
 - (b) that is derived from an interest so acquired.

-
- (3) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
 - (4) In sub-paragraphs (1) and (3) an “appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the scheme at the relevant time.

Genuine diversity of ownership condition

- 15 (1) This paragraph has effect for the purposes of paragraphs 14 and 18(4).
- (2) A co-ownership authorised contractual scheme meets the genuine diversity of ownership condition at any time when it meets conditions A to C.
- (3) Condition A is that the scheme produces documents, available to investors and to HMRC, which contain—
 - (a) a statement specifying the intended categories of investor,
 - (b) an undertaking that units in the scheme will be widely available, and
 - (c) an undertaking that units in the scheme will be marketed and made available in accordance with the requirements of sub-paragraph (6)(a).
- (4) Condition B is that—
 - (a) the specification of the intended categories of investor does not have a limiting or deterrent effect, and
 - (b) any other terms or conditions governing participation in the scheme do not have a limiting or deterrent effect.
- (5) In sub-paragraph (4) “limiting or deterrent effect” means an effect which—
 - (a) limits investors to a limited number of specific persons or specific groups of connected persons, or
 - (b) deters a reasonable investor falling within one of (what are specified as) the intended categories of investor from investing in the scheme.
- (6) Condition C is that—
 - (a) units in the scheme are marketed and made available—
 - (i) sufficiently widely to reach the intended categories of investors, and
 - (ii) in a manner appropriate to attract those categories of investors, and
 - (b) a person who falls within one of the intended categories of investors can, upon request to the operator of the scheme, obtain information about the scheme and acquire units in it.
- (7) A scheme is not regarded as failing to meet condition C at any time by reason of the scheme’s having, at that time, no capacity to receive additional investments, unless—

-
- (a) the capacity of the scheme to receive investments in it is fixed by the scheme documents (or otherwise), and
 - (b) a pre-determined number of specific persons or specific groups of connected persons make investments in the scheme which collectively exhaust all, or substantially all, of that capacity.
- (8) A co-ownership authorised contractual scheme also meets the genuine diversity of ownership condition at any time when –
- (a) there is a feeder fund in relation to the scheme, and
 - (b) conditions A to C are met in relation to the scheme after taking into account –
 - (i) the scheme documents relating to the feeder fund, and
 - (ii) the intended investors in the feeder fund.
- (9) Section 1122 of CTA 2010 (connected persons) has effect for the purposes of this paragraph.

Withdrawal of relief: portfolio test not met

- 16 (1) Where COACS seeding relief has been allowed in respect of a transaction, and the portfolio test is not met immediately before the end of the seeding period, the relief is withdrawn and tax is chargeable in accordance with sub-paragraph (2).
- (2) The amount chargeable is the amount that would have been chargeable in respect of the transaction but for COACS seeding relief.
- (3) Where COACS seeding relief has been allowed in respect of a transaction (“the relevant transaction”), and the portfolio test is met immediately before the end of the seeding period, but is not met –
- (a) at a time in the control period, or
 - (b) at a time after the end of the control period, where the failure is pursuant to or in connection with arrangements made before the end of that period,
- then, subject to sub-paragraph (4), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with sub-paragraph (5).
- A time at which the relief is withdrawn and tax is so chargeable is referred to in this paragraph as “the relevant time”.
- (4) Relief is only withdrawn under sub-paragraph (3) if, at the relevant time, the co-ownership authorised contractual scheme holds a chargeable interest –
- (a) that was acquired by the scheme under the relevant transaction, or
 - (b) that is derived from an interest so acquired.
- (5) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

-
- (6) In sub-paragraphs (3) and (5) an “appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the scheme at the relevant time.
- (7) The portfolio test is a requirement that the scheme meets –
- (a) the non-residential portfolio test (see sub-paragraph (8)), or
 - (b) the residential portfolio test (see sub-paragraph (9)).
- (8) The “non-residential portfolio test” is met at any time if –
- (a) the scheme holds at least 10 seeded interests at that time,
 - (b) so much of the total chargeable consideration as is attributable to all the seeded interests held by the scheme at that time (“the seeded portfolio”) is at least £100 million, and
 - (c) so much of the total chargeable consideration as is attributable to so many of those seeded interests as are interests in or over residential property (if any) does not exceed 10% of the seeded portfolio.
- (9) The “residential portfolio test” is met at any time if –
- (a) so much of the total chargeable consideration as is attributable to all the seeded interests held by the scheme at that time is at least £100 million, and
 - (b) at least 100 of the seeded interests held by the scheme at that time are interests in or over residential property.
- (10) In sub-paragraphs (8) and (9) –
- “seeded interest” means a chargeable interest acquired by the scheme in a transaction for which COACS seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent) (a “seeding transaction”), and
 - “total chargeable consideration” means the total of the chargeable consideration for all seeding transactions.
- (11) For the purposes of this paragraph, section 116(7) does not apply (modification of what counts as residential property).

Withdrawal of relief: units disposed of

- 17 (1) Where COACS seeding relief has been allowed in respect of a transaction (“the relevant transaction”), and a person who was the vendor in that transaction (“V”) makes a relevant disposal of one or more units in the co-ownership authorised contractual scheme –
- (a) at any time after the effective date of that transaction but within the seeding period,
 - (b) at any time in the control period, or
 - (c) in pursuance of, or in connection with, arrangements made before the end of the control period,
- the relief is withdrawn to the extent set out in this paragraph, and tax is chargeable in accordance with this paragraph.

-
- (2) A disposal is a “relevant disposal” for the purposes of this paragraph if, in relation to the disposal, SU exceeds TU.
- (3) In this paragraph, in relation to a disposal of units in the co-ownership authorised contractual scheme –
- “SU” means –
- (a) where the total number of units in the scheme held by V immediately before the disposal is equal to or greater than the number of seeded units received by V up to that time, the number of seeded units received by V up to that time, or
 - (b) where the total number of units in the scheme held by V immediately before the disposal is less than the number of seeded units received by V up to that time, the number of units in the scheme held by V immediately before the disposal;
- “TU” means the total number of units in the scheme held by V immediately after the disposal.
- (4) The amount chargeable is –

$$\frac{U}{SNU} \times SDLT$$

where –

- “U” means the difference between SU and TU;
- “SNU” means the number of seeded units received by V up to the time of the disposal;
- “SDLT” means the amount of tax that would have been chargeable in respect of the relevant transaction but for COACS seeding relief, ignoring any amount of tax that has been charged under this paragraph in respect of the relevant transaction in relation to an earlier disposal of units by V.
- (5) In this paragraph, “the number of seeded units received by V” up to a certain time means the number of units in the co-ownership authorised contractual scheme received by V before that time in consideration of a transaction for which COACS seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent).

Withdrawal of relief: dwelling occupied by non-qualifying individual

- 18 (1) This paragraph applies to a transaction (“the relevant transaction”) if –
- (a) COACS seeding relief has been allowed in respect of the transaction,
 - (b) the main subject-matter of the transaction consists of or includes a chargeable interest in or over a dwelling, and
 - (c) a non-qualifying individual (see paragraph 19) is permitted to occupy such a dwelling at any time.

The dwelling which a non-qualifying individual is permitted to occupy is referred to as “the disqualifying dwelling”.

-
- (2) The relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.
This is subject to sub-paragraphs (3) and (4).
- (3) Relief is only withdrawn if, at the time a non-qualifying individual is permitted to occupy the disqualifying dwelling, the co-ownership authorised contractual scheme holds –
- (a) a chargeable interest in or over that dwelling (“the relevant chargeable interest”), or
 - (b) a chargeable interest that is derived from the relevant chargeable interest.
- (4) Where a non-qualifying individual is first permitted to occupy the disqualifying dwelling at a time after the end of the control period, relief is only withdrawn if, at that time, the scheme fails to meet the genuine diversity of ownership condition (see paragraph 15).
- (5) The amount chargeable is –
- (a) the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief if the chargeable consideration for that transaction had been so much of the chargeable consideration as is attributable to the relevant chargeable interest, or
 - (b) (as the case may be) an appropriate proportion of the amount that would have been so chargeable.
- (6) In sub-paragraphs (2) and (5), an “appropriate proportion” means an appropriate proportion having regard to the extent to which the relevant chargeable interest is an interest in or over property other than the disqualifying dwelling.
- 19 (1) In paragraph 18 “non-qualifying individual”, in relation to a land transaction and a co-ownership authorised contractual scheme, means any of the following –
- (a) an individual who is a major participant in the scheme;
 - (b) an individual who is connected with a major participant in the scheme;
 - (c) an individual who is connected with the operator of the scheme (see section 121) or the depositary of the scheme;
 - (d) a relevant settlor;
 - (e) the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);
 - (f) a relative of an individual falling within paragraph (b), (c) or (d), or the spouse or civil partner of a relative of an individual falling within paragraph (b), (c) or (d);
 - (g) a relative of the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);
 - (h) the spouse or civil partner of an individual falling within paragraph (g).
- (2) An individual who participates in the scheme is a “major participant” in it if the individual –
- (a) is entitled to a share of at least 50% either of all the profits or income arising from the scheme or of any profits or

-
- income arising from it that may be distributed to participants, or
- (b) would in the event of the winding up of the scheme be entitled to 50% or more of the assets of the scheme that would then be available for distribution among the participants.
- (3) The reference in sub-paragraph (2)(a) to profits or income arising from the scheme is to profits or income arising from the acquisition, holding, management or disposal of the property subject to the scheme.
- (4) In this paragraph –
- “depository”, in relation to a co-ownership authorised contractual scheme, means the person to whom the property subject to the scheme is entrusted for safekeeping;
 - “relative” means brother, sister, ancestor or lineal descendant;
 - “relevant settlor”, in relation to a land transaction, means an individual who is a settlor in relation to a relevant settlement (as defined in sub-paragraph (5));
 - “settlement” has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).
- (5) Where a person, in the capacity of trustee of a settlement, is connected with a person who is the purchaser under a land transaction, that settlement is a “relevant settlement” in relation to the transaction.
- (6) In sub-paragraph (5) “trustee” is to be read in accordance with section 1123(3) of CTA 2010 (“connected” persons: supplementary).
- (7) Section 1122 of CTA 2010 (connected persons) has effect for the purposes of this paragraph, but for those purposes, subsections (7) and (8) of that section (application of rules about connected persons to partnerships) are to be disregarded.

PART 3

INTERPRETATION

“Feeder fund” and “units”

- 20 (1) In this Schedule –
- a “feeder fund” of a property AIF means an open-ended investment company, an offshore fund, a unit trust scheme or an authorised unit trust scheme –
 - (a) one of the main objects of which is investment in the property AIF, and
 - (b) which is managed by the same person as the property AIF;
 - a “feeder fund” of a co-ownership authorised contractual scheme means an open-ended investment company, an

-
- offshore fund, a unit trust scheme or an authorised unit trust scheme –
- (a) one of the main objects of which is investment in the co-ownership authorised contractual scheme, and
 - (b) which is managed by the same person as the scheme;
- “units in the property AIF” means units in –
- (a) the property AIF, and
 - (b) a feeder fund of the property AIF;
- “units in the co-ownership authorised contractual scheme” means units in –
- (a) the co-ownership authorised contractual scheme, and
 - (b) a feeder fund of the scheme;
- “units” means the rights or interests (however described) of the participants in the property AIF or the co-ownership authorised contractual scheme.
- (2) In relation to a sub-fund of an umbrella fund (see paragraph 2(3) and (4)), “units in the property AIF” means units in –
- (a) the separate pool to which that sub-fund relates, and
 - (b) a feeder fund of the sub-fund.
- (3) In relation to a sub-scheme of an umbrella COACS (see section 102A(3) and (4)), “units in the co-ownership authorised contractual scheme” means units in –
- (a) the separate pool to which that sub-scheme relates, and
 - (b) a feeder fund of the sub-scheme.

Interpretation of other terms

- 21 In this Schedule –
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
 - “attributable” means attributable on a just and reasonable basis;
 - “authorised unit trust scheme” means a unit trust scheme in the case of which an order under section 243 of FSMA 2000 is in force;
 - “COACS seeding relief” means relief under paragraph 10;
 - “collective investment scheme” has the meaning given by section 235 of FSMA 2000;
 - “control period” means the period of 3 years beginning with the day following the last day of the seeding period;
 - “co-ownership authorised contractual scheme” is to be construed in accordance with section 102A (see in particular subsections (2), (5), (7) and (8) of that section);
 - “CTA 2010” means the Corporation Tax Act 2010;
 - “FSMA 2000” means the Financial Services and Markets Act 2000;
 - the “genuine diversity of ownership condition”, in relation to a co-ownership authorised contractual scheme, has the meaning given by paragraph 15;

“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005;

“non-qualifying individual” has the meaning given by paragraph 9 (in relation to a property AIF) and paragraph 19 (in relation to a co-ownership authorised contractual scheme);

“offshore fund” has the meaning given by section 355 of the Taxation (International and Other Provisions) Act 2010;

“open-ended investment company” has the meaning given by section 236 of FSMA 2000;

“operator”, in relation to a co-ownership authorised contractual scheme, has the meaning given by section 121(2);

“PAIF seeding relief” means relief under paragraph 1;

“participant” is to be read in accordance with section 235 of FSMA 2000;

“portfolio test” has the meaning given by paragraph 6(7) (in relation to a property AIF) and paragraph 16(7) (in relation to a co-ownership authorised contractual scheme);

“property AIF” is to be construed in accordance with paragraph 2 (see in particular sub-paragraphs (2), (5) and (7) of that paragraph);

“relevant disposal” has the meaning given by paragraph 7(2) (in relation to a property AIF) and paragraph 17(2) (in relation to a co-ownership authorised contractual scheme);

“seeding period” has the meaning given by paragraph 3 (in relation to a property AIF) and paragraph 11 (in relation to a co-ownership authorised contractual scheme);

“unit trust scheme” has the meaning given by section 237(1) of FSMA 2000.”

PART 3

CONSEQUENTIAL AMENDMENTS

- 5 FA 2003 is amended in accordance with this Part.
- 6 In section 75C (anti-avoidance: supplemental), in subsection (4), after “Schedule 6A” insert “, 7A”.
- 7 (1) Section 81 (further return where relief withdrawn) is amended as follows.
- (2) In subsection (1)–
- (a) omit “or” at the end of paragraph (b), and
 - (b) after paragraph (b) insert –
 - “(ba) paragraph 5, 7 or 8 of Schedule 7A (PAIF seeding relief),
 - (bb) paragraph 13, 17 or 18 of Schedule 7A (COACS seeding relief), or”.
- (3) In subsection (1A), after “transactions)” insert “, or under paragraph 6 of Schedule 7A (PAIF seeding relief) or paragraph 14 or 16 of Schedule 7A (COACS seeding relief),”.

-
- (4) In subsection (1B), after paragraph (e) insert –
- “(f) in the case of relief under paragraph 6 of Schedule 7A (PAIF seeding relief: portfolio test) –
 - (i) where relief is withdrawn under sub-paragraph (1) of that paragraph, the last day of the seeding period (see paragraph 3 of that Schedule), or
 - (ii) where relief is withdrawn under sub-paragraph (3) of paragraph 6, the relevant time mentioned in that sub-paragraph;
 - (g) in the case of relief under paragraph 14 of Schedule 7A (COACS seeding relief: genuine diversity of ownership condition), the relevant time mentioned in sub-paragraph (1) of that paragraph;
 - (h) in the case of relief under paragraph 16 of Schedule 7A (COACS seeding relief: portfolio test) –
 - (i) where relief is withdrawn under sub-paragraph (1) of that paragraph, the last day of the seeding period (see paragraph 11 of that Schedule), or
 - (ii) where relief is withdrawn under sub-paragraph (3) of paragraph 16, the relevant time mentioned in that sub-paragraph.”
- (5) In subsection (4), after paragraph (b) insert –
- “(ba) in relation to the withdrawal of PAIF seeding relief –
 - (i) the purchaser ceasing to be a property authorised investment fund as mentioned in paragraph 5 of Schedule 7A,
 - (ii) a person who is the vendor making a relevant disposal of units as mentioned in paragraph 7 of that Schedule, or
 - (iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 8 of that Schedule;
 - (bb) in relation to the withdrawal of COACS seeding relief –
 - (i) the purchaser ceasing to be a co-ownership authorised contractual scheme as mentioned in paragraph 13 of Schedule 7A,
 - (ii) a person who is the vendor making a relevant disposal of units as mentioned in paragraph 17 of that Schedule, or
 - (iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 18 of that Schedule;”.
- 8 In section 86 (payment of tax), in subsection (2) –
- (a) omit “or” at the end of paragraph (b), and
 - (b) after paragraph (b) insert –
 - “(ba) Part 1 of Schedule 7A (PAIF seeding relief),
 - (bb) Part 2 of Schedule 7A (COACS seeding relief), or”.
- 9 (1) Section 87 (interest on unpaid tax) is amended as follows.
- (2) In subsection (3) –

-
- (a) in paragraph (a) –
- (i) omit “or” at the end of paragraph (ii), and
 - (ii) after paragraph (ii) insert –
 - “(iia) paragraph 5, 7 or 8 of Schedule 7A (PAIF seeding relief),
 - (iib) paragraph 13, 17 or 18 of Schedule 7A (COACS seeding relief), or”;
- (b) after paragraph (a) insert –
- “(azza) in the case of an amount payable because relief is withdrawn under sub-paragraph (3) of paragraph 6 of Schedule 7A (PAIF seeding relief: portfolio test), the relevant time mentioned in that sub-paragraph;
 - (azzb) in the case of an amount payable because relief is withdrawn under sub-paragraph (1) of paragraph 14 of Schedule 7A (COACS seeding relief: genuine diversity of ownership condition) at a time mentioned in paragraph (b) or (c) of that sub-paragraph, the relevant time mentioned in that sub-paragraph;
 - (azzc) in the case of an amount payable because relief is withdrawn under sub-paragraph (3) of paragraph 16 of Schedule 7A (COACS seeding relief: portfolio test), the relevant time mentioned in that sub-paragraph.”
- (3) In subsection (4), for “means – ” to the end substitute “has the same meaning as in section 81(4).”
- 10 In section 121 (minor definitions) –
- (a) the existing text becomes subsection (1), and
 - (b) after that subsection insert –
 - “(2) In this Part, “operator” –
 - (a) in relation to a co-ownership authorised contractual scheme constituted under the law of the United Kingdom, has the meaning given by section 237(2) of the Financial Services and Markets Act 2000;
 - (b) in relation to a collective investment scheme treated as a co-ownership authorised contractual scheme by virtue of section 102A(7) (equivalent EEA schemes), means the corporate body responsible for the management of the scheme (however described).”
- 11 In section 122 (index of defined expressions), at the appropriate place insert –

“COACS seeding relief Schedule 7A, paragraph 10(1)”

“co-ownership authorised contractual scheme section 102A”

-
- | | |
|--|--|
| | “operator (in relation to a co-ownership contractual scheme) authorised section 121” |
| | “PAIF seeding relief Schedule 7A, paragraph 1(1)” |
| | “property AIF Schedule 7A, paragraph 2”. |
- 12 In Schedule 4A (SDLT: higher rate for certain transactions), in paragraph 2(6) –
- (a) omit “and” at the end of paragraph (d), and
 - (b) after paragraph (d) insert –
 - “(da) Schedule 7A (PAIF seeding relief and COACS seeding relief), and”.
- 13 In Schedule 6B (transfers involving multiple dwellings), in paragraph 2(4)(b), after “Schedule 7” insert “, Schedule 7A”.

PART 4

COMMENCEMENT AND TRANSITIONAL PROVISION

Commencement and transitional provision

- 14 (1) The amendments made by Parts 2 and 3 of this Schedule have effect in relation to any land transaction of which the effective date is, or is after, the date on which this Act is passed.
- (2) But those amendments do not have effect in relation to a transaction if –
- (a) the transaction is effected in pursuance of a contract entered into and substantially performed before the date on which this Act is passed, or
 - (b) the transaction is effected in pursuance of a contract entered into before that date and is not excluded by sub-paragraph (3).
- (3) A transaction effected in pursuance of a contract entered into before the date on which this Act is passed is excluded by this subsection if –
- (a) there is any variation of the contract, or assignment (or assignation) of rights under the contract, on or after that date,
 - (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
 - (c) on or after that date there is an assignment (or assignation), subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.
- (4) In this paragraph –
- “purchaser” has the same meaning as in Part 4 of the Finance Act 2003 (see section 43(4) of that Act);
 - “substantially performed”, in relation to a contract, has the same meaning as in that Part (see section 44(5) of that Act).

Explanatory Note

Clause 50 and Schedule: SDLT: property authorised investment funds and co-ownership authorised contractual schemes

Summary

1. This clause and schedule introduce a relief from Stamp Duty Land Tax for the 'seeding' (initial transfer) of properties into Property Authorised Investment Funds (PAIFs) and Co-ownership Authorised Contractual Schemes (CoACSs). The measure also introduces changes to the stamp duty land tax (SDLT) treatment of CoACSs. These amendments come into effect for transactions from the date of Royal Assent to Finance Bill 2016.

Details of the clause and Schedule

Part 1

2. Paragraph 1 of Schedule 1 inserts new section 102A in FA 2003 "Co-ownership authorised contractual schemes" which sets out changes to the treatment of CoACSs for SDLT purposes.
3. Section 102A(1) provides that section 102A(1) applies for the purposes of this part.
4. Section 102A(2) provides that SDLT applies to a CoACS as if:
 - a. it were a company, and
 - b. the rights of the unit holders were shares in the company.
5. Section 102A(3) defines an umbrella CoACS for the purposes of this Part.
6. Section 102A(4) defines a sub-scheme for the purposes of this Part.
7. Section 102A(5) provides for each sub-scheme of an umbrella CoACS to be treated as a separate CoACS for the purposes of this Part
8. Section 102A(6) clarifies the references to chargeable interests and documents of the scheme in relation to a sub-scheme of an umbrella CoACS.
9. Section 102A(7) explains that a non-UK collective investment scheme will be treated as a CoACS for SDLT purposes if it:
 - a. is constituted by a contract under the law of an EEA State other than the UK,
 - b. has a manager incorporated under the law of an EEA State, and

- c. is equivalent to a CoACS under the law of the EEA State,
provided that, without these provisions, no SDLT would arise to the scheme.
10. Section 102A(8) defines the terms 'co-ownership authorised contractual scheme' and 'co-ownership scheme' for this Part.
 11. Section 102A(9) provides a power to make regulations to exclude specified schemes from this SDLT treatment.
 12. Section 102A(10) sets out that a co-ownership authorised contractual scheme is not treated as a company for the purposes of Schedule 7 (group relief reconstruction relief or acquisition relief).
 13. Section 102A(11) provides that, for certain transactions where a CoACS is treated as the purchaser for SDLT purposes, references to the purchaser and/or taxpayer in section 76, 80, 81, 81A, 85, 90 and 108(2) and Schedule 10 are to be read as references to the operator of the scheme so that the operator will have the same responsibilities under those provisions as the purchaser/taxpayer.

Part 2

14. Part 2 of the schedule amends Finance Act (FA) 2003. Paragraph 2 introduces the changes.
15. Paragraph 3 inserts new section 65A into FA 2003.
16. Section 65A (1) and (2) introduce a new schedule 7A to FA 2003 to provide relief from SDLT for seeding of property authorised investment funds (PAIF seeding relief) and co-ownership authorised contractual schemes (CoACS seeding relief).
17. Section 65A (3) requires that the seeding relief must be claimed in a land transaction return or an amendment of a return, and that the claim must be accompanied by a notice to HMRC.
18. Section 65A (4) and (5) set out the requirement that the purchaser confirm in the notice its status as a PAIF or CoACS or equivalent EEA fund.
19. Section 65A (6) enables HMRC to set out the form of the notice and the information required.
20. Paragraph 4 inserts new schedule 7A "Seeding Relief" into FA 2003.
21. Schedule 7A Paragraph 1 (1) to (5) set out the conditions for PAIF seeding relief. Each of conditions A to D must be met:
 - A. The purchaser must be a property AIF.
 - B. The main subject matter of the seeding transaction must be one or more major interests in land.
 - C. The only consideration for the transaction must be the issue of units in the PAIF to the vendor.
 - D. The effective date of the transaction must be a day within the seeding period as defined in paragraph 3.
22. Schedule 7A Paragraph 1(6) explains that relief will be subject to paragraph 4 (restrictions on

availability of PAIF seeding relief) and paragraphs 5 to 8 (withdrawal of PAIF seeding relief) within new schedule 7A FA 2003.

23. Schedule 7A Paragraph 2(1) provides that this paragraph has effect for the purposes of this Schedule.
24. Schedule 7A Paragraph 2(2) defines PAIFs.
25. Schedule 7A Paragraphs 2(3) and (4) define umbrella funds and sub-funds in relation to PAIFs.
26. Schedule 7A Paragraph 2(5) provides that sub-funds are treated as a separate PAIF for the purposes of Schedule 7A.
27. Schedule 7A Paragraph 2(6) explains that in relation to a sub-fund, references to chargeable interests are references to the chargeable interests which form part of the separate pool relating to that sub-fund.
28. Schedule 7A Paragraph 2(7) explains that PAIFs include EEA equivalents of a PAIF for the purposes of seeding relief and defines such equivalents.
29. Schedule 7A Paragraph 3(1) and (2) define the seeding period within which transactions must take place in order to be eligible for relief. It begins with the first property seeding date (as defined at paragraph 3(2)) and ends either 18 months later or, if earlier, at the date of the first external investment into the PAIF as defined at paragraph 3(3).
30. Schedule 7A Paragraph 3(3) defines "external investment" for the definition of seeding period. An external investment is a transfer of non-property assets to the PAIF (e.g. cash or REITs) by a person who has not previously seeded the PAIF with property, an "external investor".
31. Schedule 7A Paragraph 4 sets out restrictions on the availability of seeding relief (where Conditions A to D have already been met).
32. Schedule 7A Paragraph 4(2) explains that relief is not available unless the PAIF has arrangements in place at the date of the seeding transaction requiring a seed investor to notify the PAIF of:
 - a. the beneficial owner of any units received in consideration for seeded property "seeded units", and
 - b. any disposal by the beneficial owner of any PAIF units after the seeding transaction and within 3 years of the end of the seeding period, except where the disposal is to the PAIF.
33. Schedule 7A Paragraph 4(3) explains that relief is not available if arrangements are in place at the effective date of the transaction for the disposal of units which would give rise to subsequent clawback of seeding relief under paragraph 7.
34. Schedule 7A Paragraph 4(4) explains that relief is not available if a seeding transaction is not for bona fide commercial reasons, or form part of arrangements to avoid tax.
35. Schedule 7A Paragraph 5(1) explains that the seeding relief given will be withdrawn if a fund ceases to be a PAIF either during the seeding period or within 3 years of the end of the seeding period (the 'control period'), or under arrangements made during those periods.

36. Schedule 7A Paragraph 5(2) explains that tax will only be withdrawn under Paragraph 5(1) if some or all of the chargeable interest in respect of which the relief was given is still held by the purchaser, or the purchaser still holds an interest derived from that chargeable interest.
37. Schedule 7A Paragraph 5(3) sets out that the amount of SDLT chargeable on the withdrawal of relief under Paragraph 5(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.
38. Schedule 7A Paragraph 5(4) explains the meaning of 'appropriate proportion' in the context of paragraph 5(1), and (3).
39. Schedule 7A Paragraph 6(1) explains that the seeding relief given will be withdrawn if at the end of the seeding period a fund fails to meet the portfolio test.
40. Schedule 7A Paragraph 6(2) sets out that the amount of SDLT chargeable on the withdrawal of relief under Paragraph 6(1) is the SDLT which would have been chargeable in the absence of seeding relief.
41. Schedule 7A Paragraph 6(3) sets out that if the fund meets the portfolio test at the end of the seeding period but fails to meet the test within the 3-year control period (or later, under arrangements entered into during those periods), then the seeding relief will be partially or wholly withdrawn. This paragraph defines "the relevant time" for the rest of paragraph 6 as the time when relief is withdrawn and tax is chargeable as a result.
42. Schedule 7A Paragraph 6(4) explains that relief will only be withdrawn under Paragraph 6(1) if at the relevant time some or all of the property in respect of which the relief was given or an interest derived from it is still held by the purchasing fund.
43. Schedule 7A Paragraph 6(5) sets out that the amount of SDLT chargeable on withdrawal of the relief under Paragraph 6(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.
44. Schedule 7A Paragraph 6(6) explains the meaning of "appropriate proportion" for the purposes of sub-paragraphs (3) and (5).
45. Schedule 7A Paragraph 6(7) defines the "portfolio test" as a requirement to meet either (a) "the non-residential portfolio test" or (b) "the residential portfolio test".
46. Schedule 7A Paragraph 6(8) sets out that to meet the non-residential portfolio test:
 - a. the PAIF must hold at least 10 seeded properties,
 - b. the total chargeable consideration for the seeded properties must be at least £100 million, and
 - c. no more than 10% of that chargeable consideration must relate to residential property.
47. Schedule 7A Paragraph 6(9) sets out that to meet the residential portfolio test:
 - a. the chargeable consideration for the seeded properties must be at least £100 million, and
 - b. the PAIF must hold at least 100 seeded properties which are residential properties.
48. Schedule 7A Paragraph 6(10) defines "seeded interest" and "total chargeable consideration" for the purposes of paragraph 6(8) and (9).

49. Schedule 7A Paragraph 6(11) provides that property is defined as "residential" for the purposes of paragraph 6(8) and (9) without applying Section 116(7) Finance Act 2003. That section would normally treat a transaction in six or more dwellings as a non-residential transaction.
50. Schedule 7A Paragraph 7(1) sets out that seeding relief will be withdrawn and SDLT charged if a seed investor who has claimed seeding relief on a transaction makes a relevant disposal of units either within the seeding period or within the 3-year control period (or later, under arrangements entered into during those periods).
51. Schedule 7A Paragraph 7(2) defines a "relevant disposal" as a disposal where SU exceeds TU.
52. Schedule 7A Paragraph 7(3) defines SU and TU. SU is one of two values.
53. If the total number of PAIF units held immediately before disposal is equal to or greater than the number of seeded units received up until the date of disposal then SU is the number of seeded units received up until the date of disposal (), Otherwise, if the total number of PAIF units held immediately before disposal is lower than the number of seeded units received up until the date of disposal then SU is the number of PAIF units held immediately before disposal.
54. TU is the total number of units in a PAIF held by the vendor immediately after the disposal.
55. Schedule 7A Paragraph 7(4) sets out the formula for calculating the amount of SDLT which will be due in respect of a relevant disposal under paragraph 7(1). This is calculated as:

$$\frac{U}{SNU} \times SDLT$$

where:

- U is the difference between SU and TU.
 - SNU is the total number of seeded units received by the vendor up until the date of the disposal.
 - SDLT is the SDLT which would have been chargeable at the effective date of the relevant transaction in the absence of seeding relief, ignoring any earlier withdrawal of relief.
56. Schedule 7A Paragraph 7(5) defines "the number of seeded units received by V" (for the purposes of the calculation at Paragraph 7(4)) as the number of PAIF units received in respect of a transaction for which seeding relief has been given, regardless of any subsequent withdrawal of relief.
57. Schedule 7A Paragraphs 8(1) and (2) provide that seeding relief is withdrawn and SDLT charged where the relief was given in respect of a dwelling which a "non-qualifying individual" is permitted to occupy. Paragraph 8(1) defines such a dwelling as "the disqualifying dwelling".
58. Schedule 7A Paragraph 8(3) explains that relief will only be withdrawn under Paragraph 8 if the "disqualifying dwelling" or an interest derived from it is still held by the PAIF.
59. Schedule 7A Paragraph 8(4) explains that relief may be withdrawn where a non-qualifying

individual is permitted to occupy a disqualifying dwelling after the end of the 3-year control period where the purchaser fails to meet the genuine diversity of ownership condition set out in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I.2006/964).

60. Schedule 7A Paragraph 8(5) sets out the amount of SDLT chargeable where relief is withdrawn under Paragraph 8. The amount chargeable is the SDLT which would have been chargeable in the absence of seeding relief in respect of the disqualifying dwelling, or an appropriate proportion of it.
61. Schedule 7A Paragraph 8(6) defines the "appropriate proportion" for the purposes of subparagraphs (2) and (5).
62. Schedule 7A Paragraph 9(1) to (7) defines "non qualifying individual" and explains the terms used in the context of this definition. An individual is a non-qualifying individual if they are a major participant in or connected with the PAIF or are connected to such an individual.
63. Schedule 7A Paragraph 10(1) to (5) set out the conditions for CoACS seeding relief. Each of conditions A to D must be met:
 - A. The purchaser is a co-ownership authorised contractual scheme.
 - B. The main subject matter of the seeding transaction is one or more major interests in land.
 - C. The only consideration for the transaction is the issue of units in the co-ownership authorised contractual scheme to the vendor.
 - D. The effective date of the transaction must be a day within the seeding period as defined in paragraph 11.
64. Schedule 7A Paragraph 10(6) explains that relief will be subject to paragraph 12 (restrictions on availability of CoACS seeding relief) and paragraphs 13 to 18 (withdrawal of CoACS relief) within new schedule 7A FA 2003.
65. Schedule 7A Paragraph 11 (1) and (2) define the seeding period within which transactions must take place in order to be eligible for relief. It begins with the first property seeding date (as defined at paragraph 11(2)) and ends either 18 months later or, if earlier, at the date of the first external investment into the CoACS as defined at paragraph 11(3).
66. Schedule 7A Paragraph 11(3) defines "external investment" for the definition of seeding period. An external investment is a transfer of non-property assets to the CoACS (e.g. cash or REITs) by a person who has not previously seeded the CoACS with property.
67. Schedule 7A Paragraph 12 sets out restrictions on the availability of seeding relief (where Conditions A to D have already been met).
68. Schedule 7A Paragraph 12(2) explains that relief is not available unless the arrangements constituting the CoACS at the date of the seeding transaction require a seed investor to notify the operator of the scheme of:
 - a. the beneficial owner of any units received in consideration for seeded property, "seeded units", and
 - b. any disposal by the beneficial owner of any CoACS units after the seeding transaction and

within 3 years of the end of the seeding period, except where the disposal is to the scheme.

69. Schedule 7A Paragraph 12(3) explains that relief is not available if arrangements are in place at the effective date of the transaction for the disposal of units which would give rise to subsequent withdrawal of seeding relief under paragraph 17.
70. Schedule 7A Paragraph 12(4) explains that relief is not available if a seeding transaction is not for bona fide commercial reasons, or forms part of arrangements to avoid tax.
71. Schedule 7A Paragraph 13(1) explains that the seeding relief given will be clawed back if a fund ceases to be a CoACS either during the seeding period or within 3 years of the end of the seeding period ("the control period"), or under arrangements made during those periods.
72. Schedule 7A Paragraph 13 (2) explains that relief will only be withdrawn under Paragraph 13(1) if some or all of the chargeable interest in respect of which the relief was given is still held by the purchaser, or the purchaser still holds an interest derived from that chargeable interest.
73. Schedule 7A Paragraph 13(3) sets out that the amount of SDLT chargeable on withdrawal of relief under Paragraph 5(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.
74. Schedule 7A Paragraph 13 (4) explains the meaning of "appropriate proportion" in the context of paragraph 13(1) and (3).
75. Schedule 7A Paragraph 14(1) sets out that where an investor who has claimed seeding relief on a transaction and the genuine diversity of ownership condition is not met either immediately before the end of the seeding period or within the 3 year control period (or later under arrangements entered into during those periods) then the seeding relief will be withdrawn.
76. Schedule 7A Paragraph 14(2) explains that relief will only be withdrawn under Paragraph 14(1) if the CoACS holds chargeable interests that were acquired by it as part of the transaction for which seeding relief was claimed or derived from such an interest.
77. Schedule 7A Paragraph 14(3) sets out that the amount of SDLT chargeable on withdrawal of relief under Paragraph 14(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.
78. Schedule 7A Paragraph 14(4) explains the meaning of "appropriate proportion" in the context of paragraph 14(1) and (3).
79. Schedule 7A Paragraph 15 (1) to (7) set out the conditions for genuine diversity of ownership for CoACS, relating to:
 - the information contained in documents produced by the scheme which are made available to investors and HMRC,
 - limits or deterrents imposed on investors or participation in the scheme,
 - the marketing of the units in the scheme,

and explains terms used in the genuine diversity of ownership condition.

80. Schedule 7A Paragraph 15(8) provides that a CoACS meets the genuine diversity of ownership conditions if there is a feeder fund in relation to the CoACs that meets those conditions.
81. Schedule 7A Paragraph 15(9) defines "connected persons" for the purposes of the Paragraph.
82. Schedule 7A Paragraph 16(1) explains that the seeding relief given will be withdrawn if at the end of the seeding period a fund fails to meet the portfolio test.
83. Schedule 7A Paragraph 16(2) sets out that the amount of SDLT chargeable on withdrawal of relief under Paragraph 16(1) is the SDLT which would have been chargeable in the absence of seeding relief.
84. Schedule 7A Paragraph 16(3) sets out that if the fund meets the portfolio test at the end of the seeding period but fails to meet the test within the 3-year control period (or later, under arrangements entered into during those periods), then the seeding relief will be withdrawn. This paragraph defines the "relevant time" as the time when relief is withdrawn and tax is chargeable as a result.
85. Schedule 7A Paragraph 16(4) explains that tax will only be chargeable under Paragraph 16(1) if some or all of the property in respect of which the relief was given is still held by the purchasing fund, or the fund still holds an interest derived from the property.
86. Schedule 7A Paragraph 16(5) sets out that the amount of SDLT chargeable on withdrawal of relief under Paragraph 16(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.
87. Schedule 7A Paragraph 16(6) explains the meaning of "appropriate proportion" in the context of paragraph 16(3), and (5).
88. Schedule 7A Paragraph 16(7) explains that the portfolio test is a requirement that the scheme meets either the non-residential and residential portfolio tests at Paragraph 16(8) and 16(9).
89. Schedule 7A Paragraph 16(8) sets out that to meet the non-residential portfolio test:
 - a. the CoACS must hold at least 10 seeded properties,
 - b. the total chargeable consideration for the seeded properties must be at least £100 million, and
 - c. no more than 10% of that chargeable consideration must relate to residential property.
90. Schedule 7A Paragraph 16(9) sets out that to meet the residential portfolio test:
 - a. the chargeable consideration for the seeded properties must be at least £100 million, and
 - b. the CoACS must hold at least 100 seeded properties which are residential properties.
91. Schedule 7A Paragraph 16(10) defines "seeded interest" and "chargeable consideration" for the purposes of paragraph 16(8) and (9).
92. Schedule 7A Paragraph 16(11) provides property is defined as 'residential' for the purposes of paragraph 6(8) and (9) without applying Section 116(7) Finance Act 2003. That section would normally treat a transactions in six or more dwellings as a non-residential transaction.

93. Schedule 7A Paragraph 17(1) sets out that there will be a withdrawal of seeding relief if a seed investor who has claimed seeding relief on a transaction makes a relevant disposal of units either within the seeding period or within the 3-year control period (or later, under arrangements entered into during those periods).
94. Schedule 7A Paragraph 17 (2) defines a 'relevant disposal' as a disposal where SU exceeds TU.
95. Schedule 7A Paragraph 17(3) defines SU and TU. SU is one of two values:
- If the total number of CoACS units held immediately before disposal is equal to or greater than the number of seeded units received up until the date of disposal then SU is the number of seeded units received up until the date of disposal.
 - Otherwise, if the total number of CoACS units held immediately before disposal is lower than the number of seeded units received up until the date of disposal then SU is the number of CoACS units held immediately before disposal.

TU is the total number of units in a CoACS held by the vendor immediately after the disposal.

96. Schedule 7A Paragraph 17(4) sets out the formula for calculating the SDLT chargeable on withdrawal of relief in respect of a relevant disposal under paragraph 17(1).
97. This is calculated as:

$$\frac{U}{SNU} \times SDLT$$

where:

- U is the difference between SU and TU.
 - SNU is the total number of seeded units received by the vendor up until the date of the disposal.
 - SDLT is the SDLT which would have been chargeable at the effective date of the relevant transaction in the absence of seeding relief, ignoring any earlier withdrawal of relief.
98. Schedule 7A Paragraph 17(5) defines the "number of seeded units received by V" (for the purposes of the calculation at Paragraph 7(4)) as the number of CoACS units received in respect of a transaction for which seeding relief has been given, regardless of any subsequent withdrawal of relief.
99. Schedule 7A Paragraphs 18(1) and (2) provide that seeding relief is withdrawn where it was given in respect of a dwelling which a "non-qualifying individual" is subsequently permitted to occupy. Paragraph 18(1) defines such a dwelling as the disqualifying dwelling.
100. Schedule 7A Paragraph 18(3) explains that tax will be withdrawn under Paragraph 18 if the "disqualifying dwelling" or an interest derived from it is still held by the CoACS.
101. Schedule 7A Paragraph 18(4) explains that relief may be withdrawn where a non-qualifying individual is permitted to occupy a disqualifying dwelling after the end of the 3-year control

period, where the purchaser fails to meet the genuine diversity of ownership condition.

102. Schedule 7A Paragraph 18(5) sets out that the amount of SDLT chargeable on withdrawal of relief under Paragraph 18 is the SDLT which would have been chargeable in the absence of seeding relief in respect of the disqualifying dwelling, or an appropriate proportion of it.
103. Schedule 7A Paragraph 18(6) explains the meaning of "appropriate proportion" in the context of paragraph 18(2) and (5).
104. Schedule 7A Paragraph 19(1) to (7) defines "non qualifying individual" and explains the terms used in the context of this definition. An individual is a non-qualifying individual if they are a major participant in the scheme, connected with the operator or depositary of the scheme, or are connected to such an individual
105. Part 3 of Schedule 7A contains explanation of the interpretation of terms used in Schedule 7A.
106. Schedule 7A Paragraph 20 contains definitions of a "feeder fund" of a PAIF and a CoACS and units in the PAIF and CoACSs.
107. Schedule 7A Paragraph 21 contains explanations of other terms used in Schedule 7A.

Part 3

108. Part 3 makes consequential amendments to FA 2003. Paragraph 5 introduces the amendments.
109. Paragraph 6 inserts a reference to Schedule 7A into subsection 75C(4).
110. Paragraph 7 inserts references to Schedule 7A into amends section 81 FA 2003 to provide when a further return is required where relief is withdrawn for a PAIF or CoACS.
111. Paragraph 8 inserts references to Schedule 7A into section 86 FA 2003 to provide for payment of tax on a withdrawal of PAIFs seeding relief or CoACS seeding relief.
112. Paragraph 9 inserts references to Schedule 7A into section 87 FA 2003 to provide for interest payable in a withdrawal of PAIFs seeding relief or CoACS seeding relief.
113. Paragraph 10 amends section 121 FA 2003 to insert a definition of "operator" in relation to CoACS.
114. Paragraph 11 amends section 122 FA 2003 to insert certain defined expressions used in this Schedule.
115. Paragraph 12 amends paragraph 2(6) of Schedule 4B FA 2003 to insert a reference to Schedule 7A.
116. Paragraph 13 amends paragraph 2(4)(b) of amends schedule 6B FA 2003 to insert a reference to Schedule 7A.

Part 4

117. Part 4 makes commencement and transitional provisions.
118. Sub-paragraph 14(1) provides that the amendments made by Parts 2 and 3 of this Schedule have effect in relation to any land transaction with an effective date on or after the date on

which this Act is passed.

119. Sub-paragraph 14(2) provides that the amendments do not have effect for transactions effected under a contract entered into and substantially performed before the date on which this Act is passed or transactions effected under a contract entered into before the date on which this Act is passed and not excluded by sub-paragraph (3).
120. Sub-paragraph 14(3) outlines the circumstances in which a transaction effected under a contract entered into before the date on which the Act is passed is excluded.
121. Sub-paragraph 14(4) explains that in Paragraph 14, the terms "purchaser" and "substantially performed" have the same meaning as in sections 43(4) and 44(5) respectively of FA 2003.

Background note

122. SDLT was introduced in Part 4 of Finance Act (FA) 2003 for transactions in land from 1 December 2003. The tax applies to land transactions which are defined as any acquisition of a chargeable interest. A chargeable interest is any interest in land in the UK. The transfer of property into a PAIF, including 'seeding' it with a start-up property portfolio, is currently subject to SDLT as the PAIF acquires an interest in land.
123. Properties held in existing PAIFs or certain types of collective investment schemes (CISs) can be transferred into a new PAIF without a charge to SDLT. However any properties transferred into a PAIF that are not held in such a scheme or fund will be subject to SDLT.
124. CoACs are collective investment schemes which are "transparent" for SDLT purposes; unit holders are the beneficial owners of the scheme assets. When units in a CoACS are acquired or transferred, this gives rise to a change in ownership of the underlying units and consequently a charge to SDLT on all unit holders.
125. The government is keen to ensure that the UK has a framework for fair and appropriate taxation for property funds, and recognises that the way SDLT applies to these funds is perceived by the industry as a barrier to their effective use. These changes will improve UK competitiveness in this area and encourage more funds to be managed and domiciled in the UK.
126. The legislation introduced by this measure aims to remove barriers to the use of CoACs by treating these funds as companies for SDLT purposes so that SDLT does not apply to transfers of CoACS units. The legislation also introduces a new seeding relief for PAIFs and CoACs to enable the initial transfer of a "seed" property portfolio into these funds without a charge to SDLT.
127. The legislation includes anti-avoidance measures to limit the application of the relief to authorised funds with a broad base of investors and a sizeable portfolio of seeded properties. This aims to minimise SDLT avoidance via the "enveloping" of properties within such funds.
128. If you have any questions about this change, or comments on the legislation, please contact Catherine Dampier on 03000 585945 (email: catherine.dampier@hmrc.gsi.gov.uk)

51 SDLT higher rate: properties occupied by certain employees etc

- (1) Schedule 4A to FA 2003 (SDLT: higher rate for certain transactions) is amended as follows.
- (2) In paragraph 5D (dwellings for occupation by certain employees etc) –
 - (a) in sub-paragraph (1), for “trade” substitute “business”;
 - (b) in sub-paragraph (2)(b) for “trade” substitute “business”;
 - (c) In sub-paragraph (4) for ““Relievable trade” means a trade” substitute ““Relievable business” means a trade or property rental business”.
- (3) The heading before paragraph 5D becomes “*Dwellings for occupation by certain employees etc of a relievable business*”.
- (4) After paragraph 5E insert –

“Acquisition by management company of flat for occupation by caretaker

5EA (1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest in or over a flat which –

- (a) is one of at least three flats contained in the same premises, and
- (b) is acquired by a tenants’ management company for the purpose of making the flat available for use as caretaker accommodation.

(2) For the purposes of this paragraph a tenants’ management company makes a flat available for use “as caretaker accommodation” if it makes it available to an individual for use as living accommodation in connection with the individual’s employment by the company as caretaker of the premises.

(3) In relation to the acquisition of a flat, a company is a “tenants’ management company” if –

- (a) the tenants of two or more other flats contained in the premises are members of the company, and
- (b) the company owns, or it is intended that the company will acquire, the freehold of the premises;

but a company which carries on a relievable business is not a tenants’ management company.

(4) In this paragraph “premises” means premises constituting the whole or part of a building.”

- (5) After paragraph 5J insert –

“5JA(1) This paragraph applies where relief under paragraph 5EA (acquisition by management company of flat for occupation by caretaker) has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.

(2) The relief is withdrawn if at any time in the period of three years beginning with the effective date of the chargeable transaction the purchaser holds the higher threshold interest otherwise than for the

purpose of making the flat available for use as caretaker accommodation.

- (3) For the purposes of this paragraph a tenants' management company makes a flat available for use "as caretaker accommodation" if it makes it available to an individual for use as living accommodation in connection with the individual's employment by the company as caretaker of the premises."
- (6) In paragraph 5E (meaning of "qualifying partner", "qualifying employee" etc) –
- (a) in sub-paragraph (1) for "trade" substitute "business";
 - (b) in sub-paragraph (2) for "qualifying trade" substitute "relievable business";
 - (c) in sub-paragraph (4) –
 - (i) in the words before paragraph (a), for "trade" substitute "relievable business";
 - (ii) in paragraph (a)(i), for "trade" substitute "relievable business".
- (7) In paragraph 5J (withdrawal of relief under paragraph 5D), in sub-paragraph (3) –
- (a) in paragraph (a), after "trade" insert "or property rental business";
 - (b) in paragraph (c), after "trade" insert "or property rental business".
- (8) In paragraph 6G (withdrawal of relief under paragraph 5D in cases involving alternative finance arrangements), in sub-paragraph (4) –
- (a) in paragraph (a), for "qualifying trade" substitute "relievable business";
 - (b) in paragraph (c) for "trade" substitute "relievable business".
- (9) In paragraph 9 (interpretation), at the appropriate place insert –
"“relievable business” has the meaning given by paragraph 5D(4).”
- (10) The amendments made by this section have effect in relation to any land transaction of which the effective date is on or after 1 April 2016.

