

# Draft provisions for Finance Bill 2017

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## PART 1

### DIRECT TAXES

#### CHAPTER 1

#### INCOME TAX

##### *Employment income*

### **1 Workers' services provided to public sector through intermediaries**

Schedule 1 makes provision about workers' services provided to the public sector through intermediaries.

### **2 Optional remuneration arrangements**

Schedule 2 contains provisions about optional remuneration arrangements.

### **3 Taxable benefits: time limit for making good**

- (1) Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings) is amended as follows.
- (2) In section 87 (cash equivalent of benefit of non-cash voucher) –
  - (a) in subsection (2)(b), for “to the person incurring it” substitute “, to the person incurring it, on or before 6 July following the relevant tax year”, and
  - (b) after subsection (2) insert –
    - “(2A) If the voucher is a non-cash voucher other than a cheque voucher, the relevant tax year is –
      - (a) the tax year in which the cost of provision is incurred, or
      - (b) if later, the tax year in which the employee receives the voucher.
    - (2B) If the voucher is a cheque voucher, the relevant tax year is the tax year in which the voucher is handed over in exchange for money, goods or services.”
- (3) In section 88(3) (time at which cheque voucher treated as handed over), at the beginning insert “For the purposes of subsection (2) and section 87(2B),”.
- (4) In section 94(2) (cash equivalent of benefit of credit-token), in paragraph (b), for the words from “employee” to the end substitute “employee –
  - (i) to the person incurring it, and
  - (ii) on or before 6 July following the tax year which contains the occasion in question.”

- (5) In section 105(2) (cash equivalent of benefit of living accommodation costing £75,000 or less), in paragraph (b), after “made good” insert “, on or before 6 July following the tax year which contains the taxable period,”.
- (6) In section 106(3) (cash equivalent of benefit of living accommodation costing over £75,000), in paragraph (a), for the words from “paid” to “exceeds” substitute “paid—
- (i) by the employee,
  - (ii) in respect of the accommodation,
  - (iii) to the person providing it, and
  - (iv) on or before 6 July following the tax year which contains the taxable period,
- exceeds”.
- (7) In section 144 (deduction for payments for private use of car)—
- (a) in subsection (1)(b), for “in” substitute “on or before 6 July following”,
  - (b) in subsection (2), after “paid” insert “as mentioned in subsection (1)(b)”, and
  - (c) in subsection (3), after “paid” insert “as mentioned in subsection (1)(b)”.
- (8) In section 151(2) (when cash equivalent of benefit of car fuel is nil)—
- (a) in the words before paragraph (a) omit “in the tax year in question”,
  - (b) in paragraph (a), at the beginning insert “in the tax year in question”, and
  - (c) in paragraph (b), at the end insert “on or before 6 July following that tax year”.
- (9) In section 152(2) (car fuel: proportionate reduction of cash equivalent)—
- (a) in the words before paragraph (a) omit “for any part of the tax year in question”,
  - (b) in paragraph (a), at the beginning insert “for any part of the tax year in question”,
  - (c) in paragraph (b), at the beginning insert “for any part of the tax year in question”, and
  - (d) in paragraph (c)—
    - (i) after “employee”, in the first place it occurs, insert “—
      - (i) for any part of the tax year in question”, and
    - (ii) for “and the employee does make good that expense” substitute “, and
      - (ii) the employee does make good that expense on or before 6 July following that tax year”.
- (10) In section 158 (reduction for payments for private use of van)—
- (a) in subsection (1)(b), for “in” substitute “on or before 6 July following”,
  - (b) in subsection (2), after “paid” insert “as mentioned in subsection (1)(b)”, and
  - (c) in subsection (3), after “paid” insert “as mentioned in subsection (1)(b)”.
- (11) In section 162(2) (when cash equivalent of benefit of van fuel is nil)—
- (a) in the words before paragraph (a) omit “in the tax year in question”,

- (b) in paragraph (a), at the beginning insert “in the tax year in question,”,  
and
  - (c) in paragraph (b), at the end insert “on or before 6 July following that tax year”.
- (12) In section 163(3) (van fuel: proportionate reduction of cash equivalent) –
- (a) in the words before paragraph (a) omit “for any part of the tax year in question”,
  - (b) in paragraph (a), at the beginning insert “for any part of the tax year in question,”,
  - (c) in paragraph (b), at the beginning insert “for any part of the tax year in question,”, and
  - (d) in paragraph (c) –
    - (i) after “employee”, in the first place it occurs, insert “ –
      - (i) for any part of the tax year in question,”,  
and
      - (ii) for “and the employee does make good that expense” substitute  
“, and
        - (ii) the employee does make good that  
expense on or before 6 July following that  
tax year”.
- (13) In section 203(2) (cash equivalent of benefit treated as earnings), for “to the persons providing the benefit” substitute “, to the persons providing the benefit, on or before 6 July following the tax year in which it is provided”.
- (14) The amendments made by this section have effect for the purpose of calculating income tax charged for the tax year 2017-18 or any subsequent tax year.

#### **4 Taxable benefits: ultra-low emission vehicles**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 139 (car with a CO<sub>2</sub> emissions figure: the appropriate percentage), for subsections (1) to (6) substitute –
  - “(1) The appropriate percentage for a year for a car with a CO<sub>2</sub> emissions figure of less than 75 is determined in accordance with the following table.

<i>Car</i>	<i>Appropriate percentage</i>
Car with CO <sub>2</sub> emissions figure of 0	2%
Car with CO <sub>2</sub> emissions figure of 1 - 50	
Car with electric range figure of 130 or more	2%
Car with electric range figure of 70 - 129	5%
Car with electric range figure of 40 - 69	8%
Car with electric range figure of 30 - 39	12%
Car with electric range figure of less than 30	14%
Car with CO <sub>2</sub> emissions figure of 51 - 54	15%
Car with CO <sub>2</sub> emissions figure of 55 - 59	16%
Car with CO <sub>2</sub> emissions figure of 60 - 64	17%
Car with CO <sub>2</sub> emissions figure of 65 - 69	18%
Car with CO <sub>2</sub> emissions figure of 70 - 74	19%

- (2) For the purposes of subsection (1) and the table, if a CO<sub>2</sub> emissions figure or an electric range figure is not a whole number, round it down to the nearest whole number.
- (3) The appropriate percentage for a year for a car with a CO<sub>2</sub> emissions figure of 75 or more is whichever is the lesser of—
- 20% plus one percentage point for each 5 grams per kilometre driven by which the CO<sub>2</sub> emissions figure exceeds 75, and
  - 37%.
- (4) For the purposes of subsection (3), if a CO<sub>2</sub> emissions figure is not a multiple of 5, round it down to the nearest multiple of 5.
- (5) In this section, an “electric range figure” is the number of miles which is the equivalent of the number of kilometres specified in an EC certificate of conformity, an EC type-approval certificate or a UK approval certificate on the basis of which a car is registered, as being the maximum distance for which the car can be driven in electric mode without recharging the battery.”
- (3) In section 140 (car without a CO<sub>2</sub> emissions figure: the appropriate percentage)—
- in subsection (2), in the table —
    - for “23%” substitute “24%”, and
    - for “34%” substitute “35%”;
  - in subsection (3)(a), for “16%” substitute “2%”.
- (4) In section 142(2) (car first registered before 1 January 1998: the appropriate percentage), in the table—

- (a) for “23%” substitute “24%”, and
  - (b) for “34%” substitute “35%”.
- (5) Omit subsection 170(3).
- (6) The amendments made by this section have effect for the tax year 2020-21 and subsequent tax years.

## 5 Taxable benefits: asset made available without transfer

- (1) ITEPA 2003 is amended as follows.
- (2) In section 205 (cost of taxable benefit subject to the residual charge: asset made available without transfer) –
- (a) in subsection (1), for paragraph (a) substitute –
    - “(a) the benefit consists in an asset being made available for private use, and”,
  - (b) after subsection (1) insert –
    - “(1A) In this section and section 205A, “private use” means private use by the employee or a member of the employee’s family or household.
    - (1B) For the purposes of subsection (1) and sections 205A and 205B, an asset made available in a tax year for use by the employee or a member of the employee’s family or household is to be treated as made available throughout the year for private use unless –
      - (a) at all times in the year when it is available for use by the employee or a member of the employee’s family or household, the terms under which it is made available prohibit private use, and
      - (b) no private use is made of it in the year.
    - (1C) The cost of the taxable benefit is –
      - (a) the annual cost of the benefit determined in accordance with subsection (2), less
      - (b) any amount required to be deducted by section 205A (deduction for periods when asset unavailable for private use).
    - (1D) In certain cases, the cost of the taxable benefit is calculated under this section in accordance with section 205B (reduction of cost of taxable benefit where asset is shared).”, and
  - (c) in subsection (2), in the words before paragraph (a), for “cost of the taxable” substitute “annual cost of the”.

- (3) After section 205 insert –

### “205A Deduction for periods when asset unavailable for private use

- (1) A deduction is to be made under section 205(1C)(b) if the asset mentioned in section 205(1) has been unavailable for private use on any day during the tax year concerned.
- (2) For the purposes of this section an asset is “unavailable” for private use on any day if –

- (a) that day falls before the day on which the asset is first available to the employee,
- (b) that day falls after the day on which the asset is last available to the employee,
- (c) for more than 12 hours during that day the asset –
  - (i) is not in a condition fit for use,
  - (ii) is undergoing repair or maintenance,
  - (iii) could not lawfully be used,
  - (iv) is in the possession of a person who has a lien over it and who is not the employer, not a person connected with the employer, not the employee, not a member of the employee’s family and not a member of the employee’s household, or
  - (v) is used in a way that is neither use by, nor use at the direction of, the employee or a member of the employee’s family or household, or
- (d) on that day the employee –
  - (i) uses the asset in the performance of the duties of the employment, and
  - (ii) does not use the asset otherwise than in the performance of the duties of the employment.

- (3) The amount of the deduction is given by –

$$\frac{U}{Y} \times A$$

where –

U is the number of days, in the tax year concerned, on which the asset is unavailable for private use,

Y is the number of days in that year, and

A is the annual cost of the benefit of the asset determined under section 205(2).

- (4) The reference in subsection (2)(a) to the time when the asset is first available to the employee is to the earliest time when the asset is made available, by reason of the employment and without any transfer of the property in it, for private use.
- (5) The reference in subsection (2)(b) to the time when the asset is last available to the employee is to the last time when the asset is made available, by reason of the employment and without any transfer of the property in it, for private use.

**205B Reduction of cost of taxable benefit where asset is shared**

- (1) This section applies where the cost of an employment-related benefit (“the taxable benefit”) is to be determined under section 205.
- (2) If, for the whole or part of the tax year concerned, the same asset is available for more than one employee’s private use at the same time, the total of the amounts which are the cost of the taxable benefit for each of those employees is to be limited to the annual cost of the benefit of the asset determined in accordance with section 205(2).

- (3) The cost of the taxable benefit for each employee is determined by taking the amount given by section 205(1C) and then reducing that amount on a just and reasonable basis.
- (4) For the purposes of this section, an asset is available for an employee's private use if it is available for private use by the employee or a member of the employee's family or household."
- (4) In section 365 (deductions where employment-related benefit provided) –
  - (a) in subsection (1) –
    - (i) omit the "and" at the end of paragraph (a), and
    - (ii) after that paragraph insert –
      - (aa) the cost of the benefit was determined under section 204 or 206, and",
  - (b) in subsection (3), for "sections 204 to 206" substitute "section 204 or 206", and
  - (c) in the heading, for "employment-related benefit" substitute "certain employment-related benefits".
- (5) The amendments made by this section have effect for the tax year 2017-18 and subsequent tax years.

## 6 Pensions advice

- (1) In Chapter 9 of Part 4 of ITEPA 2003, after section 308B insert –

**“308C Provision of pensions advice: limited exemption**

  - (1) No liability to income tax arises in respect of –
    - (a) the provision of relevant pensions advice to an employee or former or prospective employee, or
    - (b) the payment or reimbursement of costs incurred, by or in respect of an employee or former or prospective employee, in obtaining relevant pensions advice,if Condition A or B is met.
  - (2) But subsection (1) does not apply in relation to a person in a tax year so far as the value of the exemption in the person's case in that year exceeds £500.
  - (3) The "value of the exemption", in relation to a person and a tax year, is the amount exempted by subsection (1) from income tax in the person's case in that year, disregarding subsection (2) for this purpose.
  - (4) If in a tax year there is in relation to an individual more than one person who is an employer or former employer, subsections (1) to (3) apply in relation to the individual as employee or former or prospective employee of any one of those persons separately from their application in relation to the individual as employee or former or prospective employee of any other of those persons.
  - (5) "Relevant pensions advice", in relation to a person, means information, or advice, in connection with –
    - (a) the person's pension arrangements, or
    - (b) the use of the person's pension funds.

- (6) Condition A is that the relevant pensions advice, or payment or reimbursement, is provided under a scheme that is open –
  - (a) to the employer’s employees generally, or
  - (b) generally to the employer’s employees at a particular location.
- (7) Condition B is that the relevant pensions advice, or payment or reimbursement, is provided under a scheme that is open generally to the employer’s employees, or generally to those of the employer’s employees at a particular location, who –
  - (a) have reached the minimum qualifying age, or
  - (b) meet the ill-health condition.
- (8) The “minimum qualifying age”, in relation to an employee, means the employee’s relevant pension age less 5 years.
- (9) “Relevant pension age”, in relation to an employee, means –
  - (a) where paragraph 22 or 23 of Schedule 36 to FA 2004 applies in relation to the employee and a registered pension scheme of which the employee is a member, the employee’s protected pension age (see paragraph 22(8) and 23(8) of Schedule 36 to FA 2004), or
  - (b) in any other case, the employee’s normal minimum pension age, as defined by section 279(1) of FA 2004.
- (10) The “ill-health condition” is met by an employee if the employer is satisfied, on the basis of evidence provided by a registered medical practitioner, that the employee is (and will continue to be) incapable of carrying on his or her occupation because of physical or mental impairment.”
- (2) In section 228 of ITEPA 2003 (effect of exemptions on liability under provisions outside Part 2 of ITEPA 2003), in subsection (2), after paragraph (da) insert –
 

“(db) section 308C (provision of pensions advice).”
- (3) Regulation 5 of the Income Tax (Exemption of Minor Benefits) Regulations 2002 (S.I. 2002/205) (exemption in respect of the provision of pensions advice) is revoked.
- (4) In regulation 2 of the Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2004 (S.I. 2004/3087) omit the inserted regulation 5.
- (5) The amendments made by this section have effect for the tax year 2017-18 and subsequent tax years.

## **7 Deductions for employee liabilities: certain legal expenses etc**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 346 (employment income: deductions for employee liabilities) –
  - (a) in the heading, at the end insert “and expenses”,
  - (b) after paragraph B (in subsection (1)) insert –
 

“BA Payment of any costs or expenses not falling within paragraph B which are incurred in connection with the employee giving evidence about matters related to the employment in, or for the purposes of –

- (a) a proceeding or other process (whether or not involving the employee), or
  - (b) an investigation (whether or not likely to lead to any proceeding or other process involving the employee).
- BB Payment of any costs or expenses not falling within paragraph B or BA which are incurred in connection with a proceeding or other process, or an investigation, in which –
  - (a) acts of the employee related to the employment, or
  - (b) any other matters related to the employment, are being or are likely to be considered.”,
- (c) in paragraph C(b) (in subsection (1)), after “B” insert “, BA or BB”,
- (d) in subsection (2) for “or B” substitute “B, BA or BB”,
- (e) in subsection (2A), for “paragraph A, B or C” substitute “any of paragraphs A to C”, and
- (f) after subsection (3) insert –
  - “(4) In this section –
    - (a) “acts” includes failures to act and acts are “related to the employment” if the employee was acting –
      - (i) in the capacity of the holder of the employment, or
      - (ii) in any other capacity in which the employee was acting in the performance of the duties of the employment,
    - (b) “giving evidence” includes making a formal or informal statement or answering questions,
    - (c) “proceeding or other process” includes any civil, criminal or arbitration proceedings, any disciplinary or regulatory proceedings of any kind and any process operated for resolving disputes or adjudicating on complaints, and
    - (d) references to a proceeding or other process or an investigation include a reference to a proceeding or other process or an investigation that is likely to take place.”
- (3) In section 349 (meaning of qualifying insurance contract), in subsection (2) –
  - (a) after paragraph (c) insert –
    - “(ca) the payment of costs or expenses incurred in connection with an employee giving evidence about matters related to the employee’s employment in, or for the purposes of –
      - (i) a proceeding or other process (whether or not involving the employee), or
      - (ii) an investigation (whether or not likely to lead to any proceeding or other process involving the employee),
    - (cb) the payment of any costs or expenses incurred in connection with a proceeding or other process, or an investigation, in which –
      - (i) acts of an employee related to the employment, or

- (ii) any other matters related to the employment of an employee,  
are being or are likely to be considered.”, and
- (b) in subsection (2)(d), after “(c)” insert “, (ca) or (cb)”.
- (4) In section 558 (deductions for liabilities of former employees: meaning of deductible payment) –
  - (a) in paragraph B (in subsection (1)) insert –
    - “BA Payment of any costs or expenses not falling within paragraph B which are incurred in connection with the former employee giving evidence about matters related to the former employment in, or for the purposes of –
      - (a) a proceeding or other process (whether or not involving the former employee), or
      - (b) an investigation (whether or not likely to lead to any proceeding or other process involving the former employee).
    - BB Payment of any costs or expenses not falling within paragraph B or BA which are incurred in connection with a proceeding or other process, or an investigation, in which –
      - (a) acts of the former employee related to the former employment, or
      - (b) any other matters related to the former employment, are being or are likely to be considered.”, and
  - (b) in paragraph C(b) (in subsection (1)), after “B” insert “, BA or BB”,
  - (c) in subsection (2), for “or B” substitute “B, BA or BB”,
  - (d) after subsection (3) insert –
    - “(4) In this section –
      - (a) “acts” includes failures to act and acts are “related to the former employment” if the former employee was acting –
        - (i) in the capacity of the holder of that employment, or
        - (ii) in any other capacity in which the former employee was acting in the performance of the duties of that employment,
      - (b) “giving evidence” includes making a formal or informal statement or answering questions,
      - (c) “proceeding or other process” includes any civil, criminal or arbitration proceedings, any disciplinary or regulatory proceedings of any kind and any process operated for resolving disputes or adjudicating on complaints, and
      - (d) references to a proceeding or other process or an investigation include a reference to a proceeding or other process or an investigation that is likely to take place.”
- (5) In section 560 (deductions for liabilities of former employees: meaning of qualifying insurance contract), in subsection (2) –
  - (a) after paragraph (c) insert –

- “(ca) the payment of costs or expenses incurred in connection with a former employee giving evidence about matters related to the former employment in, or for the purposes of –
      - (i) a proceeding or other process (whether or not involving the former employee), or
      - (ii) an investigation (whether or not likely to lead to any proceeding or other process involving the former employee).
    - (cb) the payment of any costs or expenses incurred in connection with a proceeding or other process, or an investigation, in which –
      - (i) acts of a former employee related to the employment, or
      - (ii) any other matters related to the former employment of a former employee,are being or are likely to be considered.”, and
  - (b) in paragraph (d), after “(c)” insert “, (ca) or (cb)”.
- (6) The amendments made by this section have effect in relation to the tax year 2017-18 and subsequent tax years.

## **8 Termination payments: treatment of certain legal expenses etc**

- (1) Chapter 3 of Part 6 of ITEPA 2003 (employment income which is not earnings or share-related: employer-financed retirement benefits) is amended as follows.
- (2) In section 409 (exception for payments and benefits in respect of employee liabilities etc) –
  - (a) in the heading for “employee liabilities etc” substitute “certain legal expenses etc”, and
  - (b) in subsection (3), at the end insert “or by the employer or former employer on behalf of the individual”.
- (3) In section 410 (exception for payments and benefits in respect of employee liabilities etc: individual deceased) –
  - (a) in the heading for “employee liabilities etc” substitute “certain legal expenses etc”, and
  - (b) in subsection (3), at the end insert “or by the former employer on behalf of the individual’s personal representatives”.
- (4) The amendments made by this section have effect in relation to the tax year 2017-18 and subsequent tax years.

## **9 Termination payments etc: amounts chargeable to tax on employment income**

- (1) ITEPA 2003 is amended in accordance with subsections (2) to (11).
- (2) In section 7(5) (list of provisions under which amounts are treated as earnings), before the “or” at the end of paragraph (c) insert –
  - “(ca) section 402B (termination payments, and other benefits, that cannot benefit from section 403 threshold)”.

- (3) Before section 403 (charge on payments and benefits in excess of £30,000 threshold) insert –

**“402A Split of payments and other benefits between sections 402B and 403**

- (1) In this Chapter “termination award” means a payment or other benefit to which this Chapter applies because of section 401(1)(a).
- (2) Section 402B (termination awards not benefiting from threshold treated as earnings) applies to termination awards to the extent determined under section 402C.
- (3) Section 403 (charge on payment or benefit where threshold applies) applies to termination awards so far as they are not ones to which section 402B applies.
- (4) Section 403 also applies to payments and other benefits to which this Chapter applies because of section 401(1)(b) or (c) (change in duties or earnings).

**402B Termination awards not benefiting from threshold to be treated as earnings**

- (1) The amount of a termination award to which this section applies is treated as an amount of earnings of the employee, or former employee, from the employment.
- (2) See also section 7(3)(b) and (5)(ca) (which cause amounts treated as earnings under this section to be included in general earnings).
- (3) Section 403(3) (when benefits are received) does not apply in relation to payments or other benefits to which this section applies.

**402C The termination awards to which section 402B applies**

- (1) This section has effect for the purpose of identifying the extent to which section 402B applies to termination awards in respect of the termination of the employment of the employee.
- (2) In this section “relevant termination award” means a termination award that is neither –
  - (a) a redundancy payment, nor
  - (b) so much of an approved contractual payment as is equal to or less than the amount which would have been due if a redundancy payment had been payable.
- (3) If the post-employment notice pay (see section 402D) in respect of the termination is greater than, or equal to, the total amount of the relevant termination awards in respect of the termination, section 402B applies to all of those relevant termination awards.
- (4) If the post-employment notice pay in respect of the termination is less than the total amount of the relevant termination awards in respect of the termination but is not nil –
  - (a) section 402B applies to a part of those relevant termination awards, and
  - (b) the amount of that part is equal to the post-employment notice pay.

- (5) Section 309(4) to (6) (meaning of “redundancy payment” and “approved contractual payment” etc) apply for the purposes of subsection (2) as they apply for the purposes of section 309.

**402D “Post-employment notice pay”**

- (1) “The post-employment notice pay” in respect of a termination is (subject to subsection (9)) given by –

$$\left( \frac{BP \times D}{Y} \right) - T$$

where –

BP, D and Y are given by subsections (3) to (8), and

T is the total of the amounts of any payment or benefit received by the employee in connection with the termination which would fall within section 401(1)(a) but for section 401(3).

- (2) If the amount given by the formula in subsection (1) is a negative amount, the post-employment notice pay is nil.
- (3) Subject to subsections (5) to (7) –  
BP is the employee’s basic pay (see subsection (8)) from the employment for the year ending with the trigger date,  
D is the number of days in the post-employment notice period,  
and  
Y is 365.
- (4) See section 402E for the meaning of “post-employment notice period” and “trigger date”.
- (5) If the period beginning with the day the employment starts, and ending with the trigger date, is shorter than a year then –  
BP is the employee’s basic pay from the employment for that shorter period,  
D is the number of days in the post-employment notice period,  
and  
Y is the number of days in that shorter period.
- (6) If subsection (5) does not apply, and the employee is paid weekly throughout the 52 weeks ending with the trigger date, then –  
BP is the employee’s basic pay from the employment for the 52 weeks ending with the trigger date,  
D is the number of days in the post-employment notice period,  
and  
Y is 364.
- (7) If neither of subsections (5) and (6) applies, and the minimum notice (see section 402E) is given by contractual terms and is expressed to be a whole number of months, and if the post-employment notice period is equal in length to the minimum notice or is otherwise a whole number of months –  
BP is the employee’s basic pay from the employment for the year ending with the trigger date,  
D is the length of the post-employment notice period expressed in months, and

Y is 12.

- (8) In this section “basic pay” means—
- (a) employment income of the employee from the employment but disregarding—
    - (i) any amount received by way of overtime, bonus, commission, gratuity or allowance,
    - (ii) any amount received in connection with the termination of the employment, and
    - (iii) any amount treated as earnings under Chapters 2 to 11 of Part 3 (the benefits code), and
  - (b) any amount which the employee has given up the right to receive but which would have fallen within paragraph (a) had the employee not done so.
- (9) Where the purpose, or one of the purposes, of any arrangements is the avoidance of tax by causing the post-employment notice pay calculated under subsection (1) to be less than it would otherwise be, the post-employment notice pay is to be treated as the amount which the post-employment notice pay would have been but for the arrangements.
- (10) In subsection (9) “arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.

**402E Meaning of “post-employment notice period” and “trigger date” in section 402D**

- (1) Subsections (2), (3), (6) and (7) have effect for the purposes of section 402D (and subsection (6) has effect also for the purposes of this section).
- (2) The “post-employment notice period” is the period—
- (a) beginning at the end of the last day of the employment, and
  - (b) ending with the earliest lawful termination date.
- (3) If the earliest lawful termination date is, or precedes, the last day of the employment, the number of days in the post-employment notice period is nil.
- (4) “The earliest lawful termination date” is the last day of the period which—
- (a) is equal in length to the minimum notice, and
  - (b) begins at the end of the trigger date.
- (5) For the purposes of this section, the termination is a “notice case” if the employer or employee gives notice to the other to terminate the employment, and here it does not matter—
- (a) whether the notice is more or less than, or the same as, the minimum notice, or
  - (b) if the employment ends before the notice expires.
- (6) The “minimum notice” is the minimum notice required to be given by the employer to terminate the employee’s employment in accordance with the law and contractual terms effective—
- (a) where the termination is not a notice case, immediately before the employment ends, and

- (b) where the termination is a notice case, immediately before the notice is given.
- (7) The “trigger date” is—
  - (a) if the termination is not a notice case, the last day of the employment,
  - (b) if the termination is a notice case, the day the notice is given.”
- (4) In section 403 (charges on payments and benefits which can benefit from threshold)—
  - (a) in subsection (1), for “Chapter” substitute “section”,
  - (b) in subsection (3), after “Chapter” insert “(but see section 402B(3))”,
  - (c) in subsection (4), for the words from “when” to “exceeds” substitute “when aggregated with—
    - (a) other payments or benefits in respect of the employee or former employee that are payments or benefits to which this section applies, and
    - (b) other payments or benefits in respect of the employee or former employee that are payments or benefits—
      - (i) received in the tax year 2017-18 or an earlier tax year, and
      - (ii) to which this Chapter applied in the tax year of receipt,it exceeds”,
  - (d) in subsection (5)(a), for “Chapter” substitute “section”,
  - (e) in subsection (6), after “employment income” insert “or, as the case may be, in relation to whom section 402B(1) provides for an amount to be treated as an amount of earnings”, and
  - (f) in the heading, at the end insert “where threshold applies”.
- (5) In section 404 (how the threshold applies)—
  - (a) in subsection (3)(b) (meaning of “termination or change date”), for “this Chapter” substitute “section 403”, and
  - (b) after subsection (5) insert—
    - “(6) In subsection (3)(b), the reference to a payment or other benefit to which section 403 applies includes a reference to a payment or other benefit—
      - (a) received in the tax year 2017-18 or an earlier tax year, and
      - (b) to which this Chapter applied in the tax year of receipt.”
- (6) After section 404A insert—

**“404B Power to vary threshold**

  - (1) The Treasury may by regulations amend the listed provisions by substituting, for the amount for the time being mentioned in those provisions, a different amount.
  - (2) The listed provisions are—
    - subsections (1), (4) and (5) of section 403, and
    - subsections (1), (4) and (5) of section 404 and its heading.
  - (3) Regulations under this section may include transitional provision.

- 
- (4) A statutory instrument containing regulations under this section which reduce the mentioned amount may not be made unless a draft of it has been laid before, and approved by a resolution of, the House of Commons.”
- (7) In section 406 (exception in cases of death, injury or disability) –
- (a) the existing text becomes subsection (1), and
  - (b) after that subsection insert –
    - “(2) In subsection (1) “injury” does not include injured feelings unless they amount to a psychiatric injury or other recognised medical condition.”
- (8) After section 412 insert –

**“412A Exception in certain cases of non-UK-based employment**

- (1) This Chapter does not apply to a payment or other benefit received in connection with the termination of an employee’s employment if the condition in subsection (2) is met.
- (2) The condition is that the employee’s relevant earnings (see subsection (3)) –
  - (a) so far as they are earnings from a period of employment in or after the tax year 2008-09, are earnings to which neither section 15, nor section 27, applies,
  - (b) so far as they are earnings from a period of employment in or after the tax year 2003-04 but before the tax year 2008-09, are earnings to which none of sections 15, 21, 25 and 27 as originally enacted applies,
  - (c) so far as they are earnings from a period of employment in or after the tax year 1974-75 but before the tax year 2003-04, are earnings –
    - (i) which were not chargeable under Case I of Schedule E, or
    - (ii) for which a deduction equal to the whole amount of the earnings was allowable under a foreign earnings deduction provision,
  - (d) so far as they are earnings from a period of employment in or after the tax year 1956-57 but before the tax year 1974-75, are earnings which were not chargeable under Case I of Schedule E, and
  - (e) so far as they are earnings from a period of employment before the tax year 1956-57, are earnings which were not chargeable under Schedule E.
- (3) The relevant earnings of the employee are –
  - (a) the earnings from the employment (“the terminated employment”) in connection with which the payment or other benefit mentioned in subsection (1) is received, and
  - (b) the earnings from all employments associated with the terminated employment.
- (4) For this purpose, earnings from an employment are associated with the terminated employment if at the time the earnings are received –
  - (a) the employer is the same,

- (b) one of the employers is under the control of the other employer,  
or
  - (c) one of the employers is under the control of a third person who controls or is under the control of the other employer.
- (5) In this section “foreign earnings deduction provision” means
  - (a) paragraph 1 of Schedule 2 to FA 1974,
  - (b) paragraph 1 of Schedule 7 to FA 1977, or
  - (c) section 192A or 193(1) of ICTA.”
- (9) In section 413 (exception in certain cases of foreign service) –
  - (a) in subsection (2) omit “(2A),”,
  - (b) omit subsection (2A),
  - (c) in subsection (3) –
    - (i) omit “but before the tax year 2013-14”, and
    - (ii) omit paragraph (a), including the “or” at the end,
  - (d) omit subsections (3ZA) and (3A),
  - (e) in subsection (4) omit paragraph (a), including the “or” at the end,
  - (f) in subsection (5) –
    - (i) in paragraph (a), after “1974” insert “so far as relating to employment as a seafarer”,
    - (ii) in paragraph (b), after “1977” insert “so far as relating to employment as a seafarer”,
    - (iii) before the “or” at the end of paragraph (b) insert –
      - “(ba) section 193(1) of ICTA so far as relating to employment as a seafarer,”, and
    - (iv) in paragraph (c) omit “or 193(1)”,
  - (g) in subsection (6), after “1974-75” insert “in an employment as a seafarer”,
  - (h) after subsection (6) insert –
    - “(7) In this section “employment as a seafarer” is to be read in accordance with section 384.”, and
  - (i) in the heading, after “foreign service” insert “as seafarer”.
- (10) In section 414 (proportionate reduction for foreign service, as seafarer, in certain cases) –
  - (a) in subsection (1)(b), after “service” insert “as seafarer”,
  - (b) in subsection (2), for “otherwise count as employment income under this Chapter” substitute “otherwise –
    - (a) be treated as earnings by section 402B(1), or
    - (b) count as employment income as a result of section 403”, and
  - (c) in the heading, after “foreign service” insert “as seafarer”.
- (11) In section 717(4) (regulations etc not subject to negative procedure), before “or section 681F(3)” insert “, section 404B(4) (reduction of tax-free threshold for employment-termination etc payments)”.
- (12) In consequence of amendments made by this section in section 413 of ITEPA 2003 –
  - (a) in Schedule 7 to FA 2008, omit paragraph 30, and
  - (b) in Schedule 46 to FA 2013, omit paragraph 38.

- (13) The amendments made by this section have effect for the tax year 2018-19 and subsequent tax years.

## **10 PAYE settlement agreements**

- (1) In Chapter 5 of Part 11 of ITEPA 2003 (PAYE settlement agreements), in sections 703(a) and 704(1)(a), for “an officer of Revenue and Customs” substitute “Her Majesty’s Revenue and Customs”.
- (2) The amendment made by this section has effect in relation to the tax year 2018-19 and subsequent tax years.

## **11 Overseas pensions**

Schedule 3 contains provision about payments made in respect of overseas pensions.

### *Investment income*

## **12 Deduction of income tax at source**

Schedule 4 contains provisions about deduction of income tax at source.

## **13 Life insurance policies: recalculating gains on part surrenders etc**

- (1) ITTOIA 2005 is amended as follows.
- (2) After section 507 (method for making periodic calculations in part surrender or assignment cases) insert –

### **“507A Recalculating gains under section 507**

- (1) A person may apply to an officer of Revenue and Customs for a review of a calculation under section 507 on the ground that the gain arising from it is wholly disproportionate.
- (2) Applications under subsection (1) must be –
- (a) made in writing, and
  - (b) received by an officer of Revenue and Customs within –
    - (i) two years after the end of the insurance year in which the gain arose, or
    - (ii) such longer period as the officer may agree.
- (3) If, following an application under subsection (1), an officer considers that the gain arising from the calculation under section 507 is wholly disproportionate, the officer must recalculate the gain on a just and reasonable basis.
- (4) Following a recalculation under subsection (3), references in this Chapter (but excluding this section) to a calculation under section 507 are to be regarded as references to a recalculation under this section.
- (5) Following a recalculation under subsection (3), an officer of Revenue and Customs must notify the applicant of the result of the recalculation.”

- (3) After section 512 (available premium left for relevant transaction in certain part surrender or assignment cases) insert –

**“512A Recalculating gains under section 511**

- (1) A person may apply to an officer of Revenue and Customs for a review of a calculation under section 511 on the ground that the gain arising from it is wholly disproportionate.
- (2) Applications under subsection (1) must be –
  - (a) made in writing, and
  - (b) received by an officer of Revenue and Customs within –
    - (i) two years after the end of the insurance year in which the gain arose, or
    - (ii) such longer period as the officer may agree.
- (3) If, following an application under subsection (1), an officer considers that the gain arising from the calculation under section 511 is wholly disproportionate, the officer must recalculate the gain on a just and reasonable basis.
- (4) Following a recalculation under subsection (3), references in this Chapter (but excluding this section) to a calculation under section 511 are to be regarded as references to a recalculation under this section.
- (5) Following a recalculation under subsection (3), an officer of Revenue and Customs must notify the applicant of the result of the recalculation.”

**14 Personal portfolio bonds**

In section 520 of ITTOIA 2005 (property categories), after subsection (4) insert –

- “(5) The Treasury may by regulations –
- (a) amend the table in subsection (2) by adding, removing or amending a category of property;
  - (b) add, remove or amend a definition relating to any category of property in that table; and
  - (c) make consequential amendments.
- (6) A statutory instrument containing regulations under this section which have the effect of removing a category of property from the table in subsection (2) –
- (a) must be laid before the House of Commons; and
  - (b) ceases to have effect at the end of the period of 28 days beginning with the day on which it was made, unless it is approved during that period by a resolution of the House of Commons.
- (7) In reckoning the period of 28 days, no account is to be taken of any time during which Parliament is dissolved or prorogued, or during which the House of Commons is adjourned for more than four days.”

*Income tax reliefs and allowances***15 EIS and SEIS: the no pre-arranged exits requirement**

- (1) ITA 2007 is amended as follows.
- (2) In section 177 (EIS: the no pre-arranged exits requirement), for subsection (2) substitute –
  - “(2) The arrangements referred to in subsection (1)(a) do not include –
    - (a) any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 247(1), or
    - (b) any arrangements with a view to any shares in the issuing company being exchanged for, or converted into, shares in that company of a different class.”
- (3) In section 257CD (SEIS: the no pre-arranged exits requirement), for subsection (2) substitute –
  - “(2) The arrangements referred to in subsection (1)(a) do not include –
    - (a) any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 257HB(1), or
    - (b) any arrangements with a view to any shares in the issuing company being exchanged for, or converted into, shares in that company of a different class.”
- (4) The amendments made by this section have effect in relation to shares issued on or after 5 December 2016.

**16 VCTs: follow-on funding**

- (1) ITA 2007 is amended as follows.
- (2) In section 326 (restructuring to which sections 326A and 327 apply) –
  - (a) in the heading to section 326, for “section 327 applies” substitute “sections 326A, 327 and 327A apply”;
  - (b) in subsection (1), for “Sections 326A and 327 apply” substitute “Sections 326A, 327 and 327A apply”.

- (3) After section 327 insert –

**“327A Follow-on funding**

- (1) Subsections (2) and (3) apply where –
  - (a) this section applies (see section 326(1)),
  - (b) the acquisition by the new company of all the old shares, which is provided for by the arrangements mentioned in section 326(1), takes place, and
  - (c) the acquisition falls within section 326(2).
- (2) If, after the acquisition, another company makes an investment in the new company, section 280C (the permitted maximum age condition) has effect in relation to that investment as if –
  - (a) in subsection (4)(a) the reference to a relevant investment having been made in the relevant company before the end of the initial investing period included a reference to a relevant

- investment having been made in the old company before the acquisition and before the end of the initial investing period, and
- (b) in subsection (6)(a) the reference to relevant investments made in the relevant company included a reference to relevant investments made in the old company before the acquisition.
- (3) In relation to any relevant holding issued by the new company after the acquisition, section 294A (the permitted company age requirement) has effect as if –
- (a) in subsection (3)(a) the reference to a relevant investment having been made in the relevant company before the end of the initial investing period included a reference to a relevant investment having been made in the old company before the acquisition and before the end of the initial investing period, and
  - (b) in subsection (5)(a) the reference to relevant investments made in the relevant company included a reference to relevant investments made in the old company before the acquisition.
- (4) In subsection (3) “relevant holding” has the same meaning as in Chapter 4.”
- (4) The amendments made by this section have effect –
- (a) for the purposes of section 280C of ITA 2007, in relation to investments made on or after 6 April 2017;
  - (b) for the purposes of section 294A of ITA 2007, in relation to relevant holdings issued on or after 6 April 2017.

## **17 VCTs: exchange of non-qualifying shares and securities**

- (1) Section 330 of ITA 2007 (power to facilitate company reorganisations etc involving exchange of shares) is amended as follows.
- (2) After subsection (1) insert –

“(1A) The Treasury may by regulations make provision for the purposes of this Part for cases where –

  - (a) a holding of shares or securities that does not meet the requirements of Chapter 4 is exchanged for other shares or securities not meeting those requirements, and
  - (b) the exchange is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.”
- (3) In subsection (2), for “subsection (1)” substitute “subsections (1) and (1A)”.
- (4) In subsection (3), for “The regulations” substitute “Regulations under subsection (1)”.
- (5) After subsection (3) insert –

“(3A) Regulations under subsection (1A) may, among other things, make provision –

  - (a) for the new shares or securities to be treated in any respect in the same way as the original shares and securities for any period;

- (b) as to when the new shares or securities are to be regarded as having been acquired;
- (c) as to the valuation of the original or the new shares or securities.”
- (6) In subsection (4), for “The regulations” substitute “Regulations under this section”.
- (7) In subsection (6), in paragraph (c), at the beginning insert “in the case of regulations under subsection (1)”.

## **18 Business investment relief**

- (1) Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.
- (2) In section 809VC (qualifying investments), in subsection (1)(a), after “issued to” insert “or acquired by”.
- (3) In section 809VD (condition relating to qualifying investments) –
  - (a) in subsection (1), omit the “or” at the end of paragraph (b) and after that paragraph insert –
    - “(ba) an eligible hybrid company, or”;
  - (b) in subsection (2)(b), for “2” substitute “5”;
  - (c) in subsection (3)(c), for “2” substitute “5”;
  - (d) after subsection (3) insert –
    - “(3A) A company is an “eligible hybrid company” if –
      - (a) it is a private limited company,
      - (b) it is not an eligible trading company or an eligible stakeholder company,
      - (c) it carries on one or more commercial trades or is preparing to do so within the next 5 years,
      - (d) it holds one or more investments in eligible trading companies or is preparing to do so within the next 5 years, and
      - (e) carrying on commercial trades and making investments in eligible trading companies are all or substantially all of what it does (or of what it is reasonably expected to do once it begins operating).”;
  - (e) in subsection (4), for “reference in subsection (3)” substitute “references in subsections (3) and (3A)”;
  - (f) in subsection (5)(a), for “2” substitute “5”.
- (4) In section 809VE (commercial trades), after subsection (5) insert –
  - “(6) A company which is a partner in a partnership is not to be regarded as carrying on a trade carried on by the partnership.”
- (5) In section 809VH (meaning of “potentially chargeable event”) –
  - (a) in subsection (1)(a), after “eligible stakeholder company” insert “nor an eligible hybrid company”;
  - (b) in subsection (1)(d), for “2-year” substitute “5-year”;
  - (c) in subsection (2), for paragraph (b) substitute –

- “(b) the value is received from any person in circumstances that are directly or indirectly attributable to the investment, and”;
  - (d) omit subsection (4);
  - (e) in subsection (5) –
    - (i) for “2-year” substitute “5-year”;
    - (ii) in paragraph (a), for “2” substitute “5”;
  - (f) in subsection (6), omit the “or” at the end of paragraph (b) and after that paragraph insert –
    - “(ba) it is an eligible hybrid company but is not trading and –
      - (i) it holds no investments in eligible trading companies, or
      - (ii) none of the eligible trading companies in which it holds investments is trading, or”;
  - (g) in subsection (10)(b), after “eligible stakeholder company” insert “or an eligible hybrid company”.
- (6) In section 809VJ (grace period), after subsection (2) insert –
- “(2A) But subsection (2B) applies instead of subsections (1) and (2) where the potentially chargeable event is a breach of the 5-year start-up rule by virtue of section 809VH(5)(b).
- (2B) The grace period allowed for the steps mentioned in section 809VI(2)(a) and (2)(b) is the period of 2 years beginning with the day on which a relevant person first became aware or ought reasonably to have become aware of the potentially chargeable event referred to in subsection (2A).”
- (7) In section 809VN (order of disposals etc), in subsections (1)(c) and (5)(a) and (b), after “eligible stakeholder company” insert “or eligible hybrid company”.
- (8) The amendments made by this section come into force on 6 April 2017.

## 19 Trading and property allowances

Schedule 5 contains provision about a trading allowance and a property allowance giving relief from income tax.

### CHAPTER 2

#### CORPORATION TAX

##### *Corporation tax reliefs*

## 20 Carried-forward losses

Schedule 6 contains provision about corporation tax relief for losses and other amounts that are carried forward.

## 21 Corporate interest restriction

Schedule 7 contains provision about the amounts that may be brought into account for the purposes of corporation tax in respect of interest paid and similar expenses.

## 22 Museum and gallery exhibitions

Schedule 8 contains provision about relief in respect of the production of museum and gallery exhibitions.

## 23 Grassroots sport

- (1) In section 1(2) of CTA 2010 (overview of Act) –
  - (a) omit the “and” at the end of paragraph (g), and
  - (b) after that paragraph insert –
    - “(ga) relief for expenditure on grassroots sport (see Part 6A), and”.
- (2) In CTA 2010, after Part 6 insert –

### “PART 6A

#### RELIEF FOR EXPENDITURE ON GRASSROOTS SPORT

### 217A Relief for expenditure on grassroots sport

- (1) A payment made by a company which is qualifying expenditure on grassroots sport (and which is not refunded) is allowed as a deduction in accordance with this section from the company’s total profits in calculating the corporation tax chargeable for the accounting period in which the payment is made.
- (2) The deduction is from the company’s total profits for the accounting period after any other relief from corporation tax other than –
  - (a) relief under Part 6,
  - (b) group relief, and
  - (c) group relief for carried-forward losses.
- (3) If the company is a sport governing body at the time of the payment, a deduction is allowed for the amount of the payment.  
(See section 217C for the meaning of “sport governing body”.)
- (4) If the company is not a sport governing body at the time of the payment, a deduction is allowed –
  - (a) if the payment is to a sport governing body, for the amount of the payment, and
  - (b) if the payment does not fall within paragraph (a) (a “direct payment”), in accordance with subsections (7) and (8).
- (5) If at any time on or after 1 April 2017 the company receives income for use for charitable purposes which are exclusively purposes for facilitating participation in amateur eligible sport, the amount of the deduction is reduced by the amount of that income which –
  - (a) the company does not have to bring into account for corporation tax purposes, and

- (b) has not previously been taken into account under this subsection to reduce the amount of a deduction allowed to the company under this Part.

See section 217B(2) for the meaning of terms used in this subsection.

- (6) But in any case, the amount of the deduction is limited to the amount that reduces the company's taxable total profits for the accounting period to nil.
- (7) If the total of all the direct payments made by the company in the accounting period is equal to or less than the maximum deduction for direct payments, a deduction is allowed under subsection (4)(b) in respect of that total.
- (8) If the total of all the direct payments made by the company in the accounting period is more than the maximum deduction for direct payments, a deduction is allowed under subsection (4)(b) in respect of so much of that total as does not exceed the maximum deduction for direct payments.
- (9) The maximum deduction for direct payments is £2,500 or, if the accounting period is shorter than 12 months, a proportionately reduced amount.
- (10) The Treasury may by regulations amend subsection (9) by substituting a higher amount for the amount for the time being specified there.

#### **217B Meaning of qualifying expenditure on grassroots sport**

- (1) For the purposes of this Part, a payment is qualifying expenditure on grassroots sport if –
  - (a) it is expenditure incurred for charitable purposes which are exclusively purposes for facilitating participation in amateur eligible sport, and
  - (b) apart from this Part, no deduction from total profits, or in calculating any component of total profits, would be allowed in respect of the payment.

(For the meaning of charitable purposes, see sections 2, 7 and 8 of the Charities Act 2011.)
- (2) For the purposes of section 217A(5) and subsection (1)(a) –
  - (a) paying a person to play or take part in a sport does not facilitate participation in amateur sport, but paying coaches or officials for their services may do so, and
  - (b) “eligible sport” means a sport that for the time being is an eligible sport for the purposes of Chapter 9 of Part 13 (see section 661).

#### **217C Meaning of sport governing body**

- (1) For the purposes of this Part, a “sport governing body” is a body which is designated for those purposes by regulations made by the Treasury.
- (2) Regulations under this section may designate a body by reference to its inclusion from time to time in a list maintained by a body specified in the regulations.

- (3) Regulations under this section made before 1 April 2018 may include provision having effect in relation to times before the regulations are made (but not times earlier than 1 April 2017).

#### **217D Relationship between this Part and Part 6**

If, but for section 217A, an amount –

- (a) would be deductible under Part 6, or
  - (b) would be deductible under Part 6 but for Chapter 2A of Part 6, the amount is not deductible under this Part, and nothing in this Part affects the amount’s deductibility (or non-deductibility) under Part 6.”
- (3) The amendments made by this section have effect for the purpose of allowing deductions for payments made on or after 1 April 2017.
- (4) Where a company has an accounting period beginning before 1 April 2017 and ending on or after that date, the accounting period for the purposes of the new section 217A(9) is so much of the accounting period as falls on or after 1 April 2017.

### *Patents*

#### **24 Profits from the exploitation of patents: cost-sharing arrangements**

- (1) Part 8A of CTA 2010 (profits from the exploitation of patents) is amended as follows.
- (2) After section 357BLE insert –

##### **“357BLEA Cases where the company is a party to a CSA**

- (1) Subsection (2) applies if during the relevant period –
- (a) the company is a party to an arrangement of a kind mentioned in section 357GC(1) (cost-sharing arrangements),
  - (b) the company incurs expenditure in making payments under the arrangement that are within section 357BLC(2) by reason of subsections (7) or (8) of section 357GC, and
  - (c) persons who are not connected with the company make payments under the arrangement to the company in respect of relevant research and development undertaken or contracted out by the company.
- (2) So much of the expenditure referred to in paragraph (b) of subsection (1) as is equal to the amount of the payments referred to in paragraph (c) of that subsection is to be disregarded in determining the R&D fraction for the sub-stream.
- (3) Subsection (4) applies if during the relevant period –
- (a) the company is a party to an arrangement of a kind mentioned in section 357GC(1) (cost-sharing arrangements),
  - (b) the company incurs expenditure in making payments under the arrangement that are within subsection (5), and
  - (c) the company receives payments under the arrangement that are within subsection (6).

- (4) So much of the expenditure referred to in paragraph (b) of subsection (3) as is equal to the amount of the payments referred to in paragraph (c) of that subsection is to be disregarded in determining the R&D fraction for the sub-stream.
  - (5) A payment is within this subsection if –
    - (a) it is within section 357BLD(2) by reason of subsections (7) or (8) of section 357GC, or
    - (b) it is within section 357BLE(2) or (3) by reason of subsections (9) or (10) of section 357GC.
  - (6) A payment is within this subsection if –
    - (a) it is made by persons connected with the company in respect of relevant research and development undertaken or contracted out by the company, or
    - (b) it is made in respect of an assignment to the company of a relevant qualifying IP right or a grant or transfer to the company of an exclusive licence in respect of such a right.”
- (3) For section 357GC substitute –

**“357GC Application of this Part in relation to cost-sharing arrangements**

- (1) This section applies where a company is a party to an arrangement under which –
  - (a) each of the parties to the arrangement is required to contribute to the cost of, or undertake research and development for the purpose of, creating or developing an item or process (“the invention”), and
  - (b) each of those parties –
    - (i) is entitled to a share of any income attributable to the invention, or
    - (ii) has one or more rights in respect of the invention.
- (2) But this section does not apply where the arrangement produces for the company a return within section 357BG(1)(c).
- (3) If any party to the arrangement (other than the company) holds a qualifying IP right granted in respect of the invention (“a relevant qualifying IP right”), the company is to be treated for the purposes of this Part as if it held the right.
- (4) If any party to the arrangement (other than the company) (“P”) holds a relevant qualifying IP right, the right is to be treated for the purposes of this Part as a new qualifying IP right in relation to the company if –
  - (a) the company became a party to the arrangement on or after 1 April 2017,
  - (b) P became a party to the arrangement on or after that date, or
  - (c) the right is a new qualifying IP right in relation to P.Otherwise it is to be treated for the purposes of this Part as an old qualifying IP right in relation to the company.
- (5) If any party to the arrangement (other than the company) holds an exclusive licence in respect of a relevant qualifying IP right, the company is to be treated for the purposes of this Part as if it held the licence.

- (6) If any party to the arrangement (other than the company) (“P”) holds an exclusive licence in respect of a relevant qualifying IP right, the right is to be treated for the purposes of this Part as a new qualifying IP right in relation to the company if –
- (a) the company became a party to the arrangement on or after 1 April 2017,
  - (b) P became a party to the arrangement on or after that date, or
  - (c) the right is a new qualifying IP right in relation to P.
- Otherwise it is to be treated for the purposes of this Part as an old qualifying IP right in relation to the company.
- (7) If any party to the arrangement (other than the company) undertakes research and development for the purpose of creating or developing the invention (“relevant research and development”), the research and development is to be treated for the purposes of sections 357BLC and 357BLD as having been contracted out by the company to that party.
- (8) If any party to the arrangement (other than the company) (“P”) contracts out relevant research and development to another person (“A”) –
- (a) the research and development is to be treated for the purposes of section 357BLC and 357BLD as if it has been contracted out to A by the company, and
  - (b) any payment made under the arrangement by the company in respect of the research and development is to be treated for the purposes of those sections as if it had been made to A (if that is not in fact the case).
- (9) If –
- (a) any person (“A”) assigns a qualifying IP right to a party to the arrangement (other than the company) (“P”), and
  - (b) the company makes a payment under the arrangement in respect of the assignment (whether to A or to P),
- the payment is to be treated for the purposes of section 357BLE as if it were a payment to A in respect of the assignment by A to the company of the right.
- (10) If –
- (a) any person (“A”) grants or transfers an exclusive licence in respect of a relevant qualifying IP right to a party to the arrangement (other than the company) (“P”), and
  - (b) the company makes a payment under the arrangement in respect of the grant or transfer (whether to A or to P),
- the payment is to be treated for the purposes of section 357BLE as if it were a payment to A in respect of the grant or transfer by A to the company of the licence.
- (11) In this section –
- “relevant qualifying IP right” has the meaning given by subsection (3),
  - “relevant research and development” has the meaning given by subsection (7), and
  - “research and development” has the meaning given by section 1138.

- (12) In this section—
- (a) references to the invention include references to any item or process incorporated in the invention,
  - (b) references to developing the invention include references to developing ways in which the invention may be used or applied.

**357GCA Treatment of expenditure in connection with formation of CSA etc**

- (1) Where—
- (a) a company makes a payment to a person (“P”) in consideration of that person entering into a cost-sharing arrangement with the company, and
  - (b) P holds a qualifying IP right granted in respect of the invention or holds an exclusive licence in respect of such a right,
- a just and reasonable amount of the payment is to be treated for the purposes of section 357BLE as if it was an amount paid in respect of the assignment to the company of the right or (as the case may be) the transfer to the company of the licence.
- (2) Where—
- (a) a company makes a payment to a party to a cost-sharing arrangement (“P”) in consideration of P agreeing to the company becoming a party to the arrangement (whether in place of P or in addition to P), and
  - (b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,
- a just and reasonable amount of the payment is to be treated for the purposes of section 357BLE as if it was an amount paid in respect of the assignment to the company of the right or (as the case may be) the transfer to the company of the licence.
- (3) Where—
- (a) a company that is a party to a cost-sharing arrangement makes a payment to another party to the arrangement in consideration of that party agreeing to the company becoming entitled to a greater share of the income attributable to the invention or acquiring additional rights in relation to the invention, and
  - (b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,
- a just and reasonable amount of the payment is to be treated for the purposes of section 357BLE as if it was an amount paid in respect of the assignment to the company of the right or (as the case may be) the transfer to the company of the licence.
- (4) In this section—
- “cost-sharing arrangement” means an arrangement of a kind mentioned in section 357GC(1), and
  - “invention”, in relation to a cost-sharing arrangement, means the item or process that is the subject of the arrangement (or any item or process incorporated within it).

### **357GCB Treatment of income in connection with formation of CSA etc**

- (1) Where –
  - (a) a company receives a payment in consideration of its entering into a cost-sharing arrangement, and
  - (b) the company holds a qualifying IP right granted in respect of the invention or holds an exclusive licence in respect of such a right,a just and reasonable amount of the payment is to be treated as relevant IP income of the company.
- (2) Where –
  - (a) a company that is a party to a cost-sharing arrangement receives a payment from a person in consideration of its agreeing to that person becoming a party to the arrangement (whether in place of the company or in addition to it), and
  - (b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,a just and reasonable amount of the payment is to be treated as relevant IP income of the company.
- (3) Where –
  - (a) a company that is a party to a cost-sharing arrangement receives a payment from another party to the arrangement in consideration of its agreeing to that party becoming entitled to a greater share of the income attributable to the invention or acquiring additional rights in relation to the invention, and
  - (b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,a just and reasonable amount of the payment is to be treated as relevant IP income of the company.
- (4) In this section “cost-sharing arrangement” and “invention” have the meaning given by section 357GCA(4).”
- (4) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2017.
- (5) Subsection (6) applies where a company has an accounting period (“the straddling period”) which begins before, and ends on or after, 1 April 2017.
- (6) For the purposes of this section and Part 8A of CTA 2010 –
  - (a) so much of the straddling period as falls before the 1 April 2017, 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 or 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.

*Corporation tax: Northern Ireland*

**25 Trading profits taxable at the Northern Ireland rate: SMEs**

Schedule 9 contains amendments of and relating to Part 8B of CTA 2010 (trading profits taxable at the Northern Ireland rate) about the application of that Part to SMEs.

**26 Trading profits taxable at the Northern Ireland rate: minor amendments**

- (1) Part 8B of CTA 2010 (trading profits taxable at the Northern Ireland rate) is amended in accordance with subsections (2) and (3).
- (2) In section 357IA, for “Minister of Finance and Personnel” substitute “Minister of Finance”.
- (3) In section 357QB(5)(b), for “Chapter 2” substitute “land remediation”.
- (4) In CAA 2001, in Schedule A1 (first-year tax credits), in paragraph 2, for sub-paragraphs (3A) and (4) substitute –
  - “(4) The Treasury may by regulations amend sub-paragraph (1) –
    - (a) so as to provide for a different percentage to apply where the surrenderable loss relates to a qualifying activity that is an NI rate activity, or
    - (b) so as to substitute for any percentage for the time being specified in that sub-paragraph such other percentage as the Treasury thinks fit.”
- (5) In consequence of subsection (4), in the Corporation Tax (Northern Ireland) Act 2015, in Schedule 1, omit paragraph 10.

**CHAPTER 3**

PROVISIONS RELATING TO MORE THAN ONE TAX

*Chargeable gains*

**27 Substantial shareholding exemption**

- (1) Schedule 7AC to TCGA 1992 (exemptions for disposals by companies with substantial shareholding) is amended as follows.
- (2) Omit the following (which relate to requirements to be met by investing company) –
  - (a) in paragraph 1(2), “the investing company and”;
  - (b) in paragraph 3 –
    - (i) in sub-paragraph (2)(b), “(but see sub-paragraph (3) below)”;
    - (ii) sub-paragraph (3);
    - (iii) in sub-paragraph (4), “of paragraph 18(1)(b) and”;
  - (c) in the heading to Part 3, “investing company and”;
  - (d) paragraph 18 and the preceding italic heading;
  - (e) in paragraph 23(3), “a member of a trading group or”.

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- (3) In paragraph 7 (substantial shareholding requirement), for “two” substitute “six”.
  - (4) In paragraph 19 (requirements relating to company invested in) –
    - (a) in sub-paragraph (1)(b), at the beginning insert “where the disposal is a disposal to a person connected with the investing company,”;
    - (b) at the end insert –
      - “(4) Section 1122 of CTA 2010 (meaning of “connected” persons) applies for the purposes of sub-paragraph (1)(b).”
  - (5) The amendments made by this section have effect in relation to disposals made on or after 1 April 2017.

## 28 Substantial shareholding exemption: institutional investors

- (1) Schedule 7AC to TCGA 1992 (exemptions for disposals by companies with substantial shareholding) is amended as follows.
- (2) After paragraph 3 insert –

*“Subsidiary exemption: qualifying institutional investors*

- 3A (1) This paragraph applies in relation to a gain or loss accruing to a company (“the investing company”) on a disposal of shares or an interest in shares in another company (“the company invested in”).
- (2) This paragraph applies if –
  - (a) the requirement in paragraph 7 is met (substantial shareholder requirement), and
  - (b) the requirement in paragraph 19 is not met (requirement relating to company invested in).
- (3) If immediately before the disposal 80% or more of the ordinary share capital of the investing company is owned by qualifying institutional investors, no chargeable gain or loss accrues on the disposal.
- (4) If immediately before the disposal at least 25% but less than 80% of the ordinary share capital of the investing company is owned by qualifying institutional investors, the amount of the chargeable gain or loss accruing on the disposal is reduced by the percentage of the ordinary share capital of the investing company which is owned by the qualifying institutional investors.
- (5) For the purposes of this paragraph a person “owns” ordinary share capital if the person owns it –
  - (a) directly,
  - (b) indirectly, or
  - (c) partly directly and partly indirectly.
- (6) Sections 1155 to 1157 of CTA 2010 (meaning of “indirect ownership” and calculation of amounts owned indirectly) apply for the purposes of sub-paragraph (5).
- (7) But for the purposes of sections 1155 to 1157 of CTA 2010 as applied by sub-paragraph (6), ordinary share capital may not be owned through a body corporate where –

- (a) the body is not a qualifying institutional investor, and
  - (b) any of the shares forming part of the ordinary share capital of the body are listed on a recognised stock exchange.
- (8) For the purposes of this paragraph a person is also to be regarded as owning ordinary share capital in a company in circumstances where a person would, under paragraphs 12 and 13 of this Schedule, be regarded as holding shares in a company.
- (9) In this paragraph “qualifying institutional investor” means a person falling within any of A to F below.

*Pension schemes*

- A The trustee or manager of—
- (a) a registered pension scheme, other than an investment-regulated pension scheme, or
  - (b) an overseas pension scheme, other than one which would be an investment-regulated pension scheme if it were a registered pension scheme.

“Investment-regulated pension scheme” has the same meaning as in Part 1 of Schedule 29A to the Finance Act 2004.

“Overseas pension scheme” has the same meaning as in Part 4 of that Act.

*Life assurance businesses*

- B A company carrying on life assurance business, if immediately before the disposal its interest in the investing company is held for the purpose of providing benefits to policy holders in the course of that business.

“Life assurance business” has the meaning given in section 56 of the Finance Act 2012.

*Sovereign wealth funds etc*

- C A person who cannot be liable for corporation tax or income tax (as relevant) on the ground of sovereign immunity.

*Charities*

- D A charity.

*Investment trusts*

- E An investment trust.

*Widely marketed UK investment schemes*

- F An authorised investment fund or the trustees of an exempt unauthorised unit trust, where the fund or trust meets the genuine diversity of ownership condition throughout the accounting period of the fund or trust in which the disposal is made.

“Authorised investment fund” has the same meaning as in the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964).

“Exempt unauthorised unit trust” has the same meaning as in the Unauthorised Unit Trusts (Tax) Regulations 2013 (SI 2013/2819).

Regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (genuine diversity of ownership) applies for this purpose (treating references to an authorised investment fund as including an exempt unauthorised unit trust).

- (10) The Treasury may by regulations amend this Schedule so as to add or remove a person as a “qualifying institutional investor” for the purposes of this paragraph (and may in particular do so by changing the conditions subject to which a person is a qualifying institutional investor).”
- (3) In paragraph 8 (meaning of “substantial shareholding”), after sub-paragraph (1) insert—
- “(1A) For the purposes of the exemption in paragraph 3A, a company (Company A) also holds a “substantial shareholding” in another company (Company B) if—
- (a) Company A holds shares or interests in shares in Company B the cost of which on acquisition was at least £50,000,000, and
  - (b) by virtue of those shares or interests in shares Company A—
    - (i) is beneficially entitled to not less than a proportionate percentage of the profits available for distribution to equity holders of Company B, and
    - (ii) would be beneficially entitled on a winding up to not less than a proportionate percentage of the assets of Company B available for distribution to equity holders.
- (1B) In sub-paragraph (1A)—
- “cost” means the amount or value of the consideration, in money or money’s worth, given by Company A or on its behalf wholly and exclusively for the acquisition of the shares or interests, together with the incidental costs to it of the acquisition;
- “proportionate percentage” means a percentage equal to the percentage of the ordinary share capital held by Company A by virtue of the shares and interests referred to in sub-paragraph (1A)(a).
- (1C) For the purposes of sub-paragraph (1A)(a) it does not matter whether there was a single acquisition or a series of acquisitions.”
- (4) In paragraph 8, in sub-paragraph (2), for “sub-paragraph (1)” substitute “sub-paragraphs (1) and (1A)”.
- (5) In paragraph 9 (aggregation), in sub-paragraph (1), for “paragraph 7” substitute “paragraphs 7 and 8(1A)”.
- (6) The amendments made by this section have effect in relation to disposals made on or after 1 April 2017.

*Employee shareholder shares*

**29 Employee shareholder shares: amount treated as earnings**

- (1) In section 226A of ITEPA 2003 (amount treated as earnings) –
  - (a) in subsection (2), for “calculated in accordance with subsection (3)” substitute “equal to the market value of the shares”;
  - (b) omit subsection (3);
  - (c) in subsection (6), omit “and sections 226B to 226D”;
  - (d) in subsection (7), after “subsection (1)” insert “(but not subsection (2))”.
- (2) Omit sections 226B to 226D of ITEPA 2003 (deemed payment).
- (3) In consequence of subsection (2), in ITEPA 2003 omit the following –
  - (a) section 479(3A);
  - (b) section 531(3A);
  - (c) section 532(4A).
- (4) In consequence of subsection (2), in CTA 2009 omit the following –
  - (a) in section 1005, the definition of “employee shareholder share”;
  - (b) section 1009(6);
  - (c) in section 1010(1), “and, in the case of employee shareholder shares, section 1038B”;
  - (d) in section 1011(4)(b), “(but see also section 1038B of this Act)“;
  - (e) in sections 1018(1) and 1019(1), “and, in the case of employee shareholder shares, section 1038B”;
  - (f) sections 1022(5), 1026(5), 1027(5), 1033(5) and 1034(5);
  - (g) section 1038B;
  - (h) sections 1292(6ZA) and 1293(5A);
  - (i) in Schedule 4, the entry relating to “employee shareholder share”.
- (5) The amendments made by this section have effect in relation to shares acquired in consideration of an employee shareholder agreement entered into on or after the relevant day.
- (6) The relevant day is 1 December 2016, subject to subsection (7).
- (7) Where the individual entering into an employee shareholder agreement receives the advice referred to in section 205A(6)(a) of the Employment Rights Act 1996 –
  - (a) on 23 November 2016, but
  - (b) before 1.30 pm on that day,the relevant day is 2 December 2016.

**30 Employee shareholder shares: abolition of CGT exemption**

- (1) TCGA 1992 is amended as follows.
- (2) In section 58 (spouses and civil partners) –
  - (a) in subsection (2) –
    - (i) at the end of paragraph (a) insert “or”;
    - (ii) omit paragraph (c) and the preceding “or”;
  - (b) omit subsections (3) to (5).

- (3) In section 149AA (restricted and convertible employment-related securities and employee shareholder shares), for subsection (6A) substitute –
- “(6A) For the purposes of this section –
- shares are “acquired” by an employee if the employee becomes beneficially entitled to them (and they are acquired at the time when the employee becomes so entitled);
  - “employee shareholder share” means a share acquired in consideration of an employee shareholder agreement and held by the employee;
  - “employee shareholder agreement” means an agreement by virtue of which an employee is an employee shareholder (see section 205A(1)(a) to (d) of the Employment Rights Act 1996);
  - “employee” and “employer company”, in relation to an employee shareholder agreement, mean the individual and the company which enter into the agreement.”
- (4) Omit sections 236B to 236F (exemption for employee shareholder shares).
- (5) In section 236G (relinquishment of employment rights is not disposal of an asset), in subsection (1), for “employee shareholder agreement” substitute “agreement by virtue of which the individual is an employee shareholder (see section 205A(1)(a) to (d) of the Employment Rights Act 1996)”.
- (6) The amendments made by this section have effect in relation to shares acquired in consideration of an employee shareholder agreement entered into on or after the relevant day.
- (7) The relevant day is 1 December 2016, subject to subsection (8).
- (8) Where the individual entering into an employee shareholder agreement receives the advice referred to in section 205A(6)(a) of the Employment Rights Act 1996 –
- (a) on 23 November 2016, but
  - (b) before 1.30 pm on that day,
- the relevant day is 2 December 2016.

### **31 Employee shareholder shares: purchase by company**

- (1) In ITTOIA 2005, omit section 385A (no charge to income tax on purchase by company of exempt employee shareholder shares).
- (2) The amendment made by this section has effect in relation to the purchase from an individual of shares which were acquired in consideration of an employee shareholder agreement entered into on or after the relevant day.
- (3) The relevant day is 1 December 2016, subject to subsection (4).
- (4) Where the individual entering into an employee shareholder agreement receives the advice referred to in section 205A(6)(a) of the Employment Rights Act 1996 –
- (a) on 23 November 2016, but
  - (b) before 1.30 pm on that day,
- the relevant day is 2 December 2016.

*Disguised remuneration*

**32 Employment income provided through third parties**

Schedule 10 makes provision about employment income provided through third parties.

**33 Trading income provided through third parties**

- (1) ITTOIA 2005 is amended as follows.
- (2) After section 23 insert –

*“Trading income provided through third parties*

**23A Trading income provided through third parties: application of section 23B**

- (1) Section 23B applies if –
  - (a) a person (“T”) is or has been carrying on a trade (the “relevant trade”) alone or in partnership,
  - (b) there is an arrangement in connection with the relevant trade to which T is a party or which otherwise (wholly or partly) covers or relates to T,
  - (c) it is reasonable to suppose that, in essence –
    - (i) the arrangement, or
    - (ii) the arrangement so far as it covers or relates to T,is (wholly or partly) a means of providing, or is otherwise concerned with the provision of, relevant benefits,
  - (d) a relevant benefit arises to T, or a person who is or has been connected with T, in pursuance of the arrangement, and
  - (e) it is reasonable to suppose that the relevant benefit (directly or indirectly) represents, or has arisen or derives from, or is otherwise connected with, the whole or part of a payment (the “relevant payment”) –
    - (i) made (by T or another person) to a relevant third person, and
    - (ii) in relation to which Condition A or B is met.
- (2) In this section and sections 23B to 23D –
  - (a) “relevant benefit” means any payment (including a payment by way of a loan), a transfer of money’s worth, or any other benefit;
  - (b) the assumption of a liability of T by another person is to be treated as the provision of a relevant benefit to T;
  - (c) the assumption, by a person other than T, of a liability of a person (“C”) who is or has been connected with T, is to be treated as the provision of a relevant benefit to C.
- (3) In this section and sections 23B and 23D, “loan” includes –
  - (a) any form of credit;
  - (b) a payment that is purported to be made by way of a loan.
- (4) “Relevant third person” means –
  - (a) T acting as trustee, or

- (b) any person other than T.
- (5) Condition A is that –
  - (a) a deduction for the relevant payment is made in calculating the profits of the relevant trade, or
  - (b) where the relevant trade is or has been carried on in partnership, a deduction for the relevant payment is made in calculating the amount on which T is liable to income tax in respect of the profits of the trade.
- (6) Condition B is that it is reasonable to suppose that in essence –
  - (a) the relevant payment is by way of consideration for goods or services provided in the course of the relevant trade, or
  - (b) there is some other connection (direct or indirect) between the relevant payment and the provision of goods or services in the course of the relevant trade.
- (7) This section and section 23B apply to professions and vocations as they apply to trades.
- (8) In determining whether section 23B applies in relation to a relevant benefit, 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 23B does not apply in relation to –
  - (a) the relevant benefit, or
  - (b) the relevant benefit and one or more other relevant benefits (whether or not all arising to the same person).
- (9) Where arrangements are disregarded under subsection (8), and a relevant benefit –
  - (a) would, if the arrangements were not disregarded, arise before 6 April 2017, but
  - (b) would, when the arrangements are disregarded, arise on or after that date,the relevant benefit is to be regarded for the purposes of this section, and sections 23B and 23D, as arising on the date on which it would arise apart from the arrangements.
- (10) In this section “arrangement” includes any agreement, understanding, scheme, settlement, trust, transaction or series of transactions (whether or not legally enforceable).
- (11) Section 993 of ITA 2007 (meaning of “connected”) applies for the purposes of this section and section 23D as if subsection (4) of that section 993 were omitted.
- (12) For the purposes of subsections (1)(c) and (6) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (13) See Schedule 11 for provision about the application of this section and sections 23B to 23D in relation to loans and quasi-loans that are outstanding on 5 April 2019.

### **23B Relevant benefits: tax treatment**

- (1) In this section, references to “the relevant benefit” are references to the relevant benefit arising to T or a person who is or has been connected with T (see section 23A(1)(d)).
- (2) For the purposes of this section, the “relevant benefit amount” means—
  - (a) if the relevant benefit is a payment otherwise than by way of a loan, an amount equal to the amount of the payment,
  - (b) if the relevant benefit is a payment by way of loan, an amount equal to the principal amount lent, or
  - (c) in any other case, an amount equal to the value of the relevant benefit.
- (3) Where this section applies, the relevant benefit amount is to be treated for income tax purposes as profits of the relevant trade for—
  - (a) the tax year in which the relevant benefit arises, or
  - (b) if T has ceased to carry on the relevant trade in a tax year (the “earlier tax year”) before the tax year referred to in paragraph (a), the earlier tax year.
- (4) But this section does not apply where the relevant benefit is a payment by way of a loan and—
  - (a) the loan is a loan on ordinary commercial terms within the meaning of section 176 of ITEPA 2003, ignoring conditions B and C in that section, and
  - (b) there is no connection (direct or indirect) between the provision of the relevant benefit and a tax avoidance arrangement.
- (5) For the purposes of subsection (2)(c)—
  - (a) the value of a relevant benefit is its market value at the time it arises, or
  - (b) if higher, the cost of providing it.
- (6) In subsection (5) “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.

### **23C Interpretation of section 23B: “tax avoidance arrangement”**

- (1) In section 23B(4) “tax avoidance arrangement” means an arrangement which has a tax avoidance purpose.
- (2) For the purposes of subsection (1) an arrangement has a tax avoidance purpose if subsection (3) applies to a person who is a party to the arrangement.
- (3) This subsection applies to a person if the main purpose, or one of the main purposes, of the person in entering into the arrangement is the avoidance of tax.
- (4) The following paragraphs apply for the purposes of determining whether the provision of a relevant benefit is connected with a tax avoidance arrangement—
  - (a) the provision of the relevant benefit is connected with a tax avoidance arrangement if (for example) the relevant benefit is provided (wholly or partly) in pursuance of—
    - (i) the tax avoidance arrangement, or

- (ii) an arrangement at one end of a series of arrangements with the tax avoidance arrangement being at the other end, and
- (b) it does not matter if the person providing the relevant benefit is unaware of the tax avoidance arrangement.

### **23D Relevant benefits: persons other than T**

- (1) In this section “T” is the person mentioned in section 23A(1)(a).
- (2) Subsection (3) applies where –
  - (a) a relevant benefit arises to a person in pursuance of the arrangement mentioned in section 23A(1)(b),
  - (b) that person –
    - (i) is not T,
    - (ii) is not a person connected with T, and
    - (iii) is not a person who has been connected with T, and
  - (c) any of the enjoyment conditions is met in relation to the relevant benefit.
- (3) The relevant benefit is treated for the purposes of sections 23A and 23B as arising to T (or, as the case may be, a person who is or has been connected with T) at the time it arises to the person referred to in subsection (2)(a) (whether the enjoyment condition was met at that time or at a later date).
- (4) The enjoyment conditions are –
  - (a) that the relevant benefit, or part of it, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of T;
  - (b) that the arising of the relevant benefit operates to increase the value to T of any assets –
    - (i) which T holds, or
    - (ii) which are held for the benefit of T;
  - (c) that T receives, or is entitled to receive, at any time any benefit provided or to be provided out of, or deriving or to be derived from, the relevant benefit (or part of it);
  - (d) where the relevant benefit is the payment of a sum of money (including a payment by way of loan), that T may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
  - (e) where the relevant benefit is the payment of a sum of money (including a payment by way of loan), that T is able in any manner to control directly or indirectly the application of the sum or part of the sum.
- (5) Where the enjoyment conditions are met in relation to part only of a relevant payment, that part is to be treated as a separate payment for the purposes of subsections (2) and (3).
- (6) In subsection (4) references to T include references to a person who is or has been connected with T.