Explanatory Note

Clause 51: SDLT higher rate: properties occupied by certain employees etc

Summary

1. This measure introduces new reliefs from the 15% higher rate of stamp duty land tax (SDLT) where a property is purchased for the purpose of providing living accommodation either to an employee of a qualifying property rental business, or to a caretaker of a building who is employed by a tenant-run management company.

Details of the clause

2. Subsection (1) amends Schedule 4A to Finance Act 2003.
3. Subsection (2) amends paragraph 5D of Schedule 4A of Finance Act 2003 so that relief from the higher rate of stamp duty land tax (SDLT) is not only available where a property is acquired for the purposes of providing living accommodation to an employee of a trade, but also where it is acquired for the purposes of providing living accommodation to an employee of a property rental business.
4. Subsection (3) amends the heading before paragraph 5D.
5. Subsection (4) inserts new paragraph 5EA into Schedule 4A of Finance Act 2003 to provide relief in relation to the acquisition by a tenants' management company, of a flat for occupation by caretaker.
6. New paragraph 5EA(1) provides that relief is available from the higher rate of SDLT in relation to the acquisition of a higher threshold interest in a flat where two conditions are met. These are:
 - the flat is one of at least 3 flats contained in the same premises, and
 - it is acquired by the tenants' management company for the purpose of making it available for use as caretaker accommodation.
7. New paragraph 5EA(2) provides that a tenants' management company makes a flat available for use as caretaker accommodation if it makes it available to an individual for use as living accommodation in connection with that individual's employment by the company as caretaker of the premises.
8. New paragraph 5EA(3) provides that a company is a 'tenants' management company' where:
 - the tenants of at least two of the other flats in the premises are members of the

management company,

- the company owns, or intends to acquire, the freehold of the premises, and
 - the company does not carry on a relievable business.
9. New paragraph 5EA (4) defines the term 'premises' as the whole or part of the building which contains the flat.
 10. Subsection (5) inserts new paragraph 5JA into schedule 4A of Finance Act 2003.
 11. New paragraph 5JA(1) and (2) provides that relief claimed under new paragraph 5EA above will be withdrawn if, at any time within 3 years of the effective date of transaction, the flat is held for any purpose other than to provide caretaker living accommodation.
 12. New paragraph 5JA(3) provides that a tenant's management company makes a flat available for use 'as caretaker accommodation' if it makes it available to an individual for use as living accommodation in connection with that individual's employment by the company as caretaker of the premises.
 13. Subsections (6) to (9) make consequential amendments to paragraphs 5E, 5J, 6G and 9 as a consequence of new paragraphs 5EA and 5JA.
 14. Subsection (10) provides that these changes have effect in relation to any land transaction on or after 1 April 2016.

Background note

15. Schedule 4A Finance Act 2003 provides for the 15 per cent higher rate charge to SDLT. This charge applies to the acquisition of a 'higher threshold interest' by a 'non-natural person' – that is, a company, a partnership with a corporate member, or a collective investment scheme. A 'higher threshold interest' is defined as an interest in a single dwelling (together with appurtenant rights) to which chargeable consideration of more than £500,000 is attributable. There are a number of reliefs available aimed at genuine business acquisitions which can reduce the charge to the standard rate of SDLT. Relief is withdrawn if, at any time within a period of 3 years from the date of transaction, the property is held for any purpose other than those for which relief was given.
16. This clause makes amendments to Schedule 4A FA 2003 (SDLT: higher rate for certain transactions) to align the available reliefs and withdrawal provisions under the SDLT legislation with similar new reliefs being introduced by clause 54 for the annual tax on enveloped dwellings.
17. A new relief from the higher rate of SDLT will be available where a property is purchased for the purposes of providing living accommodation to an employee of a qualifying property rental business, that is, one run on a commercial basis and with a view to profit.
18. In addition, relief will also be available from the higher rate where a tenant run management company purchases a flat for a caretaker who will be employed to manage and maintain the building (e.g. a block of flats).
19. If you have any questions about this change, or comments on the legislation, please contact

Jane Ewart on 03000 585790 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk)

52 SDLT higher rate: acquisition under regulated home reversion plan

- (1) Schedule 4A to FA 2003 (SDLT: higher rate for certain transactions) is amended as follows.
- (2) After paragraph 5C insert –

“Acquisition under a regulated home reversion plan

5CA (1) Paragraph 3 does not apply to a chargeable transaction if (and so far as) the purchaser –

- (a) is an authorised plan provider, and
- (b) acquires the subject-matter of the chargeable transaction as a plan provider.

(2) For the purposes of this paragraph the purchaser acquires the subject-matter of the chargeable transaction “as a plan provider” so far as the purchaser acquires it under a regulated home reversion plan which the purchaser enters into as plan provider.

(3) In this paragraph –

“authorised plan provider” means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom the regulated activity specified in article 63B(1) of the Regulated Activities Order (entering into regulated home reversion plan as plan provider);

“the Regulated Activities Order” means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544);

“regulated home reversion plan” means an arrangement which is a regulated home reversion plan for the purposes of Chapter 15A of Part 2 of the Regulated Activities Order.

(4) In this section references to entering into a regulated home reversion plan “as plan provider” are to be interpreted as if the references were in the Regulated Activities Order.”

(3) After paragraph 5I insert –

“5IA(1) This paragraph applies where relief under paragraph 5CA (acquisition under a regulated home reversion plan) has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.

(2) The relief is withdrawn if at any time in the period of three years beginning with the effective date of the chargeable transaction the purchaser holds the higher threshold interest otherwise than for the purposes of the regulated home reversion plan (as defined in paragraph 5CA).

(3) But sub-paragraph (2) does not apply if –

- (a) after ceasing to hold the higher threshold interest otherwise than for the purposes of the regulated home reversion plan, the purchaser sells the higher threshold interest without delay (except so far as delay is justified by commercial considerations or cannot be avoided), and

(b) at no time when the higher threshold interest is held by the purchaser as mentioned in sub-paragraph (2) is the dwelling (or any part of the dwelling) occupied by a non-qualifying individual.

(4) In this paragraph—

“the dwelling” means the dwelling to which the relief under paragraph 5CA relates;

“non-qualifying individual” is to be interpreted in accordance with paragraph 5A.”

(4) The amendments made by this section have effect in relation to any land transaction of which the effective date is on or after 1 April 2016.

Explanatory Note

Clause 52: SDLT higher rate - acquisition under a regulated home reversion plan

Summary

1. This measure introduces a new relief from the 15% higher rate of stamp duty land tax (SDLT) where a purchaser acquires the whole or part of a dwelling exclusively for the purposes of entering into an equity release scheme, specifically a home reversion plan.

Details of the clause

2. Subsection (1) amends Schedule 4A to Finance Act 2003.
3. Subsection (2) inserts new paragraph 5CA into Schedule 4A of Finance Act 2003.
4. New paragraphs 5CA(1) and (2) provide that relief from the higher rate of SDLT is available where the purchaser is an authorised plan provider, and acquires an interest in a dwelling as plan provider for the purposes of entering into a regulated home reversion plan.
5. New paragraph 5CA(3) defines the terms:
 - "authorised plan provider" means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom the activity specified in article 63B(1) of the Regulated Activities order, that is entering into a regulated Home Reversion Plan.
 - "the Regulated Activities Order" means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544).
 - "regulated home reversion plan" means an arrangement regulated by Chapter 15A of Part 2 of the Regulated Activities Order.
6. New paragraph 5CA(4) provides that references to entering into a regulated home reversion plan as "plan provider" are to be taken to mean those in the Regulated Activities Order S.I. 2001/544.
7. Subsection (3) inserts new paragraph 5IA into Schedule 4A of Finance Act 2003
8. New paragraph 5IA(1) and (2) provides that relief claimed under paragraph 5CA above is withdrawn if, at any time within 3 years of the effective date of the transaction, the purchaser holds the interest otherwise than for the purposes of a regulated home reversion plan.
9. New paragraph 5IA(3) provides that relief will continue to be available if, after the purchaser

ceases to hold the interest in the dwelling for the purposes of a regulated home reversion plan, the purchaser sells the interest without undue delay (except so far as the delay is justified by commercial considerations or cannot be avoided), and that no non-qualifying individual is permitted to occupy the dwelling.

10. New paragraph 5IA(4) defines "the dwelling" as the dwelling to which relief is available under paragraph 5CA above, and a "non-qualifying individual" in accordance with paragraph 5A of Schedule 4A, Finance Act 2003.
11. Subsection (4) provides that these changes come into effect for any land transaction where the effective date is on or after 1 April 2016.

Background note

12. The 15% higher rate of SDLT applies to the acquisition of a 'higher threshold interest' by a company, a partnership with at least one company member, or a collective investment scheme. A higher threshold interest is defined as an interest in a single-dwelling (together with appurtenant rights) to which the chargeable consideration is more than £500,000. There are a number of reliefs available aimed at genuine business acquisitions which can reduce the charge to the standard rate of SDLT. Relief is withdrawn if, within the period of 3 years from the effective date of transaction, the interest is held for any purpose other than those for which the relief was given.
13. Under certain equity release schemes (specifically, home reversion plans) an individual sells to the equity release scheme company, all or part of their property in exchange for an annuity or lump sum, and a lifetime tenancy. The individual can live in the property until death, or on entering into long term care, at which point the property is sold. In such an arrangement, the interest in the property acquired by the equity release scheme company will be liable to the 15% higher rate of SDLT. Currently no relief from the higher rate exists for such an arrangement.
14. This clause introduces new legislation to provide relief from the higher rate of SDLT for entities which acquire an interest in a dwelling as a result of entering into a regulated home reversion plan (as described in the 'Regulated Activities Order 2001' (SI 2001/544)), and where that entity is authorised under the Financial Services and Markets Act 2000 to enter into such plans.
15. Where the last individual living in the property either dies or goes into long term care, the property must be sold without undue delay (or any delay must be justified by commercial considerations or cannot be avoided) otherwise relief will be withdrawn. Similarly, relief is withdrawn if a "non-qualifying individual" is permitted to occupy the property. A non-qualifying individual is a person who has an interest in the property, or a person connected to the person who has an interest in the property.
16. Clause 55 introduces a similar relief from the annual tax on enveloped dwellings.
17. If you have any questions about this change, or comments on the legislation, please contact Jane Ewart on 03000 585790 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

53 SDLT higher rate: dwelling converted to use for trade purposes etc

(1) Schedule 4A to FA 2003 (SDLT: higher rate for certain transactions) is amended in accordance with subsections (2) to (6).

(2) After paragraph 5A insert –

“Conversion or demolition and use for trade purposes

5AA(1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest which is acquired exclusively for the purposes of –

- (a) conversion of the building for use, otherwise than as a dwelling, for the purposes of a relievable trade, or
- (b) permanent demolition of the dwelling in preparation for using the land for the purposes of a relievable trade.

(2) For the purposes of this paragraph a trade is a “relievable trade” if at the effective date of the chargeable transaction the purchaser is carrying it on on a commercial basis and with a view to profit.

(3) In this paragraph –

“the building” means the building or part of a building which counts as a dwelling by virtue of paragraph 7;

“permanent demolition” means demolition where the dwelling is not replaced by another dwelling.”

(3) After paragraph 5G insert –

“5GA(1) Relief allowed under paragraph 5AA (conversion or demolition and use for trade purposes) in respect of a chargeable transaction is withdrawn if sub-paragraph (2) or (4) applies.

(2) This sub-paragraph applies if the building is used as a dwelling at any time in the period of three years beginning with the effective date of the chargeable transaction.

(3) But the times referred to in sub-paragraph (2) do not include times when the purchaser no longer has a chargeable interest in or over the dwelling.

(4) This sub-paragraph applies if at the end of the period of three years beginning with the effective date of the chargeable transaction –

- (a) the purchaser has a chargeable interest in or over the land concerned, and
- (b) the conversion mentioned in paragraph 5AA(1)(a) or (as the case requires) the demolition mentioned in paragraph 5AA(1)(b) has not started.

(5) In this paragraph “the building” is to be interpreted in accordance with paragraph 5AA(3).”

(4) In paragraph 6A –

(a) in sub-paragraph (4), after “5(1),” insert “5AA(1),”;

(b) in sub-paragraph (5), after “5(1),” insert “5AA(1)”.

(5) In paragraph 6C, in sub-paragraph (2)(b), after “5(1),” insert “5AA(1),”.

(6) After paragraph 6E insert—

“6EA(1) This paragraph applies where relief under paragraph 5AA (conversion or demolition and use for trade purposes) has been allowed, in accordance with paragraph 6A(4), with respect to the purchase of a major interest in land.

(2) Paragraph 5GA applies in relation to that relief as if in subparagraphs (3) and (4) of that paragraph the references to “the purchaser” were to the purchaser under the second transaction.

(3) In this paragraph “the second transaction” has the same meaning as in section 71A, or 73 (as the case requires).”

(7) The amendments made by subsections (1) to (6) have effect in relation to any land transaction of which the effective date is on or after 1 April 2016.

(8) If any such a land transaction is a land transaction in relation to which section 29 of the Scotland Act 2012 does not have effect, Schedule 4A to FA 2003 has effect in relation to that land transaction as if paragraph 6EA of that Schedule were modified as follows—

“6EA(1) This paragraph applies where relief under paragraph 5AA (conversion or demolition and use for trade purposes) has been allowed, in accordance with paragraph 6A(4) or 6B(3), with respect to the purchase of a major interest in land.

(2) Paragraph 5GA applies in relation to that relief as if in subparagraphs (3) and (4) of that paragraph the references to “the purchaser” were to the relevant person.

In this sub-paragraph “the relevant person” means the person (other than the financial institution) who enters into the arrangements mentioned in section 71A(1), 72(1), 72A(1) or 73(1).”

Explanatory Note

Clause 53: SDLT higher rate: dwelling converted to use for trade purposes etc

Summary

1. This measure introduces new reliefs from the 15% higher rate of Stamp Duty Land Tax (SDLT) in circumstances where the purchaser, in the course of running a trade, acquires a dwelling for the purposes of either converting the building for use other than as a dwelling, or for permanent demolition.

Details of the clause

2. Subsection (1) amends Schedule 4A to Finance Act 2003.
3. Subsection (2) inserts new paragraph 5AA into Schedule 4A of Finance Act 2003.
4. New paragraph 5AA(1) provides that relief is available from the higher rate of SDLT in relation to the acquisition of an interest in dwelling where it is acquired exclusively for
 - conversion into non-residential use for the purposes of a relievable trade, or
 - permanent demolition of the dwelling in preparation for using the land for the purposes of a relievable trade.
5. New paragraph 5AA(2) provides that a trade is 'relievable trade' if, at the effective date of the transaction, the purchaser is carrying it on on a commercial basis with a view to profit.
6. New paragraph 5AA(3) defines the terms 'the building' as being the same as in paragraph 7, of schedule 4A FA 2003, and 'permanent demolition' as being where the dwelling is not replaced by another dwelling.
7. Subsection (3) inserts new paragraph 5GA into schedule 4A of Finance Act 2003.
8. New paragraph 5GA(1) provides that the relief claimed under paragraph 5AA above (conversion or demolition) will be withdrawn if sub-paragraphs (2) or (4) applies.
9. New paragraph 5GA(2) provides that relief is withdrawn if, at any time within 3 years of the effective date of the transaction the property is used as a dwelling.

New paragraph 5GA(3) provides that, subparagraph (2)) will not apply where the purchaser no longer has a chargeable interest in the dwelling.
10. New paragraph 5G(4) provides that relief is withdrawn if, at the end of a period of 3 years beginning with the effective date of the transaction, conversion or demolition has not begun.

11. New paragraph 5GA(5) defines the term 'the building' as the same as that in new paragraph 5AA(3).
12. Subsections (4) and (5) make consequential amendments to paragraphs 6A and 6C of Schedule 4A Finance Act 2003, as a consequence of new paragraph 5AA.
13. Subsection (6) inserts new paragraph 6EA into schedule 4A of Finance Act 2003, which modifies the withdrawal of relief provisions under new paragraph 5GA above to apply to transactions entered into as part of an alternative property finance arrangement.
14. Subsection (7) provides that these changes have effect for any land transaction where the effective date is on or after 1 April 2016.
15. Subsection (8) modifies new paragraph 6EA where paragraph 29 of the Scotland Act 2012 applies to treat a transaction as liable to stamp duty land tax and not land and buildings transaction tax.

Background note

16. Schedule 4A Finance Act 2003 provides for the 15 per cent higher rate charge to SDLT. This charge applies to the acquisition of a 'higher threshold interest' by a 'non-natural person' – that is, a company, a partnership with a corporate member, or a collective investment scheme. A 'higher threshold interest' is defined as an interest in a single dwelling (together with appurtenant rights) to which chargeable consideration of more than £500,000 is attributable. There are a number of reliefs available aimed at genuine business acquisitions which can reduce the charge to the standard rate of stamp duty land tax. Relief is withdrawn if, at any time within the period of 3 years from the date of transaction, the property is held for any purpose other than those for which the relief was given.
17. This measure introduces a new relief which will apply where a purchaser is carrying on a relievable trade and acquires a dwelling for the purposes of either converting the building for use other than as a dwelling, or for permanently demolishing the building to prepare the land for use in the relievable trade. The measure also provides for the relief to be withdrawn if the conditions are not met throughout the period of three years after the property was acquired.
18. If you have any questions about this change, or comments on the legislation, please contact Jane Ewart on 03000 585790 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

54 ATED: properties occupied by certain employees etc

- (1) Part 3 of FA 2013 (annual tax on enveloped dwellings) is amended as follows.
- (2) Section 145 (occupation by certain employees or partners) is amended in accordance with subsections (3) to (5).
- (3) In subsection (1) –
 - (a) in paragraph (b), after “qualifying trade” insert “or qualifying property rental business”;
 - (b) in paragraph (d) for “trade” substitute “qualifying trade or qualifying property rental business”.
- (4) After subsection (4) insert –

“(5) For the meaning of “qualifying property rental business” see section 133(3).”
- (5) The heading of that section becomes “**Occupation by employees or partners of a qualifying trade or property rental business**”.
- (6) In section 146 (meaning of “qualifying employee” and “qualifying partner” in section 145) –
 - (a) in subsection (1), after “trade” insert “or property rental business”;
 - (b) in subsection (2) –
 - (i) in the words before paragraph (a), after “qualifying trade” insert “or qualifying property rental business”, and
 - (ii) in paragraph (a)(i), after “trade” insert “or (as the case may be) property rental business”.
- (7) After section 147 insert –

“147A Caretaker flat owned by management company

- (1) A day in a chargeable period is relievably in relation to a single-dwelling interest if the dwelling in question is a flat in relation to which the conditions in subsection (2) are met.
- (2) The conditions are that on that day –
 - (a) a company (“the management company”) holds the single-dwelling interest for the purpose of making the flat available as caretaker accommodation,
 - (b) the flat is contained in premises which also contain two or more other flats,
 - (c) the tenants of at least two of the other flats in the premises are members of the management company,
 - (d) the management company owns the freehold of the premises, and
 - (e) the management company is not carrying on a trade or property rental business.
- (3) For the purposes of subsection (2), the management company makes a flat available “as caretaker accommodation” if it makes it available to an individual for use as living accommodation in connection with the individual’s employment by the company as caretaker of the premises.
- (4) In this section “premises” means premises constituting the whole or part of a building.”

-
- (8) In section 116 (dwelling in grounds of another dwelling), in the list in subsection (6) –
- (a) in the entry relating to section 145, for “certain employees or partners” substitute “employees or partners of a qualifying trade or property rental business”;
 - (b) at the appropriate place insert –
“section 147A (caretaker flat owned by management company);”.
- (9) In section 117 (dwellings in the same building), in the list in subsection (5) –
- (a) in the entry relating to section 145, for “certain employees or partners” substitute “employees or partners of a qualifying trade or property rental business”;
 - (b) at the appropriate place insert –
“section 147A (caretaker flat owned by management company);”.
- (10) In section 132 (effect of reliefs under sections 133 to 150), in the list in subsection (3) –
- (a) in the entry relating to section 145, for “certain employees or partners” substitute “employees or partners of a qualifying trade or property rental business”;
 - (b) at the appropriate place insert –
“section 147A (caretaker flat owned by management company);”.
- (11) In section 159A (relief declaration returns), in the table in subsection (9), in the entry relating to section 145, for “(dwellings used for trade purposes: occupation by certain employees or partners)” substitute “or 147A (occupation by certain employees etc)”.
- (12) The amendments made by this section have effect for chargeable periods beginning or after 1 April 2016.

Explanatory Note

Clause 54: ATED: properties occupied by certain employees etc

Summary

1. This measure introduces new relief from ATED where a property (a single-dwelling interest) is occupied either by an employee of a qualifying property rental business or where one of the flats in a building is occupied by a caretaker as living accommodation in connection with his employment by the tenants' management company.

Details of the clause

2. Subsection (1) amends Part 3 of Finance Act 2013.
3. Subsections (2) to (5) amend section 145 of Finance Act 2013 so that relief is not only available to an employee of a qualifying trade, but also to an employee of a qualifying property rental business.
4. Subsection (6) amends section 146 of Finance Act 2013 and amends the definition of a "qualifying employee" and "qualifying partner" to include an employee/partner of a qualifying property rental business.
5. Subsection (7) inserts a new section 147A into Finance Act 2013 to provide relief where a flat is occupied by a caretaker employed by a tenant run management company.
6. New section 147A(1) provides that relief is available for any day in a chargeable period where a single-dwelling interest is a flat and the conditions in section 147A(2) are met.
7. New section 147A(2) sets out the conditions that must apply, which are :
 - the management company holds the single-dwelling interest (i.e. the flat) for the purposes of making it available as caretaker accommodation;
 - the premises containing the flat also consist of two or more other flats;
 - the tenants of at least two of the other flats in the premises are members of the management company;
 - the management company owns the freehold of the premises;
 - the management company is not carrying on a trade or property rental business.

8. New section 147A(3) provides that for the purposes of section 147A(2), the flat is made available "as a caretaker accommodation" if it is made available to an individual for use as living accommodation in connection with that individual's employment by the company as caretaker of the premises.
9. New section 147A(4) provides that 'premises' means the whole or part of the building which contains the flat.
10. Subsections (8) to (10) make consequential amendments to sections 116(6), 117(5) and 132(3) of Finance Act 2013 inserting appropriate references to the new reliefs for employees of a qualifying property rental business and caretaker flats owned by a tenant run management company.
11. Subsection (11) amends section 159A of Finance Act 2013 (relief declaration returns) so that relief code 6 also applies to new section 147A - caretaker flat owned by a tenant owned management company.
12. The amendments made by this section have effect for chargeable periods beginning on or after 1 April 2016.

Background note

13. ATED is due where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued at more than £1m (more than £500,000 w.e.f. 1 April 2016). The amount of tax charged is calculated using a banding system based on the value of the property. There are a number of reliefs available which must be claimed in an annual return. Reliefs can reduce the annual charge to nil in part or in whole.
14. Currently relief is available where a property is occupied by an employee or partner of a qualifying trade, but no relief is available where a property is occupied by an employee of a qualifying property rental business. This measure introduces new legislation so that relief will also be available for certain employees or partners of a qualifying property rental business. A qualifying property rental business is one run on a commercial basis and with a view to profit.
15. In addition, this measure also introduces a new relief where a tenant owned management company provides living accommodation to a caretaker employed to manage and maintain the building (e.g. a block of flats).
16. Clause 51 introduces similar reliefs in relation to the 15% higher rate of Stamp Duty Land Tax.
17. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

55 ATED: regulated home reversion plans

(1) Part 3 of FA 2013 (annual tax on enveloped dwellings) is amended as follows.

(2) After section 144 insert –

“144A Regulated home reversion plans

(1) A day in a chargeable period is relievable in relation to a single dwelling interest held by a person (“P”) who is an authorised plan provider if –

- (a) P has, as plan provider, entered into a regulated home reversion plan relating to the single dwelling interest, and
- (b) the occupation condition is met on that day.

(2) If no qualifying termination event has occurred, the “occupation condition” is that a person who was originally entitled to occupy the dwelling (or any part of it) under the regulated home reversion plan is still entitled to do so.

(3) If a qualifying termination event has occurred, the “occupation condition” is that –

- (a) the single dwelling interest is being held with the intention that it will be sold without delay (except so far as delay is justified by commercial considerations or cannot be avoided), and
- (b) no non-qualifying individual is permitted to occupy the dwelling (or any part of it).

(4) In this section –

“authorised plan provider” means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom the regulated activity specified in article 63B(1) of the Regulated Activities Order (entering into regulated home reversion plan as plan provider);

“qualifying termination event” is to be interpreted in accordance with article 63B of the Regulated Activities Order;

“the Regulated Activities Order” means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544);

“regulated home reversion plan” means an arrangement which is a regulated home reversion plan for the purposes of Chapter 15A of Part 2 of the Regulated Activities Order (but see also subsection (6)).

(5) In this section references to entering into a regulated home reversion plan “as plan provider” are to be interpreted as if the references were in the Regulated Activities Order (but see also subsection (6)).

(6) For the purposes of this section –

- (a) an arrangement which P entered into before 6 April 2007 is treated for the purposes of this section as a regulated home reversion plan entered into by P as plan provider if that arrangement would have been so treated for the purposes of article 63B(1) of the Regulated Activities Order had P entered into that arrangement on the day mentioned in subsection (1);
- (b) an arrangement in relation to which P acquired rights or obligations before 6 April 2007 is treated for the purposes of this

section as a regulated home reversion plan entered into by P as plan provider if that arrangement would have been so treated for the purposes of article 63B(1) of the Regulated Activities Order had P acquired those rights or obligations on the day mentioned in subsection (1).

- (7) Section 136 (meaning of “non-qualifying individual”) applies in relation to this section as in relation to sections 133 and 135.”
- (3) In section 116 (dwelling in grounds of another dwelling), in the list in subsection (6), at the appropriate place insert –
“section 144A (regulated home reversion plans);”.
- (4) In section 117 (dwellings in the same building), in the list in subsection (5), at the appropriate place insert –
“section 144A (regulated home reversion plans);”.
- (5) In section 132 (effect of reliefs under sections 133 to 150), in the list in subsection (3), at the appropriate place insert –
“section 144A (regulated home reversion plans);”.
- (6) In section 159A (relief declaration returns), in the table in subsection (9), at the appropriate place insert –

“144A (regulated home reversion plans)	5A”.
--	------

- (7) The amendments made by this section have effect for chargeable periods beginning or after 1 April 2016.

Explanatory Note

Clause 55: ATED: Regulated home reversion plans

Summary

1. This measure introduces a new relief from annual tax on enveloped dwellings (ATED) to apply where an interest is held in UK residential property exclusively for the purposes of entering into an equity release scheme, specifically a regulated home reversion plan.

Details of the clause

2. Subsection (1) amends Part 3 of Finance Act 2013.
3. Subsection (2) inserts a new section 144A into Finance Act 2013, "Regulated home reversion plans".
4. New section 144A(1) provides that relief is available for any day in a chargeable period where an authorised plan provider holds an interest in a single dwelling as a result of entering into a regulated home reversion plan and where the occupation condition is met.
5. New section 144A(2) provides that where no qualifying termination event has occurred, the occupation condition is that the person who originally entered into the home reversion plan is entitled to occupy the dwelling.
6. New section 144A(3) provides that where a qualifying termination event has occurred, the occupation condition is that steps must be taken to sell the single dwelling interest without delay, that any delay in selling that interest could not be avoided or is justified by commercial considerations, and that no non-qualifying individual can occupy the dwelling, or any part of the dwelling.
7. New section 144A(4) defines the terms -
 - "authorised plan provider" means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom, the regulated activity specified in article 63B(1) of the Regulated Activities Order, that is a regulated home reversion plan.
 - "qualifying termination event" means an event as specified in article 63B of the Regulated Activities Order, that is that the person entitled to occupy the dwelling in section 144A(2), becomes a resident of a care home, dies, or a period of at least 20 years has passed since the home reversion plan was entered into.

- "the Regulated Activities Order" means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544).
 - "regulated home reversion plan" means an arrangement regulated by Chapter 15A of Part 2 of the Regulated Activities Order.
8. New section 144A(5) provides that references to entering into a regulated home reversion plan as "plan provider" are to be taken to mean those set out in the Regulated Activities Order S.I. 2001/544.
 9. New section 144A(6) provides that for any day for which relief under this section is claimed, a home reversion plan which was entered into before 6 April 2007 (the date home reversion plans were regulated in S.I. 2001/544), will be treated as a regulated home reversion plan where:
 - P is an authorised plan provider on any day in respect of which relief is being claimed, and
 - the home reversion plan is of a type that would have been so regulated had those regulations been in force at the time.
 10. New section 144A(7) provides that a "non qualifying individual" is as defined in section 136 of Finance Act 2013.
 11. Subsections (3) to (5) make consequential amendments to sections 116(3), 117(5), 132(3) of Finance Act 2013, inserting appropriate references to the new relief for home reversion plans.
 12. Subsection (6) inserts into section 159A of Finance Act 2013 (relief declaration returns), relief code 5A in respect of regulated home reversion plans.
 13. Subsection (7) provides that these changes have effect for chargeable periods beginning on or after 1 April 2016.

Background note

14. ATED is due where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued at more than £1m (more than £500,000 w.e.f. 1 April 2016)). The amount of tax charged is calculated using a banding system based on the value of the property. There are a number of reliefs available which must be claimed by filing an annual return. Reliefs can reduce the annual charge to nil in part or in whole.
15. Under certain equity release schemes (specifically, home reversion plans) an individual sells to the equity release scheme company, all or part of their property in exchange for an annuity or lump sum, and a lifetime tenancy. The individual can live in the property until death, or on entering into long term care, at which point the property is sold. In such an arrangement the interest in the property held by the equity release scheme company will come within the charge to ATED if the value exceeds the entry threshold. Currently no relief exists for such an arrangement.

16. This measure introduces new legislation to provide relief for entities which hold an interest in a UK residential property as a result of entering into a regulated home reversion plan (as described in the 'Regulated Activities Order 2001' (SI 2001/544)), and where that entity is authorised under the Financial Services and Markets Act 2000 to enter into such plans.
17. Home reversion plans only became regulated activities with effect from 6 April 2007. The legislation also provides that where the entity holds an interest in a property as a result of entering into a home reversion plan prior to that date, relief may still be available.
18. Where the last individual living in the property either dies or goes into long term care, the property must be sold without undue delay (or any delay must be justified by commercial considerations, or could not be avoided). If during that period a "non-qualifying individual" occupies the property, relief cannot be claimed. A non-qualifying individual is a person who has an interest in the property, or a person connected to the person who has an interest in the property.
19. Clause 52 introduces similar relief in relation to the 15% higher rate of stamp duty land tax.
20. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

56 Alternative property finance: land in Scotland

- (1) Part 3 of FA 2013 (annual tax on enveloped dwellings) is amended as follows.
- (2) Section 157 (land sold to financial institution and leased to person) is amended in accordance with subsections (3) to (6).
- (3) In subsection (1) –
 - (a) in paragraph (a), omit “or section 72 of that Act (land in Scotland sold to financial institution and leased to person)”;
 - (b) in paragraph (b), after “transaction” insert “is in England, Wales or Northern Ireland and”.
- (4) In subsection (7) –
 - (a) in the definition of “the first transaction” omit “or (as the case requires) 72”;
 - (b) in the definition of “the second transaction” omit “or (as the case requires) 72”.
- (5) Omit subsection (10).
- (6) The heading of that section becomes “**Land in England, Wales or Northern Ireland sold to financial institution and leased to person**”.
- (7) After section 157 insert –

“157A Land in Scotland sold to financial institution and leased to person

- (1) This section applies where Conditions A and B are met.
- (2) Condition A is that arrangements are entered into between a person (“the lessee”) and a financial institution under which the institution –
 - (a) purchases a major interest in land, (“the first transaction”),
 - (b) grants to the lessee out of that interest a lease (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant’s right over or interest in a property subject to a lease) (“the second transaction”), and
 - (c) enters into an agreement under which the lessee has a right to require the institution to transfer the major interest purchased by the institution under the first transaction.
- (3) Condition B is that the land in which the institution purchases a major interest under the first transaction is in Scotland and consists of or includes one or more dwellings or parts of a dwelling.
- (4) If the lessee is a company, this Part has effect in relation to times when the arrangements are in operation (see subsection (5)) as if –
 - (a) the interest held by the financial institution as mentioned in subsection (5)(b) were held by the lessee (and not by the financial institution), and
 - (b) the lease or sub-lease granted under the second transaction had not been granted.
- (5) The reference in subsection (4) to times when the arrangements are in operation is to times when –
 - (a) the lessee holds the interest granted to it under the second transaction, and

-
- (b) the interest purchased under the first transaction is held by a financial institution.
- (6) A company treated under subsection (4)(a) as holding an interest at a particular time is treated as holding it as a member of a partnership if at the time in question the company holds the interest granted to it under the second transaction as a member of the partnership (and this Part has effect accordingly in relation to the other members of the partnership).
- (7) In relation to times when the arrangements operate for the benefit of a collective investment scheme (see subsection (8)), this Part has effect as if—
- (a) the interest held by the financial institution as mentioned in subsection (8)(b) were held by the lessee for the purposes of a collective investment scheme (and were not held by the financial institution), and
- (b) the lease or sub-lease granted under the second transaction had not been granted.
- (8) The reference in subsection (7) to times when the arrangements operate for the benefit of a collective investment scheme is to times when—
- (a) the lessee holds the interest granted to it under the second transaction for the purposes of a collective investment scheme, and
- (b) the interest purchased under the first transaction is held by a financial institution.
- (9) In this section “financial institution” has the same meaning as in section 71A of FA 2003 (see section 73BA of that Act).
- (10) References in this section to a “major interest” in land are to—
- (a) ownership of land, or
- (b) the tenant’s right over or interest in land subject to a lease.
- (11) Where the lessee is an individual, references in subsections (7) and (8) to the lessee are to be read, in relation to times after the death of the lessee, as references to the lessee’s personal representatives.”
- (8) The amendments made by this section have effect for chargeable periods beginning on or after 1 April 2016.

Explanatory Note

Clause 56: Alternative property finance: land in Scotland

Summary

1. This measure makes a consequential change to the ATED legislation in relation to alternative property finance arrangements (Islamic finance) entered into between a financial institution and another person, whereby that institution purchases a property in Scotland on behalf of another person and leases it back to them. It is needed as a result of the introduction of the Scotland Act.

Details of the clause

2. Subsection (1) amends Part 3 of Finance Act 2013.
3. Subsections (2) to (6) make consequential amendments to section 157 of Finance Act 2013 so that it applies only to alternative property finance arrangements in respect of land in England, Wales or Northern Ireland.
4. Subsection (7) inserts new section 157A into Finance Act 2013 to apply ATED to alternative property finance arrangements in respect of land in Scotland.
5. New section 157A(1) to (3) set out the 2 conditions that must be met for new section 157A to apply.
 - Condition A is that there is an arrangement whereby a financial institution purchases a major interest in land in Scotland ("the first transaction"), grants to the other person ("the lessee") a leasehold interest out of that major interest ("the second transaction"), and enters into an agreement under which the lessee has a right to acquire from the institution the major interest purchased by them under the first transaction.
 - Condition B is that the major interest in land in Scotland purchased by the institution, consists of one or more dwellings, or part of a dwelling.
6. New section 157A(4) provides that where the lessee is a company, the interest held by the financial institution is treated as if it were held by the company, and that the interest granted out of the major interest is treated as if it had not occurred. The result is that the alternative property finance arrangement is ignored and the company is treated as owning the interest in the dwelling outright for the purposes of this part, i.e. the ATED charge arises on the

company and not on the financial institution.

7. New section 157A(5) provides that an alternative finance arrangement is in operation where the lessee holds the interest granted to it under the second transaction, and the financial institution holds the interest purchased under the first transaction.
8. New section 157A(6) provides that these rules also apply where the lessee is a partnership with a company member.
9. New section 156A(7) and (8) provides that these rules also apply where the lessee is a collective investment scheme.
10. New section 157A(9) defines "financial institution" as having the same meaning as that in section 71A of Finance Act 2003.
11. New section 157A(10) defines a "major interest in land" as ownership of land, or a tenant's right over or interest in land subject to a lease.
12. New section 157A(11) provides that where a lessee is an individual holding the interest for the purposes of a collective investment scheme and that lessee dies, references in new section 157(7) and (8) should be taken to mean the lessee's personal representative.
13. Subparagraph (8) provides that these changes have effect for chargeable periods on or after 1 April 2016.

Background note

14. The Annual Tax on Enveloped Dwellings (ATED) is an annual charge payable by companies, partnerships with a company member, and collective investment vehicles which own UK residential property valued at more than £1m (or more than £500,000 with effect from 1 April 2016).
15. Alternative property finance arrangements are used for property purchases to satisfy the requirements of Shari' law, which prohibits transactions which involve interest or unethical investments. For property transactions, these arrangements involve a financial institution purchasing the major interest in land and leasing it back to the individual (the lessee). The individual then has the right to acquire, at any time, the land from the institution.
16. There are special rules in relation to ATED so that where the lessee is a company, partnership with a company member or a collective investment scheme, ATED looks through the financial institution so that the charge instead falls on the lessee.
17. However, in relation to property in Scotland, the ATED legislation relies on the definition in section 72 of Finance Act 2003 (Stamp Duty Land Tax) which was repealed by the Scotland Act 2012. This change inserts consequential mirroring rules to ensure ATED continues to apply to alternative property finance arrangements in respect of property in Scotland.
18. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

57 Stamp duty on certain transfers to depositaries or providers of clearance services

- (1) Part 3 of the Finance Act 1986 (stamp duty) is amended as follows.
- (2) In section 67 (depository receipts) –
 - (a) in subsection (2), for the words from “1.5% of” to the end substitute “1.5% of –
 - (a) the amount or value of the consideration for the sale to which the instrument gives effect, or
 - (b) where subsection (2A) applies –
 - (i) the amount or value of the consideration for the sale to which the instrument gives effect, or
 - (ii) if higher, the value of the securities at the date the instrument is executed.”,
 - (b) after subsection (2) insert –

“(2A) This subsection applies where the instrument transferring the securities is executed pursuant to –
 - (a) the exercise of an option to buy or to sell the securities, and
 - (b) either –
 - (i) a term of the option which provides for the securities to be transferred to the person falling within subsection (6), (7) or (8), or
 - (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”, and
 - (c) in subsection (3), for “In any other case” substitute “If stamp duty is not chargeable on the instrument under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale)”.
- (3) In section 69 (depository receipts: supplementary), in subsection (4), for “section 67(3)” substitute “section 67(2)(b)(ii) and (3)”.
- (4) In section 70 (clearance services) –
 - (a) in subsection (2), for the words from “1.5% of” to the end substitute “1.5% of –
 - (a) the amount or value of the consideration for the sale to which the instrument gives effect, or
 - (b) where subsection (2A) applies –
 - (i) the amount or value of the consideration for the sale to which the instrument gives effect, or
 - (ii) if higher, the value of the securities at the date the instrument is executed.”,
 - (b) after subsection (2) insert –

“(2A) This subsection applies where the instrument transferring the securities is executed pursuant to –
 - (a) the exercise of an option to buy or to sell the securities, and
 - (b) either –

-
- (i) a term of the option which provides for the securities to be transferred to the person falling within subsection (6), (7) or (8), or
 - (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”, and
 - (c) in subsection (3), for “In any other case” substitute “If stamp duty is not chargeable on the instrument under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale)”.
- (5) In section 72 (clearance services: supplementary), in subsection (2), for “section 70(3)” substitute “section 70(2)(b)(ii) and (3)”.
- (6) The amendments made by this section have effect in relation to an instrument which transfers securities pursuant to the exercise of an option where –
- (a) the option was granted on or after 25 November 2015, and
 - (b) the option was exercised on or after [Budget Day 2016].

Explanatory Note

Clause 57: Stamp duty on certain transfers to depositaries or providers of clearance services

Summary

1. This clause provides that securities transferred to a depositary receipt issuer or clearance service (or their respective nominees) as a result of the exercise of an option will be charged the 1.5% higher rate of stamp duty based on either the amount or value of the consideration or, if higher, the value of the securities. The clause will have effect from Budget Day 2016 and will apply to options which are entered into on or after 25 November 2015 and exercised on or after Budget Day 2016. A related change is made in respect of stamp duty reserve tax (SDRT) by clause 58.

Details of the clause

2. Subsection (1) provides that part 3 of the Finance Act (FA) 1986 (stamp duty) is amended.
3. Subsection (2)(a) inserts new sections 67(2)(a), 67(2)(b)(i) and 67(2)(b)(ii) which provide that where the new section 67(2A) applies, stamp duty shall be charged on the amount or value of the consideration paid or, if higher, the value of the securities.
4. Subsection (2)(b) provides that section 67(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a depositary receipt issuer or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.
5. Subsection (2)(c) amends the wording of section 67(3) of FA 1986 so that it refers to cases which are not transfers on sale. This is for drafting clarity rather than effecting a substantive change.
6. Subsection (3) makes a consequential amendment to section 69(4) of FA 1986 to ensure that the description of value provided in section 69(4) applies to section 67(2)(b)(ii).
7. Subsection (4)(a) inserts new sections 70(2)(a), 70(2)(b)(i) and 70(2)(b)(ii) of FA 1986 which provide that where the new section 70(2A) applies, stamp duty shall be charged on the amount or value of the consideration or, if higher, the value of the securities.
8. Subsection (4)(b) provides that section 70(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a clearance service or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.

9. Subsection 4(c) amends the wording of section 70(3) of FA 1986 so that it refers to cases which are not transfers on sale. This is for drafting clarity rather than effecting a substantive change.
10. Subsection (5) makes a consequential amendment to section 72(2) of FA 1986 to ensure that the description of value provided in section 72(2) of FA 1986 applies to section 70(2)(b)(ii).
11. Subsection (6) sets out the commencement provision. The changes to the legislation apply where an option is exercised on or after Budget Day 2016, but only where the option was entered into on or after 25 November 2015.

Background note

12. Where shares in UK companies are transferred the transaction is subject to stamp tax. This is either stamp duty on paper documents or instruments or SDRT on electronic transfers. The rate is 0.5% in both cases. However, where shares are transferred to a clearance system or depositary receipt issuer (or their respective nominees), a higher rate of 1.5% is charged to reflect the fact that the shares can be transferred free of stamp tax whilst they are in the clearance system or are covered by the depositary receipt.
13. A depositary receipt is in effect a substitute for the share itself and is issued by a person whose business includes the issuing of receipts against the deposit of the actual shares concerned. A clearance service is a system for holding securities and which allows members of that clearance service to trade and settle by book entry those securities within that system.
14. The 1.5% charge can apply when shares are transferred to a clearance service or depositary receipt issuer as a result of the exercise of an option. However, HM revenue and Customs (HMRC) has become aware of option arrangements where the agreed price for the shares (the 'strike price') is significantly lower than their market value. The seller receives a large part of their consideration in the form of a high premium for the option.
15. As a result, these arrangements reduce the stamp duty payable on the transaction. This legislation addresses these arrangements by applying the higher of the consideration or market value where the transfer results from exercise of an option and the shares are transferred to a clearance service or depositary receipt issuer (or their respective nominees).
16. If you have any questions about this change, or comments on the legislation, please contact Stephen Roberts on 03000 585 455 or Simon English on 03000 585 446 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

58 SDRT on certain transfers to depositaries or providers of clearance services

- (1) Part 4 of the Finance Act 1986 (stamp duty reserve tax) is amended as follows.
- (2) In section 93 (depository receipts) –
 - (a) in subsection (4)(b), for the words from “worth,” to the end substitute “worth –
 - (i) the amount or value of the consideration, or
 - (ii) where subsection (4A) applies, the amount or value of the consideration or, if higher, the value of the securities;”, and
 - (b) after subsection (4) insert –

“(4A) This subsection applies where the transfer of the securities is pursuant to –

 - (a) the exercise of an option to buy or to sell the securities, and
 - (b) either –
 - (i) a term of the option which provides for the securities to be transferred to the person falling within subsection (2) or (3), or
 - (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”
- (3) In section 94 (depository receipts: supplementary), in subsection (4), for “section 93(4)(c)” substitute “section 93(4)(b)(ii) and (c)”.
- (4) In section 96 (clearance services) –
 - (a) in subsection (2)(b), for the words from “worth,” to the end substitute “worth –
 - (i) the amount or value of the consideration, or
 - (ii) where subsection (2A) applies, the amount or value of the consideration or, if higher, the value of the securities;”,
 - (b) after subsection (2) insert –

“(2A) This subsection applies where the transfer of the securities is pursuant to –

 - (a) the exercise of an option to buy or to sell the securities, and
 - (b) either –
 - (i) a term of the option which provides for the securities to be transferred to A or (as the case may be) to the person whose business is or includes holding chargeable securities as nominee for A, or
 - (ii) a direction, given by or on behalf of the person entitled or bound to acquire the securities pursuant to the exercise of the option, for the securities to be so transferred.”, and
 - (c) in subsection (10), for “subsection (2)(c)” substitute “subsection (2)(b)(ii) and (c)”.

-
- (5) The amendments made by this section have effect in relation to a transfer pursuant to the exercise of an option where –
- (a) the option was granted on or after 25 November 2015, and
 - (b) the option was exercised on or after [Budget Day 2016].

Explanatory Note

Clause 58: SDRT on certain transfers to depositaries or providers of clearance services

Summary

1. This clause provides that securities transferred to a depositary receipt issuer or clearance service (or their respective nominees) as a result of the exercise of an option will be charged the 1.5% higher rate of stamp duty reserve tax (SDRT) based on either the amount or value of the consideration or, if higher, the value of the securities. The clause will have effect from Budget Day 2016 and will apply to options which are entered into on or after 25 November 2015 and exercised on or after Budget Day 2016. A related change is made in respect of stamp duty by clause 57.

Details of the clause

2. Subsection (1) provides that part 4 of the Finance Act (FA) 1986 (stamp duty reserve tax) is amended.
3. Subsection (2)(a) inserts new sections 93(4)(b)(i) and 93(4)(b)(ii) which provide that where new section 93(4A) applies, SDRT shall be charged on the amount or value of the consideration paid or, if higher, the value of the securities.
4. Subsection (2)(b) provides that section 93(4A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a depositary receipt issuer or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.
5. Subsection (3) makes a consequential amendment to section 94(4) of FA 1986 to ensure that the description of value provided in section 94(4) applies to section 93(4)(b)(ii).
6. Subsection (4)(a) inserts new sections 96(2)(b)(i) and 96(2)(b)(ii) which provide that where the new section 96(2A) applies, SDRT shall be charged on the amount or value of the consideration paid or, if higher, the value of the securities.
7. Subsection (4)(b) provides that section 96(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a clearance service or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.
8. Subsection (4)(c) makes a consequential amendment to section 96(10) FA 1986 to ensure that the description of value provided in section 96(10) applies to section 96(2)(b)(ii).

9. Subsection (5) sets out the commencement provision. The changes to the legislation apply where an option is exercised on or after Budget Day 2016, but only where the option was entered into on or after 25 November 2015.

Background note

10. Where shares in UK companies are transferred the transaction is subject to stamp tax. This is either stamp duty on paper documents or instruments or SDRT on electronic transfers. The rate is 0.5% in both cases. However, where shares are transferred to a clearance service or depositary receipt issuer (or their respective nominees), a higher rate of 1.5% is charged to reflect the fact that the shares can be transferred free of stamp tax whilst they are in the clearance system or are covered by the depositary receipt.
11. A depositary receipt is in effect a substitute for the share itself and is issued by a person whose business includes the issuing of receipts against the deposit of the actual shares concerned. A clearance service is a system for holding securities and which allows members of that clearance service to trade and settle by book entry those securities within that system.
12. The 1.5% charge can apply when shares are transferred to a clearance service or depositary receipt issuer as a result of the exercise of an option. However, HM Revenue and Customs (HMRC) has become aware of option arrangements where the agreed price for the shares (the 'strike price') is significantly lower than their market value. The seller receives a large part of their consideration in the form of a high premium for the option.
13. As a result, these arrangements reduce the SDRT payable on the transaction. This legislation addresses these arrangements by applying the higher of the consideration or market value where the transfer results from exercise of an option and the shares are transferred into a clearance service or to a depositary receipt issuer (or their respective nominees).
14. If you have any questions about this change, or comments on the legislation, please contact Stephen Roberts on 03000 585 455 or Simon English on 03000 585 446 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

59 CCL: abolition of exemption for electricity from renewable sources

- (1) In Schedule 6 to FA 2000 (climate change levy), in paragraph 19(1) (exemption for electricity from renewable sources) –
 - (a) in paragraph (c), omit the final “and”;
 - (b) after paragraph (d) insert “, and
 - (e) the electricity is actually supplied before 1 April 2018.”
- (2) In that Schedule omit the following –
 - (a) in paragraph 5(3), “20(6)(a),”;
 - (b) paragraphs 19 and 20;
 - (c) paragraph 24(2).
- (3) The repeals made by subsection (2) come into force on the day appointed by the Treasury by regulations made by statutory instrument.

Explanatory Note

Clause 59: CCL: abolition of exemption for electricity from renewable sources

Summary

1. This measure removes the climate change levy ('CCL') exemption for renewable source electricity generated before 1 August 2015 where this is supplied on or after 1 April 2018.

Details of the clause

2. Subsection (1) amends paragraph 19 of Schedule 6 to Finance Act 2000 to insert new subparagraph (e) to provide that the exemption relates only to eligible electricity actually supplied before 1 April 2018.
3. Subsection (2) provides for consequential repeals needed as a result of the amendments made by subsection (1).
4. Subsection (3) makes provision for the repeals made by subsection (2) to come into force on the day appointed by HM Treasury in a statutory instrument.

Background note

5. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business, service and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels), and is aimed at promoting energy efficiency in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.
6. Electricity generated from renewable sources was exempted from CCL at the tax's introduction when supplied under a renewable source contract agreed between an energy supplier and their non-domestic customer. The original purpose of removing tax from these supplies was to mitigate the additional cost of renewable source electricity and in so doing increase demand from non-domestic consumers.
7. Energy policy has moved on, with far greater incentives available, targeted at renewable generation as opposed to supply. As the quantity of renewable source electricity available has increased, the CCL exemption has ceased to provide value for money for taxpayers. Finance (No 2) Act 2015 therefore removed the exemption for renewable source electricity if the electricity was generated on or after 1 August 2015.
8. To enable suppliers to retain the benefit of renewable source electricity already acquired before the date of the change, the Summer Budget announced that there would be a transitional period during which time electricity suppliers could continue to exempt supplies

of eligible electricity where this was generated from renewable sources before 1 August 2015. During the summer and autumn the government consulted on how long suppliers should be given to use up accumulated renewable source electricity. This measure legislates for an end date of the transitional period of 31 March 2018.

9. If you have any questions about this change, or comments on the legislation, please contact Tim Smith on 03000 585475 (email: timothy.smith@hmrc.gsi.gov.uk)

Explanatory Note

Clauses 60 to 62 and Schedules: General Anti-Abuse Rule: Penalty

Summary

1. This measure introduces a new penalty for all cases successfully counteracted under the General Anti-Abuse Rule (GAAR). A penalty of 60% of the counteracted tax will be charged whenever a taxpayer submits to Her Majesty's Revenue and Customs (HMRC) a return, claim, or other document on the basis that a tax advantage arises from the tax arrangements where all or part of that tax advantage is later counteracted under the GAAR. The new penalty will apply to tax arrangements entered into on or after Royal Assent of this legislation.
2. This measure also introduces changes to the GAAR procedure. Firstly, the GAAR procedure will be amended so that a GAAR Advisory Panel opinion will enable counteraction of the equivalent arrangements by other users. The GAAR procedure will also be amended to enable a provisional counteraction under the GAAR. This will enable HMRC to counteract under the GAAR within assessing time limits, whilst preserving the safeguards for the taxpayer provided by schedule 43 or the new procedure for users of equivalent arrangements. These procedural changes will apply from Royal Assent of this legislation, without reference to when the tax arrangements in question were entered into.

Details of the clauses and schedules

Clause 60: The Penalty

3. Clause 60 (2) inserts new section 212A into FA13.
4. New subsection 212A(1) provides that a person will be liable to a penalty when they have given HMRC a 'tax document' and this document is submitted on the basis of a tax advantage that arises from tax arrangements but where all or part of the tax advantage is counteracted by the GAAR.
5. New subsection 212A (2) explains that the GAAR penalty will be charged at 60% of the "value of the counteracted advantage".
6. New subsection 212A (3) introduces Schedule 43B to Finance Act 2013.
7. New subsection 212A (4) defines 'tax document'.
8. Clause 60 (3) amends section 209 of FA13 by inserting subsections (8) to (12).
9. New subsections 209 (8) to (11) provide that the taxpayer cannot amend a tax document or make other adjustments to their tax affairs to take account of any adjustments required under

section 209 FA13 in respect of arrangements after those arrangements (or lead arrangements to which the taxpayer's arrangements are to be bound) are to be referred to the independent GAAR Advisory Panel until the date upon which HMRC decides whether to counteract the tax advantages arising to the taxpayer as a result of the use of the arrangements under GAAR. This gives effect to the intention that a taxpayer should only be able to make such amendments or adjustments to avoid a GAAR penalty prior to the time at which the arrangements are to be referred to the GAAR Panel.

10. Clause 60 (4) (5) and (6) amend Schedule 43 of FA13 so that a notice of proposed counteraction under Paragraph 3 of Schedule 43 explains the effect of the GAAR penalty and the opportunity to make adjustments prior to referral to the GAAR Advisory Panel.
11. Clause 60 (7) inserts new Schedule 43B into Finance Act 2013.

New Schedule 43B to Finance Act 2013: GAAR Penalty

12. Paragraph 2 defines the 'value of the counteracted advantage' for the purposes of calculating the amount of the GAAR penalty.
13. Paragraph 3 explains how the 'value of the counteracted advantage' is to be calculated where the tax advantage counteracted under the GAAR results in or from a loss.
14. Paragraph 4 provides a special rule for quantifying a counteracted tax advantage which comprises the deferral of tax.
15. Paragraph 5 sets out how a GAAR penalty is to be assessed. The GAAR penalty can be assessed once the tax advantage has been counteracted, and any necessary adjustments will be made to the amount of the penalty following any appeal against the counteraction (see also paragraph 9.)
16. Paragraph 6 explains that a GAAR penalty assessment will be revised where the "value of the counteracted advantage" has been over- or underestimated.
17. Paragraph 7 sets out how a GAAR penalty is to be revised where a consequential adjustment under section 210(7) of FA13 is made.
18. Paragraph 8 deals with situations where more than one penalty may arise in respect of the same amount and one of those penalties is a GAAR penalty.
19. Paragraph 9 provides that a person may appeal against HMRC's decision to issue a GAAR penalty. The person does not have to pay the penalty in order to make an appeal.
20. Subparagraph 10 provides that HMRC may reduce or cancel the GAAR penalty.
21. Clause 60 (8) to (12) make consequential amendments to other enactments to take account of the GAAR penalty.
22. Clause 60 (13) explains when the new penalty will take effect.

Clause 61: Provisional Counteractions

23. Clause 61 (2) inserts new sections 209A to 209D into FA13.
24. New section 209A (1) explains the circumstances in which HMRC may make a provisional counteraction.

25. New section 209A (2) sets out the action HMRC may take to give effect to the provisional counteraction notice.
26. New section 209A (3) states the information which must be included in a provisional counteraction notice. New subsection 209A (3) (b) explains that a provisional counteraction notice may be made whether the tax advantage is to be counteracted under Schedule 43 to FA13 or new Schedule 43A to Finance Act 2013.
27. New section 209A (4) explains that adjustments to give effect to a provisional counteraction may be made in the same way as a GAAR counteraction.
28. New section 209B (2) sets out the action that must be taken by HMRC within the period specified in new section 209B (5) where the taxpayer appeals the adjustments made as a result of the provisional counteraction. This section also explains that the adjustments will be treated as cancelled where HMRC does not take any of the actions specified in this section within the time period referred to above.
29. New section 209B (2)(b) explains that if HMRC withdraws the provisional counteraction adjustments, the adjustments can be maintained on the basis that another tax provision applies. New section 209B (6) explains that HMRC may only take action under s209B (2) (b) where it has the authority to do so.
30. New section 209B(2) (c) (ii) explains that where a designated HMRC officer gives the taxpayer a notice of proposed GAAR counteraction under Paragraph 3 of Schedule 43 FA13 or a notice of binding under Schedule 43A, the adjustments specified in the notice may be the same or lesser amounts than the provisional counteraction adjustments.
31. New section 209B (3) explains that where lesser adjustments are specified in the notice of proposed GAAR counteraction under new section 209B (2) (c) (ii), the provisional counteraction adjustments are to be treated as amended in the same way.
32. New section 209B (4) provides the definition of "lesser adjustments".
33. New section 209B (5) sets out the period during which HMRC must take the action specified in new section 209B (2).
34. New section 209C (2) explains how adjustments are to be treated where a designated officer has issued a notice of proposed GAAR counteraction following a provisional counteraction, and the designated officer decides not to counteract the tax advantage under the GAAR. If HMRC withdraws the provisional GAAR adjustments, the adjustments can be maintained on the basis that another tax provision applies.
35. New section 209C (3) explains that HMRC may only take action under new section 209C (2) where it has the authority to do so.
36. New section 209C (4) explains how adjustments are to be treated where a taxpayer is given a notice under paragraph 12 of schedule 43 FA13 following the GAAR Advisory Panel opinion in circumstances where a provisional counteraction was made, and the designated officer decides not to counteract the tax advantage under the GAAR. If HMRC withdraws the provisional GAAR adjustments, the adjustments can be maintained on the basis that another tax provision applies.
37. New section 209C (5) explains that HMRC may only tax action under new section 209C (3)

where it has the authority to do so.

38. New section 209C (6) explains that a cancellation under new section 209C (4) takes effect from the date that the taxpayer is given a notice of final decision following the GAAR Advisory Panel.
39. New section 209C (7) explains how the tax advantage is to be counteracted where a provisional counteraction is made and a notice of final decision following the GAAR Advisory Panel later confirms that a tax advantage is to be counteracted.
40. New section 209D explains how a taxpayer may appeal a provisional counteraction.
41. New section 209D (2) explains that where a taxpayer appeals against adjustments made to give effect to a provisional counteraction, no action is to be taken in respect of the appeal until the action outlined at new section 209B (2) (b) or 209C (2) is taken, or a notice of counteraction under GAAR is given under paragraph 12 schedule 43 FA 13 (or paragraph 3 new Schedule 43A) is made by the designated HMRC officer.
42. New section 209D (3) explains that adjustments made to give effect to a provisional counteraction may only be made where the officer of HMRC considers that the tax arrangements are abusive, and the adjustments are made on a just and reasonable basis.
43. New section 209D (4) and (5) set out the conditions for appealing adjustments made to give effect to a provisional counteraction.

Clause 62: Binding of arrangements

44. Clauses 62 (2) and (3) apply section 209(6) (a) and 211 (2) (b) FA13 respectively to include a reference to the new Schedule 43A to FA 2013.
45. Clause 62 (4) inserts new Schedule 43A to FA 2013.

New Schedule 43A to FA 2013: Binding of arrangements

46. Paragraph 1 sets out when "equivalent arrangements" may be bound to lead arrangements and explains that HMRC must issue a notice of binding in doing so. HMRC may issue a notice of binding regardless of whether or not the "lead arrangements" have already been referred to the GAAR Advisory Panel. Subparagraph 5 sets out what the notice of binding must contain.
47. Paragraph 2 explains that a taxpayer who has received a notice of binding may make representations to HMRC during the 30-day period following HMRC's notification of the GAAR opinion notice(s) under paragraph 11(2) of Schedule 43 FA13 and explains the grounds on which representations may be made.
48. Paragraph 3 provides that HMRC may counteract a tax advantage of a taxpayer who has received notice of binding based upon the opinion of the GAAR Advisory Panel in respect of the lead arrangements.
49. Paragraph 4 defines "equivalent arrangements".
50. Paragraph 5 explains that any notice under Schedule 1 made by the HMRC designated officer may be made on the basis that a tax advantage does arise or may have arisen.
51. Paragraph 6 defines "designated officer".

Background note

52. The GAAR penalty has been introduced to increase the deterrent effect of the GAAR, discouraging the minority of persistent tax avoiders who remain undeterred from engaging in abusive tax avoidance. This penalty will ensure that there is an effective disincentive to entering into abusive tax avoidance, and that those who do engage in abusive tax avoidance are subject to an appropriate downside.
53. The procedural changes to the GAAR in Schedule 43A FA13 have been introduced to ensure that the GAAR procedure works efficiently in respect of marketed tax avoidance schemes. This draft does not yet include a provision to deal with circumstances where the lead case corrects their tax affairs prior to referral to the GAAR Advisory Panel, and no suitable lead case can be identified from amongst taxpayers who have received a notice of binding. This provision, along with other elements throughout the draft, will continue to be developed as part of the consultation on the draft legislation.
54. The procedural changes in new Section 209A FA 13 enable HMRC to provisionally counteract under GAAR whilst maintaining the procedural safeguards in schedule 43 and new Schedule 43A for taxpayers.
55. If you have any questions about this change, or comments on the legislation, please contact Ellen Roberts on 03000 594918 (email: ellen.roberts@hmrc.gsi.gov.uk)

61 General anti-abuse rule: provisional counteractions

- (1) Part 5 of FA 2013 (general anti-abuse rule) is amended as follows.
- (2) After section 209 insert –

“209A Provisional counteractions

- (1) An officer of Revenue and Customs may give a person a provisional counteraction notice if the officer has reasonable grounds for believing that a particular tax advantage arises to the person from particular tax arrangements which are abusive.
- (2) The officer of Revenue and Customs may, after or at the same time as giving a person a provisional counteraction notice, make any adjustments which the officer considers may be required under section 209 to counteract the tax advantage mentioned in subsection (1).
- (3) In this section “provisional counteraction notice” means a written notice which –
 - (a) specifies the adjustments and states that this section applies to them, and
 - (b) explains the effect of sections 209B to 209D (including an explanation of the conditions in which the matter would, or would not, be referred to the GAAR Advisory Panel under Schedule 43 or 43A).
- (4) Adjustments under subsection (2) may be made in any way in which adjustments may be made under section 209(5).

209B Confirmation or cancellation etc of provisional adjustments following an appeal

- (1) This section applies where a person (the “taxpayer”) has been given a provisional counteraction notice under section 209A.
- (2) If the taxpayer appeals against the making of the adjustments specified in the notice, the adjustments are to be treated as cancelled with effect from the time mentioned in subsection (5) unless one of the following actions is taken before that time –
 - (a) an officer of Revenue and Customs notifies the taxpayer that the adjustments are cancelled,
 - (b) (without cancelling the adjustments) an officer of Revenue and Customs gives the taxpayer written notice of the withdrawal of the provisional counteraction notice, or
 - (c) a designated HMRC officer gives the taxpayer a notice under paragraph 3 of Schedule 43 which –
 - (i) specifies the arrangements and the tax advantage mentioned in subsection section 209A(1), and
 - (ii) specifies the adjustments in question (or lesser adjustments) as the counteraction that the officer considers ought to be taken (see paragraph 3(2)(c) of that Schedule).
- (3) If, in a case within subsection (2)(c), the notice under paragraph 3 of Schedule 43 specifies lesser adjustments, the adjustments made under section 209A(2) are to be treated as modified accordingly.

-
- (4) “Lesser adjustments” means adjustments which assume a smaller tax advantage than was assumed in the provisional counteraction notice.
 - (5) The time referred to in subsection (2) is the end of the period of 12 months beginning with the day on which the provisional counteraction notice is given.
 - (6) The officer may not take the action in subsection (2)(b) unless the officer was authorised to make the adjustments otherwise than under this Part.

209C Confirmation or cancellation etc of provisional adjustments following an appeal: further stages

- (1) This section applies if the action in section 209B(2)(c) (notice to taxpayer of proposed counteraction of tax advantage) is taken.
- (2) If the matter is not referred to the GAAR Advisory Panel, the adjustments in question are to be treated as cancelled with effect from the date of the designated HMRC officer’s decision under paragraph 6(2) of Schedule 43 unless the notice under paragraph 6(3) of Schedule 43 states that the adjustments are not to be treated as cancelled under this section.
- (3) A notice under paragraph 6(3) of Schedule 43 may not contain the statement referred to in subsection (2) unless HMRC was authorised to make the adjustments otherwise than under this Part.
- (4) If the taxpayer is given a notice under paragraph 12 of Schedule 43 which states that the tax advantage arising from the arrangements is not to be counteracted under the general anti-abuse rule, the adjustments are to be treated as cancelled unless that notice states that the adjustments are not to be treated as cancelled under this section.
- (5) A notice under paragraph 12 of Schedule 43 may not contain the statement referred to in subsection (4) unless HMRC was authorised to make the adjustments otherwise than under this Part.
- (6) A cancellation under subsection (4) takes effect from the date on which the notice under paragraph 12 of Schedule 43 is given.
- (7) If the taxpayer is given a notice under paragraph 12 of Schedule 43 stating that the tax advantage in question is to be counteracted –
 - (a) the adjustments specified in the provisional counteraction notice (“the provisional adjustments”) are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and
 - (b) so far as they are not confirmed, the provisional adjustments are to be treated as cancelled.

209D Provisional counteractions: statutory stay of appeals

- (1) This section applies if a person (“the taxpayer”) appeals against the making of adjustments which are specified in a provisional counteraction notice under section 209A(2).
- (2) No steps after the initial notice of appeal are to be taken in relation to the appeal unless and until the taxpayer is given –
 - (a) a notice under section 209B(2)(b),

-
- (b) a notice under paragraph 6(3) of Schedule 43 containing the statement described in section 209C(2), or
 - (c) a notice under paragraph 12 of Schedule 43, in respect of the tax arrangements concerned.
- (3) For the purposes of the appeal it is to be assumed that section 209A(2) only authorises the making of adjustments which comply with section 209(1) and (2).
 - (4) The taxpayer has until the end of the period mentioned in subsection (5) to comply with any requirement to specify the grounds of appeal.
 - (5) The period mentioned in subsection (4) is the 30 days beginning with the day on which the taxpayer receives the notice mentioned in subsection (2)(a) or (b).
 - (6) In subsection (2) the reference to “steps” does not include the withdrawal of the appeal.”

62 General anti-abuse rule: binding of other tax arrangements to lead arrangements

- (1) Part 5 of FA 2013 (general anti-abuse rule) is amended as follows.
- (2) In section 209 (counteracting tax advantages), in subsection (6)(a), after “Schedule 43” insert “or 43A”.
- (3) In section 211 (proceedings before a court or tribunal), in subsection (2)(b), after “(see paragraph 11 of Schedule 43)” insert “, or (where applicable) any opinion of the GAAR Advisory Panel about any tax arrangements which are, as a result of a notice under paragraph 1 of Schedule 43A, the lead arrangements in relation to the tax arrangements”.
- (4) After Schedule 43 insert –

“SCHEDULE 43A

PROCEDURAL REQUIREMENTS: TAX ARRANGEMENTS BOUND TO LEAD
ARRANGEMENTS

Notice to taxpayer of proposed binding of tax arrangements

- 1 (1) This paragraph applies where a designated HMRC officer has given a person (“P”) a notice under paragraph 3 of Schedule 43 in relation to any tax arrangements (the “lead arrangements”) and either –
 - (a) the period of 45 days mentioned in paragraph 4 of that Schedule has expired without any representations having been made by P, or
 - (b) the officer has notified P under paragraph 6(3) of that Schedule of the officer’s decision to refer the matter to the GAAR Advisory Panel.
- (2) If the officer considers –
 - (a) that a tax advantage has arisen to another person (“R”) from tax arrangements that are abusive,
 - (b) that those tax arrangements (“R’s arrangements”) are equivalent arrangements in relation to the lead arrangements, and
 - (c) that the advantage ought to be counteracted under section 209,the officer may give R a notice (a “notice of binding”) in relation to R’s arrangements.
- (3) The officer may not give R a notice of binding if R has been given a notice under paragraph 3 of Schedule 43 in respect of R’s arrangements.
- (4) A notice of binding must –
 - (a) specify the tax arrangements in relation to which the notice is given and the tax advantage,
 - (b) explain why the officer considers R’s arrangements to be equivalent arrangements in relation to the lead arrangements,
 - (c) explain why the officer considers that a tax advantage has arisen to R from tax arrangements that are abusive,

-
- (d) set out the counteraction that the officer considers ought to be taken, and
 - (e) explain the effect of –
 - (i) paragraphs 2 and 3,
 - (ii) subsection (10) of section 209, and
 - (iii) section 212A.
- (5) The notice may set out steps that R may (subject to subsection (10) of section 209) take to avoid the proposed counteraction.
- (6) A notice of binding may describe more than one set of lead arrangements and, if so, must explain why the officer considers R's arrangements to be equivalent arrangements in relation to each set of lead arrangements.

Representations

- 2 (1) This paragraph applies where –
- (a) a notice of binding has been given to a person (“R”) in relation to any tax arrangements (“R’s arrangements”), and
 - (b) a designated HMRC officer has been given an opinion notice (or opinion notices) under paragraph 11(2) of Schedule 43 in relation to tax arrangements which are the lead arrangements in relation to R’s arrangements.
- (2) The officer must give R a copy of the opinion notice or notices.
- (3) The copy must be accompanied by a notice –
- (a) explaining R’s right to make representations falling within sub-paragraph (4), and
 - (b) setting out the period in which those representations may be made.
- (4) R has 30 days beginning with the relevant day to make representations in any of the following categories –
- (a) representations that, because of the expiry of time limits, no officer of Revenue and Customs has power to make the counteractions proposed in the notice of binding;
 - (b) representations that no tax advantage has arisen to R from R’s arrangements;
 - (c) representations that R has already been given a notice under paragraph 3 of this Schedule in relation to R’s arrangements (but with reference to different lead arrangements);
 - (d) representations as to why R’s arrangements are or may be materially different from the lead arrangements.
- (5) In sub-paragraph (4) “the relevant day” means the day on which the notice under sub-paragraph (3) is given by the designated HMRC officer.
- (6) In sub-paragraph (4)(d) references to “arrangements” include any circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive.

Notice of final decision after considering decision of GAAR Advisory Panel

- 3 (1) This paragraph applies where –
 - (a) a person (“R”) has been given under paragraph 2(2) a copy of an opinion notice (or opinion notices) in relation to any tax arrangements (the “lead arrangements”),
 - (b) the period of 30 days set out in paragraph 2(4) has expired, and
 - (c) a designated HMRC officer has given a notice under paragraph 12 of Schedule 43 stating that the tax advantage arising from the lead arrangements is to be counteracted under the general anti-abuse rule.
- (2) The officer must, having considered any opinion of the GAAR Advisory Panel about the lead arrangements and any representations made under paragraph 2(4), give R a written notice setting out whether the tax advantage arising from R’s arrangements is to be counteracted under the general anti-abuse rule.
- (3) If the notice under sub-paragraph (2) states that a tax advantage is to be counteracted, it must also set out –
 - (a) the adjustments required to give effect to the counteraction, and
 - (b) if relevant, any steps that R is required to take to give effect to it.

“Equivalent arrangements”

- 4 (1) For the purposes of paragraph 1, tax arrangements (the “other arrangements”) are “equivalent arrangements” in relation to the lead arrangements if Conditions 1 and 2 are met.
- (2) Condition 1 is that the other arrangements are substantially the same as the lead arrangements having regard –
 - (a) to the substantive results of the tax arrangements concerned (in each case), and
 - (b) to the means of achieving those results.
- (3) Condition 2 is that –
 - (a) the other arrangements have characteristics (“the matching characteristic”) which are the same or substantially the same as the characteristics of the lead arrangements which are relied on by the designated HMRC officer for GAAR purposes, and
 - (b) having regard to all the characteristics of the other arrangements, a designated HMRC officer could reasonably rely on the matching characteristics for GAAR purposes (if the officer were to give a notice under paragraph 3 of Schedule 43 in relation to those tax arrangements).
- (4) In Condition 2 the reference to reliance on characteristics “for GAAR purposes” is to reliance on the characteristics for explaining, in a notice under paragraph 3 of Schedule 43, why the officer considers that a tax advantage has arisen to a person from tax arrangements that are abusive.

Notices may be given on assumption that tax advantage does arise

- 5 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.
- (2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

Meaning of “designated HMRC officer”

- 6 In this Schedule “designated HMRC officer” means an officer of Revenue and Customs designated for the purposes of the general anti-abuse rule.”

60 General anti-abuse rule: penalty

(1) Part 5 of FA 2013 (general anti-abuse rule) is amended as follows.

(2) After section 212 insert –

“212A Penalty

(1) A person is liable to pay a penalty if –

- (a) the person has given a tax document to HMRC on the basis that a tax advantage results from particular tax arrangements,
- (b) the person has been given a notice under paragraph 12 of Schedule 43 or paragraph 3 of Schedule 43A stating that the tax advantage is to be counteracted, and
- (c) the tax advantage has been counteracted by the making of adjustments under section 209.

(2) The penalty is 60% of the value of the counteracted advantage.

(3) Schedule 43B –

- (a) gives the meaning of “the value of the counteracted advantage”, and
- (b) makes other provision in relation to penalties under this section.

(4) In this section “tax document” means any return, claim or other document submitted in compliance (or purported compliance) with any provision of, or made under, an Act.”

(3) In section 209 (counteracting the tax advantages), after subsection (7) insert –

“(8) Where a notice under paragraph 3 of Schedule 43 has been given to a person and the matter is referred to the GAAR Advisory Panel, the person must not make any GAAR-related adjustments in relation to the person’s tax affairs in the period which –

- (a) begins immediately after the end of the 30 day open period (see subsection (9)), and
- (b) ends immediately before the day on which the person is given the notice under paragraph 12 of Schedule 43 (notice of final decision after considering opinion of GAAR advisory panel).

(9) In subsection (8) the “30 day open period” means –

- (a) if the case falls within paragraph 5 of Schedule 43 (no representations made), the period of 30 days beginning immediately after the end of the 45 day period mentioned in paragraph 4(1) of that Schedule, or
- (b) if the case falls within paragraph 6(2) of that Schedule (referral after consideration of representations), the period of 30 days beginning with the day on which the designated HMRC officer gives the notice under paragraph 6(3) of that Schedule.

(10) Where a person has been given a notice under paragraph 1 of Schedule 43A (notice to taxpayer of proposed binding of arrangements) in relation to any tax arrangements, the person must not make any GAAR-related adjustments in the period that –

- (a) begins with the 31st day after the day on which that notice is given, and

-
- (b) ends with the day before the day on which the person is given a notice under paragraph 3(2) of Schedule 43A in relation to the tax arrangements (notice of final decision after considering opinion of GAAR Advisory Panel).
- (11) In this section “GAAR-related adjustments” means –
- (a) for the purposes of subsection (8), adjustments which give effect (wholly or in part) to the proposed counteraction specified in the notice under paragraph 3 of Schedule 43;
 - (b) for the purposes of subsection (10), adjustments which give effect (wholly or partly) to the proposed counteraction specified in the notice under paragraph 1 of Schedule 43A.”
- (4) Schedule 43 (general anti-abuse rule: procedural requirements) is amended in accordance with subsections (5) and (6).
- (5) In paragraph 3 –
- (a) in sub-paragraph (2)(e), for “of paragraphs 5 and 6” substitute “of –
 - (i) paragraphs 5 and 6,
 - (ii) section 212A, and
 - (iii) subsections (8) and (9) of section 209.”;
 - (b) in sub-paragraph (3), after “may” insert “(subject to subsections (8) and (9) of section 209).
- (6) In paragraph 6, after sub-paragraph (2) insert –
- “(3) The officer must, as soon as reasonably practicable after the day on which the officer decides whether or not the matter is to be referred to the GAAR Advisory Panel, give the taxpayer written notice of the decision.”
- (7) After Schedule 43 insert –

“SCHEDULE 43B

PENALTY UNDER SECTION 212A: SUPPLEMENTARY PROVISION

Value of the counteracted advantage: introduction

- 1 Paragraphs 2 to 4 set out how to calculate the “value of the counteracted advantage” for the purposes of section 212A.

Value of the counteracted advantage: basic rule

- 2 (1) The “value of the counteracted advantage” is the additional amount due or payable in respect of tax as a result of the counteraction mentioned in section 212A(1)(b).
- (2) The reference in sub-paragraph (1) to the additional amount due and payable includes a reference to –
- (a) an amount payable to HMRC having erroneously been paid by way of repayment of tax, and
 - (b) an amount which would be repayable by HMRC if the counteraction were not made.
- (3) The following are ignored in calculating the value of the counteracted advantage –

-
- (a) group relief, and
 - (b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.

(4) This paragraph is subject to paragraphs 3 and 4.

Value of counteracted advantage: losses

- 3
- (1) To the extent that the tax advantage mentioned in section 212A(1)(b) (“the tax advantage”) resulted in the wrong recording of a loss for the purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is determined in accordance with paragraph 2.
 - (2) To the extent that the tax advantage resulted in the wrong recording of a loss for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is –
 - (a) the value under paragraph 2 of so much of the tax advantage as results (or would in the absence of the counteraction result) from the part (if any) of the loss which was used to reduce the amount due or payable in respect of tax, plus
 - (b) 10% of the part of the loss not so used.
 - (3) Sub-paragraphs (1) and (2) apply both –
 - (a) to a case where no loss would have been recorded but for the tax advantage, and
 - (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (1) and (2) apply only to the difference between the amount recorded and the true amount).
 - (4) To the extent that the tax advantage creates or increases (or would in the absence of the counteraction create or increase) an aggregate loss recorded for a group of companies –
 - (a) the value of the counteracted advantage is calculated in accordance with this paragraph, and
 - (b) in applying paragraph 2 in accordance with sub-paragraphs (1) and (2), group relief may be taken into account (despite paragraph 2(3)).
 - (5) To the extent that the tax advantage results (or would in the absence of the counteraction result) in a loss, the value of it is nil where, because of the nature of the loss or the person’s circumstances, there was no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

Value of counteracted advantage: deferred tax

- 4
- (1) To the extent that the tax advantage mentioned in section 212A is a deferral of tax, the value of the counteracted advantage is –
 - (a) 25% of the amount of the deferred tax for each year of the deferral, or

-
- (b) a percentage of the amount of the deferred tax, for each separate period of deferral of less than a year, equating to 25% per year,
or, if less, 100% of the amount of the deferred tax.
- (2) This paragraph does not apply to a case to the extent that paragraph 3 applies.

Assessment of penalty

- 5 (1) Where a person is liable for a penalty under section 212A, HMRC must assess the penalty.
- (2) Where HMRC assess the penalty, HMRC must –
- (a) notify the person who is liable for the penalty, and
 - (b) state in the notice a tax period in respect of which the penalty is assessed.
- (3) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (4) An assessment –
- (a) is to be treated for procedural purposes as if it were an assessment to tax,
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- (5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with –
- (a) the end of the appeal period for the assessment which gave effect to the counteraction mentioned in section 212A(1)(b),
or
 - (b) if there is no assessment within paragraph (a), the date (or the latest of the dates) on which that counteraction becomes final.
- (6) The reference in sub-paragraph (5)(b) to the counteraction becoming final is to be interpreted in accordance with section 210(8).

Alteration of assessment of penalty

- 6 (1) After notification of an assessment has been given to a person under paragraph 5(2), the assessment may not be altered except in accordance with this paragraph or paragraph 7, or on appeal.
- (2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the counteracted advantage.
- (3) An assessment may be revised as necessary if operated by reference to an overestimate of the value of the counteracted advantage.

Revision of assessment following consequential relieving adjustment

- 7 (1) Sub-paragraph (2) applies where a person –

-
- (a) is notified under section 210(7) of a consequential adjustment relating to a counteraction under section 209, and
 - (b) an assessment to a penalty in respect of that counteraction of which the person has been notified under paragraph 5(2) does not take account of that consequential adjustment.
 - (2) HMRC must make any alterations of the assessment that appear to HMRC to be just and reasonable in connection with the consequential amendment.
 - (3) Alterations under this paragraph may be made despite any time limit imposed by or under an enactment.

Aggregate penalties

- 8 (1) Sub-paragraph (3) applies where –
 - (a) two or more penalties are incurred by the same person and fall to be determined by reference to an amount of tax to which that person is chargeable,
 - (b) one of those penalties is incurred under section 212A, and
 - (c) one or more of the other penalties are incurred under a relevant penalty provision.
- (2) But sub-paragraph (3) does not apply if section 212(2) of FA 2014 (follower notices: aggregate penalties) applies in relation to the amount of tax in question.
- (3) The aggregate of the amounts of the penalties mentioned in subsection (1)(b) and (c), so far as determined by reference to that amount of tax, must not exceed –
 - (a) the relevant percentage of that amount, or
 - (b) in a case where at least one of the penalties is under paragraph 5(2)(b) of, or sub-paragraph (3)(b), (4)(b) or (5)(b) of paragraph 6 of, Schedule 55 to FA 2009, £300 (if greater).
- (4) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under section 212A.
- (5) “Relevant penalty provision” means –
 - (a) Schedule 24 to FA 2007 (penalties for errors),
 - (b) Schedule 41 to FA 2008 (penalties: failure to notify etc),
 - (c) Schedule 55 to FA 2009 (penalties for failure to make returns etc), or
 - (d) Part 4 of the Schedule to section 63 of FA 2016 (penalty under Serial Avoiders Regime).
- (6) “The relevant percentage” means –
 - (a) 200% in a case where at least one of the penalties is determined by reference to the percentage in –
 - (i) paragraph 4(4)(c) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(4)(a) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(3A)(c) of Schedule 55 to FA 2009,
 - (b) 150% in a case where paragraph (a) does not apply and at least one of the penalties is determined by reference to the percentage in –

-
- (i) paragraph 4(3)(c) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(3)(a) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(3A)(b) of Schedule 55 to FA 2009,
- (c) 140% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in –
- (i) paragraph 4(4)(b) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(4)(b) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(4A)(c) of Schedule 55 to FA 2009,
- (d) 105% in a case where at none of paragraphs (a), (b) and (c) applies and at least one of the penalties is determined by reference to the percentage in –
- (i) paragraph 4(3)(b) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(3)(b) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(4A)(b) of Schedule 55 to FA 2009, and
- (e) in any other case, 100%.

Appeal against penalty

- 9 (1) A person may appeal against –
- (a) the imposition of a penalty under section 212A, or
 - (b) the amount assessed under paragraph 5.
- (2) An appeal under sub-paragraph (1)(a) may only be made on the grounds that the arrangements were not abusive or there was no tax advantage to be counteracted.
- (3) An appeal under sub-paragraph (1)(b) may only be made on the grounds that the assessment was based on an overestimate of the value of the counteracted advantage (whether because the estimate was made by reference to adjustments which were not just and reasonable or for any other reason).
- (4) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which notification of the penalty is given under paragraph 5(2).
- (5) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (6) Sub-paragraph (5) does not apply –
- (a) so as to require a person to pay a penalty before an appeal against the assessment of the penalty is determined, or
 - (b) in respect of any other matter expressly provided for by this Part.
- (7) On an appeal against the penalty the tribunal may affirm or cancel HMRC's decision.
- (8) On an appeal against the amount of the penalty the tribunal may –
- (a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC has power to make.

(9) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (5)).

Mitigation of penalties

10 (1) The Commissioners for Her Majesty's Revenue and Customs may in their discretion mitigate a penalty under section 212A, or stay or compound any proceedings for such a penalty.

(2) They may also, after judgment, further mitigate or entirely remit the penalty.

References to an "assessment"

11 In this Schedule a reference to an assessment to tax is to be interpreted, in relation to inheritance tax, as a reference to a determination."

(8) In section 103ZA of TMA 1970 (disapplication of sections 100 to 103 in the case of certain penalties) (as amended by the Schedule to section 63) –

(a) omit "or" at the end of paragraph (h), and

(b) after paragraph (i) insert "or

(i) section 212A of FA 2013 (general anti-abuse rule)."

(9) In section 212 of FA 2014 (follower notices: aggregate penalties) (as amended by the Schedule to section 63), in subsection (4) –

(a) omit "or" at the end of paragraph (c), and

(b) after paragraph (d) insert " , or

(e) section 212A of FA 2013 (general anti-abuse rule)."

(10) FA 2015 is amended in accordance with subsections (11) and (12).

(11) In section 120 (penalties in connection with offshore matters and offshore transfers), in subsection (1), omit "and" before paragraph (c) and after paragraph (c) insert – " , and

(d) Schedule 43B to FA 2013 (as amended by FA 2016)."

(12) In Schedule 20 to that Act, after paragraph 19 insert –

"General anti-abuse rule: aggregate penalties

20 (1) In Schedule 43B to FA 2013 (general anti-abuse rule: supplementary provision about penalty), sub-paragraph (6) of paragraph 7 is amended as follows.

(2) After paragraph (b) insert –

"(ba) 125% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in –

(i) paragraph 4(2)(c) of Schedule 24 to FA 2007,

(ii) paragraph 6(2)(a) of Schedule 41 to FA 2008,

(iii) paragraph 6(3A)(a) of Schedule 55 to FA 2009,".

-
- (3) In sub-paragraph (c) for “neither paragraph (a) nor paragraph (b) applies” substitute “none of paragraphs (a) to (ba) applies.”
 - (4) In sub-paragraph (d) for “none of paragraphs (a), (b) and (c) applies” substitute “none of paragraphs (a) to (c) applies”.
- (13) The amendments made by subsections (1) to (12) have effect in relation to tax arrangements entered into on or after the day on which this Act is passed.

63 Serial tax avoidance

The Schedule contains provision about the issue of warning notices to, and further sanctions for, persons who incur a relevant defeat in relation to arrangements.

SCHEDULE TO CLAUSE 63

SERIAL TAX AVOIDANCE

PART 1

ENTRY INTO THE REGIME AND BASIC CONCEPTS

Duty to give warning notice

- 1 (1) This paragraph applies where a person incurs a relevant defeat in relation to any arrangements.
- (2) HMRC must give the person a written notice (a “warning notice”).
- (3) The notice must be given within the period of 90 days beginning with the day on which the relevant defeat is incurred.
- (4) The notice must –
 - (a) set out when the warning period begins and ends (see paragraph 15),
 - (b) specify the relevant defeat to which the notice relates, and
 - (c) explain the effect of paragraphs 15(3) and 16 to 27.
- (5) In this Schedule “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) For the meaning of “relevant defeat” and provision about when a relevant defeat is incurred see paragraph 9.

Meaning of “tax”

- 2 In this Schedule “tax” includes any of the following taxes –
 - (a) income tax,
 - (b) corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax,
 - (c) capital gains tax,
 - (d) petroleum revenue tax,
 - (e) diverted profits tax,
 - (f) inheritance tax,
 - (g) stamp duty land tax,
 - (h) annual tax on enveloped dwellings,
 - (i) VAT, and
 - (j) national insurance contributions.

Meaning of “tax advantage” in relation to VAT

- 3 (1) In this Schedule “tax advantage”, in relation to VAT, is to be read in accordance with sub-paragraphs (2) to (4).
- (2) A taxable person obtains a tax advantage if—
- (a) in any prescribed accounting period, the amount by which the output tax accounted for by the person exceeds the input tax deducted by the person is less than it would otherwise be,
 - (b) the person obtains a VAT credit when the person would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case,
 - (c) in a case where the person recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case, or
 - (d) in any prescribed accounting period, the amount of the person’s non-deductible tax is less than it would otherwise be.
- (3) A person who is not a taxable person obtains a tax advantage if the person’s non-refundable tax is less than it otherwise would be.
- (4) In sub-paragraph (3) “non-refundable tax”, in relation to a person who is not a taxable person, means—
- (a) VAT on the supply to the person of any goods or services,
 - (b) VAT on the acquisition by the person from another member State of any goods, and
 - (c) VAT paid or payable by the person on the importation of any goods from a place outside the member States,
- but excluding (in each case) any VAT in respect of which the person is entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.

Meaning of “non-deductible tax”

- 4 (1) In this Schedule “non-deductible tax”, in relation to a taxable person, means—
- (a) input tax for which the person is not entitled to credit under section 25 of VATA 1994, and
 - (b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.
- (2) For the purposes of sub-paragraph (1)(b), the VAT “incurred” by a taxable person is—
- (a) VAT on the supply to the person of any goods or services,
 - (b) VAT on the acquisition by the person from another member State of any goods, and
 - (c) VAT paid or payable by the person on the importation of any goods from a place outside the member States.

“Tax advantage”: other taxes

- 5 In relation to taxes other than VAT, “tax advantage” includes –
- (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,
 - (c) receipt, or advancement of a receipt, of a tax credit,
 - (d) avoidance or reduction of a charge to tax or an assessment of tax,
 - (e) avoidance of a possible assessment to tax,
 - (f) deferral of a payment of tax or advancement of a repayment of tax, and
 - (g) avoidance of an obligation to deduct or account for tax.

“DOTAS arrangements”

- 6 (1) For the purposes of this Schedule arrangements are “DOTAS arrangements” at any time if they are notifiable arrangements and at the time in question and a person –
- (a) has provided, information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or
 - (b) has failed to comply with any of those provisions in relation to the arrangements.
- (2) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004 –
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or
 - (b) but for subsection (4A), (4C) or (5) of that section,
- is treated as providing the information at the end of the period referred to in subsection (3) of that section.
- (3) In this paragraph “notifiable arrangements” has the same meaning as in Part 7 of FA 2004.

“Disclosable VAT arrangements”

- 7 For the purposes of this Schedule arrangements are “disclosable VAT arrangements” at any time if at that time –
- (a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),
 - (b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or
 - (c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).

Paragraphs 6 and 7: “failure to comply”

- 8 (1) A person “fails to comply” with any provision mentioned in paragraph 6(1) or 7(a) if and only if any of the conditions in sub-paragraphs (2) to (4) is met.
- (2) The condition in this sub-paragraph is that –

-
- (a) the tribunal has determined that the person has failed to comply with the provision concerned,
 - (b) the appeal period has ended, and
 - (c) the determination has not been overturned on appeal.
- (3) The condition in this sub-paragraph is that—
- (a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done,
 - (b) the appeal period has ended, and
 - (c) the determination has not been overturned on appeal.
- (4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.
- (5) In this paragraph “the appeal period” means—
- (a) the period during which an appeal could be brought against the determination of the tribunal, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (6) In this paragraph “the tribunal” means the First-tier tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

“Relevant defeat”

- 9 (1) A person (“P”) incurs a “relevant defeat” in relation to arrangements if any of Conditions A to E is met in relation to P and the arrangements.
- (2) The relevant defeat is incurred when the condition in question is first met.

Condition A

- 10 (1) Condition A is that—
- (a) P has been given a notice under paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision) stating that a tax advantage arising from the arrangements is to be counteracted,
 - (b) that tax advantage has been counteracted under section 209 of FA 2013, and
 - (c) the counteraction is final.
- (2) For the purposes of this paragraph the counteraction of a tax advantage is “final” when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.

Condition B

- 11 (1) Condition B is that (in a case not falling within Condition A above) a follower notice has been given to P by reference to the arrangements (and not withdrawn) and—

-
- (a) P has complied with subsection (2) of section 208 of FA 2014 by taking the action specified in subsections (4) to (6) of that section in respect of the denied tax advantage, or
 - (b) the denied tax advantage has been counteracted otherwise than as mentioned in paragraph (a) and the counteraction of the denied tax advantage is final.
- (2) In this paragraph “the denied tax advantage” is to be interpreted in accordance with section 208(3) of FA 2014.
- (3) For the purposes of this paragraph the counteraction of a tax advantage is “final” when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.
- (4) In this Schedule “follower notice” means a follower notice under Chapter 2 of Part 4 of FA 2014.

Condition C

- 12 (1) Condition C is that (in a case not falling within Condition A or B) –
- (a) the arrangements are DOTAS arrangements,
 - (b) P has relied on the arrangements (see sub-paragraph (2)) –
 - (c) the arrangements have been counteracted, and
 - (d) the counteraction is final.
- (2) For the purposes of sub-paragraph (1), P “relies on the arrangements” if –
- (a) P makes a return, claim or election on the basis that a relevant tax advantage arises, or
 - (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P’s failure to discharge that obligation is connected with the arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a “relevant obligation” if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if –
- (a) adjustments, other than taxpayer emendations, are made in respect of P’s tax position –
 - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or
 - (ii) on the basis that the disputed obligation does (or did) arise, or
 - (b) an assessment to tax other than a self-assessment is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
- (6) For the purposes of this paragraph a counteraction is “final” when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.

-
- (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are DOTAS arrangements is when the counteraction becomes final.
 - (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5) –
 - (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P’s affairs relating to the tax in question;
 - (b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to P’s tax position as a result of a full disclosure made by P at a time when P had no reason to believe that HMRC were about to begin enquiries into P’s affairs relating to the tax in question.
 - (9) The reference in sub-paragraph (8)(b) to a “disclosure” is to a disclosure of an inaccuracy in a return or other document.
 - (10) For the purposes of this paragraph a contract settlement which HMRC enters into with P is treated as an assessment to tax (other than a self-assessment); and in relation to contract settlements references in sub-paragraph (5) to the basis on which any assessment or adjustments are made, or any other action is taken, are to be read with any necessary modifications.

Condition D

- 13 (1) Condition D is that –
 - (a) P is a taxable person;
 - (b) the arrangements are disclosable VAT arrangements to which P is a party,
 - (c) P has relied on the arrangements (see sub-paragraph (2));
 - (d) the arrangements have been counteracted, and
 - (e) the counteraction is final.
- (2) For the purposes of sub-paragraph (1) P “relies on the arrangements” if –
 - (a) P makes a return or claim on the basis that a relevant tax advantage arises, or
 - (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P’s failure to discharge that obligation is connected with those arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a “relevant obligation” if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if –
 - (a) adjustments, other than taxpayer emendations, are made in respect of P’s tax position –
 - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or

-
- (ii) on the basis that the disputed obligation does (or did) arise,
or
 - (b) an assessment to tax is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
 - (6) For the purposes of this paragraph a counteraction is “final” when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.
 - (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are disclosable VAT arrangements is when the counteraction becomes final.
 - (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5) –
 - (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P’s affairs relating to VAT;
 - (b) an adjustment made by HMRC with respect to P’s tax position (by way of an assessment or otherwise) as a result of a full disclosure made by P at a time when P had no reason to believe that HMRC were about to begin enquiries into P’s affairs relating to VAT.
 - (9) The reference in sub-paragraph (8)(b) to a “disclosure” is to a disclosure of an inaccuracy in a return or other document.

Condition E

- 14 (1) Condition E is that the arrangements are disclosable VAT arrangements to which P is a party and –
 - (a) the arrangements relate to the position with respect to VAT of a person other than P (“S”) who has made supplies of goods or services to P,
 - (b) the arrangements might be expected to enable P to obtain a tax advantage in connection with those supplies of goods or services,
 - (c) the arrangements have been counteracted, and
 - (d) the counteraction is final.
- (2) For the purposes of this paragraph the arrangements are “counteracted” if –
 - (a) HMRC assess S to tax or take any other action on basis which prevents P from obtaining (or obtaining the whole of) the tax advantage in question, or
 - (b) adjustments, other than taxpayer emendations, are made in relation to S’s VAT affairs on a basis such as is mentioned in paragraph (a).
- (3) For the purposes of this paragraph a counteraction is “final” when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.
- (4) For the purposes of sub-paragraph (1) the time when it falls to be determined whether or not the arrangements are disclosable VAT arrangements is when the counteraction becomes final.

-
- (5) The following are “taxpayer emendations” for the purposes of sub-paragraph (2)–
- (a) an adjustment made by S at a time when neither P nor S had reason to believe that HMRC had begun or were about to begin enquiries into the affairs of S or P relating to VAT;
 - (b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to S’s tax position as a result of a full disclosure made by S at a time when neither S nor P had reason to believe that HMRC were about to begin enquiries into the affairs of S or P relating to VAT.
- (6) The reference in sub-paragraph (5)(b) to a “disclosure” is to a disclosure of an inaccuracy in a return or other document.

Warning period

- 15 (1) A person to whom a warning notice under paragraph 1 has been given (and who was not on warning under this Schedule when the relevant defeat to which the notice relates was incurred) is to be on warning under this Schedule throughout the period of 5 years beginning with the day after the day on which the notice is given.
- (2) That period is a “warning period” in relation to the person.
- (3) If a person incurs a relevant defeat in relation to arrangements at a time when the person is on warning under this Schedule –
- (a) the person is to remain on warning for a further 5 years beginning with the day after the day on which the relevant defeat occurs, and
 - (b) the warning period is accordingly treated as extended to the end of that 5 year period.
- (4) In relation to a warning period which has been extended under sub-paragraph (3) or paragraph 16(8), references in this Schedule (including this paragraph) to the warning period are to be read as references to the warning period as extended.