- (7) In determining whether any of the enjoyment conditions is met in relation to a relevant payment, regard must be had to the substantial result and effect of all the relevant circumstances.”
- (3) In section 7(2) (income charged: profits of a tax year) at the end insert “(including amounts treated as profits of the tax year under section 23B(3)).”
- (4) The amendments made by this section have effect in relation to relevant benefits arising on or after 6 April 2017.
- (5) Schedule 11 contains provision about the application of new sections 23A to 23D in relation to loans and quasi-loans that are outstanding on 5 April 2019.

### **34 Disguised remuneration schemes: restriction of income tax relief**

- (1) Section 38 of ITTOIA 2005 (restriction of deductions: employee benefit contributions) is amended in accordance with subsections (2) to (5).
- (2) After subsection (1) insert –
  - “(1A) No deduction is allowed under this section in respect of employee benefit contributions for a period of account which starts more than 5 years after the end of the period of account in which the contributions are made.”
- (3) After subsection (2) insert –
  - “(2AA) Subsection (2) is subject to subsections (1A) and (2AB).
  - (2AB) Where subsection (3C) applies, no deduction is allowed for an amount in respect of the contributions for the period except so far as the amount is a qualifying amount (see subsection (3D)).”
- (4) After subsection (3) insert –
  - “(3A) Subsection (3) is subject to subsections (1A) and (3B).
  - (3B) Where subsection (3C) applies, an amount disallowed under subsection (2) is allowed as a deduction for a subsequent period only so far as it is a qualifying amount.
  - (3C) This subsection applies where the provision of qualifying benefits out of, or by way of, the contributions gives rise both to an employment income tax charge and to an NIC charge.
  - (3D) An amount in respect of employee benefit contributions is a “qualifying amount” if the relevant tax charges are paid within the relevant period (and are not repaid).
  - (3E) For the purposes of subsection (3D) –
    - (a) the “relevant tax charges”, in relation to an amount, are the employment income tax charge and the NIC charge arising in respect of benefits which are provided out of, or by way of, that amount, and
    - (b) the “relevant period” is the period of 12 months immediately following the end of the period of account for which the deduction for the employee benefit contributions would (apart from this section) be allowable.

- (3F) For the purposes of subsections (3C) and (3E), “employment income tax charge” and “NIC charge” have the meaning given by section 40(7).”
- (5) After subsection (3F) (inserted by subsection (4)) insert –
- “(3G) Subsection (3H) applies where –
- (a) a deduction would, apart from this section, be allowable for an amount (the “remuneration amount”) in respect of employees’ remuneration, and
  - (b) in consequence of the payment of the employees’ remuneration, employee benefit contributions are made, or are to be made, in respect of the remuneration amount.
- (3H) In calculating for income tax purposes the profits of a trade, the deduction referred to in subsection (3G)(a) is to be treated as a deduction in respect of employee benefit contributions made or to be made (and is to be treated as not being a deduction in respect of employees’ remuneration).”
- (6) The amendments made by subsections (2) to (4) have effect in relation to employee benefit contributions made, or to be made, on or after 6 April 2017.
- (7) The amendment made by subsection (5) has effect in relation to remuneration paid on or after 6 April 2017.

### 35 Disguised remuneration schemes: restriction of corporation tax relief

- (1) Section 1290 of CTA 2009 (restriction of deductions: employee benefit contributions) is amended in accordance with subsections (2) to (5).
- (2) After subsection (1) insert –
- “(1A) No deduction is allowed under this section in respect of employee benefit contributions for a period of account which starts more than 5 years after the end of the period of account in which the contributions are made.”
- (3) After subsection (2) insert –
- “(2A) Subsection (2) is subject to subsections (1A) and (2B).
- (2B) Where subsection (3C) applies, no deduction is allowed for an amount in respect of the contributions for the period except so far as the amount is a qualifying amount (see subsection (3D)).”
- (4) After subsection (3) insert –
- “(3A) Subsection (3) is subject to subsections (1A) and (3B).
- (3B) Where subsection (3C) applies, an amount disallowed under subsection (2) is allowed as a deduction for a subsequent period only so far as it is a qualifying amount.
- (3C) This subsection applies where the provision of qualifying benefits out of, or by way of, the contributions gives rise both to an employment income tax charge and to an NIC charge.
- (3D) An amount in respect of employee benefit contributions is a “qualifying amount” if the relevant tax charges are paid before the end of the relevant period (and are not repaid).

- (3E) For the purposes of subsection (3D) –
- (a) the “relevant tax charges”, in relation to an amount, are the employment income tax charge and the NIC charge arising in respect of benefits which are provided out of, or by way of, that amount, and
  - (b) the “relevant period” is the period of 12 months immediately following the end of the period of account for which the deduction for the employee benefit contributions would (apart from this section) be allowable.
- (3F) For the purposes of subsections (3C) and (3E), “employment income tax charge” and “NIC charge” have the meaning given by section 1292(7).”
- (5) After subsection (3F) (inserted by subsection (4)) insert –
- “(3G) Subsection (3H) applies where –
- (a) a deduction would, apart from this section, be allowable for an amount (the “remuneration amount”) in respect of employees’ remuneration, and
  - (b) in consequence of the payment of the employees’ remuneration, employee benefit contributions are made, or are to be made, in respect of the remuneration amount.
- (3H) In calculating for corporation tax purposes the profits of a company, the deduction referred to in subsection (3G)(a) is to be treated as a deduction in respect of employee benefit contributions made or to be made (and is to be treated as not being a deduction in respect of employees’ remuneration).”
- (6) The amendments made by subsections (2) to (4) have effect in relation to employee benefit contributions made, or to be made, on or after 1 April 2017.
- (7) The amendment made by subsection (5) has effect in relation to remuneration paid on or after 1 April 2017.

#### *Capital allowances*

### **36 First-year allowance for expenditure on electric vehicle charging points**

- (1) CAA 2001 is amended as follows.
- (2) In section 39 (first-year qualifying expenditure) after the entry for section 45E insert –

“section 45EA expenditure on plant or machinery for electric vehicle charging point”.

- (3) After section 45E insert –

#### **“45EA Expenditure on plant or machinery for electric vehicle charging point**

- (1) Expenditure is first-year qualifying expenditure if –
  - (a) it is incurred in the relevant period,

- 
- (b) it is expenditure on plant or machinery for an electric vehicle charging point where the plant or machinery is unused and not second-hand, and
    - (c) it is not excluded by section 46 (general exclusions).
  - (2) For the purposes of this section expenditure on plant or machinery for an electric vehicle charging point is expenditure on plant or machinery installed solely for the purpose of charging electric vehicles.
  - (3) The “relevant period” is the period beginning with 23 November 2016 and ending with –
    - (a) in the case of expenditure incurred by a person within the charge to corporation tax, 31 March 2019, and
    - (b) in the case of expenditure incurred by a person within the charge to income tax, 5 April 2019.
  - (4) The Treasury may by regulations amend subsection (3) so as to extend the relevant period.
  - (5) In this section –
    - “electric vehicle” means a road vehicle that can be propelled by electrical power (whether or not it can also be propelled by another kind of power);
    - “electric vehicle charging point” means a facility for charging an electric vehicle.”
  - (4) In section 46 (general exclusions), in subsection (1) after the entry for section 45E insert –
    - “section 45EA (expenditure on plant or machinery for electric vehicle charging point)”.
  - (5) In section 52 (amount of first-year allowances) –
    - (a) in the table in subsection (3), after the entry for expenditure qualifying under section 45E insert –
 

“Expenditure qualifying under section 45EA (expenditure on plant or machinery for electric vehicle charging point)”	100%”
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    - (b) after subsection (3) insert –
      - “(3A) Subsection (3B) applies where the Treasury make regulations under section 45EA(4) (power to extend relevant period).
      - (3B) The regulations may amend the amount specified in column 2 of the Table in subsection (3) for expenditure qualifying under section 45EA, but only in relation to expenditure incurred after the date on which the relevant period would have ended but for the regulations.”

*Co-ownership authorised contractual schemes*

**37 Co-ownership authorised contractual schemes: capital allowances**

In Part 2 of CAA 2001 (plant and machinery), in Chapter 20 (supplementary provisions), after the Chapter heading insert—

*“Co-ownership authorised contractual schemes*

**262AA Co-ownership schemes: carrying on qualifying activity**

- (1) This section applies where the participants in a co-ownership authorised contractual scheme together carry on a qualifying activity.
- (2) Each participant in the scheme is for the purposes of this Part to be regarded as carrying on the qualifying activity.
- (3) Subsection (2) applies in relation to a participant only to the extent that the profits or gains arising to the participant from the qualifying activity are, or (if there were any) would be, chargeable to tax.
- (4) But in determining for the purposes of subsection (1) whether or to what extent the participants in a co-ownership authorised contractual scheme together carry on a qualifying activity, assume that profits or gains arising to all participants from the qualifying activity are, or (if there were any) would be, chargeable to tax.

**262AB Co-ownership schemes: election**

- (1) The operator of a co-ownership authorised contractual scheme may make an election under this section.
- (2) The election must specify an accounting period of the scheme as the first accounting period in relation to which the election has effect.
- (3) That first accounting period must not—
  - (a) be longer than 12 months, or
  - (b) begin before 1 April 2017.
- (4) The election has effect for that first accounting period and all subsequent accounting periods of the scheme.
- (5) The election is irrevocable.
- (6) The election is made by notice to an officer of Revenue and Customs.

**262AC Co-ownership schemes: calculation of allowance after election**

- (1) This section applies where an election under section 262AB has effect for an accounting period of a co-ownership authorised contractual scheme (“the relevant period”).
- (2) The operator of the scheme is to calculate the allowances that would be available to the scheme under this Part in relation to the relevant period on the basis of the assumptions in subsection (3).
- (3) The assumptions are—
  - (a) the scheme is a person;

- 
- (b) the relevant period is a chargeable period for the purposes of this Act;
  - (c) any qualifying activity carried on by the participants in the scheme together is carried on by the scheme;
  - (d) property which was subject to the scheme at the beginning of the first accounting period for which the election has effect –
    - (i) ceased to be owned by the participants at that time, and
    - (ii) was acquired by the scheme at that time;
  - (e) the disposal value to be brought into account in relation to the cessation of ownership and the acquisition referred to in paragraph (d) is the tax written-down value;
  - (f) any property which became subject to the scheme at a time during an accounting period for which the election has effect was acquired by the scheme at that time;
  - (g) property which ceased to be subject to the scheme at any such time ceased to be owned by the scheme at that time;
  - (h) the disposal value to be brought into account in relation to the cessation of ownership referred to in paragraph (g) is the tax written-down value;
  - (i) the scheme is not entitled to a first-year allowance or an annual investment allowance in respect of any expenditure.
- (4) The operator of the co-ownership authorised contractual scheme must allocate to each participant in the scheme a proportion (which may be zero) of the allowances calculated under this section.
  - (5) The allocation is to be on the basis of what is just and reasonable.
  - (6) In determining what is just and reasonable –
    - (a) regard is to be had in particular to the relative size of each participant’s holding of units in the scheme;
    - (b) no regard is to be had to –
      - (i) whether or to what extent a participant is liable to income tax or corporation tax, or
      - (ii) any other circumstances relating to a participant’s liability to tax.
  - (7) If the participants in the scheme together carry on more than one qualifying activity, the calculation and allocation under this section are to be made separately for each activity.
  - (8) The proportion of an allowance allocated by the operator to a participant under this section for a qualifying activity is the total amount of the allowance available to the participant under this Part in relation to the relevant period by virtue of carrying on that activity as a participant in the scheme.
  - (9) In this section “tax written-down value”, in relation to any cessation of ownership or acquisition, means such amount as would give rise to neither a balancing allowance nor a balancing charge.
  - (10) For the purposes of subsection (9) assume that expenditure to which the disposal value relates is in its own pool.

- (11) For the purposes of subsections (3)(c) and (9), assume that profits or gains arising to all participants from the qualifying activity are, or (if there were any) would be, chargeable to tax.

**262AD Co-ownership schemes: effect of election for participants**

- (1) This section has effect where an election under section 262AB is made by the operator of a co-ownership authorised contractual scheme.
- (2) For the purposes of sections 61(1) and 196(1) (disposal events and values)–
- (a) a participant in the scheme is to be regarded as ceasing to own the participant’s interest in the property subject to the scheme at the beginning of the first accounting period of the scheme for which the election has effect, and
  - (b) the disposal value to be brought into account in relation to that cessation of ownership is the tax written-down value.
- (3) In subsection (2)(b) “tax written-down value” means such amount as would give rise to neither a balancing allowance nor a balancing charge.
- (4) For the purposes of subsection (3) assume that–
- (a) expenditure to which the disposal value relates is in its own pool;
  - (b) profits or gains arising to all participants from the qualifying activity are, or (if there were any) would be, chargeable to tax.

**262AE Co-ownership schemes: effect of election for purchasers**

- (1) This section has effect where –
- (a) an election under section 262AB is made by the operator of a co-ownership authorised contractual scheme,
  - (b) property consisting of a fixture ceased to be subject to the scheme at any time in an accounting period for which the election has effect,
  - (c) in a calculation made by the operator of the scheme under section 262AC(2) the assumption in section 262AC(3)(g) was made in relation to that fixture, and
  - (d) a person (“the current owner”) is treated as the owner of the fixture as a result of incurring capital expenditure on its provision (“the new expenditure”).
- (2) In determining the current owner’s qualifying expenditure –
- (a) if the disposal value statement requirement is not satisfied, the new expenditure is to be treated as nil, and
  - (b) in any other case, any amount of the new expenditure which exceeds the assumed disposal value is to be left out of account (or, if such an amount has already been taken into account, is to be treated as an amount that should never have been taken into account).
- (3) The disposal value statement requirement is that –
- (a) the operator of the scheme has, no later than 2 years after the date when the fixture ceased to be property subject to the

- scheme, made a written statement of the assumed disposal value, and
- (b) the current owner has obtained that statement or a copy of it (directly or indirectly) from the operator of the scheme.
- (4) Sections 185 (fixture on which a plant and machinery allowance has been claimed) and 187A (effect of changes in ownership of fixture) do not apply in relation to the new expenditure.
- (5) In this section “assumed disposal value” means the disposal value that, in making the calculation referred to in subsection (1)(c), was assumed to be brought into account pursuant to section 262AC(3)(h).

### **262AF Co-ownership schemes: definitions relating to schemes**

In sections 262AA to 262AE and this section –

“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 Part 17 of that Act (see section 235A(2) of that Act);

“operator” and “units”, in relation to a co-ownership authorised contractual scheme, have the meanings given by section 237(2) of that Act;

“participant”, in relation to such a scheme, is to be read in accordance with section 235 of that Act.”

### **38 Co-ownership authorised contractual schemes: information requirements**

- (1) The Treasury may by regulations impose requirements on the operator of a co-ownership authorised contractual scheme in relation to –
- (a) the provision of information to participants in the scheme;
  - (b) the provision of information to Her Majesty’s Revenue and Customs.
- (2) Regulations under subsection (1)(a) may be made only for the purpose of enabling participants in a co-ownership authorised contractual scheme to meet their tax obligations in the United Kingdom with respect to their interests in the scheme.
- (3) Regulations under subsection (1)(b) may in particular require the provision of information about –
- (a) who the participants in the scheme were in any accounting period of the scheme;
  - (b) the number and classes of units in the scheme in any such period;
  - (c) the amount of income per unit of any class in any such period;
  - (d) what information has been provided to participants.
- (4) Regulations under this section may specify –
- (a) the time when information is to be provided;
  - (b) the form and manner in which information is to be provided.
- (5) Regulations under this section may make provision for the imposition of penalties in respect of contravention of, or non-compliance with, the regulations, including provision –

- (a) for Her Majesty’s Revenue and Customs to exercise a discretion as to the amount of a penalty, and
  - (b) about appeals in relation to the imposition of a penalty.
- (6) Regulations under this section may in particular be framed by reference to an accounting period of a co-ownership authorised contractual scheme beginning on or after 1 April 2017.
- (7) Regulations under this section may contain consequential, supplementary and transitional provision.
- (8) Regulations under this section must be made by statutory instrument.
- (9) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section—
- “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 Part 17 of that Act (see section 235A(2) of that Act);
  - “operator” and “units”, in relation to a co-ownership authorised contractual scheme, have the meanings given by section 237(2) of that Act;
  - “participant”, in relation to such a scheme, is to be read in accordance with section 235 of that Act.

### **39 Co-ownership authorised contractual schemes: offshore funds**

- (1) The Treasury may by regulations make provision about how participants in a co-ownership authorised contractual scheme are to be treated for income tax purposes or corporation tax purposes in relation to investments made for the purposes of the scheme in an offshore fund.
- (2) Regulations under subsection (1) may, among other things, make provision—
- (a) for the operator of a co-ownership authorised contractual scheme to allocate to participants in the scheme amounts relating to investments made for the purposes of the scheme in an offshore fund;
  - (b) for those amounts to be regarded as income of the participants to whom they are allocated;
  - (c) as to when that income is to be brought into account for income tax purposes or corporation tax purposes.
- (3) Regulations under this section may—
- (a) modify an enactment (whenever passed or made);
  - (b) contain consequential, supplementary and transitional provision.
- (4) Regulations under this section must be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) References in this section to investments made for the purposes of a co-ownership authorised contractual scheme in an offshore fund include

investments so made through one or more other co-ownership authorised contractual schemes.

(7) In this section—

“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 Part 17 of that Act (see section 235A(2) of that Act);

“offshore fund” has the meaning given by section 355 of TIOPA 2010;

“operator”, in relation to a co-ownership authorised contractual scheme, has the meaning given by section 237(2) of the Financial Services and Markets Act 2000;

“participant”, in relation to such a scheme, is to be read in accordance with section 235 of that Act.

## PART 2

### DOMICILE AND OVERSEAS PROPERTY

#### *Deemed domicile*

#### 40 Deemed domicile: income tax and capital gains tax

(1) In Chapter 2A of Part 14 of ITA 2007 (income tax liability: domicile), after section 835B insert—

##### **“835BA Deemed domicile**

(1) This section has effect for the purposes of the provisions of the Income Tax Acts or TCGA 1992 which apply this section.

(2) An individual not domiciled in the United Kingdom at a time in a tax year (“the relevant tax year”) is to be regarded as domiciled in the United Kingdom at that time if—

- (a) condition A is met, or
- (b) condition B is met.

(3) Condition A is that—

- (a) the individual was born in the United Kingdom,
- (b) the individual’s domicile of origin was in the United Kingdom, and
- (c) the individual is UK resident for the relevant tax year.

(4) Condition B is that the individual has been UK resident for at least 15 of the 20 tax years immediately preceding the relevant tax year.

(5) But Condition B is not met if—

- (a) the individual is not UK resident for the relevant tax year, and
- (b) there is no tax year beginning after 5 April 2017 and preceding the relevant tax year in which the person was UK resident.”

(2) Schedule 12 contains—

- (a) provision applying section 835BA of ITA 2007, and

- (b) further provision relating to this section.

#### 41 Deemed domicile: inheritance tax

- (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 (“the relevant tax year”), or”;
  - (c) for paragraph (b) substitute –
    - “(b) he was resident in the United Kingdom –
      - (i) for at least fifteen of the twenty tax years immediately preceding the relevant tax year, and
      - (ii) for at least one of the four tax years ending with the relevant tax year.”
- (2) In that section, omit subsection (3).
- (3) In that section, in subsection (4), for “in any year of assessment” substitute “for any 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 that subsection,
 was not a formerly domiciled resident for the tax year in which the relevant time falls.”
- (8) 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, means a person –
      - (a) who was born in the United Kingdom,
      - (b) whose domicile of origin was in the United Kingdom,
      - (c) who was resident in the United Kingdom for that tax year, and
      - (d) who was resident in the United Kingdom for at least one of the two tax years immediately preceding that tax year;”.
- (9) The amendments made by this section have effect in relation to times after 5 April 2017, subject to subsections (10) to (12).
- (10) The amendment to section 267(1) of IHTA 1984 made by subsection (1)(c) does not have effect in relation to a person if –
- (a) the person is not resident in the United Kingdom for the relevant tax year, and
  - (b) there is no tax year beginning after 5 April 2017 and preceding the relevant tax year in which the person was resident in the United Kingdom.

In this subsection “relevant tax year” is to be construed in accordance with section 267(1) of IHTA 1984 as amended by subsection (1).

- (11) The amendment to section 267(1) of IHTA 1984 made by subsection (1)(c) also does not have effect in determining –
- (a) whether settled property which became comprised in the settlement on or before that date is excluded property for the purposes of IHTA 1984;
  - (b) the settlor’s domicile for the purposes of section 65(8) of that Act in relation to settled property which became comprised in the settlement on or before that date;
  - (c) whether, for the purpose of section 65(8) of that Act, the condition in section 82(3) of that Act is satisfied in relation to such settled property.
- (12) Despite subsection (2), section 267(1) of IHTA 1984, as originally enacted, shall continue to be disregarded in determining –
- (a) whether settled property which became comprised in the settlement on or before 9 December 1974 is excluded property for the purposes of IHTA 1984;
  - (b) the settlor’s domicile for the purposes of section 65(8) of that Act in relation to settled property which became comprised in the settlement on or before that date;
  - (c) whether, for the purpose of section 65(8) of that Act, the condition in section 82(3) of that Act is satisfied in relation to such settled property.

*Inheritance tax on overseas property*

**42 Overseas property with value attributable to UK residential property**

Schedule 13 makes provision about the extent to which overseas property is excluded property for the purposes of inheritance tax, in cases where the value of the overseas property is attributable to residential property in the United Kingdom.

**PART 3**

INDIRECT TAXES

**43 VAT: zero-rating of adapted motor vehicles etc**

Schedule 14 contains amendments of Schedule 8 to VATA 1994 (zero-rating).

**44 Insurance premium tax: standard rate**

- (1) In section 51(2)(b) of FA 1994 (standard rate of insurance premium tax), for “10 per cent” substitute “12 per cent”.
- (2) Subject to subsection (3), the amendment made by subsection (1) has effect in relation to a premium falling to be regarded for the purposes of Part 3 of FA 1994 as received under a taxable insurance contract by an insurer on or after 1 June 2017.
- (3) That amendment does not have effect in relation to a premium falling within subsection (4), unless the premium falls to be regarded for the purposes of Part

3 of FA 1994 as received under a taxable insurance contract by an insurer on or after 1 June 2018.

- (4) A premium falls within this subsection if it is in respect of a risk for which the period of cover begins before 1 June 2017.
- (5) Subsection (5) is supplemented by section 45.

#### **45 Insurance premiums attributable to more than one period of cover etc**

- (1) Subsection (2) applies where a premium which is liable to tax at the standard rate, and which falls to be regarded for the purposes of Part 3 of FA 1994 as received under a taxable insurance contract by an insurer on or after 1 June 2017, is –
  - (a) partly in respect of a risk for which the period of cover begins before 1 June 2017, and
  - (b) partly in respect of a risk for which the period of cover begins on or after that date.
- (2) So much of the premium as is attributable to the risk for which the period of cover begins on or after 1 June 2017 is to be treated for the purposes of section 44 and Part 3 of FA 1994 as a separate premium.
- (3) Where a premium is in respect of a standard rate matter and also a matter that is not standard rate –
  - (a) the premium is to be taken to fall within section 44(4) if the part of it attributable to a standard rate matter is in respect of a risk for which the period of cover begins before 1 June 2017; and
  - (b) the reference in subsection (1) to a premium which is liable to tax at the standard rate is to be read as a reference to so much of the premium as is attributable to the standard rate matter (and subsection (2) is to be read accordingly).
- (4) Nothing in subsection (3) applies to an excepted premium within the meaning of section 69A of FA 1994.
- (5) Any attribution under this section is to be made on such basis as is just and reasonable.
- (6) In this section a “standard rate matter” has the meaning given by section 69(12)(c) of FA 1994.
- (7) Other expressions used in this section and Part 3 of FA 1994 have the same meaning in this section as in that Part.

#### **46 Petroleum revenue tax: elections for oil fields to become non-taxable**

- (1) In Schedule 20B to FA 1993, for paragraphs 2 to 12 substitute –

*“Method of election*

- 2 An election must be made in writing.
- 3 An election must be notified to the Commissioners.
- 4 An election is deemed to have been made on the date on which notification of the election was sent to the Commissioners.

*Effect of election*

- 5 If an election is made, the field ceases to be taxable with effect from the start of the first chargeable period to begin after the election is made.

*No unrelievable field losses from field*

- 6 From the start of the first chargeable period to begin after an election is made, no allowable loss that accrues from the oil field is an allowable unrelievable field loss for the purposes of petroleum revenue tax.

*Interpretation*

- 7 (1) In this Schedule –  
“Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;  
“participator”, in relation to a particular time, means a person who is a participator in the chargeable period which includes that time.
- (2) Expressions used in this Schedule and in Part 1 of the Oil Taxation Act 1975 have the same meaning in this Schedule as in Part 1 of that Act.”
- (2) The amendment made by this section is to be treated as having come into force on 23 November 2016.

**47 Landfill tax: taxable disposals**

- (1) Part 3 of FA 1996 (landfill tax) is amended as follows.
- (2) In section 40 (charge to tax), in subsection (2), for paragraphs (a) to (d) substitute –  
“(a) it is a qualifying disposal, and  
(b) it is made at a landfill site.”
- (3) In section 45 (pet cemeteries), in subsection (2) –  
(a) in paragraph (a), for “landfill disposal” substitute “qualifying disposal”;  
(b) in paragraph (b), for “landfill disposals” substitute “qualifying disposals”.
- (4) In section 46 (power to vary), for subsection (2) substitute –  
“(2) An order under this section may, among other things, confer exemption by reference to –  
(a) where in a landfill site material is disposed of (for example, whether it is disposed of in a discrete unit within the site);  
(b) the nature of the material disposed of or the purpose for which it is disposed of (for example, aggregate for drainage or equipment for the extraction of liquid or gas);  
(c) certificates issued by the Commissioners and conditions set out in certificates.

- (2A) Provision under section (2)(c) may, among other things –
- (a) allow the Commissioners to direct requirements to be met before certificates can be issued, and
  - (b) provide for reviews and appeals relating to decisions about certificates.”
- (5) Omit section 64 (disposal of material as waste).
- (6) For section 65 (disposal by way of landfill) substitute –
- “65 Qualifying disposals**
- (1) A disposal is a “qualifying disposal” if it is a disposal of material where –
    - (a) the material is deposited on the surface of land or on a structure set into the surface, or
    - (b) the material is deposited under the surface of land.
  - (2) Subsection (1) applies whether or not the material is placed in a container before it is deposited.
  - (3) Subsection (1)(b) applies whether or not the material –
    - (a) is covered after it is deposited, or
    - (b) is deposited in a cavity (such as a cavern or mine).
  - (4) If material is deposited on the surface of land or on a structure set into the surface with a view to the material being covered, the disposal is to be treated as made when the material is deposited and not when it is covered.
  - (5) An order may redefine “qualifying disposal” for the purposes of this Part (including by amending this section).
  - (6) In this section “land” includes land covered by water where the land is above the low water mark of ordinary spring tides.”
- (7) Omit section 65A (prescribed landfill site activities).
- (8) In section 70 (interpretation) –
- (a) in subsection (1), at the appropriate place insert –
 

““qualifying disposal” has the meaning given in section 65;”;
  - (b) omit subsection (2);
  - (c) in subsection (4), for “64” substitute “65”.
- (9) In section 71 (orders and regulations), in subsection (7) –
- (a) omit paragraphs (ca) and (cb);
  - (b) in paragraph (d), for “disposal of material by way of landfill” substitute “qualifying disposal”.
- (10) In Schedule 5 (landfill tax), omit paragraphs 1A and 1B.
- (11) In Schedule 5, before paragraph 2 insert –

*“Site information*

- 1C (1) Regulations may require the operator of a landfill site to –
- (a) retain plans, licences and permits relating to the site;

- (b) provide the Commissioners with copies of, or information relating to, plans, licences and permits retained under paragraph (a).
- (2) Regulations under sub-paragraph (1)(b) may be framed by reference to such copies or information as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.”
- (12) In Schedule 5—
  - (a) in paragraph 10(1), for “as waste by way of landfill” substitute “in a qualifying disposal”;
  - (b) in paragraph 45(1)(a) and (c) and (2), for “landfill disposal” substitute “qualifying disposal”;
  - (c) in paragraph 46(1)(b), for “landfill disposal” substitute “qualifying disposal”.
- (13) In FA 2008, in Schedule 36 (information and inspection powers), in entry 12 of the table in paragraph 61A, for “landfill disposal” substitute “qualifying disposal”.
- (14) In FA 2011, in Schedule 23 (data-gathering powers), in paragraph 25(c), for “landfill disposal” substitute “qualifying disposal”.
- (15) The amendments made by this section come into force—
  - (a) so far as conferring a power to make an order or regulations, on the day on which this Act is passed, and
  - (b) subject to that, in accordance with provision made by the Treasury by regulations made by statutory instrument.
- (16) Regulations under subsection (15) may contain transitional provision and savings.

#### **48 Remote gaming duty: freeplay**

- (1) Part 3 of FA 2014 (general betting duty, pool betting duty and remote gaming duty) is amended in accordance with subsections (2) to (8).
- (2) In section 159 (remote gaming duty: gaming payments), for subsection (4) substitute—
  - “(4) For the purposes of this Chapter—
    - (a) where the chargeable person participates in the remote gaming in reliance on an offer which waives all of a gaming payment, the person is to be treated as having made a gaming payment of the amount which would have been required to be paid without the offer (“the full amount”), and
    - (b) where the chargeable person participates in the remote gaming in reliance on an offer which waives part of a gaming payment, the person is to be treated as having made an additional gaming payment of the difference between the gaming payment actually made and the full amount.
- (5) Where a person is treated by subsection (4) as having made a gaming payment, the payment is to be treated for the purposes of this Chapter—

- (a) as having been made to the gaming provider at the time when the chargeable person begins to participate in the remote gaming to which it relates, and
  - (b) as not having been –
    - (i) returned, or
    - (ii) assigned to a gaming prize fund.
  - (6) The Commissioners may by regulations make further provision about how a gaming payment which a person is treated as having made under subsection (4) is to be treated for the purposes of this Chapter.
  - (7) This section has effect subject to section 159A.”
- (3) After section 159 insert –

**“159A Play using conditional winnings**

- (1) Where a chargeable person participates in remote gaming, an amount is not to be taken into account in determining the “gaming payment” (if any) under section 159 so far as the amount is paid out of money in relation to which the first and second conditions are met (“relievable funds”).
  - (2) The first condition is that the money has been won by participation in the gaming either –
    - (a) in reliance on an offer which waives all or part of a gaming payment, or
    - (b) in a case where the gaming payment was paid out of money in relation to which this condition and the second condition were met.
  - (3) The second condition is that the chargeable person is not entitled to use the money otherwise than for the purpose of participation in the gaming.
  - (4) Subsection (5) applies where –
    - (a) a chargeable person participates in remote gaming in reliance on an offer which waives all or part of a gaming payment, and
    - (b) that offer has been won in the course of the person’s participation in the gaming (and the person was not given the choice of receiving a different benefit instead of the offer).
  - (5) The amount which would, apart from this subsection, be treated by section 159(4)(a) or (b) as a gaming payment (or additional gaming payment) is not to be so treated.
  - (6) For the purposes of this section, where a payment is made out of moneys which include both relievable funds and money which is not relievable funds (“non-relievable funds”), the payment is not taken to be made out of relievable funds, except so far as the amount of the payment exceeds the amount of the non-relievable funds.
  - (7) In this section “money” includes any amount credited and any other money’s worth.”
- (4) In section 160 (remote gaming duty: prizes) –
- (a) in subsection (1), in the opening words, after “account” insert “only”,
  - (b) omit subsection (2),

- (c) in subsection (3), at the end insert “(but where a gaming payment is returned by being credited to an account this subsection has effect subject to subsection (1))”, and
- (d) at the end insert –
  - “(9) This section has effect subject to section 160A.”
- (5) After section 160 insert –
  - “160A Prizes: freeplay**
  - (1) Where a prize is a freeplay offer (whether or not in the form of a voucher) which does not fall within section 160(4) –
    - (a) for the purposes of sections 156 and 157, the expenditure on the prize is nil, and
    - (b) subsections (5) to (7) of section 160 do not apply in relation to the prize.
  - (2) Where a prize is a voucher which gives the recipient a choice of using it in place of money for freeplay or as whole or partial payment for another benefit, section 160(5)(b) has effect as if after “used” there were inserted “if it is used as payment for a benefit other than freeplay”.
  - (3) In this section –
    - “freeplay” means participation, in reliance on a freeplay offer, in –
      - (a) remote gaming, or
      - (b) an activity in respect of which a gambling tax listed in section 161(4) is charged;
    - “freeplay offer” means an offer which waives all or part of –
      - (a) a gaming payment, or
      - (b) a payment in connection with participation in an activity in respect of which a gambling tax listed in section 161(4) is charged.”
- (6) In section 188 (gaming), after subsection (2) insert –
  - “(3) But a game is not a “game of chance” for the purposes of this Part if no amounts are paid or payable –
    - (a) in respect of any person’s entitlement to participate in the game, or
    - (b) otherwise for, on account of or in connection with any person’s participation in the game.”
- (7) In section 190 (index), in the Table, in the entry for “game of chance”, for “188(1)(b)” substitute “188(1)(b) and (3)”.
- (8) In section 194(4) (regulations under Part 3 to which the procedure in section 194(5) is to apply), before paragraph (a), insert –
  - “(za) regulations under section 159(6);”.
- (9) The amendments made by this section have effect with respect to accounting periods beginning on or after 1 August 2017.

#### **49 Tobacco products manufacturing machinery: licensing scheme**

- (1) After section 8U of TPDA 1979 insert –

**“8V Tobacco products manufacturing machinery: licensing scheme**

- (1) In this section “tobacco products manufacturing machinery” means machinery that is designed primarily for use for the purpose of (or for purposes including) manufacturing tobacco products.
- (2) The Commissioners may by regulations –
  - (a) prohibit a person from purchasing, acquiring, owning or being in possession of, or carrying out other specified activities in respect of an item of tobacco products manufacturing machinery, except in accordance with a licence granted under the regulations;
  - (b) provide that if a person contravenes the prohibition in relation to an item of tobacco products manufacturing machinery, the machinery is liable to forfeiture.
- (3) The regulations may provide that the prohibition applies only –
  - (a) in relation to persons of a specified description,
  - (b) in specified circumstances, or
  - (c) in relation to items of tobacco products manufacturing machinery of a specified description.
- (4) Regulations under this section may, in particular, make provision –
  - (a) imposing obligations on licensed persons;
  - (b) for the failure of a licensed person to comply with a condition of a licence, or with an obligation imposed by the regulations, to attract a penalty under section 9 of the Finance Act 1994 (civil penalties);
  - (c) about reducing (including reducing to nil) or staying a penalty, or agreeing a compromise in relation to proceedings for a penalty, in specified circumstances;
  - (d) for two or more contraventions to be treated as a single contravention for the purposes of assessing a penalty;
  - (e) about appeals against decisions of the Commissioners in connection with licensing, and against the imposition of penalties, under the regulations;
  - (f) for specified decisions of the Commissioners to be treated –
    - (i) as if they were listed in section 13A of FA 1994 (reviews and appeals: relevant decisions);
    - (ii) as ancillary matters for the purposes of sections 14 to 16 of FA 1994 (further provision about reviews and appeals);
  - (g) for the Customs and Excise Management Act 1979 to have effect in relation to licensed persons as it has effect in relation to revenue traders, subject to such modifications as may be specified in the regulations.
- (5) The Commissioners may, by or under regulations under this section, make provision –
  - (a) about the circumstances in which they may grant a licence to an applicant, including the requirements to be met by or in relation to the applicant (which may include a requirement that the applicant is a fit and proper person to hold a licence in relation to an item of tobacco manufacturing machinery);

- (b) about the form, manner and content of an application for or in respect of a licence;
  - (c) for licences to be subject to specified conditions or restrictions;
  - (d) regulating the variation or revocation of a licence, or of any condition or restriction to which a licence is subject;
  - (e) about the surrender or transfer of a licence;
  - (f) for communications by or with the Commissioners in connection with a licence to be made electronically;
  - (g) as to the arrangements for licensing bodies corporate which are members of the same group (as defined in the regulations);
  - (h) make provision for members of a group to be jointly and severally liable for any penalties imposed under the regulations.”
- (2) In section 9 of TPDA (regulations), in subsection (1A), for “or 8U” substitute “, 8U or 8V”.

#### 50 Cigarettes: minimum excise tax

- (1) TPDA 1979 is amended as follows.
- (2) In section 6(5)(a) (alteration of rates of duty), for “the amount” substitute “each amount”.
- (3) For the first row of the table in Schedule 1 substitute –

“1. Cigarettes	An amount equal to the higher of – (a) [x]% of the retail price plus £[x] per thousand cigarettes, or (b) £[x] per thousand cigarettes”.
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- (4) The amendments made by this section come into force on [date].

### PART 4

#### SOFT DRINKS INDUSTRY LEVY

##### *Introductory*

#### 51 Soft drinks industry levy

- (1) A tax called “the soft drinks industry levy” is to be charged in accordance with this Part.
- (2) The Commissioners are responsible for the collection and management of the soft drinks industry levy.

#### 52 “Soft drink” and “package”

- (1) “Soft drink” means –
  - (a) a non-alcoholic beverage;

- (b) a liquid which, when prepared in a specified manner, constitutes a non-alcoholic beverage.
- (2) “Non-alcoholic beverage” means a beverage which is of an alcoholic strength not exceeding 1.2%.
- (3) A liquid is prepared in a specified manner if it is –
  - (a) diluted with water,
  - (b) combined with crushed ice, or processed so as to create crushed ice,
  - (c) combined with carbon dioxide, or
  - (d) prepared by way of a process that involves any combination of the processes mentioned in paragraphs (a) to (c).
- (4) A person “packages” a soft drink if the person cans, bottles or otherwise packages the soft drink in a form in which –
  - (a) in the case of a soft drink within subsection (1)(a), it is suitable to be consumed without further preparation, and
  - (b) in the case of a soft drink within subsection (1)(b), it is suitable to be consumed when prepared in a specified manner (and without any other preparation),and “packaged” is to be construed accordingly.

### 53 Meaning of “prepared drink”

- (1) In this Part a reference to “prepared drink” is a reference to –
  - (a) a soft drink within subsection (1)(a) of section 52;
  - (b) a beverage that would result from preparing a liquid within subsection (1)(b) of that section –
    - (i) in a specified manner (see section 52(3)), and
    - (ii) in accordance with the relevant dilution ratio.
- (2) The “relevant dilution ratio” means –
  - (a) the dilution ratio stated on, or calculated by reference to information stated on, the packaging of the soft drink;
  - (b) where subsection (3) or (4) applies, the dilution ratio determined by the Commissioners.
- (3) This subsection applies where the packaging of the soft drink states neither the dilution ratio nor information by reference to which the dilution ratio can be calculated.
- (4) This subsection applies where –
  - (a) the dilution ratio, or information by reference to which the dilution ratio can be calculated, is stated on the packaging of the soft drink, and
  - (b) it is reasonable to assume that the main purpose, or one of the main purposes, of stating that particular dilution ratio or information is avoiding or reducing liability for soft drinks industry levy.
- (5) The Commissioners may by or under regulations make provision about the criteria for –
  - (a) determining a dilution ratio for the purposes of subsection (2)(b);
  - (b) determining whether the main purpose, or one of the main purposes, of stating a particular dilution ratio or information is avoiding or reducing liability for soft drinks industry levy.

*Chargeable soft drinks*

**54 Meaning of “chargeable soft drink”**

“Chargeable soft drink” means a packaged soft drink that –

- (a) meets the sugar content condition (see section 55), and
- (b) is not an exempt soft drink (see section 56).

**55 Sugar content condition**

- (1) A packaged soft drink meets the sugar content condition if it contains –
  - (a) added sugar ingredients, and
  - (b) at least 5 grams of sugars (whether or not as a result of containing added sugar ingredients) per 100 millilitres of prepared drink.
- (2) A packaged soft drink contains “added sugar ingredients” if any of the following are combined with other ingredients at any stage in the production of the soft drink –
  - (a) calorific mono-saccharides or di-saccharides;
  - (b) a substance containing calorific mono-saccharides or di-saccharides.
- (3) But a packaged soft drink does not contain “added sugar ingredients” only by reason of containing fruit juice, vegetable juice or milk (or any combination of them).
- (4) The Commissioners may by regulations make provision about what is, or is not, to be treated for the purposes of this Part as fruit juice, vegetable juice or milk.
- (5) For the purposes of subsection (1)(b) and section 59(2), “sugars” means anything that is required to be described as “sugars” for the purposes of a designated food labelling obligation.
- (6) “Designated food labelling obligation” means an obligation that –
  - (a) relates to the provision of nutritional information on the packaging of food or drinks,
  - (b) is imposed by an enactment, an EU instrument or subordinate legislation, and
  - (c) is designated by regulations made by the Commissioners for the purposes of subsection (5).

**56 Exempt soft drinks**

- (1) The following are “exempt soft drinks” –
  - (a) milk-based drinks,
  - (b) milk substitute drinks,
  - (c) alcohol substitute drinks, and
  - (d) soft drinks of a specified description which are for use for medicinal or other specified purposes.
- (2) “Milk-based drink” means a soft drink which contains at least 75 millilitres of milk per 100 millilitres of prepared drink.
- (3) “Milk substitute drink” means a soft drink which –
  - (a) contains at least the specified quantities of calcium, and

- (b) meets such other conditions as may be specified.
- (4) “Alcohol substitute drink” means a soft drink –
  - (a) which is similar to a particular kind of alcoholic beverage, and
  - (b) meets such other conditions as may be specified.
- (5) “Alcoholic beverage” means a beverage which is of an alcoholic strength exceeding 1.2%.
- (6) The Commissioners may by regulations make further provision about the criteria for determining what is, or is not, to be treated as an exempt soft drink.
- (7) In this section, “specified” means specified by regulations made by the Commissioners.

*Charging of the soft drinks industry levy*

**57 Charge to soft drinks industry levy**

- (1) The charge to soft drinks industry levy arises on a chargeable event which occurs on or after 6 April 2018.
- (2) Where chargeable soft drinks are packaged by a taxable person on premises in the United Kingdom, a chargeable event occurs on the removal of the chargeable soft drinks from the taxable person’s premises.
- (3) But if the chargeable soft drinks are made available for sale or free of charge before removal from the taxable person’s premises, a chargeable event occurs at the time they are made available (and not at the time mentioned in subsection (2)).
- (4) Where chargeable soft drinks are imported into the United Kingdom, a chargeable event occurs on the first receipt of the soft drinks by a relevant person (the “first recipient”).
- (5) The “first receipt” of imported chargeable soft drinks is the first occasion on which the soft drinks are delivered to a place in the United Kingdom which is a relevant person’s place of business (including where the chargeable soft drinks are delivered from a place outside the United Kingdom which is another place of business of the relevant person).
- (6) “Relevant person” means a person who carries on a business involving the sale of chargeable soft drinks.
- (7) The reference in subsection (6) to the sale of chargeable soft drinks includes a reference to –
  - (a) sale by wholesale,
  - (b) sale by retail, and
  - (c) sale for consumption on or in the vicinity of premises on which the drinks are sold.
- (8) Subsection (1) is subject to section 60 (small producer exemption).
- (9) “Taxable person” means a person who is liable to be registered under this Part (see sections 63 and 65).

## 58 Liability to pay the levy

- (1) Where the charge to soft drinks industry levy arises on a chargeable event within section 57(2) or (3), the taxable person who packages the soft drinks is liable to pay the amount charged.
- (2) Where the charge to soft drinks industry levy arises on a chargeable event within section 57(4), the relevant person who is the first recipient is liable to pay the amount charged.

## 59 Levy rates

- (1) Soft drinks industry levy is charged –
  - (a) in the case of chargeable soft drinks that meet the higher sugar threshold, at the rate of £[x] per litre of prepared drink;
  - (b) in the case of chargeable soft drinks that do not meet the higher sugar threshold, at the rate of £[x] per litre of prepared drink.
- (2) A chargeable soft drink meets the higher sugar threshold if it contains at least 8 grams of sugars (whether or not as a result of containing added sugar ingredients) per 100 millilitres of prepared drink.

## 60 Small producer exemption

- (1) No charge to soft drinks industry levy arises on a chargeable event in relation to chargeable soft drinks if the condition in subsection (2) is met.
- (2) The condition is met if the chargeable soft drinks are produced by a person who is, on the relevant day, a small producer.
- (3) Chargeable soft drinks are “produced” by a person (the “producer”) if they are packaged (by or on behalf of the producer) for marketing under –
  - (a) the producer’s name or business name, or
  - (b) another name which is used in accordance with a licence granted to the producer.
- (4) A person is a “small producer” on the relevant day if, on that day –
  - (a) in the case of a person who produces and packages chargeable soft drinks in the United Kingdom, the person is not liable to be registered under section 63(3);
  - (b) in the case of a person who produces and packages chargeable soft drinks outside the United Kingdom, if the person were producing the soft drinks in the United Kingdom, the person would not be liable to be registered under section 63(3);
  - (c) in the case of a person who produces, but does not package, chargeable soft drinks in the United Kingdom, the person is registered under section 64;
  - (d) in the case of a person who produces, but does not package, chargeable soft drinks outside of the United Kingdom, if the person were producing the soft drinks in the United Kingdom, the person would be entitled to apply for registration under section 64.
- (5) The relevant day, in relation to chargeable soft drinks, is the day on which the charge to soft drinks industry levy on the chargeable soft drinks would (apart from this section) arise.

**61 Export credit**

- (1) The Commissioners may by regulations make provision in relation to cases where, after a charge to soft drinks industry levy has arisen in relation to chargeable soft drinks, the soft drinks are exported from the United Kingdom.
- (2) The provision that may be made is provision –
  - (a) for the liable person to be entitled to a tax credit in respect of any soft drinks industry levy charged on the exported soft drinks;
  - (b) for the tax credit to be brought into account when the person is accounting for soft drinks industry levy due from the person for the prescribed tax period or periods.
- (3) Regulations under this section may, in particular, include provision –
  - (a) for any entitlement to a tax credit to be conditional on the making of a claim by the liable person, and specifying the period within which and the manner in which a claim may be made;
  - (b) for entitlement to bring a tax credit into account to be conditional on compliance with prescribed requirements;
  - (c) requiring a claim for a tax credit to be evidenced and quantified by reference prescribed records and other documents;
  - (d) requiring a person claiming any entitlement to a tax credit to keep, for the prescribed period and in the prescribed form and manner, those records and documents and a record of prescribed information relating to the claim;
  - (e) for the withdrawal of a tax credit where any requirement of the regulations is not complied with;
  - (f) about adjustments of liability for soft drinks industry levy in connection with entitlement or withdrawal of entitlement to a tax credit in specified circumstances;
  - (g) about the treatment of a tax credit where the liable person ceases to carry on a business involving the package or sale of chargeable soft drinks;
  - (h) for the sale or provision of chargeable soft drinks on passenger transport operating between the United Kingdom and a place outside of the United Kingdom to be treated as “export from the United Kingdom” for the purposes of regulations under this section.
- (4) In this section –
  - “liable person” means the person who is liable under section 58 to pay the charge to soft drinks industry levy referred to in subsection (1);
  - “prescribed” means specified in, or determined in accordance with, regulations under this section.

*Registration***62 The register**

- (1) The Commissioners must establish and maintain a register of persons who are liable to be registered under section 63 or 65, or are registered under section 64, for the purposes of the soft drinks industry levy.

- (2) The register under this section may contain such information as the Commissioners think is required for the purposes of the collection and management of the levy.

### **63 Liability to register: producers and packagers**

- (1) An unregistered person becomes liable to be registered –
  - (a) at the end of any month, if the person has packaged any relevant chargeable soft drinks during the immediately preceding period of 12 months;
  - (b) on any day, if there are reasonable grounds for believing that the person will package any relevant chargeable soft drinks during the period of 30 days beginning with that day.
- (2) But subsection (1) does not apply to an unregistered person if –
  - (a) the relevant chargeable soft drinks packaged by the person are also produced by the person, and
  - (b) the person is not liable to be registered under subsection (3).
- (3) An unregistered person who produces chargeable soft drinks becomes liable to be registered –
  - (a) at the end of any month, if the amount of relevant chargeable soft drinks produced by the person during the immediately preceding period of 12 months exceeds the small producer threshold;
  - (b) on any day, if there are reasonable grounds for believing that the amount of relevant chargeable soft drinks produced by the person during the period of 30 days beginning with that day will exceed the small producer threshold.
- (4) “Relevant chargeable soft drinks” means chargeable soft drinks in respect of which a chargeable event has arisen.
- (5) The amount of relevant chargeable soft drinks produced by a person during a period exceeds the “small producer threshold” if the aggregate of –
  - (a) the amount of relevant chargeable soft drinks within section 52(1)(a) that are produced by the person during the period, and
  - (b) the amount of prepared drink that would result from the relevant chargeable soft drinks within section 52(1)(b) that are produced by the person during the period,exceeds 1 million litres.
- (6) In determining for the purposes of subsection (5) the amount of chargeable soft drinks produced by a person (P), any chargeable soft drinks produced by a person connected with P are to be regarded as produced by P.
- (7) Section 1122 of CTA 2010 (meaning of connected person) applies for the purposes of subsection (6).
- (8) In this section and in sections 64 and 65, “unregistered person” means a person who is not registered under this Part for the purposes of the soft drinks industry levy.
- (9) “Produce”, in relation to chargeable soft drinks, is to be construed in accordance with section 60(3).

**64 Voluntary registration: small producers**

- (1) The Commissioners must register an unregistered person if the person –
  - (a) produces chargeable soft drinks that are packaged by another person, but is not liable to be registered under section 63(3), and
  - (b) applies to the Commissioners for registration under this section.
- (2) The Commissioners may by or under regulations make provision about the form and manner of an application under subsection (1).

**65 Liability to register: importers**

- (1) An unregistered person becomes liable to be registered –
  - (a) at the end of any month, if during the immediately preceding period of 12 months the person is the first recipient in relation to any relevant chargeable soft drinks;
  - (b) on any day, if there are reasonable grounds for believing that, during the period of 30 days beginning with that day, the person will be the first recipient in relation to any relevant chargeable soft drinks.
- (2) “Relevant chargeable soft drinks” has the meaning given by section 63(4).

**66 Notification of liability and registration**

- (1) A person who becomes liable to be registered under section 63 or 65 must notify the Commissioners of the liability before the end of the notification period.
- (2) The “notification period” is the period of 30 days beginning with the day on which the liability arises.
- (3) Where the Commissioners are satisfied that a person is liable to be registered (whether or not the person has notified liability under subsection (1)), the Commissioners must register the person with effect from the registration date.
- (4) “Registration date” means the day on which the liability to register arises.
- (5) The Commissioners may by regulations –
  - (a) make provision about the form and manner in which a notification is to be given;
  - (b) make provision about the information to be contained in or provided with a notification.

**67 Cancellation of registration**

- (1) The Commissioners must cancel a person’s registration under this Part if –
  - (a) the person requests the cancellation, and
  - (b) the person satisfies the Commissioners that the person is not liable at that time to be registered.
- (2) A cancellation under subsection (1) is to be made with effect from –
  - (a) the day on which the request is made, or
  - (b) such later day as may be agreed between the Commissioners and the person.

- (3) The Commissioners may cancel a person's registration under this Part if they are satisfied that the person is not liable to be registered.
- (4) A cancellation under subsection (3) is to be made with effect from –
  - (a) the day on which the person ceased to be liable to be registered, or
  - (b) such later day as may be agreed between the Commissioners and the person.
- (5) But the Commissioners must not cancel a registration under subsection (1) or (3) with effect from any time unless they are satisfied that it is not a time when the person would be liable to be registered under this Part.
- (6) In determining for the purposes of subsection (5) when a person would be liable to be registered, the fact that a person is already registered is to be ignored.
- (7) The Commissioners may cancel a person's registration under this Part if they are satisfied that the person was not liable to be registered on the day on which the person was registered.
- (8) A cancellation under subsection (7) is to be made with effect from the day on which the person was registered.

## **68 Correction of the register**

- (1) The Commissioners may by regulations make provision about the correction of entries in the register.
- (2) Regulations under subsection (1) may make provision for requiring persons who are or are liable to be registered to notify the Commissioners of changes in circumstances which are relevant to the register.

### *Administration and enforcement*

## **69 Payment, collection and recovery**

- (1) The Commissioners may by regulations make provision about the payment, collection and recovery of soft drinks industry levy.
- (2) Regulations under subsection (1) may –
  - (a) require persons who are or are liable to be registered under this Part to keep accounts for the purposes of the levy in the form and manner specified in the regulations;
  - (b) require persons who are or are liable to be registered under this Part to make returns for the purposes of the levy;
  - (c) determine periods ("tax periods") by reference to which payments of the levy are to be made;
  - (d) make provision about the times at which payments of the levy are to be made and methods of payment;
  - (e) require the amounts payable by reference to tax periods to be calculated by or under the regulations;
  - (f) make provision for the correction of errors made in accounting for the levy.
- (3) Provision may be made by or under regulations under subsection (2)(b) about –

- (a) the periods by reference to which returns are to be made,
  - (b) the information to be included in returns,
  - (c) timing, and
  - (d) the form of, and method of, making returns.
- (4) Schedule 15 contains provision about recovery and overpayments.

## 70 Penalties: failure to notify etc.

- (1) Schedule 41 to FA 2008 (penalties: failure to notify etc.) is amended as follows.
- (2) In the Table in paragraph 1, after the entry relating to climate change levy, insert—

“Soft drinks industry levy	Obligation under section 66 of FA 2017 (obligation to give notice of liability to be registered).”
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- (3) In the heading before paragraph 4, at the end insert “etc”.
- (4) In paragraph 4, after sub-paragraph (1) insert—
- “(1A) A penalty is payable by a person (P) where—
- (a) after a charge to soft drinks industry levy has arisen in respect of chargeable soft drinks, P acquires possession of them or is concerned with carrying, removing, depositing, keeping or otherwise dealing with them, and
  - (b) at the time when P acquires possession of the chargeable soft drinks or is so concerned, a payment of soft drinks industry levy in respect of the chargeable soft drinks is due or payable and has not been paid.”
- (5) In that paragraph, in sub-paragraph (2)—
- (a) for “sub-paragraph (1)” substitute “this paragraph”;
  - (b) at the end insert—
    - ““chargeable soft drinks” has the same meaning as in Part 4 of FA 2017.”
- (6) In paragraph 5(4)—
- (a) after “goods” insert “or chargeable soft drinks”;
  - (b) after “duty” insert “or (as the case may be) soft drinks industry levy”.
- (7) In paragraph 10—
- (a) after “goods”, in both places, insert “or chargeable soft drinks”;
  - (b) after “duty”, in the first place it occurs, insert “or (as the case may be) soft drinks industry levy”;
  - (c) after “duty”, in the second place it occurs, insert “or soft drinks industry levy”.
- (8) In paragraph 11(2)(d)—
- (a) after “goods” insert “or chargeable soft drinks”;
  - (b) after “duty” insert “or (as the case may be) soft drinks industry levy”.

- (9) In paragraph 21 –
- (a) in sub-paragraph (4), for “paragraph 4” substitute “paragraph 4(1)”;
  - (b) after that sub-paragraph insert –

“(5) In paragraph 4(1A) the reference to P acquiring possession of, or being concerned in dealing with, chargeable soft drinks in respect of which a payment of soft drinks industry levy is payable but has not been paid includes a person who acts on P’s behalf in doing so; but P is not liable to a penalty in respect of any action by P’s agent where P satisfies HMRC or (on appeal) the First-tier Tribunal that P took reasonable care to avoid it.”

## 71 Penalties: failure to comply with requirements relating to returns

- (1) In Schedule 24 to FA 2007 (penalties for errors), in the Table in paragraph 1, after the entry relating to the statement under section 1(1)(a) of the Petroleum Revenue Tax Act 1980, insert –

“Soft drinks industry levy	Return under regulations under section 69 of FA 2017”
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- (2) Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended in accordance with subsections (3) and (4).
- (3) In the Table in paragraph 1, after item 13 insert –

“13A	Soft drinks industry levy	Return under regulations under section 69 of FA 2017”
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- (4) In paragraph 1(4), in the definition of “penalty date”, for “13” substitute “13A”.
- (5) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended in accordance with subsection (6).
- (6) In the Table in paragraph 1, after item 11 insert –

“11AA	Soft drinks industry levy	Amount payable under regulations under section 69 of FA 2017 or paragraphs 2, 3, 9 or 10 of Schedule 15 to that Act	The date determined by or under regulations under section 69 of FA 2017”
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- (7) The amendment made by subsection (1) comes into force in accordance with provision made by the Treasury by regulations.

- (8) In subsections (2) and (4) of section 106 of FA 2009 (penalties for failure to make returns: commencement) references to Schedule 55 to that Act have effect as references to that Schedule as amended by subsections (2) to (4) of this section.
- (9) In subsections (2) and (4) of section 107 of FA 2009 (penalties for failure to pay tax) references to Schedule 56 to that Act have effect as references to that Schedule as amended by subsections (5) and (6) of this section.

## 72 Interest

In Schedule 53 to FA 2009 (late payment interest) after paragraph 11B insert –

*“Soft drinks industry levy due from unregistered persons*

- 11C (1) This paragraph applies where an amount of soft drinks industry levy is due from a person (P) in respect of a period during which P was liable to be registered under Part 4 of FA 2017 but was not registered.
- (2) The late payment interest start date in respect of the amount is the date which would have been the late payment interest date in respect of that amount if P had been registered when P had first become liable to be registered.”

## 73 Information and records

- (1) Parts 1, 3 to 7 and 9 of Schedule 36 to FA 2008 (powers to obtain information and documents and penalties for failure to comply) apply in relation to soft drinks industry levy as they apply in relation to a tax listed in paragraph 63(1) of that Schedule.
- (2) The Commissioners may by regulations require persons –
  - (a) to keep for purposes connected with soft drinks industry levy records of specified matters, and
  - (b) to preserve records for a specified period.
- (3) A duty under regulations under this section to preserve records may be discharged –
  - (a) by preserving them in any form and by any means, or
  - (b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by the Commissioners.
- (4) The Commissioners may direct a taxable person to keep such records as are specified in the direction.
- (5) The Commissioners may not make a direction under subsection (4) unless they have reasonable grounds for believing that the records specified in the direction might assist in identifying chargeable soft drinks in respect of which soft drinks industry levy might not be paid.
- (6) A direction under subsection (4) –
  - (a) must be given by written notice,
  - (b) must specify the consequences of failure to comply with the notice under Schedule 16, and
  - (c) remains in force until it is revoked or replaced by a further direction.

- (7) The Commissioners may require any records kept in accordance with a direction under this paragraph to be preserved for such period not exceeding 6 years as they may require.
- (8) Schedule 16 makes provision about penalties for failure to comply with requirements imposed by regulations under this section.

#### **74 Power to make further provision about enforcement**

- (1) The Commissioners may by regulations make further provision about enforcement of the soft drinks industry levy, including provision conferring powers of entry, search or seizure.
- (2) Regulations under this section may, in particular –
  - (a) confer powers to enter and inspect premises that are used, or are reasonably believed to be used, in connection with the production or packaging, sale, import or export of chargeable soft drinks;
  - (b) confer powers to board and search ships, aircraft and other vehicles entering or leaving premises referred to in paragraph (a);
  - (c) confer powers to inspect and take copies of business documents on premises referred to in paragraph (a);
  - (d) confer powers to examine and take samples of soft drinks found on premises in referred to in paragraph (a);
  - (e) make provision for the detention and seizure of chargeable soft drinks in respect of which a specified requirement of this Part has been contravened;
  - (f) make provision requiring a taxable person to provide such facilities as are reasonably necessary for an officer of Revenue and Customs to carry out an examination, search or exercise other powers conferred by the regulations.
- (3) Regulations under this section may, in particular, make provision by applying any provision of CEMA 1979.

#### **75 Appeals etc.**

Schedule 17 makes provision about appeals and reviews.

#### *General*

#### **76 Regulations: death or incapacity of person carrying on a business**

- (1) The Commissioners may by regulations make provision for the purposes of soft drinks industry levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated.
- (2) Regulations under this section may, in particular, make provision –
  - (a) requiring the person who is carrying on the business (P) to notify the Commissioners that P is carrying on the business and of the event that led to P carrying it on;
  - (b) allowing P to be treated for a limited time as if P and the person who has died or become incapacitated were the same person;

- (c) such other provision as the Commissioners think fit for securing continuity in the application of this Part in cases to which the regulations apply.

## 77 Interpretation

In this Part—

- “chargeable soft drink” has the meaning given by section 54;
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “designated food labelling obligation” has the meaning given by section 55(6);
- “first recipient” and “first receipt”, in relation to imported chargeable soft drinks, have the meanings given by section 57(4) and (5);
- “HMRC” means Her Majesty’s Revenue and Customs;
- “package” and “packaged” are to be construed in accordance with section 52(4);
- “prepared drink” has the meaning given by section 53(1);
- “produce”, in relation to chargeable soft drinks, is to be construed in accordance with section 60(3);
- “relevant person” has the meaning given by section 57(6);
- “small producer threshold” is to be construed in accordance with section 63(5);
- “soft drink” has the meaning given by section 52(1);
- “sugars” has the meaning given by section 55(5);
- “tax periods” is to be construed in accordance with section 69(2)(c);
- “taxable person” has the meaning given by section 57(9).

## 78 Regulations

- (1) Regulations under this Part—
  - (a) may make different provision for different purposes;
  - (b) may include incidental, consequential, supplementary or transitional provision.
- (2) Regulations under this Part are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under section 74 may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (4) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

## PART 5

### FULFILMENT BUSINESSES

## 79 Carrying on a third country goods fulfilment business

- (1) For the purposes of this Part a person carries on a third country goods fulfilment business if the person, by way of business—

- (a) stores third country goods which are owned by a person who is not established in a Member State, or
  - (b) stores third country goods on behalf of a person who is not established in a Member State,
- at a time when the conditions in subsection (2) are met in relation to the goods.
- (2) The conditions are that—
    - (a) there has been no supply of the goods in the United Kingdom for the purposes of VATA 1994, and
    - (b) the goods are being offered for sale in the United Kingdom or elsewhere.
  - (3) But a person does not carry on a third country goods fulfilment business if the person's activities within subsection (1) are incidental to the carriage of the goods.
  - (4) Goods are “third country” goods if they have been imported from a place outside the Member States within the meaning of section 15 of VATA 1994.
  - (5) Whether a person is established in a Member State is to be determined in accordance with Article 10 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

## **80 Requirement for approval**

- (1) A person may not carry on a third country goods fulfilment business otherwise than in accordance with an approval given by the Commissioners under this section.
- (2) The Commissioners may approve a person to carry on a third country goods fulfilment business only if they are satisfied that the person is a fit and proper person to carry on the business.
- (3) The Commissioners may approve a person to carry on a third country goods fulfilment business for such periods and subject to such conditions or restrictions as they may think fit or as they may by regulations made by them prescribe.
- (4) The Commissioners may at any time for reasonable cause vary the terms of, or revoke, an approval under this section.
- (5) In this Part “approved person” means a person approved under this section to carry on a third country goods fulfilment business.

## **81 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 consider appropriate.
- (3) The Commissioners may make publicly available such information contained in the register as they consider necessary to enable those who deal with a person who carries on a third country goods fulfilment business to determine whether the person in question is an approved person in relation to that activity.

- (4) The information may be made available by such means (including the internet) as the Commissioners consider appropriate.

## 82 Regulations relating to approval, registration etc.

- (1) The Commissioners may by regulations make provision –
- (a) regulating the approval and registration of persons under this Part,
  - (b) regulating the variation or revocation of any such approval or registration, or of any condition or restriction to which such an approval or registration is subject,
  - (c) about the register maintained under section 81,
  - (d) regulating the carrying on of a third country goods fulfilment business, and
  - (e) imposing obligations on approved persons.
- (2) The regulations may, in particular, make provision –
- (a) requiring applications, and other communications with the Commissioners, to be made electronically;
  - (b) as to the procedure for the approval and registration of bodies corporate which are members of the same group;
  - (c) requiring approved persons to keep and make available for inspection such records as may be prescribed by or under the regulations.

## 83 Offence

- (1) A person who –
- (a) carries on a third country goods fulfilment business, and
  - (b) is not an approved person,
- commits an offence.
- (2) In proceedings for an offence under subsection (1) it is a defence to show that the person did not know, and had no reasonable grounds to suspect, that the person –
- (a) was carrying on a third country goods fulfilment business, or
  - (b) was not an approved person.
- (3) A person is taken to have shown the fact mentioned in subsection (2) if –
- (a) sufficient evidence of that fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (4) A person guilty of an offence under this section is liable on summary conviction –
- (a) in England and Wales, to imprisonment for a term not exceeding 12 months, or a fine, or both;
  - (b) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.
- (5) A person guilty of an offence under this section is liable on conviction on indictment to –
- (a) imprisonment for a period not exceeding 7 years,

- (b) a fine, or
  - (c) both.
- (6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.

#### **84 Forfeiture**

- (1) If a person –
  - (a) carries on a third country goods fulfilment business, and
  - (b) is not an approved person,any goods within subsection (2) are liable to forfeiture under CEMA 1979.
- (2) Goods are within this subsection if –
  - (a) they are stored by the person, and
  - (b) their storage by the person constitutes, or has constituted, the carrying on of a third country goods fulfilment business by the person.

#### **85 Penalties**

- (1) Schedule 18 provides for a penalty to be payable by a person who carries on a third country goods fulfilment business and is not an approved person.
- (2) The Commissioners may make regulations (“penalty regulations”) imposing a penalty for the contravention by an approved person of –
  - (a) any condition or restriction imposed under this Part;
  - (b) regulations under this Part.
- (3) The amount of a penalty imposed by the penalty regulations is to be specified in the regulations, but must not exceed £3,000.
- (4) The penalty regulations may make provision for the assessment and recovery of a penalty imposed by the regulations.
- (5) The Commissioners may by regulations make provision for corporate bodies which are members of the same group to be jointly and severally liable for any penalties imposed under –
  - (a) Schedule 18;
  - (b) penalty regulations.

#### **86 Appeals**

- (1) FA 1994 is amended as follows.
- (2) In section 13A(2) (customs and excise reviews and appeals: relevant decisions) after paragraph (gb) insert –
  - “(gc) any decision by HMRC that a person is liable to a penalty, or as to the amount of a person’s liability, under –
    - (i) regulations under section 85 of FA 2017, or
    - (ii) Schedule 18 to that Act;”.
- (3) In Schedule 5 to that Act (decisions subject to review and appeal) after paragraph 9A insert –

*“The Finance Act 2017*

- 9B Any decision for the purposes of Part 5 of the Finance Act 2017 (third country goods fulfilment businesses) as to—
- (a) whether or not, and in which respects, any person is to be, or to continue to be, approved and registered, or
  - (b) the conditions or restrictions subject to which any person is approved and registered.”

## **87 Regulations**

- (1) Regulations under this Part may—
  - (a) make provision which applies generally or only for specified cases or purposes;
  - (b) make different provision for different cases or purposes;
  - (c) include incidental, consequential, transitional or transitory provision;
  - (d) confer a discretion on the Commissioners;
  - (e) make provision by reference to a notice to be published by the Commissioners.
- (2) Regulations under this Part are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of the House of Commons.
- (4) This section does not apply to regulations under section 89 (commencement).

## **88 Interpretation**

- (1) In this Part—
  - “approved person” has the meaning given by section 80(5);
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.
- (2) For the purposes of this Part two or more bodies corporate are members of a group if—
  - (a) one of them controls each of the others,
  - (b) one person (whether a body corporate or an individual) controls all of them, or
  - (c) two or more individuals carrying on a business in partnership control all of them.
- (3) A body corporate is to be taken to control another body corporate if—
  - (a) it is empowered by or under legislation to control that body’s activities, or
  - (b) it is that body’s holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006.
- (4) An individual or individuals are to be taken to control a body corporate if the individual or individuals (were the individual or individuals a company) would be that body’s holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006.

## 89 Commencement

- (1) This Part comes into force on such day as the Commissioners may by regulations made by statutory instrument appoint.
- (2) Regulations under subsection (1) may appoint different days for different purposes.

## PART 6

### ADMINISTRATION, AVOIDANCE AND ENFORCEMENT

#### *Returns and enquiries*

## 90 Partial closure notices

Schedule 19 makes provision for partial closure notices in respect of enquiries under sections 9A, 12ZM and 12AC of TMA 1970 and Schedule 18 to FA 1998.

#### *Avoidance*

## 91 Errors in taxpayers' documents

- (1) Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- (2) After paragraph 3 insert –

#### *“Errors related to avoidance arrangements*

- 3A (1) This paragraph applies where a document of a kind listed in the Table in paragraph 1 is given to HMRC by a person (“P”) and the document contains an inaccuracy which –
- (a) falls within paragraph 1(2), and
  - (b) arises because the document is submitted on the basis that particular avoidance arrangements (within the meaning given by paragraph 3B) had an effect which in fact they did not have.
- (2) It is to be presumed that the inaccuracy was careless, within the meaning of paragraph 3, unless –
- (a) the inaccuracy was deliberate on P’s part, or
  - (b) P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid inaccuracy.
- (3) In considering whether P took reasonable care to avoid inaccuracy, HMRC and (on an appeal notified to the tribunal) the tribunal must take no account of any evidence of any reliance by P on advice where the advice is disqualified.
- (4) Advice is “disqualified” if any of the following applies –
- (a) the advice was given to P by an interested person;
  - (b) the advice was given to P as a result of arrangements made between an interested person and the person who gave the advice;

- (c) the person who gave the advice did not have appropriate expertise for giving the advice;
- (d) the advice took no account of P’s individual circumstances;
- (e) the advice was addressed to, or given to, a person other than P;

but this is subject to sub-paragraph (5).

(5) Where (but for this sub-paragraph) advice would be disqualified under any of paragraphs (a) to (c) of sub-paragraph (4), the advice is not disqualified under that paragraph if at the relevant time –

- (a) P has taken reasonable steps to find out whether the advice falls within that paragraph, and
- (b) reasonably believes that it does not.

(6) In sub-paragraph (4) “an interested person” means –

- (a) a person who for any consideration (whether or not in money) facilitated P’s entering into the avoidance arrangements, or
- (b) a person, other than P, who participated in the avoidance arrangements or any transaction forming part of them.

(7) In this paragraph –

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“the relevant time” means the time when the document mentioned in sub-paragraph (1) is given to HMRC;

“the tribunal” has the same meaning as in paragraph 17 (see paragraph 17(5A)).

(8) This paragraph and section 276 of FA 2014 (limitation of defence of reasonable care in certain circumstances) are without prejudice to each other.

3B (1) In paragraph 3A “avoidance arrangements” means arrangements which fall within sub-paragraph (2).

(2) Arrangements fall within this sub-paragraph if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.

(3) Where any of conditions A to E is met in relation to particular arrangements, for the purposes of this paragraph the arrangements are to be taken to fall within (and always to have fallen within) sub-paragraph (2).

This does not prevent arrangements from falling within sub-paragraph (2) other than by reason of one or more of conditions A to E being met.

(4) Conditions A to E are as follows –

- (a) condition A is that the arrangements are DOTAS arrangements within the meaning given by section 219(5) and (6) of FA 2014;

- (b) condition B is that the arrangements are disclosable VAT arrangements within the meaning given by paragraph 9 of Schedule 18 to FA 2016;
  - (c) condition C is that both of the following apply –
    - (i) P has been given a notice under a provision mentioned in sub-paragraph (5) stating that a tax advantage arising from the arrangements is to be counteracted, and
    - (ii) that tax advantage has been counteracted under section 209 of FA 2013;
  - (d) condition D is that a follower notice under section 204 of FA 2014 has been given to P by reference to the arrangements (and not withdrawn) and –
    - (i) the necessary corrective action for the purposes of section 208 of FA 2014 has been taken in respect of the denied advantage, or
    - (ii) the denied advantage has been counteracted otherwise than as mentioned in sub-paragraph (i);
  - (e) Condition E is that a tax advantage asserted by reference to the arrangements has been counteracted (by an assessment, an amendment of a return or claim, or otherwise) on the basis that an avoidance-related rule applies in relation to P’s affairs.
- (5) The provisions referred to in sub-paragraph (4)(c)(i) are –
- (a) paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision);
  - (b) paragraph 8 or 9 of Schedule 43A to that Act (pooled arrangements: notice of final decision);
  - (c) paragraph 8 of Schedule 43B to that Act (generic referrals: notice of final decision).
- (6) In sub-paragraph (4)(d) the reference to giving a follower notice to P includes giving a partnership follower notice in respect of a partnership return in relation to which P is a relevant partner; and for the purposes of this sub-paragraph –
- (a) “relevant partner” has the meaning given by paragraph 2(5) of Schedule 31 to FA 2014;
  - (b) a partnership follower notice is given “in respect of” the partnership return mentioned in paragraph 2(2)(a) or (b) of that Schedule.
- (7) For the purposes of sub-paragraph (4)(d) it does not matter whether the denied advantage has been dealt with –
- (a) wholly as mentioned in one or other of sub-paragraphs (i) and (ii) of sub-paragraph (4)(d), or
  - (b) partly as mentioned in one of those sub-paragraphs and partly as mentioned in the other;
- and “the denied advantage” has the same meaning as in Chapter 2 of Part 4 of FA 2014 (see section 208(3) of and paragraph 4(3) of Schedule 31 to that Act).
- (8) For the purposes of sub-paragraph (4)(e) a tax advantage has been “asserted by reference to” the arrangements if a return, claim or

appeal has been made by P on the basis that the tax advantage results from the arrangements.