PART 2

ANNUAL INFORMATION NOTICES AND NAMING

Annual information notices

- 16 (1) A person (“P”) who has been given a warning notice under this Schedule must give HMRC a written notice (an “information notice”) in respect of each reporting period in the warning period (see sub-paragraph (7)).
- (2) An information notice must be given not later than the 30th day after the end of the reporting period to which it relates.
- (3) An information notice must state whether or not P –
- (a) has in the reporting period delivered a return, or made a claim or election, on the basis that a relevant tax advantage arises, or has since the end of the reporting period delivered on that basis a return which P was required to deliver before the end of that period,
 - (b) has in the reporting period failed to take action which P would be required to take under or by virtue of an enactment relating to tax

-
- but for particular DOTAS arrangements or disclosable VAT arrangements to which P is a party, or
- (c) has in the reporting period become a party to arrangements which—
 - (i) relate to the position with respect to VAT of another person (“S”) who has made supplies of goods or services to P, and
 - (ii) might be expected to enable P to obtain a relevant tax advantage (“the expected tax advantage”) in connection with those supplies of goods or services.
- (4) In this paragraph “relevant tax advantage” means a tax advantage which particular DOTAS arrangements or disclosable VAT arrangements enable, or might be expected to enable, P to obtain.
- (5) If P has, in the reporting period, made a return, claim or election on the basis mentioned in sub-paragraph (2)(a) or failed to take action as mentioned in sub-paragraph (2)(b) the notice must—
- (a) explain (on the assumptions made by P in so acting or failing to act) how the DOTAS arrangements or disclosable VAT arrangements enable P to obtain the tax advantage, or (as the case may be) have the result that P is not required to take the action in question, and
 - (b) state (on the same assumptions) the amount of the relevant tax advantage mentioned in sub-paragraph (2)(a) or (as the case may be) the amount of any tax advantage which arises in connection with the absence of a requirement to take the action mentioned in sub-paragraph (2)(b).
- (6) If P has, in the reporting period, become a party to arrangements such as are mentioned in sub-paragraph (3)(c), the notice—
- (a) must state whether or not it is P’s view that the expected tax advantage arises to P, and
 - (b) if that is P’s view, must explain how the arrangements enable P to obtain the tax advantage and state the amount of the tax advantage.
- (7) For the purposes of this paragraph—
- (a) the first reporting period in any warning period begins with the first day of the warning period and ends with a day specified by HMRC (“the specified day”),
 - (b) the remainder of the warning period is divided into further reporting periods each of which begins immediately after the end of the preceding reporting period and is twelve months long or (if that would be shorter) ends at the end of the warning period.
- (8) If P fails to comply with this paragraph HMRC may by written notice extend the warning period to the end of the period of 5 years beginning with—
- (a) the day by which the information notice should have been given (see sub-paragraph (1)) or, as the case requires,
 - (b) the day on which P gave the defective information notice to HMRC, or, if earlier, the time when the warning period would have expired but for the extension.

Naming

- 17 (1) The Commissioners may publish information about a person if the person has been given at least three warning notices which have the same basis period (see paragraph 41).

-
- (2) Information published for the first time under sub-paragraph (1) must be published within the 12 months beginning with the day on which the most recent of the warning notice falling within that sub-paragraph has been given to the person.
 - (3) No information may be published (or continue to be published) after the end of the period of 12 months beginning with the day on which it is first published.
 - (4) The information that may be published is—
 - (a) the person’s name (including any trading name, previous name or pseudonym),
 - (b) the person’s address (or registered office),
 - (c) the nature of any business carried on by the person,
 - (d) information about the fiscal effect of the defeated arrangements (had they not been defeated), for instance information about total amounts of tax understated or total amounts by which claims, or statements of losses, have been adjusted,
 - (e) the amount of any penalty to which the person is liable under paragraph 27 in respect of the relevant defeat of any defeated arrangements,
 - (f) the periods in which or times when the defeated arrangements were used, and
 - (g) any other information the Commissioners may consider it appropriate to publish in order to make clear the person’s identity.
 - (5) The information may be published in any manner the Commissioners may consider appropriate.
 - (6) Before publishing any information the Commissioners—
 - (a) must inform the person that they are considering doing so, and
 - (b) afford the person reasonable opportunity to make representations about whether or not it should be published.
 - (7) Arrangements are “defeated arrangements” for the purposes of sub-paragraph (4) if the person used the them in the warning period mentioned in sub-paragraph (1) and a warning notice specifying the defeat of those arrangements has been given to the person before the information is published.
 - (8) Nothing in this paragraph prevents the power under sub-paragraph (1) from being exercised on a subsequent occasion in relation to arrangements used by the person in a different warning period.

PART 3

RESTRICTION OF RELIEFS

Duty to give a restriction relief notice

- 18 (1) HMRC must give a person a written notice (a “restriction of relief notice”) if the person has been given three warning notices in relation to which the following conditions are met—
 - (a) the notices share the same basis period (see paragraph 41),

-
- (b) each of the notices relates to a relevant defeat by virtue of Condition A, B or C,
 - (c) each of the notices relates to the misuse of a relief (see sub-paragraph (5)), and
 - (d) in the case of each notice the condition in paragraph (a) or (b) of sub-paragraph (2) is met.
- (2) The alternative conditions are –
- (a) that the relevant counteraction (see sub-paragraph (7)) was made on the basis that a particular avoidance-related rule applies in relation to the person’s affairs, or
 - (b) that the misused relief is a loss relief.
- (3) In sub-paragraph (2)(b) –
- (a) the “misused relief” means the relief mentioned in sub-paragraph (5), and
 - (b) “loss relief” means any relief under Part 4 of ITA 2007 or Part 4 of CTA 2010.
- (4) A restriction of relief notice must –
- (a) explain the effect of paragraphs 19, 20 and 25, and
 - (b) set out when the restricted period is to begin and end.
- (5) For the purposes of this Part of this Schedule, a warning notice relating to a relevant defeat by virtue of Condition A, B or C “relates to the misuse of a relief” if –
- (a) the tax advantage in question, or part of the tax advantage in question, is or results from (or would but for the counteraction be or result from) a relief or increased relief from tax, or
 - (b) it is reasonable to conclude that the making of a particular claim for relief, or the use of a particular relief, is essential to the design of the arrangements in question.
- (6) In sub-paragraph (5) “the tax advantage in question” means –
- (a) in relation to a defeat by virtue of Condition A, the tax advantage mentioned in paragraph 10(1)(a),
 - (b) in relation to a defeat by virtue of Condition B, the denied tax advantage (as defined in paragraph 11(2)), or
 - (c) in relation to a defeat by virtue of Condition C –
 - (i) the tax advantage mentioned in paragraph 12(2)(a), or, as the case requires,
 - (ii) the absence of the relevant obligation (as defined in paragraph 12(4)).
- (7) In this paragraph “the relevant counteraction”, in relation to a warning notice given to a person in respect of a relevant defeat means –
- (a) in the case of a defeat by virtue of Condition A, the counteraction referred to in paragraph 10(1)(c);
 - (b) in the case of a defeat by virtue of Condition B, the counteraction referred to in paragraph 11(1)(b);
 - (c) in the case of a defeat by virtue of Condition C, the counteraction referred to in paragraph 12(1)(c).

Restriction of relief

- 19 (1) Sub-paragraphs (2) to (7) have effect in relation to a person to whom a relief restriction notice has been given.
- (2) The person may not, in the restricted period (see paragraph 20), make any claim for relief.
- (3) Sub-paragraph (2) does not have effect in relation to—
- (a) a claim for relief under Schedule 8 to FA 2003 (stamp duty land tax: charities relief);
 - (b) a claim for relief under Chapter 3 of Part 8 of ITA 2007 (gifts of shares, securities and real property to charities etc);
 - (c) a claim for relief under Part 10 of ITA 2007 (special rules about charitable trusts etc);
 - (d) a claim for relief under double taxation arrangements;
 - (e) an election under section 426 of ITA 2007 (gift aid: election to treat gift as made in previous year).
- (4) Claims under the following provisions in Part 4 of FA 2004 (registered pension schemes: tax reliefs etc) do not count as claims for relief for the purposes of this paragraph—
- section 192(4) (increase of basic rate limit and higher rate limit);
 - section 193(4) (net pay arrangements: excess relief);
 - section 194(1) (relief on making of a claim).
- (5) No deduction is to be made under section 118 of ITA 2007 (carry-forward property loss relief) in calculating the person's net income for a relevant tax year.
- (6) The person is not entitled to relief under section 448 (annual payments: relief for individuals) or 449 (annual payments: relief for other persons) of ITA 2007 for any payment made in the restricted period.
- (7) No reduction is to be made under section 45(4) of CTA 2010 (carry-forward of trade loss relief) in calculating the profits for a relevant accounting period of a trade carried on by the person.
- (8) If the person is a company, no deduction is to be made under section 62 (relief for losses made in UK property business) from the company's total profits of a relevant accounting period.
- (9) No deduction is to be made under regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013 (S.I. 2013/2819) (relief for deemed payments by trustees of an exempt unauthorised unit trust) in calculating the person's net income for a relevant tax year.
- (10) In this paragraph "relevant tax year" means any tax year the first day of which is in the restricted period.
- (11) In this paragraph "relevant accounting period" means an accounting period the first day of which is in the restricted period.
- (12) In this paragraph "double taxation arrangements" means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the UK).

The restricted period

- 20 (1) In paragraph 19 (and this paragraph) “the restricted period” means in the period of 3 years beginning with the day on which the relief restriction notice is given.
- (2) If during the restricted period (or the restricted period as extended under this sub-paragraph) the person to whom a relief restriction notice has been given incurs a further a relevant defeat meeting the conditions in sub-paragraph (4), HMRC must give the person a written notice (a “restricted period extension notice”).
- (3) A restricted period extension notice extends the restricted period to the end of the period of 3 years beginning with the day on which the further relevant defeat occurs.
- (4) The conditions mentioned in sub-paragraph (2) are that—
- (a) the relevant defeat is incurred by virtue of Condition A, B or C in relation to arrangements which the person used in the warning period mentioned in paragraph 18(1)(a), and
 - (b) the warning notice given to the person in respect of the relevant defeat relates to the misuse of a relief.
- (5) If the person to whom a relief restriction notice has been given incurs a relevant defeat which meets the conditions in sub-paragraph (4) after the restricted period has expired but before the end of a concurrent warning period, HMRC must give the person a restriction of relief notice.
- (6) In sub-paragraph (4) “concurrent warning period” means a warning period which at some time ran concurrently with the restricted period.

Meaning of “avoidance-related rule”

- 21 (1) In this Part of this Schedule “avoidance-related rule” means a rule in Category 1 or 2.
- (2) A rule is in Category 1 if—
- (a) it refers to the “purpose” or “object” of a transaction, arrangements or any other action or matter, and
 - (b) the purpose is expressed (wholly or partly) by reference to the avoidance of tax or the obtaining of any advantage in relation to tax (however described, and including cases where the reference is to not avoiding tax or not obtaining an advantage, or a particular advantage, in relation to tax).
- (3) Sub-paragraph (2)(a) has effect as if a reference to the “main purpose” or “main object”, or to the “main purposes” or “main objects”, of an action or matter were a reference to the “purpose” or “object” of the action or matter; and sub-paragraph (2)(b) is to be read accordingly.
- (4) A rule falls within Category 2 if as a result of the rule the treatment of a person for tax purposes may differ depending on whether or not certain purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.

(5) For the purposes of sub-paragraph (4) it does not matter whether the rule refers to “commercial purposes”, “genuine commercial purposes” or “bona fide commercial purposes”.

(6) For example, a rule in the following form would fall within Category 1 and within Category 2—

“Example rule

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B.

Condition A is that the transaction is effected—

- (a) for genuine commercial reasons, or
- (b) in the ordinary course of managing investments.

Condition B is that the avoidance of tax is not the main object or one of the main objects of the transaction.”

Meaning of “relief”

- 22 The following are “reliefs” for the purposes of this Part of this Schedule—
- (a) any relief from tax (however described) which must be claimed, or which is not available without making an election,
 - (b) any relief (not falling within paragraph (a)) under Part 4 of ITA 2007 (loss relief) or Part 4 of CTA 2010 (loss relief), and
 - (c) any relief (not falling within paragraph (a) or (b)) under a provision listed in section 24 of ITA 2007 (reliefs deductible at Step 2 of the calculation of income tax liability).

“Claim” for relief

- 23 In this Part of this Schedule “claim for relief” includes any election which is in substance a claim for relief.

VAT

- 24 In this Part of this Schedule “tax” does not include VAT.

Appeal

- 25 (1) A person may appeal against a relief restriction notice or a restricted period extension notice.
- (2) An appeal against a relief restriction notice may only be made on the ground that the condition that the person has been given three warning notices meeting the condition in paragraph 18(1) is not met.
- (3) An appeal against a restricted period extension notice may only be made on the ground that the condition in paragraph 20(2) for giving such a notice is not met.
- (4) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which the notice is given.

-
- (5) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
 - (6) On an appeal under sub-paragraph (1) the tribunal may affirm or cancel HMRC's decision.
 - (7) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (3)).

Power to amend

- 26 (1) The Treasury may by regulations –
 - (a) amend paragraph 19 for the purpose of further limiting, or removing or restricting limitations on, the matters which fall within paragraphs (a) and (b) of sub-paragraph (2) of that paragraph;
 - (b) amend paragraph 22.
- (2) Regulations under sub-paragraph (1)(b) may amend the meaning of "relief" in any way (including by extending or limiting the meaning).
- (3) Regulations under this paragraph may –
 - (a) make supplementary, incidental and consequential provision;
 - (b) make transitional provision.
- (4) Regulations under this paragraph are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this Part may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

PART 4

PENALTY

Penalty

- 27 (1) A person is liable to pay a penalty if the person incurs a relevant defeat in relation to any arrangements which the person has used in a warning period (the "relevant warning period").
- (2) The penalty is 20% of the value of the counteracted advantage if the person has not, before the relevant defeat is incurred, been given (or become liable to be given) a warning notice which has the relevant warning period as its basis period (see paragraph 41).
- (3) The penalty is 40% of the value of the counteracted advantage if before the relevant defeat is incurred the person has been given, or become liable to be given, one (but not more than one) warning notice which has the relevant warning period as its basis period.
- (4) The penalty is 60% of the value of the counteracted advantage if before the current defeat is incurred the person has been given, or become liable to be given, two or more warning notices which have the relevant warning period as their basis period.

-
- (5) For the meaning of “the value of the counteracted advantage” see paragraphs 29 to 34.

Simultaneous defeats

- 28 (1) If a person incurs simultaneously two or more relevant defeats in relation to different arrangements, sub-paragraphs (2) to (4) of paragraph 27 have effect as if the relevant defeat with the lowest value was incurred last, the relevant defeat with the next lowest value immediately before it, and so on.
- (2) For this purpose the “value” of a relevant defeat is taken to be equal to value of the counteracted tax advantage.

Value of the counteracted advantage: basic rule for taxes other than VAT

- 29 (1) In relation to a relevant defeat incurred by virtue of Condition A, B or C, the “value of the counteracted advantage” is –
- (a) in the case of a relevant defeat incurred by virtue of Condition A, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 10(1)(b);
 - (b) in the case of a relevant defeat incurred by virtue of Condition B, the additional amount due or payable in respect of tax as a result of the counteraction or relinquishment of the denied advantage;
 - (c) in the case of a relevant defeat incurred by virtue of Condition C, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 12(1).
- (2) The reference in sub-paragraph (1) to the additional amount due and payable includes a reference to –
- (a) an amount payable to HMRC having erroneously been paid by way of repayment of tax, and
 - (b) an amount which would be repayable by HMRC if the counteraction mentioned in paragraph (a) or (c) of sub-paragraph (1) were not made or (as the case may be) the denied advantage mentioned in paragraph (b) of that sub-paragraph were not counteracted or relinquished.
- (3) In sub-paragraph (1) –
- (a) in paragraph (b) “the denied advantage” has the same meaning as in paragraph 11;
 - (b) in paragraph (c) “counteraction” is to be interpreted in accordance with paragraph 12(5).
- (4) The following are ignored in calculating the value of the counteracted advantage –
- (a) group relief, and
 - (b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.
- (5) This paragraph is subject to paragraphs 30 and 31.

Value of counteracted advantage: losses for purposes of direct tax

- 30 (1) This paragraph has effect in relation to relevant defeats incurred by virtue of Condition A, B or C.
- (2) To the extent that the counteracted advantage (see paragraph 32) has the result that a loss is wrongly recorded for the purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is determined in accordance with paragraph 29.
- (3) To the extent that the counteracted advantage has the result that a loss is wrongly recorded for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is –
- (a) the value under paragraph 29 of so much of the counteracted advantage as results from the part (if any) of the loss which is used to reduce the amount due or payable in respect of tax, plus
 - (b) 10% of the part of the loss not so used.
- (4) Sub-paragraphs (2) and (3) apply both –
- (a) to a case where no loss would have been recorded but for the counteracted advantage, and
 - (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (2) and (3) apply only to the difference between the amount recorded and the true amount).
- (5) To the extent that a counteracted advantage creates or increases an aggregate loss recorded for a group of companies –
- (a) the value of the counteracted advantage is calculated in accordance with this paragraph, and
 - (b) in applying paragraph 29 in accordance with sub-paragraphs (2) and (3), group relief may be taken into account (despite paragraph 29(4)).
- (6) To the extent that the counteracted advantage results in a loss, the value of it is nil where, because of the nature of the loss or the person's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

Value of counteracted advantage: deferred tax

- 31 (1) To the extent that the counteracted advantage (see paragraph 32) is a deferral of tax (other than VAT), the value of that advantage is –
- (a) 25% of the amount of the deferred tax for each year of the deferral, or
 - (b) a percentage of the amount of the deferred tax, for each separate period of deferral of less than a year, equating to 25% per year,
- or, if less, 100% of the amount of the deferred tax.
- (2) This paragraph does not apply to a case to the extent that paragraph 30 applies.

Meaning of “the counteracted advantage” in paragraphs 30 and 23

- 32 (1) In paragraphs 30 and 31 “the counteracted tax advantage” means –

-
- (a) in relation to a relevant defeat incurred by virtue of Condition A, the tax advantage mentioned in paragraph 10(1)(b);
 - (b) in relation to a relevant defeat incurred by virtue of Condition B, the denied tax advantage referred to in paragraph (a) or (b) of paragraph 11(1);
 - (c) in relation to a relevant defeat incurred by virtue of Condition C, means any tax advantage in respect of which the counteraction mentioned in paragraph 12(1)(c) is made.
- (2) In sub-paragraph (1)(c) “counteraction” is to be interpreted in accordance with paragraph 12(5).

Value of the counteracted advantage: Conditions D and E

- 33 (1) In relation to a relevant defeat incurred by a person by virtue of Condition D or E, the “value of the counteracted advantage” is equal to the sum of any counteracted tax advantages determined under sub-paragraphs (3) to (6).
- (2) In this paragraph “the counteraction” means the counteraction mentioned in paragraph 14(1).
- (3) If the amount of VAT due or payable by the person in respect of any prescribed accounting period (X) exceeds the amount (Y) that would have been so payable but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.
- (4) If the person obtains no VAT credit for a particular prescribed accounting period, the amount of any VAT credit which the person would have obtained for that period but for the counteraction is a counteracted tax advantage.
- (5) If for a prescribed accounting period the person obtains a VAT credit of an amount (Y) which is less than the amount (X) of the VAT credit which the person would have obtained but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.
- (6) If the amount (X) of the person’s non-deductible tax for any prescribed accounting period is greater than Y, where Y is what would be the amount of the person’s non-deductible tax for that period but for the counteraction, then the amount by which X exceeds Y is a counteracted tax advantage, but only to the extent that amount is not represented by a corresponding amount which is the whole or part of a counteracted tax advantage by virtue of sub-paragraphs (3) to(5).
- (7) In this paragraph “non-deductible tax”, in relation to the person who incurred the relevant defeat, means –
- (a) input tax for which the person is not entitled to credit under section 25 of VATA 1994, and
 - (b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.
- (8) For the purposes of sub-paragraph (7)(b) the VAT “incurred” by a taxable person is –
- (a) VAT on the supply to the person of any goods or services,
 - (b) VAT on the acquisition by the person from another member State of any goods;

-
- (c) VAT on the importation of any goods from a place outside the member States.
- (9) References in sub-paragraph (3) to amounts due and payable by the person in respect of a prescribed accounting period include references to—
- (a) amounts payable to HMRC having erroneously been paid by way of repayment of tax, and
 - (b) amounts which would be repayable by HMRC if the counteraction mentioned sub-paragraph (3) were not made.

Assessment of penalty

- 34 (1) Where a person is liable for a penalty under paragraph 27, HMRC must assess the penalty.
- (2) Where HMRC assess the penalty, HMRC must—
- (a) notify the person who is liable for the penalty, and
 - (b) state in the notice a tax period in respect of which the penalty is assessed.
- (3) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with the day on which the person is notified of the penalty under sub-paragraph (2).
- (4) An assessment—
- (a) is to be treated for procedural purposes as if it were an assessment to tax,
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- (5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with the date of the defeat mentioned in paragraph 27(1).

Alteration of assessment of penalty

- 35 (1) After notification of an assessment has been given to a person under paragraph 34(2), the assessment may not be altered except in accordance with this paragraph or on appeal.
- (2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the counteracted advantage.
- (3) An assessment may be revised as necessary if operated by reference to an overestimate of the value of the counteracted advantage.

Aggregate penalties

- 36 (1) The amount of a penalty for which a person is liable under paragraph 27 is to be reduced by the amount of any other penalty incurred by the person, or any surcharge for late payment of tax imposed on the person, if the amount of the penalty or surcharge is determined by reference to the same tax liability.

-
- (2) In sub-paragraph (1) “any other penalty” does not include a penalty under section 212A of FA 2013 (GAAR penalty) or Part 4 of FA 2014 (penalty where corrective action not taken after follower notice etc).
 - (3) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under paragraph 27.

Appeal against penalty

- 37 (1) A person may appeal against a decision of HMRC that a penalty is payable under paragraph 27.
- (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by P under paragraph 27.
- (3) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which notification of the penalty is given under paragraph 27.
- (4) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC’s review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (5) Sub-paragraph (4) does not apply –
 - (a) so as to require a person to pay a penalty before an appeal against the assessment of the penalty is determined, or
 - (b) in respect of any other matter expressly provided for by this Part.
- (6) On an appeal under sub-paragraph (1) the tribunal may –
 - (a) affirm HMRC’s decision, or
 - (b) substitute for HMRC’s decision another decision that HMRC has power to make.
- (7) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (4)).

Reasonable excuse

- 38 (1) A person is not liable to a penalty under paragraph 27 in respect of a relevant defeat if the person satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that the person had a reasonable excuse for the relevant failure to which that relevant defeat relates (see paragraph 39).
- (2) A person liable to a penalty under paragraph 27 in respect of a relevant defeat (the “principal defeat”), is treated for the purposes of sub-paragraphs (2) to (4) of paragraph 27 (rate of penalty) as not having been given, and not having become liable to be given, any prior warning notice in relation to which the condition in sub-paragraph (3) is met.
- (3) The condition is that the person was not liable to a penalty in respect of the defeat specified in that prior warning notice because the person had a reasonable excuse for the relevant failure to which that defeat relates.
- (4) In sub-paragraphs (2) and (3) “prior warning notice” means a warning notice which the person was given, or became liable to be given, before incurring the principal defeat.

-
- (5) For the purposes of this paragraph, in the case of a person (“P”) –
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
 - (b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure, and
 - (c) where P had reasonable excuse for the relevant failure but the excuse had ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
- (6) In determining for the purposes of this paragraph whether or not a person (“P”) had a reasonable excuse for any action, failure or inaccuracy, reliance on advice is to be taken automatically not to constitute a reasonable excuse if the advice is addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.

Paragraph 38: meaning of “the relevant failure”

- 39 (1) In paragraph 38 “the relevant failure”, in relation to a relevant defeat, is to be interpreted in accordance with sub-paragraphs (2) to (7).
- (2) In relation to a relevant defeat incurred by virtue of Condition A, “the relevant failure” means the failures or inaccuracies as a result of which the counteraction under section 209 of FA 2013 was necessary
 - (3) In relation to a relevant defeat incurred by virtue of Condition B, “the relevant failure” means the failures or inaccuracies in respect of which the action mentioned in paragraph 11(1)(a) or (b) was taken.
 - (4) In relation to a relevant failure incurred by virtue of Condition C, “the relevant failure” means the failures or inaccuracies as a result of which the adjustments, assessments, or other action mentioned in paragraph 12(4) are required.
 - (5) In relation to a relevant defeat incurred by virtue of Condition D, “the relevant failure” means the failures or inaccuracies as a result of which the adjustments, assessments or other action mentioned in paragraph 13(4) are required.
 - (6) In relation to a relevant defeat incurred by virtue of Condition E, “the relevant failure” means P’s actions (and failures to act), so far as they are connected with matters in respect of which the counteraction mentioned in paragraph 14(1) is required.
 - (7) In sub-paragraph (6) “counteraction” is to be interpreted in accordance with paragraph 14(2).

Mitigation of penalties

- 40 (1) The Commissioners for Her Majesty’s Revenue and Customs may in their discretion mitigate a penalty under paragraph 27, or stay or compound any proceedings for such a penalty.
- (2) They may also, after judgment, further mitigate or entirely remit the penalty.

PART 5

INTERPRETATION OF PARTS 1 AND 2

“Basis period” of a warning notice

- 41 In relation to a warning notice given to a person, “basis period” means the warning period (if any) in which the person used the arrangements to which the relevant defeat specified in the notice relates.

Time of “use” of defeated arrangements

- 42 (1) With reference to a particular relevant defeat incurred by a person in relation to arrangements, the person is treated as having “used” the arrangements on the dates set out in this paragraph.
- (2) If the person incurs the relevant defeat by virtue of Condition A, the person is treated as having “used” the arrangements on the following dates –
- (a) the filing date of any return made by the person on the basis that the tax advantage mentioned in paragraph 10(1)(a) arises from the arrangements;
 - (b) the date on which the person makes any claim or election on that basis;
 - (c) the date of any relevant failure by the person to comply with an obligation.
- (3) For the purposes of sub-paragraph (2) a failure to comply with an obligation is a “relevant failure” if the whole or part of the tax advantage mentioned in paragraph 10(1)(b) arose as a result of, or in connection with, that failure.
- (4) If the person incurs the relevant defeat by virtue of Condition B, the person is treated as having “used” the arrangements on the following dates –
- (a) the filing date of any return made by the person on the basis that the asserted tax advantage (see section 204(3) of FA 2014) results from the arrangements,
 - (b) the date on which any claim is made by the person on that basis,
 - (c) the date of any failure by the person to comply with a relevant obligation.

In this sub-paragraph “relevant obligation” means an obligation which would not have fallen on the person (or might have been expected not to do so), had the denied tax advantage arisen (see section 208(3) of FA 2014).

- (5) If the person incurs the relevant defeat by virtue of Condition C, the person is treated as having “used” the arrangements on the following dates –
- (a) the filing date of any return made by the person on the basis mentioned in paragraph 12(2)(a);
 - (b) the date on which the person makes any claim or election on that basis;
 - (c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 12(4)).
- (6) If the person incurs the relevant defeat by virtue of Condition D, the person is treated as having “used” the arrangements on the following dates –
- (a) the filing date of any return made by the person on the basis mentioned in paragraph 13(2)(a);

-
- (b) the date on which the person makes any claim or election on that basis;
 - (c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 13(4)).
- (7) If the person incurs the relevant defeat by virtue of Condition E, the person is treated as having “used” the arrangements on the following dates –
- (a) the filing date of any return made by the S to which the counteraction mentioned in paragraph 14(1)(c) relates;
 - (b) the date on which S made any claim or election to which that counteraction relates;
 - (c) the date of any relevant failure by S to which that counteraction relates.
- (8) In sub-paragraph (7) “relevant failure” means a failure to comply with an obligation relating to VAT.
- (9) In this paragraph “filing date”, in relation to a return, means the earlier of –
- (a) the day on which the return is delivered, or
 - (b) the last day of the period within which the return must be delivered.
- (10) References in this paragraph to the date on which a person fails to comply with an obligation are to the date on which the person is first in breach of the obligation.

Inheritance tax

- 43 (1) In the case of inheritance tax, each of the following is treated as a return for the purposes of this Schedule –
- (a) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);
 - (b) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;
 - (c) information or a document provided by a person in accordance with regulations under section 256 of that Act;
- and such a return is treated as made by the person in question.
- (2) In this Schedule “assessment”, in relation to inheritance tax, includes a determination.

General interpretation

- 44 (1) In this Schedule –
- “adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, amendment or disallowance of a claim, the entering into of a contract settlement or otherwise (and references to “making” adjustments accordingly include securing that adjustments are made by entering into a contract settlement);
 - “arrangements” has the meaning given by paragraph 1(5);
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“contract settlement” means an agreement in connection with a person’s liability to make a payment to the Commissioners under or by virtue of an enactment;

“disclosable VAT arrangements” is to be interpreted in accordance with paragraph 7;

“DOTAS arrangements” is to be interpreted in accordance with paragraph 6;

“follower notice” has the meaning given by paragraph 11(4);

“HMRC” means Her Majesty’s Revenue and Customs;

“relevant defeat” is to be interpreted in accordance with paragraph 9;

“tax” has the meaning given by paragraph 2;

“tax advantage” has the meaning given by paragraph 5.

- (2) In this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.

PART 6

CONSEQUENTIAL AMENDMENTS

- 45 In section 103ZA of TMA 1970 (disapplication of sections 100 to 103 in the case of certain penalties) –
- (a) omit “or” at the end of paragraph (g), and
 - (b) after paragraph (h) insert “or
 - (i) Part 1 of the Schedule to section 63 of FA 2016 (serial avoiders regime).”
- 46 In section 212 of FA 2014 (follower notices: aggregate penalties), in subsection (4) –
- (a) omit “or” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “, or
 - (d) Part 1 of the Schedule to section 63 of FA 2016 (serial avoiders regime).”

PART 7

COMMENCEMENT

- 47 Subject to paragraphs 48 and 49, Parts 1 to 6 of this Schedule have effect in relation to relevant defeats incurred after the day on which this Act is passed.
- 48 (1) A relevant defeat is to be disregarded for the purposes of this Schedule if it is incurred before 6 April 2017 in relation to arrangements which the person has entered into before the day on which this Act is passed.
- (2) A relevant defeat incurred on or after 6 April 2017 is to be disregarded for the purposes of this Schedule if –
- (a) the person entered into the arrangements concerned before the day on which this Act is passed, and
 - (b) before 6 April 2017 –
 - (i) the person incurring the defeat fully discloses to HMRC the matters to which the relevant counteraction relates, or

-
- (ii) that person gives HMRC notice of a firm intention to make a full disclosure of those matters and makes such a full disclosure within any time limit set by HMRC.
- (3) In sub-paragraph (2) “the relevant counteraction” means –
- (a) in a case within Condition A, the counteraction mentioned in paragraph 10(1)(c);
 - (b) in a case within Condition B, the action mentioned in paragraph 11(1)(a) or the counteraction mentioned in paragraph 11(1)(b);
 - (c) in a case within Condition C, the counteraction mentioned in paragraph 12(1)(c);
 - (d) in a case within Condition D, the counteraction mentioned in paragraph 13(1)(d);
 - (e) in a case within Condition E, the counteraction mentioned in paragraph 14(1)(c).
- (4) In sub-paragraph (3) –
- (a) in paragraph (c) “counteraction” is to be interpreted in accordance with paragraph 12(5);
 - (b) in paragraph (d) “counteraction” is to be interpreted in accordance with paragraph 13(5);
 - (c) in paragraph (e) “counteraction” is to be interpreted in accordance with paragraph 14(2).
- (5) See paragraph 9(2) for provision about when a relevant defeat is incurred.
- 49 (1) A warning notice given to a person is to be disregarded for the purposes of –
- (a) paragraph 17 (naming), and
 - (b) Part 3 of this Schedule (restriction of reliefs),
- if the relevant defeat specified in the notice relates to arrangements which the person has entered into before the day on which this Act is passed.
- (2) Where a person has entered into any arrangements before the day on which this Act is passed –
- (a) a relevant defeat incurred by a person in relation to the arrangements, and
 - (b) any warning notice specifying such a relevant defeat,
- is to be disregarded for the purposes of paragraph 27 (penalty).

Explanatory Note

Clause 63 and Schedule: Serial tax avoidance

Summary

1. This measure introduces a new regime of warnings and escalating sanctions for those who persistently engage in tax avoidance schemes which HM Revenue & Customs (HMRC) defeats. Following the first defeat of a tax avoidance scheme, HMRC will place the taxpayer on warning that the use of any avoidance schemes in the following 5 years which HMRC defeats, will result in a penalty being issued, based on the amount of the understated tax.
2. If the taxpayer uses any further schemes while under warning which HMRC defeats, the rate of penalty will be increased to a maximum of 60% of the understated tax. If HMRC defeat three tax avoidance schemes while the taxpayer is on warning, the taxpayer's details can be published. If three avoidance schemes which exploit reliefs are used while under warning and HMRC defeat them, the taxpayer will be denied further benefit of reliefs until the warning period expires. The regime comes into effect on 6 April 2017.

Details of the clause and Schedule

Clause 63: Serial Tax Avoidance

3. Clause 63 introduces Schedule 1

The Schedule to Clause 63: Serial Tax Avoidance - *Part 1* Entry Into the Regime and Basic Concepts

4. Paragraph 1 explains that HMRC must issue a written warning notice to a person within 90 days of a relevant defeat relating to arrangements the taxpayer has used and sets out what the notice must contain. For these purposes, a scheme is used when a person submits a return or claim, or fails to comply with an obligation, on the basis that the arrangements deliver a tax advantage.
5. Paragraph 3 defines 'tax advantage' for VAT by applying the definition in paragraph 2 of Schedule 11 to VATA 1994.
6. Paragraph 5 defines 'tax advantage' for all taxes apart from value added tax (VAT) as including relief or repayment of tax, or increases in those; the receipt of a tax credit; avoidance or reduction of an assessment; deferral of tax; or the avoidance of a tax obligation.
7. Paragraph 6 defines 'DOTAS arrangements' for the purposes of the Schedule. This comprises arrangements which have been notified to HMRC under relevant enactments and those which should have been so notified but were not.
8. Paragraph 6(2) provides that the definition of 'DOTAS arrangements' for these purposes

includes arrangements which need not be notified to HMRC, either because they were properly notified as proposed arrangements or because they are substantially the same as arrangements already notified to HMRC.

9. Paragraph 7 defines 'disclosable VAT arrangements' as arrangements notified to HMRC under the relevant enactment or which should have been so notified but were not.
10. Paragraph 8 defines a person as failing to comply with a DOTAS or VADR requirement to notify only if a Tribunal makes a decision accordingly or if the person admits in writing that he failed to comply with the requirement.
11. Paragraph 9 defines the conditions for a 'relevant defeat'.
12. Paragraph 10 defines Condition A as applying when a taxpayer has been issued with a counteraction notice under the General Anti-Abuse Rule (GAAR) and the tax advantage has been successfully counteracted.
13. Paragraph 11 defines Condition B as applying when a taxpayer has been issued with a Follower Notice and either has taken the necessary corrective action or HMRC have taken action to recover the understated tax.
14. Paragraph 12 defines Condition C as applying when HMRC have counteracted arrangements used by a taxpayer which are notified or required to be notified to HMRC under the Disclosure of Tax Avoidance Schemes (DOTAS) regime and which purport to give a tax advantage or to avoid the requirement to comply with a tax obligation.
15. Paragraph 12(5) defines 'counteracted' and excludes from this 'taxpayer emendations'.
16. Paragraph 12(8) defines taxpayer emendations as occurring when a taxpayer's tax is corrected following a full disclosure by him in respect of an inaccuracy or failure at a time he has no reason to suppose HMRC have begun or are about to begin investigations into his tax affairs, or when HMRC amend the taxpayer's affairs following such a disclosure by him.
17. Paragraph 13 defines Condition D which replicates for Value Added Tax the provisions of paragraph 12.
18. Paragraph 14 defines Condition E as applying when a person who receives supplies of goods or services has been party to tax arrangements which purport to deliver him a tax advantage and HMRC have successfully counteracted that advantage by taking action against the person making the supplies.

The Schedule to Clause 63: Serial Tax Avoidance - Part 2 Annual Information Notices and Naming

19. Paragraph 16 provides that a person who has received a warning notice must send HMRC a written notice for each reporting period. The written notice must state whether or not the person has used any arrangements disclosable under DOTAS or VADR to obtain a tax advantage or avoid a tax obligation.
20. Paragraph 16(8) allows HMRC to extend the warning period if a person fails to provide an information notice by the required date or give HMRC a notice which is defective.
21. Paragraph 17 provides that HMRC may publish the details of serial tax avoiders if they are

given three warning notices in respect of schemes used while in a warning period and which are defeated. Such notices are defined as 'qualifying notices'.

The Schedule to Clause 63: Serial Tax Avoidance - Part 3

Restriction of Reliefs

22. Paragraph 18 provides that HMRC must issue a 'restriction of reliefs' notice to a person if he has used three sets of arrangements during a period of warning, which are defeated and in respect of which the warning notices 'relate to the misuse of reliefs' relating to losses or in respect of which there is a 'particular avoidance related rule
23. Paragraph 18(3) defines how a warning notice relates to the misuse of reliefs.
24. Paragraph 19 provides that a person who has received a relief restriction notice may not make any claim for a relief for the period of restriction. Certain reliefs relating to charities, international double taxation agreements and registered pension schemes are excluded from this restriction.
25. Paragraph 20(1) defines the restricted period as three years from when the relief restriction notice is given.
26. Paragraphs 20(2), 20(3) and 20(4) provide that if during a restricted period another scheme which misuses reliefs is used and defeated, the restricted period is extended to a point 3 years from the date of that defeat.
27. Paragraph 20(5) provides that if following the end of a restricted period but during the same warning period, a further scheme which misuses reliefs is used and defeated, a new restriction period begins and a restriction notice is issued.
28. Paragraph 21 defines an 'avoidance related rule' relief for the purposes of this Schedule.
29. Paragraph 25 provides that a person may appeal against a relief restriction or extension notice but only on the basis that one or more of the conditions relating to the issue of a relief restriction notice or restricted period extension notice has not been met.

The Schedule to Clause 63: Serial Tax Avoidance-Part 4

Penalty

30. Paragraph 27 provides that a person who uses arrangements during a period of warning that are ultimately defeated will incur a penalty. That penalty will be 20% of the amount of tax understated or overclaimed for the first defeat of a scheme used during a warning period, 40% for the second such defeat and 60% for any subsequent defeats.
31. Paragraph 28 explains the treatment for where a person incurs simultaneous defeats of different sets of arrangements used in the same warning period. The defeat which results in the greatest amount of tax understated or overclaimed will be penalised at the lowest penalty rate available, with the defeat resulting in the second largest amount of tax understated or overclaimed being penalised at the second lowest penalty rate available and so on.
32. Paragraph 29 defines the value of the counteracted advantage for direct taxes.
33. Paragraph 30 provides that 10% of any part of a loss not used to reduce the amount of tax due

and payable shall be included in the value of the denied advantage.

34. Paragraph 30(5) provides that where a group of companies has an aggregate loss for Corporation Tax, group relief is not disregarded when calculating the denied advantage.
35. Paragraph 31 provides a special rule for quantifying a tax advantage which comprises the deferral of tax.
36. Paragraph 32 defines counteracted advantage for direct taxes.
37. Paragraph 33 defines the value of counteracted advantage for VAT.
38. Paragraph 34 sets out how a penalty under this Chapter is to be assessed.
39. Paragraph 36 deals with situations where more than one penalty may arise in respect of the same amount and one of those penalties is a penalty under this Chapter.
40. Paragraph 37 provides that a person may appeal against HMRC's decision to issue a penalty. The person does not have to pay the penalty in order to make an appeal.
41. Paragraph 38 provides that a person is not liable to a penalty if he has a reasonable excuse for the failure to account for the correct tax.
42. Paragraph 38(2) provides that if a person has a reasonable excuse for a failure, the relevant defeat is disregarded when calculating the penalty rate for the next defeat.

The Schedule to Clause 63: Serial Tax Avoidance-Part 5 Interpretation of Parts 1 and 2

43. Paragraph 42 defines when defeated arrangements are regarded as being used for the purposes of the special regime.

The Schedule to Clause 63: Serial Tax Avoidance - Part 7 Commencement

44. Paragraph 47 details the commencement of the Special Regime.
45. Paragraph 48 provides that any arrangements a person enters into before the Act is passed but which are defeated on or after 5 April 2017 will qualify as defeated arrangements for the Special Regime, unless the person makes a full disclosure of the arrangements to HMRC before 6 April 2017, or notifies HMRC before that date of their intention to do so. Arrangements entered into between the day the Act is passed and 6 April 2017 and defeated before that date will qualify as defeated arrangements for the Special Regime.
46. Paragraph 49 provides that defeated arrangements entered into before the Act is passed will be disregarded for the purposes of penalties, naming and restricting reliefs.

Background Note

47. This regime has been introduced to change the behavior of those who persistently engage in tax avoidance schemes, often using more than one scheme on a return or using schemes on a number of successive returns. These tax avoiders do not see a significant risk resulting from their behaviour. The new regime allows HMRC to place users of defeated tax avoidance

schemes on warning and provides that they will face targeted sanctions if they persist in their behavior. These sanctions will escalate in their impact for taxpayers who fail to amend their behaviour. This will discourage such avoiders from continuing to engage in tax avoidance and to dissuade others from becoming serial tax avoiders. Elements of the draft will continue to be developed as part of the consultation on the draft legislation.

48. If you have any questions about this change, or comments on the legislation, please contact Pete Woodham on 03000 586533 (email: peter.woodham@hmrc.gsi.gov.uk).

64 Promoters of tax avoidance schemes

- (1) Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended as follows.
- (2) Section 237 (duty to give conduct notice) is amended in accordance with subsections (3) to (5).
- (3) In subsection (1)(a) for “threshold conditions” substitute “of the threshold conditions described in paragraphs 2 to 12 of Schedule 34”.
- (4) In subsection (1A)(a) for “threshold conditions” substitute “of the threshold conditions described in paragraphs 2 to 12 of Schedule 34”.
- (5) After subsection (1) insert –
 - “(1ZA) Subsections (5) to (9) also apply if an authorised officer becomes aware at any time that a person who is carrying on business as a promoter meets the threshold condition in sub-paragraph (1) of paragraph 12A of Schedule 34 (defeat of third set of arrangements) in relation to the period of 3 years ending with that time.
 - (1ZB) Subsections (5) to (9) also apply if an authorised officer becomes aware that a person to whom a defeated arrangements notice has been given under section 241A(1) meets the threshold condition in sub-paragraph (2) of paragraph 12A of Schedule 34 in relation to the 5 year look-forward period for that notice.”
- (6) After section 241 insert –

“Threshold condition relating to defeat of qualifying arrangements: provision supplementary to section 237(1ZA) and (1ZB)”

241A Defeated arrangements notice

- (1) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give a person (“P”) a notice (a “defeated arrangements notice”) if –
 - (a) P is carrying on business as a promoter, and
 - (b) Condition 1 or 2 is met.
- (2) Condition 1 is that the authorised officer has become aware of one (and only one) relevant defeat which –
 - (a) has occurred in the period of 3 years ending with the day on which the notice is given, and
 - (b) is a relevant defeat of arrangements which are qualifying arrangements in relation to P.
- (3) Condition 2 is that the authorised officer has become aware of two (but not more than two) relevant defeats each of which –
 - (a) is of different arrangements which are qualifying arrangements in relation to P, and
 - (b) has occurred in the period of 3 years ending with the day on which the notice is given.
- (4) A defeated arrangements notice must –
 - (a) set out the dates on which the 5 year look-forward period for the notice begins and ends,
 - (b) contain any other prescribed information, and

-
- (c) explain the effect of section 237(1ZB).
 - (5) In this Part “5 year look-forward period”, in relation to a defeated arrangements notice, means the period of 5 years beginning with the day after the day on which the notice is given.
 - (6) For the purposes of this Part arrangements are “qualifying arrangements” in relation to a person if –
 - (a) the arrangements are relevant arrangements or would be relevant arrangements under the condition stated in subsection (7), and
 - (b) the person is a promoter in relation to the arrangements or would be a promoter in relation to the arrangements under the condition stated in subsection (7).
 - (7) That condition is that the definition of “tax” in section 283 includes, and has always included, value added tax.
 - (8) If a defeated arrangements notice is withdrawn because of section 241D(2), nothing prevents relevant defeats (other than those affected by section 241D(2)) which have been taken into account for the purposes of the withdrawn notice from being taken into account for the purpose of giving a further notice.

241B “Different” arrangements

- (1) For the purposes of this Part, any question as to whether separate arrangements are “different” from one another is to be determined in accordance with subsections (2) to (6).
- (2) Separate arrangements are different from one another unless they are substantially the same.
- (3) For the purposes of this Part, subsections (4) to (6) set out particular cases in which separate arrangements are to be treated as “substantially the same” as one another; but those subsections do not limit the meaning of “substantially the same”, in relation to arrangements, for the purposes of this Part.
- (4) Arrangements which share –
 - (a) the same reference number allocated under section 311 of FA 2004 (disclosure of tax avoidance schemes), or
 - (b) the same reference number allocated under paragraph 9 of Schedule 11A to VATA 1994 (disclosure of avoidance schemes),are treated as being “substantially the same”.
- (5) If any two or more sets of arrangements are the subject of follower notices which are given by reference to the same judicial ruling, those sets of arrangements are treated as being “substantially the same”.
- (6) Where a notice of binding has been given in relation to any arrangements (“the bound arrangements”) on the basis that they are, for the purposes of Schedule 43A to FA 2013, equivalent arrangements in relation to another set of arrangements (the “lead arrangements”) –
 - (a) the bound arrangements and the lead arrangements are treated as being substantially the same, and
 - (b) the bound arrangements are treated as being substantially the same as any other arrangements which, as a result of this

subsection, are treated as substantially the same as the lead arrangements.

241C Defeat of qualifying arrangements: provisional defeats and provisional conduct notices

- (1) The relevant defeat of any qualifying arrangements is “provisional” if the relevant defeat has occurred only by virtue of Condition 3 in paragraph 12C.
- (2) Such a relevant defeat remains provisional until the time (if any) when there is a relevant defeat of the arrangements by virtue of Condition 1 Condition 2 or Condition 4 in paragraph 12C.
- (3) If a conduct notice given to a person under section 237 could not have been given if provisional defeats did not count as defeats for the purposes of paragraph 12A of Schedule 34, the conduct notice is provisional until the earlier of –
 - (a) the time when the conduct notice ceases to have effect by virtue of section 241(2) or (3), or
 - (b) the time (if any) when a conduct notice could be given to the person without counting any provisional defeats as relevant defeats for the purposes of paragraph 12A of Schedule 34.
- (4) A provisional conduct notice is to be disregarded for the purposes of section 242 (duty to apply for monitoring notice) as long as it remains provisional.
- (5) If a promoter fails to comply with conditions in a conduct notice at a time when the conduct notice is provisional, nothing in this paragraph prevents those failures from being taken into account under section 242(1) at any subsequent time when the conduct notice is not provisional.
- (6) If a provisional conduct notice is withdrawn because of section 241D(2), nothing prevents relevant defeats (other than those affected by section 241D(2)) which have been taken into account for the purposes of the withdrawn notice from being taken into account for the purpose of giving a further notice.
- (7) In this section “relevant defeat”, in relation to qualifying arrangements, is to be interpreted in accordance with paragraph 12B of Schedule 34.

241D Defeat of qualifying arrangements: judicial ruling upholding asserted tax advantage

- (1) Subsection (2) applies where –
 - (a) the relevant defeat of any qualifying arrangements has occurred only by virtue of Condition 3 in paragraph 12C of Schedule 34 (defeat of 75% of related arrangements), and
 - (b) a court or tribunal subsequently upholds a corresponding tax advantage which has been asserted in connection with any of the related arrangements.
- (2) This Part has effect as if the relevant defeat had never occurred.

-
- (3) In subsection (1) “the related arrangements” means the related arrangements mentioned in sub-paragraph (4) of paragraph 12C of Schedule 34.
 - (4) For the purposes of this section a tax advantage has been “asserted” in connection with particular related arrangements if a person has made a return, claim or election on the basis that the tax advantage arises from those arrangements.
 - (5) In relation to the relevant defeat of any arrangements by virtue of Condition 3 in paragraph 12C of Schedule 34, “corresponding tax advantage” means a tax advantage corresponding to any tax advantage which HMRC, in applying the test under paragraph 12C(4) of Schedule 34, counted as having been counteracted.
 - (6) For the purposes of this section a court or tribunal “upholds” a tax advantage if—
 - (a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and
 - (b) that determination is final.
 - (7) In this paragraph “counteraction” includes anything referred to as a counteraction in any of conditions A to F in Part 1A of Schedule 34.
 - (8) In this section “relevant defeat”, in relation to qualifying arrangements, is to be interpreted in accordance with paragraph 12B of Schedule 34.

241E Defeat of qualifying arrangements: bodies associated with a promoter

- (1) A relevant defeat of arrangements which are qualifying arrangements in relation to person (“Q”) is treated as also being a relevant defeat of qualifying arrangements in relation to another person (“P”) if any of Conditions 1 to 3 is met.
- (2) Subsection (1) has effect for the purposes of this Part (see particularly section 241A and paragraph 12A of Schedule 34).
- (3) Condition 1 is that—
 - (a) P is a relevant body, and
 - (b) the relevant defeat occurred at a time when P was controlled by Q.
- (4) Condition 2 is that—
 - (a) Q is a relevant body,
 - (b) the relevant defeat occurred at a time when Q was controlled by P, and
 - (c) P is not an individual.
- (5) Condition 3 is that—
 - (a) P and Q are relevant bodies, and
 - (b) a third person controlled P and Q at the time when the relevant defeat occurred.
- (6) In this section “relevant body” means—
 - (a) a body corporate, or
 - (b) a partnership.

-
- (7) For the purposes of this section a person controls a body corporate if the person has power to secure that the affairs of the body corporate are conducted in accordance with the person's wishes –
- (a) by means of the holding of shares or the possession of voting power in relation to the body corporate or any other relevant body,
 - (b) as a result of any powers conferred by the articles of association or other document regulating the body corporate or any other relevant body, or
 - (c) by means of controlling a partnership.
- (8) For the purposes of this section a person controls a partnership if the person is a controlling member or the managing partner of the partnership.
- (9) In this section “controlling member” has the same meaning as in Schedule 36 (partnerships).
- (10) In this section “managing partner”, in relation to a partnership, means the member of the partnership who directs, or is on a day-to-day level in control of, the management of the business of the partnership.
- (11) For the rule about the time when a relevant defeat occurs see paragraph 12B(2) of Schedule 34.”
- (7) Schedule 34 (promoters of tax avoidance schemes: threshold conditions) is amended in accordance with subsections (8) to (11).
- (8) In paragraph 1 for “12” substitute “12A”.
- (9) After paragraph 12 insert –

“Defeat of a third set of promoted arrangements

- 12A (1) A person (“P”) meets the condition in this sub-paragraph in relation to the 3 year period mentioned in section 237(1ZA) if there have occurred in that period at least 3 relevant defeats (see paragraph 12B), of different arrangements (see section 241B) which are qualifying arrangements in relation to P.
- (2) A person who has been given a defeated arrangements notice meets the condition in this sub-paragraph in relation to the 5 year look-forward period for that notice if sub-paragraph (3) or (4) applies.
- (3) This sub-paragraph applies if –
- (a) the defeated arrangements notice was given by virtue of Condition 1 in section 241A,
 - (b) in the 5 year look-forward period for that notice there have occurred at least two relevant defeats of arrangements which are qualifying arrangements in relation to P, and
 - (c) the arrangements in question are different from one another (see section 241B) and from the qualifying arrangements in relation to which the relevant defeat mentioned in section 241A(2) occurred.
- (4) This sub-paragraph applies if –

-
- (a) the defeated arrangements notice was given by virtue of Condition 2 in section 241A,
 - (b) in the 5 year look-forward period for that notice there has occurred at least one relevant defeat of arrangements which are qualifying arrangements in relation to P, and
 - (c) the arrangements in question are different from the qualifying arrangements in relation to which the relevant defeats mentioned in section 241A(3) occurred.”

(10) After Part 1 insert –

“PART 1A

DEFEAT OF THIRD SET OF PROMOTED ARRANGEMENTS: MEANING OF “RELEVANT DEFEAT”

Meaning of “relevant defeat”

- 12B (1) A “relevant defeat” of qualifying arrangements occurs if any of Conditions A to F is met in relation to a person (“T”) and the arrangements.
- (2) The relevant defeat occurs when the condition in question is first met.
 - (3) Paragraph 12C sets out special rules for defining “relevant defeat” in cases involving sibling arrangements.

“Relevant defeat” in a case involving sibling arrangements

- 12C (1) If a particular set of arrangements (“Set A”) which are qualifying arrangements in relation to a person (“P”) have sibling arrangements, a “relevant defeat” of Set A occurs only if and when any of Conditions 1 to 4 is met.
- (2) Condition 1 is that any of Conditions A to E is met in relation to a person (whether T or another person) and any of Set A’s sibling arrangements in a case where the decision to make the counteraction in question (as mentioned in whichever of paragraphs 12C to 12G is relevant) has been upheld by a judicial ruling which is final.
 - (3) Condition 2 is that Condition F (see paragraph 12I) is met in relation to Set A (or any of Set A’s sibling arrangements).
 - (4) Condition 3 is that (in a case not falling within Condition 4) HMRC is satisfied that at least 75% of all the related arrangements which have (so far) been relied on have been defeated (see sub-paragraph (8)).
See also sections 241C and 241D.
 - (5) Condition 4 is that HMRC is satisfied that 100% of all the related arrangements which have (so far) been relied on have been defeated.
 - (6) In this paragraph “the related arrangements” means –
 - (a) Set A, and
 - (b) Set A’s sibling arrangements.

-
- (7) For the purposes of this paragraph qualifying arrangements are “relied on” when a person makes a return, claim or election, on the basis that a tax advantage results from the arrangements.
 - (8) For the purposes of this paragraph, particular arrangements are “defeated” if (and when) any of Conditions A to F is met in relation to those arrangements.
 - (9) In relation to Set A, “sibling arrangements” means any other set of arrangements which—
 - (a) are also qualifying arrangements in relation to P, and
 - (b) are substantially the same as Set A (see section 241B).

Conditions A to F

- 12D (1) Condition A is that—
- (a) T has made a return, claim or election on the basis that a tax advantage arises from the arrangements,
 - (b) a notice given to T under paragraph 12 of Schedule 43 to FA 2013 stated that the tax advantage was to be counteracted under the general anti-abuse rule,
 - (c) the tax advantage has been counteracted under the general anti-abuse rule, and
 - (d) the counteraction is final.
- (2) For the purposes of this paragraph the counteraction of a tax advantage is “final” when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.
- 12E (1) Condition B is that a follower notice has been given to T by reference to the arrangements (and not withdrawn) and—
- (a) T has complied with subsection (2) of section 208 of FA 2014 by taking the action specified in subsections (4) to (6) of that section in respect of the denied tax advantage, or
 - (b) the denied tax advantage has been counteracted otherwise than as mentioned in paragraph (a) and the counteraction of the denied tax advantage is final.
- (2) In this paragraph “the denied tax advantage” is to be interpreted in accordance with section 208(3) of FA 2014.
- (3) For the purposes of this paragraph the counteraction of a tax advantage is “final” when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.
- (4) In this Schedule “follower notice” means a follower notice under Chapter 2 of Part 4 of FA 2014.
- 12F (1) Condition C is that—
- (a) the arrangements are DOTAS arrangements,
 - (b) T has made a return, claim or election on the basis that a relevant tax advantage arises,
 - (c) the relevant tax advantage has been counteracted, and
 - (d) the counteraction is final.

-
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable T to obtain.
 - (3) For the purposes of this paragraph the relevant tax advantage is “counteracted” if adjustments, other than taxpayer emendations, are made in respect of T’s tax position on the basis that the whole or part of that tax advantage does not arise.
 - (4) For the purposes of this paragraph a counteraction is “final” when the adjustments in question, and any amounts arising from the adjustments, can no longer be varied, on appeal or otherwise.
 - (5) The following are “taxpayer emendations” for the purposes of sub-paragraph (3) –
 - (a) an adjustment made by T at a time when T had no reason to believe that HMRC had begun or were about to begin enquiries into T’s affairs relating to the tax in question;
 - (b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to T’s tax position as a result of a full disclosure made by T at a time when T had no reason to believe that HMRC were about to begin enquiries into T’s affairs relating to the tax in question.
 - (6) The reference in sub-paragraph (5)(b) to a “disclosure” is to a disclosure of an inaccuracy in a return or other document.
 - (7) For the purposes of this paragraph a contract settlement which HMRC enters into with T is treated as an assessment to tax; and in relation to contract settlements the reference in sub-paragraph (3) to the basis on which any adjustments are made is to be read with any necessary modifications.

12G (1) Condition D is that –

- (a) T is a taxable person;
 - (b) the arrangements are disclosable VAT arrangements to which T is a party,
 - (c) T has made a return or claim on the basis that a relevant tax advantage arises,
 - (d) the relevant tax advantage has been counteracted, and
 - (e) the counteraction is final.
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable T to obtain.
 - (3) For the purposes of this paragraph the relevant tax advantage is “counteracted” if adjustments, other than taxpayer emendations, are made in respect of T’s tax position on the basis that the whole or part of that tax advantage does not arise.
 - (4) For the purposes of this paragraph a counteraction is “final” when the adjustments in question, and any amounts arising from the adjustments, can no longer be varied, on appeal or otherwise.
 - (5) The following are “taxpayer emendations” for the purposes of sub-paragraph (3) –

-
- (a) an adjustment made by T at a time when T had no reason to believe that HMRC had begun or were about to begin enquiries into T's affairs relating to VAT;
 - (b) an adjustment made by HMRC with respect to T's tax position (by way of an assessment or otherwise) as a result of a full disclosure made by T at a time when T had no reason to believe that HMRC were about to begin enquiries into T's affairs relating to VAT.
- (6) The reference in sub-paragraph (5)(b) to a "disclosure" is to a disclosure of an inaccuracy in a return or other document.
- 12H (1) Condition E is that the arrangements are disclosable VAT arrangements to which T is a party and—
- (a) the arrangements relate to the position with respect to VAT of a person other than T ("S") who has made supplies of goods or services to T,
 - (b) the arrangements might be expected to enable T to obtain a tax advantage in connection with those supplies of goods or services,
 - (c) the arrangements have been counteracted, and
 - (d) the counteraction is final.
- (2) For the purposes of this paragraph the arrangements are "counteracted" if—
- (a) HMRC assess S to tax or take any other action on basis which prevents T from obtaining (or obtaining the whole of) the tax advantage in question, or
 - (b) adjustments, other than taxpayer emendations, are made on a basis such as is mentioned in paragraph (a).
- (3) For the purposes of this paragraph a counteraction is "final" when the assessment or adjustments in question, and any amounts arising from the assessment or adjustments, can no longer be varied, on appeal or otherwise.
- (4) The following are "taxpayer emendations" for the purposes of sub-paragraph (2)—
- (a) an adjustment made by S at a time when neither T nor S had reason to believe that HMRC had begun or were about to begin enquiries into the affairs of S or T relating to VAT;
 - (b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to S's tax position as a result of a full disclosure made by S at a time when neither S nor T had reason to believe that HMRC were about to begin enquiries into the affairs of S or T relating to VAT.
- (5) The reference in sub-paragraph (4)(b) to a "disclosure" is to a disclosure of an inaccuracy in a return or other document.
- 12I (1) Condition F is that—
- (a) T has made a return, claim or election on the basis that a relevant tax advantage arises,
 - (b) the tax advantage, or part of the tax advantage would not arise if a particular avoidance-related rule (see paragraph 12J) applies in relation to the person's tax affairs, and

-
- (c) a judicial ruling states, or necessarily implies that the relevant avoidance-related rule applies in relation to the person's tax affairs, and
 - (d) the judicial ruling is final.
 - (2) For the purposes of sub-paragraph (1) "relevant tax advantage" means a tax advantage which the arrangements might be expected to enable T to obtain.
 - (3) In this paragraph "judicial ruling" means a ruling of a court or tribunal on one or more issues.
 - (4) For the purposes of this paragraph a judicial ruling is "final" if it is—
 - (a) a ruling of the Supreme Court, or
 - (b) a ruling of any other court or tribunal in circumstances where—
 - (i) no appeal may be made against the ruling,
 - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,
 - (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
 - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.
- 12J (1) In paragraph 12I "avoidance-related rule" means a rule in Category 1 or 2.
- (2) A rule is in Category 1 if—
 - (a) it refers to the "purpose" or "object" of a transaction, arrangements or any other action or matter, and
 - (b) the purpose is expressed (wholly or partly) by reference to the avoidance of tax or the obtaining of any advantage in relation to tax (however described, and including cases where the reference is to not avoiding tax or not obtaining an advantage, or a particular advantage, in relation to tax).
 - (3) Sub-paragraph (2)(a) has effect as if a reference to the "main purpose" or "main object", or to the "main purposes" or "main objects", of an action or matter were a reference to the "purpose" or "object" of the action or matter; and sub-paragraph (2)(b) is to be read accordingly.
 - (4) A rule falls within Category 2 if as a result of the rule the treatment of a person for tax purposes may differ depending on whether or not certain purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.
 - (5) For the purposes of sub-paragraph (4) it does not matter whether the rule refers to "commercial purposes", "genuine commercial purposes" or "bona fide commercial purposes".

-
- (6) For example, a rule in the following form would fall within Category 1 and within Category 2—

“Example rule

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B.

Condition A is that the transaction is effected—

- (a) for genuine commercial reasons, or
- (b) in the ordinary course of managing investments.

Condition B is that the avoidance of tax is not the main object or one of the main objects of the transaction.”

Meaning of “DOTAS arrangements” and “disclosable VAT arrangements”

- 12K (1) For the purposes of this Part of this Schedule arrangements are “DOTAS arrangements” at any time if at that time a person—
- (a) has provided, information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or
 - (b) has failed to comply with any of those provisions in relation to the arrangements.
- (2) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or
 - (b) but for subsection (4A), (4C) or (5) of that section,
- is treated as providing the information at the end of the period referred to in subsection (3) of that section.
- 12L For the purposes of paragraphs 12G and 12H arrangements are “disclosable VAT arrangements” at any time if at that time—
- (a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),
 - (b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or
 - (c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).
- 12M (1) A person “fails to comply” with any provision mentioned in paragraph 12K(1) or 12L(b) if and only if any of the conditions in sub-paragraphs (2) to (4) is met.
- (2) The condition in this sub-paragraph is that—
- (a) the tribunal has determined that the person has failed to comply with the provision concerned,
 - (b) the appeal period has ended, and
 - (c) the determination has not been overturned on appeal.

-
- (3) The condition in this sub-paragraph is that—
- (a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done,
 - (b) the appeal period has ended, and
 - (c) the determination has not been overturned on appeal.
- (4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.
- (5) In this paragraph “the appeal period” means—
- (a) the period during which an appeal could be brought against the determination of the tribunal, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (6) In this paragraph “the tribunal” means the First-tier tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

Inheritance tax

- 12N (1) In this Part of this Schedule, in relation to inheritance tax—
- (a) each of the following is treated as a return—
 - (i) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);
 - (ii) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;
 - (iii) information or a document provided by a person in accordance with regulations under section 256 of that Act;and such a return is treated as made by the person in question;
 - (b) “assessment” includes a determination.

Meaning of “judicial ruling” etc

- 12O (1) In this Part of this Schedule “judicial ruling” means a ruling of a court or tribunal on one or more issues.
- (2) For the purposes of this Part of this Schedule a judicial ruling is “final” if it is—
- (a) a ruling of the Supreme Court, or
 - (b) a ruling of any other court or tribunal in circumstances where—
 - (i) no appeal may be made against the ruling,

-
- (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,
 - (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
 - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.

Other definitions

12P (1) In this Part of this Schedule –

“adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, amendment or disallowance of a claim, the entering into of a contract settlement or otherwise (and references to “making” adjustments accordingly include securing that adjustments are made by entering into a contract settlement);

“contract settlement” means an agreement in connection with a person’s liability to make a payment to the Commissioners under or by virtue of an enactment.

(2) In this Part of this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.”

(11) In paragraph 14(2) –

(a) in paragraph (a) for “12” substitute “12A”;

(b) after paragraph (b) insert –

“(ba) amend Part 1A, including by adding, varying or removing conditions or categories (or otherwise varying the meaning of “avoidance-related rule”);”.

(12) In section 283 (interpretation of Part 5) –

(a) in subsection (1) –

(i) before the entry relating to “arrangements” insert –

““5 year look-forward period, in relation to a defeated arrangements notice, has the meaning given by section 241A(5);”;

(ii) at the appropriate places insert –

““qualifying arrangements” is to be interpreted in accordance with section 241A(6);”

““defeated arrangements notice” has the meaning given by section 241A(1);”

““substantially the same”, in relation to sets of arrangements, is to be interpreted in accordance with section 241B;”.

(b) in subsection (3) for “12” substitute “12A”.

Explanatory Note

Clause 64: Promoters of tax avoidance schemes

Summary

1. This measure makes changes to the Promoters of Tax Avoidance Schemes (POTAS) legislation in Part 5 of the Finance Act 2014 (FA2014). In particular it introduces a new threshold condition, which, if met, identifies a person as a promoter of tax avoidance schemes to which the provisions in Part 5 can be applied.
2. These changes will be introduced by Finance Bill 2016 and will take effect from Royal Assent to the Bill to ensure that certain persons who display the behaviour of promoting a series of tax avoidance schemes which do not work are brought within POTAS.

Details of the Clause

Section 64: Promoters of tax avoidance schemes

3. Subsections (2) to (5) amend section 237 of FA2014 to introduce two new subsections. New subsection 237(1ZA) provides that if an authorised officer becomes aware that a promoter has met the new threshold condition because there have been three relevant defeats of arrangements in the preceding three years they must consider whether to issue a conduct notice to the promoter. New subsection 237(1ZB) provides that the officer must consider whether to issue a conduct notice where a promoter has been given a defeated arrangements notice (new section 241A of FA2014) in respect of either one or two defeats and there have been further defeats, making three in total, within 5 years of the defeated arrangements notice being given.
4. Subsection (6) introduces a new section 241A into FA2014. It provides that a defeated arrangements notice may be given to a promoter if the authorised officer becomes aware of one or two relevant defeats (defined in new paragraph 12B of Schedule 34 to FA2014) in the preceding three years. It also contains the definition of "qualifying arrangements" for the purposes of the new threshold condition which includes VAT.
5. Subsection (6) also introduces a new section 241B into FA2014. It provides that separate arrangements are to be treated as different from one another for the purposes of Part 5 of FA2014 unless they are substantially the same and defines specific circumstances where arrangements are to be treated as substantially the same.
6. Subsection (6) also introduces a new section 241C into FA2014. It requires that where the issue of a conduct notice relies on a defeat which is a relevant defeat by virtue only of Condition 3 in new paragraph 12C Schedule 34 to FA 2014 (at least 75% of those having used the arrangements have been defeated) that conduct notice is provisional. If the arrangements

in question subsequently meet any of the other conditions in new paragraph 12C then the defeat and any conduct notice is no longer provisional. A provisional conduct notice is not taken into account when determining whether an application for a monitoring notice under section 242 of FA2014 should be made. However, if failures occur in relation to that provisional conduct notice they can be taken into account for the purposes of section 242 when the conduct notice is no longer provisional.

7. Subsection (6) also introduces a new section 241D into FA 2014. It provides that a relevant defeat, which occurs by virtue only of Condition 3 in paragraph 12C of Schedule 34 to FA2014, is treated as never having occurred for the purposes of Part 5 of FA2014 where a court makes a final determination that the related arrangements obtain the asserted tax advantage.
8. Subsection (6) also introduces a new section 241E into FA2014. It provides that a relevant defeat for one person is also treated as a relevant defeat for a person associated with the promoter.
9. Subsection (7) provides that subsections (8) to (11) amend Schedule 34 to FA2014 to provide a new threshold condition.
10. Subsection (10) introduces a new Part 1A into Schedule 34 to FA2014. New paragraph 12B defines "relevant defeat" for the purposes of these new provisions. A relevant defeat occurs where any of Conditions A to F in new paragraphs 12D to 12I is met. Those conditions are that:
 - Condition A - the arrangements have been counteracted by the general anti-abuse rule in Part 5 of FA2013;
 - Condition B - a follower notice has been given under Chapter 2 of Part 4 of FA2014;
 - Condition C - the arrangements are DOTAS arrangements as defined in new paragraph 12L, which have been counteracted;
 - Conditions D and E - the arrangements are disclosable VAT arrangements as defined in new paragraph 12L, which have been counteracted;
 - Condition F - the obtaining of tax advantage relies on the application or disapplication of an anti-avoidance rule (defined in new paragraph 12J) to which a final judicial ruling applies.
11. Subsection (10) also introduces new paragraph 12C into Schedule 34 to FA2014. It provides special rules for determining when a relevant defeat occurs where more than one person has used the same or substantially the same arrangements. These are referred to as sibling arrangements. Where there are such sibling arrangements there will be a relevant defeat where there is a final judicial ruling in relation to any person's use of those arrangements where any of Conditions A to F in new paragraphs 12D to 12I met. There will also be a relevant defeat where, in the absence of a judicial ruling which is final, HMRC is satisfied that the tax advantages have been counteracted in relation to at least 75% of persons known to have relied on arrangements. Where the figure is at least 75% but less than 100%, the provisions of new section 241C and 241D apply.

12. Subsection (10) also introduces new paragraphs 12K to 12M into Schedule 34 to FA2014. Paragraphs 12K and 12L define DOTAS arrangements and disclosable VAT arrangements for the purposes of new Part 1A of Schedule 34 to FA2014. Paragraph 12M defines when a person fails to comply with a duty to disclose arrangements by virtue of Part 7 of Finance Act 2004 (Disclosure of Tax Avoidance Schemes), or Schedule 11A of the Value Added Tax Act 1994 ((Disclosure of Avoidance Schemes), for the purposes of determining whether particular arrangements are covered by paragraph 12K or 12L.
13. Subsection (10) also introduces new paragraph 12N into Schedule 34 to FA2014 which defines what is to be treated as a return for the purposes of new Part 1A in relation to inheritance tax.
14. Subsection (10) also introduces new paragraph 12O which defines "judicial ruling" and when such a ruling is "final" for the purposes of new Part 1A.

Background note

15. POTAS was introduced in 2014 to change the behaviour of a small and persistent minority of promoters of tax avoidance schemes who display certain behaviours. It was extended to promoters of schemes avoiding National Insurance contributions in 2015.
16. Where any one of a number of threshold conditions is met, HM Revenue and Customs (HMRC) must consider whether to give the promoter a conduct notice lasting for a maximum of two years. A conduct notice imposes conditions on how that promoter must behave. If the conditions of the conduct notice are breached HMRC may apply to the Tribunal for authority to give the promoter a monitoring notice. Monitored promoters are subject to additional information requirements and penalties for non-compliance with those requirements
17. This new threshold condition is intended to tackle the behaviour of promoters who promote a series of avoidance schemes that do not work.
18. This change is part of the Government's strategic response to tax avoidance to deter the development and use of avoidance schemes through influencing the behaviour of promoters, their intermediaries and clients.
19. If you have any questions about this change, or comments on the legislation, please contact Clare Yiannakou on 03000 561904 (email: clare.yiannakou@hmrc.gsi.gov.uk)

65 Publication of tax strategies of qualifying groups etc

- (1) The Schedule contains provisions about the publication of tax strategies of qualifying groups, sub-groups, companies and partnerships.
- (2) That Schedule has effect in relation to financial years of the head of a qualifying group or sub-group, of a qualifying company or of a qualifying partnership beginning on or after the day on which this Act is passed.

SCHEDULE TO CLAUSE 65

PUBLICATION OF TAX STRATEGIES OF QUALIFYING COMPANIES, GROUPS AND SUB-GROUPS

PART 1

INTERPRETATION

Preliminary

1 This Part defines terms used in this Schedule.

“Company”, “partnership” “relevant body” and “financial year”

2 (1) “Company” has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006), subject to sub-paragraphs (2) and (3).

- (2) The term “company” does not include a company which is—
- (a) an open-ended investment company within the meaning of section 613 of CTA 2010, or
 - (b) an investment trust within the meaning of section 1158 of CTA 2010.

3 “Partnership” means a body of any of the following descriptions which is carrying on a trade, business or profession with a view to profit—

- (a) a partnership within the meaning of the Partnerships Act 1890,
- (b) a limited partnership registered under the Limited Partnerships Act 1907, or
- (c) a limited liability partnership incorporated in the United Kingdom.

4 “Relevant body” means a company or any other body corporate, but does not include a limited liability partnership.

5 (1) “Financial year” —

- (a) in relation to a company, has the meaning given by the Companies Act 2006 (see section 390 of that Act),
- (b) in relation to any other relevant body, means any period in respect of which a profit and loss account for the body’s undertaking is required to be made up (whether by its constitution or by the law under which it is established), whether that period is a year or not,
- (c) in relation to a partnership, means any period of account for which its representative partner has provided or is required to provide accounts under a return issued under section 12AB TMA 1970.

(2) In this paragraph “representative partner”, in relation to a partnership, means the partner who is required by a notice served under or by virtue of section 12AA(2) or (3) of TMA 1970 to make and deliver returns to an officer of HMRC.

“Group”, “MNE Group”, “UK group”, “UK sub-group” and “head”

- 6 (1) “Group” (except in the term “MNE Group”) means a group of two or more relevant bodies—
- (a) each of which is a member of the group by virtue of sub-paragraph (2) or (3), and
 - (b) at least two of which are companies.
- (2) A relevant body is a member of a group if—
- (a) another relevant body is its 51% subsidiary, or
 - (b) it is a 51% subsidiary of another relevant body.
- (3) Two relevant bodies are members of the same group if—
- (a) one is a 51% subsidiary of the other, or
 - (b) both are 51% subsidiaries of another relevant body.
- (4) Chapter 3 of Part 24 of CTA 2010 (meaning of 51% subsidiary) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts (subject to the modification in sub-paragraph (5)).
- (5) It applies as if references to a body corporate were references to a relevant body.
- 7 (1) “MNE Group” has the same meaning as in the OECD Model Legislation in the OECD Country-by-Country Reporting Implementation Package (except that paragraph (ii) (Excluded MNE Group) is not part of the definition for the purposes of the definition for the purposes of this Part) as contained in the OECD’s Guidance on Transfer Pricing Documentation and Country-by-Country Reporting published in 2014.
- (2) An MNE Group is a “qualifying MNE Group” in any financial year if in that year there is a mandatory reporting requirement in respect of it under regulations made under section 122 of the Finance Act 2015 (country-by-country reporting) or there would be such a requirement if the head of the group were resident in the United Kingdom for tax purposes.
- (3) In this paragraph “OECD” means the Organisation for Economic Co-operation and Development.
- 8 “UK group” means a group headed by a company or other relevant body incorporated in the United Kingdom.
- 9 (1) The identity of a group is not affected by any change in its membership resulting from a relevant body becoming or ceasing to be a 51% subsidiary of a member of the group.
- (2) A group is headed by whichever relevant body in the group is not a 51% subsidiary of another relevant body within the group (and “head”, in relation to the group, means that body).
- 10 (1) “UK sub-group” means two or more relevant bodies that would be a UK group, but for the fact that they are members of a larger group headed by a relevant body incorporated outside the United Kingdom.
- (2) The identity of a UK sub-group is not affected by any change in its membership resulting from a relevant body becoming or ceasing to be a 51% subsidiary of a member of the sub-group.

-
- (3) A UK sub-group is headed by the company or other body incorporated in the United Kingdom that is not a 51% subsidiary of another member of the sub-group (and “head”, in relation to the sub-group, means that company or body).

“Turnover” and “balance sheet total” (in relation to companies and partnerships)

- 11 (1) “Turnover” –
- (a) in relation to a company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act), and
 - (b) in relation to a partnership, has a corresponding meaning.
- (2) “Balance sheet total”, in relation to a company or partnership and a financial year, means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year.

“Qualifying group”

- 12 (1) A group is a “qualifying group” in any financial year if the group satisfied the qualification test for a group in the previous financial year of its head (subject to any regulations under sub-paragraph (2)).
- (2) A group which is an MNE Group is not a qualifying group for the purposes of this Schedule.
- (3) The Treasury may by regulations provide –
- (a) that a group of a specified description is not a qualifying group for the purposes, or any specified purpose, of this Schedule, or
 - (b) that a company or other relevant body of a specified description is to be disregarded in determining whether the qualification test is satisfied by a group;
- and in this sub-paragraph “specified” means specified in the regulations.
- 13 (1) The qualification test for a group is that the group satisfied either or both of the following conditions –

1. Group turnover	More than £200 million
2. Group balance sheet total	More than £2 billion.

- (2) “Group turnover”, in relation to a group and a financial year of its head, means the aggregate turnover of the companies that are members of a group at the end of the previous financial year of its head.
- (3) “Group balance sheet total”, in relation to a group and a financial year of its head, means the aggregate balance sheet totals for all the companies in the group at the end of the previous financial year of its head.
- (4) Where the financial year of a company within the group does not end on the same day as the previous financial year of the head of the group, the figures from that company that are to be included in the aggregate figures are the figures for that company’s financial year ending last before the end of the previous financial year of the head of the group.

“Qualifying company”

- 14 (1) A company is a “qualifying company” in any financial year if it satisfied the qualification test for a company in the previous financial year, subject to sub-paragraph (2) and any regulations under sub-paragraph (3).
- (2) A company is not to be regarded as a “qualifying company” in a financial year if at the end of the previous financial year if it is a member of a UK group or a UK sub-group.
- (3) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule.
- 15 The qualification test for a company is that the company satisfied either or both of the following conditions –

1. The company’s turnover	More than £200 million
2. The company’s balance sheet total	More than £2 billion.

“Qualifying partnership”

- 16 (1) A partnership is a “qualifying partnership”, in relation to a financial year, if it met the qualification test for a partnership at the end of the previous financial year, subject to any regulations under sub-paragraph (2).
- (2) The Treasury may by regulations provide that a partnership of a description specified in the regulations is not a qualifying partnership for the purposes of this Schedule.
- 17 The qualification test for a partnership is that the partnership satisfied either or both of the following conditions –

1. The partnership’s turnover	More than £200 million
2. The partnerships’s balance sheet total	More than £2 billion.

“Tax strategy” etc

- 18 “Tax strategy” means –
- (a) a group tax strategy (see Part 2),
 - (b) a sub-group tax strategy (see Part 3).
 - (c) a company tax strategy (see Part 4), or
 - (d) a partnership tax strategy (see Part 5).

“UK taxation”

- 19 “UK taxation”, in relation to a tax strategy required by this Schedule to be published for a UK group, UK sub-group, company or partnership, means

any of the following (so far as affecting that group, sub-group, company or partnership) –

- (a) income tax,
- (b) corporation tax, including any amount assessable or chargeable as if it were corporation tax or treated as if it were corporation tax,
- (c) value added tax,
- (d) amounts for which the company is accountable under PAYE regulations,
- (e) diverted profits tax,
- (f) insurance premium tax,
- (g) annual tax on enveloped dwellings,
- (h) stamp duty land tax,
- (i) stamp duty reserve tax,
- (j) petroleum revenue tax;
- (k) customs duties,
- (l) excise duties,
- (m) national insurance contributions.

PART 2

PUBLICATION OF GROUP TAX STRATEGY BY QUALIFYING UK GROUP

Duty to publish a group tax strategy

- 20 (1) This Part applies in relation to a UK group which is –
- (a) a qualifying MNE Group, or
 - (b) a qualifying group,
- in any financial year (“the current financial year”).
- (2) In this Part “financial year”, in relation to the head of a UK group, means a financial year of the head of the group.
- 21 (1) The head of the UK group must ensure that a group tax strategy for the group, containing the information required by paragraph 24, is prepared and published in accordance with this Part.
- (2) Any company within the UK group may publish the group tax strategy on behalf of the group.
- (3) If the UK group becomes a sub-group of another group during the current financial year, for the rest of that financial year it is to be treated for the purposes of this Part as if it were still a UK group.
- 22 (1) The group tax strategy must be published before the end of the current financial year.
- (2) If the UK group was a UK group to which this Part applied in the previous financial year, the group tax strategy must not be published less than 9 months, or more than 15 months, after the day on which its previous group tax strategy was published.
- (3) If the period between that day and the end of the current financial year is less than nine months, sub-paragraph (2) has effect with the omission of the words “less than 9 months, or”.

-
- 23 (1) The group tax strategy –
- (a) must be published on the internet, and
 - (b) may also be published in any other way the company publishing it considers appropriate.
- (2) The head of the UK group must ensure that the group tax strategy published on the internet remains accessible to the public free of charge for at least one year after it is first published.
- (3) If the UK group publishes a group tax strategy for the next financial year before the end of the year mentioned in sub-paragraph (2), the duty under that sub-paragraph ceases to apply when that group tax strategy is published.
- (4) For the purposes of this Part, a group tax strategy is published when it is first published on the internet.

Contents of a group tax strategy

- 24 (1) A group tax strategy required to be published under this Part must set out –
- (a) the approach of the UK group to risk management and governance arrangements in relation to UK taxation,
 - (b) the attitude of the group towards tax planning (so far as affecting UK taxation),
 - (c) the level of risk in relation to UK taxation that the group is prepared to accept, and
 - (d) the approach of the group towards its dealings with HMRC.
- (2) A group tax strategy may –
- (a) include other information relating to taxation (whether UK taxation or otherwise),
 - (b) deal with a matter mentioned in sub-paragraph (1) by reference to the UK group as a whole or to individual members of the group, and
 - (c) be published as a separate document or a self-contained part of a wider document.
- (3) The matters required by sub-paragraph (1) to be included in a group tax strategy do not include any information about activities of any company within the group that consist of the provision of tax advice or related professional services to persons other than a member of the group.
- (4) The company publishing information as a group tax strategy must make clear (in a way that is accessible to anyone accessing it online) that the company regards its publication as complying with the duty to publish a group tax strategy in the current financial year.

Penalty for non-compliance with requirements of this Part

- 25 (1) The head of the UK group is liable to a penalty of £7,500 if –
- (a) there is a failure to publish a group tax strategy for the group that meets the requirements of this Part, or
 - (b) where a group tax strategy has been published for the group, there is a failure to comply with paragraph 23(2).

-
- (2) Subject to sub-paragraph (3) the head is only liable to one penalty by virtue of sub-paragraph (1) in respect of a group tax strategy required for the financial year in question.
- (3) Sub-paragraph (4) applies where –
- (a) the head of the UK group is liable to a penalty under this paragraph in respect of a failure mentioned in sub-paragraph (1)(a), and
 - (b) no group tax strategy for the group that meets the requirements of this Part (disregarding paragraph 22) is published within the period of 6 months after the last day on which the duty under paragraph 21(1) could have been complied with.
- (4) At the end of that period, the head of the UK group –
- (a) is liable to a further penalty of £7,500, and
 - (b) where the failure mentioned in sub-paragraph (3)(b) continues, is liable to a further penalty of £7,500 at the end of each subsequent month in which no such group tax strategy is published.

PART 3

PUBLICATION OF SUB-GROUP TAX STRATEGY BY UK SUB-GROUP OF A QUALIFYING GROUP

Application of Part 3

- 26 (1) This Part applies to a UK sub-group of a group which in any financial year (“the current financial year”) falls within sub-paragraph (2) or (3).
- (2) A group falls within this sub-paragraph if in the current financial year it –
- (a) is a qualifying MNE Group that is not a UK group, and
 - (b) includes one or more UK sub-groups.
- (3) A group falls within this sub-paragraph if in the current financial year” it –
- (a) is a qualifying group that is not a UK group, and
 - (b) includes one or more UK sub-groups.
- (4) In this Part “financial year”, in relation to a UK sub-group, means a financial year of the head of the group of which it is a sub-group.

Duty to publish a sub-group tax strategy

- 27 (1) The head of the UK sub-group must ensure that a sub-group tax strategy for the sub-group, giving the information required by paragraph 24(1) as applied by paragraph 30, is prepared and published in accordance with this Part.
- (2) Any company within the group of which the UK sub-group is part may publish the sub-group tax strategy on its behalf.
- (3) If the UK sub-group becomes a sub-group of another group during the current financial year, for the rest of that financial year it is to be treated for the purposes of this Part as if it were still a UK sub-group of the original group (but only a company within the UK sub-group may publish a sub-group tax strategy on its behalf).
- 28 (1) The sub-group tax strategy must be published before the end of the current financial year.

-
- (2) If the group of which the UK sub-group is part was, in the previous financial year –
- (a) a qualifying MNE Group, or
 - (b) a qualifying group.
- the sub-group tax strategy must not be published less than 9 months, or more than 15 months, after the day on which the UK sub-group's previous sub-group tax strategy was published.
- (3) If the period between that day and the end of the current financial year is less than nine months, sub-paragraph (2) has effect with the omission of the words "less than 9 months, or".
- 29 (1) The sub-group tax strategy –
- (a) must be published on the internet, and
 - (b) may also be published in any other way the company publishing it considers appropriate.
- (2) The head of the UK sub-group must ensure that the sub-group tax strategy published on the internet remains accessible to the public free of charge for at least one year after it is first published.
- (3) If the UK sub-group publishes a sub-group tax strategy for the next financial year before the end of the year mentioned in sub-paragraph (2), the duty under that sub-paragraph ceases to apply when that sub-group tax strategy is published.
- (4) For the purposes of this Part a sub-group tax strategy is published when it is first published on the internet.

Content of a sub-group tax strategy

- 30 (1) Paragraph 24 applies in relation to a relation to the sub-group tax strategy of the UK sub-group as it applies to a group tax strategy of a qualifying UK group.
- (2) In the application of paragraph 24 for the purposes of this Part references to the group, or members of the group, are to be read as references to the UK sub-group or members of the UK sub-group.

Penalty for non-compliance with requirements of this Part

- 31 (1) The head of the UK sub-group is liable to a penalty of £7,500 if –
- (a) there is a failure to publish a sub-group tax strategy for the sub-group that meets the requirements of this Part, or
 - (b) where a sub-group tax strategy has been published for the sub-group, there is a failure to comply with paragraph 29(2).
- (2) Subject to sub-paragraph (3) the head of the UK sub-group is only liable to one penalty by virtue of sub-paragraph (1) in respect of a sub-group tax strategy required for the financial year in question.
- (3) Sub-paragraph (4) applies where –
- (a) the head of the UK sub-group is liable to a penalty under this paragraph in respect of a failure mentioned in sub-paragraph (1)(a), and

-
- (b) no sub-group tax strategy for the UK sub-group that meets the requirements of this Part (disregarding paragraph 28) is published within the period of 6 months after the last day on which the duty under paragraph 27(1) could have been complied with.
- (4) At the end of that period, the head of the UK sub-group is liable –
- (a) to a further penalty of £7,500, and
 - (b) where the failure mentioned in sub-paragraph (3)(b) continues, to a further penalty of £7,500 at the end of each subsequent month in which no such sub-group tax strategy is published.

PART 4

PUBLICATION OF COMPANY TAX STRATEGY BY QUALIFYING COMPANY

Duty to publish a company tax strategy

- 32 This Part applies in relation to a company which in any financial year (“the current financial year”) is –
- (a) a qualifying company, or
 - (b) a company which –
 - (i) is a member of a qualifying MNE Group that is not a UK group, but
 - (ii) is not a member of a UK sub-group of such an MNE Group.
- 33 (1) The company must prepare and publish a company tax strategy, containing the information required by paragraph 36, in accordance with this Part.
- (2) The duty under sub-paragraph (1) applies even if the company becomes a member of a UK group or a UK sub-group during the current financial year.
- 34 (1) The company tax strategy must be published before the end of the current financial year.
- (2) If the company was a company to which this Part applied in the previous financial year, the tax strategy must not be published less than 9 months, or more than 15 months, after the day on which its company tax strategy was published in the previous financial year.
- (3) If the period between that day and the end of the current financial year is less than nine months, sub-paragraph (2) has effect with the omission of the words “less than 9 months, or”.
- 35 (1) The company tax strategy –
- (a) must be published on the internet, and
 - (b) may also be published in any other way the company considers appropriate.
- (2) The company must ensure that the company tax strategy that is published on the internet remains readily accessible to the public free of charge for at least one year after it is first published.
- (3) If the company publishes a group tax strategy for the next financial year before the end of the year mentioned in sub-paragraph (2), the duty under that sub-paragraph ceases to apply when that group tax strategy is published.

-
- (4) For the purposes of this Part the company tax strategy is published when it is first published on the internet.

Content of a company tax strategy

- 36 (1) The company tax strategy must set out –
- (a) the company’s approach to risk management and governance arrangements in relation to UK taxation,
 - (b) the company’s attitude towards tax planning (so far as affecting UK taxation),
 - (c) the level of risk in relation to UK taxation that the company is prepared to accept,
 - (d) the company’s approach towards its dealings with HMRC.
- (2) The company tax strategy may –
- (a) include other information relating to taxation (whether UK taxation or otherwise), and
 - (b) be published as a separate document or a self-contained part of a wider document.
- (3) The matters required by sub-paragraph (1) to be included in a company tax strategy do not include any information about activities of the company that consist of the provision of tax advice or related professional services.
- (4) The company must when publishing information as a company tax strategy make clear (in a way that is accessible to anyone accessing it online) that the company regards its publication as complying with the duty to publish a company tax strategy in the current financial year.

Penalty for non-compliance with requirements of this Part

- 37 (1) The company is liable to a penalty of £7,500 if –
- (a) there is a failure to publish a company tax strategy for the company that meets the requirements of this Part, or
 - (b) where a company tax strategy has been published for the company, there is a failure to comply with paragraph 35(2).
- (2) Subject to sub-paragraph (3), the company is only liable to one penalty by virtue of sub-paragraph (1) in respect of a company tax strategy required for the financial year in question.
- (3) Sub-paragraph (4) applies where –
- (a) a penalty is imposed under this paragraph in respect of a failure mentioned in sub-paragraph (1)(a), and
 - (b) no company tax strategy that meets the requirements of this Part (disregarding paragraph 34) is published within the period of 6 months after the last day on which the duty under paragraph 33(1) could have been complied with.
- (4) At the end of that period, the company is liable –
- (a) to a further penalty of £7,500, and
 - (b) where the failure mentioned in sub-paragraph (3)(b) continues, to a further penalty of £7,500 at the end of each subsequent month in which no such company tax strategy is published.

PART 5

PUBLICATION OF PARTNERSHIP TAX STRATEGY BY QUALIFYING PARTNERSHIP

- 38 (1) This Part applies in relation to a partnership which is a qualifying partnership in any financial year (“the current financial year”).
- (2) The partnership must prepare and publish a partnership tax strategy, containing the information required by paragraph 36 as applied by paragraph 40, in accordance with this Part.
- 39 (1) The partnership tax strategy must be published before the end of the current financial year.
- (2) If the partnership was a qualifying partnership in the previous financial year the tax strategy must not be published less than 9 months, or more than 15 months, after the day on which its partnership tax strategy was published in the previous financial year.
- (3) If the period between that day and the end of the current financial year is less than nine months, sub-paragraph (2) has effect with the omission of the words “less than 9 months, or”.
- 40 The following paragraphs of Part 4 apply in relation to the partnership and its partnership tax strategy as they apply to a company and its company tax strategy –
- (a) paragraph 35 (publication)
 - (b) paragraph 36 (content), and
 - (c) paragraph 37 (penalties).

PART 6

PENALTIES: GENERAL

Application of Part 6 and interpretation

- 41 (1) This Part applies in relation to the liability of any person to a penalty under paragraph 25, 31, 37 or 37 as applied to a partnership by paragraph 40 and, accordingly –
- “liability to a penalty” means a liability under any of those paragraphs,
 - “failure”, in relation to a liability for a penalty, means a failure which could give rise to that liability, and
 - “penalty” means a penalty under any of those paragraphs.
- (2) In this Part “tribunal” means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.

Failure to comply with a time limit

- 42 A failure to do anything required by any provision of Parts 2 to 5 to be done within a limited period of time goes not give rise to liability to a penalty if it is done within such further time (if any) as an officer of Revenue and Customs may have allowed.

Reasonable excuse

- 43 (1) Liability to a penalty for a failure does not arise if the person who would otherwise be liable to that penalty satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that the person had a reasonable excuse for that failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
 - (b) where the person relies on another person to do anything, that cannot be a reasonable excuse—
 - (i) unless the first person took reasonable care to avoid the failure, or
 - (ii) in the case of a qualifying group, qualifying MNE Group or a UK sub-group, where the person relied on is another member of the group or sub-group,
 - (c) where the person had a reasonable excuse but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties

- 44 (1) Where a person becomes liable to a penalty—
- (a) HMRC may assess the penalty, and
 - (b) if they do so, HMRC must notify the person of the assessment.
- (2) An assessment of a penalty may not be made—
- (a) more than 6 months after the failure first comes to the attention of an officer of Revenue and Customs, or
 - (b) more than 6 years after the end of the current financial year (within the meaning of Part 2, 3, 4 or 5, as the case may be).

Appeal

- 45 (1) A person may appeal against a decision of HMRC that a penalty is payable by that person.
- (2) Notice of an appeal must be given—
- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 44(1)(b) was issued,
- (3) Notice of an appeal must state the grounds of appeal
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) Subject to this paragraph and paragraph 46, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax.

Enforcement

- 46 (1) A penalty must be paid –
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 44(1) was issued, or
 - (b) if a notice of appeal is given, before the end of 30 days beginning with the day on which the appeal is determined or withdrawn.
- (2) A penalty may be enforced as if it were corporation tax charged in an assessment and due and payable.

Power to change amount of penalties

- 47 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 25, 31 and 37 such other sums as appear to them to be justified by the change.
- (2) In sub-paragraph (1), in relation to a specified sum, “relevant date” means –
- (a) the date on which this Act is passed, and
 - (b) in relation to that sum, each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to a failure that occurs in respect of a financial year (of the company, relevant body or partnership responsible for the failure) that begins before the date on which they come into force.

Application of provisions of TMA 1970

- 48 Subject to the provisions of this Part, the following provisions of TMA 1970 apply for the purposes of this Part as they apply for the purposes of the Taxes Acts –
- (a) section 108 (responsibility of company officers),
 - (b) section 114 (want of form), and
 - (c) section 114 (delivery and service of documents).

PART 7

SUPPLEMENTARY PROVISIONS

Amendment of power under section 122 of FA 2015

- 49 The power to make regulations under section 122(6)(c) of FA 2015 (country-by-country reporting: incidental etc provision that may be included in regulations) includes power to amend paragraph 7 above.

Regulations

- 50 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

Explanatory Note

Clause 65: Publication of tax strategies of qualifying groups etc

Summary

1. This clause introduces a legislative requirement for all qualifying groups, companies, and partnerships to publish a tax strategy, in relation to UK taxation, on the internet. Non-publication or incomplete content may lead to an appealable penalty.

Details of the clause

Clause 65: Publication of tax strategies of qualifying companies, groups, and sub-groups

2. This clause introduces the Schedule and provides for its commencement.

Schedule 1: Part 1: Interpretation

3. Paragraphs 1-19 provide definitions for the terms used in this Schedule, including Company, Partnership, Relevant Body, Financial Year, representative partner, Group, MNE Group, qualifying MNE Group, OECD, UK Group, head, UK sub-group, turnover, balance sheet total, Qualifying group, group turnover, group balance sheet total, Qualifying company, Qualifying partnership, Tax strategy and UK taxation.

Schedule 1: Part 2: Publication of group tax strategy by qualifying UK group

4. Paragraph 20(1) sets out that this Part applies to a UK group which is a qualifying group in any financial year.
5. Paragraph 20(2) provides a definition of "financial year" for this Part.
6. Paragraph 21(1) sets out that the head of a qualifying group is responsible for the publication of the group's tax strategy.
7. Paragraph 21(2) sets out that any company within the group may publish the group tax strategy.
8. Paragraphs 22-23 set out when and where the group tax strategy must be published.
9. Paragraph 24(1), 24(3) and 24(4) provide an outline of the required content of a group tax strategy. Paragraph 24(2) provides areas a group tax strategy may cover.

10. Paragraph 25 provides an outline of the circumstances in which a penalty for non-compliance with this Part may be levied. Paragraph 25(1) sets out the circumstances in which the head of a group is liable to a penalty.
11. Paragraph 25(3) and 25(4) provides for a further penalty if it fails to publish the group tax strategy within six months of the delay for publication and thereafter for further penalties for each month of further delay.

Part 3: Publication of Sub-Group Tax Strategy by UK sub-group of a qualifying group

12. Paragraph 26(1) sets out that this Part applies to a UK sub-group of a qualifying group in any financial year.
13. Paragraphs 26(2) and 26(3) sets out the criteria for a group falling within this Part including MNE groups with one or more UK sub-group.
14. Paragraph 26(4) sets out the definition of "financial year" for this Part.
15. Paragraph 27(1) sets out that the head of a UK sub-group is responsible for the publication of the sub-group's tax strategy.
16. Paragraph 27(2) sets out that any company within the group of which the UK group is part may publish the sub-group tax strategy.
17. Paragraph 27(3) sets out how a UK sub-group is to be treated if it becomes a sub-group of another group during the current financial year.
18. Paragraphs 28-29 set out when and where the sub-group tax strategy must be published.
19. Paragraph 30 outlines the required content of a UK sub-group tax strategy with reference to Paragraph 24.
20. Paragraph 31 provides an outline of the circumstances in which a penalty for non-compliance with this Part may be levied. Paragraph 31(1) sets out the circumstances in which the head of the UK sub-group is liable to a penalty.
21. Paragraph 31(3) and 31(4) sets out that a company may be liable to further penalties if it fails to publish the sub-group tax strategy within six months of the deadline for publication and thereafter for further penalties for each month of further delay.

Part 4: Publication of company tax strategy by qualifying company

22. Paragraph 32 sets out that this Part applies to a company which is a qualifying company or a member of a qualifying MNE group, but not a member of a UK sub-group of that MNE Group, in any financial year.
23. Paragraph 33 sets out the duty falling on qualifying companies within this Part.
24. Paragraphs 34-35 set out when and where the company tax strategy must be published.
25. Paragraph 36(1), 36(3) and 36(4) provide an outline of the required content of a company tax strategy. Paragraph 36(2) provides areas a company tax strategy may cover.

26. Paragraph 37 provides an outline of the circumstances in which a penalty for non-compliance with this Part may be levied. Paragraph 37(1) sets out the circumstances in which the company is liable to a penalty.
27. Paragraph 37(3) and 37(4) sets out that a company may be liable to further penalties if it fails to publish the sub-group tax strategy within six months of the deadline for publication and thereafter for further penalties for each month of further delay.