- (9) In this paragraph—
- “arrangements” has the same meaning as in paragraph 3A;
  - “avoidance-related rule” has the same meaning as in Part 4 of Schedule 18 to FA 2016 (see paragraph 25 of that Schedule);
  - a “tax advantage” includes—
    - (a) relief or increased relief from tax,
    - (b) repayment or increased repayment of tax,
    - (c) avoidance or reduction of a charge to tax or an assessment to tax,
    - (d) avoidance of a possible assessment to tax,
    - (e) deferral of a payment of tax or advancement of a repayment of tax,
    - (f) avoidance of an obligation to deduct or account for tax, and
    - (g) in relation to VAT, anything which is a tax advantage for the purposes of Schedule 18 to FA 2016 under paragraph 5 of that Schedule.”

- (3) In paragraph 18, after sub-paragraph (5) insert—

“(6) Paragraph 3A applies where a document is given to HMRC on behalf of P as it applies where a document is given to HMRC by P.”

- (4) This section applies in relation to any document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 which relates to a tax period that—
- (a) begins on or after 6 April 2017, and
  - (b) ends on or after the day on which this Act is passed.
- (5) In subsection (4) “tax period” has the meaning given by paragraph 28(g) of Schedule 24 to FA 2007.

## 92 Penalties for enablers of defeated tax avoidance

Schedule 20 contains provision for penalties for persons who enable tax avoidance which is defeated.

## 93 Disclosure of tax avoidance schemes: VAT and other indirect taxes

- (1) Schedule 21 makes provision about the disclosure of tax avoidance schemes involving VAT or other indirect taxes.
- (2) Schedule 21 comes into force—
- (a) so far as is necessary for enabling the making of regulations, on the passing of this Act, and
  - (b) for all other purposes, on 1 September 2017.
- (3) But the provisions of Schedule 21 have no effect in relation to—
- (a) notifiable proposals as respects which the relevant date (as defined in paragraph 11(3) of the Schedule) is before 1 September 2017, and
  - (b) any notifiable arrangements which implement such a proposal.

- (4) Section 58A of, and Schedule 11A to, VATA 1994 (disclosure of avoidance schemes) are repealed.
- (5) Subsection (4) comes into force on 1 September 2017.

#### **94 Requirement to correct certain offshore tax non-compliance**

Schedule 22 makes provision for and in connection with requiring persons to correct any offshore tax non-compliance subsisting on 6 April 2017.

#### **95 Penalty for transactions connected with VAT fraud etc**

- (1) VATA 1994 is amended as follows.
- (2) After section 69B (penalty for breach of record-keeping requirements imposed by directions) insert –

##### **“69C Transactions connected with VAT fraud**

- (1) A person (T) is liable to a penalty where –
  - (a) T has entered into a transaction involving the making of a supply by or to T (“the transaction”), and
  - (b) conditions A to C are satisfied.
- (2) Condition A is that the transaction was connected with the fraudulent evasion of VAT by another person (whether occurring before or after T entered into the transaction).
- (3) Condition B is that T knew or should have known that the transaction was connected with the fraudulent evasion of VAT by another person.
- (4) Condition C is that HMRC have issued a decision (“the denial decision”) in relation to the supply which –
  - (a) prevents T from exercising or relying on a VAT right in relation to the supply,
  - (b) is based on the facts which satisfy conditions A and B in relation to the transaction, and
  - (c) applies a relevant principle of EU case law (whether or not in circumstances that are the same as the circumstances in which any relevant case was decided by the European Court of Justice).
- (5) In this section “VAT right” includes the right to deduct input tax, the right to apply a zero rate to international supplies and any other right connected with VAT in relation to a supply.
- (6) The relevant principles of EU case law for the purposes of this section are the principles established by the European Court of Justice in the following cases –
  - (a) joined Cases C-439/04 and C-440/04 *Axel Kittel v. Belgian State; Belgium v. Recolta Recycling* (denial of right to deduct input tax), and
  - (b) Case C-273/11 *Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* (denial of right to zero rate),

as developed or extended by that Court (whether before or after the coming into force of this section) in other cases relating to the denial or refusal of a VAT right in order to prevent abuses of the VAT system.

- (7) The penalty payable under this section is 30% of the potential lost VAT.
- (8) The potential lost VAT is –
  - (a) the additional VAT which becomes payable by T as a result of the denial decision,
  - (b) the VAT which is not repaid to T as a result of that decision, or
  - (c) in a case where as a result of that decision VAT is not repaid to T and additional VAT becomes payable by T, the aggregate of the VAT that is not repaid and the additional VAT.
- (9) No assessment of a penalty under this section may be made more than two years after the denial decision is issued.
- (10) The assessment of a penalty under this section may be made immediately after the denial decision is made (and notice of the assessment may be given to T in the same document as the notice of the decision).
- (11) Where by reason of conduct involving making a claim to exercise or rely on a VAT right in relation to a supply T –
  - (a) is liable to a penalty for an inaccuracy under paragraph 1 of Schedule 24 to the Finance Act 2007 for which T has been assessed (and the assessment has not been successfully appealed against by T or withdrawn), or
  - (b) is convicted of an offence (whether under this Act or otherwise), that conduct does not give rise to liability to a penalty under this section.

#### **69D Penalties under section 69C: officers' liability**

- (1) Where –
  - (a) a company is liable to a penalty under section 69C, and
  - (b) the actions of the company which give rise to that liability are attributable to an officer of the company,the officer is liable to pay such portion of the penalty (which may be equal to or less than 100%) as HMRC may specify in a notice given to the officer.
- (2) Subsection (1) does not allow HMRC to recover more than 100% of a penalty.
- (3) Before giving the officer a notice under this section HMRC must –
  - (a) inform the officer that they are considering doing so, and
  - (b) afford the officer the opportunity to make representations about whether a notice should be given or the portion that should be specified.
- (4) A notice under this section –
  - (a) may only be given after the amount of the penalty due from the company has been assessed, and
  - (b) may not be given more than two years after the denial decision relevant to that penalty was issued.

- (5) Where the Commissioners have specified a portion of a penalty in a notice given to an officer under subsection (1) –
  - (a) section 70 applies to the specified portion as to a penalty under section 69C,
  - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
  - (c) section 76(9) applies as if the notice were an assessment notified under section 76,
  - (d) a further notice may be given in respect of a portion of any additional amount assessed in an additional assessment, and
  - (e) section 69C(11) applies as if the officer were liable to a penalty.
- (6) In this section “company” means a body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association.
- (7) In its application to a body corporate other than a limited liability partnership “officer” means –
  - (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),
  - (b) a manager, or
  - (c) a secretary.
- (8) In its application to a limited liability partnership “officer” means a member.
- (9) In its application in any other case, “officer” means –
  - (a) a director,
  - (b) a manager,
  - (c) a secretary, or
  - (d) any other person managing or purporting to manage any of the company’s affairs.

**69E Publication of details of persons liable to penalties under section 69C**

- (1) The Commissioners may publish information about a person if –
  - (a) in consequence of an investigation the person has been found liable to one or more penalties under section 69C (the amount of which has been assessed), and
  - (b) the potential lost VAT in relation to the penalty (or the aggregate of the potential lost VAT in relation to each of the penalties) exceeds £50,000.
- (2) The information that may be published about a person 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 the Commissioners consider it appropriate to publish in order to make clear the person's identity.
- (3) In a case where –
- (a) the requirements in subsection (1)(a) and (b) are met in relation to a penalty or penalties for which a company is liable,
  - (b) information about the company is published by virtue of this section, and
  - (c) an officer of the company has been given a notice (the “decision notice”) specifying a portion of the penalty, or any of the penalties, payable by the company as a portion which the officer is liable to pay,
- the Commissioners may publish information about the officer.
- (4) The information that may be published about an officer is –
- (a) the officer's name,
  - (b) the officer's address,
  - (c) the officer's position in the company,
  - (d) the amount of any penalty imposed on the company of which a portion is payable by the officer under the decision notice and the portion so payable,
  - (e) the periods or times to which the actions giving rise to any such penalty relate,
  - (f) any other information that the Commissioners consider it appropriate to publish in order to make clear the officer's identity.
- (5) Information published under this section may be published in any manner that the Commissioners consider appropriate.
- (6) Before publishing any information the Commissioners must –
- (a) inform the person or officer to which it relates that they are considering doing so (in the case of an officer, on the assumption that they publish information about the company), and
  - (b) afford the person or officer the opportunity to make representations about whether it should be published.
- (7) No information may be published under subsection (1) 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.
- (8) No information may be published under subsection (1) for the first time after the end of the period of one year beginning with that day.
- (9) No information may be published under subsection (3) before whichever is the later of –
- (a) the day mentioned in subsection (7), and
  - (b) the day on which the decision notice becomes final.
- (10) No information may be published under subsection (3) for the first time after the end of the period of one year beginning with the later of the two days mentioned in subsection (9).

- (11) No information may be published (or continue to be published) under subsection (1) or (3) after the end of the period of three years beginning with the day mentioned in subsection (7).
  - (12) For the purposes of this section a penalty or a decision notice becomes final when 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.
  - (13) The Treasury may by regulations made by statutory instrument amend subsection (1) to vary the amount for the time being specified in paragraph (b).
  - (14) A statutory instrument containing regulations under subsection (13) is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) In section 70 (mitigation of penalties) –
- (a) in the heading, for “and 67” substitute “67, 69A and 69C”,
  - (b) in subsection (1) for “or 69A” substitute “69A or 69C”, and
  - (c) after subsection (4) insert –
    - “(5) In the application of subsections (3) and (4) in relation to a penalty under section 69C, subsection (4) has effect with the omission of paragraphs (b) and (c).”
- (4) In section 76 (assessment of amounts due by way of penalty etc), in subsection (1)(b) for “to 69B” (in both places) substitute “to 69C”.
- (5) In section 83(1) (appeals), after paragraph (n) insert –
- “(na) any liability to a penalty under section 69C, the giving of a notice under section 69D or a decision as to the specified portion of a penalty to which a notice under section 69D relates,”.
- (6) After paragraph 21 of Schedule 24 to FA 2007 (penalties for errors: double jeopardy) insert –
- “21ZA(1) A person is not liable to a penalty under paragraph 1 in respect of an inaccuracy if –
    - (a) the inaccuracy involves a claim by the person to exercise or rely on a VAT right (in relation to a supply) that has been denied or refused by HMRC as mentioned in subsection (4) of section 69C of VATA 1994, and
    - (b) the person has been assessed to a penalty under that section (and the assessment has not been successfully appealed against or withdrawn).
- (2) In sub-paragraph (1)(a) “VAT right” has the same meaning as in section 69C of VATA 1994.”
- (7) Section 69C does not apply in relation to transactions entered into before this section comes into force.

*Enforcement powers***96 Customs enforcement: power to enter premises and inspect goods**

- (1) Section 24 of FA 1994 (power to enter premises and inspect goods) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) In that subsection –
  - (a) at the beginning insert “This section applies”;
  - (b) omit the words after paragraph (b).
- (4) After that subsection insert –
  - “(2) The officer may at any reasonable time enter and inspect the premises.
  - (3) The officer may inspect, examine and take account of any goods found on the premises.
  - (4) The officer may require a relevant person to provide any assistance that is reasonable for the purpose of exercising the power in subsection (3).
  - (5) For example, the officer may require a relevant person to move, open or unpack goods and containers.
  - (6) The officer may, for the purpose of exercising the power in subsection (3) –
    - (a) move, open, or unpack goods and containers;
    - (b) search containers and anything in them;
    - (c) mark goods and containers.
  - (7) The Commissioners are not to bear any costs incurred by a relevant person in complying with a requirement under subsection (4).
  - (8) But the Commissioners are to bear the costs of anything done by the officer under subsection (6).
  - (9) In this section “relevant person” means –
    - (a) the person to whom this Chapter applies;
    - (b) the occupier of the premises;
    - (c) a person who has (or appears to have) possession or control of the goods;
    - (d) a person who is (or appears to be) acting on behalf of a person within any of paragraphs (a) to (c).
- (10) Section 159(2) of the Customs and Excise Management Act 1979 (examinations of goods to be at a place appointed by the Commissioners) does not apply to an examination under subsection (3).”

**97 Power to search vehicles or vessels**

In section 163 of CEMA 1979 (power to search vehicles or vessels), after subsection (1) insert –

- “(1A) The officer, constable or member may use reasonable force if necessary for the purpose of exercising the power in subsection (1).”

*Information*

**98 Data-gathering from money service businesses**

- (1) In Part 2 of Schedule 23 to FA 2011 (data-gathering powers: relevant data-holders), after paragraph 13C insert –

*“Money service businesses*

- 13D (1) A person is a relevant data-holder if the person –
- (a) carries on any of the activities in sub-paragraph (2) by way of business,
  - (b) is a person to whom the Money Laundering Regulations 2007 (S.I. 2007/2157) apply, and
  - (c) is not an excluded credit institution.
- (2) The activities referred to in sub-paragraph (1)(a) are –
- (a) operating a currency exchange office;
  - (b) transmitting money (or any representation of monetary value) by any means;
  - (c) cashing cheques which are made payable to customers.
- (3) An excluded credit institution is a credit institution which has permission to carry on the regulated activity of accepting deposits –
- (a) under Part 4A of the Financial Services and Markets Act 2000 (permission to carry on regulated activities), or
  - (b) resulting from Part 2 of Schedule 3 to that Act (exercise of passport rights by EEA firms).
- (4) Sub-paragraph (3) is to be read with section 22 of and Schedule 2 to the Financial Services and Markets Act 2000, and any order under that section (classes of regulated activities).
- (5) In this paragraph “credit institution” has the meaning given by Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.”

- (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).

## SCHEDULES

### SCHEDULE 1

Section 1

#### WORKERS’ SERVICES PROVIDED TO PUBLIC SECTOR THROUGH INTERMEDIARIES

#### PART 1

##### PRELIMINARY AMENDMENTS

- 1 ITEPA 2003 is amended as follows.
- 2 In section 48 (scope of Chapter 8 of Part 2: workers’ services provided through intermediaries) –
  - (a) in subsection (1), after “through an intermediary” insert “, but not where the services are provided to a public authority”, and
  - (b) after subsection (2) insert –
    - “(3) In this Chapter “public authority” has the same meaning as in Chapter 10 of this Part (see section 61L).”
- 3 In section 49(1) (engagements to which Chapter applies), after paragraph (a) insert –
  - “(aa) the client is not a public authority.”.
- 4 In section 52(2)(b) and (c) (conditions of liability under Chapter 8 where intermediary is a partnership), for “this Chapter” substitute “one or other of this Chapter and Chapter 10”.
- 5 In section 61(1) (interpretation of Chapter 8), before the definition of “engagement to which this Chapter applies” insert –
  - ““engagement to which Chapter 10 applies” has the meaning given by section 61M(4);”.

#### PART 2

##### NEW CHAPTER 10 OF PART 2 OF ITEPA 2003

- 6 In Part 2 of ITEPA 2003 (employment income: charge to tax), after Chapter 9 insert –

#### “CHAPTER 10

#### WORKERS’ SERVICES PROVIDED TO PUBLIC SECTOR THROUGH INTERMEDIARIES

##### **61K Scope of this Chapter**

- (1) This Chapter has effect with respect to the provision of services to a public authority through an intermediary.

- (2) Nothing in this Chapter –
- (a) affects the operation of Chapter 7 of this Part (agency workers),
  - (b) applies to services provided by a managed service company (within the meaning of Chapter 9 of this Part), or
  - (c) applies to payments or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax).

#### **61L Meaning of “public authority”**

- (1) In this Chapter “public authority” means –
- (a) a public authority as defined by the Freedom of Information Act 2000, or
  - (b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002 (asp 13).
- (2) An authority within paragraph (a) or (b) of subsection (1) is a public authority for the purposes of this Chapter in relation to all its activities even if provisions of the Act mentioned in that paragraph do not apply to all information held by the authority.

#### **61M Engagements to which Chapter applies**

- (1) Sections 61N to 61R apply where –
- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for another person (“the client”),
  - (b) the client is a public authority,
  - (c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and
  - (d) the circumstances are such that –
    - (i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or
    - (ii) the worker is an office-holder who holds that office under the client and the services relate to the office.
- (2) The reference in subsection (1)(c) to a “third party” includes a partnership or unincorporated association of which the worker is a member.
- (3) The circumstances referred to in subsection (1)(d) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.
- (4) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

#### **61N Worker treated as receiving earnings from employment**

- (1) If one of Conditions A to C is met, identify the chain of two or more persons where –

- (a) the highest person in the chain is the client,
  - (b) the lowest person in the chain is the intermediary, and
  - (c) each person in the chain above the lowest makes a chain payment to the person immediately below them in the chain.
- (2) In this section and sections 61O to 61R –
- “chain payment” means a payment, or money’s worth or any other benefit, that can reasonably be taken to be for the worker’s services to the client,
- “make” –
- (a) in relation to a chain payment that is money’s worth, means transfer, and
  - (b) in relation to a chain payment that is a benefit other than a payment or money’s worth, means provide, and
- “the fee-payer” means the person in the chain immediately above the lowest.
- (3) The fee-payer is treated as making to the worker, and the worker is treated as receiving, a payment which is to be treated as earnings from an employment (“the deemed direct payment”), but this is subject to subsections (5) to (7) and sections 61T and 61U.
- (4) The deemed direct payment is treated as made at the same time as the chain payment made by the fee-payer.
- (5) Subsections (6) and (7) apply, subject to sections 61S and 61T, if the fee-payer –
- (a) is not the client,
  - (b) is not resident in the United Kingdom, and
  - (c) does not have a place of business in the United Kingdom.
- (6) If each person in the chain below the highest and above the lowest –
- (a) is not resident in the United Kingdom, and
  - (b) does not have a place of business in the United Kingdom,
- subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client.
- (7) Otherwise, subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the person in the chain who –
- (a) is above the lowest,
  - (b) is resident in the United Kingdom or has a place of business in the United Kingdom, and
  - (c) is lower in the chain than any other person in the chain who –
    - (i) is above the lowest, and
    - (ii) is resident in the United Kingdom or has a place of business in the United Kingdom.
- (8) Condition A is that –
- (a) the intermediary is a company, and
  - (b) the conditions in section 61O are met in relation to the intermediary.

- (9) Condition B is that –
- (a) the intermediary is a partnership,
  - (b) the worker is a member of the partnership,
  - (c) the provision of the services is by the worker as a member of the partnership, and
  - (d) the condition in section 61P is met in relation to the intermediary.
- (10) Condition C is that the intermediary is an individual.
- (11) Where a payment, money’s worth or any other benefit can reasonably be taken to be for both –
- (a) the worker’s services to the client, and
  - (b) anything else,
- then, for the purposes of this Chapter, so much of it as can, on a just and reasonable apportionment, be taken to be for the worker’s services is to be treated as (and the rest is to be treated as not being) a payment, or money’s worth or another benefit, that can reasonably be taken to be for the workers’s services.

#### **61O Conditions where intermediary is a company**

- (1) The conditions mentioned in section 61N(8)(b) are that –
- (a) the intermediary is not an associated company of the client that falls within subsection (2), and
  - (b) the worker has a material interest in the intermediary.
- (2) An associated company of the client falls within this subsection if it is such a company by reason of the intermediary and the client being under the control –
- (a) of the worker, or
  - (b) of the worker and other persons.
- (3) The worker is treated as having a material interest in the intermediary if –
- (a) the worker, alone or with one or more associates of the worker, or
  - (b) an associate of the worker, with or without other associates of the worker,
- has a material interest in the intermediary.
- (4) For this purpose “material interest” has the meaning given by section 51(4) and (5).
- (5) In this section “associated company” has the meaning given by section 449 of CTA 2010.

#### **61P Conditions where intermediary is a partnership**

- (1) The condition mentioned in section 61N(9)(d) is –
- (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership, or
  - (b) that most of the profits of the partnership derive from the provision of services under engagements to which one or other of this Chapter and Chapter 8 applies –
    - (i) to a single client, or

- (ii) to a single client together with associates of that client,  
or
  - (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which one or other of this Chapter and Chapter 8 applies.
- (2) In subsection (1)(a) “relative” means spouse or civil partner, parent or child or remoter relation in the direct line, or brother or sister.

### **61Q Calculation of deemed direct payment**

- (1) The amount of the deemed direct payment is the amount resulting from the following steps –
- Step 1*  
 Identify the amount or value of the chain payment made by the person who is treated as making the deemed direct payment, and deduct from that amount so much of it (if any) as is in respect of value added tax.
- Step 2*  
 Deduct, from the amount resulting from Step 1, so much of that amount as represents the direct cost to any person of materials used, or to be used, in the performance of the services.
- Step 3*  
 Deduct, from the amount resulting from Step 2, so much of that amount as represents expenses met by the intermediary that would have been deductible from the taxable earnings from the employment if –
- (a) the worker had been employed by the client, and
  - (b) the expenses had been met by the worker out of those earnings.
- Step 4*  
 If the amount resulting from Step 3 is nil or negative, there is no deemed direct payment. Otherwise, that amount is the amount of the deemed direct payment.
- (2) In Step 3 of subsection (1), the reference to expenses met by the intermediary includes –
- (a) expenses met by the worker and reimbursed by the intermediary, and
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.

### **61R Application of Income Tax Acts in relation to deemed employment**

- (1) The Income Tax Acts (in particular, Part 11 and PAYE regulations) apply in relation to deemed direct payment as follows.
- (2) They apply as if –
- (a) the worker were employed by the person treated as making the deemed direct payment, and

- (b) the services were performed, or to be performed, by the worker in the course of performing the duties of that employment.
- (3) The deemed direct payment is treated in particular –
  - (a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed direct payment, and
  - (b) as taxable earnings from the employment for the purposes of section 232.
- (4) The worker is not chargeable to tax in respect of the deemed direct payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if –
  - (a) the client employed the worker,
  - (b) the worker performed the services in the course of that employment, and
  - (c) the deemed direct payment were a payment by the client of earnings from that employment.
- (5) The factors are –
  - (a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,
  - (b) the client being resident outside, or not resident in, the United Kingdom, and
  - (c) the services being provided outside the United Kingdom.
- (6) Where the intermediary is a partnership or unincorporated association, the deemed direct payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.
- (7) Where –
  - (a) the client is the person treated as making the deemed direct payment,
  - (b) the worker is resident in the United Kingdom,
  - (c) the services are provided in the United Kingdom,
  - (d) the client is not resident in the United Kingdom, and
  - (e) the client does not have a place of business in the United Kingdom,the client is treated as resident in the United Kingdom.

### **61S Information to be provided by clients and consequences of failure**

- (1) If the conditions in section 61M(1)(a) to (c) are met in any case, and a person as part of the arrangements mentioned in section 61M(1)(c) enters into a contract with the client, the client must inform that person (in the contract or otherwise) of which one of the following is applicable –
  - (a) the client has concluded that the condition in section 61M(1)(d) is met in the case;
  - (b) the client has concluded that the condition in section 61M(1)(d) is not met in the case.

- (2) If the information which subsection (1) requires the client to give to a person has not been given, the client must, on a written request by the person, provide the person with a written response giving the information.
- (3) If the information which subsection (1) requires the client to give to a person has been given (whether in the contract, as required by subsection (2) or otherwise), the client must, on a written request by the person, provide the person with a written response to any questions raised by the person about the client’s reasons for reaching the conclusion identified in the information.
- (4) A response required by subsection (2) or (3) must be provided before the end of 31 days beginning with the day the request for it is received by the client.
- (5) If the client fails to provide a response required by subsection (2) within the time allowed by subsection (4), section 61N(3) and (4) have effect in the case as if for any reference to the fee-payer there were substituted a reference to the client, but this is subject to section 61T.

#### **61T Consequences of providing fraudulent information**

- (1) Subsection (2) applies if in any case –
  - (a) a person (“the deemed employer”) would, but for this section, be treated by section 61N(3) as making a payment to another person (“the services-provider”), and
  - (b) the fraudulent documentation condition is met.
- (2) Section 61N(3) has effect in the case as if the reference to the fee-payer were a reference to the services-provider, but –
  - (a) section 61N(4) continues to have effect as if the reference to the fee-payer were a reference to the deemed employer, and
  - (b) Step 1 of section 61Q(1) continues to have effect as referring to the chain payment made by the deemed employer.
- (3) Subsection (2) has effect even though that involves the services-provider being treated as both employer and employee in relation to the deemed employment under section 61N(3).
- (4) “The fraudulent documentation condition” is that the services-provider, or a person connected with the services-provider, provided any person with a fraudulent document intended to constitute evidence that section 61N(3) did not apply in the case.

#### **61U Prevention of double charge to tax and allowance of certain deductions**

- (1) Subsection (2) applies where –
  - (a) a person (“the payee”) receives a payment or benefit (“the end-of-line remuneration”) from another person (“the paying intermediary”),
  - (b) the end-of-line remuneration can reasonably be taken to represent remuneration for services of the payee to a public authority,

- (c) a payment (“the deemed payment”) has been treated by section 61N(3) as made to the payee,
  - (d) the underlying chain payment can reasonably be taken to be for the same services of the payee to that public authority, and
  - (e) the person treated by section 61N(3) as making the deemed payment has paid any amounts due from that person under PAYE regulations in respect of the deemed payment.
- (2) For income tax purposes, the paying intermediary may treat the amount of the end-of-line remuneration as reduced (but not below nil) by any one or more of the following –
- (a) the amount (see section 61Q) of the deemed payment;
  - (b) the amount of any capital allowances in respect of expenditure incurred by the paying intermediary that could have been deducted from employment income under section 262 of CAA 2001 if the payee had been employed by the public authority and had incurred the expenditure;
  - (c) the amount of any contributions made, in the same tax year as the end-of-line payment, for the benefit of the payee by the paying intermediary to a registered pension scheme that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.
- (3) Subsection (2)(c) does not apply to –
- (a) excess contributions paid and later repaid,
  - (b) contributions set under subsection (2) against another payment by the paying intermediary, or
  - (c) contributions deductible at Step 5 of section 54(1) in calculating the amount of the payment (if any) treated by section 50 as made in the tax year concerned by the paying intermediary to the payee.
- (4) For the purposes of subsection (3)(c), the contributions to which Step 5 of section 54(1) applies in the case of the particular calculation are “deductible” at that Step so far as their amount does not exceed the result after Step 4 in that calculation.
- (5) In subsection (1)(d) “the underlying chain payment” means the chain payment whose amount is used at Step 1 of section 61Q(1) as the starting point for calculating the amount of the deemed payment.
- (6) Subsection (2) applies whether the end-of-line payment –
- (a) is earnings of the payee,
  - (b) is a distribution of the paying intermediary, or
  - (c) takes some other form.

## **61V Interpretation**

In this Chapter –

“associate” has the meaning given by section 60;

“company” means a body corporate or unincorporated association, and does not include a partnership;

“engagement to which Chapter 8 applies” has the meaning given by section 49(5).”

PART 3

CONSEQUENTIAL AMENDMENTS

- 7 In section 7(5)(a) of ITEPA 2003 (amounts treated as earnings by Chapters 7 to 9 of Part 2 are “employment income” and “general earnings”), for “9” substitute “10”.
- 8 In section 339A of ITEPA 2003 (travel for employment involving intermediaries), after subsection (6) insert –
- “(6A) Subsection (3) does not apply in relation to an engagement if –
- (a) sections 61N to 61R in Chapter 10 of Part 2 apply in relation to the engagement,
  - (b) one of Conditions A to C in section 61N is met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (6B) This section does not apply in relation to an engagement if –
- (a) sections 61N to 61R in Chapter 10 of Part 2 do not apply in relation to the engagement because the circumstances in section 61M(1)(d) are not met,
  - (b) assuming those circumstances were met, one of Conditions A to C in section 61N would be met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (6C) In determining for the purposes of subsection (6A) or (6B) whether one of Conditions A to C in section 61N is or would be met in relation to the employment intermediary, read references to the intermediary as references to the employment intermediary.”
- 9 In Part 3 of CTA 2009 (trading income), after section 139 insert –
- “140A Intermediary where worker engaged by public authority**
- (1) Subsection (2) applies where –
    - (a) a person (“the payee”) receives a payment or benefit (“the end-of-line remuneration”) from another person (“the paying intermediary”),
    - (b) the end-of-line remuneration can reasonably be taken to represent remuneration for services of the payee to a public authority,
    - (c) a payment (“the deemed payment”) has been treated by section 61N(3) of ITEPA 2003 as made to the payee,
    - (d) the underlying chain payment can reasonably be taken to be for the same services of the payee to that public authority, and
    - (e) the end-of-line remuneration is paid by the paying intermediary in connection with a trade carried on the paying intermediary.
  - (2) For the purposes of calculating the profits of that trade, a deduction is allowed for an amount equal to –

- (a) the deemed payment, less –
- (b) any amounts –
  - (i) due under PAYE regulations in respect of the deemed payment from the person treated by section 61N(3) of ITEPA 2003 as making it, or
  - (ii) due under contributions regulations from that person in respect of primary Class 1 contributions in respect of the deemed payment.
- (3) The deduction is allowed for the period of account in which the end-of-line remuneration is paid or provided.
- (4) If the paying intermediary is a firm –
  - (a) the amount of the deduction is limited to the amount that reduces the profits of the firm of the period of account to nil, and
  - (b) the expenses of the firm in connection with the services are limited to the amount deductible at Step 3 of section 61Q(1) of ITEPA 2003 in the calculation of the deemed payment.
- (5) Except in accordance with this section, no deduction may be made in respect of so much of the deemed payment as is deductible because of subsection (2).
- (6) In subsection (1)(d) “the underlying chain payment” means the chain payment whose amount is used at Step 1 of section 61Q(1) of ITEPA 2003 as the starting point for calculating the amount of the deemed payment.
- (7) In this section –
  - “the 1992 Acts” means the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992,
  - “contributions regulations” means regulations under either of the 1992 Acts providing for primary Class 1 contributions to be paid in a similar manner to income tax in relation to which PAYE regulations have effect (see, in particular, paragraph 6(1) of Schedule 1 to each of the 1992 Acts),
  - “primary Class 1 contribution” means a primary Class 1 contribution within the meaning of Part 1 of either of the 1992 Acts, and
  - “public authority” has the same meaning as in Chapter 10 of Part 2 of ITEPA 2003 (see section 61L of that Act).”

## PART 4

## COMMENCEMENT

- 10 The amendments made in ITEPA 2003 by Parts 1 and 3 of this Schedule have effect for the tax year 2017-18 and subsequent tax years.
- 11 The amendments made by Part 2 of this Schedule have effect in relation to deemed direct payments treated as made on or after 6 April 2017, even if relating to services provided before that date.

- 12 The amendment made in CTA 2009 by Part 3 of this Schedule has effect in relation to end-of-line remuneration (see new section 140A(1)) paid or provided on or after 6 April 2017.

## SCHEDULE 2

Section 2

### OPTIONAL REMUNERATION ARRANGEMENTS

#### *Optional remuneration arrangements*

- 1 In Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings), in Chapter 2 (taxable benefits: the benefits code), after section 69 insert –

#### **“69A Optional remuneration arrangements**

- (1) For the purposes of the benefits code a benefit provided for an employee is provided under “optional remuneration arrangements” if it is provided under arrangements of type A or B.
- (2) “Type A arrangements” are arrangements under which, in return for the benefit, the employee gives up the right (or a future right) to receive an amount of earnings within Chapter 1 of Part 3.
- (3) “Type B arrangements” are arrangements (other than type A arrangements) under which the employee agrees to be provided with the benefit rather than an amount of earnings within Chapter 1 of Part 3.
- (4) In this section “benefit” includes any benefit or facility, regardless of its form and the manner of providing it.

#### **69B The “amount foregone”**

- (1) In the benefits code, “the amount foregone”, in relation to a benefit provided to an employee under optional remuneration arrangements, means the amount of earnings mentioned in subsection (2) or (3) of section 69A.
- (2) Subsection (3) applies where, in order to determine the amount foregone in relation to a particular benefit mentioned in section 69A(2) or (3), it is necessary to apportion an amount of earnings to the benefit.
- (3) The apportionment is to be made on a just and reasonable basis.
- (4) In this section –
  - “benefit” has the same meaning as in section 69A;
  - “earnings” means earnings within Chapter 1 of Part 3 (and includes a reference to amounts which would have been such earnings if the employee had received them).”

#### *Benefits in kind: amount treated as earnings*

- 2 Part 3 of ITEPA 2003 (employment income: earnings and benefits in kind etc treated as earnings) is amended as follows.

- 3 In section 81 (benefit of cash voucher treated as earnings), after subsection (1) insert—
- “(1A) Where a cash voucher to which this Chapter applies is provided pursuant to optional remuneration arrangements—
- (a) subsection (1) does not apply, and
  - (b) the relevant amount is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.
- (1B) In subsection (1A) “the relevant amount” means the greater of—
- (a) the cash equivalent, and
  - (b) the amount foregone in relation to the benefit of the voucher (see section 69B).”
- 4 In section 87 (benefit of non-cash voucher treated as earnings) after subsection (1) insert—
- “(1A) Where a non-cash voucher to which this Chapter applies is provided pursuant to optional remuneration arrangements—
- (a) subsection (1) does not apply, and
  - (b) the relevant amount is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.
- (1B) In subsection (1A) “the relevant amount” means the greater of—
- (a) the cost of provision, and
  - (b) the amount foregone in relation to the benefit of the voucher (see section 69B).”
- 5 In section 94 (benefit of credit token treated as earnings), after subsection (2) insert—
- “(2A) Where a credit-token to which this Chapter applies is provided to the employee pursuant to optional remuneration arrangements relating to the use of the credit-token in a period which is or includes the whole or part of a tax year—
- (a) subsection (1) does not apply, and
  - (b) the relevant amount is to be treated as earnings from the employment for the tax year.
- (2B) In subsection (2A) “the relevant amount” means the greater of—
- (a) the relevant cost of provision for the tax year, and
  - (b) so much of the amount foregone as is attributable (on a just and reasonable basis) to the use of the credit-token by the employee in the tax year to obtain money, goods and services.
- (2C) For the purposes of subsection (2B), the “relevant cost of provision for the tax year” is determined as follows—
- Step 1*  
Find the cost of provision with respect to each occasion on which the credit-token is used by the employee in the tax year to obtain money, goods or services.
- Step 2*

The total of those amounts is the relevant cost of provision for the tax year.”

- 6 (1) Section 102 (benefit of living accommodation treated as earnings) is amended as follows.

- (2) For subsection (1) substitute –

“(1) This section applies where living accommodation to which this Chapter applies is provided in any period –  
(a) which consists of the whole or part of a tax year, and  
(b) throughout which the employee holds the employment.”

- (3) After subsection (2) insert –

“(2A) The cash equivalent of the benefit of the accommodation is to be treated as earnings from the employment for the tax year.

(2B) If the benefit of the accommodation is provided pursuant to optional remuneration arrangements –  
(a) subsection (2A) does not apply, and  
(b) the relevant amount is to be treated as earnings from the employment for that tax year.

(2C) In subsection (2B) “the relevant amount” means the greater of –  
(a) the modified cash equivalent of the benefit of the accommodation (see section 103A), and  
(b) the amount foregone with respect to the benefit of the accommodation (see section 69B).

(2D) Where it is necessary for the purposes of subsection (2C)(b) to apportion an amount of earnings to the benefit of the accommodation in the taxable period, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(4).”

- 7 After section 103 insert –

**“103A Meaning of “modified cash equivalent”**

(1) In this Chapter “the modified cash equivalent”, in relation to the benefit of any living accommodation, means the amount which would be the cash equivalent if sections 105 and 106 had effect with the modifications set out in subsections (2) and (3).

(2) In section 105 (cash equivalent: cost of accommodation not over £75,000), for subsections (2) to (5) substitute –

“(2) The cash equivalent is the rental value of the accommodation for the taxable period.”

(3) In section 106 (cash equivalent: cost of accommodation over £75,000) –

- (a) in Step 4 of subsection (2), omit paragraph (b) (and the “and” before it);  
(b) omit subsection (3).”

8 (1) Section 119 (where alternative to benefit of car or van offered) is amended as follows.

(2) For subsection (1) substitute –

- “(1) This section applies where in a tax year –
- (a) a car is made available as mentioned in section 114(1),
  - (b) the car’s CO<sub>2</sub> emissions figure (see sections 133 to 138) does not exceed 75 grams per kilometre, and
  - (c) an alternative to the benefit of the car is offered.”

(3) In the heading, before “car” insert “low emission”.

9 In section 120 (benefit of car treated as earnings), after subsection (3) insert –

- “(4) This section is subject to section 120A.”

10 After section 120 insert –

**“120A Benefit of car treated as earnings: optional remuneration arrangements**

- (1) This section applies if –
- (a) this Chapter applies to a car in relation to a particular tax year,
  - (b) the car is made available to the employee or member of the employee’s household pursuant to optional remuneration arrangements, and
  - (c) the car’s CO<sub>2</sub> emissions figure (see sections 133 to 138) exceeds 75 grams per kilometre.
- (2) Where this section applies –
- (a) the relevant amount is to be treated as earnings from the employment for that tax year, and
  - (b) section 120 does not apply.
- (3) In subsection (2) “the relevant amount” means the greater of –
- (a) the modified cash equivalent of the benefit of the car for the tax year (see section 120B), and
  - (b) the amount foregone with respect to that benefit (see section 69B).
- (4) Where it is necessary for the purposes of subsection (3)(b) to apportion an amount of earnings to the benefit of the car for the tax year, the apportionment is to be made on a just and reasonable basis. In this subsection “earnings” is to be interpreted in accordance with section 69B(4).
- (5) Where this section applies the employee is referred to in this Chapter as being chargeable to tax in respect of the car in the tax year.

**120B Meaning of “modified cash equivalent”**

- (1) In section 120A the “modified cash equivalent”, in relation to the benefit of a car for a tax year, means the amount which would be the cash equivalent if this Chapter had effect with the modifications set out in subsections (2) to (4).

- (2) In section 121 (method of calculating the cash equivalent of the benefit of a car), for Step 3 substitute –  
     “Step 3  
     The amount resulting from Step 2 is the interim sum.”
- (3) Section 132 (capital contributions by employee) is omitted.
- (4) In section 147 (classic cars: 15 years of age or more) –  
     (a) in subsection (2) omit “less any deductions under subsection (6)”, and  
     (b) omit subsections (5) to (7).”
- 11 (1) Section 149 (benefit of car fuel treated as earnings) is amended as follows.
- (2) In subsection (1) –  
     (a) at the beginning insert “This section applies”;  
     (b) in paragraph (b), after “120” insert “or 120A”.
- (3) In subsection (1), the words after paragraph (b) become subsection (1A).
- (4) After subsection (1A) insert –  
     “(1B) If the fuel is provided pursuant to optional remuneration arrangements –  
         (a) subsection (1A) does not apply, and  
         (b) the relevant amount is to be treated as earnings from the employment for the tax year.
- (1C) In subsection (1B) “the relevant amount” means the greater of –  
         (a) the cash equivalent of the benefit of the fuel, and  
         (b) the amount foregone with respect to the benefit of the fuel (see section 69B).
- (1D) Where it is necessary for the purposes of subsection (1C)(b) to apportion an amount of earnings to the benefit of the fuel in the tax year, the apportionment is to be made on a just and reasonable basis. In this subsection “earnings” is to be interpreted in accordance with section 69B(4).”
- 12 In section 154 (benefit of van treated as earnings), after subsection (3) insert –  
     “(4) This section is subject to section 154A.”
- 13 After section 154 insert –  
     **“154A Benefit of van treated as earnings: optional remuneration arrangements**
- (1) This section applies where –  
     (a) this Chapter applies to a van in relation to a particular tax year, and  
     (b) the van is made available to the employee or member of the employee’s household pursuant to optional remuneration arrangements.
- (2) Where this section applies –

- (a) the relevant amount is to be treated as earnings from the employment for that tax year, and
    - (b) section 154 does not apply.
  - (3) In subsection (2) “the relevant amount” means the greater of –
    - (a) the modified cash equivalent of the benefit of the van, and
    - (b) the amount foregone with respect to the benefit of the van (see section 69B).
  - (4) Where it is necessary for the purposes of subsection (3)(b) to apportion an amount of earnings to the benefit of the van in the tax year, the apportionment is to be made on a just and reasonable basis. In this subsection “earnings” is to be interpreted in accordance with section 69B(4).”
  - (5) In subsection (3) the reference to the “modified cash equivalent” is to the amount which would be the cash equivalent if this Chapter had effect with the omission of the following provisions –
    - (a) section 155(8)(c);
    - (b) section 158.
  - (6) Where this section applies the employee is referred to in this Chapter as being chargeable to tax in respect of the van in the tax year.”
- 14 (1) Section 160 (benefit of van fuel treated as earnings) is amended as follows.
- (2) In subsection (1)(b), after “154” insert “or 154A”.
  - (3) At the end insert –
    - “(5) This section is subject to section 160A.”
- 15 After section 160 insert –

**“160A Benefit of van fuel treated as earnings: optional remuneration arrangements**

- (1) This section applies if –
  - (a) fuel is provided for a van in a tax year by reason of an employee’s employment,
  - (b) the benefit of the fuel is provided pursuant to optional remuneration arrangements, and
  - (c) the employee is chargeable to tax in respect of the van in the tax year by virtue of section 154 or 154A.
- (2) Where this section applies –
  - (a) the relevant amount is to be treated as earnings from the employment for that year, and
  - (b) section 160 does not apply.
- (3) In subsection (1) “the relevant amount” means the greater of –
  - (a) the cash equivalent of the benefit of the fuel, and
  - (b) the amount foregone with respect to the benefit of the fuel (see section 69B).
- (4) Where it is necessary for the purposes of subsection (3)(b) to apportion an amount of earnings to the benefit of the fuel in the tax year, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(4).”

- 16 In section 173 (loans to which Chapter 7 applies), in subsection (1A)(b), for the words from “provide” to the end substitute “make provision about amounts which, in the case of a taxable cheap loan, are to be treated as earnings in certain circumstances”.
- 17 In section 175 (benefit of taxable cheap loan treated as earnings), for subsection (1) substitute –
- “(1) This section applies where an employment-related loan is a taxable cheap loan in relation to a tax year.
  - (1A) The cash equivalent of the benefit of the loan is to be treated as earnings from the employee’s employment for the tax year.
  - (1B) If the benefit of the loan is provided pursuant to optional remuneration arrangements –
    - (a) subsection (1A) does not apply, and
    - (b) the relevant amount is to be treated as earnings from the employee’s employment for the tax year.
  - (1C) In subsection (1B) “the relevant amount” means the greater of –
    - (a) the modified cash equivalent of the benefit of the loan for the tax year, and
    - (b) the amount foregone with respect to that benefit (see section 69B).
  - (1D) Where it is necessary for the purposes of subsection (1C)(b) to apportion an amount of earnings to the benefit of the loan for the tax year, the apportionment is to be made on a just and reasonable basis. In this subsection “earnings” is to be interpreted in accordance with section 69B(4).”

- 18 (1) After section 175 insert –

**“175A Meaning of “modified cash equivalent”**

- (1) For the purposes of section 175 the “modified cash equivalent” of the benefit of an employment-related loan for a tax year is the amount which would be the cash equivalent if section 175(3) had effect with the following modifications –
  - (a) in the opening words, omit “the difference between”;
  - (b) omit paragraph (b) and the “and” before it.”
- (2) Subsection (3) applies where any loans would (apart from that subsection) be treated by virtue of section 186(2) (replacement loans) as the same loan for the purpose of calculating the amount mentioned in subsection (1) above (amount which would be the cash equivalent).
- (3) That calculation is to be made as if section 186(2) did not have effect.
- (4) Subsection (5) applies where any loans would (apart from that subsection) be treated by virtue of section 187(3) (aggregation of loans by close company to a director) as a single loan for the purpose

of calculating the amount mentioned in subsection (1) above (amount which would be the cash equivalent).

(5) That calculation is to be made as if section 187(3) did not have effect.

19 In section 180 (threshold for benefit of loan to be treated as earnings), in subsection (1), for the words before paragraph (a) substitute “Section 175 does not have effect in relation to an employee and a tax year –”.

20 In section 203 (cash equivalent of benefit treated as earnings), after subsection (1) insert –

“(1A) Where an employment-related benefit is provided pursuant to optional remuneration arrangements –

- (a) subsection (1) does not apply, and
- (b) the relevant amount is to be treated as earnings from the employment for the tax year in which the benefit is provided.

(1B) In subsection (1A) “the relevant amount” means the greater of –

- (a) the cost of the benefit, and
- (b) the amount foregone with respect to the benefit (see section 69B).

(1C) Where it is necessary for the purposes of subsection (1B)(b) to apportion an amount of earnings to the benefit provided in the tax year, the apportionment is to be made on a just and reasonable basis. In this subsection “earnings” is to be interpreted in accordance with section 69B(4).”

### *Exemptions*

21 In Part 4 of ITEPA 2003 (employment income: exemptions), after section 228 insert –

#### **“228A General exclusion from exemptions: optional remuneration arrangements**

- (1) A relevant exemption does not prevent liability to income tax from arising in respect of a benefit or facility so far as the benefit or facility is provided pursuant to optional remuneration arrangements.
- (2) For the purposes of subsection (1) it does not matter whether the relevant exemption would (apart from that subsection) have effect as an employment income exemption or an earnings-only exemption.
- (3) In this section “relevant exemption” means any exemption conferred by this Part, other than –
  - (a) a special case exemption (see subsection (4)), or
  - (b) an excluded exemption (see subsection (5)).
- (4) “Special case exemption” means an exemption conferred by any of the following provisions –
  - (a) section 289A (exemption for paid or reimbursed expenses);
  - (b) section 289D (exemption for other benefits);
  - (c) section 308B (independent advice in respect of conversions and transfers of pension scheme benefits);

- (d) section 312A (limited exemption for qualifying bonus payments);
  - (e) section 317 (subsidised meals);
  - (f) section 320C (recommended medical treatment);
  - (g) section 323A (trivial benefits provided by employers).
- (5) “Excluded exemption” means an exemption conferred by any of the following provisions –
- (a) section 239 (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles);
  - (b) section 244 (cycles and cyclist’s safety equipment);
  - (c) section 266(2)(c) (non-cash voucher regarding entitlement to exemption within section 244);
  - (d) section 270A (limited exemption for qualifying childcare vouchers);
  - (e) section 307 (death or retirement benefit provision);
  - (f) section 308 (exemption of contribution to registered pension scheme);
  - (g) section 308A (exemption of contributions to overseas pension scheme);
  - (h) section 308C (provision of pensions advice);
  - (i) section 309 (limited exemptions for statutory redundancy payments);
  - (j) section 310 (counselling and other outplacement services);
  - (k) section 311 (retraining courses);
  - (l) section 318 (childcare: exemption for employer-provided care);
  - (m) section 318A (childcare: limited exemption for other care).
- (6) In this section “benefit or facility” includes anything which constitutes employment income or in respect of which employment income is treated as arising to the employee (regardless of its form and the manner of providing it).
- (7) In this section “optional remuneration arrangements” has the same meaning as in the benefits code (see section 69A).
- (8) The Treasury may by order amend subsections (4) and (5) by adding or removing an exemption conferred by Part 4.”

#### *Other amendments*

- 22 In section 362 of ITEPA 2003 (deductions where non-cash voucher provided), in subsection (1)(a), for “87(1) (cash equivalent” substitute “87(1) or (1A) (amount in respect”.
- 23 In section 363 of ITEPA 2003 (deductions where credit-token provided), in subsection (1)(a), for “94(1) (cash equivalent” substitute “94(1) or (2A) (amount in respect”.
- 24 In Part 2 of Schedule 1 to ITEPA 2003 (index of defined expressions), at the

appropriate places insert –

“amount foregone (in relation to a benefit) (in the benefits code)		section 69B”
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“optional remuneration arrangements (in the benefits code)		section 69A”
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*Commencement and transitional provision*

- 25 (1) The amendments made by paragraphs 1 and 24 of this Schedule have effect for the tax year 2017-18 and subsequent tax years.
- (2) The amendments made by paragraphs 2 to 23 of this Schedule have effect for the tax year 2017-18 and subsequent tax years.  
But this sub-paragraph does not apply in relation to pre-6 April 2017 arrangements.
- (3) In relation to pre-6 April 2017 arrangements, the amendment made by paragraph 21 has effect for the tax year 2018-19 and subsequent tax years.
- (4) In relation to pre-6 April 2017 arrangements, the amendments made by paragraphs 6 to 15 (and paragraph 2, so far as relating to those paragraphs) have effect for the tax year 2021-22 and subsequent tax years.
- (5) In relation to pre-6 April 2017 arrangements, the amendments made by paragraphs 3 to 5, 16 to 20, 22 and 23 (and paragraph 2, so far as relating to those paragraphs) have effect for the tax year 2018-19 and subsequent tax years (but see sub-paragraph (6)).
- (6) In relation to relevant school fee arrangements which came into effect before 6 April 2017 –
- (a) sub-paragraph (5) is to be read as if it did not include a reference to paragraph 20;
  - (b) the amendment made by paragraph 20 has effect for the tax year 2021-22 and subsequent tax years.
- (7) If the terms of any pre-6 April 2017 arrangements are varied on or after 6 April 2017, this paragraph has effect as if those arrangements were entered into at the beginning of the day on which the variation is made (and are distinct from the arrangements existing immediately before that day).
- (8) If any pre-6 April 2017 arrangements are renewed on or after 6 April 2017, this paragraph has effect as if those arrangements were entered into at the beginning of the day on which the renewal takes effect (and are distinct from the arrangements existing immediately before that day).  
In this sub-paragraph the reference to renewal includes a renewal which takes effect automatically.
- (9) In sub-paragraph (7) the reference to variation does not include any variation which is required only in connection with the replacement, because of accidental damage or otherwise for reasons beyond the control of the parties to the arrangements, of a benefit provided under the arrangements.

- (10) In sub-paragraph (7) the reference to variation does not include any variation which occurs in connection with a person's entitlement to statutory sick pay, statutory maternity pay, statutory adoption pay, statutory paternity pay or statutory shared parental pay.
- (11) For the purposes of this paragraph arrangements are "relevant school fee arrangements" if the benefit mentioned in section 69A(1) of ITEPA 2003 consists in the payment or reimbursement of school fees.
- (12) In this paragraph –  
     "arrangements" means optional remuneration arrangements (as defined in section 69A of ITEPA 2003);  
     "pre-6 April 2017 arrangements" means arrangements which came into effect before 6 April 2017.

## SCHEDULE 3

Section 11

## OVERSEAS PENSIONS

## PART 1

## CHARGES WHERE PAYMENTS MADE IN RESPECT OF OVERSEAS PENSIONS

- 1 Schedule 34 to FA 2004 (non-UK pension schemes: application of certain charges) is amended as follows.
- 2 (1) Paragraph 1 (application of member payment charges to relevant non-UK schemes) is amended as follows.
- (2) In sub-paragraph (6) (meaning of "relevant transfer") –
- (a) in the words before paragraph (a), before "means" insert ", in relation to a scheme ("the benefited scheme"),", and
- (b) in the words after paragraph (b), before "scheme" insert "benefited".
- (3) After sub-paragraph (6) insert –
- “(6A) There are three types of relevant transfer –
- (a) an original relevant transfer,
- (b) a subsequent relevant transfer, and
- (c) any other (including, in particular, all relevant transfers before 6 April 2017).
- (6B) “An original relevant transfer” is a relevant transfer on or after 6 April 2017 –
- (a) that is a relevant transfer within sub-paragraph (6)(a), or
- (b) that is a relevant transfer within sub-paragraph (6)(b) of the whole or part of the UK tax-relieved fund of a relieved member of a relevant non-UK scheme.
- (6C) The sums or assets transferred as a result of an original relevant transfer constitute a ring-fenced transfer fund.
- (6D) Where in the case of a ring-fenced transfer fund (“the source fund”) there is a relevant transfer of the whole or part of the fund –

- 
- (a) the sums or assets transferred as a result of the transfer constitute a ring-fenced transfer fund, and
      - (b) the transfer is “a subsequent relevant transfer”.
    - (6E) Sub-paragraph (6D) applies whether the source fund is a ring-fenced transfer fund as a result of sub-paragraph (6C) or as a result of sub-paragraph (6D).
    - (6F) The Commissioners for Her Majesty’s Revenue and Customs may by regulations provide that sums or assets identified in accordance with the regulations are not included in a ring-fence transfer fund as a result of sub-paragraph (6D)(a).”
  - 3 (1) Paragraph 2 (member payment provisions apply to payments out of non-UK schemes if member is UK resident or has been UK resident in any of the preceding 5 tax years) is amended as follows.
    - (2) The existing text becomes sub-paragraph (1).
    - (3) In that sub-paragraph, after “scheme” insert “so far as it is referable to 5-year-rule funds”.
    - (4) After that sub-paragraph insert –
      - “(2) The member payment provisions do not apply in relation to a payment made (or treated by this Part as made) to or in respect of a relieved member or transfer member of a relevant non-UK scheme so far as it is referable to 10-year rule funds unless the member –
        - (a) is resident in the United Kingdom when the payment is made (or treated as made), or
        - (b) although not resident in the United Kingdom at that time, has been resident in the United Kingdom earlier in the tax year in which the payment is made (or treated as made) or in any of the 10 tax years immediately preceding that year.
      - (3) In this paragraph –
        - “5-year rule funds”, in relation to a payment to or in respect of a relieved member of a relevant non-UK scheme, means so much of the member’s UK tax-relieved fund under the scheme as represents tax-relieved contributions, or tax-exempt provision, made under the scheme before 6 April 2017;
        - “5-year rule funds”, in relation to a payment to or in respect of a transfer member of a relevant non-UK scheme, means the member’s relevant transfer fund under the scheme;
        - “10-year rule funds”, in relation to a payment to or in respect of a relieved member of a relevant non-UK scheme, means so much of the member’s UK tax-relieved fund under the scheme as represents tax-relieved contributions, or tax-exempt provision, made under the scheme on or after 6 April 2017;
        - “10-year rule funds”, in relation to a payment to or in respect of a transfer member of a relevant non-UK scheme, means the member’s ring-fenced transfer funds under the scheme.

- (4) See also –  
 paragraph 1(6C) and (6D) (meaning of “ring-fenced transfer fund”),  
 paragraph 3 (meaning of “UK tax-relieved fund”, “tax-relieved contributions” and “tax-exempt provision” etc),  
 and  
 paragraph 4 (meaning of “relevant transfer fund” etc).”
- 4 (1) Paragraph 3 (payments to or in respect of relieved members of schemes) is amended as follows.
- (2) After sub-paragraph (5) insert –  
 “(5A) The Commissioners for Her Majesty’s Revenue and Customs may by regulations provide that, in circumstances specified in the regulations, something specified in the regulations is to be treated as done by, to, in respect of or in the case of a relieved member of a relevant non-UK scheme.”
- (3) In sub-paragraph (6) (power to specify whether payments by scheme are referable to UK tax-relieved fund), after “payments made (or treated as made) by” insert “, or other things done by or to or under or in respect of or in the case of,”.
- (4) After sub-paragraph (7) insert –  
 “(8) Where regulations under sub-paragraph (6) make provision for a payment or something else to be treated as referable to a member’s UK tax-relieved fund under a scheme, regulations under that sub-paragraph may make provision for the payment or thing, or any part or aspect of the payment or thing, also to be treated as referable to a particular part of that fund.”
- 5 (1) Paragraph 4 (payments to or in respect of transfer members of schemes) is amended as follows.
- (2) In sub-paragraph (1), after “relevant transfer fund” insert “, or ring-fenced transfer funds,”.
- (3) In sub-paragraph (2) (meaning of “relevant transfer fund”), before “so much of” insert “, subject to sub-paragraph (3A),”.
- (4) After sub-paragraph (3) insert –  
 “(3A) The member’s relevant transfer fund under the scheme does not include sums or assets that are in any of the member’s ring-fenced transfer funds under the scheme.”
- (5) After sub-paragraph (4) insert –  
 “(5) The Commissioners for Her Majesty’s Revenue and Customs may by regulations provide that, in circumstances specified in the regulations, something specified in the regulations is to be treated as done by, to, in respect of or in the case of a transfer member of a relevant non-UK scheme.
- (6) Regulations made by the Commissioners for Her Majesty’s Revenue and Customs may make provision for determining whether payments or transfers made (or treated as made) by, or

other things done by or to or under or in respect of or in the case of, a relevant non-UK scheme are to be treated as referable to a member's ring-fenced transfer funds under the scheme (and so whether or not they reduce the funds or any of them).

- (7) Where regulations under sub-paragraph (6) make provision for a payment or transfer or something else to be treated as referable to a member's ring-fenced transfer funds under a scheme, regulations under that sub-paragraph may make provision for the payment or transfer or other thing, or any part or aspect of the payment or transfer or thing, also to be treated as referable to a particular one of those funds."
- 6 In paragraph 7(2)(c) (regulations about application of member payment provisions), after "relevant transfer fund" insert "or ring-fenced transfer funds".
- 7 (1) Paragraph 9ZB (application of section 227G) is amended as follows.
- (2) In sub-paragraph (2), after "relevant transfer fund" insert "or ring-fenced transfer funds".
- (3) After sub-paragraph (3) insert –
- “(4) The reference in sub-paragraph (2) to the individual's ring-fenced transfer funds under the relevant non-UK scheme is to be read in accordance with paragraph 1.”
- 8 The amendments made by this Part of this Schedule apply in relation to payments made (or treated as made) on or after 6 April 2017.

## PART 2

### CONSEQUENTIAL AMENDMENTS OF ITEPA 2003

- 9 (1) Section 576A of ITEPA 2003 (temporary non-residents), as it applies where the year of departure is the tax year 2013-14 or a later tax year, is amended as follows.
- (2) In subsection (6)(b) (pension income: temporary non-residents: non-application where payment not referable to relevant transfer fund) –
- (a) for "not referable" substitute "referable neither", and
- (b) after "relevant transfer fund" insert ", nor to the member's ring-fenced transfer funds,".
- (3) In subsection (10) (interpretation), at the end insert –
- ““member's ring-fenced transfer fund” (see paragraph 1(6C) and (6D).”
- (4) The amendments made by this paragraph apply in relation to relevant withdrawals on or after 6 April 2017.
- 10 (1) Section 576A of ITEPA 2003, as it applies where the year of departure is the tax year 2012-13 or an earlier tax year, is amended as follows.
- (2) In subsection (6) (pension income: temporary non-residents: non-application unless payment referable to relevant transfer fund), after "member's relevant transfer fund" insert ", or the member's ring-fenced transfer funds,".

- (3) In subsection (8) (interpretation), before the definition of “scheme pension” insert—
- ““member’s ring-fenced transfer funds” has the same meaning as in that Schedule (see paragraph 1(6C) and (6D));”.
- (4) The amendments made by this paragraph apply in relation to relevant withdrawals on or after 6 April 2017.

### PART 3

#### NEW CHAPTER 5A OF PART 4 OF FA 2004 (NON-UK REGISTERED PENSION SCHEMES)

- 11 (1) In Part 4 of FA 2004 (pension schemes), after Chapter 5 insert—

#### “CHAPTER 5A

#### REGISTERED PENSION SCHEMES ESTABLISHED OUTSIDE THE UNITED KINGDOM

##### **242A Meaning of “non-UK registered scheme”**

In this Chapter “non-UK registered scheme” means a registered pension scheme established in a country or territory outside the United Kingdom.

##### **242B Application of this Part to non-UK registered schemes**

- (1) This Part (so far as would not otherwise be the case) is to be read—
- (a) as applying in relation to UK-relieved funds of a non-UK registered scheme as it applies in relation to sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme established in the United Kingdom,
  - (b) as applying in relation to a non-UK registered scheme, so far as the scheme relates to the scheme’s UK-relieved funds, as it applies in relation to a registered pension scheme established in the United Kingdom,
  - (c) as applying in relation to members of a non-UK registered scheme, so far as their rights under the scheme are represented by UK-relieved funds of the scheme, as it applies in relation to members of a registered pension scheme established in the United Kingdom, and
  - (d) as applying to relevant contributions to a non-UK registered scheme as it applies in relation to contributions to a registered pension scheme established in the United Kingdom.
- (2) Subsection (1) has effect subject to, and in accordance with, the following provisions of this Chapter.
- (3) The Commissioners for Her Majesty’s Revenue and Customs may by regulations make—
- (a) provision elucidating the application of, or supplementing, subsection (1) or other provisions of this Chapter, or
  - (b) where relief from tax is involved, other provision for or in connection with the application of this Part where the

interpretative presumption against extra-territorial application means that it would otherwise not apply.

- (4) Regulations under subsection (3) may (in particular) –
  - (a) amend provisions of or made under –
    - (i) this Part, or
    - (ii) any other enactment related to taxation in connection with pensions, and
  - (b) make consequential amendments of provisions of, or made under, any enactment.
- (5) See section 242C for the meaning of “UK-relieved funds” and “relevant contribution”.

#### **242C Meaning of “UK-relieved funds”**

- (1) For the purposes of section 242B, the “UK-relieved funds” of a non-UK registered scheme are sums or assets held for the purposes of, or representing accrued rights under, the scheme –
  - (a) that (directly or indirectly) represent sums or assets that at any time were held for the purposes of, or represented accrued rights under, a registered pension scheme established in the United Kingdom,
  - (b) that (directly or indirectly) represent sums or assets that at any time formed the UK tax-relieved fund under a relevant non-UK scheme of a relieved member of that scheme, or
  - (c) that –
    - (i) are held for the purposes of, or represent accrued rights under, an arrangement under the scheme relating to a member of the scheme who on any day has been an accruing member of the scheme, and
    - (ii) in accordance with regulations made by the Commissioners for Her Majesty’s Revenue and Customs, are to be taken to have benefited from relief from tax.
- (2) In section 242B “relevant contribution” has the meaning given by regulation 14ZB(8) of the Information Regulations.
- (3) Paragraphs (7) and (8) of regulation 14ZB of the Information Regulations (meaning of “accruing member”) apply for the purposes of this section as for those of that regulation.
- (4) “The Information Regulations” means the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567).

#### **242D Non-UK registered schemes: annual allowance charge**

- (1) This section is about the application of the provisions of this Part relating to the annual allowance charge.
- (2) Pension input amounts in respect of arrangements relating to an individual under a non-UK registered scheme are to be taken into account in applying the provisions for a tax year in relation to the individual only if, in accordance with regulations made by the Commissioners for Her Majesty’s Revenue and Customs, relieved

input are to be taken to have been made in respect of the individual under the scheme in the year.

#### **242E Investment-regulated non-UK registered schemes**

For the purposes of the application of the taxable property provisions in relation to a non-UK registered scheme, property is taxable property in relation to the scheme if it would be taxable property in relation to the scheme were the scheme a registered pension scheme established in the United Kingdom.”

- (2) The amendment made by this paragraph has effect for the tax year 2017-18 and subsequent tax years.

### PART 4

#### INCOME TAX ON PENSION INCOME

*UK residents to be taxed on 100%, not 90%, of foreign pension income*

- 12 (1) Omit section 575(2) of ITEPA 2003 (foreign pensions received by UK residents: taxable amount is 90% of actual amount).
- (2) Omit section 613(3) of ITEPA 2003 (annuities from non-UK sources: taxable amount is 90% of actual amount).
- (3) Omit section 635(3) of ITEPA 2003 (foreign voluntary annual payments: taxable amount is 90% of actual amount).
- (4) In consequence –
- (a) in section 575 of ITEPA 2003 –
    - (i) in subsection (1) omit “, (2)”,
    - (ii) in subsection (1A), for “subsections (2) and” substitute “subsection”,
    - (iii) in subsection (3), for “That pension income” substitute “The full amount of the pension income arising in the tax year, or (as the case may be) the UK part of the tax year,”, and
    - (iv) in subsection (3), for “that Act” substitute “ITTOIA 2005”,
  - (b) in section 613 of ITEPA 2003 –
    - (i) in subsection (2), for “subsections (3) and” substitute “subsection”, and
    - (ii) in subsection (4), for “that Act” substitute “ITTOIA 2005”,
  - (c) in section 635 of ITEPA 2003 –
    - (i) in subsection (2), for “subsections (3) and” substitute “subsection”,
    - (ii) in subsection (4), for “That pension income” substitute “The full amount of the pension income arising in the tax year”, and
    - (iii) in subsection (4), for “that Act” substitute “ITTOIA 2005”, and
  - (d) in Schedule 45 to FA 2013 omit paragraph 72(4).
- (5) In sections 613(5) and 635(5) (application of section 839 of ITTOIA 2005 in certain cases), for “condition B” substitute “conditions B1 and B2 (and the reference to them in subsection (1))”.

- (6) The amendments made by this paragraph have effect for the tax year 2017-18 and subsequent tax years.

*Superannuation funds to which section 615(3) of ICTA applies*

- 13 (1) In section 615(6) of ICTA (trust funds for pensions in respect of employment outside UK) –
- (a) in the words before paragraph (a) omit “which”,
  - (b) at the beginning of each of paragraphs (a), (b) and (c) insert “which”,
  - (c) in paragraph (a) (establishment of fund), after “established” insert “, before 6 April 2017,”, and
  - (d) after paragraph (a) insert –
    - “(aa) to which no contributions are made after 5 April 2017;”.
- (2) The amendments made by this paragraph are to be treated as having come into force on 6 April 2017.

PART 5

LUMP SUMS FOR UK RESIDENTS FROM FOREIGN PENSION SCHEMES

*Introductory*

- 14 ITEPA 2003 is amended as follows.

*Employer-financed retirement benefit schemes: ending of foreign-service relief*

- 15 (1) Section 395B (exemption or reduction for foreign service) is amended as follows.
- (2) In subsection (1) (conditions for entitlement to exemption or reduction), after paragraph (c) insert –
- “(ca) the recipient is not resident in the United Kingdom in the tax year in which the lump sum is received,”.
- (3) In subsection (8) (meaning of “foreign service”), for “413(2)” substitute “395C”.
- (4) The amendments made by this paragraph have effect for the tax year 2017-18 and subsequent tax years.

- 16 After section 395B insert –

**“395C Meaning of “foreign service” in section 395B**

- (1) In section 395B “foreign service” means service to which subsection (2), (3), (6) or (8) applies.
- (2) This subsection applies to service in or after the tax year 2013-14 –
- (a) to the extent that it consists of duties performed outside the United Kingdom in respect of which earnings would not be relevant earnings, or
  - (b) if a deduction equal to the whole amount of the earnings from the employment was or would have been allowable

under Chapter 6 of Part 5 (deductions from seafarers' earnings).

- (3) This subsection applies to service in or after the tax year 2003–04 but before the tax year 2013–14 such that –
- (a) any earnings from the employment would not be relevant earnings, or
  - (b) a deduction equal to the whole amount of the earnings from the employment was or would have been allowable under Chapter 6 of Part 5 (deductions from seafarers' earnings).
- (4) In subsection (2) “relevant earnings” means earnings for a tax year that are earnings to which section 15 applies and to which that section would apply even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year.
- (5) In subsection (3) “relevant earnings” means –
- (a) for service in or after the tax year 2008–09, earnings –
    - (i) which are for a tax year in which the employee is ordinarily UK resident,
    - (ii) to which section 15 applies, and
    - (iii) to which that section would apply, even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year, and
  - (b) for service before the tax year 2008–09, general earnings to which section 15 or 21 as originally enacted applies.
- (6) This subsection applies to service before the tax year 2003–04 and after the tax year 1973–74 such that –
- (a) the emoluments from the employment were not chargeable under Case I of Schedule E, or would not have been so chargeable had there been any, or
  - (b) a deduction equal to the whole amount of the emoluments from the employment was or would have been allowable under a foreign earnings deduction provision.
- (7) In subsection (6) “foreign earnings deduction provision” means –
- (a) paragraph 1 of Schedule 2 to FA 1974,
  - (b) paragraph 1 of Schedule 7 to FA 1977, or
  - (c) section 192A or 193(1) of ICTA.
- (8) This subsection applies to service before the tax year 1974–75 such that tax was not chargeable in respect of the emoluments of the employment –
- (a) in the tax year 1956–57 or later, under Case I of Schedule E, or
  - (b) in earlier tax years, under Schedule E,
- or it would not have been so chargeable had there been any such emoluments.”

17 In section 554Z4 (treatment of relevant step: residence issues), after subsection (6) insert –

- “(7) Subsection (4) does not apply if –
- (a) the relevant step is the payment of a lump sum,

- (b) the payment of the lump sum is the provision of a relevant benefit under an employer-financed retirement benefits scheme, and
  - (c) the person by whom the lump sum is received is resident in the United Kingdom in the tax year in which the lump sum is received.
- (8) In subsection (7) –
- “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 (see section 393A), and
  - “relevant benefit” has the same meaning as in that Chapter (see section 393B).”

*Lump sums under other foreign schemes*

- 18 In section 573 (foreign pensions), after subsection (3) insert –
- “(4) This section also applies to a pension paid by or on behalf of a person who is outside the United Kingdom to a person who is not resident in the United Kingdom if –
- (a) the pension is a relevant lump sum paid under a pension scheme to that person in respect of a member of the scheme, and
  - (b) the member is, or immediately before the member’s death was, resident in the United Kingdom.”
- 19 In section 574(1) (foreign pensions: meaning of “pension”), after paragraph (a) insert –
- “(aa) a relevant lump sum (see section 574A),”.

- 20 (1) After section 574 insert –

**“574A “Pension”: relevant lump sums**

- (1) A lump sum paid under a pension scheme to a member of the scheme, or to a person in respect of a member of the scheme, is “a relevant lump sum” for the purposes of this Chapter if –
- (a) the scheme is none of the following –
    - (i) a registered pension scheme,
    - (ii) a relevant non-UK scheme, and
    - (iii) an employer-financed retirement benefits scheme, and
  - (b) the payment of the lump sum is not a relevant step by reason of which Chapter 2 of Part 7A applies.
- (2) A lump sum paid under a relevant non-UK scheme to a member of the scheme, or to a person in respect of a member of the scheme, is “a relevant lump sum” for the purposes of this Chapter if the effect of paragraphs 1 to 7 of Schedule 34 to FA 2004 is that the member payment provisions (see paragraph 1(4) of that Schedule) do not apply in relation to the payment of the lump sum.
- (3) If section 573 applies to a relevant lump sum then, for the purposes of section 575, the full amount of the pension income arising by reason of the payment of the lump sum is the amount of the lump sum, reduced as follows –

*Step 1*

Deduct so much of the lump sum as is payable by reason of commutation of rights to receive pension income on which no liability to tax arises as a result of any provision of Chapter 17 of this Part.

*Step 2*

Deduct so much of the lump sum left after Step 1 as is paid in respect of rights, which accrued before 6 April 2017, specifically to receive benefits by way of lump sum payments.

*Step 3*

If the lump sum is paid under an overseas pension scheme, deduct so much of the lump sum left after Step 2 as would, if the scheme were a registered pension scheme, not be liable to income tax under this Part (for this purpose treating amounts not included in taxable pension income because of section 636B(3) as being not liable to tax).

- (4) The amount given by subsection (3) is treated for the purposes of section 575 as arising when the lump sum is paid.
- (5) In this section—
- “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 (see section 393A),
  - “member”, in relation to a pension scheme, has the meaning given by section 151 of FA 2004,
  - “overseas pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(7) of that Act),
  - “payment” includes a transfer of assets and any other transfer of money’s worth,
  - “pension scheme” has the meaning given by section 150(1) of FA 2004, and
  - “relevant non-UK scheme” is to be read in accordance with paragraph 1(5) of Schedule 34 to FA 2004.”
- (2) The amendment made by this paragraph has effect in relation to lump sums paid on or after 6 April 2017.
- 21 (1) In section 576A of ITEPA 2003 (temporary non-residents), as it applies where the year of departure is the tax year 2013-14 or a later tax year, after subsection (4) insert—
- “(4ZA) Payment of a relevant lump sum is also a “relevant withdrawal”.”
- (2) The amendment made by this paragraph applies in relation to relevant withdrawals on or after 6 April 2017.
- 22 (1) In section 576A of ITEPA 2003, as it applies where the year of departure is the tax year 2012-13 or an earlier tax year, after subsection (4A) insert—
- “(4AA) Payment of a relevant lump sum is also a “relevant withdrawal”.”
- (2) The amendment made by this paragraph applies in relation to relevant withdrawals on or after 6 April 2017.

PART 6

REGULATIONS

- 23 (1) Section 169 of FA 2004 (transfers between pension schemes) is amended as follows.
- (2) After subsection (2) insert –
- “(2A) Regulations may make provision as to –
- (a) information that is to be included in, or is to accompany, a notification under subsection (2)(a);
  - (b) the way and form in which such a notification, or any required information or evidence, is to be given or provided.”
- (3) After subsection (4B) insert –
- “(4C) Provision under subsection (2A)(b) or (4A)(a) may, in particular, provide for use of a way or form specified by the Commissioners.”
- (4) After subsection (7) insert –
- “(7A) Regulations may, in a case where –
- (a) any of the sums and assets transferred by a relevant overseas transfer represent rights in respect of a pension to which a person has become entitled under the transferring scheme (“the original pension”), and
  - (b) those sums and assets are, after the transfer, applied towards the provision of a pension under the other scheme (“the new pension”),
- provide that the new pension is to be treated, to such extent as is prescribed and for such of the purposes of this Part as are prescribed, as if it were the original pension.
- (7B) For the purposes of subsection (7A), a “relevant overseas transfer” is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a relevant non-UK scheme so as to become held for the purposes of, or to represent rights under –
- (a) another relevant non-UK scheme, or
  - (b) a registered pension scheme,
- in connection with a member of that pension scheme.”
- (5) In subsection (8) (interpretation) –
- (a) in the opening words, after “subsections (4) to (6)” insert “, (7A), (7B)”, and
  - (b) after the definition of “regulations” insert –  
““relevant non-UK scheme” has the meaning given by paragraph 1 of Schedule 34;”.

SCHEDULE 4

Section 12

DEDUCTION OF INCOME TAX AT SOURCE

PART 1

INTEREST DISTRIBUTIONS OF INVESTMENT TRUST OR AUTHORISED INVESTMENT FUND

- 1 In Chapter 3 of Part 15 of ITA 2007 (deduction of tax from certain payments of yearly interest), after section 888A insert –

**“888B Designated dividends of investment trusts**

The duty to deduct a sum representing income tax under section 874 does not apply to a dividend so far as it is treated as a payment of yearly interest by regulations under section 45 of FA 2009 (dividends designated by investment trust or prospective investment trust).

**888C Interest distributions of certain open-ended investment companies**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of yearly interest under section 373 of ITTOIA 2005 (in the case of certain open-ended investment companies, payments of yearly interest treated as made where distributable amount shown in accounts as yearly interest).

**888D Interest distribution of certain authorised unit trusts**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of yearly interest under section 376 of ITTOIA 2005 (in the case of certain authorised unit trusts, payments of yearly interest treated as made where distributable amount shown in accounts as yearly interest).”

- 2 In section 45(2) of FA 2009 (provision that regulations may make about dividends of investment trusts) omit paragraph (c) (power to disapply duty to deduct tax under section 874 of ITA 2007).