Part 5: Publication of partnership tax strategy by qualifying partnership

28. Paragraph 38(1) sets out that this Part applies to a partnership which is a qualifying partnership in any financial year. Paragraph 38(2) sets out the duty falling on qualifying partnerships within this Part.
29. Paragraph 39 sets out when a partnership tax strategy must be published.
30. Paragraph 40 sets out where a partnership's tax strategy must be published, what it must and may contain, and what penalties for non-compliance a partnership may be liable to with reference to Paragraphs 35, 36 and 37.

Part 6: Penalties: General

31. Paragraph 41 sets out to whom this Part applies and provides some definitions.
32. Paragraph 42 sets out that failure to comply with Parts 2-5 does not give rise to liability to a penalty if it is done within a time limit set by an officer of HMRC.
33. Paragraph 43(1) sets out that a person will not be liable to a penalty if that person satisfies HMRC or the tribunal that there was a reasonable excuse for the failure. Paragraph 43(2) sets out excuses which will not be considered as reasonable.
34. Paragraph 44 deals with the assessment of penalties and in what circumstances they may not be made.
35. Paragraph 45 sets out that a person may appeal a decision made by HMRC that a penalty is payable by that person. It also sets out how an appeal must be given and what it must contain.
36. Paragraph 46 sets out when a penalty must be paid, and that it may be enforced as if it were corporation tax that was due and payable.
37. Paragraph 47 provides for the Treasury to change the amount of penalties if it appears that the value of money has changed.
38. Paragraph 48 sets out the sections of the Taxes Management Act 1970 that apply to this Part.

Part 7: Supplementary Provisions

39. Paragraph 49 sets out that the power to make regulations under Section 122(6)(c) of FA 2015 includes the power to amend Paragraph 7.
40. Paragraph 50 sets out that Regulations under this Schedule will be made by statutory instrument and are subject to annulment following a resolution of the House of Commons.

Background note

41. HM Revenue and Customs (HMRC) is committed to dealing with all customers fairly and efficiently while making sure that the correct tax is paid to the Exchequer. HMRC's Large Business Directorate manages the largest 2,000 or so businesses using a risk based approach. This is due to their size and complexity, the tax at stake, and the consequent risk they present to the Exchequer.
42. This measure seeks to encourage tax transparency and compliance across all large businesses. To achieve this, we are introducing the requirement for qualifying large businesses to publish their tax strategy in relation to UK taxation.
43. This legislation will includes details of the tax strategies required to be published by such large business together with details of where and when publication is required and details of penalties for non-compliance.
44. If you have any questions about this change, or comments on the legislation, please contact Heather Wall on 03000 567215 or at largebusinessconsultation.mailbox@hmrc.gsi.gov.uk.

66 Sanctions for persistently unco-operative large businesses

- (1) The Schedule contains provisions about sanctions for persistently unco-operative large businesses.
- (2) Her Majesty's Revenue and Customs may not give a notice under the Schedule to the head of a group or sub-group, a company or a partner of a partnership before the beginning of its first financial year (as defined in the Schedule) beginning on or after the day on which this Act is passed.

SCHEDULE TO CLAUSE 66

SANCTIONS FOR PERSISTENTLY UNCO-OPERATIVE LARGE BUSINESSES

PART 1

LARGE GROUPS FALLING WITHIN THIS SCHEDULE

Persistent unco-operative behaviour linked to significant unresolved tax issues

- 1 (1) A UK group that is a qualifying MNE Group or a qualifying group (a “qualifying UK group”) falls within this Schedule if –
 - (a) the group has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the group or members of the group which are unresolved (see paragraph 5), and
 - (c) there is a reasonable likelihood of further instances of the group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the group or members of the group.
- (2) In this Schedule, the following terms have the same meaning as in the Schedule to section 65 –
 - “group”;
 - “head” (in relation to a group);
 - “member” (in relation to a group);
 - “qualifying group”;
 - “qualifying MNE Group”;
 - “UK group”.

Persistent unco-operative behaviour

- 2 (1) A qualifying UK group has “engaged in unco-operative behaviour” if –
 - (a) a member of the group has satisfied either or both of the conditions listed in sub-paragraph (2), or
 - (b) two or more of the members of the group, taken together, have satisfied either or both of those conditions.
- (2) Those conditions are –
 - (a) the behaviour condition (see paragraph 3);
 - (b) the arrangements condition (see paragraph 4).
- (3) A qualifying UK group has engaged in unco-operative behaviour “persistently” if –
 - (a) a member of the group has done so persistently, or

-
- (b) two or more members of the group, taken together, have done so persistently.
- (4) References in this Schedule to doing something “persistently” include doing it on a sufficient number of occasions for it to be clear that it represents a pattern of behaviour.

The behaviour condition

- 3 (1) A member of a qualifying UK group has, or two or more members of a qualifying UK group (taken together) have, “satisfied the behaviour condition” if it has, or they have, behaved in a manner which has delayed or otherwise hindered Her Majesty’s Revenue and Customs in the exercise of their functions in connection with determining the liability to UK taxation of the group or a member of the group.
- (2) Factors which may indicate that a member of a qualifying UK group has behaved as described in sub-paragraph (1) include—
- (a) the extent to which Her Majesty’s Revenue and Customs have used statutory powers to obtain information relating to the qualifying UK group or members of the group;
 - (b) the reasons why those powers have been used;
 - (c) the number and seriousness of inaccuracies in, and omissions from, documents given to Her Majesty’s Revenue and Customs by or on behalf of the qualifying UK group or members of the group;
 - (d) the extent to which, in dealings with Her Majesty’s Revenue and Customs, members of the group (or people acting on their behalf) have relied on interpretations of legislation relating to UK taxation which, at the time, are speculative.
- (3) An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- (4) In this Schedule, “UK taxation” means any tax, duty or other amount listed in paragraph 19 of the Schedule to section 65.

The arrangements condition

- 4 (1) A member of a qualifying UK group has “satisfied the arrangements condition” if it is a party to a tax avoidance scheme.
- (2) “Tax avoidance scheme” means—
- (a) arrangements in respect of which a notice has been given under paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision) stating that a tax advantage arising from the arrangements is to be counteracted;
 - (b) arrangements which are notifiable arrangements for the purposes of Part 7 of FA 2004 (disclosure of tax avoidance schemes), other than arrangements in relation to which Her Majesty’s Revenue and Customs have given notice under section 312(6) of FA 2014 (notice that promoters not under duty to provide clients with prescribed information);
 - (c) a scheme which is a notifiable scheme for the purposes of Schedule 11A to the Value Added Tax Act 1994 (disclosure of avoidance schemes).

Significant tax issue

- 5 (1) There is a significant tax issue in respect of a qualifying UK group or a member of a qualifying UK group where—
- (a) there is a disagreement between Her Majesty’s Revenue and Customs and a member of the group about an issue affecting the amount of the liability of the group or a member of the group to UK taxation,
 - (b) the issue has been, or could be, referred to a court or tribunal to determine, and
 - (c) as regards the amount of the liability, the difference between Her Majesty’s Revenue and Customs’ view and the view of the member is, or is likely to be, not less than £2 million.
- (2) The reference in sub-paragraph (1)(a) to circumstances in which there is a disagreement include circumstances in which there is a reasonable likelihood of a disagreement.
- (3) The Treasury may by regulations substitute a higher amount for the amount for the time being specified in sub-paragraph (1)(c).
- (4) Regulations under this paragraph are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

Changes in the composition of a group

- 6 (1) The references in paragraphs 2 to 5 to things done by a member of a qualifying UK group (“the group in question”)—
- (a) include acts and omissions of a relevant body that is not a member of the group in question if they took place at a time when the relevant body was a member of a group headed by the body that is the head of the group in question;
 - (b) do not include acts or omissions of a relevant body that is a member of the group in question if they took place at a time when the relevant body was not a member of a group headed by the body that is the head of the group in question.
- (2) In this Schedule, “relevant body” has the same meaning as in the Schedule to section 65.

PART 2

NOTICES

Meaning of “designated HMRC officer”

- 7 In this Schedule, “designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of this Schedule.

Warning notice

- 8 (1) A designated HMRC officer may give the head of a qualifying UK group a notice under this paragraph (a “warning notice”) if the officer considers that the group falls within this Schedule.
- (2) The notice must set out the reasons why the officer considers that the qualifying UK group falls within this Schedule.

Withdrawal of warning notice

- 9 A warning notice –
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the qualifying UK group, and
 - (b) if not previously withdrawn, is to be treated as withdrawn at the end of the period of 15 months beginning with the day on which it was given.

Special measures notice

- 10 (1) A designated HMRC officer may give the head of a qualifying UK group a notice under this paragraph (a “special measures notice”) if –
- (a) the officer considers that the group falls within this Schedule,
 - (b) the head of the group has been given a warning notice,
 - (c) the period of 12 months beginning with the day on which the warning notice was given has expired,
 - (d) the period of 15 months beginning with that day has not expired, and
 - (e) the warning notice has not been withdrawn,
- (see also paragraph 13).
- (2) When considering whether a qualifying UK group falls within this Schedule, a designated HMRC officer may consider any types of behaviour, whether or not they are mentioned in the warning notice given to the head of the group.
- (3) When deciding whether to give a special measures notice, a designated HMRC officer must consider any representations made by a member of the qualifying UK group before the end of the period of 12 months beginning with the day on which the warning notice was given.
- (4) The special measures notice must set out the reasons why the officer considers that the qualifying UK group falls within this Schedule.

Withdrawal of special measures notice

- 11 (1) A special measures notice –
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the qualifying UK group, and
 - (b) if not previously withdrawn, is to be treated as withdrawn at the end of the period of 27 months beginning with the relevant day.
- (2) “The relevant day” means the later of –
- (a) the day on which the special measures notice was given;
 - (b) the day on which it was last confirmed (see paragraph 12).

Confirmation of special measures notice

- 12 (1) A designated HMRC officer may give the head of a qualifying UK group a notice under this paragraph confirming a special measures notice (a “confirmation notice”) if –
- (a) the officer considers that the group falls within this Schedule,
 - (b) the head of the group has been given a special measures notice,
 - (c) the period of 24 months beginning with the relevant day has expired,
 - (d) the period of 27 months beginning with that day has not expired, and
 - (e) the special measures notice has not been withdrawn.
- (2) When considering whether a qualifying UK group falls within this Schedule, a designated HMRC officer may consider any types of behaviour, whether or not they are mentioned in the special measures notice which is to be confirmed or any previous confirmation notice.
- (3) “The relevant day” means the later of –
- (a) the day on which the special measures notice was given;
 - (b) the day on which it was last confirmed under this paragraph.
- (4) The confirmation notice must set out the reasons why the officer considers that the qualifying UK group falls within this Schedule.
- (5) When deciding whether to give a confirmation notice, a designated HMRC officer must consider any representations made by a member of the qualifying UK group before the end of the period of 24 months beginning with the relevant day.

Additional power to give special measures notice

- 13 (1) A designated HMRC officer may give the head of a qualifying UK group a special measures notice in circumstances in which paragraph 10(1) is not satisfied if –
- (a) the head of the group has been given a warning notice or a special measures notice,
 - (b) that notice has been withdrawn by virtue of the operation of paragraph 9(b) or 11(1)(b),
 - (c) during the period of 6 months beginning with the day on which it was withdrawn (“the withdrawal day”), the group has engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (d) there is a reasonable likelihood that, if it had engaged in the behaviour before the notice was withdrawn, a designated HMRC officer would not have withdrawn it,
 - (e) during the period of 7 months beginning with the withdrawal day, a designated HMRC officer has notified the head of the group that the power under this paragraph may be exercised in relation to the group, and
 - (f) the period of 9 months beginning with the withdrawal day has not expired.
- (2) When deciding whether to give a special measures notice in reliance on this paragraph, the designated HMRC officer must consider any representations made by a member of the qualifying UK group before the end of the period of 8 months beginning with the withdrawal day.

Circumstances in which notices are treated as having been given

- 14 (1) Sub-paragraphs (2) and (3) apply where—
 - (a) a relevant body (“B1”) is given a warning notice, and
 - (b) before the notice is withdrawn, B1 becomes a member of a group headed by another relevant body (“H1”).
- (2) H1 is to be treated as having been given a warning notice on the day on which the warning notice was given to B1.
- (3) A warning notice treated as given under sub-paragraph (2) is valid whether or not, on the day mentioned in that sub-paragraph, H1 was the head of a qualifying UK group that fell within this Schedule.
- (4) Sub-paragraphs (5) to (7) apply where—
 - (a) a relevant body (“B2”) is given a special measures notice, and
 - (b) before the notice is withdrawn, B2 becomes a member of a group headed by another relevant body (“H2”).
- (5) H2 is to be treated as having been given a special measures notice on the day on which the special measures notice was given to B2.
- (6) A special measures notice treated as given under sub-paragraph (5) is valid whether or not, on the day mentioned in that sub-paragraph, H2 was the head of a qualifying UK group that fell within this Schedule.
- (7) Paragraph 15(1) does not by virtue of sub-paragraphs (5) and (6) of this paragraph apply to an inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of a person—
 - (a) at a time when the person was a member of a group headed by H2, but
 - (b) before the day mentioned in sub-paragraph (5).
- (8) Sub-paragraphs (9) and (10) apply where—
 - (a) a relevant body (“B3”) is given a confirmation notice, and
 - (b) before the notice is withdrawn, B3 becomes a member of a group headed by another relevant body (“H3”).
- (9) H3 is to be treated as having been given a confirmation notice on the day on which the confirmation notice was given to B3.
- (10) A confirmation notice treated as given under sub-paragraph (9) is valid whether or not, on the day mentioned in that sub-paragraph, H3 was the head of a qualifying UK group that fell within this Schedule.
- (11) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to relevant bodies in other circumstances described in the regulations.
- (12) Regulations under this paragraph may, in particular—
 - (a) make provision about the validity of notices treated as given by virtue of the regulations;
 - (b) make provision about the effect of paragraph 15(1) in cases involving such notices.
- (13) Regulations under this paragraph are to be made by statutory instrument.

-
- (14) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

PART 3

SANCTIONS

Liability for penalties for errors in documents given to HMRC

- 15 (1) For the purposes of Schedule 24 to FA 2007 (penalties for errors), an inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of a person is to be treated as being due to failure by the person to take reasonable care if—
- (a) the document was given to Her Majesty's Revenue and Customs at a time when the person was a member of a group subject to a special measures notice, and
 - (b) the inaccuracy—
 - (i) relates to a tax avoidance scheme (as defined in paragraph 4) entered into by the person at a time when the person was a member of a group subject to a special measures notice, or
 - (ii) is, entirely or partly, attributable to an interpretation of legislation relating to UK taxation which, at the time the document was given to Her Majesty's Revenue and Customs, was speculative.
- (2) A group is “subject to a special measures notice” if a special measures notice—
- (a) has been given to the head of the group, and
 - (b) has not been withdrawn.
- (3) An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- (4) Sub-paragraph (1) does not apply to an inaccuracy if—
- (a) it is deliberate on the part of the person or someone acting on the person's behalf,
 - (b) it is in fact due to a failure by the person or someone acting on the person's behalf to take reasonable care, or
 - (c) it is treated as due to such a failure by virtue of another enactment.
- 16 In Schedule 24 to FA 2007 (penalties for errors), at the end of paragraph 3 (meaning of “careless” etc) insert—
- “(3) Paragraph 15 of the Schedule to section 66 of FA 2016 (special measures for persistently unco-operative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care.”

Publishing information

- 17 (1) If a group is subject to a confirmed special measures notice, the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) may publish the following information—
- (a) the name of the group, including any previous name;

-
- (b) the address or registered office of the head of the group;
 - (c) any other information that the Commissioners consider it appropriate to publish in order to identify the group;
 - (d) the fact that the group is subject to a confirmed special measures notice.
- (2) A group is “subject to a confirmed special measures notice” if sub-paragraph (3) or (4) is satisfied.
- (3) This sub-paragraph is satisfied if –
- (a) a special measures notice has been given to the head of the group and confirmed under paragraph 12, and
 - (b) the special measures notice has not been withdrawn.
- (4) This sub-paragraph is satisfied if –
- (a) a special measures notice has been given to the head of the group and confirmed under paragraph 12,
 - (b) the notice has been withdrawn, and
 - (c) a further special measures notice has been given to the head of the group under paragraph 13 in the period of 9 months beginning with the day on which the special measures notice mentioned in paragraph (a) was withdrawn.
- (5) Before publishing the information, the Commissioners must –
- (a) inform the head of the group that they are considering doing so, and
 - (b) allow the head of the group a reasonable opportunity to make representations about whether the information should be published.
- (6) If, after information about a group is published under this paragraph, the group ceases to be subject to a confirmed special measures notice, the Commissioners must publish a notice stating that the group is no longer subject to a confirmed special measures notice.
- (7) A notice under sub-paragraph (6) must be published before the end of the period of 30 days beginning with the day on which the special measures notice is withdrawn.
- (8) The Commissioners may publish information and notices under this paragraph in any manner they consider appropriate.

PART 4

APPLICATION OF THIS SCHEDULE TO OTHER LARGE BUSINESSES

Large sub-groups

- 18 (1) A UK sub-group of a group described in sub-paragraph (2) (a “qualifying UK sub-group”) falls within this Schedule if –
- (a) the sub-group has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the sub-group or members of the sub-group which are unresolved (see paragraph 5), and

-
- (c) there is a reasonable likelihood of further instances of the sub-group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the sub-group or members of the sub-group.
 - (2) The groups mentioned in sub-paragraph (1) are –
 - (a) a qualifying MNE Group that is not a UK group;
 - (b) a qualifying group that is not a UK group.
 - (3) Paragraphs 2 to 6 of this Schedule apply in relation to a qualifying UK sub-group as they apply in relation to a qualifying UK group.
 - (4) Paragraphs 7 to 13 of this Schedule apply in relation to the head of a qualifying UK sub-group as they apply in relation to the head of a qualifying UK group.
 - (5) As applied by this paragraph, paragraphs 2 to 13 of this Schedule have effect as if references to a qualifying UK group (including in references to the head of a qualifying UK group or members of a qualifying UK group) were references to a qualifying UK sub-group.
 - (6) In paragraphs 6, 14, 15 and 17, references to a group (including in references to the head of a group or members of a group) include a UK sub-group.
 - (7) In paragraph 14, references to the head of a qualifying UK group include the head of a qualifying UK sub-group.
 - (8) In this paragraph, “UK sub-group” and “head” (in relation to a UK sub-group) have the same meaning as in the Schedule to section 65.

Large companies

- 19 (1) A company which is a qualifying company or an MNE company falls within this Schedule if –
 - (a) the company has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the company which are unresolved (see paragraph 5), and
 - (c) there is a reasonable likelihood of further instances of the company engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the company.
- (2) Paragraphs 2 to 5 of this Schedule apply in relation to a qualifying company as they apply in relation to a qualifying UK group.
- (3) Paragraphs 7 to 13 of this Schedule apply in relation to a qualifying company as they apply in relation to the head of a qualifying UK group.
- (4) As applied by this paragraph, paragraphs 2 to 5 and 7 to 13 have effect as if references to a qualifying UK group, the head of a qualifying UK group or a member of a qualifying UK group were references to a qualifying company.
- (5) Paragraph 15 applies in relation to a company as it applies in relation to a member of a group.

-
- (6) Paragraph 17 applies in relation to a company as it applies in relation to a group.
- (7) As applied by this paragraph, paragraphs 15 and 17 have effect as if references to a group, the head of a group or a member of a group were references to a company.
- (8) In this paragraph –
“company” has the same meaning as in the Schedule to section 65;
“MNE company” means a company which –
 (a) is a member of a qualifying MNE Group that is not a UK group, but
 (b) is not a member of a UK sub-group of such an MNE Group;
“qualifying company” has the same meaning as in the Schedule to section 65.

Large partnerships

- 20 (1) A qualifying partnership falls within this Schedule if –
- (a) the partnership has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the partnership which are unresolved (see paragraph 5), and
 - (c) there is a reasonable likelihood of further instances of the partnership engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the partnership.
- (2) Paragraphs 2 to 5 of this Schedule apply in relation to a qualifying partnership as they apply in relation to a qualifying UK group.
- (3) Paragraphs 7 to 13 of this Schedule apply in relation to the representative partner of a qualifying partnership as they apply in relation to the head of a qualifying UK group.
- (4) As applied by this paragraph, paragraphs 2 to 5 and 7 to 13 have effect as if –
- (a) references to a qualifying UK group were references to a qualifying partnership;
 - (b) references to the head of a qualifying UK group were references to the representative partner of a qualifying partnership;
 - (c) references to a member of a qualifying UK group were references to a partner of a qualifying partnership, acting in the person’s capacity as such.
- (5) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to the representative partner of a partnership in circumstances described in the regulations.
- (6) Sub-paragraphs (12) to (14) of paragraph 14 apply to regulations under this paragraph.

-
- (7) Paragraph 15 applies in relation to an inaccuracy in a document given to Her Majesty’s Revenue and Customs by a partner of a partnership, acting in the person’s capacity as such, as if –
- (a) references to a group were references to a partnership;
 - (b) references to the head of a group were references to the representative partner of a partnership;
 - (c) references to a member of a group were references to a partner of a partnership.
- (8) Paragraph 15 applies in relation to an inaccuracy in any other document given to Her Majesty’s Revenue and Customs on behalf of a partnership as if –
- (a) references to a person included a partnership;
 - (b) references to a group, or a member of a group, were references to a partnership;
 - (c) references to the head of a group were references to the representative partner of a partnership.
- (9) Paragraph 17 applies in relation to a partnership as it applies in relation to a group.
- (10) As applied by this paragraph, paragraph 17 has effect as if –
- (a) references to a group were references to a partnership;
 - (b) references to the head of a group were references to the representative partner of a partnership.
- (11) In this paragraph –
- “partnership” and “qualifying partnership” have the same meaning as in the Schedule to section 65;
 - “representative partner”, in relation to a partnership, means the partner who is required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to make and deliver returns to an officer of Her Majesty’s Revenue and Customs.

PART 5

DEFINED TERMS

This Table lists terms defined for the purposes of this Schedule.

<i>Term</i>	<i>Paragraph</i>
confirmation notice	paragraph 12
designated HMRC officer	paragraph 7
group	paragraph 1(2)
head (in relation to a group)	paragraph 1(2)
member (in relation to a group)	paragraph 1(2)
qualifying group	paragraph 1(2)
qualifying MNE Group	paragraph 1(2)

<i>Term</i>	<i>Paragraph</i>
qualifying UK group	paragraph 1(1)
relevant body	paragraph 6(2)
special measures notice	paragraph 10
UK group	paragraph 1(2)
UK taxation	paragraph 3(4)
warning notice	paragraph 8

Explanatory Note

Clause 66 and Schedule: Sanctions for persistently unco-operative large businesses

Summary

1. This clause introduces a special measures regime to tackle the small number of large businesses who engage in aggressive tax planning, or refuse to engage with HMRC in an open and collaborative manner.

Details of the clause

2. This clause introduces the Schedule and provides for its commencement.

Schedule 1: Part 1: Large groups falling within this Schedule

3. Paragraph 1(1) sets out which UK Groups are UK qualifying groups falling within this Schedule.
4. The UK qualifying groups concerned are those fulfilling three conditions - relating to persistent unco-operative behaviour, significant unresolved tax issues and there being a reasonable likelihood of further such behaviour causing or contributing to further such issues.
5. Paragraph 1(2) provides some definitions used in the Schedule.
6. Paragraph 2 sets out the criteria for a group having "engaged in persistent unco-operative behaviour" by reference to members of the group having satisfied either or both of the behaviour and arrangements conditions set out in paragraphs 3 and 4. Paragraph 2(4) expands on the meaning of "persistently" in this Schedule.
7. Paragraph 3(1) sets out the behaviour condition, which is concerned with behaviour which has delayed or hindered HMRC in the exercise of its functions in relation to the group as regards UK taxation.
8. Paragraph 3(2) gives examples of factors which may indicate that the behaviour condition is satisfied, relating to the use of information powers, inaccuracies and omissions in documents submitted to HMRC and reliance on speculative interpretations of legislation.
9. Paragraph 3(3) and 3(4) provide definitions.
10. Paragraph 4 sets out the arrangements condition, which is concerned with being party to tax avoidance schemes as defined in paragraph 4(2).

11. Paragraph 5 sets out the definition of a "significant tax issue", in terms of there being a disagreement between the group or a member of the group and HMRC whose value exceeds or is likely to exceed £2m.
12. Paragraphs 5(3)-(5) allow for the substitution of a higher figure by regulations.
13. Paragraph 6 makes provision in relation to changes in the composition of a group.

Schedule 1: Part 2: Notices

14. Paragraph 7 provides the definition of "designated HMRC officer" as it relates to this Schedule.
15. Paragraph 8 sets out the circumstances in which a "warning notice" may be given to the head of a qualifying UK group by HMRC, and what it must contain.
16. Paragraph 9 sets out the ways in which a warning notice may be withdrawn by HMRC.
17. Paragraph 10 sets out the circumstances in which a "special measures notice" may be given to the head of a UK qualifying group by HMRC, and what it must contain. 10(3) provides for HMRC to take account of the representations of the UK qualifying group in deciding whether to do so.
18. Paragraph 11 sets out the ways in which a special measures notice may be withdrawn by HMRC.
19. Paragraph 12 sets out in what circumstances a "confirmation of special measures notice" may be given to the head of a UK qualifying group by HMRC.
20. Paragraph 13 sets out the additional circumstances in which a special measures notice may be given to the head of a UK qualifying group by HMRC within a 7 month period after the withdrawal of a warning notice. 13(2) provides for HMRC to take account of the representations of the UK qualifying group in deciding whether to do so.
21. Paragraph 14 sets out the circumstances in which notices are treated as being given where a member of a group becomes a member of another group during the special measures process.

Schedule 1: Part 3: Sanctions

22. Paragraph 15 provides for an inaccuracy in a document given to HMRC to be treated as being due to a failure to take reasonable care for the purposes of Schedule 24 FA 2007 (penalties for errors) if the inaccuracy relates to a tax avoidance scheme or is attributable to a speculative interpretation of the law relating to UK taxation.
23. Paragraph 16 makes an amendment to Schedule 24 of the Finance Act 2007.
24. Paragraph 17 sets out the circumstances in which HMRC may publish information about a UK qualifying group, what information HMRC may publish about the group, what HMRC must do before it publishes this information, and what HMRC must do when the group ceases to be subject to a confirmed special measures notice.

Schedule 1: Part 4: Application of this Schedule to other large businesses

25. Paragraph 18 sets out the circumstances in which a UK sub-group of a group falls within this Schedule and a UK sub-group of an MNE group and how the Schedule is applied to such sub-groups.
26. Paragraph 18(8) sets out the meaning for "UK sub-group" and "head" in relation to a UK sub-group with reference to the Schedule to clause 65.
27. Paragraph 19 sets out in what circumstances a qualifying company or MNE company falls within this Schedule and how the Schedule is applied to a qualifying company or MNE company. Paragraph 19(8) sets out the definition of "company", "MNE company", "qualifying company", and "qualifying MNE group" in this Schedule.
28. Paragraph 20 sets out in what circumstances a qualifying partnership falls within this Schedule and how the Schedule is applied to a qualifying partnership. Paragraph 20(11) sets out the meaning of "partnership", "qualifying partnership" and "representative partner" in this Schedule.

Schedule 1: Part 5: Defined terms

29. This Part provides a table that sets out the location of terms defined within this Schedule.

Background note

30. HM Revenue and Customs (HMRC) is committed to dealing with all customers fairly and efficiently while making sure that the correct tax is paid to the Exchequer. HMRC's Large Business Directorate manages the largest 2,000 or so businesses using a risk based approach. This is due to their size and complexity, the tax at stake, and the consequent risk they present to the Exchequer.
31. This measure seeks to provide a tool with which to tackle the small number of large businesses with an ongoing history of aggressive tax planning and/or who refuse to engage with HMRC.
32. To achieve this, we are introducing a special measures regime for the aforementioned large businesses.
33. If you have any questions about this change, or comments on the legislation, please contact Mary Purcell on 03000 579867 or at largebusinessconsultation.mailbox@hmrc.gsi.gov.uk.

67 Civil penalties for enablers of offshore tax evasion

- (1) The Schedule makes provision for civil penalties for persons who enable offshore tax evasion by other persons.
- (2) The Schedule comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under this section may –
 - (a) appoint different days for different purposes, and
 - (b) make such transitional provision as the Treasury considers appropriate in connection with the coming into force of any provision of this Part.

SCHEDULE TO CLAUSE 67

PENALTIES FOR ENABLERS OF OFFSHORE TAX EVASION

PART 1

LIABILITY FOR PENALTY

Liability for penalty

- 1 (1) A penalty is payable by a person (P) where conditions A and B are met.
- (2) Condition A is that P—
 - (a) has enabled another person (Q) to carry out offshore tax evasion, and
 - (b) knew when P's actions were carried out that they enabled, or were likely to enable, Q to carry out offshore tax evasion.
- (3) For the purposes of this Part P enables Q to carry out offshore tax evasion by encouraging, assisting or otherwise facilitating Q to carry out offshore tax evasion.
- (4) Q carries out “offshore tax evasion” by—
 - (a) committing a relevant offence where the tax at stake is income tax, capital gains tax or inheritance tax, or
 - (b) engaging in behaviour that makes Q liable (if the applicable conditions are met) to a relevant penalty where the tax at stake is income tax, capital gains tax or inheritance tax.
- (5) The relevant offences are—
 - (a) an offence of cheating the public revenue involving offshore activity, or
 - (b) an offence under section 106A of TMA 1970 (fraudulent evasion of income tax) involving offshore activity,
 - (c) an offence under section 106B, 106C or 106D of TMA 1970 (offences relating to certain failures to comply with section 7 or 8 by a taxpayer chargeable to income tax or capital gains tax on or by reference to offshore income, assets or liabilities).
- (6) The relevant penalties are—
 - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (errors in taxpayer's document) involving an offshore matter or an offshore transfer (within the meaning of that Schedule),
 - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 (failure to notify etc) in relation to a failure to comply with section 7(1) of TMA 1970 involving offshore activity,
 - (c) a penalty under paragraph 1 of Schedule 55 to FA 2009 (failure to make returns) involving offshore activity,
 - (d) a penalty under paragraph 1 of Schedule 21 to FA 2015 (penalties in connection with relevant offshore asset moves).

-
- (7) Condition B is that –
- (a) in the case of offshore tax evasion consisting of the commission of a relevant offence, Q has been convicted of the offence and the conviction is final, or
 - (b) in the case of offshore tax evasion consisting of behaviour that makes Q liable to a relevant penalty, Q has been found to be liable to such a penalty, assessed and notified, and the penalty is final.
- (8) A conviction becomes final when the time allowed for bringing an appeal against it expires or, if later, when any appeal against conviction has been determined.
- (9) A penalty becomes final –
- (a) when the time allowed for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is determined, or
 - (b) if a contract is made between the Commissioners and the person under which the Commissioners agree not to take proceedings to recover it, at the time the contract is made.

Meaning of “involving offshore activity” and related expressions

- 2 (1) This paragraph has effect for the purposes of this Schedule.
- (2) Conduct involves offshore activity if it involves –
- (a) an offshore matter,
 - (b) an offshore transfer, or
 - (c) a relevant offshore asset move.
- (3) Conduct involves an offshore matter if it results in a potential loss of revenue that is charged on or by reference to –
- (a) income arising from a source in a territory outside the United Kingdom,
 - (b) assets situated or held in a territory outside the United Kingdom,
 - (c) activities carried on wholly or mainly in a territory outside the United Kingdom, or
 - (d) anything having effect as if it were income, assets or activities of the kind described above.
- (4) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (3) as situated or held in a territory outside the United Kingdom if they are so held or situated immediately after the transfer of value by reason of which inheritance tax becomes chargeable.
- (5) Conduct involves an offshore transfer if –
- (a) it does not involve an offshore matter,
 - (b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
 - (c) the condition set out in paragraph 4AA of Schedule 24 to FA 2007 is satisfied.
- (6) Conduct involves a relevant offshore asset move if at a time when Q is the beneficial owner of an asset (“the qualifying time”) –
- (a) the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,

-
- (b) the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or
 - (c) there is a change in the arrangements for the ownership of the asset, and Q remains the beneficial owner of the asset, or any part of it, immediately after the qualifying time.
- (7) Paragraphs 4(2) to (4) of Schedule 21 to FA 2015 apply for the purposes of sub-paragraph (6) above as they apply for purposes of paragraph 4 of that Schedule.
- (8) In sub-paragraph (6) above, “specified territory” has the same meaning as in paragraph 4 of Schedule 21 to FA 2015.

Amount of penalty

- 3 The penalty payable under paragraph 1 is the higher of—
- (a) 100% of the potential lost revenue, or
 - (b) £3,000.

Meaning of “potential lost revenue”

- 4 (1) The potential lost revenue in respect of conduct resulting in a liability to a penalty under paragraph 1 is the additional amount due or payable in respect of the tax at stake as a result of correcting any inaccuracy in information in a document (including an inaccuracy attributable to a supply of false information or withholding information) or a failure to notify an under-assessment
- (2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—
- (a) an amount payable to HMRC having been erroneously paid by way of repayment of tax,
 - (b) an amount which would have been repayable by HMRC had the inaccuracy or assessment not been corrected.
- (3) Paragraphs 6 to 8 of Schedule 24 to FA 2007 apply (so far as relevant) for the purposes of this Schedule as they apply for the purposes of Schedule 24.

Reduction of penalty for disclosure etc by P

- 5 (1) If P (who would otherwise be liable to a penalty under paragraph 1)—
- (a) makes a disclosure to HMRC of—
 - (i) a matter relating to an inaccuracy in a document, a supply of false information or a failure to disclose an under-assessment,
 - (ii) P’s enabling of actions by Q that constituted (or might constitute) a relevant offence or that made (or might make) Q liable to a relevant penalty, or
 - (iii) any other matter HMRC regard as assisting them in relation to the assessment of P’s liability to a penalty under paragraph 1, or
 - (b) assists HMRC in any investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty,

HMRC must reduce the penalty to one that reflects the quality of the disclosure or assistance.

- (2) But the penalty may not be reduced –
 - (a) in the case of unprompted disclosure or assistance, below whichever is the higher of –
 - (i) 10% of the potential lost revenue, or
 - (ii) £1,000, or
 - (b) in the case of prompted disclosure or assistance, below whichever is the higher of –
 - (i) 30% of potential lost revenue, or
 - (ii) £3,000.
- 6
- (1) This paragraph applies for the purposes of paragraph 5.
 - (2) P discloses a matter by –
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in relation to the matter (for example by quantifying an inaccuracy in a document, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment), and
 - (c) allowing HMRC access to records for any reasonable purpose connected with resolving the matter (for example for the purpose of ensuring that an inaccuracy in a document, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment is fully corrected).
 - (3) P assists HMRC in relation to an investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty by –
 - (a) assisting or encouraging Q to disclose all relevant facts to HMRC,
 - (b) allowing HMRC access to records, or
 - (c) any other conduct which HMRC considers assisted them in investigating or assessing Q’s liability to such a penalty.
 - (4) Disclosure or assistance by P –
 - (a) is “unprompted” if made at a time when P has no reason to believe that HMRC have discovered or are about to discover Q’s offshore tax evasion (including any inaccuracy in a document, supply of false information or withholding of information, or under-assessment), and
 - (b) otherwise is “prompted”.
 - (5) In relation to disclosure or assistance, “quality” includes timing, nature and extent.
- 7
- (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1.
 - (2) In sub-paragraph 1 “special circumstances” does not include –
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.
 - (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –

-
- (a) staying a penalty, or
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Procedure for assessing penalty, etc

- 8 (1) Where a person becomes liable for a penalty under paragraph 1 HMRC must –
- (a) assess the penalty,
 - (b) notify the person, and
 - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment of a penalty –
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule), and
 - (b) may be enforced as if it were an assessment to tax.
- (4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax that would have been shown in a return.
- (5) Sub-paragraph (6) applies if –
- (a) an assessment in respect of a penalty is based on a liability to tax that would have been shown on a return, and
 - (b) that liability is found by HMRC to have been excessive.
- (6) HMRC may amend the assessment so that it is based upon the correct amount.
- (7) But an amendment under sub-paragraph (6) –
- (a) does not affect when the penalty must be paid,
 - (b) may be made after the last day on which the assessment in question could have been made under paragraph 9.
- 9 An assessment of a person as liable to a penalty under paragraph 1 may not take place more than 2 years after the fulfilment of the conditions mentioned in paragraph 1(1) (in relation to that person) first came to the attention of an officer of Revenue and Customs.

Appeals

- 10 A person may appeal against –
- (a) a decision of HMRC that a penalty under paragraph 1 is payable by that person, or
 - (b) a decision of HMRC as to the amount of a penalty under paragraph 1 payable by the person.
- 11 (1) An appeal under paragraph 10 is to be treated in the same way as an appeal against an assessment to the tax at stake (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

-
- (2) Sub-paragraph (1) does not apply –
- (a) so as to require the person bringing the appeal to pay a penalty before an appeal against the assessment of the penalty is determined,
 - (b) in respect of any other matter expressly provided for by this Schedule.
- 12 (1) On an appeal under paragraph 10(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
- (2) On an appeal under paragraph 10(b) that is notified to the tribunal, the tribunal may –
- (a) affirm HMRC’s decision, or
 - (b) substitute for that decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its own decision for HMRC’s, the tribunal may rely on paragraph 5 or 7 (or both) –
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point),
 - (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of that paragraph was flawed.
- (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 11(1)).

Double jeopardy

- 13 A person is not liable to a penalty under paragraph 1 in respect of conduct for which the person –
- (a) has been convicted of an offence, or
 - (b) has been assessed to a penalty under any provision other than paragraph 1.

Application of provisions of TMA 1970

- 14 Subject to the provisions of this Part, the following provisions of TMA 1970 apply for the purposes of this Part as they apply for the purposes of the Taxes Acts –
- (a) section 108 (responsibility of company officers),
 - (b) section 114 (want of form), and
 - (c) section 114 (delivery and service of documents).

Interpretation of Part 1

- 15 (1) This paragraph applies for the purposes of this Schedule.
- (2) References to an assessment to tax, in relation to inheritance tax, are to a determination.

PART 2

PUBLISHING DETAILS OF PERSONS FOUND LIABLE TO PENALTIES

Naming etc of persons assessed to penalty or penalties under paragraph 1

- 16 (1) HMRC may publish information about a person if –
- (a) in consequence of an investigation, one or more penalties under paragraph 1 is found to have been incurred by the person, and
 - (b) the potential lost revenue in relation to the penalty (or the aggregate of the potential lost revenue in relation to each of the penalties) exceeds £25,000.
- (2) HMRC may also publish information about a person if the person has been assessed to 5 or more penalties under paragraph 1 in any 5 year period.
- (3) The information that may be published is –
- (a) the person's name (including any trading name, previous name or pseudonym),
 - (b) the person's address (or registered office),
 - (c) the nature of any business carried on by the person,
 - (d) the amount of the penalty or penalties in question,
 - (e) the periods or times to which the actions giving rise to the penalty or penalties relate,
 - (f) any other information that HMRC consider it appropriate to publish in order to make clear the person's identity.
- (4) The information may be published in any manner that HMRC consider appropriate.
- (5) Before publishing any information HMRC must –
- (a) inform the person that they are considering doing so, and
 - (b) afford the person the opportunity to make representations about whether it should be published.
- (6) No information may be published before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.
- (7) No information may be published for the first time after the end of the period of one year beginning with that day.
- (8) No information may be published about a penalty if the amount of the penalty –
- (a) is reduced under paragraph 5 to –
 - (i) 10% of the potential lost revenue (in the case of unprompted disclosure or assistance), or
 - (ii) 30% of potential lost revenue (in a case of prompted disclosure or assistance),
 - (b) would have been reduced to 10% or 30% of potential lost revenue but for the imposition of the minimum penalty,
 - (c) is reduced under paragraph 7 to nil or stayed.

-
- (9) For the purposes of this paragraph a penalty becomes final if it has been assessed and the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined.
- 17 (1) The Treasury may by regulations amend paragraph 16(1) to vary the amount for the time being specified in sub-paragraph (1)(b).
- (2) Regulations under this paragraph are to be made by statutory instrument.
- (3) A statutory instrument under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

Explanatory Note

Clause 67: Civil penalties for enablers of offshore tax evasion

Summary

1. This clause of the Finance Bill 2016 introduces new civil penalties for deliberate enablers of offshore tax evasion, including a new financial penalty, and a new power to publish information about the enabler. The penalties will be applicable in relation to income tax, capital gains tax and inheritance tax. This will be enacted through the Finance Bill 2016.

Details of the clause

Section 7 (1) introduces the Schedule that makes provision for civil penalties for enablers of offshore tax evasion.

Section 7 (2) and (3) provide that the Schedule comes into force on a day appointed by the Treasury in regulations. The regulations may appoint different days for different purposes and make such transitional provisions as the Treasury consider appropriate.

Schedule 1: Penalties for enablers of offshore evasion

Part 1 - Liability for penalty

Paragraph 1: Liability for penalty

2. Part 1 sets out the circumstances where a financial penalty is payable.
3. Paragraph 1 sets out that Conditions A and B need to be met for a penalty to be payable.
4. Paragraph 1(2) sets out condition A, which is that an enabler has enabled another person to evade tax offshore and they knew at the time that their actions enabled or were likely to enable that evasion.
5. Paragraph 1(3) sets out the actions required for a person to have enabled another person to carry out offshore tax evasion. These are encouraging, assisting or otherwise facilitating a person to carry out offshore tax evasion.
6. Paragraph 1(4) sets out what is meant by the evader carrying out "offshore tax evasion". This is either where they have committed a relevant offence in relation to income tax, capital gains tax or inheritance tax, or have been liable to a relevant penalty charged in relation to those taxes.
7. Paragraph 1(5) lists the relevant offences.

8. Paragraph 1(6) lists the relevant penalties.
9. Paragraph 1(7) sets out the second condition, B, which has to be met (along with condition A) if an enabler is to be liable to a penalty. This condition is met where either: the evader has been convicted of a relevant offence and that conviction, in terms of the evader themselves, is final; or where the evader is liable to a civil penalty for offshore tax evasion, their penalty has been assessed and notified and the penalty is final.
10. Paragraphs 1(8) and (9) set out when a conviction and penalty become final.

Paragraph 2: Meaning of 'involving offshore activity' and related expressions

11. Paragraph 2(2) sets out the meaning of "involving offshore activity" for the purpose of interpreting whether the criminal offences and civil penalties listed at paragraphs 1(5) and (6) are relevant to showing that the evader committed offshore tax evasion. Conduct involves an offshore activity if it involves an offshore matter, an offshore transfer, or a relevant offshore asset move. Paragraph 2(3) to (8) sets out further detail on this definition.
12. Paragraph 2(3) sets out what is meant by conduct involving an offshore matter, for the purpose of paragraph 2(2)(a).
13. Paragraph 2(4) sets out the circumstances where inheritance tax is to be treated as an offshore matter for the purposes of paragraphs 2(2)(a) and 2(3)(b).
14. Paragraph 2(5) sets out what is meant by conduct involving an offshore transfer, for the purpose of paragraph 2(2)(b).
15. Paragraph 2(6) defines what is meant by conduct involving a relevant offshore asset move for the purpose of paragraph 2(2)(c).
16. Paragraph 2(7) applies a number of provisions from Schedule 21 Finance Act 2015 (penalties in connection with offshore asset moves) for the purposes of the definition of conduct involving a relevant offshore asset move at paragraph 2(6).
17. Paragraph 2(8) applies the definition of "specified territory" in Schedule 21 Finance A 2015 (penalties in connection with offshore asset moves) for the purposes of the definition of conduct involving a relevant offshore asset move at paragraph 2(6).

Paragraph 3: Amount of penalty

18. Paragraph 3 sets out the amount of the penalty. This is to be the greater of 100% of the potential loss revenue, as set out in paragraph 4, or £3,000.

Paragraph 4: Meaning of "potential lost revenue"

19. Paragraph 4(1) to (3) sets out what is meant by 'potential lost revenue', for the purpose of paragraph 3. This is the additional amount due or payable as a result of correcting any inaccuracy in a taxpayer document or from a failure to notify an under-assessment.

Paragraphs 5 to 7: Reduction of penalty for disclosure etc by P

20. Paragraph 5(1) sets out that reductions to the penalty payable by the enabler must be made according to the quality of disclosure or assistance provided to HMRC by the enabler. Where disclosures made by the enabler assist HMRC in an investigation, leading to the evaders being

charged with a relevant offence or found liable to a relevant penalty, the penalty on the enabler must be reduced accordingly.

21. Paragraph 5(2) sets out the minimum levels to which the penalty may be reduced. That is the higher of 10% of the potential lost revenue or £1,000 for unprompted disclosure or assistance and 30% or £3,000 for prompted disclosure or assistance.
22. Paragraphs 6(1) to (5) outlines what constitutes disclosure for the purposes of paragraph 5. This includes telling, giving reasonable help and allowing access to records.
23. Paragraph 6(3) sets out how a person would assist HMRC in relation to an investigation leading to an offshore evader being charged with a relevant offence or found liable to a relevant penalty. This consists of assisting or encouraging the evader to disclose all relevant facts, allowing access to records and any other conduct which HMRC considers assisted them.
24. Paragraphs 6(4) and (5) sets out what is meant by unprompted and prompted disclosure or assistance by the enabler, and that the quality of disclosure or assistance includes timing, nature and extent.
25. Paragraphs 7(1) to (3) sets out that HMRC may reduce the penalty under paragraph 1 because of special circumstances, and clarifies what does not fall within the term 'special circumstances'.

Paragraphs 8 to 9: Procedure for assessing penalty, etc

26. Paragraphs 8(1) to (7) sets out the procedures for assessing the penalty. An assessment of the penalty is to be treated, procedurally, in the same way as an assessment to tax (except where expressly provided otherwise) and may be enforced as it were such an assessment.
27. Paragraph 9 sets out that an assessment may not be made more than 2 years after the fulfilment of the conditions set out in paragraph 1(1) first came to the attention of HMRC.

Paragraphs 10 to 12: Appeals

28. Paragraph 10 sets out what may be appealed against in respect of a penalty under paragraph 1.
29. Paragraphs 11(1) and (2) provides that an appeal against a penalty imposed on the enabler is subject to the same appeal rights and procedure, as an appeal against an assessment to tax. However, this does not require the appellant to pay a penalty before an appeal is determined, nor does it apply in respect of any matters expressly provided for by the Schedule.
30. Paragraphs 12(1) to (5) sets out the treatment of an appeal when it is notified to the tribunal.

Paragraph 13: Double jeopardy

31. Paragraph 13 sets out that a person is not liable to a penalty under paragraph 1 in respect of conduct for which they have already been convicted of an offence, or have been assessed to a penalty under any other provision.

Paragraph 14: Application of provisions of TMA 1970

32. Paragraph 14 sets out the provisions in Taxes Management Act 1970 (TMA 1970) that apply for the purposes of this Part.

Paragraph 15: Interpretation of Part 1

33. Paragraph 15 provides that reference to an assessment to tax in the Schedule, in relation to inheritance tax, are to a determination.

Part 2: Penalties for enablers of offshore evasion

Paragraphs 16 to 17: Naming etc of persons assessed to penalty or penalties under paragraph 1

34. Part 2 sets out the circumstances in which HMRC may name enablers of offshore tax evasion, who are found to liable for a penalty under paragraph 1.
35. Paragraph 16(1) provides that HMRC may publish information about a person if one or more penalties under paragraph 1 is found to have been incurred by that person, and the potential lost revenue involved exceeds £25,000.
36. Paragraph 16(2) establishes that where a person has been found liable for 5 or more penalties in the past 5 years, in relation to enabling offshore evasion under paragraph 1, then HMRC may publish information about that person.
37. Paragraph 16(3) sets out the information that may be published.
38. Paragraph 16(4) sets out that HMRC may publish information in any manner HMRC considers appropriate.
39. Paragraph 16(5) provides that HMRC must inform the person before publishing any information about them, and must give them an opportunity to make representations.
40. Paragraphs 16(6) and (7) set out the time limits for publication.
41. Paragraph 16(8) sets out that no information may be published if the penalty is reduced by the maximum amounts allowed under paragraph 5, or is reduced to nil or stayed under the special circumstances provision at paragraph 7.
42. Paragraph 16(9) establishes when a penalty becomes final for the purposes of this Schedule.
43. Paragraph 17 provides that the Treasury may, by regulations, vary the amount of potential lost revenue set out in paragraph 16(1)(b). Such regulations must be made by statutory instrument and are subject to annulment in the House of Commons.

Background note

44. Following consultation, this [clause] has been introduced to support the Government's wider offshore tax evasion strategy. The [clause] will establish new civil penalties for enablers of offshore tax evasion. These penalties are a new financial penalty, and a new naming power.
45. The penalties will only apply in relation to income tax, capital gains tax and inheritance tax. This will be enacted through the Finance Bill 2016. Where the enabler makes an unprompted disclosure of the fact that they enabled offshore tax evasion and assists HMRC, reductions in penalties will apply, and the enabler will not be named. The clause is intended to encourage enablers to come forward to HMRC, and make a maximum disclosure of information.