PART 2

INTEREST ON PEER-TO-PEER LENDING

- 3 In Chapter 3 of Part 15 of ITA 2007 (deduction of tax from certain payments of yearly interest), after section 888D (inserted by this Schedule) insert –

**“888E Interest on certain peer-to-peer lending**

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on an amount of peer-to-peer lending.
- (2) In subsection (1) “peer-to-peer lending” means credit in relation to which the condition in subsection (4) is met.
- (3) In this section –  
“original borrower”, in relation to any credit, means the person to whom the credit is originally provided,

“credit” includes a cash loan and any other form of financial accommodation, and

“original lender”, in relation to any credit, means the person who originally provides the credit.

- (4) The condition is that—
- (a) the original borrower and the original lender enter the agreement under which the credit is provided at the invitation of a person (“the operator”),
  - (b) the operator makes the invitation in the course of, or in connection with, operating an electronic system,
  - (c) the operator’s operation of the electronic system is an activity specified in article 36H(1) or (2D) of the Order (operating an electronic system in relation to lending), and
  - (d) the operator has permission under Part 4A of FISMA 2000 to carry on that activity.
- (5) For the purposes of subsection (4), it does not matter if the agreement mentioned in subsection (4)(a) is not an article 36H agreement (as defined in article 36H of the Order).
- (6) The Commissioners for Her Majesty’s Revenue and Customs may by regulations make such amendments of the preceding provisions of this section as they consider appropriate in consequence of—
- (a) the Order, or any part of it, being replaced (or further replaced) by provision in another instrument, or
  - (b) any amendment of the Order or any such other instrument.
- (7) In this section “the Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).”

### PART 3

#### FURTHER AMENDMENT AND COMMENCEMENT

##### *Further amendment*

- 4 In section 874(3)(a) of ITA 2007 (which refers to provisions which disapply the duty under section 874 to deduct tax from yearly interest), for “888” substitute “888E”.

##### *Commencement*

- 5 (1) The new sections 888B to 888D of ITA 2007, and the repeal of section 45(2)(c) of FA 2009, have effect in relation to amounts treated as payments of yearly interest made on or after 6 April 2017.
- (2) The new section 888E of ITA 2007 has effect in relation to payments of interest made on or after 6 April 2017.

SCHEDULE 5

Section 19

TRADING AND PROPERTY ALLOWANCES

PART 1

MAIN PROVISIONS

- 1 In ITTOIA 2005, after section 783 insert –

**“PART 6A**

INCOME CHARGED UNDER THIS ACT: TRADING AND PROPERTY ALLOWANCES

**CHAPTER 1**

TRADING ALLOWANCE

*Introduction*

**783A Relief under this Chapter**

- (1) This Chapter gives relief to an individual on –
  - (a) the income of a relevant trade (see section 783B), and
  - (b) miscellaneous income (see section 783C).
- (2) The form of relief depends on whether the individual’s relevant income exceeds the individual’s trading allowance (see sections 783D and 783E).
- (3) If the individual’s relevant income does not exceed the individual’s trading allowance, the income is not charged to income tax (unless the individual elects otherwise) (see sections 783F to 783H).
- (4) If the individual’s relevant income does exceed the individual’s trading allowance, the individual may elect for alternative methods of calculating the income (see sections 783I to 783L).
- (5) Any provision of this Chapter which gives relief is subject to sections 783O and 783P, which specify circumstances in which relief under this Chapter is not given.

*Basic definitions*

**783B “Relevant trade” of an individual**

- (1) For the purposes of this Chapter, a trade carried on by an individual is a “relevant trade” of the individual for a tax year if –
  - (a) the individual carries on the trade otherwise than in partnership, and
  - (b) the trade is not a rent-a-room trade in relation to the individual for the tax year.
- (2) For the purposes of subsection (1)(b) a trade is a “rent-a-room trade” in relation to an individual for a tax year if –

- (a) the individual qualifies for rent-a-room relief for the tax year, and
- (b) the individual has rent-a-room receipts for the tax year which would, apart from Chapter 1 of Part 7 (rent-a-room relief), be brought into account in calculating the profits of the trade.

See section 783Q for definitions relevant to this subsection.

- (3) In this Chapter references to a trade include references to a profession or vocation.

#### **783C “Miscellaneous income”**

- (1) For the purposes of this Chapter, an individual’s “miscellaneous income” for a tax year is all the income arising to the individual in the tax year which would be chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged) for the tax year.
- (2) But if—
  - (a) the individual qualifies for rent-a-room relief for the tax year, and
  - (b) the individual has rent-a-room receipts for the tax year which would, apart from Chapter 1 of Part 7, be chargeable to income tax under Chapter 8 of Part 5,the rent-a-room receipts are not miscellaneous income.
- (3) The reference in subsection (1) to the amount which would be chargeable to income tax under Chapter 8 of Part 5 is to the amount which would be so chargeable—
  - (a) apart from this Chapter, and
  - (b) if no deduction were made for expenses or any other matter.

#### **783D The individual’s “relevant income”**

- (1) For the purposes of this Chapter, an individual’s “relevant income” for a tax year is the sum of the following—
  - (a) the receipts for the tax year of the individual’s relevant trades for the tax year, and
  - (b) the individual’s miscellaneous income for the tax year.
- (2) In subsection (1)(a) the reference to the receipts of a trade for a tax year is to all the receipts which would, apart from this Chapter, be brought into account in calculating the profits of the trade for the tax year.

#### **783E The individual’s trading allowance**

- (1) For the purposes of this Chapter, an individual’s trading allowance for a tax year is £1,000.
- (2) The Treasury may by regulations amend subsection (1) so as to substitute a higher sum for the sum for the time being specified in that subsection.

*Relief if relevant income does not exceed trading allowance***783F Full relief: introduction**

An individual qualifies for full relief for a tax year if –

- (a) the individual has relevant income for the tax year,
- (b) the relevant income does not exceed the individual's trading allowance for the tax year, and
- (c) no election by the individual under section 783M has effect (election for full relief not to be given).

**783G Full relief: trade profits**

- (1) This section applies if –
  - (a) an individual qualifies for full relief for a tax year, and
  - (b) the individual's relevant income for the tax year consists of or includes receipts of one or more relevant trades.
- (2) The profits or losses of each such trade for the tax year are treated as nil.

**783H Full relief: miscellaneous income**

- (1) This section applies if –
  - (a) an individual qualifies for full relief for a tax year, and
  - (b) the individual's relevant income for the tax year consists of or includes miscellaneous income.
- (2) The amount of –
  - (a) the miscellaneous income arising in the tax year, less
  - (b) any expenses associated with that income,is treated as nil.

*Relief if relevant income exceeds trading allowance***783I Partial relief: alternative calculation of profits: introduction**

An individual qualifies for partial relief for a tax year if –

- (a) the individual has relevant income for the tax year,
- (b) the relevant income exceeds the individual's trading allowance for the tax year, and
- (c) an election by the individual under section 783N has effect (election for partial relief).

**783J Partial relief: alternative calculation of trade profits**

- (1) This section applies if –
  - (a) an individual qualifies for partial relief for a tax year, and
  - (b) the individual's relevant income for the tax year consists of or includes receipts of one or more relevant trades.
- (2) The profits or losses for the tax year of each of the individual's relevant trades are given by taking the following steps –  
*Step 1*

Calculate the total amount of receipts which would, apart from this Chapter, be brought into account in calculating the profits of the trade for the tax year.

*Step 2*

Subtract the deductible amount.

*Step 3*

Subtract from the amount given by step 2 the total of the deductions for overlap profit allowed in calculating the profits of the trade for the tax year (if any).

- (3) Subject to section 783L, the deductible amount is equal to the individual's trading allowance for the tax year.
- (4) In this section "deduction for overlap profit" means a deduction allowed for overlap profit under section 205 or 220 (deduction for overlap profit in final tax year or on change of accounting date).

**783K Partial relief: alternative calculation of chargeable miscellaneous income**

- (1) This section applies if –
  - (a) an individual qualifies for partial relief for a tax year, and
  - (b) the individual's relevant income for the tax year consists of or includes miscellaneous income.
- (2) The amount of miscellaneous income chargeable to income tax for the tax year is –
  - (a) the miscellaneous income for the tax year, less
  - (b) the deductible amount.
- (3) Subject to section 783L, the deductible amount is equal to the individual's trading allowance for the tax year.

**783L Deductible amount: splitting of trading allowance**

- (1) This section applies where the individual's relevant income for the tax year includes –
  - (a) receipts of a relevant trade, and
  - (b) receipts of any other relevant trade or miscellaneous income (or both).
- (2) The references in section 783J and (where it applies) section 783K to the deductible amount are to amounts which, in total, equal the individual's trading allowance for the tax year.
- (3) The question of how to allocate the individual's trading allowance for the tax year for the purposes of subsection (2) is to be decided by the individual, subject to subsections (4) and (5).
- (4) The deductible amount in respect of a relevant trade must not be such that the amount given by step 2 of section 783J(2) is negative.
- (5) The deductible amount in respect of miscellaneous income must not be such as to result in the individual making a loss in the transactions giving rise to the miscellaneous income.

*Elections***783M Election for full relief not to be given**

- (1) An individual may elect not to be given full relief for a tax year (see sections 783G and 783H).
- (2) An election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the election is made.

**783N Election for partial relief**

- (1) An individual may elect for partial relief to be given for a tax year if the individual's relevant income for the tax year exceeds the individual's trading allowance for the tax year (see sections 783J and 783K).
- (2) An election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the election is made.

*Exclusions from relief***783O Exclusion from relief: expenses deducted against rent-a-room receipts**

- (1) No relief under this Chapter is given to an individual for a tax year if –
  - (a) the individual qualifies for rent-a-room relief for the tax year,
  - (b) the individual has rent-a-room receipts mentioned in subsection (2) for the tax year, and
  - (c) condition A or B is met.
- (2) The rent-a-room receipts mentioned in subsection (1) are –
  - (a) rent-a-room receipts which would, apart from Chapter 1 of Part 7 (rent-a-room relief), be brought into account in calculating the profits of a trade, or
  - (b) rent-a-room receipts which would, apart from Chapter 1 of Part 7, be chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged).
- (3) Condition A is that –
  - (a) the individual's total rent-a-room amount for the tax year does not exceed the individual's limit for the tax year (see section 783Q), and
  - (b) an election by the individual under section 799 has effect to disapply full rent-a-room relief for the tax year.
- (4) Condition B is that –
  - (a) the individual's total rent-a-room amount for the tax year exceeds the individual's limit for the tax year, and
  - (b) no election by the individual under section 800 has effect to apply the alternative method of calculating profits for the tax year.

### **783P Exclusion from relief: payments by employer**

No relief under this Chapter is given to an individual for a tax year if –

- (a) the individual has relevant income for the tax year, and
- (b) the income includes a payment made by, or on behalf of, a person at a time when the individual is –
  - (i) an employee of the person, or
  - (ii) connected with an employee of the person.

#### *Interpretation*

### **783Q Interpretation of this Chapter**

In this Chapter –

- (a) “rent-a-room relief”, “rent-a-room receipts” and “total rent-a-room amount” have the same meanings as in Chapter 1 of Part 7 (rent-a-room relief: see sections 784, 786 and 788), and
- (b) references to “the individual’s limit” are to be construed in accordance with section 789 (the individual’s limit for the purposes of rent-a-room relief).

## **CHAPTER 2**

### **PROPERTY ALLOWANCE**

#### *Introduction*

### **783R Relief under this Chapter**

- (1) This Chapter gives relief to an individual on certain income of a relevant property business (see sections 783S and 783T).
- (2) The form of relief depends on whether the individual’s relevant property income exceeds the individual’s property allowance (see sections 783U and 783V).
- (3) If the individual’s relevant property income does not exceed the individual’s property allowance, the income is not charged to income tax (unless the individual elects otherwise) (see sections 783W and 783X).
- (4) If the individual’s relevant property income does exceed the individual’s property allowance, the individual may elect for an alternative method of calculating the income (see sections 783Y to 783Z1).
- (5) Any provision of this Chapter which gives relief is subject to sections 783Z4 to 783Z6, which specify circumstances in which relief under this Chapter is not given.

*Basic definitions*

**783S “Relevant property business” of an individual**

- (1) Subject to subsection (3), for the purposes of this Chapter an individual’s property business is a “relevant property business” for a tax year if the business is not a rent-a-room property business in relation to the individual for the tax year.
- (2) For the purposes of subsection (1) a property business is a “rent-a-room property business” in relation to an individual for a tax year if –
  - (a) the individual qualifies for rent-a-room relief for the tax year, and
  - (b) all the receipts which would, apart from Chapter 1 of Part 7 (rent-a-room relief), be brought into account in calculating the profits of the business, are rent-a-room receipts.

See section 783Z7 for definitions relevant to this subsection.

- (3) If an individual receives –
  - (a) property income distributions which are treated as profits of a UK property business by virtue of regulation 69Z18(1) or (2) of the AIF Regulations (property AIF distributions: liability to tax), or
  - (b) distributions which are treated as profits of a UK property business by virtue of section 548(6) of CTA 2010 (REIT distributions: liability to tax),

that separate property business (see regulation 69Z18(6) of the AIF Regulations and section 549(5) of CTA 2010) is not a relevant property business of the individual.

- (4) In subsection (3) “the AIF Regulations” means the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964).

**783T “Relievable receipts” of a property business**

- (1) For the purposes of this Chapter, the “relievable receipts” of an individual’s property business for a tax year are all the receipts which would, apart from this Chapter, be brought into account in calculating the profits of the business for the tax year.  
This is subject to subsections (2) and (3).
- (2) If –
  - (a) the individual qualifies for rent-a-room relief for the tax year, and
  - (b) the individual has rent-a-room receipts for the tax year which would, apart from Chapter 1 of Part 7, be brought into account in calculating the profits of the property business,
 the rent-a-room receipts are not relievable receipts of the business.
- (3) Non-relievable balancing charges in respect of the property business for the tax year are not relievable receipts of the business.
- (4) In subsection (3) “non-relievable balancing charges”, in respect of a property business for a tax year, means balancing charges falling to be made for the tax year under Part 2 of CAA 2001 which do not relate to a business or transaction which is carried on, or entered into,

for the purpose of generating receipts which are relievably receipts of the property business.

**783U The individual’s “relevant property income”**

For the purposes of this Chapter, an individual’s “relevant property income” for a tax year is the relievably receipts for the tax year of the individual’s relevant property businesses for the tax year.

**783V The individual’s property allowance**

- (1) For the purposes of this Chapter, an individual’s property allowance for a tax year is £1,000.
- (2) The Treasury may by regulations amend subsection (1) so as to substitute a higher sum for the sum for the time being specified in that subsection.

*Relief if relevant property income does not exceed property allowance*

**783W Full relief: introduction**

An individual qualifies for full relief for a tax year if –

- (a) the individual has relevant property income for the tax year,
- (b) the relevant property income does not exceed the individual’s property allowance for the tax year, and
- (c) no election by the individual under section 783Z2 has effect (election for full relief not to be given).

**783X Full relief: property profits**

- (1) If an individual qualifies for full relief for a tax year, this section applies in relation to the calculation of the profits of the individual’s relevant property business for the tax year or, where the individual’s relevant property income for the tax year consists of the relievably receipts of two relevant property businesses, the profits of each property business for the tax year.
- (2) The following are not brought into account –
  - (a) the relievably receipts of the property business for the tax year, and
  - (b) any expenses associated with those receipts.

*Relief if relevant property income exceeds property allowance*

**783Y Partial relief: alternative calculation of property profits: introduction**

An individual qualifies for partial relief for a tax year if –

- (a) the individual has relevant property income for the tax year,
- (b) the relevant property income exceeds the individual’s property allowance for the tax year, and
- (c) an election by the individual under section 783Z3 has effect (election for partial relief).

**783Z Partial relief: alternative calculation of property profits**

- (1) If an individual qualifies for partial relief for a tax year, this section applies in relation to the calculation of the profits of the individual's relevant property business for the tax year or, where the individual's relevant property income for the tax year consists of the relievable receipts of two relevant property businesses, the profits of each property business for the tax year.
- (2) The relievable receipts of the property business for the tax year are brought into account.
- (3) No expenses associated with the relievable receipts are brought into account.
- (4) The deductible amount is brought into account.
- (5) Subject to section 783Z1, the deductible amount is equal to the individual's property allowance for the tax year.

**783Z1 Deductible amount: splitting of property allowance**

- (1) This section applies where the individual's relevant property income for the tax year consists of the relievable receipts of two relevant property businesses.
- (2) The references in section 783Z to the deductible amount are to amounts which, in total, equal the individual's property allowance for the tax year.
- (3) The question of how to allocate the individual's property allowance for the tax year for the purposes of subsection (2) is to be decided by the individual, subject to subsection (4).
- (4) The deductible amount in respect of a relevant property business must not be such as to result in a loss of the business.

*Elections*

**783Z2 Election for full relief not to be given**

- (1) An individual may elect not to be given full relief for a tax year (see section 783X).
- (2) An election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the election is made.

**783Z3 Election for partial relief**

- (1) An individual may elect for partial relief to be given for a tax year if the individual's relevant property income for the tax year exceeds the individual's property allowance for the tax year (see section 783Z).
- (2) An election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the election is made.

*Exclusions from relief*

**783Z4 Exclusion from relief: tax reduction under section 274A**

No relief under this Chapter is given to an individual for a tax year if, in calculating the individual's liability to income tax for the tax year, a tax reduction under section 274A (property business: relief for non-deductible costs of a dwelling-related loan) is applied at Step 6 of the calculation in section 23 of ITA 2007.

**783Z5 Exclusion from relief: expenses deducted against rent-a-room receipts**

- (1) No relief under this Chapter is given to an individual for a tax year if—
  - (a) the individual qualifies for rent-a-room relief for the tax year,
  - (b) the individual has rent-a-room receipts for the tax year which would, apart from Chapter 1 of Part 7 (rent-a-room relief), be brought into account in calculating the profits of a property business, and
  - (c) condition A or B is met.
- (2) Condition A is that—
  - (a) the individual's total rent-a-room amount for the tax year does not exceed the individual's limit for the tax year (see section 783Z7), and
  - (b) an election by the individual under section 799 has effect to disapply full rent-a-room relief for the tax year.
- (3) Condition B is that—
  - (a) the individual's total rent-a-room amount for the tax year exceeds the individual's limit for the tax year, and
  - (b) no election by the individual under section 800 has effect to apply the alternative method of calculating profits for the tax year.

**783Z6 Exclusion from relief: payments by employer**

No relief under this Chapter is given to an individual for a tax year if—

- (a) the individual has relevant property income for the tax year, and
- (b) the income includes a payment made by, or on behalf of, a person at a time when the individual is—
  - (i) an employee of the person, or
  - (ii) connected with an employee of the person.

*Interpretation*

**783Z7 Interpretation of this Chapter**

In this Chapter—

- (a) “rent-a-room relief”, “rent-a-room receipts” and “total rent-a-room amount” have the same meanings as in Chapter 1 of Part 7 (rent-a-room relief: see sections 784, 786 and 788), and

- (b) references to “the individual’s limit” are to be construed in accordance with section 789 (the individual’s limit for the purposes of rent-a-room relief).”

## PART 2

### CONSEQUENTIAL AMENDMENTS

- 2 ITTOIA 2005 is amended in accordance with paragraphs 3 to 7.
- 3 In Part 1 (overview), in section 1, before paragraph (a) of subsection (5) insert –
- “(za) provision about a trading allowance and property allowance (see Part 6A).”
- 4 In Chapter 2 of Part 2 (trading income: income taxed as trade profits), after section 22 insert –

#### *“Trading allowance*

#### **22A Trading allowance**

- (1) The rules for calculating the profits of a trade, profession or vocation carried on by an individual are subject to Chapter 1 of Part 6A (trading allowance).
- (2) That Chapter gives relief on relevant income and, where relief is given, disallows most deductions under this Part (see, in particular, sections 783D, 783G and 783J).”
- 5 In Chapter 5 of Part 3 (property income: rules about receipts and deductions), after the Chapter heading insert –

#### *“Property allowance*

#### **307A Property allowance**

- (1) The rules for calculating the profits of an individual’s property business are subject to Chapter 2 of Part 6A (property allowance).
- (2) That Chapter gives relief on relevant property income and, where relief is given, disallows all deductions under this Part which relate to that income (see, in particular, sections 783U, 783X and 783Z).”
- 6 In Chapter 8 of Part 5 (miscellaneous income), in section 688 (income charged under Chapter 8 of Part 5), before paragraph (a) of subsection (2) insert –
- “(za) Chapter 1 of Part 6A (which gives relief on relevant income which may consist of or include income chargeable under this Chapter: see, in particular, sections 783C, 783D, 783H and 783K).”
- 7 In Schedule 4 (defined expressions), at the appropriate places insert –

“individual’s property allowance (in Chapter 2 of Part 6A)	section 783V
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individual’s trading allowance (in Chapter 1 of Part 6A)	section 783E
miscellaneous income (in Chapter 1 of Part 6A)	section 783C
relevant income (in Chapter 1 of Part 6A)	section 783D
relevant property business (in Chapter 2 of Part 6A)	section 783S
relevant property income (in Chapter 2 of Part 6A)	section 783U
relevant trade (in Chapter 1 of Part 6A)	section 783B
relievable receipts (in Chapter 2 of Part 6A)	section 783T”.

### PART 3

#### COMMENCEMENT

- 8 The amendments made by this Schedule have effect for the tax year 2017-18 and subsequent tax years.

### SCHEDULE 6

Section 20

#### CARRIED-FORWARD LOSSES

### PART 1

#### AMENDMENT OF GENERAL RULES ABOUT CARRYING FORWARD LOSSES

##### *Non-trading deficits from loan relationships*

- 1 Part 5 of CTA 2009 (loan relationships) is amended in accordance with paragraphs 2 to 4.
- 2 In the heading of Chapter 16 (non-trading deficits) at the end insert “: pre-1 April 2017 deficits and charities”.
- 3 In section 456 (introduction to Chapter 16) in subsection (1) –
- (a) after “if” insert “ –
  - (a) ”, and
  - (b) at the end insert “, and
  - (b) either –
  - (i) that accounting period begins before 1 April 2017, or
  - (ii) at the end of that accounting period the company is a charity”.

4 After section 463 insert –

## “CHAPTER 16A

### NON-TRADING DEFICITS: POST 1 APRIL 2017 DEFICITS

#### **463A Introduction to Chapter**

- (1) This Chapter applies if –
  - (a) for any accounting period beginning on or after 1 April 2017 a company has a non-trading deficit from its loan relationships under section 301(6), and
  - (b) at the end of that accounting period the company is not a charity.
- (2) In this Chapter “the deficit” and “the deficit period” mean that deficit and that period respectively.
- (3) Sections 463B and 463C deal with claims to set off the deficit against profits of the deficit period or earlier periods.
- (4) Sections 463D to 463F deal with the consequences of such claims.
- (5) Sections 463G and 463H provide for so much of the deficit as is not –
  - (a) set off against profits under section 463B, or
  - (b) surrendered as group relief under Part 5 of CTA 2010, to be carried forward to later accounting periods.

#### **463B Claim to set off deficit against profits of deficit period or earlier periods**

- (1) The company may make a claim for the whole or part of the deficit –
  - (a) to be set off against any profits of the company (of whatever description) for the deficit period, or
  - (b) to be carried back to be set off against profits for earlier accounting periods.
- (2) No claim may be made under subsection (1) in respect of so much of the deficit as is surrendered as group relief under Part 5 of CTA 2010.
- (3) For time limits and other provisions applicable to claims under subsection (1), see section 463C.
- (4) For what happens when a claim is made under subsection (1)(a), see section 463D.
- (5) For what happens when a claim is made under subsection (1)(b), and the profits available for relief when such a claim is made, see sections 463E and 463F.

#### **463C Time limits for claims under section 463B(1)**

- (1) A claim under section 463B(1) must be made within –
  - (a) the period of 2 years after the deficit period ends, or
  - (b) such further period as an officer of Revenue and Customs allows.

- (2) Different claims may be made in respect of different parts of a non-trading deficit for any deficit period.
- (3) But no claim may be made in respect of any part of a deficit to which another such claim relates.

#### **463D Claim to set off deficit against profits for the deficit period**

- (1) This section applies if a claim is made under section 463B(1)(a) for the whole or part of the deficit to be set off against profits for the deficit period.
- (2) The amount of the deficit to which the claim relates must be set off against the profits of the company for the deficit period which are identified in the claim.
- (3) Those profits are reduced accordingly.
- (4) Relief under this section must be given before relief is given against profits for the deficit period –
  - (a) under section 37 or 62(1) to (3) of CTA 2010 (deduction of losses from total profits for the same or earlier accounting periods), or
  - (b) as a result of a claim under section 463B(1)(b) (carry-back) in respect of a deficit for a later period.
- (5) No relief may be given under this section against ring fence profits of the company within the meaning of Part 8 of CTA 2010 (oil activities).

#### **463E Claim to carry back deficit to earlier periods**

- (1) This section applies if a claim is made under section 463B(1)(b) for the whole or part of the deficit to be carried back to be set off against profits for accounting periods before the deficit period.
- (2) The claim has effect only if it relates to an amount no greater than the lesser of –
  - (a) so much of the deficit as is not an amount in relation to which a claim is made under section 463B(1)(1)(a), and
  - (b) the total amount of the profits available for relief under this section.
- (3) Section 463F explains which profits are so available.
- (4) The amount to which the claim relates is set off against those profits by treating them as reduced accordingly.
- (5) If those profits are profits for more than one accounting period, the relief is applied by setting off the amount to which the claim relates against profits for a later period before setting off any remainder of that amount against profits for an earlier period.

#### **463F Profits available for relief under section 463E**

- (1) The profits available for relief under section 463E are the amounts which (apart from the relief) would be charged under this Part as profits for accounting periods ending within the permitted period after giving every prior relief.

- (2) In this section –
- “the permitted period” means the period of 12 months immediately before the deficit period, and
  - “prior relief” means a relief which subsection (5) provides must be given before relief under section 463E.
- (3) If an accounting period ending within the permitted period begins before it, only a part of the amount which (apart from the relief) would be chargeable under this Part for the period, after giving every prior relief, is available for relief under section 463E.
- (4) That part is so much as is proportionate to the part of the accounting period in the permitted period.
- (5) The reliefs which must be given before relief under section 463E are –
- (a) relief as a result of a claim under section 459(1)(a) or section 463B(1)(a) (claim for deficit to be set off against total profits for the deficit period),
  - (b) relief in respect of a loss or deficit incurred or treated as incurred in an accounting period before the deficit period,
  - (c) relief under Part 6 of CTA 2010 (charitable donations relief in respect of payments made wholly and exclusively for the purposes of a trade),
  - (d) relief under section 37 of CTA 2010 (losses deducted from total profits of the same or an earlier accounting period), and
  - (e) if the company is a company with investment business for the purposes of Part 16 (companies with investment business) –
    - (i) any deduction in respect of management expenses under section 1219 (expenses of management of a company’s investment business),
    - (ii) relief under Part 6 of CTA 2010 in respect of payments made wholly and exclusively for the purposes of its business, and
    - (iii) any allowance under Part 2 of CAA 2001 (plant and machinery allowances).

#### **463G Carry forward of unrelieved deficit**

- (1) This section applies if any amount of the deficit (“the unrelieved amount”) is not –
- (a) set off against profits on a claim under section 463B(1), or
  - (b) surrendered as group relief under Part 5 of CTA 2010.
- (2) The unrelieved amount is carried forward to the first accounting period after the deficit period.
- (3) The company may make a claim for the whole or part of the unrelieved amount to be set off against the company’s total profits for the first accounting period after the deficit period.
- (4) If a claim is made under subsection (3) –
- (a) the unrelieved amount, or the part of it to which the claim relates, must be set off against the company’s total profits for the first accounting period after the deficit period, and

- (b) those profits are reduced accordingly.
- (5) No claim may be made under subsection (3) in respect of so much of the unrelieved amount as is surrendered under Part 5A of CTA 2010 (group relief for carried-forward losses).
- (6) A claim under subsection (3) must be made within—
  - (a) the period of two years after the end of the first accounting period after the deficit period, or
  - (b) such further period as an officer of Revenue and Customs allows.

#### **463H Re-application of section 463G if any deficit remains after previous application**

- (1) This section applies if—
  - (a) any amount of the deficit is carried forward to an accounting period (“the later period”) of the company under section 463G(2), and
  - (b) any of that amount is not—
    - (i) set off against the company’s total profits for the later period on a claim under section 463G(3), or
    - (ii) surrendered as group relief for carried-forward losses under Part 5A of CTA 2010.
- (2) Subsections (2) to (6) of section 463G apply as if—
  - (a) references to the unrelieved amount were to so much of the amount of the deficit carried forward to the later period as is not set off or surrendered as mentioned in subsection (1)(b), and
  - (b) references to the deficit period were to the later period.”

#### *Non-trading losses on intangible fixed assets*

- 5 (1) Section 753 of CTA 2009 (treatment of non-trading loss) is amended as follows.
- (2) In subsection (3) (carry forward of non-trading loss) in the words after paragraph (b) for “debit of” substitute “loss on intangible fixed assets for”.
- (3) After subsection (3) insert—
  - “(4) In the application of subsection (3) to an amount of a loss previously carried forward under that subsection, the reference in paragraph (b) to group relief under Part 5 of CTA 2010 is to be read as a reference to group relief for carried-forward losses under Part 5A of that Act.”

#### *Expenses of management of investment business etc*

- 6 (1) Section 1223 of CTA 2009 (carrying forward expenses of management and other amounts) is amended as follows.
- (2) In subsection (1)(b)—
  - (a) for “amounts” substitute “an amount”, and

- (b) after “(2)(c),” insert “–
- (i) a claim relating to the whole of the amount has not been made under subsection (3B), or”.
- (3) After subsection (3) insert –
- “(3A) But subsection (3) does not apply in relation to so much of the excess as is surrendered as group relief under Part 5 of CTA 2010 or as group relief for carried-forward losses under Part 5A of that Act.
- (3B) A deduction in respect of the excess may be made under section 1219 for the next accounting period only on the making by the company of a claim.
- (3C) A claim may relate to the whole of the excess or to part of it only.
- (3D) A claim must be made –
- (a) within the period of two years after the end of the next accounting period, or
- (b) within such further period as an officer of Revenue and Customs may allow.
- (3E) Subsection (1A) of section 1219 does not apply in relation to a deduction in respect of the excess made for the next accounting period.”

#### *Trading losses*

- 7 Chapter 2 of Part 4 of CTA 2010 (trade losses) is amended in accordance with paragraphs 8 to 11.
- 8 In section 36 (introduction to Chapter) for subsection (1) substitute –
- “(1) This Chapter provides relief for a loss made by a company in a trade (see sections 37 to 47)”.
- 9 For the italic heading before section 37 substitute –
- “Relief in loss-making period and carry back relief”.*
- 10 (1) Section 45 (carry forward of trade loss against subsequent trade profits) is amended as follows.
- (2) In the heading, after “of” insert “pre-1 April 2017”.
- (3) In subsection (1) after “accounting period” insert “beginning before 1 April 2017”.
- (4) In subsection (4)(b) for “cannot be” substitute “is not”.
- (5) After subsection (4) insert –
- “(4A) But the company may make a claim that the profits of the trade of an accounting period specified in the claim are not to be reduced by the unrelieved loss, or are not to be reduced by the unrelieved loss by more than an amount specified in the claim.
- (4B) A claim under subsection (4A) may specify an accounting period only if it begins on or after 1 April 2017.

- (4C) A claim under subsection (4A) is effective if, and only if, it is made—
- (a) within the period of two years after the end of the accounting period specified in the claim, or
  - (b) within such further period as an officer of Revenue and Customs may allow.”; and
- (6) In subsection (5) for “section” (in the second place it occurs) substitute “, sections 45B, 45F and”.
- 11 After section 45 insert—

**“45A Carry forward of post-1 April 2017 trade loss against total profits**

- (1) This section applies if—
- (a) in an accounting period (“the loss-making period”) beginning on or after 1 April 2017 a company carrying on a trade makes a loss in the trade,
  - (b) relief under section 37 or Part 5 (group relief) is not given for an amount of the loss (“the unrelieved amount”),
  - (c) the company continues to carry on the trade in the next accounting period (“the later period”), and
  - (d) the conditions in subsection (2) are met.
- (2) The conditions are that—
- (a) the trade did not become small or negligible in the loss-making period,
  - (b) relief under section 37 was not unavailable for the loss by reason of subsection (5) of that section or section 44, 48 or 52, and
  - (c) relief under section 37 would not be unavailable by reason of section 44 for a loss (assuming there was one) made in the trade in the later period.
- (3) The unrelieved amount is carried forward to the later period.
- (4) The company may make a claim for relief to be given in the later period for the unrelieved amount or for any part of it specified in the claim.
- (5) If the company makes a claim, the relief is given by deducting the unrelieved amount, or the specified part of it, from the company’s total profits of the later period.
- (6) A claim under this section must be made—
- (a) within the period of two years after the end of the later period, or
  - (b) within such further period as an officer of Revenue and Customs may allow.
- (7) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

**45B Carry forward of post-1 April 2017 trade loss against trade profits**

- (1) This section applies if—

- (a) in an accounting period (“the loss-making period”) beginning on or after 1 April 2017 a company carrying on a trade makes a loss in the trade,
  - (b) relief under section 37 or 42 or Part 5 (group relief) is not given for an amount of the loss (“the unrelieved amount”),
  - (c) the company continues to carry on the trade in the next accounting period (“the later period”), and
  - (d) any of the conditions in section 45A(2) are not met.
- (2) The unrelieved amount is carried forward to the later period.
  - (3) Relief for the unrelieved amount is given to the company in the later period if the company makes a profit in the trade in the later period.
  - (4) The relief is given by reducing the profits of the trade of the later period by the unrelieved amount.
  - (5) But the company may make a claim for relief not to be given in the later period for the unrelieved amount or for any part of it specified in the claim.
  - (6) A claim under subsection (5) is effective if, and only if, it is made –
    - (a) within the period of two years after the end of the later period, or
    - (b) within such further period as an officer of Revenue and Customs may allow.
  - (7) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

**45C Re-application of section 45A if loss remains after previous application**

- (1) This section applies if –
  - (a) an amount of a loss made in a trade is carried forward to an accounting period (“the later period”) of a company under section 45A(3),
  - (b) any of that amount is not deducted from the company’s total profits of the later period on a claim under section 45A(4) or surrendered by way of group relief for carried forward-losses under Part 5A,
  - (c) the company continues to carry on the trade in the accounting period (“the further period”) after the later period, and
  - (d) the conditions in subsection (2) are met.
- (2) The conditions are that –
  - (a) the trade did not become small or negligible in the later period, and
  - (b) relief under section 37 would not be unavailable by reason of section 44 for a loss (assuming there was one) made in the trade in the further period.
- (3) Subsections (3) to (7) of section 45A apply as if –

- (a) references to the unrelieved amount were to so much of the amount carried forward to the later period as is not deducted or surrendered as mentioned in subsection (1)(b), and
- (b) references to the later period were to the further period.

**45D Application of section 45B if loss remains after application of section 45A**

- (1) This section applies if—
  - (a) an amount of a loss made in a trade is carried forward to an accounting period (“the later period”) of a company under section 45A(3),
  - (b) any of that amount is not deducted from the company’s total profits of the later period on a claim under section 45A(4) or surrendered by way of group relief for carried forward-losses under Part 5A,
  - (c) the company continues to carry on the trade in the accounting period (“the further period”) after the later period, and
  - (d) either of the conditions in section 45C(2) are not met.
- (2) Subsections (2) to (7) of section 45B apply as if—
  - (a) references to the unrelieved amount were to so much of the amount carried forward to the later period as is not deducted or surrendered as mentioned in subsection (1)(b), and
  - (b) references to the later period were to the further period.

**45E Re-application of section 45B if loss remains after previous application**

- (1) This section applies if—
  - (a) an amount of a loss made in a trade is carried forward to an accounting period (“the later period”) of a company under section 45B(2),
  - (b) any of that amount is not used under section 45B(4) to reduce profits of the trade for the later period, and
  - (c) the company continues to carry on the trade in the accounting period (“the further period”) after the later period.
- (2) Subsections (2) to (7) of section 45B apply as if—
  - (a) references to the unrelieved amount were to so much of the amount carried forward to the later period as was not used as mentioned in subsection (1)(b), and
  - (b) references to the later period were to the further period.

**45F Terminal losses: relief unrestricted by Part 7ZA and 7A**

- (1) This section applies if—
  - (a) a company makes a loss in a trade in an accounting period (the “loss-making period”),
  - (b) an amount of that loss is carried forward to an accounting period of the company (“the terminal period”) under section 45, 45A or 45B,

- (c) relief in the terminal period is not given under section 45, 45A or (as the case may be) 45B for that amount or for any part of it, and
  - (d) the company ceases to carry on the trade in the terminal period.
- (2) The company may make a claim for relief to be given for the unrelieved amount under this section.
- (3) If the company makes a claim the relief is given by deducting the unrelieved amount from the relevant profits of the company of –
- (a) the terminal period, and
  - (b) previous accounting periods so far as they fall (wholly or partly) within the period of 3 years ending with the end of the terminal period.
- (4) But no deduction is to be made under subsection (3) for any accounting period which is –
- (a) the loss-making period,
  - (b) a period before the loss-making period, or
  - (c) a period beginning before 1 April 2017.
- (5) The amount of a deduction to be made under subsection (3) for any accounting period is the amount of the unrelieved amount so far as it cannot be deducted under that subsection for a subsequent accounting period.
- (6) The company’s claim must be made –
- (a) within the period of two years after the end of the terminal period, or
  - (b) within such further period as an officer of Revenue and Customs may allow.
- (7) In this section –
- “the unrelieved amount” means so much of the amount mentioned in subsection (1)(b) for which relief is not given in the terminal period under section 45, 45A or (as the case may be) 45B, and
  - “relevant profits”, in relation to the terminal period or any previous accounting period, means –
    - (a) the total profits of the company of the period, in a case where the unrelieved amount was carried forward to the terminal period under section 45A,
    - (b) the profits of the trade of the period, in a case where the unrelieved amount was carried forward to the terminal period under section 45 or 45B.
- (8) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

**45G Section 45F: accounting period falling partly within 3 year period**

- (1) This section applies if an accounting period falls partly within the period of 3 years mentioned in section 45F(3)(b).

- (2) The amount of the deduction for the unrelieved amount for the accounting period is not to exceed an amount equal to the overlapping proportion of the company's relevant profits of that period.
- (3) The overlapping proportion is the same as the proportion that the part of the accounting period falling within the period of 3 years bears to the whole of the accounting period.
- (4) In this section “the unrelieved amount” and “relevant profits” have the meaning given by section 45F(7).

**45H Section 45F: transfers of trade to obtain relief**

Section 45F does not apply by reason of a company ceasing to carry on a trade if—

- (a) on the company ceasing to carry on the trade, any of the activities of the trade begin to be carried on by a person who is not (or by persons any or all of whom are not) within the charge to corporation tax, and
- (b) the company's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to secure that that section applies by reason of the cessation.”

*UK property business losses*

- 12 Chapter 4 of Part 4 of CTA 2010 (property losses) is amended in accordance with paragraphs 13 and 14.
- 13 (1) Section 62 (relief for losses made in UK property business) is amended as follows.
  - (2) In subsection (4)—
    - (a) in the words before paragraph (a), for “Subsection (5) applies” substitute “Subsections (5) to (5C) apply”, and
    - (b) for paragraph (a) substitute—
      - “(a) an amount of the loss is not deducted as mentioned in subsection (3) or surrendered by way of group relief under Part 5,”.
  - (3) In subsection (5), for the words before paragraph (a) substitute “The amount”.
  - (4) After subsection (5) insert—
    - “(5A) But relief under subsection (2) for the amount is given to the company in the next accounting period only on the making by the company of a claim.
    - (5B) A claim may relate to the whole of the amount or to part of it only.
    - (5C) A claim must be made—
      - (a) within the period of two years after the end of the next accounting period, or
      - (b) within such further period as an officer of Revenue and Customs may allow.

- (5D) In the application of this section to an amount of a loss previously carried forward under subsection (5), the reference in subsection (4)(a) to group relief under Part 5 is to be read as a reference to group relief for carried-forward losses under Part 5A.”
- 14 (1) Section 63 (company with investment business ceasing to carry on UK property business) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Subsections (3) to (7) apply if an amount of loss made in carrying on the UK property business would be carried forward to the next accounting period under section 62(5) but for the company ceasing to carry on the business or to be within the charge to corporation tax in respect of it.”
- (3) In subsection (3)(b) for “that” substitute “the next accounting”.
- (4) After subsection (3) insert—
- “(4) But a deduction in respect of the amount of loss may be made under section 1219 of CTA 2009 for the next accounting period only on the making by the company of a claim.
- (5) A claim may relate to the whole of the amount of the loss or to part of it only.
- (6) A claim must be made—
- (a) within the period of two years after the end of the next accounting period, or
- (b) within such further period as an officer of Revenue and Customs may allow.
- (7) Subsection (1A) of section 1219 does not apply in relation to a deduction in respect of the amount of loss made for the next accounting period.”

## PART 2

### RESTRICTION ON DEDUCTIONS IN RESPECT OF CARRIED-FORWARD LOSSES

- 15 CTA 2010 is amended in accordance with paragraphs 16 to 22.
- 16 After section 269 insert—

### **“PART 7ZA**

#### RESTRICTIONS ON OBTAINING CERTAIN DEDUCTIONS

##### *Introduction*

#### **269ZA Overview of Part**

This Part contains provision restricting the amount of certain deductions which a company may make in calculating its taxable total profits for an accounting period.

*Restrictions on obtaining certain deductions*

**269ZB Restriction on deductions from trading profits**

- (1) This section has effect for determining the taxable total profits of a company for an accounting period.
- (2) The sum of any deductions made by the company for the accounting period under sections 45(4)(b) and 45B (carry forward of trade loss against subsequent trade profits) may not exceed the relevant maximum.  
But this is subject to subsection (8).
- (3) In this section the “relevant maximum” means the sum of—
  - (a) 50% of the company’s relevant trading profits for the accounting period, and
  - (b) the company’s trading profits deductions allowance for the accounting period.
- (4) Section 269ZE contains provision for determining a company’s relevant trading profits for an accounting period.
- (5) A company’s “trading profits deductions allowance” for an accounting period—
  - (a) is so much of the company’s deductions allowance for the period as is specified in the company’s tax return as its trading profits deductions allowance for the period, and
  - (b) accordingly, is nil if no amount of the company’s available deductions allowance for the period is so specified.
- (6) An amount specified under subsection (5)(a) as a company’s trading profits deductions allowance for an accounting period may not exceed the difference between—
  - (a) the amount of the company’s deductions allowance for the period, and
  - (b) any amount specified under section 269ZC(5)(a) as the company’s non-trading profits deduction allowance for the period.
- (7) A company’s “deductions allowance” for an accounting period is to be determined in accordance with section 269ZG where, at any time in that period—
  - (a) the company is a member of a group (see section 269ZO), and
  - (b) one or more other companies within the charge to corporation tax are members of that group.Otherwise, a company’s “deductions allowance” for an accounting period is to be determined in accordance with section 269ZL.
- (8) Subsection (2) does not apply in relation to a company for an accounting period where, in determining the company’s relevant trading profits, the amount given by step 1 in section 269ZE(3) is not greater than nil.

**269ZC Restriction on deductions from non-trading profits**

- (1) This section has effect for determining the taxable total profits of a company for an accounting period.

- (2) The sum of any deductions made by the company for the accounting period under section 457(3) of CTA 2009 (carry forward of non-trading deficits from loan relationships against subsequent non-trading profits) may not exceed the relevant maximum. But this is subject to subsection (8).
- (3) In this section the “relevant maximum” means the sum of—
- (a) 50% of the company’s relevant non-trading profits for the accounting period, and
  - (b) the amount of the company’s non-trading profits deductions allowance for the accounting period.
- (4) Section 269ZE contains provisions for determining a company’s relevant non-trading profits for an accounting period.
- (5) A company’s “non-trading profits deductions allowance” for an accounting period—
- (a) is so much of the company’s deductions allowance for the period as is specified in the company’s tax return as its non-trading profits deductions allowance for the period, and
  - (b) accordingly, is nil if no amount of the company’s deductions allowance for the period is so specified.
- (6) An amount specified under subsection (5)(a) as a company’s non-trading profits deductions allowance for an accounting period may not exceed the difference between—
- (a) the amount of the company’s deductions allowance for the period, and
  - (b) any amount specified under section 269ZB(5)(a) as the company’s trading profits deduction allowance for the period.
- (7) A company’s “deductions allowance” for an accounting period is to be determined in accordance with section 269ZG where, at any time in that period—
- (a) the company is a member of a group (see section 269ZO), and
  - (b) one or more other companies within the charge to corporation tax are members of that group.
- Otherwise, a company’s “deductions allowance” for an accounting period is to be determined in accordance with section 269ZL.
- (8) Subsection (2) does not apply in relation to a company for an accounting period where, in determining the company’s relevant non-trading profits for the period, the amount given by step 1 in section 269ZE(3) is not greater than nil.

#### **269ZD Restriction on deductions from total profits**

- (1) This section has effect for determining the taxable total profits of a company for an accounting period.
- (2) The sum of any relevant deductions made by the company for the accounting period may not exceed the difference between—
  - (a) the relevant maximum, and
  - (b) the sum of any deductions made by the company for the accounting period under—

- (i) sections 45(4)(b) and 45B (carry forward of trade loss against subsequent trade profits), and
- (ii) section 457(3) of CTA 2009 (carry forward of non-trading deficits from loan relationships against subsequent non-trading profits).

But this is subject to subsection (7).

- (3) The following deductions made for an accounting period are “relevant deductions” for the purposes of this section –
- (a) a deduction under section 463G of CTA 2009 (carry forward of non-trading deficit against total profits);
  - (b) a deduction under section 753 of CTA 2009 (non-trading losses on intangible fixed assets) in respect of a loss treated by subsection (3) of that section (carry forward of losses) as if it were a loss of the accounting period;
  - (c) a deduction under section 1219 of CTA 2009 (expenses of management of a company’s investment business) in respect of an amount treated by section 1223(3) of that Act (carrying forward of expenses of management and other amounts) as expenses of management deductible for the accounting period;
  - (d) a deduction under section 1219 of CTA 2009 (expenses of management of a company’s investment business) in respect of a loss treated by section 63(3) (carrying forward of certain losses made by company with investment business which ceases to carry on UK property business) as an expense of management deductible for the accounting period;
  - (e) a deduction under section 45A (carry forward of trade loss against total profits);
  - (f) a deduction under section 62(3) (relief for losses made in UK property business) in respect of a loss treated by subsection (5)(b) of that section (carry forward of losses) as a loss made by the company in the accounting period;
  - (g) a deduction under Part 5A (group relief for carried-forward losses).
- (4) In this section the “relevant maximum” means the sum of –
- (a) 50% of the company’s relevant profits for the accounting period, and
  - (b) the amount of the company’s deductions allowance for the accounting period.
- (5) Section 269ZF contains provisions for determining a company’s relevant profits for an accounting period.
- (6) A company’s “deductions allowance” for an accounting period is to be determined in accordance with section 269ZG where, at any time in that period –
- (a) the company is a member of a group (see section 269ZO), and
  - (b) one or more other companies within the charge to corporation tax are members of that group.

Otherwise, the company’s “deductions allowance” for the accounting period is to be determined in accordance with section 269ZL.

- (7) Subsection (2) does not apply in relation to a company for an accounting period where, in determining the company’s relevant profits for the period, the amount given by step 1 in section 269ZE(3) is not greater than nil.

*Relevant profits*

**269ZE “Relevant trading profits” and “relevant non-trading profits”**

- (1) A company’s “relevant trading profits” for an accounting period are –
- (a) the company’s qualifying trading profits for the accounting period (see subsection (3)), less
  - (b) the company’s trading profits deductions allowance for the accounting period (see section 269ZB(5)).

But if the allowance mentioned in paragraph (b) exceeds the profits mentioned in paragraph (a), the company’s “relevant trading profits” for the accounting period are nil.

- (2) A company’s “relevant non-trading profits” for an accounting period are –
- (a) the company’s qualifying non-trading profits for the accounting period (see subsection (3)), less
  - (b) the company’s non-trading profits deductions allowance for the accounting period (see section 269ZC(5)).

But if the allowance mentioned in paragraph (b) exceeds the profits mentioned in paragraph (a), the company’s “relevant non-trading profits” for the accounting period are nil.

- (3) To determine a company’s qualifying trading profits and qualifying non-trading profits for an accounting period –

*Step 1*

Calculate the company’s total profits for the accounting period, without making any deductions under –

- (a) sections 45(4)(b) and 45B (carry forward of trade loss against subsequent trade profits), or
- (b) section 457(3) of CTA 2009 (carry forward of non-trading deficits from loan relationships against subsequent non-trading profits).

(If the amount given by this step is not greater than nil, no further steps are to be taken: see sections 269ZB(8), 269ZC(8) and 269ZD(7)).

*Step 2*

Calculate the sum of any amounts which can be relieved against the company’s total profits for the accounting period (as calculated in accordance with step 1), ignoring the amount of any excluded deductions for the accounting period (see subsection (5)).

If the amount given by step 1 does not exceed the amount given by this step, the qualifying trading profits and the qualifying non-trading profits are both nil.

Otherwise, proceed with steps 3 to 5.

*Step 3*

Divide the company’s total profits for the accounting period (as calculated in accordance with step 1) into profits that are profits of a

trade of the company (the company’s “trade profits”) and profits that are not profits of a trade of the company (the company’s “non-trade profits”).

*Step 4*

Take the amount given by step 2 and do one of the following –

- (a) reduce the company’s trade profits by the whole of that amount,
- (b) reduce the company’s non-trade profits by the whole of that amount, or
- (c) reduce the company’s trade profits by part of that amount and reduce the company’s non-trade profits by the remaining part of that amount.

Apply this step in a way which ensures that neither the company’s trade profits nor the company’s non-trade profits are reduced below nil.

*Step 5*

The company’s qualifying trading profits and qualifying non-trading profits for the accounting period are the company’s trade profits and non-trade profits following the reductions at step 4.

- (4) In calculating a company’s total profits for an accounting period at step 1 in subsection (3) ignore any income so far as it falls within, and is dealt with under, Part 9A of CTA 2009 (company dividends and other distributions).
- (5) The following are “excluded deductions” for an accounting period (“the current accounting period”) –
  - (a) a deduction for the current accounting period which is a relevant deduction for the purposes of section 269ZD (see subsection (3) of that section),
  - (b) a deduction under section 37 (relief for trade losses against total profits) in relation to a loss made in an accounting period after the current accounting period;
  - (c) a deduction under section 45F (terminal losses);
  - (d) a deduction under section 260(3) of CAA 2001 (special leasing of plant or machinery: carry back of excess allowances) in relation to capital allowances for an accounting period after the current accounting period;
  - (e) a deduction under section 463E of CTA 2009 (non-trading deficit from loan relationships) in relation to a deficit for a period after the current account period.

**269ZF “Relevant profits”**

- (1) A company’s “relevant profits” for an accounting period are –
  - (a) the amount given by step 1 in subsection (3) of section 269ZE, less
  - (b) the sum of –
    - (i) the amount given by step 2 in that subsection of that section, and
    - (ii) the company’s deductions allowance for the accounting period (see section 269ZD(6)).

- (2) But if the amount given by step 1 in subsection (3) of section 269ZE does not exceed the sum of the amounts mentioned in subsection (1)(b), the company's relevant profits for the accounting period are nil.

*Deductions allowance*

**269ZG Deductions allowance for company in a group**

- (1) This section makes provision as to the deductions allowance of a company for an accounting period where, at any time in the period –
- (a) the company is a member of a group, and
  - (b) one or more other companies within the charge to corporation tax are members of that group.
- (2) The company's deductions allowance for the accounting period is the sum of –
- (a) any amounts of group deductions allowance allocated to the company for the period in accordance with sections 269ZH to 269ZK, and
  - (b) the appropriate amount of non-group deductions allowance of the company for the period,
- up to a limit of £5, 000, 000.
- (3) The "appropriate amount of non-group deductions allowance" of the company, for the accounting period, is –

$$\frac{\text{DNG}}{\text{DAC}} \times \text{£5,000,000}$$

where –

"DNG" is the number of days in the period on which the company is not a member of a group that has another member that is a company within the charge to corporation tax, and

"DAC" is the total number of days in the period.

- (4) If the accounting period is less than 12 months –
- (a) the appropriate amount of non-group deductions allowance, and
  - (b) the limit in subsection (2),
- are proportionally reduced.

**269ZH Group deductions allowance and the nominated company**

- (1) This section applies where –
- (a) two or more members of a group are companies within the charge to corporation tax, and
  - (b) all the companies within the charge to corporation tax that are members of the group together nominate ("the group allowance nomination") one of their number ("the nominated company") for the purposes of this Part.
- (2) The "group deductions allowance" for the group is £5, 000, 000 for each accounting period of the nominated company throughout which the group allowance nomination has effect.

- (3) If the group allowance nomination takes effect, or ceases to have effect, part of the way through an accounting period of the nominated company, the “group deductions allowance” for the group for that period is –

$$\frac{\text{DN}}{\text{DAC}} \times \text{£}5,000,000$$

where –

“DN” is the number of days in the accounting period on which a group allowance nomination that nominates the nominated company in relation to the group has effect, and

“DAC” is the total number of days in the accounting period.

- (4) If an accounting period of the nominated company is less than 12 months, the group deductions allowance for that period is proportionally reduced.
- (5) A group allowance nomination must state the date on which it is to take effect (which may be earlier than the date the nomination is made).
- (6) A group allowance nomination is of no effect unless it is signed by the appropriate person on behalf of each company that is, when the nomination is made, a member of the group and within the charge to corporation tax.
- (7) A group allowance nomination ceases to have effect –
- immediately before the date on which a new group allowance nomination in respect of the group takes effect,
  - upon the appropriate person in relation to a company within the charge to corporation tax that is a member of the group notifying an officer of Revenue and Customs, in writing, that the group allowance nomination is revoked, or
  - upon the nominated company ceasing to be a company within the charge to corporation tax or ceasing to be a member of the group.
- (8) The Commissioners for Her Majesty’s Revenue and Customs may by regulations make further provision about a group allowance nomination or any notification under this section including, in particular, provision –
- about the form and manner in which a nomination or notification may be made,
  - about how a nomination may be revoked and the form and manner of such revocation,
  - requiring a person to notify HMRC of the making or revocation of a nomination,
  - requiring a person to give information to HMRC in connection with the making or revocation of a nomination or the giving of a notification,
  - imposing time limits in relation to making or revoking a nomination or giving a notification, and
  - providing that a nomination or its revocation, or a notification, is of no effect, or ceases to have effect, if time

limits or other requirements under the regulations are not met.

- (9) In this Part “the appropriate person”, in relation to a company, means—
- (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Part.
- (10) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of subsection (9) as they apply for the purposes of that section.

**269ZI Group allowance allocation statement: submission**

- (1) A company must submit a group allowance allocation statement to HMRC for each of its accounting periods in which it is the nominated company in relation to a group.  
This is subject to subsections (2) and (3).
- (2) If a company ceases to be the nominated company in relation to a group before it submits a group allowance allocation statement to HMRC for an accounting period—
  - (a) that company may not submit the statement, and
  - (b) the company that is for the time being the nominated company in relation to the group must do so.
- (3) But if a new group allowance nomination in respect of the group takes effect on a date before it is made, that does not affect the validity of the submission of any group allowance allocation statement submitted before the date the new nomination is made.
- (4) A group allowance allocation statement under this section must be received by HMRC before the first anniversary of the filing date for the company tax return for the accounting period to which the statement relates.
- (5) A group allowance allocation statement under this section may be submitted at a later time if an officer of Revenue and Customs allows it.
- (6) A group allowance allocation statement under this section must comply with the requirements of section 269ZK.

**269ZJ Group allowance allocation statement: submission of revised statement**

- (1) This section applies if a group allowance allocation statement has been submitted under section 269ZI, or this section, in respect of an accounting period of a company that is, or was, a nominated company (“the nominee’s accounting period”).
- (2) A revised group allowance allocation statement in respect of the nominee’s accounting period may be submitted to HMRC by the company that is for the time being the nominated company in relation to the group.

- (3) But if a new group allowance nomination in respect of the group takes effect on a date before it is made, that does not affect the validity of the submission of any revised group allowance allocation statement submitted before the date the new nomination is made.
- (4) A revised group allowance allocation statement may be submitted on or before whichever is the latest of the following dates –
  - (a) the first anniversary of the filing date for the company tax return for the nominee’s accounting period,
  - (b) if notice of enquiry (within the meaning of Schedule 18 to FA 1998) is given into a relevant company tax return, 30 days after the enquiry is completed,
  - (c) if, after such an enquiry, an officer of Revenue and Customs amends the return under paragraph 34(2) of that Schedule, 30 days after the notice of amendment is issued,
  - (d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.
- (5) A revised group allowance allocation statement may be submitted at a later time if an officer of Revenue and Customs allows it.
- (6) In this section “relevant company tax return” means a company tax return of a company for an accounting period for which an amount of group deductions allowance was, or could have been, allocated by a previous group allowance allocation statement in respect of the nominee’s accounting period.
- (7) The references in subsection (4) to an enquiry into a relevant company tax return do not include an enquiry resulting from an amendment of such a return where –
  - (a) the scope of the enquiry is limited as mentioned in paragraph 25(2) of Schedule 18 to FA 1998 (enquiry into amendments when time limit for enquiry into return as originally submitted is passed), and
  - (b) the amendment relates only to the allocation of group deductions allowance for the nominee’s accounting period.
- (8) A group allowance allocation statement under this section must comply with the requirements of section 269ZK.

**269ZK Group allowance allocation statement: requirements and effects**

- (1) This section applies in relation to a group allowance allocation statement submitted under section 269ZI or 269ZJ.
- (2) The statement must be signed by the appropriate person in relation to the company giving the statement.
- (3) The statement must –
  - (a) identify the group to which it relates,
  - (b) specify the accounting period, of the company that is or was the nominated company, to which the statement relates (“the nominee’s accounting period”),
  - (c) specify the days in the nominee’s accounting period on which that company was the nominated company in relation to the group or state that that company was the nominated company throughout the period,

- (d) state the group deductions allowance the group has for the nominee’s accounting period,
  - (e) list one or more of the companies that were members of the group and within the charge to corporation tax in the nominee’s accounting period (“listed companies”),
  - (f) allocate amounts of the group deductions allowance to the listed companies, and
  - (g) for each amount of group deductions allowance allocated to a listed company, specify the accounting period of the listed company for which it is allocated.
- (4) An amount of group deductions allowance allocated to a listed company must be allocated to that company for an accounting period that falls wholly or partly in the nominee’s accounting period.
- (5) The maximum amount of group deductions allowance that may be allocated, by the group allowance allocation statement, to a listed company for an accounting period of that company is –

$$\frac{\text{DAP}}{\text{DNAP}} \times \text{GSA}$$

where –

“DAP” is the number of days in the accounting period of the listed company that are –

- (a) days in the nominee’s accounting period, and
- (b) days on which the company was a member of the group,

“DNAP” is the number of days in the nominee’s accounting period, and

“GSA” is the group deductions allowance of the group for the nominee’s accounting period.

- (6) The sum of the amounts allocated to listed companies by the group allowance allocation statement may not exceed the group deductions allowance for the nominee’s accounting period.
- (7) If a group allowance allocation statement is submitted that does not comply with subsection (5) or (6), the company that is, for the time being, the nominated company in relation to the group must submit a revised group allowance allocation statement that does comply with those subsections within 30 days of the date on which the group allowance allocation statement that did not comply was submitted or within such further period as an officer of Revenue and Customs allows.
- (8) If a group allowance allocation statement –
- (a) complies with those subsection when it is submitted, but
  - (b) subsequently ceases to comply with either of them,
- the company that is, for the time being, the nominated company in relation to the group must submit a revised group allowance allocation statement that does comply with those subsections within 30 days of the date on which the group allowance allocation statement ceased to comply with one of those subsections or within such further period as an officer of Revenue and Customs allows.

- (9) If a company fails to comply with subsection (7) or (8), an officer of Revenue and Customs may by written notice to the company amend the group allowance allocation statement as the officer thinks fit for the purpose of making it comply with subsections (5) and (6).
- (10) An officer of Revenue and Customs who issues a notice under subsection (9) to a company must, at the same time, send a copy of the notice to each of the listed companies.
- (11) The time limits otherwise applicable to the amendment of a company tax return do not apply to any such amendment to the extent that it is made in consequence of a group allowance allocation statement being submitted in accordance with section 269ZI or 269ZJ.
- (12) The Commissioners for Her Majesty's Revenue and Customs may by regulations make further provision about a group allowance allocation statement including, in particular, provision –
  - (a) about the form of a statement and the manner in which it is to be submitted,
  - (b) requiring a person to give information to HMRC in connection with a statement,
  - (c) as to the circumstances in which a statement that is not received by the time specified in section 269ZJ(4) is to be treated as if it were so received, and
  - (d) as to the circumstances in which a statement that does not comply with the requirements of this section is to be treated as if it did comply.

#### **269ZL Deductions allowance for company not in a group**

- (1) This section makes provision as to the deductions allowance of a company for an accounting period where section 269ZG (deductions allowance for company in a group containing other companies within the charge to corporation tax) does not apply.
- (2) The company's deductions allowance for the accounting period is £5,000,000.
- (3) If the accounting period is less than 12 months, the company's deductions allowance for the period is proportionally reduced.

#### **269ZM Company tax return to specify amount of deductions allowance**

- (1) A company's company tax return for an accounting period must specify the amount of the company's deductions allowance for the period.
- (2) But subsection (1) applies only if the company makes for the accounting period a deduction to which section 269ZB(2), 269ZC(2) or 269ZD(2) applies.

#### **269ZN Excessive specifications of deductions allowance**

- (1) This section applies if a company's company tax return for an accounting period specifies an excessive amount as –
  - (a) the company's deductions allowance for the period,
  - (b) the company's trading profits deductions allowance for the period, or

- (c) the company's non-trading profits deductions allowance for the period.
- (2) The company must, so far as it may do so, amend the company tax return so that the amount specified is not excessive.
- (3) If an officer of Revenue and Customs considers that an undue amount of relief has been given as a consequence of the amount specified being excessive, the officer may make an assessment to tax in the amount which in the officer's opinion ought to be charged.
- (4) If—
  - (a) the amount specified became excessive in consequence of an alteration being made to the amount of group deductions allowance allocated to the company for the accounting period concerned, and
  - (b) the company has failed, or is unable, to amend its company tax return in accordance with subsection (2),
 an assessment under subsection (3) is not out of time if it is made within 12 months of the date on which the alteration took place.
- (5) The power in subsection (3) is without prejudice to the power to make a discovery assessment under paragraph 41(1) of Schedule 18 to FA 1998.

#### **269ZO Meaning of “group”**

- (1) In this Part “group” means two or more companies which together meet the following condition.
- (2) The condition is that one of the companies is—
  - (a) the ultimate parent of each of the other companies, and
  - (b) is not the ultimate parent of any other company.
- (3) A company (“A”) is the “ultimate parent” of another company (“B”) if—
  - (a) A is the parent of B, and
  - (b) no company is the parent of both A and B.
- (4) A company (“A”) is the “parent” of another company (“B”) if—
  - (a) B is a 75% subsidiary of A,
  - (b) A is beneficially entitled to at least 75% of any profits available for distribution to equity holders of B, or
  - (c) A would be beneficially entitled to at least 75% of any assets of B available for distribution to its equity holders on a winding up.
- (5) The following apply for the purposes of subsection (4)—
  - (a) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) other than sections 169 to 182, and
  - (b) Chapter 3 of Part 24 (subsidiaries).
 This is subject to subsections (6) and (7).
- (6) In applying Chapter 3 of Part 24 for the purposes of subsection (4)—
  - (a) share capital of a registered society is to be treated as if it were ordinary share capital, and

- (b) a company (“the shareholder”) that directly owns shares in another company is to be treated as not owning those shares if a profit on their sale would be a trading receipt of the shareholder.
- (7) In applying Chapter 6 of Part 5 (other than sections 169 to 182) and Chapter 3 of Part 24 for the purposes of subsection (4), they are to be read with all modifications necessary to ensure that—
- (a) they apply to a company which does not have share capital, and to holders of corresponding ordinary holdings in such a company, in a way which corresponds to the way they apply to companies with ordinary share capital and holders of ordinary shares in such companies,
  - (b) they apply to a company which is an unincorporated association in a way which corresponds to the way they apply to companies which are bodies corporate,
  - (c) they apply in relation to ownership through an entity (other than a company), or any trust or other arrangement, in a way which corresponds to the way they apply to ownership through a company, and
  - (d) for the purposes of achieving paragraphs (a) to (c), profits or assets are attributed to holders of corresponding ordinary holdings in unincorporated associations, entities, trusts or other arrangements in a manner which corresponds to the way profits or assets are attributed to holders of ordinary shares in a company which is a body corporate.
- (8) In this section “corresponding ordinary holding” in an unincorporated association, entity, trust or other arrangement means a holding or interest which provides the holder with economic rights corresponding to those provided by a holding of ordinary shares in a body corporate”.
- 17 (1) Section 269C (overview of Chapter 3 of Part 7A: restriction on banking company obtaining certain deductions) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) This Chapter applies in relation to a banking company in addition to Part 7ZA (which contains provision restricting the amount of certain deductions which any kind of company may make in calculating its taxable total profits for an accounting period).”
- (3) In subsection (2) for “269CD” substitute “269CC”
- 18 (1) Section 269CA (restriction on deductions for pre-1 April 2015 trading losses) is amended as follows.
- (2) In subsection (2), in the second sentence—
- (a) for “269CD” substitute “269ZE”, and
  - (b) omit “step 5 in”.
- (3) In subsection (3), for the words from “where” to the end substitute “in relation to a banking company for an accounting period where, in determining the company’s relevant trading profits for the period, the amount given by step 1 in section 269ZE(3) is not greater than nil”.

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- 19 (1) Section 269CB (restriction on deductions for pre-1 April 2015 non-trading deficits from loan relationships) is amended as follows.
- (2) In subsection (2), in the second sentence –
- (a) for “269CD” substitute “269ZE”, and
  - (b) for “step 6 in subsection (1)” substitute “subsection (2)”.
- (3) In subsection (3), for the words from “where” to the end substitute “in relation to a banking company for an accounting period where, in determining the company’s relevant non-trading profits for the period, the amount given by step 1 in section 269ZE(3) is not greater than nil”
- 20 (1) Section 269CC (restriction on deductions for pre-1 April 2015 management expenses etc) is amended as follows.
- (2) In subsection (3) for the words from “does not apply” to the end substitute “is subject to subsection (8)”.
- (3) In subsection (7) –
- (a) in the second sentence of step 1, for “269CD” substitute “269ZF”,
  - (b) in step 2 for the words from “which are” to the end substitute “under –
    - (a) section 45 (carry forward of pre-1 April 2017 trade loss against subsequent trade profits),
    - (b) section 45B (carry forward of post-1 April 2017 trade loss against subsequent trade profits), or
    - (c) section 457 of CTA 2009 (carry forward of pre-1 April non-trading deficits from loan relationships).”
- (4) After subsection (7) insert –
- “(8) Subsection (2) does not apply in relation to a banking company for an accounting period where, in determining the company’s relevant profits for the period, the amount given by step 1 in section 269ZE(3) is not greater than nil.”
- 21 Section 269CD (relevant profits) is omitted.
- 22 (1) Section 269CN (definitions for the purposes of Part 7A) is amended as follows.
- (2) In the definition of “relevant non-trading profits” for the words from “means” to the end substitute “has the meaning given by section 269ZE(2)”.
- (3) In the definition of “relevant profits” for the words from “means” to the end substitute “has the meaning given by section 269ZF”.
- (4) In the definition of “relevant trading profits” for the words from “means” to the end substitute “has the meaning given by section 269ZE(1)”.

PART 3

GROUP RELIEF FOR CARRIED-FORWARD LOSSES

23 After section 188 of CTA 2010 insert –

**“PART 5A**

GROUP RELIEF FOR CARRIED-FORWARD LOSSES

**CHAPTER 1**

INTRODUCTION

**188A Introduction to Part**

- (1) This Part –
  - (a) allows a company to surrender losses and other amounts that have been carried forward to an accounting period of the company (see Chapter 2), and
  - (b) enables, in certain cases involving groups of companies, other companies to claim corporation tax relief for the losses and other amounts that are surrendered (see Chapter 3).
- (2) See Chapter 4 for definitions that apply for the purposes of this Part and miscellaneous provisions.
- (3) The corporation tax relief mentioned in subsection (1) is called “group relief for carried-forward losses.”

**CHAPTER 2**

SURRENDER OF COMPANY'S CARRIED-FORWARD LOSSES ETC

**188B Overview of Chapter**

- (1) This Chapter allows a company to surrender losses and other amounts that have been carried forward to an accounting period of the company.
- (2) Section 188C sets out the basic provisions about the surrendering of losses and other amounts.
- (3) Sections 188D to 188I place restrictions on the surrendering of losses and other amounts.

**188C Surrender of carried-forward losses and other amounts**

- (1) This section applies if losses or other amounts are carried forward to an accounting period of a company under any of the following provisions –
  - (a) section 463G(2) of CTA 2009 (carry forward of post-1 April 2017 non-trading deficit from loan relationships),
  - (b) section 753(3) of that Act (carry forward of non-trading loss on intangible fixed assets),

- (c) section 1223 of that Act (carry forward of expenses of management of investment business),
  - (d) section 45A(3) (carry forward of post-1 April 2017 trade loss), and
  - (e) sections 62(5)(a) and 63(3)(a) (carry forward of loss made in UK property business).
- (2) The company may surrender the losses or other amounts under this Chapter so far as the losses or other amounts are eligible for corporation tax relief (apart from this Part).
- (3) Subsection (2) is subject to sections 188D to 188I (which place restrictions on what the surrendering company may surrender).
- (4) Under paragraph 70(1) of Schedule 18 to FA 1998, the company surrenders losses or other amounts, so far as eligible for surrender under this Chapter, by consenting to one or more claims for group relief for carried-forward losses in relation to the amounts (see requirement 1 in section 188K).
- (5) In this Part, in relation to losses or other amounts within subsection (1) that a company has carried forward to an accounting period –
- “the surrenderable amounts” means those losses and other amounts so far as eligible for surrender under this Chapter,
  - “surrendering company” means the company that has the losses or other amounts,
  - “the surrender period” means the accounting period to which the losses and other amounts have been carried forward.

#### **188D Restriction on surrendering pre-1 April 2017 losses etc**

- (1) The surrendering company may not surrender under this Chapter –
- (a) a loss carried forward to the surrender period under section 753(3) of CTA 2009 in so far as the loss is made up of an amount previously carried forward under that section from an accounting period beginning before 1 April 2017,
  - (b) expenses carried forward to the surrender period under section 1223 of CTA 2009 if the expenses were first deductible under section 1219 of that Act for an accounting period beginning before that date, or
  - (c) a loss carried forward to the surrender period under section 62(5)(b) or 63(3)(a) if the loss was made in an accounting period beginning before that date.
- (2) The surrendering company may not surrender under this Chapter a qualifying charitable donation carried forward to the surrender period under section 1223 of CTA 2009.

#### **188E Restriction where surrendering company could use losses etc itself**

The surrendering company may not surrender any losses or other amounts under this Chapter if –

- (a) section 269ZD(2) applies in determining the taxable total profits of the surrendering company for the surrender period, and

- (b) the sum of the relevant deductions (within the meaning of section 269ZD(3)) made for the surrender period is less than the maximum permitted by section 269ZD(2).

**188F Restriction where surrendering company has no income-generating assets**

The surrendering company may not surrender any losses or other amounts under this Chapter if at the end of the surrender period the surrendering company has no assets capable of producing income.

**188G Restriction on surrender of losses etc made when UK resident**

- (1) This section applies in relation to a loss or other amount carried forward to the surrender period if the surrendering company was UK resident during the loss-making period.
- (2) The surrendering company may not surrender the loss or other amount under this Chapter so far as the loss or other amount –
  - (a) is attributable to a permanent establishment through which the company carried on a trade outside the UK during the loss-making period (see subsection (3)), and
  - (b) is, or represents, an amount within subsection (5).
- (3) A loss or other amount is attributable to a permanent establishment of the surrendering company if (ignoring this section) the amount could be included in the company's surrenderable amounts for the surrender period if those amounts were determined –
  - (a) by reference to that establishment alone, and
  - (b) by applying, in relation to that establishment, principles corresponding in all material respects to those mentioned in subsection (4).
- (4) The principles are those that would be applied for corporation tax purposes in determining an equivalent loss or other amount in the case of a permanent establishment through which a non-UK resident company carried on a trade in the United Kingdom.
- (5) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of the territory in which the permanent establishment was situated, the amount is or at any time has been (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the surrendering company.
- (6) Subsection (7) applies for the purposes of subsection (5) if, in order to determine if an amount is or at any time has been deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is or has been deductible or otherwise allowable for tax purposes in the United Kingdom.
- (7) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned if (and only if) the surrendering company is treated as resident in that territory for the purposes of the non-UK tax.
- (8) In this section and section 188H –

“the loss-making period”, in relation to a loss or other amount, means the accounting period in which the loss was made or the amount arose,

“non-UK tax” has the meaning it has in Part 5 (see section 187), and

“non-UK profits” has the meaning given by section 108.

#### **188H Restriction on surrender of losses made when non-UK resident**

- (1) This section applies in relation to a loss or other amount carried forward to the surrender period if during the loss-making period the surrendering company was a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.
- (2) If the surrendering company was established in the EEA (within the meaning of section 134A) during the loss-making period, it may surrender the loss or other amount under this Chapter only so far as conditions A and B are met.  
 Subsection (8) imposes restrictions on a surrender under this subsection.
- (3) In any other case, the surrendering company may surrender the loss or other amount under this Chapter only so far as conditions A, B and C are met in relation to the loss or amount.
- (4) Condition A is that the loss or other amount is attributable to activities of the surrendering company in respect of which it is within the charge to corporation tax for the loss-making period.
- (5) Condition B is that the loss or other amount is not attributable to activities of the surrendering company that are double taxation exempt for the loss-making period (within the meaning given by section 186).
- (6) Condition C is that—
  - (a) the loss or other amount does not correspond to, and is not represented in, an amount with subsection (7), and
  - (b) no amount brought into account in calculating the loss or other amount corresponds to, or is represented in, an amount within subsection (7).
- (7) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is or at any time has been (in any period) deductible from or otherwise allowable against non-UK profits of any person.
- (8) A loss or other amount may not be surrendered by virtue of subsection (2) if and to the extent that it, or any amount brought into account in calculating it, corresponds to, or is represented in, amounts within subsection (9).
- (9) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount has (in any period) been deducted from or otherwise allowed against non-UK profits of any person.
- (10) But an amount is not to be taken to be within subsection (7) or (9) by reason only that it is—

- (a) an amount of profits brought into account for the purpose of being excluded from non-UK profits of the person, or
  - (b) an amount brought into account in calculating an amount of profits brought into account as mentioned in paragraph (a).
- (11) Subsection (12) applies for the purposes of subsection (7) if, in order to determine if an amount is or at any time has been deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is or at any time has been deductible or otherwise allowable for tax purposes in the United Kingdom.
- (12) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned.

### **188I Restriction on surrender losses etc made when dual resident**

The surrendering company may not surrender a loss or other amount under this Chapter if the company was not eligible to surrender the loss or other amount under Chapter 2 of Part 5 by reason of section 109 (restriction on losses etc surrenderable by dual resident).

## **CHAPTER 3**

### **CLAIMS FOR GROUP RELIEF FOR CARRIED-FORWARD LOSSES**

### **188J Overview of Chapter**

This Chapter sets out how a company may claim group relief for carried-forward losses, how the relief is given and limitations on the amount of relief to be given on a claim.

#### *Claiming group relief*

### **188K Claims for group relief for carried-forward losses**

- (1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 2.
- (2) A company ("the claimant company") may make a claim for group relief for carried-forward losses for an accounting period ("the claim period") in relation to those amounts (in whole or in part) if the following requirements are met.

#### *Requirement 1*

The surrendering company consents to the claim.

#### *Requirement 2*

There is a period ("the overlapping period") that is common to the claim period and the surrender period.

#### *Requirement 3*

At a time during the overlapping period the group condition is met (see section 188L).

- (3) But a company may not make a claim for group relief for carried-forward losses for an accounting period if—
- (a) any amount carried forward to that period under any provision mentioned in section 188C(1) is not deducted in full from the total profits of the company for that period at Step 2 of section 4(2),
  - (b) the company makes a claim under section 458(1) of CTA 2009 for any amount of a deficit to be excepted from being set off against profits of that period,
  - (c) the company makes a claim under section 45(4A) that the profits of a trade of that period are not to be reduced or are not to be reduced by more than a specified amount, or
  - (d) the company makes a claim under section 45B(5) for relief not to be given in that period for an amount of a loss or for a specified part of an amount of a loss.
- (4) More than one company may make a claim for group relief for carried-forward losses in relation to any surrenderable amounts (but the giving of relief in relation to any claim is subject to the provisions of this Chapter).

#### **188L The group condition**

- (1) The group condition is met if the surrendering company and the claimant company—
- (a) are members of the same group of companies, and
  - (b) are both UK related.
- (2) Two companies are members of the same group of companies for the purposes of this section if—
- (a) one is the 75% subsidiary of the other, or
  - (b) both are 75% subsidiaries of a third company.
- (3) In this section “75% subsidiary” is to be read in accordance with Chapter 3 of Part 24, but subject to subsections (4) to (6).
- (4) In applying the definition of “75% subsidiary” in section 1154(3), share capital of a registered society is to be treated as if it were ordinary share capital.
- (5) If—
- (a) a company (“the shareholder”) directly owns shares in another company, and
  - (b) a profit on the sale of those shares would be a trading receipt of the shareholder,
- the shareholder is treated as not being the owner of those shares for the purpose of determining if any company is a 75% subsidiary of any other company.
- (6) If a company (“the subsidiary”) would, apart from this subsection, be treated as a 75% subsidiary of another company (“the parent”) at any time, the subsidiary is not to be so treated unless at that time the parent—
- (a) is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary, and

- (b) would be beneficially entitled to at least 75% of any assets of the subsidiary available for distribution to such equity holders on a winding up.
- (7) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (6)(a) and (b).
- (8) Section 134 (meaning of “UK related” company) applies for the purposes of this section.

*Giving group relief*

**188M Deductions from total profits**

- (1) If a claimant company makes a claim as mentioned in section 188K, the group relief for carried-forward losses is given by the making of a deduction from the claimant company’s total profits of the claim period.
- (2) The amount of the deduction is –
  - (a) an amount equal to the surrendering company’s surrenderable amounts for the surrender period, or
  - (b) if the claim is in relation to only part of those amounts, an amount equal to that part.
- (3) Subsection (2) is subject to –
  - (a) subsections (4) to (7),
  - (b) the limitation set out in sections 188N to 188R, and
  - (c) section 269ZD (restriction on deductions from total profits).
- (4) The deduction is to be made –
  - (a) before deductions for relief within subsection (5), but
  - (b) after all other deductions to be made at Step 2 in section 4(2) (apart from deductions for group relief for carried-forward losses on other claims).
- (5) The deductions within this subsection are deductions for relief –
  - (a) under section 37 in relation to a loss made in an accounting period after the claim period,
  - (b) under section 260(3) of CAA 2001 in relation to capital allowances for an accounting period after the claim period, and
  - (c) under section 386 or 463B of CTA 2009 in relation to a deficit of a deficit period after the claim period.
- (6) For the purposes of subsection (4)(b) it is to be assumed that the claimant company has claimed all relief available to it for the claim period under section 37 of this Act or section 260(3) of CAA 2001.
- (7) Corporation tax relief is not to be given more than once for the same amount, whether –
  - (a) by giving group relief for carried-forward losses and by giving some other relief (for any accounting period) to the surrendering company, or
  - (b) by giving group relief for carried-forward losses more than once.

*Limitation on amount of group relief for carried-forward losses to be given*

**188N Limitation on amount of group relief for carried-forward losses**

The amount of group relief for carried-forward losses to be given on a claim (“the current claim”) is limited to—

- (a) the unused part of the surrenderable amounts (see section 188O), or
- (b) if less, the unrelieved part of the claimant company’s available total profits of the claim period (see section 188P).

**188O Unused part of the surrenderable amounts**

- (1) The unused part of the surrenderable amounts is the amount equal to—
  - (a) the surrenderable amount for the overlapping period (see subsection (2)), less
  - (b) the amount of prior surrenders for that period (see subsections (3) to (5)).
- (2) To determine the surrenderable amount for the overlapping period—
  - (a) take the proportion of the surrender period included in the overlapping period, and
  - (b) apply that proportion to the surrenderable amount for the surrender period.

The surrenderable amount for the overlapping period is the amount given as a result of paragraph (b).

- (3) To determine the amount of prior surrenders for the overlapping period—
  - (a) identify any prior claims for the purposes of this section (see subsection (4)), and
  - (b) take the steps set out in subsection (5) in relation to each such claim.

The amount of prior surrenders for the overlapping period is the total of the previously used amounts given at Step 3 in subsection (5) for all the prior claims.

- (4) A claim is a prior claim for the purposes of this section if—
  - (a) it is a claim by any company for group relief for carried-forward losses in respect of the whole or a part of the amounts that, in relation to the current claim, are the surrendering company’s surrenderable amount for the surrender period,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.
- (5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

*Step 1*

Identify the overlapping period for the prior claim.

*Step 2*

Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim.

If there is a common period, go to Step 3.

If there is no common period, there is no previously used amount in relation to the prior claim (and ignore Step 3).

*Step 3*

Determine the previously used amount of group relief for carried-forward losses in relation to the prior claim (see subsection (6)).

- (6) To determine the previously used amount of group for carried-forward losses in relation to a prior claim –
  - (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at Step 2 in relation to that claim, and
  - (b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.

The previously used amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).

- (7) For the meaning of the “overlapping period” see section 188R.

#### **188P Unrelieved part of claimant company’s available total profits**

- (1) The unrelieved part of the claimant company’s available total profits of the claim period is the amount equal to –
  - (a) the company’s available total profits for the overlapping period (see subsection (2)), less,
  - (b) the amount of previously claimed group relief for carried-forward losses for that period.
- (2) To determine the available total profits for the overlapping period –
  - (a) take the proportion of the claim period included in the overlapping period, and
  - (b) apply that proportion to the available total profits of the claim period.

The available total profits for the overlapping period is the amount given as a result of paragraph (b).

- (3) To determine the amount of previously claimed group relief for carried-forward losses for the overlapping period –
  - (a) identify any prior claims for the purposes of this section (see subsection (4)), and
  - (b) take the steps set out in subsection (5) in relation to each such claim.

The amount of previously claimed group relief for carried-forward losses for the overlapping period is the total of the previously claimed amounts given at Step 3 in subsection (5) for all the prior claims.

- (4) A claim is a prior claim for the purposes of this section if –
  - (a) it is a claim by the claimant company for group relief for carried-forward losses which would be given by way of a deduction from the company’s total profits of the claim period,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.

- (5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.
- Step 1  
Identify the overlapping period.
- Step 2  
Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim.  
If there is a common period, go to Step 3.  
If there is no common period, there is no previously claimed amount in relation to the prior claim (and ignore Step 3).
- Step 3  
Determine the previously claimed amount of group relief for carried forward losses in relation to the prior claim (see subsection (6)).
- (6) To determine the previously claimed amount of group relief for carried-forward losses in relation to a prior claim –
- (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at Step 2 in relation to that claim, and
  - (b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.
- The previously claimed amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).
- (7) In this section references to the claimant company’s “available total profits” are references to its total profits after the deductions mentioned in section 188M(4)(b).
- (8) Further, if the claimant company is non-UK resident its available total profits do not include any part of its total profits that arise from activities that are double taxation exempt for the claim period (so far as those profits are not covered by the deductions mentioned in section 188M(4)(b)).
- (9) Section 186 (when activities are double taxation exempt) applies for the purposes of this section.

**188Q Sections 188O and 188P: supplementary**

- (1) If two or more claims for group relief for carried-forward losses are made at the same time, for the purpose of section 188O and 188P treat the claims as made –
  - (a) in such order as the company making them may elect or the companies making them may jointly elect, or
  - (b) if no such election is made, in such order as an officer of Revenue and Customs may direct.
- (2) For the purpose of Step 3 in subsection (5) of each of section 188O and 188P the amount of group relief for carried-forward losses given on a prior claim is determined on the basis that relief is given on the claim before it is given on any later claim.
- (3) If the use of the proportion mentioned in section 188O(2) or (6), or in section 188P(2) or (6), would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion

is to be modified so far as necessary to produce a result that is just and reasonable.

**188R Meaning of “the overlapping period”**

- (1) In sections 188O and 188P “the overlapping period”, in relation to a claim for group relief for carried-forward losses, means the period that is common to the claim period and the surrender period (see Requirement 2 in section 188K(2)).
- (2) But if during any part of the overlapping period the group condition is not met, that part is treated as not forming part of the overlapping period but instead as forming—
  - (a) a part of the surrender period that is not included in the overlapping period, and
  - (b) a part of the claim period that is not included in the overlapping period.

**CHAPTER 4**

MISCELLANEOUS PROVISIONS AND INTERPRETATION OF PART

*Miscellaneous*

**188S Payments for group relief for carried-forward losses**

- (1) This section applies if—
  - (a) the surrendering company and the claimant company have an agreement between them in relation to losses and other amounts of the surrendering company (“the agreed loss amounts”),
  - (b) group relief for carried-forward losses is given to the claimant company in relation to the agreed loss amounts, and
  - (c) as a result of the agreement the claimant company makes a payment to the surrendering company that does not exceed the total amount of the agreed loss amounts.
- (2) The payment—
  - (a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and
  - (b) for corporation tax purposes is not to be regarded as a distribution.

*Interpretation*

**188T Definitions**

- (1) In this Part—
  - “the claimant company” has the meaning given by section 188K(2),
  - “the claim period” has the meaning given by section 188K(2),
  - “company” means any body corporate,
  - “group relief for carried-forward losses” has the meaning given by section 188A(3)

“profits” means income and chargeable gains, except in so far as the context otherwise requires,  
 “the surrenderable amounts” has the meaning given by section 188C(5),  
 “surrendering company” has the meaning given by 188C(5),  
 and  
 “the surrender period” has the meaning given by section 188C(5).

- (2) In this Part, except in so far as the context otherwise requires –
- (a) references to a trade include an office, and
  - (b) reference to carrying on a trade include holding an office.”

#### PART 4

##### MINOR AND CONSEQUENTIAL AMENDMENTS

#### ICTA 1988

- 24 (1) Section 826 (interest on tax overpaid) is amended as follows.
- (2) After subsection (7A) insert –
- “(7AA) In any case where –
- (a) a company ceases to carry on a trade in an accounting period (“the terminal period”),
  - (b) as a result of a claim under section 45F of CTA 2010, the whole or any part of a loss made in the trade is relieved for the purposes of corporation tax against profits (of whatever description) of an earlier accounting period (“the earlier period”) which does not fall wholly within the period of 12 months immediately preceding the terminal period, and
  - (c) a repayment falls to be made of corporation tax paid for the earlier period or of income tax in respect of a payment received by the company in that accounting period,
- then, in determining the amount of interest (if any) payable under this section on the repayment referred to in paragraph (c) above, no account shall be taken of so much of the amount of that repayment as falls to be made as a result of the claim under section 45F, except so far as concerns interests for any time after the date on which any corporation tax for the terminal period became (or, as the case may be, would have become) due and payable, as mentioned in subsection (7D) below.”
- (3) In subsection (7D) (meaning of references to the date on which corporation tax became payable) after “(7A),” insert “(7AA),”.
- (4) In subsection (7E) (power conferred by section 59E of TMA 1970 not to include power to change the meaning of references to the date on which corporation tax became payable) after “(7A),” insert “(7AA)”.

#### FA 1998

- 25 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended in accordance with paragraphs 26 to 38.

- 26 In paragraph 61(1)(c) (consequential claims etc arising out of certain Revenue amendments or assessments), in the words in brackets, after “relief” insert “or group relief for carried-forward losses”.
- 27 In the heading of Part 8 (claims for group relief) at the end insert “and group relief for carried-forward losses”.
- 28 For paragraph 66 (introduction to Part 8) substitute—
- “66 (1) This Part of this Schedule applies to—
- (a) claims for group relief under Part 5 of the Corporation Tax Act 2010, and
  - (b) claims for group relief for carried-forward losses under Part 5A of that Act.
- (2) In this Part of this Schedule (except where otherwise indicated)—
- (a) references to “relief” are to either of those forms of relief, and
  - (b) references to “a claim” are to a claim for either of those forms of relief.”
- 29 In paragraph 67 (claim to be included in company tax return) omit “for group relief”.
- 30 (1) Paragraph 68 (content of claims) is amended as follows.
- (2) In sub-paragraph (1), in the words before paragraph (a), omit “for group relief”.
- (3) In sub-paragraph (3), in the words before paragraph (a), omit “for group relief”.
- (4) For sub-paragraph (4) substitute—
- “(4) Those companies are—
- (a) the claimant company,
  - (b) the surrendering company,
  - (c) any other company by reference to which the claimant company and the surrendering company are members of the same group, and
  - (d) if the claim is for group relief, any other company by reference to which consortium condition 1, 2 or 3 in section 132 and 133 of the Corporation Tax Act 2010 is satisfied in the case of the claimant company and the surrender company.”
- 31 (1) Paragraph 69 (claims for more or less than the amount available for surrender) is amended as follows.
- (2) In subsection (1) omit “for group relief”.
- (3) In subsection (3), in the first step, after “Part 5” insert “or (as the case may be) Part 5A”.
- 32 (1) Paragraph 70 (consent to surrender) is amended as follows.

- (2) For sub-paragraph (1) substitute –
- “(1) In accordance with Requirement 1 in section 130(2), 135(2) or (as the case may be) 188K(2) of the Corporation Tax Act 2010, a claim requires the consent of the surrendering company.”
- (3) In sub-paragraph (4) omit “for group relief”.
- 33 (1) Paragraph 72 (notice of consent requiring amendment of return) is amended as follows.
- (2) For sub-paragraph (1) substitute –
- “(1) Where notice of consent by the surrendering company relates to a loss or other amount in respect of which corporation tax relief has been given to the company for any accounting period, the company must at the same time amend its company tax return for that accounting period so as to reflect the notice of consent.”
- (3) Omit sub-paragraph (2).
- (4) In sub-paragraph (3) omit “or (2)”.
- (5) In sub-paragraph (4) omit “or (2)”.
- 34 (1) Paragraph 73 (withdrawal or amendment of claim) is amended as follows.
- (2) In sub-paragraph (1) omit “for group relief”.
- (3) In sub-paragraph (2) omit “for group relief”.
- 35 (1) Paragraph 74 (time limit for claims) is amended as follows.
- (2) In sub-paragraph (1), in the words before paragraph (a), omit “for group relief”.
- (3) In sub-paragraph (2) omit “for group relief”.
- (4) In sub-paragraph (3) omit “for group relief”.
- (5) In sub-paragraph (4) omit “for group relief” in both places those words occur.
- 36 (1) Paragraph 75A (assessment on other claimant companies) is amended as follows.
- (2) In sub-paragraph (2) omit “group”.
- (3) In sub-paragraph (6) omit “for group relief”.
- 37 (1) Paragraph 76 (assessment to recover excessive relief) is amended as follows.
- (2) In the italic heading omit “group”.
- (3) In sub-paragraph (1) omit “group”.
- 38 (1) Paragraph 77 (joint amended returns) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) in paragraph (a) omit “for group relief”, and
- (b) in paragraph (b) omit “group” in the second and third places that word occurs.

- (3) In sub-paragraph (3), in paragraph (a), omit “for group relief”.

CTA 2009

- 39 In section 1223 (carry forward expenses of management and other amounts), in subsection (1)(b), after sub-paragraph (i) (as inserted by paragraph 6(2)(b)) insert –
- “(ii) section 269ZD of CTA 2010 (restrictions on deductions from total profits) has effect for the accounting period, or
  - (iii) ”.

CTA 2010

- 40 CTA 2010 is amended in accordance with paragraphs 41 to 48.
- 41 (1) Section 1 (overview of Act) is amended as follows.
- (2) In subsection (2) (list of reliefs provided by Parts 4 to 7) after paragraph (f) insert –
- “(fa) group relief for carried-forward losses (see Part 5A),”
- (3) After subsection (2) insert –
- “(2A) Part 7ZA contains provision restricting the amount of certain deductions which may be made in calculating the profits of a company on which corporation tax is chargeable.”
- 42 (1) Section 46 (use of trade-related interest and dividends if insufficient trade profits) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) This section applies if in an accounting period a company carrying on a trade makes a loss in the trade and either –
    - (a) relief for the loss could be given in a later accounting period under section 45(4)(b) or 45B(4) but for the fact that there are no profits of the trade of the later accounting period, or
    - (b) the amount of relief for the loss that could be given in a later accounting period under section 45(4)(b) or 45B(4) is limited by reason of the amount of profits of the trade of the later accounting period.”
- (3) In subsection (2) at the beginning insert “For the purposes of section 45 and 45B,”.
- 43 In section 47 (registered societies), in subsection (1), for “section 45” substitute “sections 45 and 45B”.
- 44 In section 53 (leasing contracts and company reconstructions), in subsection (1)(e), for “or 45” substitute “, 45, 45A or 45B”.
- 45 In section 54 (non-UK resident company: receipts of interest, dividends or royalties), in subsection (2), for “or 45” substitute “, 45, 45A or 45B”.
- 46 In section 104 of CTA 2010 (meaning of “non-trading loss on intangible fixed assets” for purposes of section 99(1)(g) of CTA 2010), for subsection (2)

substitute –

- “(2) But it does not include a loss treated as a non-trading loss on intangible fixed assets for the surrender period as a result of section 753(3) of CTA 2009.”
- 47 In section 137 (giving of group relief: deduction from total profits) in subsection (5) (list of deductions to be made after group relief is given) –
- (a) omit “and” at the end of paragraph (b),
  - (b) in paragraph (c) for “or 459” substitute “, 459 or 463B”, and
  - (c) after paragraph (c) insert “, and
  - (d) under section 188M (giving of group relief for carried-forward losses: deductions from total profits)”.
- 48 In section 189(2) (relief for qualifying charitable donations) at the end insert “and group relief for carried-forward losses”.

## PART 5

### COMMENCEMENT ETC

- 49 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2017.
- (2) For the purposes of the amendments made by this Schedule, where a company has an accounting period beginning before 1 April 2017 and ending on or after that date (“the straddling period”) –
- (a) so much of the straddling period as falls before 1 April 2017, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) profits and losses of the company for the straddling period are apportioned to the two separate accounting periods –
    - (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.

## SCHEDULE 7

Section 21

### CORPORATE INTEREST RESTRICTION

## PART 1

### INTRODUCTION

#### *Overview*

- 1 (1) This Schedule contains provision that –
- (a) disallows certain amounts that a company would (apart from this Schedule) be entitled to bring into account for the purposes of corporation tax in respect of interest paid and similar expenses, and
  - (b) allows certain amounts disallowed under this Schedule in previous accounting periods to be brought into account in later accounting periods.

- (2) Paragraph 2 of this Part defines some key concepts including, in particular, “the total disallowed amount” in relation to a period of account of a worldwide group.
- (3) Part 2 provides for –
  - (a) the appointment of the “reporting company” of a worldwide group for a period of account of the group, and
  - (b) the preparation and submission by that company of an “interest restriction return” for the group in respect of the period.
- (4) Part 3 provides for –
  - (a) the disallowance in certain circumstances of tax-interest expense amounts of companies that are members of a worldwide group, and
  - (b) the carrying forward of disallowed tax-interest expense amounts, and for bringing those amounts into account in certain circumstances in relation to a later period of account of the worldwide group.
- (5) Part 4 –
  - (a) defines “a tax-interest expense amount” and “a tax-interest income amount” of a company for a period of account of a worldwide group, which are amounts that are (or, apart from this Schedule, would be) brought into account for the purposes of corporation tax,
  - (b) defines “the net tax-interest expense” of a company for a period of account for a worldwide group, which is the total of the company’s tax-interest expense amounts for the period less the total of its tax-interest income amounts for the period, and
  - (c) defines “aggregate net tax-interest expense” of a worldwide group for a period of account of the worldwide group, which is the sum of each member of the group’s net tax-interest expense for the period.
- (6) Part 5 contains provision about the calculation of “the interest capacity” of a worldwide group for a period of account of the group, which is the aggregate of the interest allowance for the period and any unused interest allowance of the group from the previous five years (or, if that aggregate is less than the de minimis amount, the de minimis amount).
- (7) Part 6 makes provision about the calculation of “the interest allowance” of a worldwide group for a period of account of the group.

The interest allowance for a period of account is calculated using the fixed-ratio method unless the group elects for the group ratio method to be used for the period.
- (8) Part 7 defines concepts used in Part 6 including –
  - the “tax-EBITDA” of a company for a period of account of a worldwide group (which is an amount derived from amounts brought into account for the purposes of corporation tax);
  - the “aggregate tax-EBITDA” of a worldwide group for a period of account of the group (which is an amount derived from the tax-EBITDA of UK group companies);
  - the “adjusted group interest expense” of a worldwide group for a period of account of the group (which is an amount derived from the financial statements of the worldwide group);
  - the “qualifying group interest expense” of a worldwide group for a period of account of the group (which is an amount derived from the financial statements of the worldwide group);

the “group-EBITDA” of the worldwide group for a period of account of the group (which is an amount derived from the financial statements of the worldwide group).

- (9) Part 8 contains further interpretative and supplementary provision including in particular definitions of “the worldwide group”, “ultimate parent”, “period of account of the worldwide group”, “UK group company” and “relevant accounting period”.
- (10) Part 9 contains rules connected with tax avoidance.
- (11) Part 10 contains provision about commencement and transitional matters.
- (12) Part 11 contains consequential amendments.
- (13) Part 12 contains an index of defined expressions.

*Meaning of “subject to interest restrictions”, “the total disallowed amount” etc*

- 2 (1) A worldwide group is “subject to interest restrictions” in a period of account of the group if—
  - (a) the aggregate net tax-interest expense of the group for the period (see paragraph 42), exceeds
  - (b) the interest capacity of the group for the period (see paragraph 44).
- (2) “The total disallowed amount” of a worldwide group in a period of account of the group is—
  - (a) if the group is subject to interest restrictions in the period, the amount of the excess mentioned in sub-paragraph (1);
  - (b) otherwise, nil.
- (3) “The interest reactivation cap” of a worldwide group in a period of account of the group is (subject to sub-paragraph (4))—
  - (a) the interest allowance of the group for the period (see paragraph 48), less
  - (b) the aggregate net tax-interest expense of the group for the period (see paragraph 42).
- (4) If the amount determined under sub-paragraph (3) is a negative amount, the interest reactivation cap of the worldwide group in the period is nil.
- (5) A worldwide group is “subject to interest reactivations” in a period of account of the group if—
  - (a) the interest reactivation cap of the group in the period is not nil, and
  - (b) at least one company that was a UK group company at any time during the period has an amount available for reactivation in the return period that is not nil (see paragraph 20).
- (6) This paragraph has effect for the purposes of this Schedule.

PART 2

THE REPORTING COMPANY AND THE INTEREST RESTRICTION RETURN

*Appointment of reporting company and obligation to submit return*

*Appointment by a worldwide group of a reporting company*

- 3 (1) A member of a worldwide group may, by notice to HMRC –
- (a) appoint an eligible company to be the group’s “reporting company” in relation to such period of account of the group as is specified in the appointment (“the relevant period of account”), or
  - (b) revoke an appointment it has previously made.
- (2) The revocation of an appointment does not prevent a further appointment under sub-paragraph (1).
- (3) An appointment or revocation under sub-paragraph (1) may not be made –
- (a) before the end of the relevant period of account, or
  - (b) after the end of the period of 6 months beginning with the end of the relevant period of account.
- (4) An appointment or revocation under sub-paragraph (1) is of no effect unless the notice –
- (a) is signed on behalf of at least 50% of eligible companies, and
  - (b) contains a statement that the signatories represent at least 50% of eligible companies.
- (5) In this paragraph “eligible company” means a company that –
- (a) was a UK group company at any time during the relevant period of account, and
  - (b) was not dormant throughout the relevant period of account.
- (6) A notice of appointment under sub-paragraph (1) may be accompanied by a statement that such of the signatories as may be specified in the statement do not wish to be consenting companies in relation to returns submitted by the reporting company in relation to the relevant period of account.  
For provision as to the effect of a statement under this sub-paragraph, see paragraph 10.
- (7) The Commissioners may by regulations make further provision about an appointment or revocation under sub-paragraph (1) including, in particular, provision –
- (a) about the form and manner in which an appointment or revocation may be made;
  - (b) requiring a person to give information to HMRC in connection with the making of an appointment or revocation;
  - (c) prohibiting a company from being appointed unless it meets conditions specified in the regulations;
  - (d) about the time from which an appointment or revocation has effect;
  - (e) providing that an appointment or revocation is of no effect, or (in the case of an appointment) ceases to have effect, if a requirement under the regulations is not met.

*Appointment by HMRC of a reporting company if group fails to do so*

- 4 (1) This paragraph applies where –
- (a) a worldwide group has not appointed a reporting company under paragraph 3(1) in relation to a period of account of the group (“the relevant period of account”), and
  - (b) the time limit in paragraph 3(3)(b) (time limit for appointment of reporting company by group) has passed.
- (2) The Commissioners may appoint an eligible company to be the reporting company of the group in relation to the relevant period of account.
- (3) An appointment under sub-paragraph (2) may be made –
- (a) at any time before the end of the period of 36 months beginning with the end of the relevant period of account, or
  - (b) at any time after the end of that period if, at that time, an amount stated in the company tax return of a relevant company for a relevant accounting period can be altered.
- (4) In this paragraph “relevant company” means a company that was a UK group company at any time during the relevant period of account.
- (5) Paragraph 88(3) to (5) of Schedule 18 to FA 1998 (meaning of “can no longer be altered”) applies for the purposes of this paragraph.
- (6) In this paragraph “eligible company” means a company that –
- (a) was a UK group company at any time during the relevant period of account, and
  - (b) was not dormant throughout the relevant period of account.

*Appointment by HMRC of replacement reporting company*

- 5 (1) This paragraph applies where –
- (a) a reporting company is appointed under paragraph 3 or 4 in relation to a period of account of a worldwide group (“the relevant period of account”), and
  - (b) condition A or B is met.
- (2) Condition A is that an officer of Revenue and Customs considers that the reporting company mentioned in sub-paragraph (1)(a) has not complied with, or will not comply with, a requirement under or by virtue of this Schedule.
- (3) Condition B is that the reporting company mentioned in sub-paragraph (1)(a) has agreed that an officer of Revenue of Customs may exercise the power in this paragraph.
- (4) The Commissioners may at any time appoint an eligible company to be the reporting company of the group in relation to the relevant period of account in place of the company mentioned in sub-paragraph (1).
- (5) In this paragraph “eligible company” means a company that –
- (a) was a UK group company at any time during the relevant period of account, and
  - (b) was not dormant throughout the relevant period of account.

*Obligation of reporting company to notify group members of its appointment*

- 6 (1) This paragraph applies where a reporting company is appointed under this Part in relation to a period of account of a worldwide group (“the relevant period of account”).
- (2) As soon as reasonably practicable after the appointment, the reporting company must notify each company that was a UK group company at any time during the relevant period of account of its appointment.

*Obligation of reporting company to submit interest restriction return*

- 7 (1) This paragraph applies where a reporting company is appointed under this Part in relation to a period of account of a worldwide group (“the relevant period of account”).
- (2) A reporting company that was appointed under paragraph 3 or 4 must submit a return in relation to the relevant period of account to HMRC.
- (3) A reporting company that was appointed under paragraph 5 must submit a return in relation to the relevant period of account to HMRC if no return in relation to the period was submitted under sub-paragraph (2).
- (4) A return submitted under this paragraph must be received by HMRC before the filing date.
- (5) For this purpose, “the filing date” means –
- (a) the end of the period of 12 months beginning with the end of the relevant period of account, or
  - (b) if later, the end of the period of 3 months beginning with the day on which the reporting company was appointed.
- (6) A return submitted under this paragraph is of no effect unless it is received by HMRC before –
- (a) the end of the period of 36 months beginning with the end of the relevant period of account, or
  - (b) if later the end of the period of 3 months beginning with the day on which the reporting company was appointed.
- This is subject to sub-paragraph (7).
- (7) Where a notice of determination under paragraph 24 is sent to a relevant company after the time limit in sub-paragraph (6), a return may be submitted under this paragraph at any time during the period of 12 months beginning with date on which the determination is made.
- (8) In this paragraph “relevant company” means a company that was a UK group company at any time during the relevant period of account.
- (9) A return submitted under this paragraph must comply with the requirements of paragraph 14.

*Revised interest restriction return*

- 8 (1) This paragraph applies where –
- (a) a reporting company has been appointed under this Part in relation to a period of account of a worldwide group (“the relevant period of account”), and

- (b) a return (“the previous interest restriction return”) was submitted under paragraph 7, or this paragraph, in relation to the relevant period of account.
- (2) The reporting company may submit a revised interest restriction return in relation to the relevant period of account to HMRC.
- (3) A revised interest restriction return submitted under sub-paragraph (2) is of no effect unless it is received by HMRC before –
  - (a) the end of the period of 36 months beginning with the end of the relevant period of account, or
  - (b) if later, the end of the period of 3 months beginning with the day on which the reporting company was appointed.
- (4) Where –
  - (a) a member of the group amends, or is treated as amending, its company tax return, and
  - (b) as a result of the amendment any of the figures contained in the previous interest restriction return have become incorrect,
 the reporting company must submit a revised interest restriction return to HMRC.
- (5) A revised interest restriction return submitted under sub-paragraph (4) must be received by HMRC before the end of the period of 3 months beginning with –
  - (a) the day on which the amended company tax return was received by HMRC, or
  - (b) (as the case may be) the day as from which the company tax return was treated as amended.
- (6) A return submitted under this paragraph –
  - (a) must indicate the respects in which it differs from the previous return, and
  - (b) supersedes the previous return.
- (7) A return submitted under this paragraph must comply with the requirements of paragraph 14.

*Meaning of “consenting company” and “non-consenting company”*

- 9 (1) This paragraph makes provision for the purposes of this Schedule about whether a company is a “consenting company” in relation to an interest restriction return submitted by a reporting company in relation to a period of account.
- (2) The company is a “consenting company” in relation to the return if, before the return is submitted –
  - (a) it has notified the appropriate persons that it wishes to be a consenting company in relation to interest restriction returns submitted by the reporting company in relation to the period of account, and
  - (b) it has not notified the appropriate persons that it no longer wishes to be a consenting company in relation to such returns.
- (3) In sub-paragraph (2) “the appropriate persons” means –
  - (a) an officer of Revenue and Customs, and

- (b) the reporting company in relation to the period of account.
- (4) The company is a “non-consenting company”, in relation to the return, if it is not a consenting company in relation to the return.

*Signatory of appointment of reporting company treated as a consenting company*

- 10 (1) This paragraph applies where a company –
- (a) is a signatory to the appointment under paragraph 3 of a reporting company in relation to a period of account, and
  - (b) is not included in a statement under sub-paragraph (6) of that paragraph (signatories not wishing to be consenting companies).
- (2) The signatory is treated as having given, at the time of the appointment, a notice under paragraph 9(2)(a) in relation to interest restriction returns submitted by the reporting company in relation to the period of account.
- (3) Sub-paragraph (2) does not prevent the signatory, at any time after the appointment, from giving a notice under paragraph 9(2)(b) in relation to interest restriction returns submitted by the reporting company in relation to the period of account.

*Meaning of “reporting company”, “interest restriction return” and “the return period”*

- 11 In this Schedule –
- (a) “reporting company” means a company appointed under paragraph 3, 4 or 5.
  - (b) “interest restriction return” means a return submitted under paragraph 7 or 8;
  - (c) “the return period”, in relation to an interest restriction return of a worldwide group, means the period of account of the group to which the return relates.

*Contents of interest restriction return*

*Election that interest allowance be calculated using group ratio method*

- 12 (1) This paragraph applies where –
- (a) a reporting company has been appointed under this Part in relation to a period of account of a worldwide group (“the relevant period of account”), and
  - (b) the group is subject to interest restrictions in the period.
- (2) The reporting company may –
- (a) elect that the interest allowance for the relevant period of account is to be calculated using the group ratio method, or
  - (b) revoke an election previously made.
- (3) An election or revocation under sub-paragraph (2) is of no effect unless it is included in an interest restriction return submitted under paragraph 7 or 8(2).
- (4) An election under this paragraph is referred to in this Schedule as a “group ratio election”.
- (5) For provision as to the effect of a group ratio election, see paragraph 48.

*Election to submit abbreviated return if group not subject to interest restrictions*

- 13 (1) This paragraph applies where –
- (a) a reporting company has been appointed under this Part in relation to a period of account of a worldwide group (“the relevant period of account”), and
  - (b) the group is not subject to interest restrictions in the period.
- (2) The reporting company may –
- (a) elect to submit an abbreviated interest restriction return in relation to the relevant period of account, or
  - (b) revoke an election previously made.
- (3) An election or revocation under sub-paragraph (2) is of no effect unless it is included in an interest restriction return submitted under paragraph 7 or 8(2).
- (4) An election under this paragraph is referred to in this Schedule as an “abbreviated return election”.
- (5) For provision as to the effect of an abbreviated return election, see –
- paragraph 14 (which limits the required contents of the interest restriction return);
  - paragraph 45 (which deprives the group of the use of interest allowance for the return period, or any earlier period, in future periods of account).

*Required contents of interest restriction return: full returns and abbreviated returns*

- 14 (1) This paragraph makes provision about the contents of an interest restriction return submitted by a reporting company under paragraph 7 or 8.
- (2) The return must (subject to sub-paragraph (3)) –
- (a) state the name and (where it has one) the Unique Taxpayer Reference of the ultimate parent of the worldwide group,
  - (b) specify the return period,
  - (c) state the names and Unique Taxpayer References (where they have them) of the companies that were UK group companies at any time during the return period, specifying in relation to each whether it is a consenting or a non-consenting company in relation to the return,
  - (d) contain a statement of calculations (see paragraph 15),
  - (e) if the group is subject to interest restrictions in the return period –
    - (i) contain a statement of that fact,
    - (ii) specify the total disallowed amount, and
    - (iii) contain a statement of allocated interest restrictions (see paragraph 16), and
  - (f) if the group is subject to interest reactivations in the return period –
    - (i) contain a statement of that fact,
    - (ii) specify the interest reactivation cap,
    - (iii) contain a statement of allocated interest reactivations (see paragraph 19);
  - (g) contain a declaration by the person making the return that the return is, to the best of that person’s knowledge, correct and complete.

- (3) If the worldwide group is not subject to interest restrictions in the return period and the reporting company has made an abbreviated return election, the return must –
  - (a) state that the group is not subject to interest restrictions in the return period;
  - (b) comply with paragraphs (a), (b), (c) and (g) of sub-paragraph (2).
- (4) If the ultimate parent of the worldwide group is a deemed parent by virtue of paragraph 66 (stapled entities) or paragraph 67 (business combinations), the requirement in sub-paragraph (2)(a) is to state the name and (where it has one) Unique Taxpayer Reference of each of the entities mentioned in that paragraph.
- (5) In this Schedule –
  - (a) a return prepared in accordance with sub-paragraph (2) is referred to as “a full interest restriction return”;
  - (b) a return prepared in accordance with sub-paragraph (3) is referred to as “an abbreviated interest restriction return”.

#### *Statement of calculations*

- 15 The statement of calculations required by paragraph 14(2)(d) to be included in a full interest restriction return must include the following information –
  - (a) for each company that was a UK group company at any time during the return period –
    - (i) the company’s net tax-interest expense for the return period (see paragraph 41);
    - (ii) the company’s tax-EBITDA for the return period (see paragraph 52);
  - (b) the aggregate net tax-interest expense of the group for the return period (see paragraph 42);
  - (c) the interest capacity of the group for the return period (see paragraph 44);
  - (d) the aggregate of interest allowances of the group for periods before the return period so far as they are available in the return period (see paragraph 45);
  - (e) the interest allowance of the group for the return period (see paragraph 48);
  - (f) the aggregate tax-EBITDA of the group for the return period (see paragraph 51);
  - (g) where the interest allowance is calculated using the fixed ratio method, the adjusted net group-interest expense of the group for the return period (see paragraph 59);
  - (h) where the interest allowance is calculated using the group ratio method –
    - (i) the group ratio percentage (see paragraph 50);
    - (ii) the qualifying net group-interest expense of the group for the return period (see paragraph X);
    - (iii) the group-EBITDA of the group for the return period (see paragraph Y).

*Statement of allocated interest restrictions*

- 16 (1) The statement of allocated interest restrictions required by paragraph 14(2)(e) to be included in a full interest restriction return must—
- (a) list one or more companies that were UK group companies at any time during the return period,
  - (b) in relation to each company listed under paragraph (a), specify an amount, and
  - (c) show the total of the amounts specified under paragraph (b).
- (2) The amount specified under sub-paragraph (1)(b) in relation to a company is referred to in this Schedule as the “allocated disallowance” of the company for the return period.
- (3) The allocated disallowance of a company for the return period—
- (a) must not exceed the net tax-interest expense of the company for the return period,
  - (b) where the company is a non-consenting company in relation to the return, must not exceed the company’s pro-rata share of the total disallowed amount (see paragraph 17), and
  - (c) must not be a negative amount.
- (4) The sum of the allocated disallowances for the return period of the companies listed in the statement must equal the total disallowed amount.
- (5) The statement must also specify an amount in relation to each relevant accounting period of each company listed in the statement.
- (6) The amount specified under sub-paragraph (5) in relation to an accounting period of a company is referred to in this Schedule as the “allocated disallowance” of the company for the accounting period.
- (7) In the case of a company that has only one relevant accounting period, the allocated disallowance of the company for that accounting period must be equal to the allocated disallowance of the company for the return period.
- (8) In the case of a company that has more than one relevant accounting period, the allocated disallowance of the company for any of those accounting periods—
- (a) must not exceed so much of the net tax-interest expense of the company for the return period as is referable to the accounting period,
  - (b) where the company is a non-consenting company in relation to the return, must not exceed the accounting period’s pro-rata share of the total disallowed amount (see paragraph 18), and
  - (c) must not be a negative amount.
- (9) The sum of the allocated disallowances of the company for its relevant accounting periods must be equal to the allocated disallowance of the company for the return period.

*A company’s pro-rata share of the total disallowed amount*

- 17 (1) This paragraph—

- (a) applies in relation to a worldwide group that is subject to interest restrictions in a period of account of the group (“the period of account”), and
  - (b) allocates the total disallowed amount of the group in the period of account to relevant companies.
- (2) In this paragraph “relevant company” means a company that was a UK group company at any time during the period of account.
- (3) The amount allocated to a relevant company under this paragraph is referred to in this Schedule as the company’s “pro-rata share” of the total disallowed amount.
- (4) Sub-paragraph (5) applies in relation to a relevant company whose net tax-interest expense for the period of account is a positive amount.
- (5) The amount of the total disallowed amount that is allocated to the company under this paragraph is –

$$A \times \frac{B}{C}$$

where –

- A is the total disallowed amount;
  - B is the net tax-interest expense of the company for the period of account;
  - C is the sum of each relevant company’s net tax-interest expense for the period of account that is a positive amount.
- (6) Where this paragraph does not allocate any of the total disallowed amount to a relevant company, the company’s “pro-rata share” of the total disallowed amount is nil.

*Accounting period’s pro-rata share of the total disallowed amount*

- 18 (1) This paragraph –
- (a) applies in relation to a worldwide group that is subject to interest restrictions in a period of account of the group (“the period of account”), and
  - (b) allocates the total disallowed amount of the group in the period of account to relevant accounting periods of relevant companies.
- (2) In this paragraph “relevant company” means a company that was a UK group company at any time during the period of account.
- (3) The amount allocated to an accounting period under this paragraph is referred to in this Schedule as the accounting period’s “pro-rata share” of the total disallowed amount.
- (4) Sub-paragraph (5) applies where –
- (a) a relevant company’s pro-rata share of the total disallowed amount is not nil, and
  - (b) the company has only one relevant accounting period.
- (5) The amount of the total disallowed amount that is allocated to the accounting period under this paragraph is the company’s pro-rata share of the total disallowed amount.

- (6) Sub-paragraph (7) applies where –
- (a) a relevant company’s pro-rata share of the total disallowed amount is not nil,
  - (b) the company has more than one relevant accounting period, and
  - (c) the net tax-interest expense of the company for any of those accounting periods (“the accounting period”) is a positive amount.
- (7) The amount of the total disallowed amount that is allocated to the accounting period under this paragraph is –

$$A \times \frac{B}{C}$$

where –

- A is the company’s pro-rata share of the total disallowed amount;  
 B is the net tax-interest expense of the company for the accounting period;  
 C is the sum of the company’s net tax-interest expenses for relevant accounting periods that are positive amounts.
- (8) Where this paragraph does not allocate any of the total disallowed amount to an accounting period of a relevant company, the accounting period’s “pro-rata share” of the total disallowed amount is nil.
- (9) In this paragraph references to the net tax-interest expense of a company for an accounting period are to so much of the net tax-interest expense of the company for the return period as is referable to the accounting period.

*Statement of allocated interest reactivations*

- 19 (1) The statement of allocated interest reactivations required by paragraph 14(2)(f) to be included in a full interest restriction return must –
- (a) list one or more relevant companies,
  - (b) in relation to each company listed under paragraph (a), specify an amount, and
  - (c) show the total of the amounts specified under paragraph (b).
- (2) The amount specified under sub-paragraph (1)(b) in relation to a company is referred to in this Schedule as the “allocated reactivation” of the company for the return period.
- (3) The allocated reactivation of a company for the return period –
- (a) must not exceed the amount available for reactivation of the company in the return period (see paragraph 20), and
  - (b) must not be a negative amount.
- (4) The sum of the allocated reactivations for the return period of the companies listed in the statement must equal –
- (a) the sum of the amounts available for reactivation of each relevant company in the return period, or
  - (b) if lower, the interest reactivation cap of the worldwide group in the return period.
- (5) In this paragraph “relevant company” means a company that was a UK group company at any time during the return period.

“Amount available for reactivation” of company in period of account of group

- 20 (1) This paragraph applies for the purposes of this Schedule.
- (2) The “amount available for reactivation” of a company in a period of account (“the relevant period of account”) of a worldwide group (“the relevant worldwide group”) is –
- (a) the amount determined under sub-paragraph (3), or
  - (b) if lower, the company’s interest reactivation cap (see sub-paragraph (5)).

- (3) The amount referred to in sub-paragraph (2)(a) is –

$$A + B - C + D - E$$

where –

A is the total of the disallowed tax-interest expense amounts (if any) that are brought forward to the specified accounting period from earlier accounting periods;

B is the total of the tax-interest expense amounts (if any) that the company is required to leave out of account under paragraph 25(2) or (5) or 26(5) in the specified accounting period as a result of the operation of this Schedule in relation to a period of account of the worldwide group before the relevant period of account;

C is the total of the disallowed tax-interest expense amounts (if any) that the company is required to bring into account under paragraph 29(2) in the specified accounting period as a result of the operation of this Schedule in relation to a period of account of the worldwide group before the relevant period of account;

D is the total of the tax-interest expense amounts (if any) that the company is required to leave out of account under paragraph 25(2) or (5) or 26(5) in the specified accounting period as a result of the operation of this Schedule in relation to a period of account of a worldwide group of which the company was a member before it became a member of the relevant worldwide group;

E is the total of the disallowed tax-interest expense amounts (if any) that the company is required to bring into account under paragraph 29(2) in the specified accounting period as a result of the operation of this Schedule in relation to a period of account of a worldwide group of which the company was a member before it became a member of the relevant worldwide group.

- (4) In sub-paragraph (3) “the specified accounting period” means –
- (a) the earliest relevant accounting period of the company, or
  - (b) where the company became a member of the relevant worldwide group during the relevant period of account, the earliest relevant accounting period of the company in which it was a member of the group.
- (5) For the purposes of sub-paragraph (2)(b) “the interest reactivation cap” of the company is –

$$A \times B$$

where –

A is the interest reactivation cap of the worldwide group in the relevant period of account;

B is the proportion of the relevant period of account in which the company is a UK group company.

*Estimated information in statements*

- 21 (1) The paragraph applies in relation to a statement under –
- (a) paragraph 15 (statement of calculations),
  - (b) paragraph 16 (statement of allocated interest restrictions), or
  - (c) paragraph 19 (statement of allocated interest reactivations).
- (2) Where any information is included in the statement that is (or is derived from) estimated information, the statement –
- (a) must state that fact, and
  - (b) must identify the information in question.

*Provision of information*

*Provision of information to and by the reporting company*

- 22 (1) The reporting company in relation to a period of account of a worldwide group may, by notice, require a relevant company to provide it with information that it needs for the purpose of exercising functions under or by virtue of this Schedule.
- (2) A notice under sub-paragraph (1) –
- (a) must be in writing, and
  - (b) must specify the information to be provided.
- (3) The duty to comply with a notice under sub-paragraph (1) is enforceable by the reporting company.
- (4) As soon as reasonably practicable after submitting an interest restriction return under paragraph 7 or 8, the reporting company must send a copy of it to each relevant company.
- (5) The duty to comply with sub-paragraph (4) is enforceable by any person to whom the duty is owed.
- (6) In this paragraph “relevant company” means a company that was a UK group company at any time during the period of account.

*Provision of information between members of group where no reporting company appointed*

- 23 (1) This paragraph applies where condition A or B is met in relation to a period of account of a worldwide group.
- (2) Condition A is that –
- (a) no reporting company has been appointed under paragraph 3 or 4 in relation to the period of account, and
  - (b) the time limit in paragraph 3(3)(b) (time limit for appointment of reporting company by group) has passed.
- (3) Condition B is that –

- (a) a reporting company has been appointed under paragraph 3 or 4 in relation to the period of account,
  - (b) a full interest restriction return has not been submitted in accordance with this Part in relation to the period, and
  - (c) the filing date for the submission of an interest restriction return in relation to the period has passed (see paragraph 7(5)).
- (4) A relevant company may, by notice, require any other relevant company to provide it with information that it needs for the purpose of determining whether, or the extent to which, it is required to leave tax-interest expense amounts out of account, or bring them into account, under Part 3.
- (5) A notice under sub-paragraph (4) –
- (a) must be in writing, and
  - (b) must specify the information to be provided.
- (6) The duty to comply with a notice under sub-paragraph (4) is enforceable by the company that sends the notice.
- (7) In this paragraph “relevant company” means a company that was a UK group company at any time during the period of account.

#### *Non-compliance*

#### *Power of HMRC to make determinations*

- 24 (1) This paragraph applies where –
- (a) a reporting company has been appointed under this Part in relation to a period of account of a worldwide group (“the relevant period of account”),
  - (b) the filing date for the submission of an interest restriction return in relation to the period has passed (see paragraph 7(5)),
  - (c) either –
    - (i) no interest restriction return has been submitted under this Part in relation to the period, or
    - (ii) an interest restriction has been submitted under this Part in relation to the period, but it does not comply with the requirements of paragraph 14(2) (for example by omitting figures or including inaccurate figures), and
  - (d) an officer of Revenue and Customs considers that the group was subject to interest restrictions in the period.
- (2) An officer of Revenue and Customs may determine, to the best of the officer’s information and belief –
- (a) a relevant company’s pro-rata share of the total disallowed amount of the group for the relevant period of account, and
  - (b) in relation to each relevant accounting period of the company, the accounting period’s pro-rata share of the total disallowed amount.
- (3) Notice of a determination under this paragraph must be sent to the company, and to the reporting company, stating the date on which the determination is made.

- (4) No determination under this paragraph may be made after the end of the period of 3 years beginning with the time mentioned in sub-paragraph (1)(b).
- (5) For provision as to the effect of a determination under this paragraph, see paragraph 26(8) (disallowance of deductions: no return, or non-compliant return submitted).
- (6) In this paragraph “relevant company” means a company that was a UK group company at any time during the relevant period of account.

### PART 3

#### DISALLOWANCE AND REACTIVATION OF TAX-INTEREST EXPENSE AMOUNTS

##### *Disallowance of deductions: full interest restriction return submitted*

- 25 (1) This paragraph applies where –
  - (a) an interest restriction return is submitted under Part 2 in relation to a period of account of a worldwide group (“the relevant period of account”),
  - (b) the return complies with the requirements of paragraph 14(2) (requirements for full interest restriction return), and
  - (c) the return includes a statement that the group is subject to interest restrictions in the return period.
- (2) A company that is listed on the statement under paragraph 16 (statement of allocated interest restrictions) must, in any accounting period for which the statement specifies an allocated disallowance, leave out of account tax-interest expense amounts that, in total, equal that allocated disallowance.
- (3) A non-consenting company in relation to the return may elect that the statement under paragraph 16 is not to apply in relation to such relevant accounting period of the company as is specified in the election.
- (4) An election under sub-paragraph (3) is of no effect unless it is received by HMRC before –
  - (a) the filing date in relation to the interest restriction return (see paragraph 7(5)), or
  - (b) if later, the end of the period of 3 months beginning with the day on which the return was received by HMRC.
- (5) Where a company makes an election under sub-paragraph (3) –
  - (a) sub-paragraph (2) does not apply to the accounting period specified in the election,
  - (b) the company must, if paragraph 18 allocates to the accounting period a pro-rata share of the total disallowed amount that is not nil, leave out of account in that accounting period tax-interest expense amounts that, in total, equal that pro-rata share, and
  - (c) if the company has delivered a company tax return for the accounting period, it must amend the return accordingly.
- (6) An amendment under sub-paragraph (5)(c) must be made before the time limit in sub-paragraph (4).

- (7) See paragraph 27 for provision as to which tax-interest expense amounts are to be left out of account under sub-paragraph (2) or (5).

*Disallowance of deductions: no return, or non-compliant return, submitted*

- 26 (1) This paragraph applies where –
- (a) a worldwide group is subject to interest restrictions in a period of account of the group (“the relevant period of account”),
  - (b) the period of 12 months beginning with the end of the relevant period of account has expired, and
  - (c) condition A, B or C is met.
- (2) Condition A is that no reporting company of the group has been appointed in relation to the relevant period of account.
- (3) Condition B is that –
- (a) a reporting company of the group has been appointed in relation to the relevant period of account, and
  - (b) no interest restriction return has been submitted under Part 2 in relation to the period.
- (4) Condition C is that –
- (a) a reporting company of the group has been appointed in relation to the relevant period of account,
  - (b) an interest restriction return has been submitted under Part 2 in relation to the period, and
  - (c) the return does not comply with the requirements of paragraph 14(2) (requirements for full interest restriction return).
- (5) A relevant company must, in any accounting period to which paragraph 18 allocates a pro-rata share of the total disallowed amount that is not nil, leave out of account tax-interest expense amounts that, in total, equal that pro-rata share.
- (6) Where the company has delivered a company tax return for the accounting period in question it must amend the return accordingly.
- (7) An amendment under sub-paragraph (6) must be made before the end of the period of 15 months beginning with the end of the relevant period of account.
- (8) Where a notice of determination under paragraph 24 has been sent to the relevant company in respect of the relevant period of account –
- (a) the amount specified in the notice in relation to a relevant accounting period is treated, for the purposes of sub-paragraph (5), as the amount allocated to that accounting period under paragraph 18, and
  - (b) where the company has delivered a company tax return for the accounting period, it is treated as having amended the return accordingly.
- (9) See paragraph 27 for provision as to which tax-interest expense amounts are to be left out of account under sub-paragraph (5).
- (10) In this paragraph “relevant company” means a company that was a member of the worldwide group at any time during the period of account.

*Disallowance of deductions: identification of the tax-interest amounts to be left out of account*

- 27 (1) This paragraph applies where –
- (a) a company is required to leave tax-interest expense amounts out of account in an accounting period under paragraph 25(2) or (5) or paragraph 26(5), and
  - (b) the total of the tax-interest expense amounts that, apart from that provision, would be brought into account in the accounting period exceeds the total of the tax-interest expense amounts that are required by that provision to be left out of account in that period.
- (2) Tax-interest expense amounts must (subject to the following provisions of this paragraph) be left out of account in the following order.
- First*, leave out of account tax-interest expense amounts that meet condition A in paragraph 33 and would (if brought into account) be brought into account under Part 5 of CTA 2009.
- Second*, leave out of account tax-interest expense amounts that meet condition B in paragraph 33 and would (if brought into account) be brought into account under Part 5 of CTA 2009 as a result of section 574 of that Act.
- Third*, leave out of account tax-interest expense amounts that meet condition A in paragraph 33 and would (if brought into account) be brought into account under Part 3 of CTA 2009 as a result of section 297 of that Act.
- Fourth*, leave out of account tax-interest expense amounts that meet condition B in paragraph 33 and would (if brought into account) be brought into account under Part 3 of CTA 2009 as a result of section 573 of that Act.
- Fifth*, leave out of account tax-interest expense amounts that meet condition C in paragraph 33 (and do not also meet condition A or B in that paragraph).
- (3) The company may –
- (a) elect that sub-paragraph (2) is not to apply to the accounting period, or
  - (b) revoke an election previously made.
- (4) An election under sub-paragraph (3) must specify the particular tax-interest expense amounts that are to be left out of account.
- (5) An election or revocation under sub-paragraph (3) can only be made by being included in the company’s tax return (as originally made or by amendment).

*Disallowed tax-interest expense amounts carried forward*

- 28 (1) For the purposes of this Schedule a tax-interest expense amount of a company is “disallowed” in an accounting period if the company is required to leave it out of account in that accounting period under paragraph 25 or 26.
- (2) A tax-interest expense amount of a company that is disallowed in an accounting period is (subject to sub-paragraphs (3) to (6)) carried forward to subsequent accounting periods.
- (3) Where –
- (a) a tax-interest expense amount of a company would (apart from this Schedule) be brought into account in calculating the profits or losses of a trade carried on by the company in an accounting period,

- (b) the tax-interest expense amount is disallowed in that accounting period, and
  - (c) in a subsequent accounting period (“the later accounting period”) the company ceases to carry on the trade, or the scale of the activities in the trade becomes small or negligible,  
the tax-interest expense amount is not carried forward to the later accounting period or accounting periods after the later accounting period.
- (4) Where –
- (a) a tax-interest expense amount of a company would (apart from this Schedule) be brought into account in calculating the profits or losses of a trade carried on by the company in an accounting period,
  - (b) the tax-interest expense amount is disallowed in that accounting period, and
  - (c) in a subsequent accounting period (“the later accounting period”) the trade is uncommercial and non-statutory,  
the tax-interest expense amount is not carried forward to the later accounting period or accounting periods after the later accounting period.
- (5) For the purposes of sub-paragraph (4), a trade is “uncommercial and non-statutory” in an accounting period if, were the company to have made a loss in the trade in the period, relief for the loss under section 37 of CTA 2010 (relief for trade loss against total profits) would have been unavailable by virtue of section 44 of that Act (trade must be commercial or carried on for statutory functions).
- (6) Where a tax-interest expense amount –
- (a) is disallowed in an accounting period,
  - (b) is carried forward to a subsequent accounting period (“the later accounting period”), and
  - (c) is brought into account in the later accounting period in accordance with paragraph 29,  
it is not carried forward to accounting periods after the later accounting period.

#### *Reactivation of interest*

- 29 (1) This paragraph applies where –
- (a) an interest restriction return is submitted under Part 2 in relation to a period of account of a worldwide group (“the relevant period of account”),
  - (b) the return complies with the requirements of paragraph 14(2) (requirements for full interest restriction return), and
  - (c) the return contains a statement that the group is subject to interest reactivations in the return period.
- (2) A company that is listed on the statement under paragraph 19 (statement of allocated interest reactivations) must, in the specified accounting period, bring into account tax-interest expense amounts that –
- (a) are brought forward to the specified accounting period from an earlier accounting period, and
  - (b) in total, equal the allocated reactivation for the return period.

- (3) A tax-interest expense amount is brought into account in the specified accounting period under sub-paragraph (2) by being treated as a tax-interest expense amount of the specified accounting period (so that, for example, a tax-interest expense amount that is a relevant loan relationship debit falling within paragraph 34(2)(a)(ii) is brought into account in the specified period as a non-trading debit under Part 5 of CTA 2009).
- (4) See paragraph 30 for provision as to which tax-interest expense amounts are to be brought into account under sub-paragraph (2).
- (5) In this paragraph “the specified accounting period” means –
  - (a) the earliest relevant accounting period of the company, or
  - (b) where the company became a member of the relevant worldwide group during the relevant period of account, the earliest relevant accounting period of the company in which it was a member of the group.

*Reactivation of deductions: identification of the tax-interest amounts to be brought into account*

- 30 (1) This paragraph applies where –
- (a) a company is required to bring tax-interest expense amounts into account in an accounting period under paragraph 29, and
  - (b) the total of the tax-interest expense amounts that are brought forward to the accounting period from earlier accounting periods exceeds the total of the tax-interest expense amounts that are required by that provision to be brought into account in that accounting period.
- (2) Tax-interest expense amounts must (subject to the following provisions of this paragraph) be brought into account in the following order.
- First*, bring into account tax-interest expense amounts that meet condition A in paragraph 33 and are brought into account under Part 5 of CTA 2009.
- Second*, bring into account tax-interest expense amounts that meet condition B in paragraph 33 and are brought into account under Part 5 of CTA 2009 as a result of section 574 of that Act.
- Third*, bring into account tax-interest expense amounts that meet condition A in paragraph 33 and are brought into account under Part 3 of CTA 2009 as a result of section 297 of that Act.
- Fourth*, bring into account tax-interest expense amounts that meet condition B in paragraph 33 and are brought into account under Part 3 of CTA 2009 as a result of section 573 of that Act.
- Fifth*, bring into account tax-interest expense amounts that meet condition C in paragraph 33 (and do not also meet condition A or B in that paragraph).
- (3) The company may –
    - (a) elect that sub-paragraph (2) is not to apply to the accounting period, or
    - (b) revoke an election previously made.
  - (4) An election under sub-paragraph (3) must specify the particular tax-interest expense amounts that are to be brought into account.
  - (5) An election or revocation under sub-paragraph (3) can only be made by being included in the company’s tax return (as originally made or by amendment).

*Set-off of disallowances and reactivations in the same accounting period*

- 31 (1) This paragraph applies where, as a result of the operation of this Schedule in relation to different periods of account (whether of the same or a different worldwide group), a company would, apart from this paragraph—
- (a) be required to leave out of account one or more tax-interest expense amounts in an accounting period under paragraph 25(2) or (5) or 26(5), and
  - (b) be required to bring one or more tax-interest expense amounts into account in that accounting period under paragraph 29(2).
- (2) In this paragraph—
- (a) “the gross disallowed amount” means the amount, or total of the amounts, mentioned in sub-paragraph (1)(a);
  - (b) “the gross reactivated amount” means the amount, or total of the amounts, mentioned in sub-paragraph (1)(b).
- (3) Where the gross disallowed amount is equal to the gross reactivated amount, no tax-interest expense amounts are to be left out of account in the accounting period under paragraph 25(2) or (5) or 26(5) or brought into account in the accounting period under paragraph 29(2).
- (4) Where the gross disallowed amount is greater than the gross reactivated amount—
- (a) the requirement in paragraph 25(2) or (5) or 26(5) is to leave out of account tax-interest expense amounts that, in total, equal the gross disallowed amount less the gross reactivated amount, and
  - (b) no amount is to be brought into account in the accounting period under paragraph 29(2).
- (5) Where the gross reactivated amount is more than the gross disallowed amount—
- (a) no amount to be left out of account in the accounting period under paragraph 25(2) or 26(5), and
  - (b) the requirement in paragraph 29(2) is to bring into account the gross reactivated amount less the gross disallowed amount.

*Company tax returns*

- 32 (1) This paragraph applies where—
- (a) a company has delivered a company tax return for an accounting period, and
  - (b) as a result of the submission of an interest restriction return—
    - (i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or
    - (ii) any other information contained in the return is incorrect.
- (2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in sub-paragraph (1)(b)(i) or to correct the information mentioned in sub-paragraph (1)(b)(ii).
- (3) The Commissioners may by regulations make further provision about cases where this paragraph applies including, in particular, provision—
- (a) permitting or requiring the company to deliver an amended company tax return for the accounting period;

- (b) specifying amendments that may or must be made in the return;
- (c) specifying a time limit for the delivery of the return that is later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company).

#### PART 4

#### TAX-INTEREST AMOUNTS

##### *Tax-interest expense amounts and tax-interest income amounts: basic rules*

##### *The tax-interest expense amounts of a company*

- 33 (1) References in this Schedule to a “tax-interest expense amount” of a company for a period of account of a worldwide group are to any amount that –
- (a) is (or apart from this Schedule would be) brought into account for the purposes of corporation tax in a relevant accounting period of the company, and
  - (b) meets condition A, B or C.
- (2) Condition A is that the amount is a relevant loan relationship debit (see paragraph 34).
- (3) Condition B is that the amount is a relevant derivative contract debit (see paragraph 35).
- (4) Condition C is that the amount is in respect of the financing cost implicit in amounts payable under a relevant arrangement or transaction.
- (5) In sub-paragraph (4), “relevant arrangement or transaction” means –
- (a) a finance lease,
  - (b) debt factoring, or any similar transaction, or
  - (c) a service concession arrangement if and to the extent that the arrangement is accounted for as a financial liability.
- (6) Sub-paragraph (8) applies if an accounting period in which a tax-interest expense amount is (or apart from this Schedule would be) brought into account for the purposes of corporation tax contains one or more disregarded periods.
- (7) A “disregarded period” is any period falling within the accounting period –
- (a) which does not fall within the period of account of the worldwide group, or
  - (b) throughout which the company is not a member of the group.
- (8) Where this sub-paragraph applies, the tax-interest expense amount mentioned in sub-paragraph (6) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that sub-paragraph.
- (9) An amount may be reduced to nil under sub-paragraph (8).

##### *Relevant loan relationship debits*

- 34 (1) This paragraph applies for the purposes of paragraph 33.
- (2) An amount is a “relevant loan relationship debit” if –

- (a) it is a debit that is (or apart from this Schedule would be) brought into account for the purposes of corporation tax in respect of a loan relationship under –
    - (i) Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) Part 5 of that Act (other loan relationships), and
  - (b) is not an excluded debit.
- (3) A debit is “excluded” for the purposes of sub-paragraph (2)(b) if –
- (a) it is in respect of an exchange loss (within the meaning of Parts 5 and 6 of CTA 2009), or
  - (b) it is in respect of an impairment loss.

*Relevant derivative contract debits*

- 35 (1) This paragraph applies for the purposes of paragraph 33.
- (2) An amount is a “relevant derivative contract debit” if –
- (a) it is a debit that is (or apart from this Schedule would be) brought into account for the purposes of corporation tax in respect of a derivative contract under –
    - (i) Part 3 of CTA 2009 as a result of section 573 of that Act (derivative contracts for purposes of trade), or
    - (ii) Part 5 of that Act as a result of section 574 of that Act (other derivative contracts),
  - (b) it is not an excluded debit, and
  - (c) the condition in sub-paragraph (4) is met.
- (3) A debit is “excluded” for the purposes of sub-paragraph (2)(b) if –
- (a) it is in respect of an exchange loss (within the meaning of Part 7 of CTA 2009), or
  - (b) it is in respect of an impairment loss.
- (4) The condition referred to in sub-paragraph (2)(c) is that the underlying subject matter of the derivative contract consists only of one or more of the following –
- (a) interest rates;
  - (b) any index determined by reference to income or retail prices;
  - (c) currency;
  - (d) an asset or liability representing a loan relationship;
  - (e) any other underlying subject matter which is –
    - (i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (5) For the purposes of this paragraph, whether part of the underlying subject matter of the derivative contract is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.
- (6) The following expressions have the same meaning in this paragraph as in Part 7 of CTA 2009 –
- “derivative contract”;

“underlying subject matter”.

*The tax-interest income amounts of a company*

- 36 (1) References in this Schedule to a “tax-interest income amount” of a company for a period of account of a worldwide group are to any amount that –
- (a) is (or apart from this Schedule would be) brought into account for the purposes of corporation tax in a relevant accounting period of the company, and
  - (b) meets condition A, B, C or D.
- (2) Condition A is that the amount is a relevant loan relationship credit (see paragraph 37).
- (3) Condition B is that the amount is a relevant derivative contract credit (see paragraph 38).
- (4) Condition C is that the amount is in respect of the financing income implicit in amounts receivable under a relevant arrangement or transaction.
- (5) In sub-paragraph (4), “relevant arrangement or transaction” means –
- (a) a finance lease,
  - (b) debt factoring, or any similar transaction, or
  - (c) a service concession arrangement if and to the extent that the arrangement is accounted for as a financial asset.
- (6) Condition D is that the amount is in respect of income that –
- (a) is receivable from another company, and
  - (b) is in consideration of the provision of a guarantee of any borrowing of that other company.
- (7) Sub-paragraph (9) applies if an accounting period in which a tax-interest income amount is (or apart from this Schedule would be) brought into account for the purposes of corporation tax contains one or more disregarded periods.
- (8) A “disregarded period” is any period falling within the accounting period –
- (a) which does not fall within the period of account of the worldwide group, or
  - (b) throughout which the company is not a member of the group.
- (9) Where this sub-paragraph applies, the tax-interest income amount mentioned in sub-paragraph (7) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that sub-paragraph.
- (10) An amount may be reduced to nil under sub-paragraph (9).

*Relevant loan relationship credits*

- 37 (1) This paragraph applies for the purposes of paragraph 36.
- (2) An amount is a “relevant loan relationship credit” if –
- (a) it is a credit that is (or apart from this Schedule would be) brought into account for the purposes of corporation tax in respect of a loan relationship under –

- (i) Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) Part 5 of that Act (other loan relationships), and
  - (b) it is not an excluded credit.
- (3) A credit is “excluded” for the purposes of sub-paragraph (2)(b) if –
- (a) it is in respect of an exchange gain (within the meaning of Parts 5 and 6 of CTA 2009), or
  - (b) it is in respect of the reversal of an impairment loss.

*Relevant derivative contract credits*

- 38 (1) This paragraph applies for the purposes of paragraph 36.
- (2) An amount is a “relevant derivative contract credit” if –
- (a) it is a credit that is (or apart from this Schedule would be) brought into account for the purposes of corporation tax in respect of a derivative contract under –
    - (i) Part 3 of CTA 2009 as a result of section 573 of that Act (derivative contracts for purposes of trade), or
    - (ii) Part 5 of that Act as a result of section 574 of that Act (other derivative contracts),
  - (b) is not an excluded credit, and
  - (c) the condition in sub-paragraph (4) is met.
- (3) A credit is “excluded” for the purposes of sub-paragraph (2)(b) if –
- (a) it is in respect of an exchange gain (within the meaning of Part 7 of CTA 2009), or
  - (b) it is in respect of the reversal of an impairment loss.
- (4) The condition referred to in sub-paragraph (2)(c) is that the underlying subject matter of the derivative contract consists only of one or more of the following –
- (a) interest rates;
  - (b) any index determined by reference to income or retail prices;
  - (c) currency;
  - (d) an asset or liability representing a loan relationship;
  - (e) any other underlying subject matter which is –
    - (i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (5) For the purposes of this paragraph, whether part of the underlying subject matter of the derivative contract is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.
- (6) The following expressions have the same meaning in this paragraph as in Part 7 of CTA 2009 –
- “derivative contract”;
  - “underlying subject matter”.

*Tax-interest expense amounts and tax-interest income amounts: special cases*

*Charities*

- 39 (1) This paragraph applies where –
- (a) apart from this paragraph, an amount (“the relevant amount”) would be a tax-interest expense amount of a company as a result of meeting condition A in paragraph 33 (loan relationship debits),
  - (b) the creditor is a charity,
  - (c) the company is wholly owned by the charity, and
  - (d) the charitable gift condition is met at all times during the accounting period in which the relevant amount is (or apart from this Schedule would be) brought into account.
- (2) The relevant amount is treated as not being a tax-interest expense amount of the company.
- (3) For the purposes of this paragraph the “charitable gift condition” is met at any time at which, were the company to make a donation to the charity at that time, it would be a qualifying charitable donation (see section 190 of CTA 2010).
- (4) In this paragraph “the creditor” means the person who is party to the loan relationship in question as creditor.
- (5) The following provisions apply for the purposes of this paragraph –
- (a) section 200 of CTA 2010 (company wholly owned by a charity);
  - (b) section 202 of that Act (meaning of “charity”).

*Double taxation relief*

- 40 (1) This paragraph applies where –
- (a) apart from this paragraph, an amount (“the relevant amount”) would be a tax-interest income amount of a company (“the company”), and
  - (b) the amount of corporation tax chargeable in respect of the relevant amount is reduced under section 18(2) of TIOPA 2010 (entitlement to credit for foreign tax reduces UK tax by amount of the credit).
- (2) The relevant amount is not a tax-interest income amount to the extent that it consists of notional untaxed income.
- (3) For this purpose, the amount of the relevant amount that consists of “notional untaxed income” is –

$$\frac{A}{B}$$

where –

- A is the amount of the reduction mentioned in sub-paragraph (1)(b);
- B is the rate of corporation tax applicable to the relevant amount.

*Net tax-interest expense*

*The “net tax-interest expense” of a company*

- 41 (1) For the purposes of this Schedule the “net tax-interest expense” of a company for a period of account of a worldwide group is –

$$A - B$$

where –

A is the total of the company’s tax-interest expense amounts (if any) for the period of account;

B is the total of the company’s tax-interest income amounts (if any) for the period.

- (2) For the purposes of this Schedule the net tax-interest expense of a company for a period of account of a worldwide group is “referable” to an accounting period of the company to the extent that it comprises tax-interest expense amounts or tax-interest income amounts that are (or apart from this Schedule would be) brought into account in the accounting period.

*The worldwide group’s aggregate net tax-interest expense*

- 42 (1) For the purposes of this Schedule “the aggregate net tax-interest expense” of a worldwide group for a period of account of the group is (subject to sub-paragraph (2)) the sum of each relevant company’s net tax-interest expense for the period.
- (2) Where the amount determined under sub-paragraph (1) is negative, “the aggregate net tax-interest expense” of the group for the period is nil.
- (3) In this paragraph “relevant company” means a company that was a member of the group at any time during the period of account of the group.

*Interpretation*

*Meaning of “impairment loss”*

- 43 (1) In this Schedule “impairment loss” means a loss in respect of the impairment of a financial asset.
- (2) A reference to a debit in respect of an impairment loss does not include a debit that is (or apart from this Schedule would be) brought into account in an accounting period in which fair value accounting is used.

PART 5

INTEREST CAPACITY

*The interest capacity of a worldwide group for a period of account*

- 44 (1) For the purposes of this Schedule the “interest capacity” of a worldwide group for a period of account of the group (“the current period”) is (subject to sub-paragraph (2)) –

$$A + B$$

where –

- A is the interest allowance of the group for the current period (see Part 6);
  - B is the aggregate of the interest allowances of the group for periods before the current period so far as they are available in the current period (see paragraph 45).
- (2) Where the amount determined under sub-paragraph (1) is less than the de minimis amount for the current period, the interest capacity of the worldwide group for the period is the de minimis amount.
- (3) For this purpose “the de minimis amount” for a period of account is –
- (a) £2 million, or
  - (b) where the period is more than or less than a year, the amount mentioned in paragraph (a) proportionately increased or reduced.

*Amount of interest allowance for a period that is “available” in a later period*

- 45 (1) This paragraph applies for the purposes of this Part.
- (2) The amount of an interest allowance of a worldwide group for a period of account (“the originating period”) that is “available” in a later period of account of the group (“the receiving period”) is (subject to sub-paragraph (5)) the lower of amounts A and B.
- (3) Amount A is –
- (a) the amount of the interest allowance for the originating period, less
  - (b) the total of the amount or amounts (if any) of that interest allowance that were used in the originating period, or in any subsequent period of account of the group before the receiving period (see paragraph 46).
- (4) Amount B is the amount (if any) of the interest allowance for the originating period that is unexpired in the receiving period (see paragraph 47).
- (5) The amount of the interest allowance for the originating period that is “available” in the receiving period is nil if –
- (a) an abbreviated return election is made in relation to the originating period, the receiving period or any intervening period of account of the group, or
  - (b) an interest restriction return is not submitted under Part 2 in relation to any such period.