46. If you have any questions about this change, or comments on the legislation, please contact Philippa Madelin by email at philippa.madelin@gsi.gov.uk or by telephone on 03000 585507.

68 Penalties in connection with offshore matters and offshore transfers

- (1) The Schedule contains provisions amending –
 - (a) Schedule 24 to FA 2007 (penalties for errors in tax returns etc),
 - (b) Schedule 41 to FA 2008 (penalties for failure to notify etc), and
 - (c) Schedule 55 to FA 2009 (penalties for failure to make return etc).
- (2) The Schedule comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under subsection (2) –
 - (a) may commence a provision generally or only for specified purposes, and
 - (b) may appoint different days for different provisions or for different purposes.

SCHEDULE TO CLAUSE 68

PENALTIES IN CONNECTION WITH OFFSHORE MATTERS AND OFFSHORE TRANSFERS

Amendments to Schedule 24 to the Finance Act 2007 (c. 11)

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 (1) Paragraph 9 (reductions for disclosure) is amended as follows.
 - (2) For sub-paragraph (A1) substitute –
 - “(A1) Paragraph 10 provides for reductions in penalties –
 - (a) under paragraph 1 where a person discloses an inaccuracy that involves a domestic matter,
 - (b) under paragraph 1A where a person discloses a supply of false information or withholding of information, and
 - (c) under paragraph 2 where a person discloses a failure to disclose an under-assessment.
 - (A2) Paragraph 10A provides for reductions in penalties under paragraph 1 where a person discloses an inaccuracy that involves an offshore matter or an offshore transfer.
 - (A3) Sub-paragraph (1) applies where a person discloses –
 - (a) an inaccuracy that involves a domestic matter,
 - (b) a careless inaccuracy that involves an offshore matter,
 - (c) a supply of false information or withholding of information, or
 - (d) a failure to disclose an under-assessment.”
 - (3) In sub-paragraph (1), in the words before paragraph (a), for the words from “an inaccuracy” to “under-assessment” substitute “the matter”.
 - (4) After sub-paragraph (1) insert –
 - “(1A) Sub-paragraph (1B) applies where a person discloses –
 - (a) a deliberate inaccuracy (whether concealed or not) that involves an offshore matter, or
 - (b) an inaccuracy that involves an offshore transfer.
 - (1B) A person discloses the inaccuracy by –
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the inaccuracy,
 - (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected, and
 - (d) providing HMRC with additional information.

(1C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (1B)(d).

(1D) Regulations under sub-paragraph (1C) are to be made by statutory instrument.

(1E) An instrument containing regulations under sub-paragraph (1C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

“(4) Paragraph 4A(4) to (5) applies to determine whether an inaccuracy involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

3 In paragraph 10 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
70%	35%	20%
100%	50%	30%”

4 After paragraph 10 insert –

“10A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –

(a) in the case of a prompted disclosure, in column 2 of the Table, and

(b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
37.5%	18.75%	0%
45%	22.5%	0%

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
60%	30%	0%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

Amendments to Schedule 41 to the Finance Act 2008 (c. 9)

- 5 Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.
- 6 (1) Paragraph 12 (reductions for disclosure) is amended as follows.
- (2) For sub-paragraph (1) substitute –
- “(1) Paragraph 13 provides for reductions in penalties –
- (a) under paragraph 1 where P discloses a relevant failure that involves a domestic matter, and
- (b) under paragraphs 2 to 4 where P discloses a relevant act or failure.
- (1A) Paragraph 13A provides for reductions in penalties under paragraph 1 where P discloses a relevant failure that involves an offshore matter or an offshore transfer.
- (1B) Sub-paragraph (2) applies where P discloses –
- (a) a relevant failure that involves a domestic matter,
- (b) a non-deliberate relevant failure that involves an offshore matter, or
- (c) a relevant act or failure giving rise to a penalty under any of paragraphs 2 to 4.”
- (3) In sub-paragraph (2), for “a” substitute “the”.
- (4) After sub-paragraph (2) insert –
- “(2A) Sub-paragraph (2B) applies where P discloses –
- (a) a deliberate relevant failure (whether concealed or not) that involves an offshore matter, or
- (b) a relevant failure that involves an offshore transfer.
- (2B) P discloses the failure by –

-
- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it,
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
 - (d) providing HMRC with additional information.
- (2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).
- (2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.
- (2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

“(5) Paragraph 6A(4) to (5) applies to determine whether a failure involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.

(6) In this paragraph “relevant failure” means a failure to comply with a relevant obligation.”

7 In paragraph 13 (amount of reduction for disclosure), for the Table in sub-paragraph (3) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
70%	35%	20%
100%	50%	30%”

8 After paragraph 13 insert –

“13A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –

- (a) for a prompted disclosure, in column 2 of the Table, and
- (b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum for case A and case B –

- (a) the case A minimum applies if HMRC becomes aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure;
- (b) otherwise, the case B minimum applies.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
37.5%	case A: 12.5% case B: 25%	case A: 0% case B: 12.5%
45%	case A: 15% case B: 30%	case A: 0% case B: 15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

Amendments to Schedule 55 to the Finance Act 2009 (c.10)

- 9 Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended as follows
- 10 (1) Paragraph 14 (reductions for disclosure) is amended as follows.
 - (2) At the beginning insert –
 - “(A1) In this paragraph, “relevant information” means information which has been withheld by a failure to make a return.”
 - (3) In sub-paragraph (1) –
 - (a) after “6(3) or (4)” insert “where P discloses relevant information that involves a domestic matter”;
 - (b) for the words from “information which” to the end substitute “relevant information”.

(4) After sub-paragraph (1) insert –

“(1A) Paragraph 15A provides for reductions in the penalty under paragraph 6(3) or (4) where P discloses relevant information that involves an offshore matter or an offshore transfer.

(1B) Sub-paragraph (2) applies where –

- (a) P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves a domestic matter, or
- (b) P is liable to a penalty under any of the other provisions mentioned in sub-paragraph (1) and P discloses relevant information.”

(5) After sub-paragraph (2) insert –

“(2A) Sub-paragraph (2B) applies where P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves an offshore matter or an offshore transfer.

(2B) P discloses relevant information by –

- (a) telling HMRC about it,
- (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld,
- (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
- (d) providing HMRC with additional information.

(2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(6) At the end insert –

“(5) Paragraph 6A(4) to (5) applies to determine whether relevant information involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

11 In paragraph 15 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	35%	20%
100%	50%	30%”

12 After paragraph 15 insert –

“15A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –

(a) in the case of a prompted disclosure, in column 2 of the Table, and

(b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

(3) But HMRC must not under this paragraph reduce a penalty below £300.”

Explanatory Note

Clause 68 and Schedule: Penalties in connection with offshore matters and offshore transfers

Summary

1. This measure increases minimum penalties for inaccuracies, failure to notify a charge to tax or failure to deliver a return, where the penalty relates to an offshore matter or transfer. For the increased penalties to apply, the behaviour that led to the penalty must have been deliberate or deliberate and concealed.

Details of the clause and Schedule

Section 1: Part 1:

2. Paragraph (1) amends Schedule 24 Finance Act 2007, Schedule 41 Finance Act 2008 and Schedule 55 Finance Act 2009, to as provided for by Schedule X.
3. Paragraph (2) and (3) provides that the Schedule comes into force on a day appointed by regulations, and that different days may be appointed in respect of different provisions for specified purposes.

Schedule : Para 2-5: Amendments to Schedule 24 to the Finance Act 2007

4. Paragraph 1 provides that Schedule 24 to Finance Act 2001 is amended as set out in the following paragraphs.
5. Paragraph 2(1), (2) and (3) amends the penalties for errors in a taxpayer's document rules in Schedule 24 Finance Act 2007, so that paragraph 9 (reductions for disclosure) applies to only inaccuracies that involve domestic matters (that is, those that do not involve an offshore matter).
6. Paragraph 2(4) amends the provisions for reducing penalties for deliberate offshore inaccuracy under Schedule 24 Finance Act 2007, requiring the taxpayer to provide HMRC with "additional information", in addition to that which is already requirement to make a full disclosure of the inaccuracy. Sub-paragraphs (1C) and (1D) requires the Treasury to set out what is meant by "additional information" by statutory instrument.
7. Paragraph (5) applies the current rules in paragraph 4A(4) to (5) Schedule 24 Finance 2007 to determine whether the inaccuracy involves an offshore matter, an offshore transfer or domestic matter.

8. Paragraph 3 amends paragraph 10(2) of Schedule 24 Finance Act 2007 so that the table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation
9. Paragraph 4 inserts paragraph 10A(1) into Schedule 24 Finance Act 2007 which provides maximum and minimum penalty rates for inaccuracies involving an offshore matter or offshore transfer. For inaccuracies involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased from the minimum penalty rates applicable before the amendments come into effect.

Schedule : Para 5-8: Amendments to Schedule 41 to the Finance Act 2008

10. Paragraph 5 provides that Schedule 41 to Finance Act 2008 (penalties: failure to notify etc.) is to be amended.
11. Paragraph 6(1) to (4) amends the penalties for failure to notify rules in Schedule 41 Finance Act 2008, so that failures involving an offshore transfer, or an offshore matter with deliberate behaviour, require the taxpayer to provide "additional information" to HMRC in order to receive the maximum penalty reduction. The requirements for penalty reduction in other cases (such as cases involving domestic matters) remain unchanged.
12. Paragraph 12(2C) to (2E) of Schedule 41 to Finance Act 2008 provide for the Treasury to set out what is meant by "additional information" in a statutory instrument.
13. Paragraph 6(5) applies the current rules in paragraph 6A(4) to (5) Schedule 41 Finance 2008 for the purposes of paragraph 12 of that Schedule to determine whether the inaccuracy involves an offshore matter, an offshore transfer or domestic matter.
14. Paragraph 7 amends paragraph 13 of Schedule 41 Finance Act 2008 so that the substituted table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation.
15. Paragraph 8 inserts a new paragraph 13A into Schedule 41 Finance Act 2008 which provides maximum and minimum penalty rates for failures involving an offshore matter or offshore transfer. For failures involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased.

Schedule : Para 9-12: Amendments to Schedule 55 to the Finance Act 2009

16. Paragraph 9 provides that Schedule 55 to Finance Act 2009 (penalties for failure to make returns etc.) is to be amended.
17. Paragraph 10(1) to (4) amends the failure to make a return rules in Schedule 55 Finance Act 2009, so that failures involving an offshore transfer, or an offshore matter with deliberate behaviour, require the taxpayer to provide "additional information" to HMRC in order to receive the maximum penalty reduction. The requirements for penalty reduction in other cases (such as cases involving domestic matters) remain unchanged.
18. Paragraph 10(5) inserts paragraphs 14(2A) to 2(E) into Schedule 55 Finance Act 2009, which

make provision for the Treasury to set out what is meant by "additional information" in a statutory instrument.

19. Paragraph 10(6) provides that the current rules in paragraph 6A(4) to (5) Schedule 55 Finance 2009 apply for the purposes of paragraph 14 of that Schedule to determine whether the failure is an offshore matter, offshore transfer or domestic matter.
20. Paragraph 11 amends paragraph 13 so that the substituted table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation.
21. Paragraph 12 inserts paragraph 15A into Schedule 55 Finance 2009 which provides maximum and minimum penalty rates for failures involving an offshore matter or offshore transfer. For failures involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased.

Background note

22. Following consultation, which ran from July 2015 to October 2015, this clause has been introduced to support the Government's wider strategy to tackle offshore tax evasion. In order to achieve the objectives set out in this strategy, there needs to be a strong deterrent against offshore non-compliance, including robust civil sanctions.
23. The clause will increase minimum penalties for cases of deliberate offshore inaccuracies in a return, failure to notify a liability to tax and failure to deliver a return. The clause will also require taxpayers to disclose additional details of the offshore inaccuracy or failure in order to receive maximum penalty reductions.
24. The sanctions will apply to a liability to income tax, capital gains tax or inheritance tax that arises offshore, or income or gains that arise in the UK, but are transferred offshore and not declared to HMRC.
25. Discussed in the consultation document and during consultation meetings was an additional penalty charged on the value of the underlying asset used in the offshore inaccuracy or failure. The Government will be holding further, informal consultation on the draft clauses of this asset-based penalty, which will be published in early 2016.
26. If you have any questions about this change, or comments on the legislation, please contact Timothy Holmes on 03000 522 637 (email: timothy.holmes@hmrc.gsi.gov.uk).

69 Offshore tax errors etc: publishing details of deliberate tax defaulters

- (1) Section 94 of FA 2009 (publishing details of deliberate tax defaulters) is amended as follows.
- (2) After subsection (4), insert –
 - “(4A) Subsection (4B) applies where a person who is a body corporate or a partnership has incurred –
 - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
 - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).
 - (4B) The Commissioners may publish the information mentioned in subsection (4) in respect of any individual who –
 - (a) controls the body corporate or the partnership (within the meaning of section 1124 of CTA 2010), and
 - (b) would have obtained a tax advantage as a result of the inaccuracy or failure.
 - (4C) Subsection (4D) applies where one or more trustees of a settlement have incurred –
 - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
 - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).
 - (4D) The Commissioners may publish the information mentioned in subsection (4) in respect of any trustee who is an individual and who would have obtained a tax advantage as a result of the inaccuracy or failure.”
- (3) In subsection (6), after “information” insert “about a person under subsection (1),”.
- (4) After subsection (6), insert –
 - “(6A) Before publishing any information about an individual under subsection (4B) or (4D), the Commissioners –
 - (a) must inform the individual that they are considering doing so, and
 - (b) afford the individual reasonable opportunity to make representations about whether it should be published.”
- (5) In subsection (10) –
 - (a) omit the word “or” at the end of paragraph (a), and after that paragraph insert –

-
- “(aa) paragraph 10A of that Schedule to the full extent permitted following an unprompted disclosure;”
- (b) after paragraph (b) insert “, or
- (c) paragraph 13A of that Schedule to the full extent permitted following an unprompted disclosure.”
- (6) For subsection (16) substitute –
- “(16) In this section –
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “tax advantage” has the meaning given by section 208 of FA 2013.”
- (7) The amendments made by this section come into force on such day as the Treasury may appoint by regulations made by statutory instrument.

Explanatory Note

Clause 69: Offshore tax errors etc: publishing details of deliberate tax defaulters

Summary

1. This measure makes changes to the naming provisions in section 94 Finance Act 2009, so that where there is an inaccuracy in a taxpayer's document, or failure to notify which relates to offshore matters or offshore transfers, only full, unprompted disclosures will be outside the scope of the provisions. Section 94 is also amended to allow the naming of certain people who have benefited from the inaccuracy or failure.

Details of the clause and Schedule

Schedule 1: Para 1: Amendments to Section 94 to the Finance Act 2009

2. Subsection (2) inserts subsections (4A) and (4B) into section 94 Finance Act 2009 to provide HMRC with the power to publish the details of an individual who controls a body corporate or a partnership. This applies where that body corporate or partnership has been charged a penalty for a deliberate failure to notify HMRC of a tax charge or deliberate inaccuracy in a return, and the individual would have obtained a tax advantage from the inaccuracy or failure had it not been corrected. The failure or inaccuracy must involve an offshore matter or transfer.
3. Subsection (2) also inserts subsection (4C) and (4D) into section 94 to provide HMRC with the power to publish the details of one or more trustees of a settlement where the trustee has incurred a penalty for a deliberate failure to notify HMRC of a tax charge or deliberate inaccuracy in a return, and the trustee as an individual would have obtained a tax advantage from the inaccuracy or failure had it not been corrected. The failure or inaccuracy must involve an offshore matter or transfer.
4. Subsection (4) inserts subsection (6A) into section 94. Section 94(6A) provides that before publishing any information about an individual who falls under subsection (4B) and (4D) HMRC must inform that the individual that they are considering doing so. The individual must also be given a reasonable opportunity to make representations to HMRC on whether their details should be published. A consequential amendment is made to subsection (6) of Section 94 by subsection (3).
5. Subsection (5) amends section 94(1) to provide that no information will be published in instances of inaccuracies or failures relating to an offshore matter or transfer if the full penalty

reduction is given for disclosure, and the taxpayer was unprompted in disclosing the failure or inaccuracy to HMRC.

6. Subsection (7) provides that the amendments made by this section come into force on a day appointed by regulations made by the Treasury.

Background note

7. Following consultation, which ran from July 2015 to October 2015, this clause has been introduced to support the Government's wider strategy to tackle offshore tax evasion. In order to achieve the objectives set out in this strategy, there needs to be a strong deterrent against offshore non-compliance, including robust civil sanctions.
8. The clause will strengthen naming provisions to enable HMRC to name those that hide behind entities, such as companies and trusts, when committing offshore tax evasion, and restrict protection from naming for those offshore evaders who do not come forward to HMRC unprompted.
9. The sanctions will apply to a liability to income tax, capital gains tax or inheritance tax that arises offshore, or income or gains that arise in the UK, but are transferred offshore and not declared to HMRC.
10. If you have any questions about this change, or comments on the legislation, please contact Timothy Holmes on 03000 522 637 (email: timothy.holmes@hmrc.gsi.gov.uk).

70 Offences relating to offshore income, assets and activities

- (1) After section 106A of TMA 1970 insert –

“Offshore income, assets and activities

106B Offence of failing to give notice of being chargeable to tax

- (1) A person who is required by section 7 to give notice of being chargeable to income tax or capital gains tax (or both) for a year of assessment and who has not given that notice by the end of the notification period commits an offence if –
- (a) the tax in question is chargeable (wholly or in part) on or by reference to offshore income, assets or activities, and
 - (b) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to give the notice required by section 7.
- (3) In this section “the notification period” has the same meaning as in section 7 (see subsection (1C) of that section).

106C Offence of failing to deliver return

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if –
- (a) the return is not delivered by the end of the withdrawal period,
 - (b) an accurate return would have disclosed liability to income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
 - (c) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to deliver the return.
- (3) In this section “the withdrawal period” has the same meaning as in section 8B (see subsection (6) of that section).

106D Offence of making inaccurate return

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if, at the end of the amendment period –
- (a) the return contains an inaccuracy the correction of which would result in an increase in the amount of income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
 - (b) the amount of that increase exceeds the threshold amount.

-
- (2) It is a defence for a person accused of an offence under this section to prove that the person took reasonable care to ensure that the return was accurate.
 - (3) In this section “the amendment period” means the period for amending the return under section 9ZA.

106E Exclusions from offences under sections 106B to 106D

- (1) A person is not guilty of an offence under section 106B, 106C or 106D if the capacity in which the person is required to give the notice or make and deliver the return is –
 - (a) as a relevant trustee of a settlement, or
 - (b) as the executor or administrator of a deceased person.
- (2) The Treasury may by regulations provide that a person is not guilty of an offence under section 106B, 106C or 106D if –
 - (a) conditions specified in the regulations are met, or
 - (b) circumstances so specified exist.
- (3) The conditions may (in particular) include conditions in relation to the income, assets or activities on or by reference to which the tax in question is chargeable.

106F Offences under sections 106B to 106D: supplementary provision

- (1) Where a period of time is extended under subsection (2) of section 118 by HMRC, the tribunal or an officer (but not where a period is otherwise extended under that subsection), any reference in section 106B, 106C or 106D to the end of the period is to be read as a reference to the end of the period as so extended.
- (2) The Treasury may by regulations specify the amount (which must not be less than £25,000) that is to be the threshold amount for the purposes of sections 106B to 106D.
- (3) The Treasury may by regulations make provision as to the calculation for the purposes of sections 106B to 106D of –
 - (a) the amount of tax that is chargeable on or by reference to offshore income, assets or activities, and
 - (b) the increase in the amount of tax that is so chargeable as a result of correcting an inaccuracy.
- (4) In sections 106B to 106D and this section “offshore income, assets or activities” means –
 - (a) income arising from a source in a territory outside the United Kingdom,
 - (b) assets situated or held in a territory outside the United Kingdom, or
 - (c) activities carried on wholly or mainly in a territory outside the United Kingdom.
- (5) In subsection (4), “assets” has the meaning given in section 21(1) of the 1992 Act, but also includes sterling.

106G Penalties for offences under sections 106B to 106D

- (1) A person guilty of an offence under section 106B, 106C or 106D is liable on summary conviction –
 - (a) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.
- (2) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (1)(a) to 51 weeks is to be read as a reference to 6 months.

106H Regulations under sections 106E and 106F

- (1) This section makes provision about regulations under sections 106E and 106F.
 - (2) If the regulations contain a reference to a document or any provision of a document and it appears to the Treasury that it is necessary or expedient for the reference to be construed as a reference to that document or that provision as amended from time to time, the regulations may make express provision to that effect.
 - (3) The regulations –
 - (a) may make different provision for different cases, and
 - (b) may include incidental, supplemental, consequential and transitional provision and savings.
 - (4) The regulations are to be made by statutory instrument.
 - (5) An instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) The amendment made by this section comes into force on such day as the Treasury may by regulations appoint.
 - (3) The regulations –
 - (a) may appoint different days for different purposes, and
 - (b) may include incidental, supplemental, consequential and transitional provision and savings.
 - (4) The amendment made by this section does not have effect in relation to –
 - (a) a failure to give a notice required by section 7 of TMA 1970,
 - (b) a failure to make and deliver a return required by section 8 of TMA 1970, or
 - (c) a return required by section 8 that contains an inaccuracy,if the notice or return relates to a tax year before that in which the amendment comes into force.

Explanatory Note

Clause 70: Offences relating to offshore income, assets and activities

Summary

1. Clause 70 introduces a new criminal offence which does not require the need to prove intent for failing to declare taxable offshore income and gains, through an amendment to the Taxes Management Act 1970 (TMA). The offences will apply for the purposes of income tax and capital gains tax, where a person has failed to properly declare offshore income or gains in accordance with sections 7 and 8 TMA leading to a loss of tax over a threshold amount which will be defined in regulations and will be on a per tax year basis. The provisions will come into force following a commencement order.

Details of the clause

Section (1)

2. Section 1 amends TMA to insert new sections to that Act, sections 106B-H.
3. New section 106B subsection (1) establishes a new criminal offence if a person fails, before the end of the notification period, to notify HM Revenue and Customs (HMRC) as required by section 7 TMA of the person's chargeability to income tax or capital gains tax exceeding a certain amount ("threshold amount") and the tax in question is chargeable by reference to offshore income, assets or activities.
4. New subsection (2) of section 106B provides a defence to the new subsection (1) offence if the person accused proves they had a reasonable excuse for failing to notify as required under section 7 TMA.
5. New subsection (3) of section 106B defines the "notification period" as having the same meaning as in section 7(1C) TMA.
6. New section 106C subsection (1) establishes a new criminal offence if a person fails, before the end of the withdrawal period, to deliver a tax return when required by a notice under section 8 TMA and an accurate return would have shown income or capital gains tax chargeable by reference to offshore income, assets or activities, and that amount of tax exceeds the threshold amount.
7. New subsection (2) of section 106C provides a defence to the new subsection (1) offence if the person proves they had a reasonable excuse for failing to deliver the tax return as required under section 8 TMA.
8. New subsection (3) of section 106C defines the "withdrawal period" as having the same

meaning as in section 8B(6) TMA.

9. New section 106D subsection (1) establishes a new criminal offence if a person, who is required by a notice under section 8 TMA to do so, delivers a tax return which, at the end of the amendment period, understates income tax or capital gains tax chargeable by reference to offshore income, assets or activities for the period covered by the return which exceeds the threshold amount.
10. New subsection (2) of section 106D provides a defence to the new subsection (1) offence if the person proves they took reasonable care to ensure that the return was correct.
11. New subsection (3) of section 106D defines the "amendment period" as having the same meaning as in section 9ZA TMA.
12. New section 106E subsection (1) provides that the offences do not apply to persons who are responsible for giving notice or making a return to HMRC by virtue of being a trustee of a settlement or an executor/administrator of a deceased person.
13. New subsections (2) and (3) of section 106E provide the Treasury with a power to make regulations specifying other circumstances when a person will not be guilty of the new offences. By virtue of the new section 106H (see below), the regulations may make different provisions for different cases and make other consequential and transitional provisions.
14. New section 106F subsection (1) provides that where a period of time is extended by HMRC, the tribunal or an office under subsection (2) of section 118 TMA, this extended period is to apply to the periods of time relevant to the offences in new sections 106B, 106C and 106D TMA.
15. New subsections (2) and (3) of section 106F provide the Treasury with a power to specify in regulations the threshold amount for the purposes of the new offences (where the amount of tax specified in the offence is equal to or less than the threshold amount the new offences will not apply). The threshold must not be less than £25,000. The regulations may also set out how to calculate whether the threshold has been exceeded for the purposes of the offences. These regulations may also make different provisions and other consequential and transitional provisions by virtue of new section 106H.
16. New subsections (4) and (5) of section 106F define the terms "offshore income, assets or activities" and "assets".
17. New section 106G subsection (1) and (2) provides the penalties for conviction. Subsection (1)(a) and (2) allow for an unlimited fine in England and Wales and/or a custodial sentence of up to 6 months for offences committed before section 281(5) of the Criminal Justice Act 2003 comes into force, and 51 weeks thereafter. Subsection 1(b) allows for a fine not exceeding level 5 on the standard scale in Scotland or Northern Ireland and/or a custodial sentence of no more than 6 months.
18. New section 106H makes provisions about regulations under sections 106E and 106F. The regulations may make different provisions for different cases and may include incidental, supplemental, consequential and transitional provision and savings. The regulations may also provide that any reference they make to a document or any provision of a document must be construed as a reference to the document or provision as amended from time to time. The regulations must be made by statutory instrument which is subject to annulment in pursuance

of a resolution of the House of Commons.

Section (2) - (4)

19. Subsections (2) and (3) of the clause provides the Treasury with a power to appoint a day for the offences to come into force by regulations. The regulations may appoint different days for different parts of the offence and may include incidental, supplemental, consequential and transitional provision and savings.
20. Sub-section (4) of the clause provides that the offences will first apply to notifications or returns in respect of the tax year in which the offence is introduced.

Background note

21. Following consultation, this clause has been introduced to support the Government's wider offshore tax evasion strategy. The clause will introduce new criminal offences for offshore tax evasion which does not require the prosecution to demonstrate the taxpayer intentionally sought to evade tax. The new offences will be an additional tool to enable HMRC to tackle offshore tax evasion and deter would be evaders.
22. The offences will apply only for the purposes of income tax and capital gains tax and will only apply if the tax underpaid or understated is more than a threshold amount. The offence cannot apply if the taxpayer can satisfy the court that they have a reasonable excuse or took reasonable care to comply with UK tax obligations.
23. If you have any questions about this change, or comments on the legislation, please contact Tim Holmes on 03000 522 637 (email: timothy.holmes@hmrc.gsi.gov.uk).

71 Simple assessments

- (1) The Schedule contains provisions about simple assessments by HMRC.
- (2) That Schedule has effect in relation to the 2015-16 tax year and subsequent years.

SCHEDULE TO CLAUSE 71

SIMPLE ASSESSMENTS

PART 1

AMENDMENT OF THE TAXES MANAGEMENT ACT 1970

- 1 TMA 1970 is amended as follows.
- 2 In section 7 (notice of liability to income tax and capital gains tax), after subsection (2) insert –
- “(2A) A person who –
- (a) falls within subsection (1A) or (1B), and
 - (b) is notified of a simple assessment for the year of assessment, is not required to give notice under subsection (1) for that year unless the person is chargeable to income tax or capital gains tax for the year of assessment on any income or gain that is not included in the assessment.”
- 3 In the heading to section 8B (withdrawal of notice under section 8 or 8A), at end insert “**at the taxpayer’s request**”.
- 4 After section 8B insert –
- “8C Withdrawal by HMRC of notice under section 8 or 8A prior to simple assessment**
- (1) This section applies to person who is given a notice under section 8 or 8A.
 - (2) Before the end of the withdrawal period, HMRC may withdraw the notice if they intend to make a simple assessment in respect of that person for the year of assessment to which the notice relates.
 - (3) If HMRC decide to withdraw the notice they must do so by giving the person a notice under this section.
 - (4) A notice under this section must specify the date on which the notice under section 8 or 8A is withdrawn.
 - (5) For the purposes of this section “the withdrawal period” means the period of 2 years from the end of the year of assessment to which the notice under section 8 or 8A relates.
 - (6) Withdrawal of a notice given to a person under section 8 or 8A in relation to a year of assessment does not prevent HMRC from giving the person a further notice under section 8 or 8A.
 - (7) See paragraph 17AA of Schedule 55 to FA 2009 as to the cancellation of liability to a penalty under any paragraph of that Schedule by including provision in a notice under this section.”

-
- 5 After section 28G (determination of amount notionally chargeable where no NRCGT return delivered) insert—

“28H Simple assessments by HMRC: personal assessments

- (1) HMRC may make a simple assessment for a year of assessment in respect of a person who is, when the assessment is made, a qualifying person in relation to that year of assessment.
- (2) A person (other than a person to whom section 28I applies) is a qualifying person at any time in relation to a year of assessment if at that time—
 - (a) the person has not delivered a return under section 8 for the year (whether or not including a self assessment), and
 - (b) the person is not subject to a requirement to make and deliver such a return by virtue of a notice under section 8.
- (3) A simple assessment is—
 - (a) an assessment of the amounts in which the person is chargeable to income tax and capital gains tax for the year of assessment to which it relates, and
 - (b) an assessment of the amount payable by the person by way of income tax, that is to say, the difference between the amount in which the person is assessed to income tax under paragraph (a) and the aggregate amount of any income tax deducted at source and any tax credits to which section 397(1) or 397A(1) of ITTOIA 2005 applies;but nothing in this subsection enables an assessment to show as repayable any income tax treated as deducted or paid by virtue of section 246D of the principal Act, section 626 of ITEPA 2003 or section 399(2), 400(2), 414(1), 421(1) or 530(1) of ITTOIA 2005.
- (4) The amounts in which a person is chargeable to income tax and capital gains are net amounts, taking into account the person’s personal allowance (including any relief or allowance previously claimed and included by HMRC in calculating that personal allowance).
- (5) A simple assessment may be based on any information held by HMRC (whether or not supplied by the person to whom the assessment relates).
- (6) The notice of a simple assessment required to be sent to the person by section 30A(3) must (among other things)—
 - (a) include particulars of the income and gains, and any personal allowance, taken into account in the assessment, and
 - (b) state any amount payable by the person by virtue of section 59BA (with particulars of how it may be paid and the date on which it is payable).
- (7) The tax to be assessed on a person by a simple assessment does not include any tax which—
 - (a) is chargeable on the scheme administrator of a registered pension scheme under Part 4 of Finance Act 2004,
 - (b) is chargeable on the sub-scheme administrator of a sub-scheme under Part 4 of the Finance Act 2004 as modified by

-
- the Registered Pension Schemes (Splitting of Schemes) Regulations 2006, or
- (c) is chargeable on the person who is (or persons who are) the responsible person in relation to an employer-financed retirement benefits scheme under section 394(2) of ITEPA 2003.
- (8) In subsections (3) to (7) references to a simple assessment are to one made under subsection (1).
 - (9) Nothing in this section prevents HMRC issuing more than one simple assessment to the same person in respect of a year of assessment (whether or not any earlier simple assessment is withdrawn).

28I Simple assessments by HMRC: trustees

- (1) HMRC may make a simple assessment for a year of assessment in respect of a settlement if, when the assessment is made, the relevant trustees of the settlement qualify for such an assessment in relation to that year of assessment.
- (2) The trustees qualify for such an assessment at any time in relation to a year of assessment if at that time –
 - (a) no return under section 8A has been delivered (whether or not including a self assessment) by the relevant trustees or any of them, and
 - (b) there is no subsisting requirement to make and deliver such a return by virtue of a notice under section 8A.
- (3) A simple assessment is –
 - (a) an assessment of the amounts in which the relevant trustees are chargeable to income tax and capital gains tax for the year of assessment to which it relates, and
 - (b) an assessment of the amount payable by them by way of income tax, that is to say, the difference between the amount in which the person is assessed to income tax under paragraph (a) and the aggregate amount of any income tax deducted at source and any tax credits to which section 397(1) or 397A(1) of ITTOIA 2005 applies;

but nothing in this subsection enables an assessment to show as repayable any income tax treated as deducted or paid by virtue of section 246D of the principal Act, section 626 of ITEPA 2003 or section 399(2), 400(2), 414(1), 421(1) or 530(1) of ITTOIA 2005.
- (4) The amounts in which the relevant trustees are chargeable to income tax and capital gains are net amounts, taking into account any allowance that is applicable (including any relief or allowance previously claimed and taken into account by HMRC in calculating that allowance).
- (5) A simple assessment may be based on any information held by HMRC (whether or not supplied by the relevant trustees).
- (6) The notice of a simple assessment required by section 30A(3) may be given to any one or more of the relevant trustees.

-
- (7) That notice must (among other things) –
- (a) include particulars of the income and gains, and any allowance, taken into account in the assessment, and
 - (b) state any amount payable by the relevant trustees by virtue of section 59BA (with particulars of how it may be paid and the date on which it is payable).
- (8) The tax to be assessed by a simple assessment does not include any tax which –
- (a) is chargeable on the scheme administrator of a registered pension scheme under Part 4 of Finance Act 2004,
 - (b) is chargeable on the sub-scheme administrator of a sub-scheme under Part 4 of the Finance Act 2004 as modified by the Registered Pension Schemes (Splitting of Schemes) Regulations 2006, or
 - (c) is chargeable on the person who is (or persons who are) the responsible person in relation to an employer-financed retirement benefits scheme under section 394(2) of ITEPA 2003.
- (9) In subsections (2) to (8) references to a “simple assessment” are to an assessment under this section.
- (10) Nothing in this section prevents HMRC issuing more than one simple assessment in respect of the same settlement and the same year of assessment (whether or not any earlier simple assessment is withdrawn).
- (11) In this Act references to the person to whom a simple assessment relates are, in relation to one made under this section, to the relevant trustees of the settlement to which it relates.

28J Power to withdraw a simple assessment

- (1) HMRC may withdraw a simple assessment by notice to the person to which it relates.
- (2) An assessment that has been withdrawn ceases to have effect (and is to be taken as never having had any effect).”

6 In section 31A (appeals: notice of appeal), after subsection (4) insert –

- “(4A) In the case of an appeal under section 31(1)(d) relating to a simple assessment –
- (a) subsection (1)(b) has effect subject to section 31AA, and
 - (b) the reference in subsection (4) to the officer by whom the notice of assessment was given includes a reference to any officer authorised to receive notices of appeal relating to such assessments.”

7 After section 31A (notice of appeal) insert –

“31AA Power to suspend simple assessment

- (1) If the person to whom a simple assessment relates believes that the assessment is or may be incorrect, the person may notify HMRC of that belief and the reasons for it.

-
- (2) A notice under subsection (1) must be given to HMRC within the period of 30 days after the date on which the simple assessment was issued or such longer period as HMRC may allow.
 - (3) On receipt of a notice under subsection (1) HMRC may suspend the simple assessment (in whole or part).
 - (4) HMRC must notify the person concerned if the assessment is suspended and, if suspended in part, of the amount that they consider (based on the information provided by the notice under subsection (1)) is not disputed.
 - (5) While the assessment is suspended the person concerned is under no obligation to pay –
 - (a) the amount specified in the notice of assessment as payable (where the whole of the assessment is suspended), or
 - (b) so much of that amount as remains payable (where the assessment is suspended in part).
 - (6) HMRC must respond to a notice under subsection (1) by –
 - (a) confirming the simple payment assessment and lifting the suspension (if any),
 - (b) withdrawing the simple payment assessment,
 - (c) issuing a further simple payment assessment (whether in addition to the original assessment or to replace it).
 - (7) HMRC must notify the person concerned of their decision.
 - (8) Where the suspension of the assessment has been lifted, section 31A applies again to the assessment as if the specified date is the day on which notice under subsection (7) was given.
- 8 (1) Section 59B (payment of income tax and capital gains tax) is amended as follows.
- (2) In the heading, at end insert “: **assessments other than simple assessments**”.
 - (3) In subsection (6), after “9” insert “, 28H or 28I”.

9 After section 59B insert –

“59BA Payment of income tax and capital gains tax: simple assessments

- (1) Subject to subsection (2), the difference between –
 - (a) the amount of income tax and capital gains tax contained in a simple assessment for any year of assessment, and
 - (b) the aggregate of any payments on account made by the person to whom the assessment relates in respect of that year (whether under section 59A or 59AA or otherwise) and any income tax which in respect of that year has been deducted at source,is payable by that person as mentioned in subsection (3) or (4).
- (2) Nothing in subsection (1) requires the repayment of any income tax treated as deducted or paid by virtue of section 246D of the principal Act, section 626 of ITEPA 2003 or section 399(2), 400(2), 414(1), 421(1) or 530(1) of ITTOIA 2005.

-
- (3) In a case where the person was given notice of the simple assessment after the 31st October next after the year of assessment, the difference is payable at the end of the period of 3 months after the day on which that notice was given.
 - (4) In any other case the difference is payable on or before the 31st January next after the end of the year of assessment.”

PART 2

CONSEQUENTIAL AMENDMENTS

10 After paragraph 17A of Schedule 55 to FA 2009 (cancellation of penalty for failure to make return where taxpayer requests withdrawal of notice under section 8 or 8A) insert—

“17AA(1) This paragraph applies where—

- (a) P is liable for a penalty under any paragraph of his Schedule in relation to a failure to make a return within item 1 in the Table, and
 - (b) HMRC decide under section 8C of TMA 1970 to withdraw the notice under section 8 of that Act.
- (2) The notice under section 8C may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.

Explanatory Note

Clause 71 and Schedule: Simpler assessments

Summary

1. This legislation provides a new power to allow HM Revenue & Customs (HMRC) to make an assessment of an individual's Income Tax or Capital Gains Tax liability without them first being required to complete a self-assessment return where it has sufficient information about that individual to make the assessment. This measure will have effect on and after the date of Royal Assent to Finance Bill 2016.

Details of the clause and Schedule

2. Clause 71 introduces the Schedule which makes amendments to the Taxes Management Act 1970 (TMA 1970) to introduce simple assessment.
3. Schedule amends Parts 2, 4 and 5 of the TMA 1970.

Part 1: Amendment of the Taxes Management Act 1970

4. Part 1 introduces a power that will allow HMRC to issue a simple assessment to an individual based on information already held by HMRC whether it is received from that individual or a third party. It also provides for HMRC to withdraw a notice to file a return that is no longer required.
5. Paragraph 2 amends section 7 of TMA 1970 removing the requirement by an individual to notify HMRC of income that is subject to a simple assessment.
6. Paragraph 3 amends the heading to section 8B TMA 1970 stating clearly that this section applies when an individual wants HMRC to withdraw a notice to file a return.
7. Paragraph 4 inserts new section 8C into TMA 1970 which permits HMRC to withdraw a notice to file a return if it intends to make a simple assessment. The subsections contained therein set out who will be affected, that HMRC will withdraw the notice and the period when the notice can be withdrawn. As well as allowing HMRC to retain the right to send a further notice to file a return. If a notice is withdrawn any penalties that may have been applied will be cancelled.
8. Paragraph 5 inserts new section 28H, 28I and 28J into TMA 1970.
9. New section 28H provides for the introduction of a simple assessment for individuals. The subsections sets out who will qualify for a simple assessment and the basis on which that assessment is calculated which includes taking account of the individual's personal allowance at that time. It sets out that the simple assessment notice must include details of the information used when making the assessment and the amount due. It also provides that

HMRC can issue more than one simple assessment in a tax year.

10. New section 28I provides for the introduction of simple assessment for trustees it takes effect in the same way as section 28H and also allows for the simple assessment to be sent to any trustees where more than one exists and defines who the relevant trustee to whom the simple assessment should be sent.
11. New section 28J permits HMRC to withdraw a simple assessment if necessary and once withdrawn the assessment no longer has any effect
12. Paragraph 6 inserts new subsection 4A into section 31A TMA that allows for the notice of appeal to be given to any officer of HMRC
13. Paragraph 7 introduces new section 31AA that allows HMRC to suspend a simple assessment if the individual thinks that it is wrong and provides further information to back up this claim. This is to allow the individual to dispute the amount due without having to make a formal appeal. The person must contact HMRC within 30 days of the date of the assessment although HMRC can extend the period. It sets out that HMRC may suspend the assessment in whole or in part and it must notify the person concerned if the assessment is suspended. The individual will be required to pay the sum of money that is not in dispute. It permits HMRC after considering the individuals' dispute to either confirm the assessment, withdraw the assessment or issue a further assessment either in addition to or in place of the original. Where HMRC lifts the suspension it provides that the individual will still be able to appeal the assessment if they remain unhappy that the assessment is incorrect.
14. Paragraph 8 makes amendments to section 59B to make it clear that it does not apply to simple assessments.
15. Paragraph 9 introduces new section 59BA which sets out how the amount due is calculated. It also sets out when the amount due should be paid.

Part 2: consequential amendments

16. Paragraph 10 contains a consequential amendment to Schedule 55 to Finance Act 2009 inserting new section 17AA(1). This new section cancels a penalty that may have arisen before HMRC withdraws a notice to file a return.

Background note

17. Modernising the tax system will be one of the biggest-ever changes to the way people manage and pay their taxes. Key to this will be HMRC making smarter use of the data that it holds so that we do more of the work that taxpayers currently have to do for themselves. Making it as easy as possible for individuals to pay the right tax at the right time.
18. These provisions will enable HMRC to issue a legally enforceable assessment to those individuals with straightforward tax affairs where HMRC already hold all the information needed to calculate their tax position without the need for them to complete a return.
19. Those individuals whose tax affairs are not straightforward or where HMRC does not have all the necessary information to calculate their tax liability will still be required to complete a tax return.

20. HMRC will be required to set out clearly how much is due and the information used when calculating the amount due. This will enable the individual to check whether the information used in the calculation is correct, including whether there are any omissions. If the individual disputes the amount due they will be required to inform HMRC explaining why and provide necessary evidence. The requirement on individuals to report information to HMRC remains unless there is no further information than that used in the simple assessment.
21. There are occasions when HMRC has issued an individual with a notice to file a return but realise that this is not necessary. Whilst an individual can currently ask that a notice to file a return can be withdrawn, provision is being made that will allow HMRC to withdraw a notice to file a return when we intend to make a simple assessment.
22. The date the amount is due is linked to the current payment provisions that apply if the individual had completed a return.
23. If you have any questions about this change, or comments on the legislation, please contact Paul Harris on 03000 586519, email: simple.assessment@hmrc.gsi.gov.uk

72 Time limit for self assessment tax returns

- (1) TMA 1970 is amended as follows.
- (2) In section 34 (ordinary time limit of 4 years for assessments), after subsection (2) insert—
 - “(3) In this section “assessment” does not include a self-assessment.”
- (3) After that section insert—

“34A Ordinary time limit for self-assessments

- (1) Subject to subsections (2) and (3), a self assessment contained in a return under section 8 or 8A may be made and delivered at any time not more than 4 years after the end of the year of assessment to which it relates.
- (2) Nothing in subsection (1) prevents—
 - (a) a person who has received a notice under section 8 or 8A within that period of 4 years from delivering a return including a self-assessment within the period of 3 months beginning with the date of the notice,
 - (b) a person in respect of whom a determination under section 28C has been made from making a self-assessment in accordance with that section within the period allowed by subsection (5)(a) or (b) of that section.
- (3) Subsection (1) has effect subject to the following provisions of this Act and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case.
- (4) This section has effect in relation to self-assessments for a year of assessment earlier than 2012-13 as if—
 - (a) in subsection (1) for the words from “not more” to the end there were substituted “on or before 5 April 2017”, and
 - (b) in subsection (2)(a) for the words “within that period of 4 years” there were substituted “on or before 5 April 2017.””

Explanatory Note

Clause 72: Time limit for self assessment tax returns

Summary

1. This measure clarifies the time allowed for making a self-assessment when HMRC has served a notice to file a return.

Details of the clause

Section 1: Time limit for self assessment tax returns

2. Subsection 1 introduces amendments to the Taxes Management Act (TMA) 1970.
3. Subsection 2 introduces a clarification in section 34 TMA 1970 that 'assessment' does not include 'self-assessment'. Section 34 therefore relates to the assessments made by HM Revenue & Customs (HMRC).
4. Subsection 3 introduces a new clause 34A after section 34 TMA 1970.
5. Section 34A sets out the ordinary time limits for self-assessment. That is the calculation of tax due put forward by the taxpayer for a specified tax year.
6. Subsection (1) of section 34A sets out that the normal time limit for self-assessments contained in a return under section 8 or 8A TMA is 4 years after the end of the tax year it relates to.
7. An example would be that the last date you could submit a self-assessment for the tax year 2020/21 would be 4 years after 5 April 2021. That would be 5 April 2025.
8. A taxpayer must make the self-assessment and deliver it to HMRC by that date.
9. Subsection (2) of section 34A sets out two specific instances where the time limits may be longer than 4 years.
10. Subsection (2)(a) of section 34A sets out that when HMRC issues a taxpayer with a notice to file within the 4 year period the taxpayer will always have 3 months to make and deliver their self-assessment.
11. Subsection (2)(b) of section 34A sets out that time limits in relation to self-assessments made in response to determinations by HMRC will not be affected.
12. Subsection 3 of section 34A is a general provision to allow for circumstances when the Taxes Acts allow for a longer period of time to submit a self-assessment, that longer time limit is to apply.
13. Subsection 4 of section 34A states that for self-assessments for the year 2012 to 2013 and

before, customers will have until 5 April 2017 to make and deliver them to HMRC. These are self-assessments where a notice to file has been issued to the customer, that no determination has been made and have not been submitted and processed before (amendments to returns).

14. This section will come into force from Royal Assent.

Background note

15. This measure seeks to make clear the amount of time a customer has to submit a self-assessment. This seeks to create clear boundaries for customers so that they have certainty over their tax affairs and to ensure that the tax system applies fairly to all.
16. If you have any questions about this change, or comments on the legislation, please contact Abigail La Fontaine (email: sa.policy@hmrc.gsi.gov.uk)

73 Rate of interest applicable to judgment debts etc: Scotland

- (1) This section applies if—
 - (a) a sum is payable to or by the Commissioners under a decree or extract issued in any court proceedings relating to a taxation matter (a “tax-related judgment debt”), and
 - (b) interest in relation to the tax-related judgment debt is included in or payable under the decree or extract.
- (2) In a case where the rate of interest in relation to the tax-related judgment debt is stated in the decree or extract, the rate stated in relation to that debt may not exceed (and may not be capable of exceeding)—
 - (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
 - (b) in the case of a sum payable by the Commissioners, the special repayment rate.
- (3) In a case where the rate of interest in relation to the tax-related judgment debt is not stated in the decree or extract but provided for by an enactment or rule of court (whenever passed or made), that enactment or rule is to have effect in relation to the debt as if for the rate for which it provides there were substituted—
 - (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
 - (b) in the case of a sum payable by the Commissioners, the special repayment rate.
- (4) This section has effect in relation to interest for periods beginning on or after the day on which this Act is passed, regardless of—
 - (a) the date of the decree or extract in question, and
 - (b) whether interest begins to run on or after the day on which this Act is passed, or began to run before that date.
- (5) In this section—
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
 - “enactment” includes an Act of the Scottish Parliament or an instrument made under such an Act;
 - “late payment interest rate” means the rate provided for in regulations made by the Treasury under section 103(1) of FA 2009;
 - “special repayment rate” has the same meaning as in section 52 of F(No.2)A 2015 (and subsections (7) to (10) of that section apply for the purposes of this section as they apply for the purposes of that section);
 - “taxation matter” means anything the collection and management of which is the responsibility of the Commissioners (or was the responsibility of the Commissioners of Inland Revenue or Commissioners of Customs and Excise);
 - “working day” means any day other than a non-business day as defined in section 92 of the Bills of Exchange Act 1882.
- (6) This section extends to Scotland only.

74 Rate of interest applicable to judgment debts etc: Northern Ireland

- (1) This section applies if a sum payable to or by the Commissioners under a judgment or order given or made in any court proceedings relating to a taxation matter (a “tax-related judgment debt”) carries interest.
- (2) In a case where the rate of interest is specified in the judgment (in the case of the High Court) or directed by the judge (in the case of a county court), the rate specified or directed in relation to that debt may not exceed (and may not be capable of exceeding) –
 - (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
 - (b) in the case of a sum payable by the Commissioners, the special repayment rate.
- (3) In a case where the rate of interest in relation to the tax-related judgment debt is not specified in the judgment or directed by the judge but provided for by an enactment or rule of court (whenever passed or made), that enactment or rule is to have effect in relation to the debt as if for the rate for which it provides there were substituted –
 - (a) in the case of a sum payable to the Commissioners, the late payment interest rate, and
 - (b) in the case of a sum payable by the Commissioners, the special repayment rate.
- (4) This section has effect in relation to interest for periods beginning on or after the day on which this Act is passed, regardless of –
 - (a) the date of the judgment or order in question, and
 - (b) whether interest begins to run on or after the day on which this Act is passed, or began to run before that date.
- (5) In this section –
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
 - “enactment” includes Northern Ireland legislation or an instrument made under such legislation;
 - “late payment interest rate” means the rate provided for in regulations made by the Treasury under section 103(1) of FA 2009;
 - “special repayment rate” has the same meaning as in section 52 of F(No.2) A 2015 (and subsections (7) to (10) of that section apply for the purposes of this section as they apply for the purposes that section);
 - “taxation matter” means anything the collection and management of which is the responsibility of the Commissioners (or was the responsibility of the Commissioners of Inland Revenue or Commissioners of Customs and Excise);
 - “working day” means any day other than a non-business day as defined in section 92 of the Bills of Exchange Act 1882.
- (6) This section extends to Northern Ireland only.