*When interest allowance is “used”*

- 46 (1) This paragraph applies for the purposes of this Part.
- (2) The amount of the interest allowance of a worldwide group for a period of account of the group (“the originating period”) that is “used” in the originating period is the lower of –
- (a) the interest allowance for the originating period, and
  - (b) the sum of –
    - (i) the aggregate net tax-interest expense of the group for the originating period;

- (ii) the total amount of tax-interest expense amounts required to be brought into account in the originating period under paragraph 29 (reactivation of interest) by members of the group.
- (3) The amount of the interest allowance for the originating period that is “used” in a later period of account of the group (“the receiving period”) is the lower of –
- (a) the interest allowance so far as it is available in the receiving period (see paragraph 45), and
  - (b) the relevant part of the aggregate net tax-interest expense of the group for the receiving period (see sub-paragraph (4)).
- (4) In sub-paragraph (3)(b) “the relevant part of the aggregate net tax-interest expense of the group for the receiving period” is (subject to sub-paragraph (5)) –

$$A - B - C$$

where –

A is the aggregate net tax-interest expense of the group for the receiving period;

B is the interest allowance of the group for the receiving period;

C is the amount of the interest allowance of the group for any period before the originating period that is used in the receiving period.

- (5) Where the amount determined under sub-paragraph (4) is negative, “the relevant part of the aggregate net tax-interest expense of the group for the receiving period” is nil.

*Amount of interest allowance for a period of account that is “unexpired” in later period*

- 47 (1) This paragraph contains provision for determining for the purposes of this Part the extent to which an interest allowance of a worldwide group for a period of account (“the originating period”) is “unexpired” in a later period of account of the group (“the receiving period”).
- (2) If the receiving period –
- (a) begins five years or less after the originating period begins, and
  - (b) ends five years or less after the originating period ends,
- all of the interest allowance for the originating period is unexpired in the receiving period.
- (3) If the receiving period begins more than five years after the originating period ends, none of the interest allowance for the originating period is unexpired in the receiving period.
- (4) Sub-paragraph (5) applies if the receiving period –
- (a) begins more than five years after the originating period begins, and
  - (b) ends five years or less after the originating period ends.
- (5) The amount of the interest allowance for the originating period that is unexpired in the receiving period is –

$$(A - B) \times \frac{X}{Y}$$

where –

A is the interest allowance for the originating period;

B is –

- (a) the aggregate net tax-interest expense of the group for the originating period, or
- (b) if lower, the interest allowance for the originating period;

X is the number of days in the period –

- (a) beginning with the day on which the receiving period begins, and
- (b) ending with the day five years after the day on which the originating period ends;

Y is the number of days in the originating period.

(6) Sub-paragraph (7) applies if the receiving period –

- (a) begins five years or less after the originating period begins, and
- (b) ends more than five years after the originating period ends.

(7) The amount of the interest allowance for the originating period that is unexpired in the receiving period is –

$$(A - B) \times \frac{X}{Z}$$

where –

A is the aggregate net tax-interest expense of the group for the receiving period;

B is –

- (a) the interest allowance of the group for the receiving period, or
- (b) if lower, aggregate net tax-interest expense of the group for the receiving period;

X has the same meaning as in sub-paragraph (5);

Z is the number of days in the receiving period.

(8) Sub-paragraph (9) applies if –

- (a) the receiving period –
  - (i) begins more than five years after the originating period begins, and
  - (ii) ends more than five years after the originating period ends, and
- (b) sub-paragraph (3) does not apply.

(9) The amount of the interest allowance for the originating period that is unexpired in the receiving period is the lower of the amounts determined under sub-paragraphs (5) and (7).

PART 6

INTEREST ALLOWANCE

*Meaning of “interest allowance”*

- 48 For the purposes of this Schedule the “interest allowance” of a worldwide group for a period of account of the group is –
- (a) where no group ratio election is in force in relation to the period, the amount calculated using the fixed ratio method (see paragraph 49);
  - (b) where such an election is in force in relation to the period, the amount calculated using the group ratio method (see paragraph 50).

*Interest allowance calculated using fixed ratio method*

- 49 (1) This paragraph applies for the purposes of this Schedule.
- (2) The interest allowance for a period of account of a worldwide group calculated using “the fixed ratio method” is the lower of the following amounts –
- (a) 30% of the aggregate tax-EBITDA of the group for the period;
  - (b) the adjusted net group-interest expense of the group for the period.
- (3) See –
- paragraph 51 for the meaning of “aggregate tax-EBITDA”;
  - paragraph 59 for the meaning of “adjusted net group-interest expense”.

*Interest allowance calculated using group ratio method*

- 50 (1) This paragraph applies for the purposes of this Schedule.
- (2) The interest allowance for a period of account of a worldwide group calculated using “the group ratio method” is the lower of the following amounts –
- (a) the group ratio percentage of the aggregate tax-EBITDA of the group for the period;
  - (b) the qualifying net group-interest expense of the group for the period.
- (3) “The group ratio percentage” means (subject to sub-paragraph (4)) –

$$\frac{A}{B} \times 100$$

where

A is the qualifying net group-interest expense of the group for the period;

B is the accounts-EBITDA of the group for the period.

- (4) “The group ratio percentage” means 100% where –
- (a) the percentage determined under sub-paragraph (3) is negative or higher than 100%, or
  - (b) B in sub-paragraph (3) is zero.
- (5) See –
- paragraph 51 for the meaning of “aggregate tax-EBITDA”;
  - paragraph Y for the meaning of “group-EBITDA”;

paragraph Z for the meaning of “qualifying net group-interest expense”.

## PART 7

### DEFINITION OF CONCEPTS USED IN PART 6

#### *Tax-EBITDA*

##### *The aggregate tax-EBITDA of a worldwide group*

- 51 For the purposes of this Schedule “the aggregate tax-EBITDA” of a worldwide group for a period of account of the group is—
- (a) the total of the tax-EBITDAs for the period of each company that was a member of the group at any time during the period, or
  - (b) where the amount specified in paragraph (a) is negative, nil.

##### *The tax-EBITDA of a company*

- 52 (1) For the purposes of this Schedule the “tax-EBITDA” of a company for a period of account of the worldwide group is—
- (a) where the company has only one relevant accounting period, the company’s adjusted corporation tax earnings for that accounting period;
  - (b) where the company has more than one relevant accounting period, the total of the company’s adjusted corporation tax earnings for each of those accounting periods.
- (2) The company’s “adjusted corporation tax earnings” for an accounting period is the total of the amounts that meet condition A or B.
- (3) Condition A is that the amount—
- (a) is brought into account by the company in determining its taxable total profits of the period (within the meaning given by section 4(2) of CTA 2010), and
  - (b) is not an excluded amount for the purposes of this condition (see paragraph 53).
- (4) Condition B is that the amount—
- (a) is not brought into account as mentioned in sub-paragraph (3)(a), but would have been so brought into account if the company had made profits, or more profits, of any description in the period, and
  - (b) is not an excluded amount for the purposes of this condition (see paragraph 53).
- (5) The company’s adjusted corporation tax earnings for an accounting period may accordingly (in consequence of condition B) be a negative amount.
- (6) Sub-paragraph (8) applies if an amount—
- (a) is brought into account as mentioned in sub-paragraph (3)(a), or
  - (b) is not brought into account as mentioned in sub-paragraph (3)(b), in an accounting period which contains one or more disregarded periods.
- (7) A “disregarded period” is any period falling within the accounting period—

- (a) which does not fall within the period of account of the worldwide group, or
  - (b) throughout which the company is not a member of the group.
- (8) Where this sub-paragraph applies, the amount mentioned in sub-paragraph (6) is reduced, for the purposes of sub-paragraph (2), by such amount (if any) as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in sub-paragraph (6).
- (9) An amount may be reduced to nil under sub-paragraph (8).

*Amounts not brought into account in determining a company’s tax-EBITDA*

- 53 (1) An amount is an excluded amount for the purposes of conditions A and B in paragraph 52 if it is any of the following –
- (a) a tax-interest expense amount or a tax-interest income amount;
  - (b) an allowance or charge under CAA 2001;
  - (c) an excluded relevant intangibles debit or an excluded relevant intangibles credit (see paragraph 54);
  - (d) a loss that –
    - (i) is made by the company in an accounting period other than that mentioned in paragraph 52(2), and
    - (ii) is not an allowable loss for the purposes of TCGA 1992;
  - (e) a deficit from the company’s loan relationships for an accounting period other than that mentioned in paragraph 52(2);
  - (f) expenses of management of the company that are referable to an accounting period other than that mentioned in paragraph 52(2);
  - (g) a deduction under section 137 of CTA 2010 (group relief) [or section 188M of that Act (group relief for carried-forward losses)] if and to the extent that it constitutes a loss of the worldwide group.
- (2) For the purposes of sub-paragraph (1)(g) the deduction constitutes a “loss of the worldwide group” if and to the extent that it comprises surrenderable amounts that are referable to times at which the surrendering company was a member of the worldwide group.
- (3) An amount is an excluded amount for the purposes of condition B in paragraph 52 if it is an allowable loss for the purposes of TCGA 1992.

*Excluded relevant intangibles debits and excluded relevant intangibles credits*

- 54 (1) For the purposes of paragraph 53 (and this paragraph) –
- (a) a debit is a “relevant intangibles debit” if it is brought into account under a provision of Part 8 of CTA 2009 (intangible fixed assets) that is listed in column 1 of the following table;
  - (b) a relevant intangibles debit is “excluded” to the extent indicated in the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>Excluded debits</i>
section 729	excluded in full
section 731	excluded in full

<i>Provision</i>	<i>Excluded debits</i>
section 732	excluded if and to the extent that its amount is determined by reference to an excluded intangibles credit
section 735	excluded in full
section 736	excluded in full
section 872	excluded in full
section 874	excluded in full

(2) For the purposes of paragraph 53 (and this paragraph) –

- (a) a credit is a “relevant intangibles credit” if it is brought into account under a provision of Part 8 of CTA 2009 (intangible fixed assets) that is listed in column 1 of the following table;
- (b) a relevant intangibles credit is “excluded” to the extent indicated in the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>Excluded credits</i>
section 723	excluded if and to the extent that its amount is determined by reference to excluded intangible debits and excluded intangible credits
section 725	excluded if and to the extent that its amount is determined by reference to an excluded intangibles debit
section 735	excluded if and to the extent that the cost of the asset in question exceeds its tax written-down value
section 872	excluded in full
section 874	excluded in full

(3) In the table in sub-paragraph (2) –

- (a) “tax written-down value” has the same meaning as in Part 8 of CTA 2009 (see Chapter 5 of that Part);
- (b) “the cost of the asset” has the same meaning as in section 736 of that Act.

#### *Double taxation relief*

55 (1) This paragraph applies where –

- (a) apart from this paragraph, an amount of income (“the relevant amount”) would meet condition A or B in relation to a relevant accounting period of a company (“the company”), and
- (b) the amount of corporation tax chargeable in respect of the relevant amount is reduced under section 18(2) of TIOPA 2010 (entitlement to credit for foreign tax reduces UK tax by amount of the credit).

(2) The relevant amount is treated, for the purposes of paragraph 52(2) (meaning of “adjusted corporation tax earnings”) as not meeting the

condition mentioned in sub-paragraph (1)(a) to the extent that it consists of notional untaxed income.

- (3) For this purpose, the amount of the relevant amount that consists of “notional untaxed income” is –

$$\frac{A}{B}$$

where –

- A is the amount of the reduction mentioned in sub-paragraph (1)(b);  
B is the rate of corporation tax applicable to the relevant amount.

#### *Group-interest*

#### *The net group-interest expense of a worldwide group*

- 56 (1) References in this Schedule to “the net group-interest expense” of a worldwide group for a period of account of the group are to –

$$A - B$$

where –

- A is the sum of the amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, in respect of a relevant interest expense matter (see paragraph 57);  
B is the sum of the amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, in respect of a relevant interest income matter (see paragraph 57).
- (2) References in this paragraph to an amount recognised in a group’s financial statements for a period include references to an amount that –
- was previously recognised as an item of other comprehensive income, and
  - is transferred to become an item of profit or loss in determining the company’s profit or loss for the period.
- (3) In this paragraph the following expressions have the meaning they have for accounting purposes –
- “item of profit or loss”;
  - “item of other comprehensive income”.

#### *“Relevant expense matter” and “relevant income matter”*

- 57 (1) For the purposes of this Part “relevant expense matter” means –
- interest payable under a loan relationship;
  - expenses ancillary to a loan relationship;
  - losses arising from a loan relationship or a related transaction, other than –
    - exchange losses (within the meaning of Parts 5 and 6 of CTA 2009), and
    - impairment losses;
  - dividends payable in respect of preference shares accounted for as a financial liability;

- 
- (e) losses arising from a relevant derivative contract or a related transaction, other than—
    - (i) exchanges losses (within the meaning of Part 7 of CTA 2009), and
    - (ii) impairment losses;
  - (f) an exchange loss;
  - (g) expenses ancillary to a relevant derivative contract or related transaction;
  - (h) financing charges implicit in payments made under a finance lease;
  - (i) financing charges relating to debt factoring;
  - (j) financing charges implicit in payments made under a service concession arrangement if and to the extent that it is accounted for as a financial liability;
  - (k) interest payable in respect of a relevant non-lending relationship;
  - (l) alternative finance return payable under alternative finance arrangements;
  - (m) manufactured interest payable;
  - (n) financing charges in respect of the advance under a debtor repo or debtor quasi-repo;
  - (o) financing charges so far as they are made up of amounts which—
    - (i) are treated as interest payable under a loan relationship under a relevant provision of Chapter 2 of Part 16 of CTA 2010 (finance arrangements), or
    - (ii) would be so treated if the company in question were within the charge to corporation tax.
- (2) For the purposes of this Part “relevant income matter” means—
- (a) interest receivable under a loan relationship;
  - (b) profits arising from a loan relationship or a related transaction, other than—
    - (i) exchange gains (within the meaning of Parts 5 and 6 of CTA 2009), and
    - (ii) the reversal of impairment losses;
  - (c) dividends receivable in respect of preference shares accounted for as a financial asset;
  - (d) gains arising from a relevant derivative contract or a related transaction, other than
    - (i) exchanges gains (within the meaning of Part 7 of CTA 2009), and
    - (ii) the reversal of impairment losses;
  - (e) an exchange gain (within the meaning of Part 7 of CTA 2009);
  - (f) financing income implicit in amounts received under a finance lease;
  - (g) financing income relating to debt factoring;
  - (h) financing income implicit in amounts received under a service concession arrangement if and to the extent that it is accounted for as a financial liability;
  - (i) interest receivable in respect of a relevant non-lending relationship;
  - (j) alternative finance return receivable under alternative finance arrangements;
  - (k) manufactured interest receivable;

- (l) financing income in respect of the advance under a creditor repo or creditor quasi-repo;
- (m) financing income so far as it is made up of amounts which –
  - (i) are treated as interest receivable under a loan relationship under a relevant provision of Chapter 2 of Part 16 of CTA 2010 (finance arrangements), or
  - (ii) would be so treated if the company in question were within the charge to corporation tax.

*Paragraph 57: interpretation*

- 58 (1) For the purposes of sub-paragraph (1)(b) of paragraph 57, expenses are “ancillary” to a loan relationship if and only if they are incurred directly –
- (a) in bringing, or attempting to bring, the relationship into existence,
  - (b) in altering, or attempting to alter, the terms of the loan relationship, or
  - (c) in making payments under the loan relationship.
- (2) For the purposes of sub-paragraphs (1)(c) and (2)(d) of paragraph 57 a derivative contract is “relevant” if its underlying subject matter consists only of one or more of the following –
- (a) interest rates;
  - (b) currency;
  - (c) an asset or liability representing a loan relationship;
  - (d) any other underlying subject matter which is –
    - (i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (c), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (3) Whether part of the underlying subject matter of a derivative contract is subordinate or of small value is to be determined for the purposes of sub-paragraph (2)(d) by reference to the time when the company enters into or acquires the contract.
- (4) For the purposes of sub-paragraph (1)(g) of paragraph 57 expenses are “ancillary” to a relevant derivative contract or related transaction if and only if they are incurred directly –
- (a) in bringing the derivative contract into existence,
  - (b) in entering into or giving effect to the related transaction,
  - (c) in making payments under the derivative contract or as a result of the related transaction, or
  - (d) in taking steps to secure the receipt of payments under the derivative contract or in accordance with the related transaction.
- (5) For the purposes of sub-paragraphs (1)(o) and (2)(m) of paragraph 57, the following provisions of Chapter 2 of Part 16 of CTA 2010 are “relevant” –
- (a) section 761(3) (type 1 finance arrangements: borrower a company);
  - (b) section 762(3) (type 1 finance arrangements: borrower a partnership);
  - (c) section 766(3) (type 2 finance arrangements);
  - (d) section 769(3) (type 3 finance arrangements).
- (6) In paragraph 57 and this paragraph –

- “alternative finance arrangements” has the same meaning as in Parts 5 and 6 of CTA 2009 (see section 501(2) of that Act);
- “alternative finance return” has the same meaning as in Part 6 of CTA 2009 (see sections 511 to 513 of that Act);
- “creditor quasi-repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 544 of that Act);
- “creditor repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 543 of that Act);
- “debtor quasi-repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 549 of that Act);
- “debtor repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 548 of that Act);
- “derivative contract” has the same meaning as in Part 7 of CTA 2009 (see section 576 of that Act);
- “exchange gain” –
- (a) in sub-paragraph (2)(b), has the same meaning as in Parts 5 and 6 of CTA 2009 (see section 475 of that Act);
  - (b) in sub-paragraph (2)(d), has the same meaning as in Part 7 of CTA 2009 (see section 705 of that Act);
- “exchange loss” –
- (a) in sub-paragraph (1)(c), has the same meaning as in Parts 5 and 6 of CTA 2009 (see section 475 of that Act);
  - (b) in sub-paragraph (1)(e), has the same meaning as in Part 7 of CTA 2009 (see section 705 of that Act);
- “manufactured interest” has the same meaning as in Chapter 9 of Part 6 of CTA 2009 (see section 539(5) of that Act);
- “related transaction” –
- (a) in sub-paragraph (1)(c), has the same meaning as in Part 5 of CTA 2009 (see section 304 of that Act);
  - (b) in sub-paragraph (1)(e), has the same meaning as in Part 7 of CTA 2009 (see section 596 of that Act);
- “relevant non-lending relationship” has the same meaning as in Chapter 2 of Part 6 of CTA 2009 (see sections 479 and 480 of that Act);
- “underlying subject matter” has the same meaning as in Part 7 of CTA 2009 (see section 583 of that Act).

*The adjusted net group-interest expense of a worldwide group*

- 59 (1) For the purposes of this Schedule “the adjusted net group-interest expense” of a worldwide group for a period of account of the group is (subject to sub-paragraph (2)) –

$$A + B - C$$

where

- A is the net group-interest expense of the group for the period;
- B is the sum of any upward adjustments (see sub-paragraph (3));
- C is the sum of any downward adjustments (see sub-paragraph (4)).

- (2) Where the amount determined under sub-paragraph (1) is negative, “the adjusted net group-interest expense” of the group for the period is nil.

- (3) The following are “upward adjustments” for the purposes of sub-paragraph (1)–
- (a) any amount that, in the financial statements of the group for the period, is brought into account in determining the carrying value of an asset or liability, so far as it –
    - (i) is brought into account for the purposes of corporation tax by a member of the group as a debit under section 320 or 604 of CTA 2009 (credits and debits treated as relating to capital expenditure), or
    - (ii) would be so brought into account if the member were within the charge to corporation tax;
  - (b) any amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, in respect of a relevant income matter, so far as it –
    - (i) is not brought into account for the purposes of corporation tax by virtue of section 322(2) or 323A of CTA 2009 (cases where credits not required to be brought into account), or
    - (ii) would not be so brought into account by virtue of either of those provisions if the member were within the charge to corporation tax.
- (4) The following are “downward adjustments” for the purposes of sub-paragraph (1)–
- (a) any amount that, in the financial statements of the group for the period, is brought into account in determining the carrying value of an asset or liability, so far as it –
    - (i) is brought into account for the purposes of corporation tax by a member of the group as a credit under section 320 or 604 of CTA 2009 (credits and debits treated as relating to capital expenditure), or
    - (ii) would be so brought into account if the member were within the charge to corporation tax;
  - (b) any amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, in respect of a relevant expense matter, so far as it –
    - (i) is not brought into account for the purposes of corporation tax by virtue of section 322(2) or 323A of CTA 2009 (cases where credits not required to be brought into account), or
    - (ii) would not be so brought into account by virtue of either of those provisions if the member were within the charge to corporation tax;
  - (c) any amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, in respect of a relevant interest expense matter, so far as –
    - (i) the amount represents a dividend payable in respect of preference shares, and
    - (ii) those shares are recognised as a liability in the financial statements of the group for the period.

*The qualifying net group-interest expense of a worldwide group*

- 60 (1) References in this Schedule to “the qualifying net group-interest expense” of a worldwide group for a period of account of the group are to...

## PART 8

## INTERPRETATION, ETC

*Meaning of “a worldwide group”, “ultimate parent” etc*

- 61 (1) In this Schedule “a worldwide group” means—
- (a) any entity which—
    - (i) is a relevant entity (see paragraph 62), and
    - (ii) meets the condition in sub-paragraph (2), and
  - (b) each consolidated subsidiary (if any) of the entity mentioned in paragraph (a).
- (2) The condition is that the entity—
- (a) is a member of an IAS group and is not a consolidated subsidiary of a relevant entity, or
  - (b) is not a member of an IAS group.
- (3) In this Schedule—
- (a) references to “a member” of a worldwide group are to an entity mentioned in sub-paragraph (1)(a) or (b);
  - (b) references to “the ultimate parent” of a worldwide group are to the entity mentioned in sub-paragraph (1)(a);
  - (c) references to “a single-company worldwide group” are to a worldwide group whose only member is its ultimate parent;
  - (d) references to “a multi-company worldwide group” are to a worldwide group with two or more members.
- (4) In this paragraph “IAS group” means a group within the meaning given by international accounting standards.

*Interpretation of paragraph 61: “relevant entity”*

- 62 (1) In paragraph 61 “relevant entity” means (subject to sub-paragraph (7)) an entity in relation to which condition A, B or C is met.
- (2) Condition A is that the entity is a body corporate other than—
- (a) a limited liability partnership in relation to which section 1273(1) of CTA 2009 (limited liability partnerships) applies, or
  - (b) an entity formed under the law of a territory outside the United Kingdom which would be a partnership if formed under the law of any part of the United Kingdom.
- (3) Condition B is that the amount of profits to which each person who has an interest in the entity is entitled depends upon a decision that—
- (a) is taken by the entity or members of the entity, and
  - (b) is taken after the period in which the profits arise.
- (4) Condition C is that—
- (a) shares or other interests in the entity are listed on a recognised stock exchange, and
  - (b) the shares or other interests in the entity are sufficiently widely held.
- (5) For the purposes of sub-paragraph (3) a person “has in interest in the entity” if the person holds—

- (a) shares in the entity, or
  - (b) interests corresponding to shares,  
which entitle the person to a share of the profits of the entity.
- (6) For the purposes of sub-paragraph (4) shares or other interests in an entity are “sufficiently widely held” if no participator in the entity holds more than 10% by value of all the shares or other interests in the entity.
- (7) The following are not relevant entities –
- (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department, or
  - (e) a foreign sovereign power.
- (8) Section 454 of CTA 2010 (meaning of participator) applies for the purposes of this paragraph.

*Meaning of “non-consolidated subsidiary” and “consolidated subsidiary”*

- 63 (1) For the purposes of this Part an entity (“X”) is a “non-consolidated subsidiary” of another entity (“Y”) where –
- (a) X is a subsidiary of Y, and
  - (b) Y is required by international accounting standards to measure its investment in X at fair value through profit or loss.
- (2) For the purposes of this Part an entity (“X”) is a “consolidated subsidiary” of another entity (“Y”) where X is a subsidiary, but not a non-consolidated subsidiary, of Y.
- (3) In this paragraph “subsidiary” has the meaning given by international accounting standards.
- (4) For the purposes of this paragraph, assume that all entities are subject to international accounting standards.

*Continuity of identity of a worldwide group through time*

- 64 (1) This paragraph applies for the purpose of determining whether a group of entities that constitutes a worldwide group at any time (“Time 2”) is the same worldwide group as a group of entities that constitutes a worldwide group at an earlier time (“Time 1”).
- (2) The group at Time 2 is the same worldwide group as the group at Time 1 if and only if the entity that is the ultimate parent of the group at Time 2 –
- (a) was the ultimate parent of the group at Time 1, and
  - (b) was the ultimate parent of a worldwide group at all times between Time 1 and Time 2.

*Meaning of “relevant public body”*

- 65 (1) In this Schedule “relevant public body” means –
- (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,

- (d) a Northern Ireland department,
  - (e) a foreign sovereign power,
  - (f) a designated educational establishment (within the meaning given by section 106 of CTA 2009),
  - (g) a health service body (within the meaning given by section 986 of CTA 2010),
  - (h) a local authority, or
  - (i) any other body that acts under any enactment for public purposes and not for its own profit.
- (2) In this paragraph “enactment” includes –
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (3) The Commissioners may by regulations amend this paragraph so as to alter the meaning of “relevant public body”.
- (4) The provision that may be made under sub-paragraph (3) does not include provision altering the meaning of “relevant public body” so that it includes a person who has no functions of a public nature.
- (5) Regulations under sub-paragraph (3) are subject to negative resolution procedure.

*Treatment of stapled entities*

- 66 (1) This paragraph applies where two entities –
- (a) would, apart from this paragraph, each be the ultimate parent of a worldwide group, and
  - (b) are stapled to each other.
- (2) This Schedule has effect as if –
- (a) the two entities were consolidated subsidiaries of another entity (the “deemed parent”), and
  - (b) the deemed parent fell within paragraph 61(1)(a) (conditions for being the ultimate parent of a worldwide group).
- (3) For the purpose of this paragraph an entity (“entity A”) is “stapled” to another entity (“entity B”) if, in consequence of the nature of the rights attaching to the shares or other interests in entity A (including any terms or conditions attaching to the right to transfer the interests), it is necessary or advantageous for a person who has, disposes of or acquires shares or other interests in entity A also to have, dispose of or acquire shares or other interests in entity B.

*Treatment of business combinations*

- 67 (1) This paragraph applies where two entities –

- (a) would, apart from this paragraph, each be the ultimate parent of a worldwide group, and
  - (b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.
- (2) This Schedule has effect as if –
- (a) the two entities were consolidated subsidiaries of another entity (the “deemed parent”), and
  - (b) the deemed parent met conditions A to C in paragraph 61 (conditions for being the ultimate parent of a worldwide group).
- (3) In this paragraph “business combination” has the meaning given by international accounting standards.

*Meaning of “service concession agreement”*

- 68 In this Schedule “service concession agreement” has the meaning given by international accounting standards.

*Meaning of “UK group company”*

- 69 (1) In this Schedule “UK group company”, in relation to a worldwide group, means a company that meets conditions A and B.
- (2) Condition A is that the company is a member of the worldwide group.
- (3) Condition B is that the company –
- (a) is resident in the United Kingdom, or
  - (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

*Meaning of “relevant accounting period”*

- 70 For the purposes of this Schedule a “relevant accounting period” of a company, in relation to a period of account of a worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

*“Financial statements” of a worldwide group and “period of account” of a worldwide group*

- 71 (1) References in this Schedule to “financial statements” of a worldwide group are –
- (a) in the case of a multi-company worldwide group, to consolidated financial statements of the worldwide group’s ultimate parent and its subsidiaries;
  - (b) in the case of a single-company worldwide group, to financial statements of the ultimate parent.
- (2) The basic rule is that the references mentioned in sub-paragraph (1)(a) and (b) are to financial statements that are in fact drawn up by or on behalf of the ultimate parent.
- (3) But see –

- (a) paragraph 72 for provision under which, in certain circumstances, financial statements are treated as having been drawn up in accordance with different accounting standards from those in accordance with which they are in fact drawn up;
  - (b) paragraph 73 for provision under which, in certain circumstances, financial statements are treated as consolidating different subsidiaries from those in fact consolidated;
  - (c) paragraph 74 for provision under which, in certain circumstances, financial statements are treated as having been drawn up in respect of different periods from those in respect of which they are in fact drawn up;
  - (d) paragraphs 75 and 76 for provision under which, where financial statements are not in fact drawn up, financial statements are treated as having been drawn up.
- (4) References in this Schedule to a “period of account” of a worldwide group are to –
- (a) a period in respect of which financial statements of the group are in fact drawn up, or
  - (b) in a case to which paragraph 75 or 76 applies, a period in respect of which financial statements are treated as drawn up under that paragraph.

*Actual financial statements not acceptable: IAS financial statements treated as drawn up*

- 72 (1) Sub-paragraph (2) applies if, in the case of a multi-company worldwide group –
- (a) consolidated financial statements of the group’s ultimate parent and its subsidiaries are drawn up in respect of a period, but
  - (b) the financial statements are not acceptable.
- (2) For the purposes of this Schedule (apart from this paragraph) –
- (a) the financial statements mentioned in sub-paragraph (1) are treated as not having been drawn up, and
  - (b) IAS financial statements of the worldwide group are treated as having been drawn up in respect of the period.
- (3) Sub-paragraph (4) applies if, in the case of a single-company worldwide group –
- (a) financial statements of the ultimate parent are drawn up in respect of a period, but
  - (b) the financial statements are not acceptable.
- (4) For the purposes of this Schedule (apart from this paragraph) –
- (a) the financial statements mentioned in sub-paragraph (3) are treated as not having been drawn up, and
  - (b) IAS financial statements of the worldwide group are treated as having been drawn up in respect of the period.
- (5) For the purposes of this paragraph financial statements are “acceptable” only if condition A, B, C or D is met.
- (6) Condition A is that the financial statements are IAS financial statements.

- (7) Condition B is that the amounts recognised in the financial statements are not materially different from those that would be recognised in IAS financial statements of the worldwide group, if such statements were drawn up.
- (8) Condition C is that the financial statements are drawn up in accordance with UK generally accepted accounting practice.
- (9) Condition D is that the financial statements are drawn up in accordance with generally accepted accounting principles and practice of one of the following territories –
  - (a) Canada;
  - (b) China;
  - (c) India;
  - (d) Japan;
  - (e) South Korea;
  - (f) the United States of America.
- (10) The Commissioners may by regulations amend this paragraph so as to alter the circumstances in which financial statements mentioned in sub-paragraph (1) or (3) are acceptable for the purposes of this paragraph.
- (11) Regulations under sub-paragraph (10) are subject to negative resolution procedure.

*Financial statements not consolidating all consolidated subsidiaries treated as adjusted*

- 73 (1) This paragraph applies where –
- (a) consolidated financial statements of a multi-company worldwide group’s ultimate parent and its subsidiaries are drawn up in respect of a period, and
  - (b) the following condition is met.
- (2) The condition is that, in the consolidated financial statements mentioned in sub-paragraph (1)(a) –
- (a) the results of one or more consolidated subsidiaries of the ultimate parent are not consolidated with those of the other members of the group as the results of a single economic entity, or
  - (b) the results of one or more non-consolidated subsidiaries of the ultimate parent are consolidated with those of other members of the group as the results of a single economic entity.
- (3) For the purposes of this Schedule (apart from this paragraph), the financial statements mentioned in sub-paragraph (1)(a) are treated as if –
- (a) the results of the consolidated subsidiary or subsidiaries (if any) mentioned in sub-paragraph (2)(a) were consolidated as mentioned in that provision, and
  - (b) the results of the non-consolidated subsidiary or subsidiaries (if any) mentioned in sub-paragraph (2)(b) were not consolidated as mentioned in that provision.

*Financial statements dealing with more than one worldwide group treated as split*

- 74 (1) This paragraph applies where conditions A and B are met.
- (2) Condition A is that –

- (a) in the case of a multi-company worldwide group, consolidated financial statements of the ultimate parent (“company A”) and its subsidiaries are drawn up in respect of a period (“the actual period of account”), or
  - (b) in the case of a single-company worldwide group, financial statements of the ultimate parent (“company A”) are drawn up in respect of a period (“the actual period of account”).
- (3) Condition B is that, at any time during the actual period of account, company A was not the ultimate parent of any worldwide group.
- (4) For the purposes of this Schedule (apart from this paragraph) the financial statements mentioned in sub-paragraph (2) are treated as not having been drawn up.
- (5) Instead, financial statements are treated for those purposes as having been drawn up, in accordance with the same accounting principles and practice as the financial statements mentioned in sub-paragraph (2), in respect of each worldwide group of which company A was the ultimate parent during the actual period of account.
- (6) The financial statements treated as drawn up by sub-paragraph (5) are treated as drawn up in respect of such period during the actual period of account as the worldwide group in question was in existence.

*No financial statements of worldwide group: ultimate parent draws up financial statements*

- 75 (1) This paragraph applies where, in the case of a multi-company worldwide group –
- (a) financial statements of the ultimate parent of the worldwide group are drawn up in respect of a period (“the relevant period”), but
  - (b) consolidated financial statements of the ultimate parent and its subsidiaries are not drawn up in respect of the relevant period.
- (2) For the purposes of this Schedule (apart from this paragraph) IAS financial statements of the worldwide group are treated as drawn up in respect of the relevant period.

*No financial statements of worldwide group: other cases*

- 76 (1) In this paragraph “accounts-free period”, in relation to a multi-company worldwide group, means any period –
- (a) throughout which the worldwide group exists, and
  - (b) in respect of which consolidated financial statements of the group’s ultimate parent and its subsidiaries are not prepared.
- (2) In this paragraph “accounts-free period”, in relation to a single-company worldwide group, means any period –
- (a) throughout which the worldwide group exists, and
  - (b) in respect of which financial statements of the ultimate parent are not prepared.
- (3) Any period that forms part of an accounts free period is not itself an accounts-free period.
- (4) If an accounts-free period in relation to a worldwide group is 12 months or less, IAS financial statements of the worldwide group are treated for the

purposes of this Schedule (apart from this paragraph) as having been drawn up in respect of the accounts-free period.

- (5) If an accounts-free period in relation to a worldwide group is more than 12 months, IAS financial statements of the worldwide group are treated for the purposes of this Schedule (apart from this paragraph) as having been drawn up in respect of each of the following periods –
- (a) the first period of 12 months falling within the accounts-free period;
  - (b) any subsequent period of 12 months falling within the accounts-free period;
  - (c) any period of less than 12 months which –
    - (i) begins immediately after the end of a period mentioned in paragraph (a) or (b), and
    - (ii) ends at the end of the accounts-free period.
- (6) This paragraph does not apply where paragraph 75 applies.

*Meaning of “IAS financial statements”*

- 77 References in this Part to “IAS financial statements” of a worldwide group are –
- (a) in the case of a multi-company worldwide group, to consolidated financial statements of the worldwide group’s ultimate parent and its subsidiaries, drawn up in accordance with international accounting standards;
  - (b) in the case of a single-company worldwide group, to financial statements of the ultimate parent, drawn up in accordance with international accounting standards.

*References to amounts “recognised” in financial statements*

- 78 (1) References in this Schedule to an amount “recognised” in financial statements –
- (a) include an amount comprised in an amount so recognised;
  - (b) are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent.
- (2) The exchange rate by reference to which an amount is to be translated under sub-paragraph (1)(b) is the average rate of exchange for the period of account, calculated from daily spot rates.

*Other interpretation*

- 79 In this Schedule –
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “HMRC” means Her Majesty’s Revenue and Customs.

*Regulations*

- 80 (1) Regulations under this Schedule may –
- (a) make different provision for different cases or circumstances,
  - (b) include supplementary, incidental and consequential provision, or
  - (c) make transitional provision and savings.

- (2) Regulations under this Schedule must be made by statutory instrument.
- (3) Where regulations under this Schedule are subject to “affirmative resolution procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.
- (4) Where regulations under this Schedule are subject to “negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Any provision that may be made by regulations under this Schedule subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

## PART 9

### ANTI-AVOIDANCE

#### *Counteracting effect of avoidance arrangements*

- 81 (1) Any tax advantage that would (in the absence of this paragraph) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to amounts to be left out of account or brought into account under this Schedule.
- (2) Any adjustments required to be made under this paragraph (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim or otherwise.
  - (3) In this paragraph “arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
  - (4) For the purposes of this paragraph arrangements are “relevant avoidance arrangements” if conditions A and B are met.
  - (5) Condition A is that the main purpose, or one of the main purposes, of the arrangements is to enable a company to obtain a tax advantage.
  - (6) Condition B is that the tax advantage mentioned in sub-paragraph (5) is attributable (or partly attributable) to any company –
    - (a) not leaving tax-interest expense amounts out of account that it otherwise would have left out of account,
    - (b) leaving tax-interest expense amounts out of account that are lower than they otherwise would have been,
    - (c) leaving tax-interest expense amounts out of account in an accounting period other than that in which it otherwise would have left them out of account,
    - (d) bringing tax-interest expense amounts into account that it otherwise would not have brought into account,
    - (e) bringing tax-interest expense amounts into account that are higher than they otherwise would have been, or
    - (f) bringing tax-interest expense amounts into account in an accounting period other than that in which it otherwise would have brought them into account.

- (7) In sub-paragraph (6) –
- (a) references to leaving amounts out of account are to leaving them out of account under this Schedule;
  - (b) references to bringing amounts into account are to bringing them into account under this Schedule.
- (8) In this paragraph “tax advantage” has the meaning given by section 1139 of CTA 2010.

## PART 10

### COMMENCEMENT AND TRANSITIONAL PROVISION

#### *Commencement*

- 82 (1) This Schedule, apart from Part 11 (consequential amendments), has effect in relation to periods of account of worldwide groups that begin on or after 1 April 2017.
- (2) The following provisions of this paragraph apply if financial statements of a worldwide group are drawn up in respect of a period that begins before, and ends on or after, 1 April 2017.
- (3) In this paragraph –
- (a) “the group’s actual financial statements” means the financial statements mentioned in sub-paragraph (2);
  - (b) “the straddling period of account” means the period mentioned in sub-paragraph (2).
- (4) For the purposes of this Schedule (apart from this paragraph and Part 11) the group’s actual financial statements are treated as not having been drawn up.
- (5) Instead, financial statements of the worldwide group are treated for those purposes as having been drawn up in respect of each of the following periods –
- (a) the period beginning at the time the straddling period of account begins and ending with 31 March 2017, and
  - (b) the period beginning with 1 April 2017 and ending at the time the straddling period of account ends.
- (6) Where condition C or D in paragraph 72 is met in relation to the group’s actual financial statements, the financial statements treated as drawn up by sub-paragraph (5) are treated as drawn up in accordance with the generally accepted accounting principles and practice with which the group’s actual financial statements were drawn up.
- (7) Where neither of those conditions is met in relation to the group’s actual financial statements, the financial statements treated as drawn up by sub-paragraph (5) are IAS financial statements (within the meaning given by paragraph 77).
- (8) Where, for the purpose of determining amounts recognised in the financial statements treated as drawn up by sub-paragraph (5), it is expedient to apportion any amount that is recognised in the group’s actual financial statements, the apportionment is to be made in accordance with section 1172 of CTA 2010 (apportionment on a time basis).

- (9) But if it appears that apportionment in accordance with that section would work unjustly or unreasonably, the apportionment is to be made on a just and reasonable basis.

*Transitional provision: change of accounting policy*

- 83 (1) For the purposes of this Schedule (apart from this paragraph and Part 11) a debit or credit to which this paragraph applies is to be ignored.
- (2) This paragraph applies to a debit or credit if—
- (a) it is brought into account for the purposes of Part 5 of CTA 2009 by virtue of regulations made under section 319 of that Act (general power to make regulations about changes in accounting policy), and
  - (b) the later period, in relation to the change of accounting policy to which the debit or credit relates, begins before 1 April 2017.
- (3) In this paragraph “the later period” has the meaning given by section 315(2) of CTA 2009.

*Transitional provision: transitional adjustments under Schedule 7 to F(No.2)A 2015*

- 84 (1) For the purposes of this Schedule (apart from this paragraph and Part 11) a debit or credit to which this paragraph applies is to be ignored.
- (2) This paragraph applies to a debit or credit if—
- (a) it is brought into account for the purposes of Part 5 of CTA 2009 by virtue of paragraphs 115 and 116 of F(No.2)A 2015 (transitional adjustments relating to loan relationships), or
  - (b) it is brought into account for the purposes of Part 7 of CTA 2009 by virtue of paragraphs 119 and 120 of that Act (transitional adjustments relating to derivative contracts).

## PART 11

### CONSEQUENTIAL AMENDMENTS

*Repeal of Part 7 of TIOPA 2010*

- 85 (1) The following provisions of TIOPA 2010 are repealed—
- (a) section 1(1)(d) (reference in overview to Part 7);
  - (b) Part 7 (tax treatment of financing costs and income);
  - (c) in Schedule 9, Part 7 (transitional provision relating to Part 7);
  - (d) in Schedule 11, Part 5 (index of defined expressions for Part 7).
- (2) In consequence of sub-paragraph (1), the following enactments (which amend provisions repealed by that sub-paragraph) are repealed—
- (a) in F(No.3)A 2010, section 11 and Schedule 5;
  - (b) in FA 2011, in Schedule 13, paragraphs 29 and 30;
  - (c) in FA 2012—
    - (i) section 31 and Schedule 5;
    - (ii) in Schedule 16, paragraphs 242 and 243(a);
    - (iii) in Schedule 20, paragraphs 43 to 45;
  - (d) in FA 2013, section 44;
  - (e) in FA 2014, section 39.

- (3) Also in consequence of sub-paragraph (1), the following regulations (which are made under powers contained in provisions repealed by that sub-paragraph) are revoked –
- (a) the Corporation Tax (Financing Costs and Income) Regulations 2009 (S.I. 2009/3173);
  - (b) the Corporation Tax (Tax Treatment of Financing Costs and Income) (Acceptable Financial Statements) Regulations 2009 (S.I. 2009/3217);
  - (c) the Corporation Tax (Exclusion from Short-Term Loan Relationships) Regulations 2009 (S.I. 2009/3313);
  - (d) the Tax Treatment of Financing Costs and Income (Available Amount) Regulations 2010 (S.I. 2010/2929);
  - (e) the Tax Treatment of Financing Costs and Income (Correction of Mismatches) Regulations 2010 (S.I. 2010/3025);
  - (f) the Taxation (International and Other Provisions) Act 2010 (Part 7) (Amendment) Regulations 2012 (S.I. 2012/3045);
  - (g) the Tax Treatment of Financing Costs and Income (Correction of Mismatches: Partnerships and Pensions) Regulations 2012 (S.I. 2012/3111);
  - (h) the Tax Treatment of Financing Costs and Income (Excluded Schemes) Regulations 2013 (S.I. 2013/2892);
  - (i) the Tax Treatment of Financing Costs and Income (Change of Accounting Standards: Investment Entities) Regulations 2015 (S.I. 2015/662).

*Commencement of paragraph 85*

- 86 (1) Paragraph 85 has effect in relation to periods of account of the worldwide group that begin on or after 1 April 2017.
- (2) The following provisions of this paragraph apply if financial statements of the worldwide group are drawn up in respect of a period that begins before, and ends on or after, 1 April 2017.
- (3) In this paragraph –
- (a) “the group’s actual financial statements” means the financial statements mentioned in sub-paragraph (2);
  - (b) “the straddling period of account” means the period mentioned in sub-paragraph (2).
- (4) For the purposes of the enactments repealed or revoked by paragraph 85, the group’s actual financial statements are treated as not having been drawn up.
- (5) Instead, financial statements of the worldwide group are treated for those purposes as having been drawn up in respect of each of the following periods –
- (a) the period beginning at the time the straddling period of account begins and ending with 31 March 2017, and
  - (b) the period beginning with 1 April 2017 and ending at the time the straddling period of account ends.
- (6) Where condition B, C or D in regulation 2 of the Corporation Tax (Tax Treatment of Financing Costs and Income) (Acceptable Financial Statements) Regulations 2009 (S.I. 2009/3217) is met in relation to the group’s actual financial statements, the financial statements treated as drawn up by sub-paragraph (5) are treated as drawn up in accordance with

the generally accepted accounting principles and practice with which the group’s actual financial statements were drawn up.

- (7) Where none of those conditions is met in relation to the group’s actual financial statements, the financial statements treated as drawn up by sub-paragraph (5) are IAS financial statements (within the meaning given by section 348(5) and (5A) of TIOPA 2010).
- (8) Where, for the purpose of determining amounts recognised in the financial statements treated as drawn up by sub-paragraph (5), it is expedient to apportion any amount that is recognised in the group’s actual financial statements, the apportionment is to be made in accordance with section 1172 of CTA 2010 (apportionment on a time basis).
- (9) But if it appears that apportionment in accordance with that section would work unjustly or unreasonably, the apportionment is to be made on a just and reasonable basis.
- (10) In this paragraph “the worldwide group” has the same meaning as in Part 7 of TIOPA 2010 (see section 337 of that Act).
- (11) Section 346 of TIOPA 2010 (meaning of references to financial statements of the worldwide group and to a period of account of the worldwide group) applies for the purposes of this paragraph.

## PART 12

### INDEX OF DEFINED EXPRESSIONS

The following table sets out some of the expressions used in this Schedule, showing where they are defined or otherwise explained.

abbreviated interest restriction return	paragraph 14
abbreviated return election	paragraph 13
adjusted net group-interest expense, of a worldwide group	paragraph 59
aggregate net tax-interest expense, of a worldwide group	paragraph 42
aggregate tax-EBITDA, of a worldwide group	paragraph 51
allocated reactivation, of company for period of account	paragraph 19(2)
amount available for reactivation, of company in period of account	paragraph 20
available for reactivation, in relation to disallowed interest	paragraph 20
available, in relation to interest allowance (in Part 5)	paragraph 45
the Commissioners	paragraph 79
consenting company	paragraph 9
consolidated subsidiary, of another entity (in Part 8)	paragraph 63
disallowed, in relation to tax-interest expense amount	paragraph 28

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financial statements, of a worldwide group	paragraph 71
fixed ratio method	paragraph 49
full interest restriction return	paragraph 14
group ratio election	paragraph 12
group ratio method	paragraph 50
group ratio percentage	paragraph 50
HMRC	paragraph 79
IAS financial statements (in Part 8)	paragraph 77
impairment loss	paragraph 43
interest allowance, of a worldwide group	paragraph 48
interest capacity, of a worldwide group	paragraph 44
interest reactivation cap, of a worldwide group	paragraph 2
interest restriction return	paragraph 11
member, of a worldwide group	paragraph 61(3)
multi-company worldwide group	paragraph 61(3)
net group-interest expense, of a worldwide group	paragraph 56
net tax-interest expense, of a company	paragraph 41
non-consenting company	paragraph 9
non-consolidated subsidiary, of an entity (in Part 8)	paragraph 63
period of account, of a worldwide group	paragraph 71
pro-rata share, of company (of total disallowed amount)	paragraph 17
pro-rata share, of accounting period (of total disallowed amount)	paragraph 17
recognised, in financial statements	paragraph 78
relevant accounting period	paragraph 70
relevant expense matter (in Part 7)	paragraph 57
relevant income matter (in Part 7)	paragraph 57
relevant public body	paragraph 65
the return period	paragraph 11
reporting company	paragraph 11
service concession agreement	paragraph 68
single-company worldwide group	paragraph 61(3)

subject to interest reactivations	paragraph 2
subject to interest restrictions	paragraph 2
tax-EBITDA, of a company	paragraph 52
tax-interest expense amount, of a company	paragraph 33
tax-interest income amount, of a company	paragraph 36
total disallowed amount, of a worldwide group	paragraph 2
UK group company	paragraph 69
the ultimate parent, of a worldwide group	paragraph 61(3)
unexpired (in Part 5)	paragraph 47
used (in Part 5)	paragraph 46
a worldwide group	paragraph 61

## SCHEDULE 8

Section 22

### RELIEF FOR PRODUCTION OF MUSEUM AND GALLERY EXHIBITIONS

#### PART 1

#### AMENDMENT OF CTA 2009

1 After Part 15D of CTA 2009 insert –

#### “PART 15E

#### MUSEUMS AND GALLERIES EXHIBITION TAX RELIEF

#### CHAPTER 1

#### INTRODUCTION

#### *Overview*

#### **1218ZA Overview**

- (1) This Part is about the production of museum and gallery exhibitions, and applies for corporation tax purposes.
- (2) This Chapter explains what is meant by “exhibition” and “touring exhibition” and how a company comes to be treated as the primary production company or a secondary production company for an exhibition.
- (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 exhibition 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 “museums and galleries exhibition tax relief”) which may be given to a production company in relation to an exhibition –
  - (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 (a “museums and galleries exhibition 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 museums and galleries exhibition 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*

#### **1218ZAA “Exhibition”**

- (1) In this Part “exhibition” means a curated public display of an organised collection of objects or works (or of a single object or work) considered to be of scientific, historic, artistic or cultural interest.
- (2) But a display is not an exhibition if –
  - (a) it is organised in connection with a competition of any kind,
  - (b) its main purpose, or one of its main purposes, is to sell anything displayed or to advertise or promote any goods or services,
  - (c) it includes a live performance by any person,
  - (d) anything displayed is for sale, or
  - (e) anything displayed is alive.
- (3) A display is “public” if the general public is admitted to it, whether or not the public is charged for admission.
- (4) A display does not fall outside subsection (3) just because visitors other than the general public are admitted to it for a single session or a small number of sessions.

#### **1218ZAB “Touring exhibition”**

- (1) In this Part an exhibition is a “touring exhibition” if conditions A to D are met.
- (2) Condition A is that the exhibition is held at two or more venues.

- (3) Condition B is that at least 25% of the objects or works displayed at the first venue at which the exhibition is held are also displayed at every subsequent venue at which the exhibition is held.
- (4) Condition C is that the period between the deinstalling of the exhibition at one venue and the installation of the exhibition at the next venue does not exceed 6 months.
- (5) Condition D is that—
  - (a) there is a primary production company for the exhibition (see section 1218ZAC), and
  - (b) the primary production company is within the charge to corporation tax.

#### **1218ZAC Primary production company**

- (1) In this Part a company is the primary production company for an exhibition if the company (acting otherwise than in partnership) meets conditions A and B.
- (2) Condition A is that the company—
  - (a) makes an effective creative, technical or artistic contribution to the exhibition, and
  - (b) directly negotiates for, contracts for and pays for rights, goods and services in relation to the exhibition.
- (3) Condition B is that—
  - (a) where the exhibition is held at just one venue, the company is responsible for the production of the exhibition at that venue;
  - (b) where the exhibition is held at two or more venues, the company is responsible for the production of the exhibition at (at least) the first of those venues.
- (4) For the purposes of this section and section 1218ZAD, a company is responsible for the production of the exhibition at a venue if—
  - (a) it is responsible for producing and running the exhibition at the venue,
  - (b) where the exhibition is at the venue for a limited time, it is responsible for deinstalling and closing the exhibition at the venue, and
  - (c) it is actively engaged in decision-making in relation to the exhibition at the venue.
- (5) If more than one company meets conditions A and B in relation to the production of the exhibition, the company that most directly meets those conditions is the primary production company for the exhibition.
- (6) If no company meets conditions A and B in relation to the production of the exhibition, there is no primary production company for the exhibition.

#### **1218ZAD Secondary production company**

- (1) If an exhibition is held at two or more venues, there may be one or more secondary production companies for the exhibition.

- (2) In this Part a company is the secondary production company for an exhibition at a venue if the company meets conditions C and D.
- (3) Condition C is that the company (acting otherwise than in partnership) is responsible for the production of the exhibition at the venue.
- (4) Condition D is that the company is not the primary production company.
- (5) If more than one company meets conditions C and D in relation to the production of the exhibition at the venue, the company that is most directly responsible for the production of the exhibition at the venue is the secondary production company for the exhibition at the venue.
- (6) If no company meets conditions C and D in relation to the production of the exhibition at the venue, there is no secondary production company for the exhibition at the venue.

## CHAPTER 2

### TAXATION OF ACTIVITIES OF PRODUCTION COMPANY

#### *Separate exhibition trade*

#### **1218ZB Separate exhibition trade**

- (1) Subsection (2) applies to a company in relation to an exhibition if, and only for so long as, the company qualifies for museums and galleries exhibition tax relief in relation to the production of the exhibition (see section 1218ZCA).
- (2) The company's activities in relation to the production of the exhibition are treated as a trade separate from any other activities of the company (including activities in relation to the production of any other exhibition).
- (3) In this Part the separate trade mentioned in subsection (2) is called "the separate exhibition trade".
- (4) Subsections (5) and (6) apply where the company is the primary production company for the exhibition.
- (5) The company is treated as beginning to carry on the separate exhibition trade—
  - (a) at the beginning of the production stage of the exhibition at the first venue at which it is held, or
  - (b) if earlier, at the time of the first receipt by the company of any income from the production of the exhibition.
- (6) The company is treated as ceasing to carry on the separate trade when the exhibition closes at the last venue at which it is held.
- (7) Subsections (8) and (9) apply where the company is a secondary production company for the exhibition.

- (8) The company is treated as beginning to carry on the separate exhibition trade—
- (a) at the beginning of the production stage of the exhibition at the first venue for which the company is the secondary production company, or
  - (b) if earlier, at the time of the first receipt by the company of any income from the production of the exhibition.
- (9) The company is treated as ceasing to carry on the separate trade when the exhibition closes at the last venue for which the company is the secondary production company.

*Profits and losses of separate exhibition trade*

**1218ZBA Calculation of profits or losses of separate exhibition trade**

- (1) This section applies for the purpose of calculating the profits or losses of the separate exhibition trade.
- (2) For the first period of account during which the separate exhibition trade is carried on, the following are brought into account—
  - (a) as a debit, the costs of the production of the exhibition 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 exhibition 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 exhibition;
- I is the estimated total income from the production of the exhibition.

**1218ZBB Income from the production**

- (1) References in this Chapter to income from a production of an exhibition are to any receipts by the company in connection with the production or exploitation of the exhibition.
- (2) This includes—
  - (a) receipts from the sale of tickets or of rights in the exhibition;

- (b) royalties or other payments in connection with the exploitation of the exhibition or aspects of it (such as a particular exhibit);
- (c) payments for rights to produce merchandise;
- (d) a grant designated as made for the purposes of the exhibition;
- (e) receipts by the company by way of a profit share agreement.

#### **1218ZBC Costs of the production**

- (1) References in this Chapter to the costs of a production of an exhibition are to expenditure incurred by the company on—
  - (a) activities involved in developing, producing, running, deinstalling and closing the exhibition, or
  - (b) activities with a view to exploiting the exhibition.
- (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.

#### **1218ZBD When costs are taken to be incurred**

- (1) For the purposes of this Chapter, the costs that have been incurred on a production of an exhibition 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 exhibition, the obligation is not treated as having become unconditional unless an appropriate amount of income is or has been brought into account under section 1218ZBA.

#### **1218ZBE Pre-trading expenditure**

- (1) This section applies if, before the company begins to carry on the separate exhibition trade, it incurs expenditure on activities falling within section 1218ZBC(1)(a).
- (2) The expenditure may be treated as expenditure of the separate exhibition 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.

#### **1218ZBF Estimates**

Estimates for the purposes of section 1218ZBA 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

#### MUSEUMS AND GALLERIES EXHIBITION TAX RELIEF

##### *Introduction*

#### **1218ZC Overview of museums and galleries exhibition tax relief**

- (1) Relief under this Chapter (“museums and galleries exhibition tax relief”) is given by way of –
  - (a) additional deductions (see sections 1218ZCE to 1218ZCG), and
  - (b) museums and galleries exhibition tax credits (see sections 1218ZCH to 1218ZCK).
- (2) See Schedule 18 to FA 1998 (in particular, Part 9D) for provision about the procedure for making claims for museums and galleries exhibition tax relief.

##### *Companies qualifying for museums and galleries exhibition tax relief*

#### **1218ZCA Companies qualifying for museums and galleries exhibition tax relief**

- (1) A company qualifies for museums and galleries exhibition tax relief in relation to the production of an exhibition if conditions A to D are met.
- (2) Condition A is that the company is –
  - (a) the primary production company for the exhibition, or
  - (b) a secondary production company for the exhibition.
- (3) Condition B is that the company is –
  - (a) a charitable company which maintains a museum or gallery,
  - (b) wholly owned by a charity which maintains a museum or gallery, or
  - (c) wholly owned by a local authority which maintains a museum or gallery.

See section 1218ZCB for the interpretation of paragraphs (b) and (c).
- (4) Condition C is that at the beginning of the planning stage, the company intends that the exhibition should be public (within the meaning given by section 1218ZAA).
- (5) Condition D is that the EEA expenditure condition is met (see section 1218ZCC).
- (6) For the purposes of subsection (3) “museum or gallery” includes –
  - (a) a library or archive, and
  - (b) a site where a collection of objects or works (or a single object or work) considered to be of scientific, historic, artistic or cultural interest is exhibited outdoors (or partly outdoors).
- (7) There is further related provision in section 1218ZCM (tax avoidance arrangements).

**1218ZCB Interpretation of section 1218ZCA(3)(b) and (c)**

- (1) For the purposes of section 1218ZCA(3)(b) a company is “wholly owned by a charity which maintains a museum or gallery” if condition A or B is met.
- (2) Condition A is that—
  - (a) the company has an ordinary share capital, and
  - (b) every part of that share capital is owned by—
    - (i) a charity which maintains a museum or gallery, or
    - (ii) two charities, each of which maintains a museum or gallery.
- (3) Condition B is that—
  - (a) the company is limited by guarantee,
  - (b) there are no more than two beneficiaries of the company, and
  - (c) the beneficiary, or each beneficiary, is—
    - (i) a charity which maintains a museum or gallery, or
    - (ii) a company wholly owned by a charity which maintains a museum or gallery.
- (4) For the purposes of section 1218ZCA(3)(c) a company is “wholly owned by a local authority” if—
  - (a) where the company has an ordinary share capital, every part of that share capital is owned by the local authority, or
  - (b) where the company is limited by guarantee, the local authority is the sole beneficiary of the company.
- (5) Ordinary share capital of a company is treated as owned by a charity or a local authority if the charity or local authority (as the case may be)—
  - (a) directly or indirectly owns that share capital within the meaning of Chapter 3 of Part 24 of CTA 2010, or
  - (b) would be taken so to own it if references in that Chapter to a body corporate included references to a charity or local authority which is not a body corporate.
- (6) A beneficiary of a company is a person who—
  - (a) is beneficially entitled to participate in the company’s divisible profits, or
  - (b) will be beneficially entitled to share in any of the company’s net assets available for distribution on its winding up.
- (7) In this section “museum or gallery” has the same meaning it has for the purposes of section 1218ZCA.

**1218ZCC The EEA expenditure condition**

- (1) The “EEA expenditure condition” is that at least 25% of the core expenditure on the production of the exhibition 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 1218ZE and 1218ZEA (which are about the giving of relief provisionally on the basis that the EEA expenditure condition will be met).

#### **1218ZCD “Core expenditure”**

- (1) Subject to the following provisions of this section, in this Part “core expenditure”, in relation to a company’s production of an exhibition, means expenditure on the activities involved in producing, deinstalling and closing the exhibition at every relevant venue.
- (2) For the purposes of subsection (1) a venue is a “relevant venue” in relation to a company if the company’s activities in relation to the exhibition at the venue form part of the company’s separate exhibition trade.
- (3) Expenditure on the activities involved in deinstalling and closing the exhibition at a venue is core expenditure only if the period between the opening and closing of the exhibition at the venue is 12 months or less.
- (4) Expenditure on the storage of exhibits for an exhibition which is held at just one venue is not core expenditure.
- (5) Where a company incurs expenditure on the storage of exhibits for an exhibition which is held at two or more venues, the amount of such expenditure which is core expenditure is limited to the amount of relevant storage expenditure (if any) incurred by the company in respect of a period of 4 months or less.
- (6) For the purposes of subsection (5) expenditure in relation to the exhibition is “relevant storage expenditure” if –
  - (a) the expenditure is incurred in respect of the storage of exhibits between the deinstallation of the exhibition at one venue and the opening of the exhibition at the next venue, and
  - (b) the exhibits are not stored at a venue at which the exhibition has been held or is to be held.
- (7) Expenditure of the following kinds is not core expenditure –
  - (a) expenditure on any matters not directly involved with putting on the exhibition (for instance, financing, marketing, legal services and promotional events),
  - (b) speculative development expenditure on initial exhibition concepts and feasibility,
  - (c) expenditure on the ordinary running of the exhibition (for instance, invigilation and the maintenance of exhibits),
  - (d) expenditure on further development of the exhibition during the running stage,

- (e) expenditure on purchasing the exhibits, and
- (f) expenditure on infrastructure, unless that expenditure is incurred solely for the purposes of the exhibition.

*Additional deduction*

**1218ZCE Claim for additional deduction**

- (1) A company which qualifies for museums and galleries exhibition tax relief in relation to the production of an exhibition 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 1218ZCF, in calculating the profit or loss of the separate exhibition 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 exhibition 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.

**1218ZCF 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 1218ZCE is calculated as follows.
- (2) For the first period of account during which the separate exhibition 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).
- (5) If a period of account of the separate exhibition 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.

#### **1218ZCG “Qualifying expenditure”**

- (1) In this Chapter “qualifying expenditure”, in relation to the production of an exhibition, means core expenditure (see section 1218ZCD) on the production that—
  - (a) falls to be taken into account under sections 1218ZBA to 1218ZBF in calculating the profit or loss of the separate exhibition trade for tax purposes,
  - (b) is not expenditure which is otherwise relievable, and
  - (c) is incurred on or before 31 March 2022.
- (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) an R&D expenditure credit under Chapter 6A of Part 3,
  - (b) relief under Part 13 (additional relief for expenditure on research and development),
  - (c) film tax relief under Chapter 3 of Part 15,
  - (d) television tax relief under Chapter 3 of Part 15A, or
  - (e) video games tax relief under Chapter 3 of Part 15B.
- (3) The Treasury may by regulations amend subsection (1)(c) so as to substitute a later date for the date specified.

#### *Museums and galleries exhibition tax credits*

#### **1218ZCH Museums and galleries exhibition tax credit claimable if company has surrenderable loss**

- (1) A company which qualifies for museums and galleries exhibition tax relief in relation to the production of an exhibition may claim a museums and galleries exhibition tax credit in relation to the production for an accounting period in which the company has a surrenderable loss.
- (2) Section 1218ZCI 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) Subject to section 1218ZCK, the amount of the museums and galleries exhibition tax credit to which a company making a claim is entitled for the accounting period is—
  - (a) 25% of the amount of the loss surrendered if the exhibition is a touring exhibition (see section 1218ZAB), or
  - (b) 20% of the amount of the loss surrendered if the exhibition is not a touring exhibition.

- (5) The company's available loss for the accounting period (see section 1218ZCI(2)) is reduced by the amount surrendered.

**1218ZCI 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 exhibition 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 exhibition 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 1218ZCH, or
  - (b) carried forward under section 45 of CTA 2010 and set against profits of the separate exhibition trade.

- (4) For the first period of account during which the separate exhibition trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1218ZCF(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 1218ZCF(3), and

S is the total amount previously surrendered under section 1218ZCH.

- (6) If a period of account of the separate exhibition 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.

**1218ZCJ Payment in respect of museums and galleries exhibition tax credit**

- (1) If a company –
- (a) is entitled to a museums and galleries exhibition 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) a museums and galleries exhibition tax credit, or
  - (b) interest on a museums and galleries exhibition 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 a museums and galleries exhibition 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 a museums and galleries exhibition 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, or
  - (b) 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 a museums and galleries exhibition tax credit is not income of the company for any tax purpose.

**1218ZCK Maximum museums and galleries exhibition tax credits payable**

- (1) Subsections (2) and (3) prescribe the maximum amount of museums and galleries exhibition tax credits which may be paid to a company under section 1218ZCJ in respect of the company's separate exhibition trade.
- (2) Where the separate exhibition trade relates to the production of a touring exhibition, the maximum amount which may be paid to the company is £100,000.
- (3) Where the separate exhibition trade relates to the production of an exhibition which is not a touring exhibition, the maximum amount which may be paid to the company is £80,000.
- (4) 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 museums and galleries exhibition tax credits payable under section 1218ZCJ in the case of any undertaking is not to exceed 50 million euros per year.

**1218ZCL No account to be taken of amount if unpaid**

- (1) In determining for the purposes of this Chapter the amount of costs incurred on a production of an exhibition at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.

- (2) This is without prejudice to the operation of section 1218ZBD (when costs are taken to be incurred).

*Anti-avoidance etc*

**1218ZCM Tax avoidance arrangements**

- (1) A company does not qualify for museums and galleries exhibition tax relief in relation to the production of an exhibition 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.

**1218ZCN Transactions not entered into for genuine commercial reasons**

- (1) A transaction is to be ignored for the purpose of determining museums and galleries exhibition 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 1218ZCM.

**CHAPTER 4**

LOSSES OF SEPARATE EXHIBITION TRADE

**1218ZD Application of sections 1218ZDA to 1218ZDC**

- (1) Sections 1218ZDA to 1218ZDC apply to a company which is treated under section 1218ZB(2) as carrying on a separate trade in relation to the production of an exhibition.
- (2) In those sections –
  - (a) “the completion period” means the accounting period in which the company ceases to carry on the separate exhibition 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.

**1218ZDA Restriction on use of losses before completion period**

- (1) Subsection (2) applies if a loss is made by the company in the separate exhibition 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 exhibition trade in a subsequent period.

#### **1218ZDB Use of losses in the completion period**

- (1) Subsection (2) applies if a loss made in the separate exhibition 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 museums and galleries exhibition 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 exhibition 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 museums and galleries exhibition tax relief (see subsection (4)).
- (4) The amount of a loss in any period that is attributable to museums and galleries exhibition 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 a loss surrendered, or treated as carried forward, under section 1218ZDC (terminal losses).

#### **1218ZDC Terminal losses**

- (1) This section applies if –
- (a) the company ceases to carry on the separate exhibition 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 exhibition trade is referred to as “trade 1”.

- (2) If company A –
- (a) is treated under section 1218ZB(2) as carrying on a separate trade in relation to the production of another exhibition (“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 1218ZB(2) as carrying on a separate trade (“company B’s trade”) in relation to the production of—
    - (i) the exhibition which is the subject of trade 1, or
    - (ii) another exhibition,
  - (b) company B is carrying on company B’s 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

#### **1218ZE Provisional entitlement to relief**

- (1) In relation to a company and the production of an exhibition, “interim accounting period” means any accounting period that—
  - (a) is one in which the company carries on the separate exhibition trade, and
  - (b) precedes the accounting period in which it ceases to do so.
- (2) A company is not entitled to museums and galleries exhibition 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 exhibition that is EEA expenditure (see section 1218ZCC(2)), and
  - (b) that amount is such as to indicate that the EEA expenditure condition (see section 1218ZCC) will be met.

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

### **1218ZEA Clawback of provisional relief**

- (1) If a statement is made under section 1218ZE(2) but it subsequently appears that the EEA expenditure condition will not be met on the company's ceasing to carry on the separate exhibition trade, the company –
  - (a) is not entitled to museums and galleries exhibition 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 exhibition 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 exhibition trade, and
  - (b) be accompanied by a final statement of the amount of the core expenditure on the production of the exhibition that is EEA expenditure.
- (3) If that statement shows that the EEA expenditure condition is not met –
  - (a) the company is not entitled to museums and galleries exhibition tax relief or to relief under section 1218ZDC (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

#### **1218ZF Regulations about activities in relation to an exhibition**

The Treasury may by regulations amend section 1218ZBC (costs of the production) or 1218ZCD ("core expenditure") for the purpose of providing that activities of a specified description are, or are not, to be regarded as activities involved in developing or (as the case may be) producing, running, deinstalling or closing –

- (a) an exhibition, or
- (b) an exhibition of a specified description.

#### **1218ZFA 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 1218ZCD;
- “costs”, in relation to an exhibition, has the meaning given by section 1218ZBC;

- “EEA expenditure” has the meaning given by section 1218ZCC(2);
- “EEA expenditure condition” has the meaning given by section 1218ZCC;
- “exhibition” has the meaning given by section 1218ZAA;
- “income”, in relation to an exhibition, has the meaning given by section 1218ZBB;
- “museums and galleries exhibition tax relief” is to be read in accordance with Chapter 3 (see in particular section 1218ZC(1));
- “primary production company” has the meaning given by section 1218ZAC;
- “qualifying expenditure” has the meaning given by section 1218ZCG;
- “secondary production company” has the meaning given by section 1218ZAD;
- “the separate exhibition trade” is to be read in accordance with section 1218ZB;
- “touring exhibition” has the meaning given by section 1218ZAB.”

## PART 2

### CONSEQUENTIAL AMENDMENTS

#### ICTA

- 2 (1) Section 826 of ICTA (interest on tax overpaid) is amended as follows.
- (2) In subsection (1), after paragraph (fd) insert –
- “(fe) a payment of museums and galleries exhibition tax credit falls to be made to a company; or”.
- (3) In subsection (3C), for “or orchestra tax credit” substitute “, orchestra tax credit or museums and galleries exhibition tax credit”.
- (4) In subsection (8A) –
- (a) in paragraph (a), for “or (fd)” substitute “, (fd) or (fe)”, and
- (b) in paragraph (b)(ii), after “orchestra tax credit” insert “or museums and galleries exhibition tax credit”.
- (5) In subsection (8BA), after “orchestra tax credit” (in both places) insert “or museums and galleries exhibition tax credit”.

#### FA 1998

- 3 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended in accordance with paragraphs 4 to 6.
- 4 In paragraph 10 (other claims and elections to be included in return), in subparagraph (4), for “or 15D” substitute “, 15D or 15E”.
- 5 (1) Paragraph 52 (recovery of excessive repayments etc) is amended as follows.

- (2) In sub-paragraph (2), after paragraph (bh) insert –  
     “(bi) museums and galleries exhibition tax credit under Part 15E of that Act,”.
- (3) In sub-paragraph (5) –  
     (a) after paragraph (aj) insert –  
         “(ak) an amount of museums and galleries exhibition tax credit paid to a company for an accounting period,” and  
     (b) in the words after paragraph (b), after “(aj)” insert “, (ak)”.
- 6 In Part 9D (certain claims for tax relief) –  
     (a) in the heading, for “or 15D” substitute “, 15D or 15E”, and  
     (b) in paragraph 83S (introduction), after sub-paragraph (f) insert –  
         “(g) museums and galleries exhibition 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 (f) and after paragraph (g) insert “, and  
     (h) Chapter 3 of Part 15E of that Act (museums and galleries exhibition 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 (ivd) and after that paragraph insert –  
     “(ive) a museums and galleries exhibition tax credit under Chapter 3 of Part 15E of that Act, or”.

#### CTA 2009

- 9 CTA 2009 is amended in accordance with paragraphs 10 to 14.
- 10 In section 104BA (restriction on claiming other tax reliefs), after subsection (4) insert –  
     “(5) For provision prohibiting an R&D expenditure credit being given under this Chapter and relief being given under Chapter 3 of Part 15E (museums and galleries exhibition tax relief), see section 1218ZCG(2).”
- 11 In Part 8 (intangible fixed assets), in Chapter 10 (excluded assets), after section 808D insert –

**“808E Assets representing expenditure incurred in course of separate exhibition trade**

- (1) This Part does not apply to an intangible fixed asset held by a museums and galleries exhibition production company so far as the asset represents expenditure on an exhibition that is treated under Part 15E as expenditure of a separate trade (see particularly sections 1218ZB and 1218ZBE).
- (2) In this section –

- “exhibition” has the same meaning as in Part 15E (see section 1218ZAA);
- “museums and galleries exhibition production company” means a company which, for the purposes of that Part, is the primary production company or a secondary production company for an exhibition (see sections 1218ZAC and 1218ZAD).”
- 12 In section 1040ZA (restriction on claiming other tax reliefs), after subsection (4) insert –
- “(5) For provision prohibiting relief being given under this Part and under Chapter 3 of Part 15E (museums and galleries exhibition tax relief), see section 1218ZCG(2).”
- 13 In section 1310 (orders and regulations), in subsection (4), after paragraph (eo) insert –
- “(ep) section 1218ZCC (EEA expenditure condition),  
(eq) section 1218ZCF (amount of additional deduction),  
(er) section 1218ZF (regulations about activities in relation to exhibition),”.
- 14 In Schedule 4 (index of defined expressions), insert at the appropriate places –

“company tax return (in Part 15E)	section 1218ZFA”
“core expenditure (in Part 15E)	section 1218ZCD”
“costs, in relation to an exhibition (in Part 15E)	section 1218ZBC”
“EEA expenditure (in Part 15E)	section 1218ZCC(2)”
“EEA expenditure condition (in Part 15E)	section 1218ZCC”
“exhibition (in Part 15E)	section 1218ZAA”
“income, in relation to an exhibition (in Part 15E)	section 1218ZBB”
“museums and galleries exhibition tax relief (in Part 15E)	section 1218ZC(1)”
“primary production company (in Part 15E)	section 1218ZAC”
“qualifying expenditure (in Part 15E)	section 1218ZCG”
“secondary production company (in Part 15E)	section 1218ZAD”
“separate exhibition trade (in Part 15E)	section 1218ZB”
“touring exhibition (in Part 15E)	section 1218ZAB”.

FA 2009

- 15 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 (h) and after paragraph (i) insert “, or
  - (j) a payment of museums and galleries exhibition tax credit under Chapter 3 of Part 15E of CTA 2009 for an accounting period.”;
- (b) in sub-paragraph (4), for “(i)” substitute “(j)”.

#### CTA 2010

- 16 In Part 8B of CTA 2010 (trading profits taxable at Northern Ireland rate), in section 357H(7) (introduction), after “Chapter 14A for provision about orchestra tax relief;” insert “Chapter 14B for provision about museums and galleries exhibition tax relief;”.
- 17 In Part 8B of CTA 2010, after section 357UQ insert –

### “CHAPTER 14B

#### MUSEUMS AND GALLERIES EXHIBITION TAX RELIEF

##### *Introductory*

#### **357UR Introduction and interpretation**

- (1) This Chapter makes provision about the operation of Part 15E of CTA 2009 (museums and galleries exhibition 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 exhibition trade” has the same meaning as in Part 15E of CTA 2009 (see section 1218ZB(3) of that Act);
  - (c) “qualifying expenditure” has the same meaning as in Chapter 3 of that Part (see section 1218ZCG of that Act).
- (3) References in Part 15E of CTA 2009 to “museums and galleries exhibition tax relief” include relief under this Chapter.

##### *Museums and galleries exhibition tax relief*

#### **357US Northern Ireland additional deduction**

- (1) In this Chapter “a Northern Ireland additional deduction” means so much of a deduction under section 1218ZCE 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 exhibition trade.