75 Rate of interest applicable to judgment debts etc: England and Wales

- (1) In section 52 of F(No. 2)A 2015 (rates of interest applicable to judgment debts etc in taxation matters: England and Wales), in subsection (15), in the definition of “taxation matter” omit “, other than national insurance contributions,”.
- (2) This section has effect in relation to interest for periods beginning on or after the day on which this Act is passed, regardless of—
 - (a) the date of the judgment or order in question, and
 - (b) whether interest begins to run on or after the day on which this Act is passed, or began to run before that date.
- (3) This section extends to England and Wales only.

Explanatory Note

Clauses 73, 74 and 75: Rate of interest applicable to judgment debts etc: Scotland, Northern Ireland, England and Wales.

Summary

1. The first two of these three related clauses provide that in Scotland and Northern Ireland, where HM Revenue & Customs (HMRC) is party to a tax-related judgment debt (court proceedings in a taxation matter), the rates of interest are those referred to in tax legislation. This ensures that interest payable by or to HMRC, whether or not a debt follows from court action, is that prescribed in tax legislation. The Scotland and Northern Ireland clauses also set the rates of interest on tax-related judgment debts owed by or to HMRC to appropriate levels given prevailing interest rates and harmonises the rates UK-wide.
2. The third related clause removes the exclusion of National Insurance contributions from the definition of taxation matter in section 52 Finance (No2) Act 2015 in order that the definition of taxation matter is harmonised UK-wide.
3. The new rates of interest will apply to new and existing judgment debts in Scotland and Northern Ireland from the date of Royal Assent of Finance Act 2016. Any interest already accrued under an existing judgment debt will be unaffected.

Details of the clauses

Clause 73: Rate of interest applicable to judgment debts etc: Scotland

4. Subsection (1) sets out that the provision relates only to sums payable by or to HMRC under a decree or extract of the court, and in respect of interest only.
5. Subsections (2) and (3) provide that the late payment rate of interest in accordance with section 103(1) Finance Act 2009 applies to tax-related judgment debts where HMRC is the creditor, and a new special repayment rate of interest applies to tax-related judgment debts where HMRC is the debtor. Subsection (2) sets out that where the rate of interest in relation to the tax-related judgment debt is stated in the decree or extract, the rate stated in relation to the debt may not exceed the late repayment rate where HMRC is the creditor, or the special repayment rate where HMRC is the debtor.
6. Subsection (4) provides that the new rates of interest apply from Royal Assent of Finance Act 2016 on existing as well as new judgments and whether or not judgment interest has already accrued prior to this date. However, interest that has already accrued up to and including the day before Royal Assent is not affected by this section.

Clause 74: Rate of interest applicable to judgment debts etc: Northern Ireland

7. Subsection (1) sets out that the provision relates only to sums payable by or to HMRC under a judgment or order of the court, and in respect of interest only.
8. Subsections (2) and (3) provide that the late payment rate of interest in accordance with section 103(1) Finance Act 2009 applies to tax-related judgment debts where HMRC is the creditor, and a new special repayment rate of interest applies to tax-related judgment debts where HMRC is the debtor. Subsection (2) sets out that where the rate of interest in relation to the tax-related judgment debt is stated in the judgment or order, the rate stated in relation to the debt may not exceed the late repayment rate where HMRC is the creditor, or the special repayment rate where HMRC is the debtor.
9. Subsection (4) provides that the new rates of interest apply from Royal Assent of Finance Act 2016 on existing as well as new judgments and whether or not judgment interest has already accrued prior to this date. However, interest that has already accrued up to and including the day before Royal Assent is not affected by this section.

Clause 75: Rate of interest applicable to judgment debts etc: England and Wales

10. The clause for National Insurance contributions removes the exclusion of National Insurance contributions from the definition of taxation matter in the England and Wales judgment debt interest provision contained in section 52 Finance (No2) Act 2015. This ensures a consistent definition of taxation matter UK-wide.

Background note

11. The government introduced section 52 Finance (No2) Act 2015 for England and Wales, which requires that where HMRC is party to a tax-related debt, the rates of interest are those contained in tax legislation. This ensures that interest payable by or to HMRC, whether or not a debt follows from court action, is that prescribed in tax legislation. It is appropriate for interest rates on judgment debts relating to taxation matters to be determined in tax legislation rather than the Judgments Act, County Courts Act, or Scottish or Northern Irish equivalents, which are the responsibility of government departments other than HMRC. This measure is to extend the same principle to Scotland, Northern Ireland and to include National Insurance contributions within the definition of taxation matter.
12. This change in rates applies to cases both where HMRC receives judgment interest where it has won a case, and where it pays judgment interest where it has lost a case.
13. The government is making this change to ensure a consistent UK-wide position that where HMRC is party to a tax-related debt, the rates of interest are those contained in tax legislation. The change also ensures that the rates of interest on such debts are set at an appropriate level.
14. If you have any questions about this change, or comments on the legislation, please contact Helen Sawyer on 03000 568355 (email: helen.sawyer@hmrc.gsi.gov.uk).

76 Gift aid: power to impose penalties on charities and intermediaries

- (1) At the end of section 428 of ITA 2007 insert –
 - “(5) The regulations may also make provision –
 - (a) for the imposition of a penalty of a specified amount (which must not exceed £3000) for a failure to comply with a specified requirement imposed by the regulations,
 - (b) for the assessment and recovery of the penalty (which may include provision about the reduction of the penalty in specified circumstances), and
 - (c) conferring a right of appeal against the imposition of a penalty.”
- (2) The amendment made by this section comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

Explanatory Note

Clause 76: power to impose penalties on charities and intermediaries

Summary

1. This clause amends primary legislation introduced at Finance Bill 2014. This amendment gives HMRC the power to impose penalties if an intermediary or a charity fails to comply with requirements set out in regulations. An appointed day order will be completed to commence the primary legislation when regulations have been finalised.

Details of the clause

2. Subsection 5 sets out when a penalty may be imposed, the maximum amount that can be imposed per failure to comply with requirements and confers a right of appeal against the imposition of a penalty.

Background note

3. At Finance Bill 2015 primary legislation was introduced to define intermediaries and explain their relationship with charities. The aim is to make it simpler for donors to Gift Aid their donations made through digital channels such as text message donations and online donations. This supports the government's objective of maximising Gift Aid on eligible donations.
4. This measure will give HMRC the powers to impose penalties if intermediaries fail to comply with requirements set out in regulations.
5. These regulations will be discussed in a technical consultation early next year and will be laid later in 2016.
6. If you have any further question please contact Chris Maudsley on 03000 518 538 or email christopher.maudsley@hmrc.gsi.gov.uk

77 Detention and seizure under CEMA 1979: exceptions to notice requirement etc

- (1) CEMA 1979 is amended as follows.
- (2) Schedule 2A (detention of things as liable to forfeiture) is amended as set out in subsections (3) and (4).
- (3) In paragraph 3(2) (exceptions to requirement of notice of detention) –
 - (a) omit the “or” at the end of paragraph (b), and after that paragraph insert –
 - “(ba) a person who has (or appears to have) possession or control of the thing being detained,”;
 - (b) in paragraph (c), after “on” insert “or from”;
 - (c) at the end insert “, or”
 - (d) in the case of any thing detained on or from a vehicle, the driver of the vehicle.”
- (4) In paragraph 4(2) (unauthorised removal or disposal of things detained: definition of “responsible person”), for paragraphs (a) and (b) substitute –
 - “(a) the person whose offence or suspected offence occasioned the detention,
 - (b) the owner or any of the owners of the thing detained or any servant or agent of such an owner,
 - (c) a person who has (or appears to have) possession or control of the thing being detained,
 - (d) in the case of any thing detained on a ship or aircraft, the master or commander,
 - (e) in the case of any thing detained on a vehicle, the driver of the vehicle, or
 - (f) a person whom the person who detains the thing reasonably believes to be a person within any of paragraphs (a) to (e).”
- (5) In Schedule 3 (seizure and forfeiture), in paragraph 1(2) (exceptions to requirement of notice of seizure) –
 - (a) after paragraph (b) insert –
 - “(ba) a person who has (or appears to have) possession or control of the thing being seized; or”;
 - (b) in paragraph (c), for “in” substitute “on or from”;
 - (c) at the end insert “, or”
 - (d) in the case of any thing seized on or from a vehicle, the driver of the vehicle.”
- (6) The amendments made by this section have effect in relation to things detained or seized on or after the day on which this Act is passed.

Explanatory Note

Clause 77: Detention and seizure under CEMA 1979: Exceptions to notice requirement etc.

Summary

1. This measure makes amendments to Schedules 2A and 3 of the Customs and Excise Management Act 1979 ('CEMA').
2. It augments current legislation relating to the detention or seizure of goods liable to forfeiture. The legislation will amend paragraph 3(2) of Schedule 2A and paragraph 1(2) of Schedule 3 to provide exemptions from the duty to serve a notice on the person who has, or appears to have, possession or control over any thing being detained or seized or on the driver of any type of vehicle on or from which the goods are detained or seized.
3. As a consequence of changes made to paragraph 3(2) of Schedule 2A it is necessary to make consequential amendments to paragraph 4(2) of that Schedule. The measure also makes certain other minor drafting amendments to ensure consistency.

Details of the clause

4. Subsection 1 introduces the amendments to CEMA.

Schedule 2A

5. Subsection 2 specifies the parts of Schedule 2A to which the subsequent amendments apply.
6. Subsection 3(a) inserts new sub-paragraph (ba) to include a person who has or appears to have possession or control of the thing being detained.
7. Subsection 3(b) inserts the words "or from" after the word "on" in sub-paragraph 3(2)(c)
8. Subsection 3(c) inserts new sub-paragraph (d) to sub-paragraph 3(2) to include the driver of the vehicle in the case where any thing is detained on or from any type of vehicle.
9. Subsection 4 substitutes sub-paragraphs (a) and (b) of sub-paragraph 4(2) with new sub-paragraphs (a) to (f) listing those persons within the meaning of sub-paragraph 4(2). This is to ensure consistency with paragraph 3(2).

Schedule 3

10. Subsection 5(a) inserts new sub-paragraph (ba) after sub-paragraph 1(2)(b) to include a person who has or appears to have possession or control of the thing being seized.
11. Subsection 5(b) replaces the word "in" for "on or from" in sub-paragraph 1(2)(c).

12. Subsection 5(c) inserts new sub-paragraph (d) after sub-paragraph 1(2)(c) to include the driver of the vehicle in the case where any thing is seized on or from any type of vehicle.

Background note

13. The measure has been introduced in order to provide operational assistance to HMRC and Border Force officers who are placed in some difficulty where it is unclear who the owner of the goods is. The measure permits officers to treat the driver, or a person in a comparable situation, as if he or she were a representative of the owner.
14. HMRC has a duty to take robust action to deal with those who smuggle illicit goods of any description into the UK or seek to bring in goods on which duty has not been paid. The detention and seizure of goods is, in particular, a valuable tool in the fight against duty evasion.
15. If you have any questions about this change, or comments on the legislation, please contact Marilyn Seago on 03000 593391 (email: marilyn.seago@hmrc.gsi.gov.uk)

78 Proceedings under customs and excise Acts: prosecuting authority

- (1) Part 11 of CEMA 1979 (arrest of persons, forfeiture and legal proceedings) is amended as set out in subsections (2) and (3).
- (2) In section 146A(7) (definition of prosecuting authority) –
 - (a) in the opening words, for “prosecution” substitute “prosecuting”;
 - (b) in paragraph (b), omit “the Commissioners or”;
 - (c) in paragraph (c), for “the Commissioners” substitute “the Director of Public Prosecutions for Northern Ireland”.
- (3) In section 150(1) (joint and several liability), for the words from “the Director” to “Ireland)” substitute “prosecuting authority (within the meaning of section 146A)”.
- (4) In consequence of subsection (3), in Schedule 4 to the Commissioners for Revenue and Customs Act 2005, omit paragraph 25.
- (5) The amendments made by this section apply in relation to proceedings commenced on or after the day on which this Act is passed.

Explanatory Note

Clause 78: Proceedings under customs and excise Acts: prosecuting authority

Summary

1. This measure makes minor amendments to Part 11 of the Customs and Excise Management Act (CEMA) 1979.
2. It will amend section 146A(7)(b) and (c) to remove reference to the Commissioners from the definition of prosecuting authority for Scotland and Northern Ireland. As well as this it will insert the Director of Public Prosecutions for Northern Ireland as the relevant prosecuting authority for Northern Ireland. The effect of the amendments will be to clarify that the time limit for commencing summary proceedings under the customs and excise Acts only starts to run from the date on which the procurator fiscal (for Scotland) or the Director of Public Prosecutions for Northern Ireland, has knowledge of sufficient evidence to justify the proceedings, rather than the Commissioners.
3. The term prosecuting authority will also be used in s150, in place of the current reference to the Commissioners, to clarify that it is a matter for the procurator fiscal or the Director of Public Prosecutions for Northern Ireland, as appropriate, to decide whether to charge persons jointly or severally with an offence under the customs and excise Acts.

Details of the clause

4. Subsection 1 specifies the part of CEMA 1979 to which the subsequent amendments apply.
5. Subsection 2 sets out the amendments to the definition of prosecuting authority in section 146A(7).
6. Subsection 2(a) substitutes the word "prosecution" with "prosecuting" in the opening words of section 146A(7).
7. Subsection 2(b) removes the words "the Commissioners or" from Section 146A(7)(b).
8. Subsection 2(c) replaces the words "the Commissioners" with "the Director of Public Prosecutions for Northern Ireland" in Section 146A(7)(c).
9. Subsection 3 substitutes the words from "the Director" to "Northern Ireland" with "prosecuting authority (within the meaning of section 146A)" in Section 150(1).
10. Subsection 4 omits paragraph 25 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 as a consequence of subsection 3.

Background note

11. Section 146A(3) CEMA states that proceedings for summary offences under the customs and excise Acts must be commenced within six months from the date on which sufficient evidence came to the knowledge of the prosecuting authority.
12. At present the prosecuting authority for Scotland is defined in section 146A(7)(b) as "the Commissioners or the procurator fiscal" and, in s146A(7)(c) for Northern Ireland, as "the Commissioners", being the Commissioners for HMRC. Section 146A(7)(a), as presently drafted, defines the prosecuting authority for England and Wales as the Director of Public Prosecutions, with no reference to the Commissioners.
13. However, while offences under the customs and excise Acts are investigated by HMRC, decisions about whether to institute proceedings are made, in Northern Ireland, by the Director of Public Prosecutions for Northern Ireland and in Scotland, by the procurator fiscal.
14. The proposed amendments will ensure that the time limit for summary offences does not start to run before the date at which the procurator fiscal or the Director of Public Prosecutions for Northern Ireland (the independent authorities responsible for determining whether a prosecution should be commenced) has knowledge of sufficient evidence to warrant the proceedings. This removes any possibility that the time limit could be triggered at a date before the matter has been referred to the relevant prosecuting authority. It will also align the definition of prosecuting authority for Scotland and Northern Ireland with the present drafting of prosecuting authority for England and Wales.
15. For consistency, the amended definition of prosecuting authority in section 146A(7) will be extended to section 150, to replace the current reference to the Commissioners, so that it is for the procurator fiscal or the Director of Public Prosecutions for Northern Ireland to decide whether to proceed against persons jointly or severally for offences under the customs and excise Acts.
16. If you have any questions about this change, or comments on the legislation, please contact Marilyn Seago on 03000 593391 (email: marilyn.seago@hmrc.gsi.gov.uk)

79 Data-gathering powers: providers of payment or intermediary services

- (1) In Part 2 of Schedule 23 to FA 2011 (data-gathering powers: relevant data-holders), after paragraph 13A insert –

“Electronic payment service providers

13B (1) A person who provides electronic payment services is a relevant data-holder.

- (2) In this paragraph “electronic payment services” means services by means of which monetary value is stored electronically for the purpose of payments being made in respect of transactions to which the provider of those services is not a party.

Business intermediaries

13C (1) A person who –

- (a) provides services to enable or facilitate transactions between suppliers and their customers or clients, and
(b) receives information about such transactions in the course of doing so,

is a relevant data-holder.

- (2) In this paragraph “suppliers” means persons supplying goods or services in the course of business.

- (3) For the purposes of this paragraph, information about transactions includes information that is capable of indicating the likely quantity or value of transactions.”

- (2) This section applies in relation to relevant data with a bearing on any period (whether before, on or after the day on which this Act is passed).

Explanatory Note

Clause 79: Data-gathering powers: providers of payment or intermediary services

Summary

1. This measure extends Schedule 23 to Finance Act (FA) 2011 which covers HM Revenue & Customs' (HMRC) bulk data gathering powers. This enables HMRC to collect data from certain third parties which is for use in HMRC's compliance activities.
2. The changes enable HMRC to issue a notice to electronic payment service providers, who perform a similar function to merchant acquirers, who operate "digital wallets" (These are where a monetary value is stored, from a bank account or payment card electronically for use to transfer payments to a retailer or trader); and business intermediaries, who facilitate transactions between supplier and their customer or clients. This will future proof legislation to include emerging new data sources. The changes will have effect from Royal Assent.

Details of the clause

3. **Paragraph 1** amends Part 2 of Schedule 23 to FA 2011 to insert a new paragraph 13B for electronic payment service providers and a new paragraph 13C for business intermediaries as a new category of relevant data-holder.
4. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power.
5. **Paragraph 2** provides that data can be required which relates to periods before the law comes into effect. This approach follows that taken for Schedule 23 FA 2011 and is subject to time limits in Schedule 23.

Background note

6. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.
7. Since these new powers were introduced, new payment methods and innovations have arisen through developments in the digital world. Electronic payment providers and business intermediaries were not specifically specified as data-holders in Schedule 23 FA2011 as originally enacted and do not fall within any other existing categories of data-holder specified in the schedule.

8. The data will help with HMRC tackle the hidden economy by identifying businesses that are receiving income but are not registered for tax, as well as those who are registered but under-declare their income to HMRC. HMRC will not be obtaining data about the individual consumer.
9. Treasury secondary legislation is needed to specify the data that HMRC may require electronic payment service providers and business intermediaries to provide. These draft regulations were published on 9 December 2015.
10. If you have any questions about this change, or comments on the legislation, please contact Angela Roach on 03000 586962 (email: angela.roach@hmrc.gsi.gov.uk) or Paul Miller on 03000 586520 (email: paul.miller@hmrc.gsi.gov.uk).

80 Data-gathering powers: daily penalties for extended default

- (1) Part 4 of Schedule 23 to FA 2011 (data-gathering powers: penalties) is amended as follows.
- (2) In paragraph 38 (increased daily default penalty) –
 - (a) in sub-paragraphs (1)(c) and (2), for “imposed” substitute “assessable”;
 - (b) for sub-paragraphs (3) and (4) substitute –
 - “(3) If the tribunal decides that an increased daily penalty should be assessable –
 - (a) the tribunal must determine the day from which the increased daily penalty is to apply and the maximum amount of that penalty (“the new maximum amount”);
 - (b) from that day, paragraph 31 has effect in the data-holder’s case as if “the new maximum amount” were substituted for “£60”.
 - (4) The new maximum amount may not be more than £1,000.”;
 - (c) in sub-paragraph (5), for “the amount” substitute “the new maximum amount”.
- (3) In paragraph 39 –
 - (a) in sub-paragraph (1), for “a data-holder becomes liable to a penalty” substitute “the tribunal makes a determination”;
 - (b) in sub-paragraph (2), for “the day from which the increased penalty is to apply” substitute “new maximum amount and the day from which it applies”;
 - (c) omit sub-paragraph (3).
- (4) In paragraph 40 (enforcement of penalties), in sub-paragraph (2)(a) omit “or 39”.
- (5) At the end of paragraph 36 (right to appeal against penalty), the existing text of which becomes sub-paragraph (1), insert –
 - “(2) But sub-paragraph (1)(b) does not give a right of appeal against the amount of a penalty payable by virtue of paragraph 38 (increased daily default penalty).”

Explanatory Note

Clause 80: Data-gathering powers: daily penalties for extended default

Summary

1. This clause amends Schedule 23 to Finance Act (FA) 2011 which covers HM Revenue & Customs (HMRC) data-gathering powers. This enables HMRC to collect data from certain third parties for use in HMRC's compliance activities.
2. The purpose of these amendments is to improve the mechanism by which increased daily penalties are approved and assessed, making it clear that it is for the tribunal to decide a new maximum increased daily penalty amount and the date from which it may be applied, and for HMRC to assess and notify any such penalties. HMRC considered that, as drafted, the provisions were not sufficiently clear and may have led to confusion for taxpayers and obstacles to its administration of these penalties.

Details of the clause

3. Paragraph 1 amends Part 4 of Schedule 23 FA 2011.
4. Paragraph 2 amends paragraph 38 of Schedule 23 FA2011. The effect of this change will be for the tribunal to decide whether an increased daily penalty is assessable, determine the new maximum amount of the penalty and the date from which it will be applied. The process for assessing the increased penalty remains with HMRC, but will now be allowed under paragraph 31 of Schedule 23 FA2011. The new maximum amount allowed by the tribunal replaces the £60 amount in that paragraph.
5. Paragraph 3 corrects the administrative provisions in paragraph 39 of Schedule 23 of FA2011 about notification of the penalty. The changes provide a framework for assessing the penalty and enable use of the existing daily penalty framework under paragraph 35 of Schedule 23 FA 2011.
6. Paragraph 4 makes a consequential correction to paragraph 40 of Schedule 23 FA2011 by omitting paragraph 39 of Schedule 23 FA2011.
7. Paragraph 5 provides that there is no right of appeal against HMRC using the new maximum amount determined by the tribunal. An appeal against the new maximum amount would be made under the normal tribunal appeal rules.

Background note

8. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following

consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. This data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

9. The data helps HMRC identify traders that are receiving income but are not registered for tax, as well as those who are registered but under-declare their income to HMRC.
10. The clause amends Schedule 23 FA 2011 to clarify the administration of the increased daily penalty. There are two other measures in this Bill which add two new categories of data-holders (electronic payment providers and business intermediaries) to Schedule 23 FA2011.
11. If you have any questions about this change, or comments on the legislation, please contact Angela Roach on 03000 586962 (email: angela.roach@hmrc.gsi.gov.uk) or Paul Miller. 03000 586 520 (paul.miller@hmrc.gsi.gov.uk)

81 Extension of provisions about set-off to Scotland

- (1) Sections 130 and 131 of FA 2008 (which deal with the availability of set-off in England and Wales and Northern Ireland) extend also to Scotland.
- (2) Accordingly, those sections are amended as follows.
- (3) In section 130 –
 - (a) omit subsection (10), and
 - (b) in the heading omit “: England and Wales and Northern Ireland”.
- (4) In section 131 –
 - (a) in subsection (5), in paragraph (a), after “winding up order” insert “or award of sequestration”,
 - (b) in that subsection, omit the “or” at the end of paragraph (d) and after paragraph (e) insert “, or
 - (f) that person’s estate becomes vested in any other person as that person’s trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985).”, and
 - (c) omit subsection (9).

Explanatory Note

Clause 81: Extension of provisions about set-off to Scotland

Summary

1. Clause 81 extends the provisions of sections 130 and 131 of the Finance Act (FA) 2008 to Scotland.

Details of the clause

2. Subsection (1) provides that the provisions of section 130 and section 131 of FA 2008, which currently extend to England, Wales and Northern Ireland, will extend also to Scotland.
3. Subsection (3) amends Section 130, which currently extends to England, Wales and Northern Ireland and provides the basis for HM Revenue & Customs (HMRC) to set-off sums payable to a person by HMRC ('a credit') against amounts owed to HMRC by the same person ('a debit'), to extend its application to Scotland.
4. Subsection (4) amends Section 131, which currently provides that set-off will not apply under section 130 where an insolvency procedure has been applied to set a post-insolvency credit against a pre insolvency debit, to extend those provisions to Scotland and to include certain insolvency procedures that are applied in Scotland.

Background note

5. FA 2008 introduced a legislative basis for set-off in England, Wales and Northern Ireland. At this time the Scottish Common Law provisions were deemed sufficient for the purposes of set off. However, for the avoidance of any doubt and consistency of approach, this clause is introduced to provide the same legislative basis for set off across the UK.
6. Section 131 provides that set-off will not be applied where the person is subject to an insolvency procedure to set a post-insolvency credit against a pre-insolvency debit and this clause extends the same provisions to Scotland. This will mean that the set off provisions will not apply anywhere in the UK when the person concerned is subject to such an insolvency procedure.
7. If you have any questions about this change, or comments on the legislation, please contact Helen Sawyer on 03000 568355 (email: helen.sawyer@hmrc.gsi.gov.uk).

82 Raw tobacco registration scheme

- (1) After section 8J of TPDA 1979 insert –

“8K Raw tobacco: definitions

- (1) The following definitions apply for the purposes of sections 8L to 8W.
- (2) “Raw tobacco” means the leaves or any other part of a plant of the genus *Nicotiana* but does not include –
- (a) any part of a living plant,
 - (b) a tobacco product, or
 - (c) anything incorporated in a tobacco product.
- (3) “Controlled activity” means –
- (a) buying, selling or otherwise dealing in raw tobacco,
 - (b) importing or exporting raw tobacco,
 - (c) storing or transporting raw tobacco,
 - (d) applying a manufacturing process to raw tobacco, or
 - (e) using raw tobacco for any other purpose.
- (4) The Commissioners may by regulations amend subsection (3) so as to add, modify or remove an activity.

8L Raw tobacco: requirement for approval

- (1) A person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.
- (2) Subsection (1) is subject to the exception in section 8N.
- (3) The Commissioners may approve a person for the purposes of subsection (1) only if satisfied that –
- (a) the person is a fit and proper person to carry on a controlled activity, and
 - (b) the activity will not be carried on for the purpose of, or with a view to, the fraudulent evasion of the duty of excise charged on tobacco products under section 2(1).
- (4) Provision about the form and content of an application for approval may be made by or under regulations made by the Commissioners.
- (5) In sections 8M to 8W, “approved person” means a person approved under this section to carry on a controlled activity.

8M Supplementary provision about approval

- (1) An approval may –
- (a) specify the period of approval, and
 - (b) be subject to conditions or restrictions that the Commissioners think fit, or as they may specify by or under regulations.
- (2) The conditions or restrictions may, in particular, require a controlled activity to be carried on only at or from –
- (a) premises specified in the approval (“notified premises”), or
 - (b) at premises registered in accordance with regulations made under section 7(1)(b), (ba) or (c) (“registered premises”).

-
- (3) The criteria for determining whether or not particular premises may be specified in an approval may be prescribed by or under regulations made by the Commissioners.
 - (4) The Commissioners may at any time for reasonable cause revoke or vary the terms of an approval.
 - (5) The Commissioners may in particular revoke an approval on the ground that the approved person has not carried on a controlled activity for a period of time specified in regulations made by the Commissioners.

8N Exception to the requirement for approval

- (1) Section 8L(1) does not apply to a person who is in possession of raw tobacco for the sole purpose of transporting it to notified or registered premises for delivery to an approved person.
- (2) The Commissioners may by regulations make provision about the manner in which they will determine whether the exception in subsection (1) applies.

8O The register of approved persons

- (1) The Commissioners must maintain a register of approved persons.
- (2) The register is to contain such information relating to approved persons as the Commissioners think fit.

8P Penalty for contravention of section 8L(1)

- (1) A penalty is payable by a person who contravenes section 8L(1).
- (2) If the contravention is deliberate and concealed, the amount of the penalty is 100% of the potential lost revenue.
- (3) If the contravention is deliberate but not concealed, the amount of the penalty is 70% of the potential lost revenue.
- (4) In any other case, the amount of the penalty is 30% of the potential lost revenue.
- (5) The contravention is –
 - (a) “deliberate and concealed” if the contravention is deliberate and the person makes arrangements to conceal the contravention, and
 - (b) “deliberate but not concealed” if the contravention is deliberate but the person does not make arrangements to conceal the contravention.

8Q Potential lost revenue

- (1) The “potential lost revenue” in respect of a contravention of section 8L(1) is the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (2) The relevant quantity of smoking tobacco is equal to the quantity by weight of the raw tobacco in respect of which the controlled activity contravening section 8L(1) has been carried on.

-
- (3) In this section a reference to “smoking tobacco” is a reference to tobacco products within section 1(1)(d) (“other smoking tobacco”).

8R Assessment of penalty

- (1) Where a person becomes liable for a penalty under section 8P –
- (a) the Commissioners may assess the penalty, and
 - (b) if they do so, they must notify the person liable.
- (2) A notice under subsection (1)(b) must state the contravention in respect of which the penalty is assessed.
- (3) A penalty payable under section 8P must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
- (4) An assessment is to be treated as an amount of duty due from the person liable for the penalty and may be recovered accordingly.
- (5) An assessment may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.
- (6) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty payable under section 8P.

8S Penalties: reasonable excuse

- (1) A person is not liable to a penalty under section 8P in respect of a contravention if –
- (a) the contravention is not deliberate, and
 - (b) the person satisfies the Commissioners that there is a reasonable excuse for the contravention.
- (2) For the purposes of subsection (1)(b), where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the contravention.

8T Penalties: double jeopardy

A person is not liable to a penalty under section 8P in respect of a contravention in respect of which the person has been convicted of an offence.

8U Forfeiture

Where a person contravenes section 8L(1) by carrying on a controlled activity in relation to raw tobacco otherwise than in accordance with an approval, the raw tobacco is liable to forfeiture.

8V Regulations about approval, registration etc.

- (1) The Commissioners may by regulations make provision –
- (a) regulating the approval and registration of persons under sections 8L to 8O,
 - (b) regulating the variation or revocation of an approval or registration, or of any condition or restriction to which an approval or registration is subject,

-
- (c) about the register maintained under section 8O,
 - (d) imposing obligations on approved persons, and
 - (e) for the failure of an approved person to comply with an obligation imposed by the regulations to attract a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (2) The regulations may, in particular –
- (a) require applications and other communications with the Commissioners to be made electronically,
 - (b) make provision as to the procedure for the approval and registration of bodies corporate which are members of the same group (as defined in the regulations), and
 - (c) make provision for members of a group to be jointly and severally liable for any penalties imposed under section 8P or in accordance with regulations under subsection (1)(e).

8W Modification of Customs and Excise Management Act 1979

For the purposes of sections 8K to 8V –

- (a) the Customs and Excise Management Act 1979 has effect in relation to approved persons as it has effect in relation to revenue traders, and
 - (b) section 163A(1) of that Act (power to search articles) has effect as if the reference to goods to which the section applies included a reference to raw tobacco which is liable to forfeiture under the customs and excise Acts.”
- (2) In section 9 of TPDA 1979 (regulations) –
- (a) after “statutory instrument and” insert “, subject to subsections (1A) and (1B),”, and
 - (b) after subsection (1) insert –
- “(1A) Regulations under section 8K(4) may not be made unless a draft of the instrument containing them has been laid before, and approved by resolution of, the House of Commons.
- (1B) A statutory instrument containing regulations under any of sections 8L(4), 8M(1)(b), (3) or (5), 8N(2) or 8V is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) In section 13A(2) of FA 1994 (customs and excise reviews and appeals: “relevant decisions”), after paragraph (g) insert –
- “(gb) any decision by HMRC that a person is liable to a penalty, or as to the amount of the penalty, under section 8P of the Tobacco Products Duty Act 1979;”.
- (4) In Schedule 5 to FA 1994 (decisions subject to review and appeal) after paragraph 5 insert –
- “5A Any decision –
- (a) to refuse an approval under section 8L of the Tobacco Products Duty Act 1979 (raw tobacco registration scheme: approval to carry on a controlled activity),
 - (b) under section 8M of that Act to impose a condition or restriction on, or to revoke or vary the terms of, an approval.”

-
- (5) The amendments made by this section come into force on such day as the Commissioners for Her Majesty's Revenue and Customs may by regulations made by statutory instrument appoint.
 - (6) Regulations under subsection (5) may appoint different days for different purposes.

Explanatory Note

Clause 82: Raw Tobacco Registration Scheme

Summary

1. This clause amends Parts 8 and 9 of Tobacco Products Duty Act (TPDA) 1979 to introduce new legislation requiring users and dealers of raw tobacco, to be registered by HM Revenue & Customs (HMRC). The scheme is due to have effect on or after 1 October 2016.

Details of the clause

Section 8K: Raw Tobacco: Definitions

2. Section 8K contains the definitions of raw tobacco and controlled activities.

Section 8L: Raw Tobacco: Requirement for approval

3. Subsection (1) states that raw tobacco can only be used by an approved person for a specified controlled activity.
4. Subsection (3) specifies that approval will only be given subject to the raw tobacco not being used for the purpose of or with a view to the fraudulent evasion on tobacco duty, activity and that the applicant also passes a fit and proper test.

Section 8M: Supplementary provision about approval

5. Subsection (1) provides a power to specify that an approval may be extant over a given time period and contain conditions or restrictions.
6. Subsection (2) provides a power to specify that a controlled activity can only take place upon notified premises and/or registered premises.
7. Subsection (5) provides a power to allow for revocation of an approval if a controlled activity is not undertaken over a specified time period.

Section 8N: Exception to the requirement for approval

8. This section provides an exception to the prohibition to those who solely transport raw tobacco to either a notified or registered premises.

Section 8P: Penalty for contravention of section 8L(1)

9. This section states that a penalty will be payable by a liable person if there is a contravention of section 8L(1). The amount of the penalty will be determined by the nature of the contravention and the value of the potential lost revenue. .

Section 8Q: Potential Lost Revenue

10. Subsection (1) states that the potential lost revenue is calculated by reference to the 'other smoking tobacco' duty rate as provided in Schedule 1 of Tobacco Products Duty Act (TPDA) 1979.

Section 8R: Assessment of penalty

11. Subsection (1) allows for a discretion in the assessment of a penalty.
12. Subsection (3) provides that a penalty must be paid before a period of 30 days following the notification of the penalty has lapsed.
13. Subsection (4) provides that the assessment is to be treated as an amount of duty to be due from the person liable for the contravention.
14. Subsection (5) provides that an assessment of a penalty may not be made more than one year after the contravention has been detected.
15. Subsection (6) details that if more than one contravention is breached then they will be treated as a single contravention for assessing a penalty.

Section 8S: Penalties: Reasonable Excuse

16. This section states that a person is not liable to a penalty if the person satisfies the Commissioners that there is a reasonable excuse for the contravention.

Section 8U: Forfeiture

17. This section states raw tobacco may be liable to forfeiture in respect of a contravention of section 8L(1).

Section 8V: Regulations about approval, registration etc.

18. This section provides the power to make regulations in order to facilitate the functionality of the raw tobacco registration scheme specifically for sections 8L to 8O Tobacco Products Duty Act (TPDA) 1979.

Section 8W: Modification of Customs and Excise Management Act 1979.

19. Subsection (1) provides that for the purposes of the registration scheme, approved persons are deemed to be 'revenue traders' for the purposes of using the power in the Customs and Excise Management Act 1979.
20. Subsection (2) states that any changes made to section 8K regarding the definitions of raw tobacco or a controlled activity can only be made by draft regulation being approved by the House of Commons. Other powers within this scheme are exercisable subject to annulment by the House of Commons.
21. Subsection (3) provides an amendment to be made to section 13A(2) FA 1994 to include any decision made by HMRC to the liability and the amount of a penalty under section 8P TPDA 1979.

22. Subsection (4) amends section Schedule 5 of FA 1994 to include the refusal of an approval request to be subject to review and appeal.

Background note

23. This clause has been introduced to prohibit the use of raw tobacco by an unregistered person, to prevent the illegal manufacture of tobacco products, by introducing effective controls and deterrence.
24. Raw tobacco which is not yet in a smokeable form is not subject to excise duty or any possession controls. This is presenting an increasing risk of evasion of tobacco products duty through raw tobacco being freely and legally imported and either processed into smoking products in unregistered premises or sold in small quantities to consumers for home processing.
25. At March Budget 2015, following consultation, the Government announced its intention to introduce a registration scheme to tighten controls on the use of raw tobacco in order to reduce the risk of evasion of tobacco products duty. The registration scheme was considered to be the least restrictive way to target the fraudulent evasion of tobacco duty through the importation of raw tobacco. HMRC intends to accept applications for registration from 1 October 2016, and the scheme is due to take effect from 1 January 2017.
26. If you have any questions about this change, or comments on the legislation, please contact Wendy Longworth on 03000 587927 (email: wendy.longworth@hmrc.gsi.gov.uk).

83 Office of Tax Simplification

- (1) There continues to be an Office of Tax Simplification (referred to in this Act as the “OTS”).
- (2) The Schedule contains provision about the OTS.

84 Functions of the OTS: general

- (1) The OTS must provide advice to the Chancellor of the Exchequer, on request or as the OTS considers appropriate, on the simplification of the tax system.
- (2) For the purposes of this section and section 85 –
 - (a) “the tax system” means the law relating to, and the administration of, relevant taxes,
 - (b) “relevant taxes” means taxes that the Commissioners for Her Majesty’s Revenue and Customs are responsible for collecting and managing, and
 - (c) a reference to “taxes” includes a reference to duties and national insurance contributions.
- (3) References in this section and section 85 (however expressed) to the simplification of the tax system include references to improving the efficiency of the administration of relevant taxes.

85 Functions of the OTS: reviews and reports

- (1) At the request of the Chancellor of the Exchequer, the OTS must conduct a review of an aspect of the tax system for the purpose of identifying whether, and if so how, that aspect of the tax system could be simplified.
- (2) The OTS must prepare a report –
 - (a) setting out the results of the review, and
 - (b) making such recommendations (if any) as the OTS consider appropriate.
- (3) The OTS must send a copy of the report to the Chancellor of the Exchequer.
- (4) The Chancellor of the Exchequer must –
 - (a) publish the report, and
 - (b) lay a copy of the report before Parliament.
- (5) The Chancellor of the Exchequer must prepare and publish a response to the report.

86 Annual report

- (1) The OTS must prepare a report of the performance of its functions in each financial year.
- (2) The report relating to a financial year must be prepared as soon as reasonably practicable after the end of the financial year.
- (3) The OTS must –
 - (a) send a copy of the report to the Chancellor of the Exchequer, and
 - (b) publish the report.
- (4) The Chancellor of the Exchequer must lay a copy of the report before Parliament.
- (5) For the purposes of this paragraph, each of the following is a “financial year” –
 - (a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and
 - (b) each successive period of 12 months.

87 Review of the OTS

- (1) The Treasury must, before the end of each review period, conduct a review of the effectiveness of the OTS in performing its functions.
- (2) The “review period” means –
 - (a) in relation to the first review, the period of 5 years beginning with the day on which this section comes into force, and
 - (b) in relation to subsequent reviews, the period of 5 years beginning with the day on which the previous review was completed.
- (3) The Treasury must prepare and publish a report of each review.

88 Commencement

Sections 83 to 87 and the Schedule come into force on such day as the Treasury may by regulations made by statutory instrument appoint.

SCHEDULE TO CLAUSE 83

OFFICE OF TAX SIMPLIFICATION

Membership

- 1 (1) The OTS is to consist of not more than eight members.
- (2) The members of the OTS must include –
 - (a) a chair,
 - (b) a tax director (see sub-paragraph (5)),
 - (c) a representative of Her Majesty's Revenue and Customs, and
 - (d) a representative of the Treasury.
- (3) The additional members, if any, are to be nominated by the chair.
- (4) The members of the OTS are to be appointed by the Chancellor of the Exchequer.
- (5) A person may be appointed as a tax director of the OTS only if the Chancellor of the Exchequer is satisfied that the person has the necessary qualifications and experience to direct the manner in which the OTS discharges its functions.
- (6) The Chancellor of the Exchequer must consult the chair of the OTS before appointing a person as a tax director (subject to paragraph 3(3)).

Term of office

- 2 (1) A person holds and vacates office as a member of the OTS in accordance with the terms of the appointment, subject to the following provisions.
- (2) A period of appointment may not exceed 5 years.
- (3) A person who ceases to be a member of the OTS is eligible for re-appointment.

Appointment of initial members

- 3 (1) Sub-paragraphs (2) and (3) apply where a person (P) appointed under paragraph 1(2)(a) or (b) was, immediately before the appointment, the chair or tax director (as the case may be) of the non-statutory Office of Tax Simplification.
- (2) P's period of appointment is to be taken to have begun with the appointment of P as the chair or tax director (as the case may be) of the non-statutory Office of Tax Simplification.

-
- (3) The requirement in paragraph 1(6) does not apply where P was, immediately before P's appointment under paragraph 1(2)(b), the tax director of the non-statutory Office of Tax Simplification.

Termination of appointments

- 4 A member of the OTS may at any time resign by giving written notice to the Chancellor of the Exchequer.
- 5 (1) The Chancellor of the Exchequer may terminate the appointment of a member of the OTS by giving the member written notice.
- (2) In the case of a member appointed for the purposes of paragraph 1(2)(a) or (b) or (3), the Chancellor of the Exchequer may only terminate the appointment if—
- (a) the member has been absent from meetings of the OTS without the OTS's permission for a period of more than 3 months,
 - (b) the member becomes bankrupt (see sub-paragraph (3)),
 - (c) the member has failed to comply with the terms of the appointment, or
 - (d) the member is, in the opinion of the Chancellor of the Exchequer, unable, unfit or unwilling to carry out the member's functions.
- (3) A member becomes bankrupt if—
- (a) in England and Wales or Northern Ireland, a bankruptcy order is made in relation to the member,
 - (b) in Scotland, the member's estate is sequestrated.

Remuneration

- 6 The Treasury may pay a member of the OTS such remuneration and allowances as the Treasury may determine.

Provision of staff and facilities etc.

- 7 The Treasury may provide the OTS with such staff, accommodation, services and other facilities as appear to the Treasury to be necessary or expedient for the proper performance by the OTS of its functions.

Validity of proceedings

- 8 The OTS may regulate its own procedure.
- 9 The validity of anything done by the OTS is not affected by—
- (a) any vacancy in the membership of the OTS, or
 - (b) any defect in the appointment of a member of the OTS.

Supplementary powers

- 10 The OTS may do anything that appears to it to be necessary or appropriate for the purpose of, or in connection with, the performance of its functions.

Finance

- 11 (1) The Treasury may make to the OTS such payments out of money provided by Parliament as the Treasury considers appropriate for the purpose of enabling the Office to meet its expenses.
- (2) Payments are to be made at such times, and subject to such conditions, as the Treasury may determine.

Disqualification

- 12 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—
“The Office of Tax Simplification.”
- 13 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—
“The Office of Tax Simplification.”

Freedom of information

- 14 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which the Act applies) insert at the appropriate place—
“The Office of Tax Simplification.”

Public sector equality duty

- 15 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty) under the heading “Industry, business, finance etc.” insert at the appropriate place—
“The Office of Tax Simplification.”

Explanatory Note

Clauses 83, 84, 85, 86, 87, 88 and Schedule: Office of Tax Simplification

Summary

1. This clause and Schedule provides for the permanent establishment of the Office of Tax Simplification (OTS) in statute, sets out its functions and makes certain provisions for its governance and operation. The clause and Schedule take effect from a Treasury appointed day.

Details of the clause and Schedule

Clause

2. Section 1(1) establishes the OTS in statute.
3. Section 1(2) introduces Schedule 1 which sets out various provisions for the governance and operation of the OTS.
4. Section 2(1) sets out that the function of the OTS is to advise the Chancellor on simplifying the tax system, either at the Chancellor's request or of its own accord.
5. Section 2(2) provides that the tax system means those taxes (including the legislation for administering those taxes) for which HM Revenue and Customs are responsible for, including duties and national insurance contributions.
6. Section 2(3) ensures that any references in Sections 2 and 3 to simplification of the tax system includes improving the efficiency of the administration of relevant taxes.
7. Section 3(1) specifies that the Chancellor can instruct the OTS to carry out a review to provide advice on simplifying any aspect of the tax system.
8. Sections 3(2) and (3) require the OTS to report to the Chancellor on the results of its review and make any recommendations it considers appropriate.
9. Sections 3(4) and (5) require the Chancellor to publish the OTS report, provide a copy of it to Parliament, and publish a government response.
10. Sections 4(1), (2), (3) and (4) require the OTS to provide the Chancellor with, and publish, an annual report about its work as soon as reasonably possible after the end of every financial year, and that the Chancellor has to provide a copy of this report to Parliament.
11. Section 4(5) specifies that a financial year for the purposes of the OTS annual report begins

with the day that this section comes into effect and ends on the following 31 March. Successive financial years then begin on 1 April ending 12 months later on the following 31 March.

12. Section 5(1) provides for the Treasury to review the effectiveness of the work of the OTS. These reviews must be conducted before the end of a specified review period.
13. Section 5(2) specifies this review period. The first review must be conducted before the end of a 5 year period beginning with the day that this section takes effect. The following reviews must be conducted before the end of a 5 year period beginning with the day on which the previous review was completed.
14. Section 5(3) requires the Treasury to publish a report of each such review.
15. Section 6 provides for this legislation establishing the OTS (Sections 1 to 5 and Schedule 1) to take effect from an appointed day set out by the Treasury in regulations.

Schedule 1: Office of Tax Simplification

16. Paragraph 1 makes provision about the membership of the OTS. The OTS will not have more than 8 members. These members must include the chair and a tax director and representatives of the Treasury and HM Revenue and Customs. The chair nominates any additional members. All members are appointed by the Chancellor, however, the Chancellor needs to be satisfied that the tax director has the necessary qualifications and experience for the post (which will, given the nature of the OTS's functions, include tax qualifications and experience). The Chancellor is required to consult the chair prior to the appointment of the tax director.
17. Paragraph 2 contains further provision about membership of the OTS. The terms of the appointment of OTS members are subject to the provisions of sub-paragraph (2). No appointment can be for longer than 5 years, but when members leave the OTS, they can be re-appointed.
18. Paragraph 3 makes provision about the appointment of initial members of the OTS, specifically the chair and tax director. Where the current chair and tax director of the non-statutory OTS are appointed chair and tax director respectively of the statutory OTS, the durations of their appointment begins with the date of their appointment to that non-statutory body. The Chancellor does not need to consult the chair about the appointment of the tax director if that person is the current tax director of the non-statutory OTS.
19. Paragraph 4 specifies that OTS members can leave at any time during their period of appointment by writing to the Chancellor to resign from their post.
20. Paragraph 5 permits the Chancellor to terminate the appointment of an OTS member by giving the member written notice. In the case of the chair, tax director or OTS members nominated by the chair, paragraphs 5(2) and (3) set out the conditions under which the Chancellor can terminate these appointments.
21. Paragraph 6 inserts provision for the Treasury to decide on the remuneration and allowances that it may pay to each member of the OTS.
22. Paragraph 7 makes provision for the Treasury to provide the OTS with any staff, offices and other services and facilities that the Treasury may decide is necessary for the proper performance of the OTS' work.

23. Paragraphs 8, 9 and 10 insert provisions that permit the OTS to establish its own internal governance and controls, as well as operating procedures and process that it may decide is necessary for the proper performance of its work. A vacancy in the membership of the OTS or a defect in the appointment of a member will not affect the validity of the work of the OTS.
24. Paragraph 11 permits the Treasury to provide the OTS with a budget that it considers appropriate for funding the work of the OTS, subject to any conditions that it may determine.
25. Paragraphs 12, 13, 14 and 15 insert provisions to bring the OTS within the scope of the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975, Freedom of Information Act 2000 and the public sector equality duty established by section 149 of the Equality Act 2010.

Background note

26. The OTS was established as a temporary, non-statutory office of the Treasury in July 2010 to provide independent advice to the government on simplifying the UK tax system.
27. At the Summer Budget on 8 July 2015, the Chancellor announced the government's intention to introduce legislation in 2016 to put the OTS on a permanent, statutory footing with an expanded role and capacity.
28. If you have any questions about this change, or comments on the legislation, please contact Matthew Henty on 020 7270 4997 (email: Matthew.Henty@hmtreasury.gsi.gov.uk).

HM Revenue & Customs contact

HM Revenue & Customs
100 Parliament Street,
Westminster
London
SW1A 2BQ

HM Treasury contact

HM Treasury
1 Horse Guards Road,
Westminster
London
SW1A 2HQ

Tel: 020 7270 5000

This document can be found in full on our
website at: www.gov.uk