### **357UT Northern Ireland supplementary deduction**

- (1) This section applies where –
  - (a) a company is entitled under section 1218ZCE of CTA 2009 to an additional deduction in calculating the profit or loss of the separate exhibition 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 1218ZCH of CTA 2009 (museums and galleries exhibition 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 357UU 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 exhibition trade, and
  - (b) forms part of the Northern Ireland profits or Northern Ireland losses of the separate exhibition trade.
- (5) In this section “surrenderable loss” has the meaning given by section 1218ZCI of CTA 2009.

### **357UU Northern Ireland supplementary deduction: amount**

- (1) This section contains provision for the purposes of section 357UT(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 1218ZCH 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.

**357UV Museums and galleries exhibition tax credit: Northern Ireland supplementary deduction ignored**

For the purpose of determining the available loss of a company under section 1218ZCI 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 exhibition trade*

**357UW Restriction on use of losses before completion period**

- (1) Section 1218ZDA 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 exhibition 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 1218ZDA of CTA 2009 (see section 1218ZD(2) of that Act).

### **357UX Use of losses in the completion period**

- (1) Section 1218ZDB 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 exhibition 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 exhibition 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 15E of CTA 2009 included a reference to a Northern Ireland supplementary deduction under this Chapter.

### **357UY Terminal losses**

- (1) Section 1218ZDC 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.”

- 18 (1) Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.
- (2) In the entry for “Northern Ireland expenditure” –
- (a) for “14A” substitute “14B”, and
- (b) for “and 357UJ(2)” substitute “, 357UJ(2) and 357UR(2)”.
- (3) Insert at the appropriate places –

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

“the separate exhibition trade (in Chapter 14B of Part 8B section 357UR(2)).”

#### FA 2016

- 19 In Schedule 24 to FA 2016 (tax advantages constituting the grant of state aid), in Part 1, in the table headed “*Creative tax reliefs*”, after the entry for “Orchestra tax relief” insert –

“Museums and exhibition tax relief		Part 15E of CTA 2009”
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#### PART 3

#### COMMENCEMENT

- 20 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.
- 21 (1) The amendments made by the following provisions of this Schedule have effect in relation to accounting periods beginning on or after 1 April 2017 –
- (a) Part 1, and
- (b) in Part 2, paragraphs 2 to 15 and 19.
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2017 and ending on or after that date (“the straddling period”).
- (3) For the purposes of Part 15E of CTA 2009 –
- (a) so much of the straddling period as falls before 1 April 2017, 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.

- 22 (1) The amendments made by paragraphs 16 to 18 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 14B of Part 8B 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.

## SCHEDULE 9

Section 9

### TRADING PROFITS TAXABLE AT THE NORTHERN IRELAND RATE: SMES

#### *Amendments of CTA 2010*

- 1 CTA 2010 is amended as follows.
- 2 (1) Section 357H (introduction) is amended as follows.
- (2) In subsection (5) –
- (a) after “that is an SME” insert “and is a Northern Ireland employer”;
  - (b) for “that is not an SME” substitute “that –
    - (a) is an SME that is not a Northern Ireland employer and has made the requisite election, or
    - (b) is not an SME.”
- 3 (1) Section 357KA (meaning of “Northern Ireland company”) is amended as follows.
- (2) In subsection (1)(b), for “the SME condition” substitute “the SME (Northern Ireland employer) condition, the SME (election) condition”.
- (3) In subsection (2), for “SME condition” substitute “SME (Northern Ireland employer) condition”.
- (4) After subsection (2) insert –
- “(2A) The “SME (election) condition” is that –
- (a) the company is an SME in relation to the period,
  - (b) the company is not a Northern Ireland employer in relation to the period,
  - (c) the company has a NIRE in the period,
  - (d) the company is not a disqualified close company in relation to the period, and

- (e) an election by the company for the purposes of this subsection has effect in relation to the period.”
- (5) In subsection (4), after the definition of “Northern Ireland employer” insert—
- “disqualified close company”, see section 357KEA;”.
- (6) After subsection (3) insert—
- “(3A) An election for the purposes of subsection (2A)—
- (a) must be made by notice to an officer of Revenue and Customs,
  - (b) must specify the accounting period in relation to which it is to have effect (“the specified accounting period”),
  - (c) must be made before the end of the period of 12 months beginning with the end of the specified accounting period, and
  - (d) if made in accordance with paragraphs (a) to (c) has effect in relation to the specified accounting period.”
- 4 (1) Section 357KE (Northern Ireland workforce conditions) is amended as follows.
- (2) In subsection (2)—
- (a) omit the “and” at the end of paragraph (b), and
  - (b) at the end of paragraph (c) insert “, and
  - (d) in the case of a close company, or of a company which would be a close company if it were UK resident, individuals who are participators in the company.”
- (3) After subsection (7) insert—
- “(7A) In this section “participator” has the same meaning as in sections 1064 to 1067 (see sections 1068 and 1069).
- (7B) In determining for the purposes of this section the amount of working time that is spent in any place by a participator in the company, time spent by the participator in that place is to be included where—
- (a) the time is spent by the participator in providing services to a person other than the company (“the third party”), and
  - (b) condition A or B is met.
- (7C) Condition A is that the provision of the services results in a payment being made (whether directly or indirectly) to the company by—
- (a) the third party, or
  - (b) a person connected with the third party.
- (7D) Condition B is that—
- (a) the company holds a right that it acquired (whether directly or indirectly) from the participator, and
  - (b) any payment in connection with that right is made (whether directly or indirectly) to the company by—
    - (i) the third party, or
    - (ii) a person connected with the third party.

(7E) Section 1122 (connected persons) applies for the purposes of this section.”

5 After section 357KE insert –

*“Meaning of “disqualified close company”*

**357KEA “Disqualified close company”**

- (1) A company is a “disqualified close company” in relation to a period if –
  - (a) the company is a close company, or would be a close company if it were UK resident, at any time in the period, and
  - (b) conditions A and B are met.
- (2) Condition A is that the company has a NIRE in the period as a result of tax-avoidance arrangements.
- (3) Condition B is that –
  - (a) 50% or more of the working time that is spent in the United Kingdom during the period by members of the company’s workforce is working time spent by participators in the company otherwise than in Northern Ireland, or
  - (b) 50% or more of the company’s workforce expenses that are attributable to working time spent in the United Kingdom during the period by members of the company’s workforce are attributable to working time spent by participators in the company otherwise than in Northern Ireland.
- (4) For the purposes of this section “tax avoidance arrangements” means arrangements the sole or main purpose of which is to secure that any profits or losses of the company for the period are Northern Ireland profits or losses.
- (5) In subsection (4) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) The following provisions apply for the purposes of this section as they apply for the purposes of section 357KE (Northern Ireland workforce conditions) –
  - (a) subsections (2) to (5) and (7A) to (7E) of that section;
  - (b) regulations made under that section.
- (7) In its application by virtue of subsection (6), subsection (5) of section 357KE has effect as if the reference in it to subsection (1)(b) of that section were to subsection (3)(b) of this section.”

6 In the heading of Chapter 6, at the end insert “that are Northern Ireland employers”.

7 In section 357M (Chapter 6: introductory), in subsection (1), for “SME condition” substitute “SME (Northern Ireland employer) condition”.

8 In the heading of Chapter 7, after “losses etc:” insert “SMEs that are not Northern Ireland employers and”.

- 9 In section 357N (Chapter 7: introductory), in subsection (1), after “by virtue of” insert “the SME (election) condition or”.
- 10 (1) Section 357OB (Northern Ireland intangibles credits and debits: SMEs) is amended as follows.
- (2) In the heading, at the end, insert “that are Northern Ireland employers”.
- (3) In subsection (1)(a), for “SME condition” substitute “SME (Northern Ireland employer) condition”.
- 11 (1) Section 357OC (Northern Ireland intangibles credits and debits: large companies) is amended as follows.
- (2) In the heading, after “debts:” insert “SMEs that are not Northern Ireland employers and”.
- (3) In subsection (1), after “by virtue of” insert “the SME (election) condition or”.
- 12 (1) Section 357VB (relevant Northern Ireland IP profits: SMEs) is amended as follows.
- (2) In the heading, at the end, insert “that are Northern Ireland employers”.
- (3) In subsection (1)(a), for “SME condition” substitute “SME (Northern Ireland employer) condition”.
- 13 (1) Section 357VC (relevant Northern Ireland IP profits: large companies) is amended as follows.
- (2) In the heading, after “profits:” insert “SMEs that are not Northern Ireland employers and”.
- (3) In subsection (1)(a), after “by virtue of” insert “the SME (election) condition or”.
- 14 (1) Section 357WA (meaning of “Northern Ireland firm”) is amended as follows.
- (2) In subsection (1)(b), for “SME partnership condition” substitute “SME (Northern Ireland employer) partnership condition, the SME (election) partnership condition”.
- (3) In subsection (2), for “SME partnership condition” substitute “SME (Northern Ireland employer) partnership condition”.
- (4) After subsection (2) insert –
- “(2A) The “SME (election) partnership condition” is that –
- (a) the firm is an SME in relation to the firm’s accounting period,
- (b) the firm is not a Northern Ireland employer in relation to that period,
- (c) the firm has a NIRE in that period,
- (d) the firm is not a disqualified firm in relation to the period, and
- (e) an election by the firm for the purposes of this subsection has effect in relation to that period.”
- (5) After subsection (3) insert –
- “(3A) An election for the purposes of subsection (2A) –

- (a) must be made by notice to an officer of Revenue and Customs,
  - (b) must specify the accounting period in relation to which it is to have effect (“the specified accounting period”),
  - (c) must be made before the end of the period of 12 months beginning with the end of the specified accounting period, and
  - (d) if made in accordance with paragraphs (a) to (c) has effect in relation to the specified accounting period.”
- (6) In subsection (4) –
- (a) in the opening words, for “to subsections (2) and (3)” substitute “in relation to a firm”;
  - (b) for paragraph (b) substitute –
    - “(b) references to the Northern Ireland workforce conditions were to the Northern Ireland workforce partnership conditions (see section 357WBA).”
- (7) In subsection (5) omit paragraph (c).
- 15 After section 357WB, insert –

**“357WBA Northern Ireland workforce partnership conditions**

- (1) The Northern Ireland workforce partnership conditions, in relation to a period, are –
- (a) that 75% or more of the working time that is spent in the United Kingdom during the period by members of the firm’s workforce is spent in Northern Ireland, and
  - (b) that 75% or more of the firm’s workforce expenses that are attributable to working time spent in the United Kingdom during the period by members of the firm’s workforce are attributable to time spent in Northern Ireland.
- (2) References in this section to members of the firm’s workforce are to –
- (a) employees of the firm,
  - (b) externally provided workers in relation to the firm, and
  - (c) individuals who are partners in the firm.
- (3) In subsection (2) “externally provided worker”, in relation to a firm, has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act).
- In the application of section 1128 of that Act for the purposes of subsection (2), references to a company are to be read as references to a firm and references to a director are to be treated as omitted.
- (4) References in this section to the working time spent by members of the firm’s workforce in a place are to the total time spent by those persons in that place while providing services to the firm.
- (5) References in this section to “the firm’s workforce expenses” are, where the period is an accounting period of the firm, to the total of the deductions made by the firm in the period in respect of members of the firm’s workforce in calculating the profits of the firm’s trade.

- (6) References in this section to “the firm’s workforce expenses” are, where the period is not an accounting period of the firm, to the total of –
- (a) the deductions made by the firm in any accounting period falling wholly within the period, and
  - (b) the appropriate proportion of the deductions made by the firm in any accounting period falling partly within the period,
- in respect of members of the firm’s workforce in calculating the profits of the firm’s trade.
- (7) For the purposes of subsection (6)(b), “the appropriate proportion” is to be determined by reference to the number of days in the periods concerned.
- (8) The Commissioners for Her Majesty’s Revenue and Customs may by regulations specify descriptions of deduction that are, or are not, to be regarded for the purposes of this section as made in respect of members of a firm’s workforce.
- (9) Regulations under this section –
- (a) may make different provision for different purposes;
  - (b) may make incidental, supplemental, consequential and transitional provision and savings.
- (10) Section 357WBB contains supplementary provision applying for the purposes of this section.

**357WBB Section 357WBA: supplementary**

- (1) References in section 357WBA or this section to a partner in the firm include any person entitled to a share of income of the firm.
- (2) In determining for the purposes of section 357WBA the amount of working time that is spent in any place by a partner in the firm, time spent by the partner in that place is to be included where –
- (a) the time is spent by the partner in providing services to a person other than the firm (“the third party”), and
  - (b) condition A or B is met.
- (3) Condition A is that the provision of the services results in a payment being made (whether directly or indirectly) to the firm by –
- (a) the third party, or
  - (b) a person connected with the third party.
- (4) Condition B is that –
- (a) the firm holds a right that it acquired (whether directly or indirectly) from the partner, and
  - (b) any payment in connection with that right is made (whether directly or indirectly) to the firm by –
    - (i) the third party, or
    - (ii) a person connected with the third party.
- (5) Section 1122 (connected persons) applies for the purposes of this section.

- (6) References in section 357WBA to deductions made in respect of the members of the firm's workforce in calculating profits of the firm's trade include, in relation to a partner in the firm, the appropriate notional consideration for services provided by the partner (see subsections (7) and (8)).
- (7) For the purposes of subsection (6), "the appropriate notional consideration for services" provided by a partner is—
  - (a) the amount which the partner would receive in consideration for services provided to the firm by the partner during the period in question, were the consideration to be calculated on the basis mentioned in subsection (8), less
  - (b) any amount actually received in consideration for such services which is not included in the partner's profit share.
- (8) The consideration mentioned in subsection (7)(a) is to be calculated on the basis that the partner is not a partner in the firm and is acting at arm's length from the firm.

**357WBC "Disqualified firm"**

- (1) For the purposes of this Chapter, a firm is a "disqualified firm" in relation to a period if conditions A and B are met.
- (2) Condition A is that the firm has a NIRE in the period as a result of tax-avoidance arrangements.
- (3) Condition B is that—
  - (a) 50% or more of the working time that is spent in the United Kingdom during the period by members of the firm's workforce is working time spent by partners otherwise than in Northern Ireland, or
  - (b) 50% or more of the firm's workforce expenses that are attributable to working time spent in the United Kingdom during the period by members of the firm's workforce are attributable to working time spent by partners otherwise than in Northern Ireland.
- (4) For the purposes of this section "tax avoidance arrangements" means arrangements the sole or main purpose of which is to secure that any profits or losses of the firm for the period are Northern Ireland profits or losses.
- (5) In subsection (4) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) The following provisions apply for the purposes of this section as they apply for the purposes of section 357WBA (Northern Ireland workforce partnership conditions)—
  - (a) subsections (2) to (5) of that section;
  - (b) regulations made under that section;
  - (c) section 357WBB."

16 In section 357WC (Northern Ireland profits etc of firm determined under Chapter 6), in subsection (2), for "SME partnership condition" substitute "SME (Northern Ireland employer) partnership condition".

- 17 (1) Section 357WD (Northern Ireland profits etc of firm determined under Chapter 7) is amended as follows.
- (2) For subsections (1) to (3) substitute –
- “(1) This section applies where –
- (a) a company (“the corporate partner”) is a partner in a firm at any time during an accounting period of the firm (“the firm’s accounting period”) and is within the charge to corporation tax in relation to the firm’s trade, and
- (b) condition A or B is met.
- (2) Condition A is that the firm is a Northern Ireland firm in the firm’s accounting period by virtue of the SME (election) partnership condition or the large partnership condition in section 357WA.
- (3) Condition B is that –
- (a) the firm is a Northern Ireland firm in the firm’s accounting period by virtue of the SME (Northern Ireland employer) partnership condition in section 357WA, and
- (b) the corporate partner is not an SME in relation to an accounting period of the corporate partner which is the same as, or overlaps (to any extent), the firm’s accounting period.”
- (3) In subsection (4), after “losses etc:” insert “SMEs that are not Northern Ireland employers and”.
- 18 In section 357WE (sections 357WC and 357WD: interpretation), omit subsection (2).
- 19 (1) Section 357WF (application of section 747 of CTA 2009 to Northern Ireland firm) is amended as follows.
- (2) In paragraph (e) –
- (a) for “SME condition” substitute “SME (Northern Ireland employer) condition”;
- (b) for “SME partnership condition” substitute “SME (Northern Ireland employer) partnership condition”.
- (3) After paragraph (e) insert –
- “(ea) references to the SME (election) condition in section 357KA were to the SME (election) partnership condition in section 357WA;”.
- 20 (1) Section 357WG (application of Part 8A to Northern Ireland firm) is amended as follows.
- (2) In paragraph (g) –
- (a) for “SME condition” (in the first place it appears) substitute “SME (Northern Ireland employer) condition”;
- (b) for “SME condition” (in the second place it appears) substitute “SME (Northern Ireland employer) partnership condition”.
- (3) For paragraph (h) substitute –
- “(h) references in section 357VC to –

- (i) the SME (election) condition in section 357KA were to the SME (election) partnership condition in section 357WA;
- (ii) the large company condition in section 357KA were to the large partnership condition in section 357WA;
- (iii) a qualifying trade by virtue of section 357KB(1) were to a qualifying partnership trade by virtue of section 357WB(1).”

- 21 In Schedule 4 (index of defined expressions) –
- (a) omit the entry for “SME condition (in Part 8B)”;
  - (b) at the appropriate places, insert –

“disqualified close company	section 357KEA”
“SME (Northern Ireland employer) condition (in Part 8B)	section 357KA”
“SME (election) condition (in Part 8B)	section 357KA”

*Amendments relating to capital allowances*

- 22 CAA 2001 is amended in accordance with paragraphs 23 and 24.
- 23 (1) Section 6A (“NIRE company” and “Northern Ireland SME company”) is amended as follows.
- (2) In the heading, for “Northern Ireland SME company” substitute “SME (Northern Ireland employer) company”.
  - (3) In the definition of “NIRE company”, after “by virtue of” insert “the SME (election) condition or”.
  - (4) For “Northern Ireland SME company” substitute “SME (Northern Ireland employer) company”.
  - (5) For “SME condition” substitute “SME (Northern Ireland employer) condition”.
- 24 In the following provisions, for “a Northern Ireland SME company” substitute “an SME (Northern Ireland employer) company” –
- (a) section 6C(1)(a) and (c);
  - (b) section 6D(1);
  - (c) section 6E(1);
  - (d) section 61(4B)(a);
  - (e) section 66B(1)(a), (b) and (c);
  - (f) section 66C(b);
  - (g) section 66D(1)(a) and (b);
  - (h) section 66E(b);
  - (i) section 212ZE(b);
  - (j) Schedule 1.
- 25 In the Corporation Tax (Northern Ireland) Act 2015, in Schedule 1, in Part 6 (capital allowances: transitional provision), in paragraphs 20(1)(a) and

21(1)(a), for “a Northern Ireland SME company” substitute “an SME (Northern Ireland employer) company”.

## SCHEDULE 10

Section 32

## EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTIES

## PART 1

## AMENDMENTS TO ITEPA 2003

*Introductory*

- 1 Part 7A of ITEPA 2003 (employment income provided through third parties) is amended as follows.

*Close companies*

- 2 After section 554A (application of Chapter 2) insert –

**“554AA Application of Chapter 2: close companies**

- (1) Chapter 2 applies if –
- (a) an individual (“A”) has a qualifying connection with a close company (“B”),
  - (b) there is an arrangement (“the relevant arrangement”) to which A is a party or which otherwise (wholly or partly) covers or relates to A,
  - (c) it is reasonable to suppose that, in essence –
    - (i) the relevant arrangement, or
    - (ii) the relevant arrangement so far as it covers or relates to A,
 is (wholly or partly) a means of providing, or is otherwise concerned (wholly or partly) with the provision of, A-linked payments or benefits or loans,
  - (d) B enters into a relevant transaction (see section 554AB),
  - (e) it is reasonable to suppose that, in essence –
    - (i) the relevant transaction is entered into (wholly or partly) in pursuance of the relevant arrangement, or
    - (ii) there is some other connection (direct or indirect) between the relevant transaction and the relevant arrangement,
  - (f) a relevant step is taken by a relevant third person, and
  - (g) it is reasonable to suppose that, in essence –
    - (i) the relevant step is taken (wholly or partly) in pursuance of the relevant arrangement, or
    - (ii) there is some other connection (direct or indirect) between the relevant step and the relevant arrangement.
- (2) A has a “qualifying connection” with B if –
- (a) A is –

- (i) a director, or a former director, of B, or
    - (ii) an employee, or a former employee, of B, and
  - (b) A has, or at any time has had, a material interest in B.
- (3) Subject to subsection (6), section 68 (meaning of “material interest” in a company) applies for the purposes of this section as it applies for the purposes of the benefits code.
- (4) For the purposes of subsection (1)(c), a payment or benefit or loan is “A-linked” if –
- (a) it is being provided to A, or a person chosen by A or within a class of persons chosen by A,
  - (b) it is being provided to a person on A’s behalf, or at A’s direction or request, or
  - (c) it is being provided to a person linked with A and it is reasonable to suppose that the main reason, or one of the main reasons, for it being provided is that the person is linked with A.
- (5) In this section “close company” includes a company that would be a close company but for section 442(a) of CTA 2010 (exclusion of companies not resident in the United Kingdom).
- (6) In section 68 as it applies for the purposes of this section, “participator” –
- (a) in relation to a close company, means a person who is a participator in relation to the company for the purposes of section 455 of CTA 2010 (see sections 454 and 455(5) of that Act), and
  - (b) in relation to a company which would be a close company if it were a UK resident company, means a person who would be such a participator if the company were a close company.
- (7) “Relevant step” has the meaning given by section 554A(2).
- (8) See also sections 554AD and 554AE (exceptions and further interpretation).

**554AB Section 554AA: meaning of “relevant transaction”**

- (1) For the purposes of section 554AA(1)(d) and (e), B enters into a relevant transaction if –
- (a) B enters into a transaction within subsection (2), and
  - (b) the transaction is not an excluded transaction (see section 554AC).
- (2) B enters into a transaction within this subsection if B –
- (a) pays a sum of money to a relevant third person,
  - (b) acquires a right to a payment of a sum of money, or to a transfer of assets, where there is a connection (direct or indirect) between the acquisition of the right and –
    - (i) a payment made, by way of a loan or otherwise, to a relevant third person, or
    - (ii) a transfer of assets to a relevant third person,
  - (c) releases or writes off the whole or a part of –
    - (i) a loan made to a relevant third person, or

- (ii) an acquired debt of the kind mentioned in paragraph (b),
  - (d) transfers an asset to a relevant third person,
  - (e) takes a step by virtue of which a third person acquires an asset within subsection (4),
  - (f) makes available a sum of money or asset for use, or makes it available under an arrangement which permits its use –
    - (i) as security for a loan made or to be made to a relevant third person, or
    - (ii) otherwise as security for the meeting of any liability, or the performance of any undertaking, which a relevant third person has or will have, or
  - (g) grants to a relevant third person a lease of any premises the effective duration of which is likely to exceed 21 years.
- (3) For the purposes of subsection (2) “loan” includes –
  - (a) any form of credit, and
  - (b) a payment that is purported to be made by way of a loan.
- (4) The following assets are within this subsection –
  - (a) securities,
  - (b) interests in securities, and
  - (c) securities options,as defined in section 420 for the purposes of Chapters 1 to 5 of Part 7; and in subsection (2)(e) “acquires” is to be read in accordance with section 421B(2)(a).
- (5) For the purposes of subsection (2)(f) –
  - (a) references to making a sum of money or asset available are references to making it available in any way, however informal,
  - (b) it does not matter if the relevant third person has no legal right to have the sum of money or asset used as mentioned, and
  - (c) it does not matter if the sum of money or asset is not actually used as mentioned.
- (6) Subsections (7) and (8) apply for the purpose of determining the likely effective duration of a lease of any premises granted to a relevant third person (“the original lease”) for the purposes of subsection (2)(g).
- (7) If there are circumstances which make it likely that the original lease will be extended for any period, the effective duration of the original lease is to be determined on the assumption that the original lease will be so extended.
- (8) Further, if –
  - (a) the relevant third person, A or a person linked with A is, or is likely to become, entitled to a later lease, or the grant of a later lease, of the same premises, or
  - (b) it is otherwise likely that the relevant third person, A or a person linked with A will be granted a later lease of the same premises,

the original lease is to be treated as continuing until the end of the later lease (and subsection (7) also applies for the purpose of determining the duration of the later lease).

- (9) In this section “lease” and “premises” have the same meaning as they have in Chapter 4 of Part 3 of ITTOIA 2005.

**554AC Section 554AB: meaning of “excluded transaction”**

- (1) In section 554AB, “excluded transaction” means –
- (a) a distribution made by B,
  - (b) a transaction that –
    - (i) is entered into by B in the ordinary course of B’s business, and
    - (ii) is on terms that would have been made between persons not connected with each other dealing at arm’s length, or
  - (c) a transaction entered into in order to facilitate the disposal, on terms that would have been made between persons not connected with each other dealing at arm’s length, of shares in B.
- (2) Sections 1030 to 1030B of CTA 2010 are to be disregarded in determining what is a “distribution” for the purposes of this section.
- (3) But a transaction is not an excluded transaction if there is a connection (direct or indirect) between the transaction and a tax avoidance arrangement.

**554AD Sections 554AA and 554AB: supplementary**

- (1) Section 554AA(1) is subject to subsection (2) and sections 554E to 554Y.
- (2) Chapter 2 does not apply by reason of section 554AA(1) in relation to a relevant step taken on or after A’s death if –
- (a) the relevant step is within section 554B, or
  - (b) the relevant step is within section 554C by virtue of subsection (1)(ab) of that section.
- (3) In section 554AA(1)(b) and (c) references to A include references to a person linked with A.
- (4) For the purposes of section 554AA(1)(c) it does not matter if the relevant arrangement does not include details of the steps which will or may be taken in connection with providing, in essence, payments or benefits or loans as mentioned (for example, details of any sums of money or assets which will or may be involved or details of how or when or by whom or in whose favour any step will or may be taken).
- (5) In section 554AA(1) and 554AB “relevant third person” means –
- (a) A acting as a trustee,
  - (b) B acting as a trustee, or
  - (c) any person other than A or B.

- 
- (6) If B is a member of a group of companies at the time the relevant step is taken, in subsection (5) references to B are to be read as including references to any other company which is a member of that group at that time.
- (7) If, at the time the relevant step is taken, B is a company that is –
- (a) a wholly-owned subsidiary of a limited liability partnership, or
  - (b) a subsidiary undertaking of a parent undertaking which is a limited liability partnership,
- in subsection (5) references to B are to be read as including references to the limited liability partnership and any company which is a wholly-owned subsidiary of it.
- (8) In subsection (7) –
- (a) “wholly-owned subsidiary” has the meaning given by section 1159(2) of the Companies Act 2006, and
  - (b) “subsidiary undertaking” and “parent undertaking” have the meaning given by 1162 of that Act.
- (9) Subsections (6) and (7) do not apply if there is a connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (10) For the purposes of section 554AA(1)(g) –
- (a) the relevant step is connected with the relevant arrangement if (for example) the relevant step is taken (wholly or partly) in pursuance of an arrangement at one end of a series of arrangements with the relevant arrangement being at the other end, and
  - (b) it does not matter if the person taking the relevant step is unaware of the relevant arrangement.
- (11) For the purposes of section 554AA(1)(c) and (g) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter.

**554AE Section 554AA: meaning of “director”**

- (1) For the purposes of section 554AA(2) “director” means –
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,
- and includes any person in accordance with whose directions or instructions the directors of the company (as defined in this subsection) are accustomed to act.
- (2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.

- (3) For the purposes of section 5 as it applies to this Part, a person who is a director within the meaning of subsection (1) is to be treated (where it would not otherwise be the case) as holding an office.”

3 In the heading of section 554A, at the end insert “: main case”.

4 In section 554Z(2) (interpretation: “A” and “B”) at the end insert “or, as the case may be, section 554AA(1)(a)”.

*Loans: transferring, releasing or writing off*

5 (1) Section 554C (relevant steps: payment of sum, transfer of asset etc.) is amended as follows.

(2) In subsection (1), after paragraph (a) insert –

“(aa) acquires a right to a payment of a sum of money, or to a transfer of assets, where there is a connection (direct or indirect) between the acquisition of the right and –

(i) a payment made, by way of a loan or otherwise, to a relevant person, or

(ii) a transfer of assets to a relevant person,

(ab) releases or writes off the whole or a part of –

(i) a loan made to a relevant person, or

(ii) an acquired debt of the kind mentioned in paragraph (aa).”.

(3) After subsection (3) insert –

“(3A) For the purposes of subsection (1) “loan” includes –

(a) any form of credit, and

(b) a payment that is purported to be made by way of a loan.”

6 In section 554A(4) (application of Chapter 2 where relevant step taken on or after A’s death) –

(a) omit “within section 554B”, and

(b) at the end insert “if –

(a) the relevant step is within section 554B, or

(b) the relevant step is within section 554C by virtue of subsection (1)(ab) of that section.”

7 After section 554O insert –

**“554OA Exclusions: transfer of employment-related loans**

(1) Chapter 2 does not apply by reason of a relevant step taken by a person (“P”) if –

(a) the step is acquiring a right to payment of an amount equal to the whole or part of a payment made by way of a loan to a relevant person (the “borrower”),

(b) the loan, at the time it was made, was an employment-related loan,

(c) at the time the relevant step is taken, the borrower is an employee, or a prospective employee, of P, and

(d) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.

- (2) In subsection (1) “employment-related loan” has the same meaning as it has for the purposes of Chapter 7 of Part 3.”
- 8 In section 554Z(10)(b) (interpretation: relevant step which involves a sum of money), after “section 554C(1)(a)” insert “to (ab)”.
- 9 In section 554Z12(1) (relevant step taken after A’s death etc.), after “554C” insert “, by virtue of subsection (1)(a) or (b) to (e) of that section,”.

*Exclusions: payments in respect of a tax liability*

- 10 After section 554X insert –

**“554XA Exclusions: payments in respect of a tax liability**

- (1) Chapter 2 does not apply by reason of a relevant step which is the payment of a sum of money if –
- (a) the payment is a relevant tax payment, or
  - (b) where the payment is not a relevant tax payment –
    - (i) the payment is made to a person for the purpose of the person making a relevant tax payment, and
    - (ii) the person makes a relevant tax payment of an amount equal to the amount of the first payment, and
    - (iii) the relevant tax payment is made before the end of the period of 60 days beginning with the day on which the first payment is made.
- (2) “Relevant tax payment” means a payment made to Her Majesty’s Revenue and Customs in respect of a liability for –
- (a) income tax,
  - (b) national insurance contributions,
  - (c) inheritance tax, or
  - (d) corporation tax,
- where the liability arises in respect of the relevant arrangement in pursuance of which the step is taken.
- (3) But a provisional payment of tax (see section 554Z12C) is not a relevant tax payment.”

*Double taxation*

- 11 In section 554Z2 (value of relevant step to count as employment income), after subsection (1) insert –
- “(1AA) But subsection (1) does not apply where –
- (a) this Chapter applies only by reason of section 554AA (close companies),
  - (b) the relevant step is a step within section 554B, 554C or 554D, and
  - (c) the relevant step gives rise to a charge to tax under either –
    - (i) section 455 of CTA 2010 by virtue of section 459 of that Act (loans treated as made to participator), or
    - (ii) section 415 of ITTOIA 2005 (release of loan to participator in a close company).”

12 For section 554Z5 (overlap with earlier relevant step) substitute –

**“554Z5 Overlap with money or asset subject to earlier tax liability**

- (1) This section applies if there is overlap between –
  - (a) the sum of money or asset (“sum or asset P”) which is the subject of the relevant step, and
  - (b) a sum of money or asset (“sum or asset Q”) by reference to which, on an occasion that occurred before the relevant step is taken, A became subject to a liability for income tax (“the earlier tax liability”).
- (2) But this section does not apply where –
  - (a) the earlier tax liability arose by reason of a relevant step within section 554B taken in a tax year before 6 April 2011, and
  - (b) the value of the relevant step is (or if large enough would be) reduced under paragraph 59 of Schedule 2 to FA 2011.
- (3) Where either the payment condition or the liability condition is met, the value of the relevant step is reduced (but not below nil) by an amount equal to so much of the sum of money, or (as the case may be) the value of so much of the asset, as is within the overlap.
- (4) The payment condition is that, at the time the relevant step is taken –
  - (a) the earlier tax liability has become due and payable, and
  - (b) either –
    - (i) it has been paid in full, or
    - (ii) the person liable for the earlier tax liability has agreed terms with an officer of Revenue and Customs for the discharge of that liability.
- (5) The liability condition is that, at the time the relevant step is taken, the earlier tax liability is not yet due and payable.
- (6) For the purposes of this section there is overlap between sum or asset P and sum or asset Q so far as it is just and reasonable to conclude that –
  - (a) they are the same sum of money or asset, or
  - (b) sum or asset P directly, or indirectly, represents sum or asset Q.
- (7) Subsection (8) applies where the earlier tax liability arose by virtue of the application of this Chapter by reason of an earlier relevant step (the “earlier relevant step”).
- (8) If any reductions were made under this section to the value of the earlier relevant step, sum or asset P is treated as overlapping with any other sum of money or asset so far as the other sum of money or asset was treated as overlapping with sum or asset Q for the purposes of this section.
- (9) In subsection (1)(b) –
  - (a) the reference to A includes a reference to any person linked with A, and

- (b) the reference to a liability for income tax does not include a reference to a liability for income tax arising by reason of section 175 (benefit of taxable cheap loan treated as earnings).
- (10) In subsection (3) the reference to the value of the relevant step is a reference to that value—
  - (a) after any reductions made to it under section 554Z4, this section or 554Z7, but
  - (b) before any reductions made to it under section 554Z6 or 554Z8.
- (11) For the purposes of subsection (4)(b)(i) a person is not to be regarded as having paid any tax by reason only of making—
  - (a) a payment on account of income tax,
  - (b) a payment that is treated as a payment on account under section 223(3) of FA 2014 (accelerated payments), or
  - (c) a payment pending determination of an appeal made in accordance with section 55 of TMA 1970.”

13 After section 554Z12 insert—

**“554Z12A Earlier income tax liability: application of section 554Z12B**

- (1) Section 554Z12B applies if the conditions in subsections (2) and (3) are met.
- (2) The first condition is that there is overlap between—
  - (a) the sum of money or asset (“sum or asset P”) which is the subject of the relevant step, and
  - (b) a sum of money or asset (“sum or asset Q”) by reference to which, on an occasion that occurred before the relevant step is taken, A became subject to a liability for income tax (“the earlier tax liability”).
- (3) The second condition is that at the time the relevant step is taken—
  - (a) an amount is payable by a person (the “liable person”) in respect of the earlier tax liability, but the whole or part of that amount is unpaid and not otherwise accounted for, and
  - (b) the liable person has not agreed any terms with an officer of Revenue and Customs for the discharge of the earlier tax liability.
- (4) For the purposes of this section there is overlap between sum or asset P and sum or asset Q so far as it is just and reasonable to conclude that—
  - (a) they are the same sum of money or asset, or
  - (b) sum or asset P directly, or indirectly, represents sum or asset Q.
- (5) In subsection (2)(b)—
  - (a) the reference to A includes a reference to any person linked with A, and
  - (b) the reference to a liability for income tax does not include a reference to a liability for income tax arising by reason of section 175 (benefit of taxable cheap loan treated as earnings).

**554Z12B Earlier income tax liability: treatment of payments**

- (1) In this section—
  - (a) “the earlier charge” means so much of the earlier tax liability as relates to the overlap between sum or asset P and sum or asset Q, and
  - (b) “the Chapter 2 overlap charge” means so much of the Chapter 2 tax liability as relates to the overlap between sum or asset P and sum or asset Q.
- (2) The amount of a tax liability that relates to the overlap between sum or asset P and sum or asset Q is to be determined on a just and reasonable basis.
- (3) Subsection (4) applies where, after the relevant step is taken, an amount (the “earlier charge paid amount”) is paid in respect of all or part of—
  - (a) the earlier charge, or
  - (b) any late payment interest in respect of the charge.
- (4) An amount equal to the earlier charge paid amount is treated as a payment on account of—
  - (a) the Chapter 2 overlap charge, or
  - (b) if that charge has been paid in full, any late payment interest payable in respect of the charge.
- (5) Except where subsection (10) applies, subsection (6) applies where an amount (the “Chapter 2 paid amount”) is paid in respect of all or part of—
  - (a) the Chapter 2 overlap charge, or
  - (b) any late payment interest in respect of the charge.
- (6) An amount equal to the Chapter 2 paid amount is treated as a payment on account of—
  - (a) the earlier charge, or
  - (b) if the earlier charge has been paid in full, any late payment interest payable in respect of the charge.
- (7) Subsection (10) applies where—
  - (a) the condition in 554Z12A(2) is met because there is overlap between sum or asset P and each of two or more items within section 554Z12A(2)(b), and
  - (b) an amount (the “Chapter 2 aggregate paid amount”) is paid in respect of all or part of—
    - (i) two or more relevant Chapter 2 overlap charges, or
    - (ii) any late payment interest in respect of any of those charges.
- (8) In subsection (7)(b), “relevant Chapter 2 overlap charge” means so much of the Chapter 2 tax liability as relates to the overlap between sum or asset P and one of those items within section 554Z12A(2)(b).
- (9) For the purposes of subsection (10)—
  - (a) in the case of each of those items, the “earlier charge” in respect of the overlap between sum or asset P and the item is

- so much of the liability mentioned in section 554Z12A(2)(b) in the case of the item as relates to the overlap, and
- (b) the Chapter 2 aggregate paid amount is to be allocated, in such proportions as are just and reasonable in all the circumstances, between the earlier charges given by paragraph (a).
- (10) The amount allocated to an earlier charge under subsection (9) is treated as a payment on account of –
- (a) the earlier charge to which it is allocated, and
- (b) if the earlier charge has been paid in full, any late payment interest payable in respect of the charge.
- (11) In this section –
- “late payment interest” means interest payable under –
- (a) section 86 of TMA 1970,
- (b) section 101 of FA 2009, or
- (c) regulation 82 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682);
- “Chapter 2 tax liability” means the liability for income tax arising by virtue of the application of Chapter 2 by reason of the relevant step.

#### **554Z12C Earlier income tax liability: provisional payments of tax**

- (1) Subsection (2) applies for the purposes of –
- (a) section 554Z12A(3)(a), and
- (b) section 554Z12B(3), (4)(b), (7)(b) and (10)(b).
- (2) A person is not to be regarded as having paid, or otherwise accounted for, any tax by reason only of making a provisional payment of tax, except in accordance with an application granted under section 554Z12D.
- (3) In this Part, “provisional payment of tax” means –
- (a) a payment on account of income tax,
- (b) a payment that is treated as a payment on account under section 223(3) of FA 2014 (accelerated payments), or
- (c) a payment pending determination of an appeal made in accordance with section 55 of TMA 1970.
- (4) The reference in subsection (3)(a) to a payment on account of income tax does not include a reference to a payment treated under section 554Z12B as a payment on account of a tax liability.

#### **554Z12D Application for provisional payments to be treated as payment of tax**

- (1) A person may make an application to Her Majesty’s Revenue and Customs for a provisional payment of tax to be treated for the purposes of section 554Z12B as –
- (a) an earlier charge paid amount,
- (b) a Chapter 2 paid amount, or
- (c) a Chapter 2 aggregate paid amount.

- (2) Where an application under subsection (1) is granted, the provisional payment of tax to which it relates may not be repaid.
- (3) An application for approval must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs.
- (4) An officer of Revenue and Customs must notify the applicant of the decision on an application.

**554Z12E Provisional payments of tax: further provision**

- (1) This section applies in a case to which section 554Z12B applies (see section 554Z12A(1)).
- (2) If a provisional payment of tax is made in respect of an earlier charge in relation to an overlap, it is to be treated as also being made in respect of the Chapter 2 overlap charge in relation to the overlap.
- (3) If a provisional payment of tax is made in respect of a Chapter 2 overlap charge in relation to an overlap, it is to be treated as also being made in respect of the earlier charge in relation to the overlap.
- (4) If section 554Z12B(10) applies in a case (see section 554Z12B(7)) and a provisional payment of tax is made in respect of two or more relevant Chapter 2 overlap charges –
  - (a) the amount of the provisional payment of tax is to be allocated, in such proportions as are just and reasonable in all the circumstances, between those relevant Chapter 2 overlap charges, and
  - (b) a provisional payment of tax, equal to the amount allocated to the relevant Chapter 2 overlap charge relating to any particular overlap, is to be treated as also being made in respect of the earlier charge given by section 554Z12B(9) in respect of that overlap.
- (5) Subsection (6) applies if –
  - (a) the provisional payment of tax is repaid, and
  - (b) late payment interest on the earlier charge or the Chapter 2 overlap charge would have accrued during the relevant period if the provisional payment of tax had not been made.
- (6) The late payment interest mentioned in subsection (5) is treated as having accrued as if the provisional payment of tax had not been made.
- (7) For the purposes of subsection (5), the “relevant period” is the period beginning on the day on which the provisional payment of tax is made and ending with the day on which the repayment is made.”

PART 2

LOANS AND QUASI-LOANS OUTSTANDING ON 5 APRIL 2019

*Relevant step*

- 14 (1) A person (“P”) is treated as taking a relevant step for the purposes of Part 7A of ITEPA 2003 if –

- (a) P has made a loan, or a quasi-loan, to a relevant person,
  - (b) the loan or quasi-loan was made on or after 6 April 1999, and
  - (c) an amount of the loan or quasi-loan is outstanding immediately before the end of 5 April 2019.
- (2) P is treated as taking the step immediately before—
- (a) the end of the approved repayment date, if the loan is an approved fixed term loan on 5 April 2019, or
  - (b) the end of 5 April 2019, in any other case.
- (3) Where P is treated as taking a relevant step within this paragraph by reason of making a loan or a quasi-loan, references to “the relevant step” in sections 554A(1)(e)(i) and (ii) and 554AA(1)(e)(i) and (ii) of ITEPA 2003 have effect as if they were references to the step of making the loan or, as the case may be, quasi-loan.
- (4) For the purposes of section 554Z3(1) of ITEPA 2003 (value of relevant step), the step is to be treated as involving a sum of money equal to the amount of the loan or quasi-loan that is outstanding at the time P is treated as taking the step.
- (5) Subsections (2) and (3) of section 554C of ITEPA 2003 (“relevant person”) apply for the purposes of this Part of this Schedule as they apply for the purposes of that section.
- (6) Sub-paragraph (1) is subject to paragraph 30 (accelerated payments) and paragraph 31 (double taxation).

*Meaning of “loan”, “quasi-loan” and “approved repayment date”*

- 15 (1) In this Part of this Schedule “loan” includes—
- (a) any form of credit;
  - (b) a payment that is purported to be made by way of a loan.
- (2) For the purposes of paragraph 14, P makes a “quasi-loan” to a relevant person if (and when) P acquires a right (the “acquired debt”)—
- (a) which is a right to a payment or a transfer of assets, and
  - (b) in respect of which the condition in sub-paragraph (3) is met.
- (3) The condition is met in relation to a right if there is a connection (direct or indirect) between the acquisition of the right and—
- (a) a payment made, by way of a loan or otherwise, to the relevant person, or
  - (b) a transfer of assets to the relevant person.
- (4) Where a quasi-loan or a loan made by P to a relevant person is replaced, directly or indirectly, by a loan or another loan (the “replacement loan”), references in paragraph 14 to the loan are references to the replacement loan.
- (5) Where a loan or a quasi-loan made by P to a relevant person is replaced, directly or indirectly, by a quasi-loan or another quasi-loan (the “replacement quasi-loan”), references in paragraph 14 to the quasi-loan are references to the replacement quasi-loan.
- (6) In this Part of this Schedule, “approved repayment date”, in relation to an approved fixed term loan, means the date by which, under the terms of the

loan at the time of making the application for approval under paragraph 19, the whole of the loan must be repaid.

*Meaning of “outstanding”: loans*

- 16 (1) An amount of a loan is “outstanding” for the purposes of paragraph 14 if the relevant principal amount exceeds the repayment amount.
- (2) In sub-paragraph (1) “relevant principal amount”, in relation to a loan, means the total of –
- (a) the initial principal amount lent, and
  - (b) any sums that have become principal under the loan, otherwise than by capitalisation of interest.
- (3) In sub-paragraph (1) “repayment amount”, in relation to a loan, means the total of –
- (a) the amount of principal under the loan that has been repaid before 17 March 2016, and
  - (b) payments in money made by the relevant person on or after 17 March 2016 by way of repayment of principal under the loan.
- (4) A payment is to be disregarded for the purposes of sub-paragraph (3)(b) if there is any connection (direct or indirect) between the payment and a tax avoidance arrangement (other than the arrangement under which the loan was made).
- (5) In this paragraph and in paragraph 17, “tax avoidance arrangement” has the same meaning as it has for the purposes of Part 7A of ITEPA 2003 (see section 554Z(13) to (16) of that Act).

*Meaning of “outstanding”: quasi-loans*

- 17 (1) An amount of a quasi-loan is outstanding for the purposes of paragraph 14 if the initial debt amount exceeds the repayment amount.
- (2) In sub-paragraph (1) “initial debt amount”, in relation to a quasi-loan, means the total of –
- (a) an amount equal to the value of the acquired debt (see paragraph 15(2)), and
  - (b) where P subsequently acquires a further right (an “additional debt”) to a payment, or transfer of assets, in connection with the payment mentioned in paragraph 15(3)(a) or (as the case may be) the transfer mentioned in paragraph 15(3)(b), an amount equal to the value of the additional debt.
- (3) For the purposes of sub-paragraph (2) –
- (a) where the acquired debt is a right to payment of an amount, the “value” of the debt is that amount,
  - (b) where the additional debt is a right to payment of an amount, the “value” of the debt is that amount, but is nil if the additional debt accrued to P by the capitalisation of interest on the acquired debt or another additional debt, and
  - (c) where the acquired debt or additional debt is a right to a transfer of assets, the “value” of the debt is an amount equal to –

- (i) the market value of the assets at the time the right is acquired (or the value of the right at that time if the assets are non-fungible and not in existence at that time), or
  - (ii) if higher, the cost of the assets at that time.
- (4) In sub-paragraph (1) “repayment amount”, in relation to a quasi-loan, means the total of—
- (a) the amount (if any) by which the initial debt amount has been reduced (by way of repayment) before 17 March 2016,
  - (b) payments in money (if any) made by the relevant person on or after 17 March 2016 by way of repayment of the initial debt amount, and
  - (c) if the acquired debt or an additional debt is a right to a transfer of assets, and the assets have been transferred, an amount equal to the market value of the assets at the time of the transfer.
- (5) A payment or transfer is to be disregarded for the purposes of sub-paragraph (4)(b) or (c) if there is any connection (direct or indirect) between the payment or transfer and a tax avoidance arrangement (other than the arrangement under which the quasi-loan was made).

*Meaning of “approved fixed term loan”*

- 18 (1) A loan is an “approved fixed term loan” on 5 April 2019 if, at any time on that day, it is a qualifying loan which has been approved by an officer of Revenue and Customs in accordance with paragraph 19.
- (2) A loan is a “qualifying loan” if—
- (a) the loan was made before 9 December 2010,
  - (b) the term of the loan cannot exceed 10 years, and
  - (c) it is not an excluded loan under sub-paragraph (3).
- (3) A loan is an excluded loan if, at any time after the loan was made—
- (a) the loan has been replaced, directly or indirectly, by another loan, or
  - (b) the terms of the loan have been altered so as—
    - (i) to meet the condition in sub-paragraph (2)(b), or
    - (ii) to postpone the date by which, under the terms of the loan, the whole of the loan must be repaid.

*Approval: application to HMRC*

- 19 (1) The liable person in relation to a qualifying loan may make an application to the Commissioners for Her Majesty’s Revenue and Customs for approval of the loan.
- (2) An officer of Revenue and Customs may grant such an application if satisfied that, in relation to the loan—
- (a) the qualifying payments condition is met (see paragraph 20), or
  - (b) the commercial terms condition is met (see paragraph 21).
- (3) Subject to sub-paragraph (4), an application may be made in 2018.
- (4) An application may be made after 2018 if an officer of Revenue and Customs considers it is reasonable in all the circumstances for the liable person to make a late application.

- (5) An application for an approval must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs.
- (6) An officer of Revenue and Customs must notify the applicant of the decision on an application.
- (7) In this paragraph “liable person”, in relation to a loan, means the person who is liable for any tax on the value of the relevant step in relation to the loan under paragraph 14.

*Approval: qualifying payments condition*

- 20 (1) The qualifying payments condition is met in relation to a qualifying loan if, during the relevant period –
  - (a) payments have been made to P in respect of the repayment of the principal of the loan, and
  - (b) the payments have been made at intervals not exceeding 53 weeks.
- (2) The “relevant period” in relation to a loan is the period beginning with the making of the loan and ending with the making of the application.

*Approval: commercial terms condition*

- 21 (1) The commercial terms condition is met in relation to a qualifying loan if –
  - (a) either –
    - (i) it is reasonable to assume that, had the qualifying loan been made in the ordinary course of a lending business, loans on terms comparable to those of the qualifying loan would have been available to members of the public, or
    - (ii) the qualifying loan was made in the ordinary course of a lending business, and
  - (b) the borrower has, in all material respects, complied with the terms of the loan.
- (2) For the purposes of sub-paragraph (1), a loan is made in the ordinary course of a lending business if it is made by a person in the ordinary course of a business carried on by the person which includes –
  - (a) the lending of money, or
  - (b) the supplying of goods or services on credit.

*Exclusions: commercial transactions*

- 22 (1) Section 554F of ITEPA 2003 (exclusions: commercial transactions) is amended in accordance with this paragraph.
- (2) In the opening words of subsection (1) –
  - (a) after “relevant step” insert “taken by a person (“L”)”;
  - (b) after “which is” insert “, or has a relevant connection with,”.
- (3) In subsection (1)(a), after “the loan is” insert “(at the time it is made)”.
- (4) After subsection (1) insert –

“(1A) For the purposes of subsection (1), a relevant step has a relevant connection with the payment of a sum of money by way of a loan if –

- (a) the relevant step is within paragraph 14 of Schedule 10 to FA 2017, and
- (b) L is treated as taking a relevant step within that paragraph by reason of the payment of that sum in that way.”

*Exclusions: transactions under employee benefit packages*

- 23 (1) Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 14 which is treated as being taken by a person (“P”) if –
- (a) P is treated as taking a relevant step within that paragraph by reason of the payment of a sum of money by way of a loan,
  - (b) the step is not taken under a pension scheme,
  - (c) the loan was made for the sole purpose of a transaction of P’s with A and which P entered into in the ordinary course of P’s business,
  - (d) at the time the loan was made (the “relevant time”) –
    - (i) a substantial proportion of P’s business involved making similar loans to members of the public,
    - (ii) the transaction with A was part of a package of benefits which was available to a substantial proportion of B’s employees, and
    - (iii) sub-paragraph (3) does not apply,
  - (e) the terms on which similar transactions were offered by P under the package of benefits mentioned in paragraph (d)(ii) were generous enough to enable substantially all of the employees of B to whom the package was available at or around the relevant time to take advantage of what was offered (if they wanted to),
  - (f) the terms on which P entered into the transaction with A were substantially the same as the terms on which at or around the relevant time P normally entered into similar transactions with employees of B under the package of benefits,
  - (g) if B is a company, a majority of B’s employees to whom the package of benefits was available at the relevant time did not have a material interest (as defined in section 68 of ITEPA 2003) in B, and
  - (h) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) For the purposes of sub-paragraph (1)(d)(i) –
- (a) a loan is “similar” if it is made for the same or similar purposes as the loan which is the subject of the relevant step, and
  - (b) “members of the public” means members of the public at large with whom P deals at arm’s length.
- (3) This sub-paragraph applies if any feature of the package of benefits mentioned in sub-paragraph (1)(d)(ii) had or would have been likely to have had the effect that, of the employees of B to whom the package was available, it is employees within sub-paragraph (4) on whom benefits under the package will be wholly or mainly conferred.
- (4) The employees within this sub-paragraph are –
- (a) directors,
  - (b) senior employees,

- (c) employees who at the relevant time received, or as a result of the package of benefits would have been likely to have received, the higher or highest levels of remuneration, and
  - (d) if, at the relevant time, B was a company and was a member of a group of companies, any employees not within paragraph (b) or (c) who –
    - (i) were senior employees in the group, or
    - (ii) received, or as a result of the package of benefits would have been likely to have received, the higher or highest levels of remuneration in the group.
- (5) For the purposes of sub-paragraph (1)(d) and (e) a transaction is “similar” if it is of the same or a similar type to the transaction which P has or had with A.
- (6) In this paragraph references to A include references to any person linked with A.
- (7) In this paragraph “pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(1) of that Act).
- 24 In section 554G of ITEPA 2003 (exclusions: transactions under employee benefit packages), after subsection (1A) insert –
- “(1A) See paragraph 23 of Schedule 10 to FA 2017 for provision about exclusions for transactions under employee benefit packages in a case in which the relevant step is within paragraph 14 of that Schedule.”

*Exclusions: cases involving employment-related securities*

- 25 Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 14 which is treated as being taken by a person (“P”) if –
- (a) P is treated as taking a relevant step within that paragraph by reason of the payment of a sum of money by way of a loan (the “relevant loan”),
  - (b) the relevant loan is made and used solely for the purpose of enabling A to exercise an employment-related securities option (within the meaning of Chapter 5 of Part 7 of ITEPA 2003),
  - (c) the exercise of the option by A gives rise to employment income of A in respect of A’s employment with B –
    - (i) which is chargeable to income tax or would be chargeable apart from Chapter 5B of Part 2 of ITEPA 2003, or
    - (ii) which is exempt income, and
  - (d) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- 26 In section 554N of ITEPA 2003 (exclusions: other cases involving employment-related securities etc.), at the end insert –
- “(17) See paragraph 25 of Schedule 10 to FA 2017 for provision about exclusions where a loan is made for the purpose of enabling the exercise of an employment-related securities option and the relevant step is within paragraph 14 of that Schedule.”

*Exclusions: employee car ownership schemes*

- 27 In section 554O of ITEPA 2003 (exclusions: employee car ownership schemes), after subsection (4) insert –
- “(4A) Chapter 2 does not apply by reason of a relevant step within paragraph 14 of Schedule 10 to FA 2017 which is treated as being taken by a person if –
- (a) the person is treated as taking a relevant step within that paragraph by reason of making the car loan, and
  - (b) the car ownership arrangement is not a tax avoidance arrangement and there is no other connection (direct or indirect) between the relevant step and a tax avoidance arrangement.”

*Exclusions: acquisition of unlisted employer shares*

- 28 (1) Chapter 2 of Part 7A of ITEPA 2003 does not apply by reason of a relevant step within paragraph 14 which is treated as being taken by a person (“P”) if –
- (a) P is treated as taking a relevant step within that paragraph by reason of the payment of a sum of money by way of loan,
  - (b) the loan was made before 9 December 2010,
  - (c) the sum is used by A solely to acquire shares (“the shares”) that form part of the ordinary share capital of –
    - (i) B, or
    - (ii) if B is a company and is a member of a group of companies at the time the shares are acquired, any other company which is a member of that group at that time,
  - (d) the shares are acquired before the end of the period of one year beginning with the day on which the loan is made, and
  - (e) the shares are not listed on a recognised stock exchange at any time during the period beginning with the day on which the loan is made and ending with the earlier of –
    - (i) the day on which A ceases to hold the shares, or
    - (ii) the day on which the loan is repaid.
- (2) Sub-paragraph (4) applies if –
- (a) apart from sub-paragraph (1), Chapter 2 of Part 7A would apply by reason of the relevant step mentioned in sub-paragraph (1), and
  - (b) by the end of the relevant period, the loan has not been fully repaid.
- (3) In this paragraph “the relevant period” means the period of 12 months beginning with the day on which A ceases to hold the shares.
- (4) Part 7A of ITEPA 2003 has effect as if –
- (a) a relevant step within paragraph 14 were taken by reason of making a loan of an amount equal to the amount of the loan outstanding as at the end of the relevant period, and
  - (b) the relevant step were taken on the day after the end of the relevant period.

*Duty to provide loan balance information to B*

- 29 (1) This paragraph applies where –
- (a) a person (“P”) has made a loan, or a quasi-loan, to a relevant person,
  - (b) the loan or quasi-loan was made on or after 6 April 1999, and
  - (c) an amount of the loan or quasi-loan is outstanding at any time –
    - (i) on or after 17 March 2016, and
    - (ii) before the end of 5 April 2019.
- (2) Each of A and P must ensure that the loan balance information in relation to the loan or quasi-loan is provided to B before the end of the period of 30 days beginning with the day after the loan charge date.
- (3) The “loan balance information” is –
- (a) the information that is necessary for B to ascertain the amount of the loan or quasi-loan concerned that is outstanding immediately before the end of the loan charge date, and
  - (b) such other information about the loan or quasi-loan as B may reasonably require for the purpose of compliance with B’s obligations under PAYE regulations.
- (4) In this paragraph “loan charge date” means –
- (a) the approved repayment date, if the loan is an approved fixed term loan on 5 April 2019, or
  - (b) 5 April 2019, in any other case.
- (5) If, despite taking reasonable steps, A and P have failed to contact B to provide the loan balance information, each of them is responsible for ensuring that the Commissioners for Her Majesty’s Revenue and Customs are notified of that fact.
- (6) A notification under sub-paragraph (5) must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs.
- (7) “Loan”, “quasi-loan” and “outstanding” have the same meaning for the purposes of this paragraph as they have for the purposes of paragraph 14.

*Accelerated payments*

- 30 (1) Sub-paragraph (5) applies where –
- (a) P would (ignoring sub-paragraph (5)) be treated as taking a relevant step within paragraph 14 by reason of making a loan, or a quasi-loan, to a relevant person,
  - (b) an accelerated payment notice, or a partner payment notice, relating to a relevant charge (the “accelerated payment notice”) has been given under Chapter 3 of Part 4 of FA 2014,
  - (c) the relevant person makes a payment (the “accelerated payment”) in respect of the understated or disputed tax to which the notice relates,
  - (d) the accelerated payment is made on or before the relevant date, and
  - (e) the amount of the loan or quasi-loan that, at the end of the relevant date, is outstanding for the purposes of paragraph 14 (see paragraphs 16 and 17) is equal to or less than the amount of the accelerated payment.

- (2) In sub-paragraph (1)(b), “relevant charge” means a charge to tax arising by reason of a step taken pursuant to the relevant arrangement concerned.
- (3) The reference in sub-paragraph (2) to the relevant arrangement concerned is a reference to the relevant arrangement in pursuance of which, or in connection with which, the loan or quasi-loan mentioned in sub-paragraph (1)(a) is made.
- (4) In sub-paragraph (1)(d) and (e), “the relevant date” means –
  - (a) the approved repayment date, if the loan is an approved fixed term loan on 5 April 2019, or
  - (b) 5 April 2019, in any other case.
- (5) If the relevant person makes a claim to the Commissioners for Her Majesty’s Revenue and Customs, P is to be treated –
  - (a) as taking the relevant step only if the condition in sub-paragraph (6) is met, and
  - (b) as doing so not at the time given by paragraph 14(2) but immediately before the end of the 30 days beginning with the date on which the condition in sub-paragraph (6) becomes met.
- (6) The condition is that, on the withdrawal of the accelerated payment notice or on the determination of an appeal, any part of the accelerated payment is repaid.
- (7) A claim under sub-paragraph (5) must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs.

#### *Double taxation*

- 31 (1) This paragraph applies where –
  - (a) a person (“P”) would, apart from this paragraph, be treated as taking a relevant step within paragraph 14 by reason of a loan made to a relevant person, and
  - (b) the loan gives rise to a charge to tax under section 455 of CTA 2010 by virtue of section 459 of that Act (loans treated as made to participators).
- (2) Paragraph 14(1) does not apply if, before the end of 5 April 2019, the charge to tax mentioned in sub-paragraph (1)(b) –
  - (a) has become due and payable, and
  - (b) is paid in full.
- 32 (1) Sub-paragraph (2) applies where –
  - (a) P is treated as taking a relevant step within paragraph 14(1) by reason of a loan made to a relevant person, and
  - (b) the loan is an employment-related loan (within the meaning of Chapter 7 of Part 3 of ITEPA 2003).
- (2) The effect of section 554Z2(2)(a) of ITEPA 2003 (value of relevant step to count as employment income: application of Part 7A instead of the benefits code) is that the loan is not to be treated as a taxable cheap loan for the purposes of Chapter 7 of Part 3 of that Act for –
  - (a) the tax year in which the relevant step is treated as being taken, and
  - (b) any subsequent tax year.

33 In section 554Z2 of ITEPA 2003, at the end insert –

- “(4) See paragraph 32 of Schedule 10 to FA 2017 for provision about the effect of subsection (2)(a) in a case in which the relevant step is within paragraph 14 of that Schedule.”

*Remittance basis*

34 Part 7A of ITEPA 2003 is amended as follows.

35 (1) Section 554Z9 (remittance basis: A does not meet section 26A requirement) is amended in accordance with this paragraph.

(2) In subsection (1), for “Subsection (2) applies” substitute “Subsections (2) and (2A) apply”.

(3) In subsection (1A), for “subsection (2) does not apply” substitute “subsections (2) and (2A) do not apply”.

(4) At the beginning of subsection (2) insert “Except in a case within subsection (2A),”.

(5) After subsection (2) insert –

“(2A) Where the relevant step is within paragraph 14 of Schedule 10 to FA 2017, A’s employment income by virtue of section 554Z2(1), or the relevant part of it, is “taxable specific income” in the tax year in which the relevant step is treated as being taken so far as the income is remitted to the United Kingdom in that tax year or in any previous tax year.”

(6) In subsection (3) for “this purpose” substitute “the purposes of subsections (2) and (2A)”.

(7) In subsection (5) –

(a) in the words before paragraph (a), for “subsection (2)” substitute “subsection (2) or (2A)”;

(b) in the words after paragraph (d) –

(i) for “subsection (2)” substitute “subsection (2) or (2A)”;

(ii) for “that subsection” substitute “subsection (2) or (2A) (as the case may be)”.

36 (1) Section 554Z10 (remittance basis: A meets section 26A requirement) is amended in accordance with this paragraph.

(2) In subsection (1) for “Subsection (2) applies” substitute “Subsections (2) and (2A) apply”.

(3) At the beginning of subsection (2) insert “Except in a case within subsection (2AA),”.

(4) After subsection (2) insert –

“(2AA) Where the relevant step is within paragraph 14 of Schedule 10 to FA 2017, the overseas portion of (as the case may be) –

(a) A’s employment income by virtue of section 554Z2(1), or

(b) the relevant part of A’s employment income by virtue of that section,

is “taxable specific income” in the tax year in which the relevant step is treated as being taken so far as the overseas portion is remitted to the United Kingdom in that tax year or in any previous tax year.”

- 37 (1) Section 554Z11 (remittance basis: supplementary) is amended in accordance with this paragraph.
- (2) In subsection (4), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.
- (3) In subsection (5), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.
- (4) In subsection (6), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.
- 38 (1) Section 554Z11A (temporary non-residents) is amended in accordance with this paragraph.
- (2) In subsection (2) –
- (a) after “554Z9(2)” insert “or (2A)”;
- (b) after “554Z10(2)” insert “or (2AA)”.
- (3) In subsection (3)(d)(i), for “554Z9(2) or 554Z10(2)” substitute “554Z9(2) or (2A) or 554Z10(2) or (2AA)”.

### *Supplementary*

- 39 ITEPA 2003 is amended as follows.
- 40 In section 554A(2) (meaning of “relevant step”), after “or 554D” insert “, or paragraph 14 of Schedule 10 to FA 2017”.
- 41 In section 554Z(9) (interpretation: reference to definition of “relevant step”), at the end insert “, but see also Part 2 of Schedule 10 to FA 2017”.
- 42 In section 554Z(10) (interpretation: relevant step which involves a sum of money) omit “or” at the end of paragraph (b) and after paragraph (c) insert “, or
- (d) a step within paragraph 14 of Schedule 10 to FA 2017.”

## PART 3

### AMENDMENTS TO ITTOIA 2005, CTA 2009 AND FA 2011

#### *ITTOIA 2005*

- 43 In section 39(4) of ITTOIA 2005 (meaning of “employee benefit scheme”), for paragraph (a) substitute –
- “(a) an arrangement (the “relevant arrangement”) which is –
- (i) an arrangement within subsection (1)(b) of section 554A of ITEPA 2003 to which subsection (1)(c) of that section applies, or
- (ii) an arrangement within subsection (1)(b) of section 554AA of ITEPA 2003 to which subsection (1)(c) of that section applies.”

CTA 2009

- 44 In section 1291(4) of CTA 2009 (meaning of “employee benefit scheme”), for paragraph (a) substitute –
- “(a) an arrangement (the “relevant arrangement”) which is –
    - (i) an arrangement within subsection (1)(b) of section 554A of ITEPA 2003 to which subsection (1)(c) of that section applies, or
    - (ii) an arrangement within subsection (1)(b) of section 554AA of ITEPA 2003 to which subsection (1)(c) of that section applies,”.

FA 2011

- 45 (1) Paragraph 59 of Schedule 2 to FA 2011 (transitional provision relating to Part 7A of ITEPA 2003) is amended as follows.
- (2) In sub-paragraph (1)(a), after “ITEPA 2003” insert “or paragraph 14 of Schedule 10 to FA 2017”.
- (3) In sub-paragraph (1)(f), after “554Z4” insert “and 554Z6”.
- (4) In the opening words of sub-paragraph (2), after “554Z4” insert “and 554Z6”.

PART 4

COMMENCEMENT

- 46 Subject to paragraph 47, the amendments made by Part 1 of this Schedule to Part 7A of ITEPA 2003 have effect in relation to relevant steps taken on or after 6 April 2017.
- 47 (1) Sections 554Z12A to 554Z12C of ITEPA 2003, inserted by paragraph 13 of this Schedule, have effect in relation to relevant steps taken on or after 6 April 2011.
- (2) Where –
- (a) a relevant step (the “early step”) is taken on or after 9 December 2010 but before 6 April 2011, and
  - (b) Chapter 2 of Part 7A of ITEPA 2003 would have applied by reason of the early step had it been taken on or after 6 April 2011 but before 6 April 2017,
- sections 554Z12A to 554Z12C of ITEPA 2003 have effect in relation to the early step as they have effect in relation to relevant steps taken on or after 6 April 2011.
- 48 The amendment made by paragraph 43 of this Schedule to section 39(4) of ITTOIA 2005 has effect in relation to employee benefit contributions (as defined in that section) made, or to be made, on or after 6 April 2017.
- 49 The amendment made by paragraph 44 of this Schedule to section 1291(4) of CTA 2009 has effect in relation to employee benefit contributions (as defined in that section) made, or to be made, on or after 1 April 2017.
- 50 The amendments made by paragraph 45(3) and (4) of this Schedule to paragraph 59 of Schedule 2 to FA 2011 have effect in relation to chargeable steps (as defined in that paragraph) taken on or after 6 April 2017.

## SCHEDULE 11

Section 33

## TRADING INCOME PROVIDED THROUGH THIRD PARTIES: LOANS ETC. OUTSTANDING ON 5 APRIL 2019

*Application of sections 23A to 23D of ITTOIA 2005 in relation to loans etc. outstanding on 5 April 2019*

- 1 (1) A loan or quasi-loan in relation to which sub-paragraph (2) applies is to be treated as a “relevant benefit” for the purposes of sections 23A to 23D of ITTOIA 2005.
- (2) This sub-paragraph applies in relation to a loan or a quasi-loan if –
  - (a) the loan or quasi-loan was made –
    - (i) on or after 6 April 1999, and
    - (ii) before 6 April 2017, and
  - (b) an amount of the loan or quasi-loan is outstanding immediately before the end of 5 April 2019.
- (3) Where section 23B applies in relation to a relevant benefit which is a loan or quasi-loan in relation to which sub-paragraph (2) applies, section 23B has effect –
  - (a) as if the “relevant benefit amount” were the amount of the loan or quasi-loan that is outstanding immediately before –
    - (i) the end of the approved repayment date, if the relevant benefit is an approved fixed term loan on 5 April 2019, or
    - (ii) the end of 5 April 2019 in any other case,
  - (b) as if section 23B(3)(a) specified –
    - (i) the tax year in which the approved repayment date falls, if the relevant benefit is an approved fixed term loan on 5 April 2019, or
    - (ii) the tax year 2018-2019 in any other case, and
  - (c) where T ceases to carry on the relevant trade in a tax year before the tax year so specified in section 23B(3)(a), as if section 23B(3)(b) were omitted and as if section 23B(3) provided that the relevant benefit amount is to be treated for income tax purposes as a post-cessation receipt of the trade received in the tax year so specified in section 23B(3)(a).
- (4) This paragraph is subject to paragraphs 9 (accelerated payments) and 10 (double taxation).

*Meaning of “loan”, “quasi-loan” and “approved repayment date”*

- 2 (1) In this Schedule “loan” includes –
  - (a) any form of credit;
  - (b) a payment that is purported to be made by way of a loan.
- (2) For the purposes of paragraph 1, a person (“P”) makes a “quasi-loan” to T if (and when) P acquires a right (the “acquired debt”) –
  - (a) which is a right to a payment or a transfer of assets, and
  - (b) in respect of which the condition in sub-paragraph (3) is met.

- (3) The condition is met in relation to a right if there is a connection (direct or indirect) between the acquisition of the right and –
  - (a) a payment made, by way of a loan or otherwise, to T, or
  - (b) a transfer of assets to T.
- (4) Where a loan or a quasi-loan made to T is replaced, directly or indirectly, by another loan (the “replacement loan”), references in paragraph 1 to the loan are references to the replacement loan.
- (5) Where a loan or a quasi-loan made to T is replaced, directly or indirectly, by another quasi-loan (the “replacement quasi-loan”), references in paragraph 1 to the quasi-loan are references to the replacement quasi-loan.
- (6) In this Schedule, “approved repayment date”, in relation to an approved fixed term loan, means the date by which, under the terms of the loan at the time of making the application for approval under paragraph 6, the whole of the loan must be repaid.
- (7) In this paragraph and in paragraphs 3, 4 and 9 –
  - (a) “T” is the person mentioned in section 23A(1)(a) of ITTOIA 2005,
  - (b) references to T include references to a person who is or has been connected with T, and
  - (c) for that purpose, section 993 of ITA 2007 (meaning of “connected”) applies for the purposes of this Schedule but as if subsection (4) of that section were omitted.

*Meaning of “outstanding”: loans*

- 3 (1) An amount of a loan is “outstanding” for the purposes of paragraph 1 if the relevant principal amount exceeds the repayment amount.
- (2) In sub-paragraph (1) “relevant principal amount”, in relation to a loan, means the total of –
  - (a) the initial principal amount lent, and
  - (b) any sums that have become principal under the loan, otherwise than by capitalisation of interest.
- (3) In sub-paragraph (1) “repayment amount”, in relation to a loan, means the total of –
  - (a) the amount of principal under the loan that has been repaid before 5 December 2016, and
  - (b) payments in money made by T on or after 5 December 2016 by way of repayment of principal under the loan.
- (4) A payment is to be disregarded for the purposes of sub-paragraph (3)(b) if there is any connection (direct or indirect) between the payment and a tax avoidance arrangement (other than the arrangement in pursuance of which the loan was made).
- (5) In this paragraph and in paragraph 4, “tax avoidance arrangement” means an arrangement which has a tax avoidance purpose.
- (6) For the purposes of sub-paragraph (5), an arrangement has a tax avoidance purpose if sub-paragraph (7) applies to a person who is a party to the arrangement.

- (7) This sub-paragraph applies to a person if the main purpose, or one of the main purposes, of the person entering into the arrangement is the avoidance of tax.
- (8) The following paragraphs apply for the purpose of determining whether any payment is connected with a tax avoidance arrangement –
- (a) a payment is connected with a tax avoidance arrangement if (for example) the payment is made (wholly or partly) in pursuance of –
    - (i) the tax avoidance arrangement, or
    - (ii) an arrangement at one end of a series of arrangements with the tax avoidance arrangement being at the other end, and
  - (b) it does not matter whether the person making the payment is unaware of the tax avoidance arrangement.

*Meaning of outstanding: “quasi-loans”*

- 4 (1) An amount of a quasi-loan is outstanding for the purposes of paragraph 1 if the initial debt amount exceeds the repayment amount.
- (2) In sub-paragraph (1), “initial debt amount” means the total of –
- (a) an amount equal to the value of the acquired debt (see paragraph 2(2)), and
  - (b) where P subsequently acquires a further right (the “additional debt”) to a payment, or transfer of assets, in connection with the payment mentioned in paragraph 2(3)(a) or (as the case may be) the transfer mentioned in paragraph 2(3)(b), an amount equal to the value of the additional debt.
- (3) For the purposes of sub-paragraph (2) –
- (a) where the acquired debt is a right to payment of an amount, the “value” of the debt is that amount,
  - (b) where the additional debt is a right to payment of an amount, the “value” of the debt is that amount, but is nil if the additional debt accrued to P by the capitalisation of interest on the acquired debt or another additional debt, and
  - (c) where the acquired debt or additional debt is a right to a transfer of assets, the “value” of the debt is an amount equal to –
    - (i) the market value of the assets at the time the right is acquired (or the value of the right at that time if the assets are non-fungible and not in existence at that time), or
    - (ii) if higher, the cost of the assets at that time.
- (4) In sub-paragraph (1), “repayment amount”, in relation to a quasi-loan, means the total of –
- (a) the amount (if any) by which the initial debt amount has been reduced (by way of repayment) before 5 December 2016,
  - (b) payments in money (if any) made by T on or after 5 December 2016 by way of repayment of the initial debt amount, and
  - (c) if the acquired debt or additional debt is a right to a transfer of assets, and the assets have been transferred, an amount equal to the market value of the assets at the time of the transfer.
- (5) A payment or transfer is to be disregarded for the purposes of sub-paragraph (4)(b) or (c) if there is any connection (direct or indirect) between

the payment or transfer and a tax avoidance arrangement (other than the arrangement under which the quasi-loan was made).

- (6) In this paragraph, “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.

*Meaning of “approved fixed term loan”*

- 5 (1) A loan is an “approved fixed term loan” on 5 April 2019 if, at any time on that day, it is a qualifying loan which has been approved by an officer of Revenue and Customs in accordance with paragraph 6.
- (2) A loan is a “qualifying loan” if—
- (a) the loan was made before 9 December 2010,
  - (b) the term of the loan cannot exceed 10 years, and
  - (c) it is not an excluded loan under sub-paragraph (3).
- (3) A loan is an excluded loan if, at any time after the loan was made—
- (a) the loan has been replaced, directly or indirectly, by another loan, or
  - (b) the terms of the loan have been altered so as—
    - (i) to meet the condition in sub-paragraph (2)(b), or
    - (ii) to postpone the date by which, under the terms of the loan, the whole of the loan must be repaid.

*Approval: application to HMRC*

- 6 (1) A person may make an application to the Commissioners for Her Majesty’s Revenue and Customs for approval of a qualifying loan made to T.
- (2) An officer of Revenue and Customs may grant such an application if satisfied that, in relation to the loan—
- (a) the qualifying payments condition is met (see paragraph 7), or
  - (b) the commercial terms condition is met (see paragraph 8).
- (3) Subject to sub-paragraph (4), an application may be made in 2018.
- (4) An application may be made after 2018 if an officer of Revenue and Customs considers it reasonable in all the circumstances for a late application to be made.
- (5) An application for an approval must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs.
- (6) An officer of Revenue and Customs must notify the applicant of the decision on an application.

*Approval: qualifying payments condition*

- 7 (1) The qualifying payments condition is met in relation to a qualifying loan if, during the relevant period—
- (a) payments have been made in respect of the repayment of the principal of the loan, and
  - (b) the payments have been made at intervals not exceeding 53 weeks.

- (2) The “relevant period” in relation to a loan is the period beginning with the making of the loan and ending with the making of the application.

*Approval: commercial terms condition*

- 8 (1) The commercial terms condition is met in relation to a qualifying loan if –
- (a) either –
    - (i) it is reasonable to assume that, had the qualifying loan been made in the ordinary course of a lending business, loans on terms comparable to those of the qualifying loan would have been available to members of the public, or
    - (ii) the qualifying loan was made in the ordinary course of a lending business; and
  - (b) the borrower has, in all material respects, complied with the terms of the loan.
- (2) For the purposes of sub-paragraph (1), a loan is made in the ordinary course of a lending business if it is made by a person in the ordinary course of a business carried on by the person which includes –
- (a) the lending of money, or
  - (b) the supplying of goods or services on credit.

*Accelerated payments*

- 9 (1) Sub-paragraph (4) applies where –
- (a) section 23B of ITTOIA 2005 would (ignoring sub-paragraph (4)) apply in relation to a relevant benefit arising to T,
  - (b) the relevant benefit is a loan or quasi-loan in relation to which paragraph 1(2) applies,
  - (c) an accelerated payment notice, or a partner payment notice, relating to a relevant charge (the “accelerated payment notice”) has been given under Chapter 3 of Part 4 of FA 2014,
  - (d) T makes a payment (the “accelerated payment”) in respect of the understated or disputed tax to which the notice relates,
  - (e) the accelerated payment is made on or before the relevant date, and
  - (f) the amount of the loan or quasi-loan that, at the end of the relevant date, is outstanding for the purposes of paragraph 1 (see paragraphs 3 and 4) is equal to or less than the amount of the accelerated payment.
- (2) In sub-paragraph (1)(c), “relevant charge” means a charge to tax under section 23B arising by reason of a relevant benefit which arises to T in pursuance of the relevant arrangement in pursuance of which the relevant benefit mentioned in sub-paragraph (1)(a) and (b) arises.
- (3) In sub-paragraph (1)(e) and (f), “the relevant date” means –
- (a) the approved repayment date, if the relevant benefit is an approved fixed term loan on 5 April 2019, or
  - (b) 5 April 2019, in any other case.
- (4) If T makes a claim to be so treated, the claimant is to be treated –
- (a) as if the relevant benefit mentioned in sub-paragraph (1)(a) and (b) arises only if the condition in sub-paragraph (5) is met, and

- (b) as if it arises immediately before the end of the 30 days beginning with the date on which the condition in sub-paragraph (5) becomes met.
- (5) The condition is that, on the withdrawal of the accelerated payment notice or on the determination of an appeal, any part of the accelerated payment is repaid.

*Double taxation*

- 10 (1) This paragraph applies if –
- (a) section 23B of ITTOIA 2005 applies in relation to a relevant benefit which is a loan or quasi-loan to which paragraph 1(2) applies,
  - (b) a liability for income tax arises in respect of the relevant benefit amount, otherwise than by virtue of section 23B,
  - (c) a liability for income tax subsequently arises in respect of that amount by virtue of that section, and
  - (d) it is just and reasonable for this paragraph to apply in order to avoid a double charge to income tax in respect of the relevant benefit amount.
- (2) So far as it is just and reasonable in order to avoid a double charge to income tax as mentioned in sub-paragraph (1)(d), no liability to income tax is to arise on the relevant benefit amount by virtue of section 23B.

## SCHEDULE 12

Section 40

## DEEMED DOMICILE: INCOME TAX AND CAPITAL GAINS TAX

## PART 1

## APPLICATION OF DEEMED DOMICILE RULE

*ICTA 1988*

- 1 (1) In section 266A of ICTA 1988 (life assurance premiums paid by employer), after subsection (8) insert –
- “(8A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (6)(b).”
- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.

*TCGA 1992*

- 2 TCGA 1992 is amended as follows.
- 3 (1) Section 16ZA (losses: non-UK domiciled individuals) is amended as follows.
- (2) For subsections (1) to (3) substitute –
- “(1) An individual may make an election under this section in respect of –

- 
- (a) the first tax year in which section 809B of ITA 2007 (claim for remittance basis) applies to the individual, or
  - (b) the first tax year in which that section applies to the individual following a period in which the individual has been domiciled in the United Kingdom.
- (2) Where an individual makes an election under this section in respect of a tax year, the election has effect in relation to the individual for –
- (a) that tax year, and
  - (b) all subsequent tax years.
- (2A) But if after making an election under this section an individual becomes domiciled in the United Kingdom at any time in a tax year, the election does not have effect in relation to the individual for –
- (a) that tax year, or
  - (b) any subsequent tax year.
- (2B) Where an election made by an individual under this section in respect of a tax year ceases to have effect by virtue of subsection (2A), the fact that it has ceased to have effect does not prevent the individual from making another election under this section in respect of a later tax year.
- (3) If an individual does not make an election under this section in respect of a year referred to in subsection (1)(a) or (b), foreign losses accruing to the individual in –
- (a) that tax year, or
  - (b) any subsequent tax year except one in which the individual is domiciled in the United Kingdom,
- are not allowable losses.”
- (3) After subsection (6) insert –
- “(7) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of this section.”
- (4) The amendments made by this paragraph have effect in relation to the tax year 2017-18 and subsequent tax years.
- (5) Where –
- (a) an individual makes an election under section 16ZA of TCGA 1992 as originally enacted for a tax year before 2017-18, but
  - (b) after making the election the individual becomes domiciled in the United Kingdom at any time in a tax year,
- sections 16ZB and 16ZC of that Act do not have effect in relation to the individual by virtue of that election for that tax year or any subsequent tax year.
- (6) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of sub-paragraph (5).
- 4 (1) In section 16ZB (election under section 16ZA: foreign chargeable gains remitted in the tax year after that in which they accrue), in subsection (1), paragraphs (a) and (b) substitute –
- “(a) the individual has made an election under section 16ZA in respect of a tax year before the applicable year,

- (aa) the election has effect in relation to the individual for the applicable year,
    - (b) foreign chargeable gains accrued to the individual in or after the tax year in respect of which the election was made but before the applicable year, and”.
  - (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.
- 5
- (1) In section 16ZC (election under section 16ZA by individual to whom remittance basis applies), in subsection (1), for paragraphs (a) to (c) substitute –
    - “(a) the individual has made an election under section 16ZA in respect of the tax year or any earlier tax year,
    - (b) the election has effect in relation to the individual for the tax year, and
    - (c) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the tax year.”
  - (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.
- 6
- (1) In section 69 (trustees of settlements), after subsection (2E) insert –
    - “(2F) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (2B)(c).”
  - (2) The amendment made by this paragraph has effect in relation to a settlement –
    - (a) in a case where the settlement arose on the settlor’s death (whether by will, intestacy or otherwise), where the settlor died on or after 6 April 2017;
    - (b) in any other case, where the settlor made the settlement (or was treated for the purposes of TCGA 1992 as making the settlement) on or after 6 April 2017.
- 7
- (1) In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), after subsection (3) insert –
    - “(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(c).”
  - (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.
- 8
- (1) In section 275 (location of assets), after subsection (3) insert –
    - “(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(l)(iii).”
  - (2) The amendment made by this paragraph has effect for the purposes of determining for the purposes of TCGA 1992 the situation of any asset, or whether the situation of any asset is in the United Kingdom, at any time on or after 6 April 2017 (irrespective of when the asset was acquired by the person holding it).
- 9
- (1) In Schedule 5A (settlements with foreign element: information), in

paragraph 3, after sub-paragraph (3) insert –

“(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of sub-paragraph (3).”

- (2) The amendment made by this paragraph has effect in relation to settlements created on or after 6 April 2017.

#### *ITEPA 2003*

- 10 (1) ITEPA 2003 is amended as follows.
- (2) In section 355 (deductions for corresponding payments by non-domiciled employees with foreign employers), in subsection (2), at the end insert “(and section 835BA of ITA 2007 (deemed domicile) applies for the purposes of this subsection)”.
- (3) In section 373 (non-domiciled employee’s travel costs and expenses where duties performed in UK), at the end insert –
- “(7) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1).”
- (4) In section 374 (non-domiciled employee’s spouse’s etc travel costs and expenses where duties performed in UK), at the end insert –
- “(10) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1).”
- (5) In section 376 (foreign accommodation and subsistence costs and expenses (overseas employment)), at the end insert –
- “(6) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(c).”
- (6) The amendments made by this paragraph have effect in relation to the tax year 2017-18 and subsequent tax years.

#### *ITA 2007*

- 11 ITA 2007 is amended as follows.
- 12 (1) In section 476 (how to work out whether settlor meets condition C in section 475), after subsection (3) insert –
- “(3A) Section 835BA (deemed domicile) applies for the purposes of subsections (2)(b) and (3)(b).”
- (2) The amendment made by this paragraph has effect –
- (a) so far as relating to section 476(2)(b) of ITA 2007, in relation to a settlor who dies on or after 6 April 2017;
- (b) so far as relating to section 476(3)(b) of ITA 2007, in relation to a settlement made on or after 6 April 2017.
- 13 (1) In section 718 (meaning of “person abroad” etc), after subsection (2) insert –
- “(3) Section 835BA (deemed domicile) applies for the purposes of subsection (1)(b).”

- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.
- 14 (1) Chapter A1 of Part 14 (remittance basis) is amended as follows.
- (2) In section 809B (claim for remittance basis to apply), after subsection (1) insert—
- “(1A) Section 835BA (deemed domicile) applies for the purposes of subsection (1)(b).”
- (3) In section 809C (claim for remittance basis by long-term UK resident: nomination) omit the following—
- (a) in subsection (1)(b), “the 17-year residence test,”;
  - (b) subsection (1ZA);
  - (c) subsection (1A)(a);
  - (d) in subsection (1B)(a), “the 17-year residence test or”;
  - (e) subsection (4)(za).
- (4) In section 809E (application of remittance basis without claim: other cases), after subsection (1) insert—
- “(1A) Section 835BA (deemed domicile) applies for the purposes of subsection (1)(b).”
- (5) In section 809H (claim for remittance basis by long-term UK resident: charge) omit the following—
- (a) in subsection (1)(c), “the 17-year residence test,”;
  - (b) in subsection (1A)—
    - (i) “(1ZA)”;
    - (ii) “the 17-year residence test,”;
  - (c) subsection (5B)(za).
- (6) The amendments made by this paragraph have effect in relation to the tax year 2017-18 and subsequent tax years.  
This is subject to paragraphs 15 and 16.
- 15 (1) This paragraph applies in a case where—
- (a) section 10A of TCGA 1992 (temporary non-residents) as originally enacted applies in relation to an individual, and
  - (b) the year of return is 2017-18.
- (2) For the purposes of capital gains tax in respect of foreign chargeable gains accruing to the individual during an intervening year, the amendment made by paragraph 14(2) does not have effect in relation to the year of return.
- (3) Where by virtue of sub-paragraph (2) an individual makes a claim under section 809B of ITA 2007 for the tax year 2017-18, sections 809C, 809G and 809H of ITA 2007 do not apply to the individual for that tax year.
- (4) In this paragraph—
- “intervening year” and “year of return” have the same meanings as in section 10A of TCGA 1992 as originally enacted;
  - “foreign chargeable gain” has the meaning given by section 12(4) of TCGA 1992.

- 16 (1) This paragraph applies in a case where section 10A of TCGA 1992 as substituted by paragraph 119 of Schedule 45 to FA 2013 applies in relation to an individual.
- (2) For the purposes of capital gains tax in respect of foreign chargeable gains accruing to the individual during a temporary period of non-residence beginning before 8 July 2015, the amendment made by paragraph 14(2) does not have effect in relation to the tax year which consists of or includes the period of return.
- (3) Where by virtue of sub-paragraph (2) an individual makes a claim under section 809B of ITA 2007 for any of the tax years 2017-18 to 2020-21 inclusive, sections 809C, 809G and 809H of ITA 2007 do not apply to the individual for that tax year.
- (4) In this paragraph, “foreign chargeable gain” has the meaning given by section 12(4) of TCGA 1992.
- (5) Part 4 of Schedule 45 to FA 2013 explains what “temporary period of non-residence” and “period of return” mean.
- 17 (1) In section 834 (residence of personal representatives), at the end insert –
- “(5) Section 835BA (deemed domicile) applies for the purposes of subsection (3).”
- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.

## PART 2

### PROTECTION OF OVERSEAS TRUSTS

#### TCGA 1992

- 18 In Schedule 5 to TCGA 1992 (provisions supplementing section 86 of TCGA 1992), after paragraph 5 insert –
- “5A (1) Section 86 does not apply in relation to a year (“the particular year”) if –
- (a) the particular year is the tax year 2017-18 or a later tax year,
  - (b) the settlor is not domiciled in the United Kingdom when the settlement is created,
  - (c) where the settlement is created on or after 6 April 2017, it is created at a time when the settlor is not regarded for the purposes of section 86(1)(c) as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 (see section 86(3A)),
  - (d) there is no time in the particular year when the settlor is –
    - (i) domiciled in the United Kingdom, or
    - (ii) regarded for the purposes of section 86(1)(c) as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect because of condition A in that section being met, and
  - (e) no property or income is provided directly or indirectly for the purposes of the settlement by the settlor, or the trustees

of any other settlement of which the settlor is a beneficiary or settlor, at a time in the period –

- (i) beginning with the later of the creation of the settlement and the start of 6 April 2017, and
- (ii) ending with the end of the particular tax year,

when the settlor is regarded for the purposes of section 86(1)(c) as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect because of condition B in that section being met.

(2) For the purposes of sub-paragraph (1)(e), ignore –

- (a) property or income provided under a transaction entered into at arm's length,
- (b) property or income provided in pursuance of a liability incurred by any person before 6 April 2017, and
- (c) where the settlement's expenses relating to taxation and administration for a tax year exceed its income for that year, property or income provided towards meeting that excess if the value of any such property and income is not greater than the amount of the excess."

19 (1) In TCGA 1992, after section 87C insert –

**“87D Sections 87 and 87A: disregard of capital payments to non-residents**

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement, no account is to be taken of a capital payment (or a part of a capital payment) within subsection (2), but this is subject to subsection (3) and section 87E.
- (2) A capital payment is within this subsection if (and to the extent that) it is in a tax year received (or treated as received) from the trustees of the settlement by a beneficiary who at all times in that year is not resident in the United Kingdom, but this is subject to section 87F.
- (3) Subsection (1) does not apply in relation to a capital payment (or a part of a capital payment) if –
  - (a) the recipient beneficiary is a close member of the settlor's family (see section 87H),
  - (b) the payment (or part) is received on or after 6 April 2017, and
  - (c) the settlor is resident in the United Kingdom in the tax year in which the payment (or part) is received.

**87E Sections 87 and 87A: disregarded payments to temporary non-resident**

- (1) If –
  - (a) as a result of section 87D, no account is taken of a capital payment (or a part of a capital payment) for the purposes of sections 87 and 87A,
  - (b) the recipient beneficiary is an individual who is temporarily non-resident, and
  - (c) the payment (or part) is received in the beneficiary's temporary period of non-residence,the payment (or part) is treated for the purposes of sections 87 and 87A as received (by the beneficiary) in the beneficiary's period of

return, and account is to be taken of it accordingly for those purposes.

- (2) Part 4 of Schedule 45 to FA 2013 explains –
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of residence” and “the period of return” mean.

**87F Sections 87 and 87A: disregarded payments in year settlement ends**

- (1) This section applies in relation to a settlement if –
- (a) in a particular tax year, the settlement ceases to exist,
  - (b) two or more beneficiaries (“the recipients”) in the year receive (or are treated as receiving) capital payments from the trustees, and
  - (c) at least one of the recipients is, and at least one is not, a non-resident beneficiary.
- (2) Those capital payments, so far as received by such of the recipients as are non-resident beneficiaries, are not within section 87D(2).
- (3) In this section “non-resident beneficiary” means a beneficiary who at all times in the year is not resident in the United Kingdom.

**87G Cases where settlor liable for section 87 charge on closely-related beneficiary**

- (1) Subsection (2) applies if in the case of a settlement –
- (a) chargeable gains are treated by section 87 or 89(2) as accruing to an individual (“the beneficiary”) in a tax year,
  - (b) the beneficiary is a close member of the settlor’s family (see section 87H) at any time in the year,
  - (c) the settlor is resident in the United Kingdom at any time in the year, and
  - (d) either –
    - (i) the beneficiary is, at all times in the year, not resident in the United Kingdom, or
    - (ii) section 809B, 809D or 809E of ITA 2007 (remittance basis) apply to the beneficiary for the year and none of the gains is remitted to the United Kingdom in the year.
- (2) The settlor is chargeable to capital gains tax on the gains as if they were chargeable gains accruing to the settlor in the year.
- (3) Where any tax is chargeable on the settlor as a result of subsection (2) and is paid, the settlor is entitled to recover the amount of the tax from the beneficiary or from any person who is a trustee of the settlement.
- (4) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying –
- (a) the amount of the gains concerned, and
  - (b) the amount of tax paid,

and any such certificate is conclusive evidence of the facts stated in it.

**87H Meaning of “close member of the settlor’s family”**

- (1) For the purposes of sections 87D, 87G and 87I as they apply in relation to a settlement, a person is a close member of the settlor’s family if the person is—
  - (a) the settlor’s spouse or civil partner, or
  - (b) a child of the settlor, or of a person within paragraph (a), if the child has not reached the age of 18.
- (2) For the purposes of subsection (1)—
  - (a) two people living together as if they were spouses of each other are treated as if they were spouses of each other, and
  - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

**87I Non-UK resident settlements: attribution of gains to onward gifts**

- (1) Subsection (2) applies if in the case of a settlement—
  - (a) a capital payment (“the original payment”) is received in a tax year by a person (“the original beneficiary”) in a tax year from the trustees of the settlement,
  - (b) there is no time in that year when the trustees are resident in the United Kingdom,
  - (c) either—
    - (i) the original beneficiary is not a close member of the settlor’s family at any time in that year, or
    - (ii) although there is a time in that year when the original beneficiary is a close member of the settlor’s family, the settlor is not resident in the United Kingdom in that year,
  - (d) the original beneficiary makes, directly or indirectly, a gift (“the onward payment”) to a person (“the subsequent recipient”)—
    - (i) after the original payment is received but before the end of 3 years beginning with the day containing the start time, or
    - (ii) before the original payment is received and, it is reasonable to assume, in anticipation of receiving the original payment,
  - (e) the subsequent recipient is resident in the United Kingdom in the tax year in which the onward payment is received by the subsequent recipient, and
  - (f) if a particular tax year is a tax year contained in the period beginning with the start of the tax year in which the original payment is received, and ending with the end of the tax year in which the onward payment is received by the subsequent beneficiary, either—
    - (i) the original beneficiary is, at all times in the particular year, not resident in the United Kingdom, or

- (ii) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the original beneficiary for the particular tax year.
- (2) Sections 87, 87A and 89 and subsection (1)(a) have effect—
  - (a) as if the subsequent recipient were a beneficiary of the settlement who has received a capital payment from the trustees of the settlement—
    - (i) at the time the onward payment is made, or
    - (ii) if earlier, in the tax year in which the settlement ceases to exist, and
  - (b) as if the amount of that capital payment were the same as—
    - (i) the amount of the onward payment, or
    - (ii) if less, the amount of the original payment reduced by the tax-producing amount of any relevant payment,and the other provisions of this Part have effect accordingly.
- (3) For the purposes of subsection (1)(d)—
  - (a) if the original payment is a capital payment other than one that is treated as received because of the operation of subsection (2), “the start time” is the time the original payment is received, and
  - (b) if the original payment is a capital payment that is treated as received because of the operation of subsection (2) on a previous occasion, “the start time” is the time given as the start time by this subsection on that occasion.
- (4) If the onward payment is made as part of any arrangements that amount in substance to arrangements for the whole or part of the amount of a capital payment actually made by the trustees to be received ultimately by a beneficiary who is not the recipient of that payment (which may be a payment other than the original payment), subsection (1)(d) has effect as if “but before the end of 3 years beginning with the day containing the start time” were omitted.
- (5) In subsections (2)(b)(ii) and (6) “relevant payment” means—
  - (a) a gift made—
    - (i) by the subsequent recipient,
    - (ii) after the original payment is received, and
    - (iii) before the onward payment is made, or
  - (b) where chargeable gains are treated by section 87 or 89 as accruing to the original beneficiary as a result of the receipt of the original payment, any amount of those gains remitted to the United Kingdom in a tax year for which section 809B, 809D or 809E of ITA 2007 applies to the original beneficiary.
- (6) For the purposes of subsection (2)(b)(ii), the “tax-producing amount” of a relevant payment is—
  - (a) if the relevant payment is within subsection (5)(a), the amount (if any) on which a person is chargeable to capital gains tax as a result of the operation of subsection (2) by reference to the making of that relevant payment, and
  - (b) if the relevant payment is within subsection (5)(b), the amount remitted.

- (7) In this section –
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
  - “gift” includes any benefit, and
  - “make”, in relation to a gift that is a benefit, means confer.

**87J Sections 87 and 87A: disregard of payments to migrating beneficiary**

- (1) For the purposes of section 87 and 87A as they apply in relation to a settlement for a particular tax year, no account is to be taken of a capital payment (or part of a capital payment) within subsection (2).
- (2) A capital payment is within this subsection –
- (a) if it is received by a beneficiary of the settlement in or before the particular tax year,
  - (b) if the beneficiary is resident in the United Kingdom in the tax year in which it is received,
  - (c) if the beneficiary is not resident in the United Kingdom in the particular tax year, and
  - (d) so far as it has not been matched (under section 87A as it applies for tax years before the particular tax year) with –
    - (i) the section 2(2) amount for any tax year before the particular tax year, but not earlier than the tax year 2017-18, in which the beneficiary is resident in the United Kingdom, or
    - (ii) the section 2(2) amount for any earlier tax year.”
- (2) In section 87B(1) (when remittance basis applies to gains treated as accruing by section 87) –
- (a) omit the “and” at the end of paragraph (a),
  - (b) in paragraph (b) (which refers to sections 809B, 809D and 809E of ITA 2007), after “809E” insert “of ITA 2007”, and
  - (c) after paragraph (b) insert “, and
    - (ba) the gains are not treated as accruing to the settlor by section 87G.”
- (3) In section 89(3) of TCGA 1992 (application of sections 87 to 87C in relation to migrant settlements), for “87C” substitute “87I”.
- (4) The new sections 87D and 87E have effect –
- (a) except as provided by the new section 87D(3), in relation to payments received in the tax year 2017-18 or a later tax year, and
  - (b) in the tax year 2017-18 and later tax years, also in relation to payments received before the tax year 2017-18.
- (5) The new section 87F has effect in relation to payments received in the tax year 2017-18 or a later tax year.
- (6) The new section 87G has effect in relation to chargeable gains treated as accruing in or after the tax year 2017-18 as a result of capital payments received, or treated as received, in or after that tax year.
- (7) The new section 87H, and the amendments made in sections 87B and 89, have effect for the tax year 2017-18 and later tax years.

- (8) The new section 87I has effect in relation to onward payments made on or after 6 April 2017, and does so even in cases where the original payment is received (or treated as received) before that date.
- (9) The new section 87J has effect where the particular tax year is the tax year 2017-18 or a later tax year.

*FA 2008*

- 20 In Part 2 of Schedule 7 to FA 2008 (remittance basis: trusts etc), after paragraph 171 insert—
- “172 (1) Sub-paragraph (2) has effect for the purposes of—  
 paragraphs 100(1)(b), 101(1)(c) and 102(1)(e),  
 paragraph (b) of paragraph 118(3) so far as having effect for  
 the purposes of paragraph 118(1)(d), and  
 paragraphs 124(1)(b), 126(7)(b), 127(1)(e) and 151(1)(b).
- (2) An individual not domiciled in the United Kingdom at a time in the tax year 2017-18, or a later tax year, is to be regarded as domiciled in the United Kingdom at that time if—
- (a) the individual was born in the United Kingdom,
  - (b) the individual’s domicile of origin was in the United Kingdom, and
  - (c) the individual is resident in the United Kingdom for the tax year concerned.”

PART 3

CAPITAL GAINS TAX REBASING

- 21 (1) This paragraph applies to the disposal of an asset by an individual (“P”) where—
- (a) the asset was held by P on 5 April 2017,
  - (b) the disposal is made on or after 6 April 2017,
  - (c) the asset was not situated in the United Kingdom at any time in the relevant period, and
  - (d) P is a qualifying individual.
- (2) The relevant period is the period which—
- (a) begins with 16 March 2016 or, if later, the date on which P acquired the asset, and
  - (b) ends with 5 April 2017.
- (3) P is a qualifying individual if—
- (a) section 809H of ITA 2007 (claim for remittance basis by long-term UK resident: charge) applied in relation to P for any tax year before the tax year 2017-18,
  - (b) P is not an individual—
    - (i) who was born in the United Kingdom, and
    - (ii) whose domicile of origin was in the United Kingdom,
  - (c) P was not domiciled in the United Kingdom at any time in a relevant tax year, and

- (d) P met condition B in section 835BA of ITA 2007 in relation to each relevant tax year.
- (4) The relevant tax years are –
  - (a) the tax year 2017-18, and
  - (b) if the disposal was made after that tax year, all subsequent tax years up to and including that in which the disposal was made.
- (5) In computing, for the purpose of capital gains tax, the gain or loss accruing on the disposal, it is to be assumed that P acquired the asset on 5 April 2017 for a consideration equal to its market value on that date.
- (6) Where under section 127 of TCGA 1992 (including that section as applied by sections 132 and 135 of that Act) an original and a new holding of shares or other securities are treated as the same asset, the condition in sub-paragraph (1)(c) applies to both the original and the new holding.
- (7) Words and expressions used in this paragraph and in TCGA 1992 are to be construed in accordance with that Act.
- 22 (1) This paragraph applies for the purposes of paragraph 21(1)(c) in the case of an asset which is brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) of ITA 2007 applies.
- (2) The asset is to be regarded as not situated in the United Kingdom at any time in the relevant period –
  - (a) if the asset is, under section 809X of ITA 2007, treated as not remitted to the United Kingdom at the time it is brought to, or received or used in, the United Kingdom, and
  - (b) the asset is not under section 809Y(1) of that Act treated as remitted to the United Kingdom at any time during the relevant period.
- 23 (1) An individual may make an election for paragraph 21 not to apply to a disposal made by the individual.
- (2) Sections 42 and 43 of TMA 1970 (procedure and time limit for claims), except section 42(1A) of that Act, apply in relation to an election under this paragraph as they apply in relation to a claim for relief.
- (3) An election under this paragraph is irrevocable.
- (4) All such adjustments are to be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this paragraph.

#### PART 4

##### CLEANSING OF MIXED FUNDS

- 24 (1) This paragraph applies for the purposes of the application of section 809Q(3) of ITA 2007 in relation to an individual (“P”).
- (2) Section 809R(4) of ITA 2007 does not apply to an offshore transfer from a mixed fund where –
  - (a) the transfer is made in the tax year 2017-18 or the tax year 2018-19,
  - (b) the transfer is a transfer of money,
  - (c) the mixed fund from which the transfer is made is an account (account A) and the transfer is made to another account (account B),

- (d) the transfer is nominated by P for the purposes of this sub-paragraph,
  - (e) at the time of the nomination no other transfer from account A to account B has been so nominated, and
  - (f) P is a qualifying individual.
- (3) P is a qualifying individual if—
- (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applied in relation to P for any tax year before the tax year 2017-18, and
  - (b) P is not an individual who—
    - (i) was born in the United Kingdom, and
    - (ii) whose domicile of origin was in the United Kingdom.
- (4) In this paragraph “mixed fund” and “offshore transfer” have the same meanings as in section 809R(4) of ITA 2007.

## SCHEDULE 13

Section 42

### OVERSEAS PROPERTY WITH VALUE ATTRIBUTABLE TO UK RESIDENTIAL PROPERTY

#### *Non-excluded overseas property*

- 1 In IHTA 1984, before Schedule 1 insert—

#### “SCHEDULE A1

#### NON-EXCLUDED OVERSEAS PROPERTY

#### PART 1

#### OVERSEAS PROPERTY WITH VALUE ATTRIBUTABLE TO UK RESIDENTIAL PROPERTY

#### *Introductory*

- 1 Property is not excluded property by virtue of section 6(1) or 48(3)(a) if and to the extent that any of paragraphs 2 to 4 apply to it.

#### *Rights and interests in a close company*

- 2 (1) This paragraph applies to the right or interest that a participator in a close company has in that company, if and to the extent that the value of the right or interest is directly or indirectly attributable to a UK residential property interest.
- (2) For the purposes of sub-paragraph (1) the value of a right or interest in a close company is indirectly attributable to a UK residential property interest only if it is attributable to such an interest by virtue of one or more qualifying interests (which need not be owned directly by the close company).
- (3) In this paragraph “qualifying interest” means—
- (a) a right or interest in a close company, or
  - (b) an interest in a partnership.

- (4) For the purposes of sub-paragraph (3), disregard a qualifying interest if—
  - (a) in the case of a qualifying interest which is a right or interest in a close company, its value is less than 1% of all the rights or interests in that close company;
  - (b) in the case of a qualifying interest which is an interest in a partnership, its value is less than 1% of all the interests in that partnership.
- (5) In determining the value of a right or interest in a close company for the purposes of sub-paragraph (1), liabilities of the close company are to be attributed to all of its property rateably (whether or not they would otherwise be attributed to any particular property of the company).

*Interests in a partnership*

- 3 (1) This paragraph applies to an interest in a partnership, if and to the extent that the value of the interest is directly or indirectly attributable to a UK residential property interest.
- (2) For the purposes of sub-paragraph (1) the value of an interest in a partnership is indirectly attributable to a UK residential property interest only if it is attributable to such an interest by virtue of one or more qualifying interests (which need not be owned directly by the partnership).
- (3) Paragraph 2(3) and (4) (meaning of “qualifying interest” and disregard of minor qualifying interests) apply for the purposes of sub-paragraph (2).

*Loans*

- 4 (1) This paragraph applies to—
  - (a) the rights of a creditor in respect of a relevant loan, and
  - (b) money or money’s worth held or otherwise made available as security, collateral or guarantee for a relevant loan.
- (2) This paragraph also applies to—
  - (a) the right or interest that a participator in a close company has in that company, if and to the extent that the value of that right or interest is directly or indirectly attributable to property within sub-paragraph (1)(a) or (b);
  - (b) an interest in a partnership, if and to the extent that the value of that interest is directly or indirectly attributable to property within sub-paragraph (1)(a) or (b).
- (3) For the purposes of sub-paragraph (2) the value of a right or interest in a close company, or an interest in a partnership, is indirectly attributable to property within sub-paragraph (1)(a) or (b) only if it is attributable to such property by virtue of one or more qualifying interests (which need not be owned directly by the close company or partnership).

- (4) For the purposes of this paragraph a loan is a relevant loan if and to the extent that money or money's worth made available under the loan is used to finance (directly or indirectly) –
- (a) the acquisition of a UK residential property interest by an individual, a partnership or the trustees of a settlement,
  - (b) the maintenance, or an enhancement, of the value of a UK residential property interest, where the UK residential property interest is the property of an individual, is partnership property or is comprised in a settlement, or
  - (c) the acquisition by an individual or the trustees of a settlement of a right or interest in a close company, or of an interest in a partnership, if and to the extent that money or money's worth made available under the loan is used to finance (directly or indirectly) –
    - (i) the acquisition of a UK residential property interest by the close company or partnership, or
    - (ii) the maintenance, or an enhancement, of the value of a UK residential property interest, where the UK residential property interest is the property of the close company or is partnership property.
- (5) Paragraph 2(3) and (4) (meaning of “qualifying interest” and disregard of minor qualifying interests) apply for the purposes of sub-paragraph (3).

## PART 2

## SUPPLEMENTARY

*Disposals and repayments*

- 5 (1) This paragraph applies to the following property –
- (a) property which constitutes consideration in money or money's worth for the disposal of –
    - (i) property to which paragraph 2 or 3 applies, or
    - (ii) property falling within paragraph 4(2);
  - (b) any money or money's worth paid in respect of a creditor's rights falling within paragraph 4(1)(a);
  - (c) any property directly or indirectly representing property within paragraph (a) or (b).
- (2) If and to the extent that property is property to which this paragraph applies and is not relevant settled property –
- (a) it is not excluded property by virtue of section 6(1), (1A) or (2), or section 48(3)(a), (3A) or (4) for the two-year period, and
  - (b) if it is held in a qualifying foreign currency account within the meaning of section 157 (non-residents' bank accounts), that section does not apply to it for the two-year period.
- (3) The two-year period is the period of two years beginning with –
- (a) the date of the disposal referred to in sub-paragraph (1)(a), or

- (b) the date of the payment referred to in sub-paragraph (1)(b).
- (4) If and to the extent that property is property to which this paragraph applies and is relevant settled property, section 65(7), (7A) and (8) do not apply to it.
- (5) In this paragraph “relevant settled property” means property which is “relevant property” within the meaning given by section 58(1) (but ignoring section 58(1)(f)).

*Tax avoidance arrangements*

- 6 (1) In determining whether or to what extent property situated outside the United Kingdom is excluded property, no regard is to be had to any arrangements the purpose or one of the main purposes of which is to secure a tax advantage by avoiding or minimising the effect of paragraph 1 or 5.
- (2) In this paragraph –
  - “tax advantage” has the meaning given in section 208 of the Finance Act 2013;
  - “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding (whether or not legally enforceable and whenever entered into) and any associated operations.

*Double taxation relief arrangements*

- 7 (1) Nothing in any double taxation relief arrangements made with the government of a territory outside the United Kingdom is to be read as preventing a person from being liable for any amount of inheritance tax by virtue of paragraph 1 or 5 in relation to any transfer of value if under the law of that territory –
  - (a) no tax of a character similar to inheritance tax is charged on that transfer of value, or
  - (b) a tax of a character similar to inheritance tax is charged in relation to that transfer of value at an effective rate of 0%.
- (2) In this paragraph –
  - “double taxation relief arrangements” means arrangements having effect under section 158(1);
  - “effective rate” means the rate found by expressing the tax chargeable as a percentage of the amount by reference to which it is charged.

PART 3

INTERPRETATION

*UK residential property interest*

- 8 (1) In this Schedule “UK residential property interest” means an interest in UK land if –
  - (a) the land consists of or includes a dwelling, or

(b) the interest subsists under a contract for an off-plan purchase.

(2) In this paragraph –

“interest in UK land” has the meaning given by paragraph 2 of Schedule B1 to the 1992 Act (and the power in subparagraph (5) of that paragraph applies for the purposes of this Schedule);

“the land”, in relation to an interest in UK land which is an interest subsisting for the benefit of land, is a reference to the land for the benefit of which the interest subsists;

“dwelling” has the meaning given by paragraph 4 of Schedule B1 to the 1992 Act (and the power in paragraph 5 of that Schedule applies for the purposes of this Schedule);

“contract for an off-plan purchase” has the meaning given by paragraph 1(6) of Schedule B1 to the 1992 Act.

#### *Definitions relating to close companies*

9 In this Schedule –

“close company” means a company within the meaning of the Corporation Tax Acts which is (or would be if resident in the United Kingdom) a close company for the purposes of those Acts;

“participator”, in relation to a close company, means any person who is (or would be if the company were resident in the United Kingdom) a participator in relation to that company within the meaning given by section 454 of the Corporation Tax Act 2010;

references to rights and interests in a close company include references to rights and interests in the assets of the company available for distribution among the participators in the event of a winding-up or in any other circumstances.

#### *Partnerships*

10 In this Schedule “partnership” means –

- (a) a partnership within the Partnerships Act 1890,
- (b) a limited partnership registered under the Limited Partnerships Act 1907,
- (c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships Act (Northern Ireland) 2002, or
- (d) a firm or entity of a similar character to either of those mentioned in paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom.”

#### *Consequential amendments*

2 IHTA 1984 is amended as follows.

- 3 In section 6 (excluded property), at the end insert –  
“(5) This section is subject to Schedule A1 (non-excluded overseas property).”
- 4 In section 48 (excluded property) –  
(a) in subsections (3) and (3A), at the end insert “and to Schedule A1”;  
(b) in subsection (4), at the end (but on a new line) insert “This subsection is subject to Schedule A1.”
- 5 In section 65 (charge at other times), after subsection (8) insert –  
“(8A) Subsections (7) to (8) are subject to paragraph 5 of Schedule A1 (non-excluded overseas property).”
- 6 In section 157 (non-residents’ bank accounts), after subsection (3) insert –  
“(3A) This section is subject to paragraph 5 of Schedule A1 (non-excluded overseas property).”

*Commencement*

- 7 (1) The amendments made by this section have effect in relation to times on or after 6 April 2017.
- (2) But for the purposes of paragraph 5(1) of Schedule A1 to IHTA 1984 as inserted by this Schedule –  
(a) paragraph (a) of that paragraph does not apply in relation to a disposal of property occurring before 6 April 2017, and  
(b) paragraph (b) of that paragraph does not apply in relation to a payment of money or money’s worth occurring before 6 April 2017.

## SCHEDULE 14

Section 43

## VAT: ZERO-RATING OF ADAPTED MOTOR VEHICLES ETC

*Adaptation of a qualifying motor vehicle*

- 1 (1) In Schedule 8 to VATA 1994 (zero-rating), Group 12 (drugs, medicines, aids for the handicapped etc) is amended as follows.
- (2) For item 2A substitute –  
“2A (1) The supply of a motor vehicle (other than a motor vehicle capable of carrying more than 12 persons including the driver) to a person (“P”) if –  
(a) the motor vehicle is a qualifying motor vehicle by virtue of paragraph (2) or (3),  
(b) P is a disabled person to whom paragraph (4) applies, and  
(c) the vehicle is supplied for domestic or P’s personal use.
- (2) A motor vehicle is a “qualifying motor vehicle” by virtue of this paragraph if it is designed to enable a person to whom paragraph (4) applies to travel in it.

- (3) A motor vehicle is a “qualifying motor vehicle” by virtue of this paragraph if –
- (a) it has been substantially and permanently adapted to enable a person to whom paragraph (4) applies to travel in it, and
  - (b) the adaptation is necessary to enable P to travel in it.
- (4) This paragraph applies to a disabled person –
- (a) who usually uses a wheelchair, or
  - (b) who is usually carried on a stretcher.
- 2B (1) The supply of a qualifying motor vehicle (other than a motor vehicle capable of carrying more than 12 persons including the driver) to a charity for making available, by sale or otherwise to a person to whom paragraph (3) applies, for domestic or the person’s personal use.
- (2) A motor vehicle is a “qualifying motor vehicle” for the purposes of this item if it is designed or substantially and permanently adapted to enable a disabled person to whom paragraph (3) applies to travel in it.
- (3) This paragraph applies to a disabled person –
- (a) who usually uses a wheelchair, or
  - (b) who is usually carried on a stretcher.”

*Three year rule, reporting and certification*

- 2 In Schedule 8 to VATA 1994, in Group 12 –
- (a) omit Note (5L), and
  - (b) before Note (6) insert –
    - “(5M) For the purposes of Notes (5N) to (5S), the supply of a motor vehicle is a “relevant supply” if it is a supply of goods (which is made in the United Kingdom).
    - (5N) In the case of a relevant supply of a motor vehicle to a disabled person (“the new supply”), items 2(f) and 2A do not apply if, in the period of 3 years ending with the day on which the motor vehicle is made available to the disabled person –
      - (a) a reckonable zero-rated supply of another motor vehicle has been made to that person, or
      - (b) that person has made a reckonable zero-rated acquisition, or reckonable zero-rated importation, of another motor vehicle.
    - (5O) If a relevant supply of a motor vehicle is made to a disabled person and –
      - (a) any reckonable zero-rated supply of another motor vehicle has previously been made to the person, or
      - (b) any reckonable zero-rated acquisition or importation of another motor vehicle has previously been made by the person,

the reckonable zero-rated supply or (as the case may be) reckonable zero-rated importation or acquisition is treated for the purposes of Note (5N) as not having been made if either of the conditions in Note (5P) is met.

- (5P) The conditions mentioned in Note (5O) are that—
- (a) at the time of the new supply (see Note (5N)) the motor vehicle mentioned in Note (5O)(a) or (b) is unavailable for the disabled person's use because—
    - (i) it has been stolen, or
    - (ii) it has been destroyed, or damaged beyond repair (accidentally, or otherwise in circumstances beyond the disabled person's control), or
  - (b) the Commissioners are satisfied that (at the time of the new supply) the motor vehicle mentioned in Note (5O)(a) or (b) has ceased to be suitable for the disabled person's use because of changes in the person's condition.
- (5Q) In the case of a relevant supply of a motor vehicle to a disabled person, items 2(f) and 2A cannot apply unless the supplier—
- (a) gives to the Commissioners, before the end of the period of 12 months beginning with the day on which the supply is made, any information and supporting documentary evidence that may be specified in a notice published by them, and
  - (b) in doing so complies with any requirements as to method set out in the notice.
- (5R) In the case of a relevant supply of a motor vehicle to a disabled person, items 2(f) and 2A cannot apply unless, before the supply is made, the person making the supply has been given a certificate in the required form which—
- (a) states that the supply will not fall within Note (5N), and
  - (b) sets out any other matters, and is accompanied by any supporting documentary evidence, that may be required under a notice published by the Commissioners for the purposes of this Note.
- (5S) The information that may be required under Note (5Q)(a) includes—
- (a) the name and address of the disabled person and details of the person's disability, and
  - (b) any other information that may be relevant for the purposes of that Note,
- (and the matters that may be required under Note (5R)(b) include any information that may be required for the purposes of Note (5Q)).
- (5T) In Notes (5N) to (5S)—

“in the required form” means complying with any requirements as to form that may be specified in a notice published by the Commissioners;

“reckonable zero-rated acquisition”, in relation to a motor vehicle, means an acquisition of the vehicle from another member State in a case where –

- (a) VAT is not chargeable on the acquisition as a result of item 2(f) or 2A, and
- (b) the acquisition takes place on or after 1 April 2017;

“reckonable zero-rated importation”, in relation to a motor vehicle, means an importation of the vehicle from a place outside the member States in a case where –

- (a) VAT is not chargeable on the importation as a result of item 2(f) or 2A, and
- (b) the importation takes place on or after 1 April 2017;

“reckonable zero-rated supply”, in relation to a motor vehicle, means a supply of the vehicle which –

- (a) is a supply of goods,
- (b) is zero-rated as a result of item 2(f) or 2A, and
- (c) is made on or after 1 April 2017.

(5U) In items 2A and 2B references to design, or adaptation, of a motor vehicle to enable a person (or a person of any description) to travel in it are to be read as including a reference to design or, as the case may be, adaptation of the motor vehicle to enable the person (or persons of that description) to drive it.”

### *Penalty*

3 (1) Section 62 of VATA 1994 (incorrect certificates as to zero-rating etc) is amended as follows.

(2) After subsection (1A) insert –

“(1B) Where –

- (a) a person gives a certificate for the purposes of Note (5R) to Group 12 of Schedule 8 with respect to a supply of a motor vehicle, and
- (b) the certificate is incorrect,

the person giving the certificate is to be liable to a penalty.”

(3) In subsection (2), at the end insert –

- “(c) in a case where it is imposed by virtue of subsection (1B), the difference between –
  - (i) the amount of the VAT which would have been chargeable on the supply if the certificate had been correct, and
  - (ii) the amount of VAT actually chargeable.”

*Minor amendments*

- 4 Schedule 8 to VATA 1994 is amended as follows.
- 5 In Part 1 (index to zero-rated supplies of goods and services) –
- (a) in the entry relating to Group 12, for “handicapped” substitute “disabled”;
  - (b) in the entry relating to Group 4, for “handicapped” substitute “disabled”.
- 6 In Group 4 (talking books for the blind and handicapped and wireless sets for the blind) –
- (a) in item 1, for each occurrence of “handicapped” substitute “disabled”;
  - (b) in the heading, for “handicapped” substitute “disabled”.
- 7 In Group 12 (drugs, medicines, aids for the handicapped etc) –
- (a) in items 2 to 19 and Notes (1) and (5B) to (9), for each occurrence of “handicapped” substitute “disabled”;
  - (b) for Note (3) substitute –
    - “(3) Any person who is chronically sick or disabled is “disabled” for the purposes of this Group.”;
  - (c) in the heading, for “handicapped” substitute “disabled”.
- 8 In Group 15 (charities etc) –
- (a) in item 5 and Notes (1C) to (4A), (5A) and (5B), for “handicapped” substitute “disabled”;
  - (b) for Note (5) substitute –
    - “(5) Any person who is chronically sick or disabled is “disabled” for the purposes of this Group.”

*Commencement*

- 9 The amendments made by this Schedule have effect in relation to supplies made, and acquisitions and importations taking place, on or after 1 April 2017.

SCHEDULE 15

Section 69

SOFT DRINKS INDUSTRY LEVY: RECOVERY AND OVERPAYMENTS

PART 1

RECOVERY

*Recovery as debt due*

- 1 Soft drinks industry levy is recoverable as a debt due to the Crown.

*Assessments*

- 2 (1) Sub-paragraph (2) applies where it appears to the Commissioners that –

- (a) an amount has become due from a person in respect of soft drinks industry levy (but the amount due cannot be ascertained), and
  - (b) there has been a relevant default by the person (see sub-paragraph (3)).
- (2) The Commissioners may –
- (a) assess the amount of levy due from the person to the best of their judgment, and
  - (b) notify the amount to the person.
- (3) The following are “relevant defaults” –
- (a) a failure to comply with a requirement of section 66 (notification of liability to register) or of regulations under section 68 (correction of the register);
  - (b) a failure to make a return required by regulations under section 69;
  - (c) a failure to keep documents, or provide facilities, necessary to verify returns required by those regulations;
  - (d) the making, in purported compliance with a requirement of the regulations, of an incomplete or incorrect return;
  - (e) an unreasonable delay in complying with a requirement, where the failure to comply would be a default within any of paragraphs (a) to (d).
- (4) Sub-paragraph (5) applies where it appears to the Commissioners that –
- (a) an amount has become due from any person in respect of soft drinks industry levy, and
  - (b) the amount due can be ascertained by the Commissioners.
- (5) The Commissioners may –
- (a) assess the amount of levy due from the person, and
  - (b) notify the amount to the person.

#### *Supplementary assessments*

- 3 (1) Sub-paragraph (2) applies where –
- (a) an assessment has been notified to a person under paragraph 2(2) or (5), and
  - (b) it appears to the Commissioners that the amount which ought to have been assessed as due exceeds the amount that has already been assessed.
- (2) The Commissioners may –
- (a) make a supplementary assessment of the amount of levy due from the person to the best of their judgment, and
  - (b) notify the amount to that person.

#### *Further provision about assessments under paragraphs 2 and 3*

- 4 (1) Where an amount has been assessed and notified to a person under paragraph 2 or 3, it is recoverable on the basis that it is an amount of soft drinks industry levy due from that person.
- (2) But sub-paragraph (1) does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

*Time limits for assessments*

- 5 (1) An assessment under paragraph 2 or 3 may not be made after the end of the relevant period.
- (2) Except in a case within sub-paragraph (3), the relevant period is the period of 4 years from the end of the tax period to which the assessment relates.
- (3) Where an assessment of an amount due from a person in a case involving loss of soft drinks industry levy –
- (a) brought about deliberately by the person, or
  - (b) attributable to a failure by the person to comply with comply with a requirement of section 66 (notification of liability to register) or of regulations under section 68 (correction of the register),
- the relevant period is the period of 20 years from the end of the tax period to which the assessment relates.
- (4) In sub-paragraph (3)(a) the reference to loss brought about deliberately by a person includes a reference to a loss brought about as a result of the deliberate inaccuracy in a document given to HMRC by the person.
- (5) In sub-paragraphs (3) and (4) references to a loss brought about by a person include references to a loss brought about by another person acting on behalf of that person.

*Notifications to a person’s representative*

- 6 (1) A notification of an assessment under paragraph 2 or 3 to a person’s representative is to be treated for the purposes of this Schedule as a notification to the person in relation to whom the representative acts.
- (2) In sub-paragraph (1), “representative”, in relation to a person, means –
- (a) any of that person’s personal representatives,
  - (b) that person’s trustee in bankruptcy, interim or permanent trustee or liquidator;
  - (c) any person holding office as receiver in relation to that person or any of that person’s property;
  - (d) any other person acting in a representative capacity in relation to that person.

PART 2

OVERPAYMENTS

*Repayments of overpaid levy*

- 7 (1) This paragraph applies where a person (P) has paid an amount to the Commissioners by way of levy which was not levy due.
- (2) The Commissioners are liable, on the making of a claim by P, to repay the amount.
- (3) The Commissioners may by regulations make provision about –
- (a) the form and manner of a claim;
  - (b) the information required in support of a claim.

- (4) Except as provided by this paragraph, the Commissioners are not liable to repay any amount paid by way of levy by reason of the fact that it was not levy due.
- (5) This paragraph is subject to paragraph 8.

*Supplementary provisions about repayment etc.*

- 8 (1) The Commissioners are not liable, on a claim for a repayment of levy, to repay any amount paid more than 4 years before the making of the claim.
- (2) It is a defence to any claim for repayment of an amount of levy that the repayment of that amount would unjustly enrich the claimant.
- (3) The Commissioners may by regulations make provision about the matters to be taken or not taken into account in determining whether for the purposes of sub-paragraph (2) –
- (a) repayment of an amount to a person would enrich that person, or
  - (b) enrichment of a person would be unjust.

*Assessment for excessive repayment*

- 9 (1) Sub-paragraph (2) applies where –
- (a) an amount has been paid at any time to a person by way of a repayment of levy, and
  - (b) the amount paid exceeded the amount which the Commissioners were liable at that time to repay to that person.
- (2) Sub-paragraph (2) also applies where a person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by regulations under paragraph 8(3).
- (3) The Commissioners may –
- (a) to the best of their judgment, assess the amount of the excess (in a case within sub-paragraph (1)) or the amount due (in a case within sub-paragraph (2)), and
  - (b) notify the amount to the person.
- (4) Subject to sub-paragraph (5), where –
- (a) an assessment is made on any person under this paragraph in respect of a repayment of levy, and
  - (b) the Commissioners have power under Part 1 of this Schedule to make an assessment on that person to an amount of levy due from that person, the assessments may be combined and notified to the person as one assessment.
- (5) A notice of a combined assessment under sub-paragraph (4) must separately identify the amount being assessed in respect of repayments of levy.

*Supplementary assessments*

- 10 (1) Sub-paragraph (2) applies where –
- (a) an assessment has been notified to a person under paragraph 9, and
  - (b) it appears to the Commissioners that the amount which ought to have been assessed as due exceeds the amount that has already been assessed.

- (2) The Commissioners may –
- (a) on or before the last day on which the assessment under paragraph 9 could have been made, make a supplementary assessment of the amount of levy due from the person, and
  - (b) notify the amount to that person.

*Supplementary provision about assessments under paragraphs 9 and 10*

- 11 (1) Where an amount has been assessed and notified to a person under paragraph 9 or 10, it is recoverable on the basis that it is an amount of soft drinks industry levy due from that person.
- (2) But sub-paragraph (1) does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

*Notifications to a person’s representative*

- 12 (1) A notification of an assessment under paragraph 9 or 10 to a person’s representative is to be treated for the purposes of this Schedule as a notification to the person in relation to whom the representative acts.
- (2) In this paragraph “representative”, in relation to a person, has the meaning given by paragraph 6(2).

SCHEDULE 16

Section 73

SOFT DRINKS INDUSTRY LEVY: REQUIREMENTS TO KEEP RECORDS ETC: PENALTIES

PART 1

PENALTIES

*Sections 73(2) and 68: requirements imposed by regulations*

- 1 (1) A person who fails to comply with a requirement imposed by regulations under section 73(2)(a) or 68(2) is liable to a penalty.
- (2) The amount of the penalty is equal to the relevant rate multiplied by the number of days on which the failure continues (up to a maximum of 100 days) or, if it is greater, to a penalty of £50.
- (3) In relation to a failure by a person to comply with the requirement, the relevant rate is to be determined by reference to the number of occasions in the period of 2 years preceding the beginning of the failure on which the person has previously failed to comply with that requirement.
- (4) But –
- (a) a continuing failure to comply with a requirement is to be regarded as one occasion of failure occurring on the date on which the failure began;
  - (b) if the same omission gives rise to a failure to comply with more than one such requirement, it is to be regarded as the occasion of only one failure.

- (5) The relevant rate is—
- (a) if there has been no such previous occasion in that period, £5;
  - (b) if there has been only one such occasion in that period, £10; and
  - (c) in any other case, £15.
- (6) A person who fails to comply with a requirement to preserve records imposed by regulations under section 73(2)(b) is liable to a penalty of £500.
- (7) If by reason of conduct falling within sub-paragraph (1) or (6) a person is assessed to a penalty for a deliberate inaccuracy under FA 2007, that conduct does not also give rise to a penalty under this paragraph.

*Section 73(4): requirements imposed by directions*

- 2 (1) A person who fails to comply with a requirement imposed under section 73(4) is liable to a penalty.
- (2) The amount of the penalty is equal to £200 multiplied by the number of days on which the failure continues (up to a maximum of 30 days).
- (3) A person who fails to comply with a requirement imposed under section 73(7) is liable to a penalty of £500.
- (4) If by reason of conduct falling within sub-paragraph (1) or (3) a person is assessed to a penalty for a deliberate inaccuracy under FA 2007, that conduct does not also give rise to a penalty under this paragraph.

*Power to alter amounts specified in paragraphs 1 and 2*

- 3 (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 specified in paragraph 1(2), (5)(a) to (c) and (6) and paragraph 2(2) and (3) such other sums as appear to them to be justified by the change.
- (2) But regulations under sub-paragraph (1) may not apply to a failure which began before the date on which the regulations come into force.
- (3) The “relevant date”, in relation to a specified sum, means—
- (a) the date on which this Act is passed, and
  - (b) each date on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.

*Reasonable excuse*

- 4 (1) A failure by any person to comply with any requirement mentioned in paragraph 1 or 2 does not give rise to a liability to a penalty under this Schedule if the person concerned satisfies—
- (a) the Commissioners, or
  - (b) on appeal, a tribunal,
- that there is a reasonable excuse for the failure.
- (2) A failure for which there is a reasonable excuse is to be disregarded for the purposes of paragraph 1(5).
- (3) 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.

## PART 2

### ASSESSMENTS

#### *Power to make assessments*

- 5 (1) Where a person becomes liable for a penalty under this Schedule—
  - (a) the Commissioners may assess the penalty, and
  - (b) if they do so, they must notify the amount to that person.
- (2) Where a person is liable to a penalty under paragraph 1(1) for failure to comply with a requirement imposed by regulations under section 73 or 68(2), no assessment of the penalty may be made under this paragraph unless—
  - (a) the Commissioners have given the person written notice of the consequences of a continuing failure to comply with that requirement, and
  - (b) the notice has been given during the period of 2 years preceding the assessment.
- (3) A notice under sub-paragraph (1) must specify a date, being not later than the date of the notice, to which the amount of the penalty is calculated.
- (4) If the penalty continues to accrue after that date, a further assessment or assessments may be made under this paragraph in respect of the accrued amounts.
- (5) If, within such period as may be notified by the Commissioners to the person liable to a penalty, the failure to comply with a requirement imposed by regulations under section 73 or 68(2) is remedied, it is to be treated as remedied on the date specified under sub-paragraph (3).

#### *Supplementary assessments*

- 6 (1) Sub-paragraph (2) applies where—
  - (a) an assessment has been notified to a person under paragraph 5, and
  - (b) it appears to the Commissioners that the amount which ought to have been assessed as due exceeds the amount that has already been assessed.
- (2) The Commissioners may—
  - (a) make a supplementary assessment of the amount due from the person, and
  - (b) notify the amount to that person.

#### *Further provision about assessments under this Schedule*

- 7 (1) Where an amount has been assessed and notified to a person under paragraph 5 or 6, it is recoverable on the basis that it is an amount of soft drinks industry levy due from that person.

- (2) But sub-paragraph (1) does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

*Time limits for assessments*

- 8 (1) An assessment under paragraph 5 may not be made after the end of the relevant period.
- (2) Except in a case within sub-paragraph (3), the relevant period is the period of 4 years from the end of the tax period to which the assessment relates.
- (3) Where an assessment of an amount due from a person in a case involving loss of soft drinks industry levy –
- (a) brought about deliberately by the person, or
  - (b) attributable to a failure by the person to comply with a requirement imposed by regulations under section 73,
- the relevant period is the period of 20 years from the end of the tax period to which the assessment relates.
- (4) In sub-paragraph (3)(a) the reference to loss brought about deliberately by a person includes a reference to a loss brought about as a result of the deliberate inaccuracy in a document given to HMRC by the person.
- (5) In sub-paragraphs (3) and (4) references to a loss brought about by a person include references to a loss brought about by another person acting on behalf of that person.

*Notifications to a person’s representative*

- 9 (1) A notification of an assessment under paragraph 5 or 6 to a person’s representative is to be treated for the purposes of this Schedule as a notification to the person in relation to whom the representative acts.
- (2) In this paragraph “representative”, in relation to a person, has the meaning given by paragraph 6(2) of Schedule 15.

SCHEDULE 17

Section 75

SOFT DRINKS INDUSTRY LEVY: APPEALS AND REVIEWS

PART 1

APPEALABLE DECISIONS

*Appealable decisions*

- 1 An appeal may be brought against –

## PART 2

### REVIEWS

#### *Offer of review*

- 2 (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal in respect of the decision may be brought under paragraph 1.
- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This paragraph does not apply to the notification of the conclusions of a review.

#### *Right to require review*

- 3 (1) Any person (other than P) who has the right of appeal under paragraph 1 against a decision may require HMRC to review that decision if that person has not appealed to the appeal tribunal.
- (2) A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision.

#### *Review by HMRC*

- 4 (1) HMRC must review a decision if—
  - (a) they have offered a review of the decision under paragraph 2, and
  - (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the appeal tribunal under paragraph 1.
- (3) HMRC must review a decision if a person other than P notifies them under paragraph 3.
- (4) HMRC may not review a decision if P, or another person, has appealed to the appeal tribunal under paragraph 1 in respect of the decision.

#### *Extensions of time*

- 5 (1) If under paragraph 2 HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
- (2) If under paragraph 3 another person may require HMRC to review a matter, HMRC may within the relevant period notify the other person that the relevant period is extended.
- (3) If notice is given the relevant period is extended to the end of 30 days from—
  - (a) the date of the notice, or
  - (b) any other date set out in the notice or a further notice.
- (4) In this paragraph “relevant period” means—
  - (a) the period of 30 days referred to in—

- (i) paragraph 4(1)(b) (in a case falling within sub-paragraph (1)),  
or
  - (ii) paragraph 3(2) (in a case falling within sub-paragraph (2)), or
- (b) if notice has been given under sub-paragraph (1) or (2), that period as extended (or as most recently extended) in accordance with sub-paragraph (3).

*Review out of time*

- 6 (1) This paragraph applies if –
- (a) HMRC have offered a review of a decision under paragraph 2 and P does not accept the offer within the time allowed under paragraph 4(1)(b) or 5(3), or
  - (b) a person who requires a review under paragraph 3 does not notify HMRC within the time allowed under that paragraph or paragraph 5(3).
- (2) HMRC must review the decision under paragraph 4 if –
- (a) after the time allowed, P, or the other person, notifies HMRC in writing requesting a review out of time,
  - (b) HMRC are satisfied that P, or the other person, had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
  - (c) HMRC are satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC may not review a decision if P, or another person, has appealed to the appeal tribunal under paragraph 1 in respect of the decision.

*Nature of review etc.*

- 7 (1) This paragraph applies if HMRC are required to undertake a review under paragraph 4 or 6.
- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
- (3) For the purposes of sub-paragraph (2), HMRC must, in particular, have regard to steps taken before the beginning of the review –
- (a) by HMRC in reaching the decision, and
  - (b) by any person in seeking to resolve disagreement about the decision.
- (4) The review must take account of any representations made by P, or the other person, at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) The review may conclude that the decision is to be –
- (a) upheld,
  - (b) varied, or
  - (c) cancelled.
- (6) HMRC must give P, or the other person, notice of the conclusions of the review and their reasoning within –
- (a) a period of 45 days beginning with the relevant date, or
  - (b) such other period as HMRC and P, or the other person, may agree.

- (7) In sub-paragraph (6) “relevant date” means –
- (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within paragraph 2), or
  - (b) the date HMRC received notification from another person requiring review (in a case falling within paragraph 3), or
  - (c) the date on which HMRC decided to undertake the review (in a case falling within paragraph 6).
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the period specified in sub-paragraph (6), the review is to be treated as having concluded that the decision is upheld.
- (9) If sub-paragraph (8) applies HMRC must notify P, or the other person of the conclusion which the review is treated as having reached.

### PART 3

### APPEALS

#### “Appeal tribunal”

- 8 In this Schedule “appeal tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

#### Bringing of appeals

- 9 (1) An appeal under paragraph 1 is to be made to the appeal tribunal before –
- (a) the end of the period of 30 days beginning with –
    - (i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates, or
    - (ii) in a case where a person other than P is the appellant, the date that person becomes aware of the decision, or
  - (b) if later, the end of the relevant period (within the meaning of paragraph 5).
- (2) But that is subject to sub-paragraphs (3) to (5).
- (3) In a case where HMRC are required to undertake a review under paragraph 4 –
- (a) an appeal may not be made until the conclusion date, and
  - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (4) In a case where HMRC are requested to undertake a review by virtue of paragraph 6 –
- (a) an appeal may not be made to the appeal tribunal –
    - (i) unless HMRC have notified P, or the other person, as to whether or not a review will be undertaken, and
    - (ii) if HMRC have notified P, or the other person, that a review will be undertaken, until the conclusion date;
  - (b) any appeal where paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date;

- (c) if HMRC have notified P, or the other person, that a review will not be undertaken, an appeal may be made only if the appeal tribunal gives permission to do so.
- (5) In a case where paragraph 7(8) applies, an appeal may be made at any time from the end of the period specified in paragraph 7(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in sub-paragraph (1), (3)(b), (4)(b) or (5) if the appeal tribunal gives permission to do so.
- (7) In this paragraph “conclusion date” means the date of the document notifying the conclusions of the review.

*Appeals: further provision*

- 10 (1) An appeal relating to a decision that an amount of soft drinks industry levy is due from a person may not be considered by the appeal tribunal unless the amount which HMRC have determined to be due has been paid or deposited with them.
- (2) In a case where the amount determined to be payable as levy has not been paid or deposited an appeal may be considered if –
- (a) HMRC are satisfied (on the application of the appellant), or
  - (b) if HMRC are not satisfied, the appeal tribunal decides, that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship
- (3) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 (rights of appeal) the decision of the appeal tribunal as to the issue of hardship is final.

SCHEDULE 18

Section 85

THIRD COUNTRY GOODS FULFILMENT BUSINESSES: PENALTY

*Liability to penalty*

- 1 (1) A penalty is payable by a person (“P”) who –
- (a) carries on a third country goods fulfilment business, and
  - (b) is not an approved person.
- (2) In this Schedule references to a “contravention” are to acting as mentioned in sub-paragraph (1).

*Amount of penalty*

- 2 (1) If the contravention is deliberate and concealed, the amount of the penalty is the maximum amount (see paragraph 10).
- (2) If the contravention is deliberate but not concealed, the amount of the penalty is 70% of the maximum amount.
- (3) In any other case, the amount of the penalty is 30% of the maximum amount.

- (4) The contravention is –
  - (a) “deliberate and concealed” if the contravention is deliberate and P makes arrangements to conceal the contravention, and
  - (b) “deliberate but not concealed” if the contravention is deliberate but P does not make arrangements to conceal the contravention.

*Reductions for disclosure*

- 3 (1) Paragraph 4 provides for reductions in penalties under this Schedule where P discloses a contravention.
  - (2) P discloses a contravention by –
    - (a) telling the Commissioners about it,
    - (b) giving the Commissioners reasonable help in identifying any other contraventions of which P is aware, and
    - (c) allowing the Commissioners access to records for the purpose of identifying such contraventions.
  - (3) Disclosure of a contravention –
    - (a) is “unprompted” if made at a time when P has no reason to believe that the Commissioners have discovered or are about to discover the contravention, and
    - (b) otherwise, is “prompted”.
  - (4) In relation to disclosure, “quality” includes timing, nature and extent.
- 4 (1) Where P discloses a contravention, the Commissioners must reduce the penalty to one that reflects the quality of the disclosure.
  - (2) If the disclosure is prompted, the penalty may not be reduced below –
    - (a) in the case of a contravention that is deliberate and concealed, the maximum amount,
    - (b) in the case of a contravention that is deliberate but not concealed, 35% of the maximum amount, and
    - (c) in any other case, 20% of the maximum amount.
  - (3) If the disclosure is unprompted, the penalty may not be reduced below –
    - (a) in the case of a contravention that is deliberate and concealed, 30% of the maximum amount,
    - (b) in the case of a contravention that is deliberate but not concealed, 20% of the maximum amount, and
    - (c) in any other case, 10% of the maximum amount.

*Special reduction*

- 5 (1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under this Schedule.
  - (2) In sub-paragraph (1) “special circumstances” does not include ability to pay.
  - (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –
    - (a) staying a penalty, and
    - (b) agreeing a compromise in relation to proceedings for a penalty.

*Assessment*

- 6 (1) Where P becomes liable for a penalty under this Schedule, the Commissioners must—
- (a) assess the penalty,
  - (b) notify P, and
  - (c) state in the notice the contravention in respect of which the penalty is assessed.
- (2) A penalty under this Schedule 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) A penalty under this Schedule is recoverable as a debt due to the Crown.
- (4) An assessment of a penalty under this Schedule 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.
- (5) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty under this Schedule.

*Reasonable excuse*

- 7 (1) Liability to a penalty does not arise under this Schedule in respect of a contravention which is not deliberate if P satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.
- (2) For the purposes of sub-paragraph (1), where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the contravention.

*Companies: officer's liability*

- 8 (1) Where a penalty under this Schedule is payable by a company in respect of a contravention which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as the Commissioners may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow the Commissioners to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership, “officer” means—
- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),
  - (b) a manager, and
  - (c) a secretary.
- (4) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.
- (5) In the application of sub-paragraph (1) in any other case, “officer” means—
- (a) a director,
  - (b) a manager,

- (c) a secretary, and
  - (d) any other person managing or purporting to manage any of the company's affairs.
- (6) Where the Commissioners have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1) –
- (a) paragraph 5 applies to the specified portion as to a penalty,
  - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
  - (c) sub-paragraphs (3) to (5) of paragraph 6 apply as if the notice were an assessment of a penalty, and
  - (d) paragraph 9 applies as if the officer were liable to a penalty.
- (7) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership.

*Double jeopardy*

- 9 P is not liable to a penalty under this Schedule in respect of a contravention in respect of which P has been convicted of an offence.

*The maximum amount*

- 10 (1) In this Schedule “the maximum amount” means £10,000.
- (2) 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 sum for the time being specified in sub-paragraph (1) such other sum as appears to them to be justified by the change.
- (3) In sub-paragraph (2), “relevant date” means –
- (a) the date on which this Act is passed, and
  - (b) each date on which the power conferred by that sub-paragraph has been exercised.
- (4) Regulations under this paragraph do not apply to any contravention which occurs wholly before the date on which they come into force.

*Appeal tribunal*

- 11 In this Schedule “appeal tribunal” has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994.

SCHEDULE 19

Section 90

PARTIAL CLOSURE NOTICES

*TMA 1970*

- 1 TMA 1970 is amended as follows.
- 2 In section 9A (notice of enquiry), in subsection (5) –
- (a) in paragraph (a), omit the final “or”;

- 
- (b) for paragraph (b) substitute—
- “(b) after a final closure notice has been issued in relation to an enquiry into the return, or
  - (c) after a partial closure notice has been issued in such an enquiry in relation to the matters to which the amendment relates or which are affected by the amendment.”.
- 3 (1) Section 9B (amendment of return by taxpayer during enquiry) is amended as follows.
- (2) In subsection (1), for “is in progress into the return” substitute “into the return is in progress in relation to any matter to which the amendment relates or which is affected by the amendment”.
- (3) In subsection (3)—
- (a) after “in progress” insert “in relation to any matter to which the amendment relates or which is affected by the amendment”;
  - (b) in paragraph (a), for “the closure notice” substitute “a partial or final closure notice”;
  - (c) in paragraph (b), for “the closure notice is issued” substitute “a partial closure notice is issued in relation to the matters to which the amendment relates or which are affected by the amendment or, if no such notice is issued, a final closure notice is issued”.
- (4) In subsection (4)—
- (a) after “in progress” insert “in relation to any matter”;
  - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.
- 4 (1) Section 9C (amendment of self-assessment during enquiry to prevent loss of tax) is amended as follows.
- (2) In subsection (1), for “is in progress into a return” substitute “into a return is in progress in relation to any matter”.
- (3) In subsection (2), after “deficiency” insert “so far as it relates to the matter”.
- (4) In subsection (4)—
- (a) after “in progress” insert “in relation to any matter”;
  - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.
- 5 In section 12ZM (NRCGT returns: notice of enquiry), in subsection (4)—
- (a) in paragraph (a), omit the final “or”;
  - (b) for paragraph (b) substitute—
    - “(b) after a final closure notice has been issued in relation to an enquiry into the return, or
    - (c) after a partial closure notice has been issued in such an enquiry in relation to the matters to which the amendment relates or which are affected by the amendment.”.

- 6 (1) Section 12ZN (NRCGT returns: amendment of return by taxpayer during enquiry) is amended as follows.
  - (2) In subsection (1), for “is in progress into the return” substitute “into the return is in progress in relation to any matter to which the amendment relates or which is affected by the amendment”.
  - (3) In subsection (3) –
    - (a) after “in progress” insert “in relation to any matter to which the amendment relates or which is affected by the amendment”;
    - (b) in paragraph (a), for “the closure notice” substitute “a partial or final closure notice”;
    - (c) in paragraph (b), for “the closure notice is issued” substitute “a partial closure notice is issued in relation to the matters to which the amendment relates or which are affected by the amendment or, if no such notice is issued, a final closure notice is issued”.
  - (4) In subsection (4) –
    - (a) after “in progress” insert “in relation to any matter”;
    - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.
- 7 In section 12AC (partnership return: notice of enquiry), in subsection (5) –
  - (a) in paragraph (a), omit the final “or”;
  - (b) for paragraph (b) substitute –
    - “(b) after a final closure notice has been issued in relation to an enquiry into the return, or
    - (c) after a partial closure notice has been issued in such an enquiry in relation to the matters to which the amendment relates or which are affected by the amendment,”.
- 8 (1) Section 12AD (amendment of partnership return by taxpayer during enquiry) is amended as follows.
  - (2) In subsection (1), for “is in progress into the return” substitute “into the return is in progress in relation to any matter to which the amendment relates or which is affected by the amendment”.
  - (3) In subsection (3) –
    - (a) after “in progress” insert “in relation to any matter to which the amendment relates or which is affected by the amendment”;
    - (b) in paragraph (a), for “the closure notice” substitute “a partial or final closure notice”;
    - (c) in paragraph (b), for “the closure notice is issued” substitute “a partial closure notice is issued in relation to the matters to which the amendment relates or which are affected by the amendment or, if no such notice is issued, a final closure notice is issued”.
  - (4) In subsection (5) –
    - (a) after “in progress” insert “in relation to any matter”;
    - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.

- 9 In section 12B (records), in subsection (1)(b)(i), for “28A(1) or 28B(1)” substitute “28A(1B) or 28B(1B)”.
- 10 (1) Section 28ZA (referral of questions during enquiry) is amended as follows.
- (2) In subsection (1), after “of this Act” insert “in relation to any matter”.
- (3) In subsection (5) –
- (a) after “in progress” insert “in relation to any matter”;
  - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.
- 11 In section 28ZD (effect of referral on enquiry), in subsection (1) –
- (a) for paragraph (a) substitute –
    - “(a) no partial closure notice relating to the question referred shall be given,
    - (aa) no final closure notice shall be given in relation to the enquiry, and”;
  - (b) in paragraph (b), for “such a notice” substitute “a notice referred to in paragraph (a) or (aa)”.
- 12 (1) Section 28A (completion of enquiry into personal, trustee or NRCGT return) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) This section applies in relation to an enquiry under section 9A(1) or 12ZM of this Act.
  - (1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a “partial closure notice”) that the officer has completed his enquiries into that matter.
  - (1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a “final closure notice”) –
    - (a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or
    - (b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.”
- (3) In subsection (2) –
- (a) for “closure notice” substitute “partial or final closure notice”;
  - (b) for “either” substitute “state the officer’s conclusions and”.
- (4) In subsections (3) and (4), for “closure notice” substitute “partial or final closure notice”.
- (5) In subsection (6), for “a closure notice” substitute “the partial or final closure notice”.
- (6) After subsection (6) insert –
- “(7) In this section “the taxpayer” means the person to whom notice of enquiry was given.

- (8) In the Taxes Acts, references to a closure notice under this section are to a partial or final closure notice under this section.”
- 13 (1) Section 28B (completion of enquiry into partnership return) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) This section applies in relation to an enquiry under section 12AC of this Act.
- (1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a “partial closure notice”) that the officer has completed his enquiries into that matter.
- (1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a “final closure notice”) –
- (a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or
- (b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.”
- (3) In subsection (2) –
- (a) for “closure notice” substitute “partial or final closure notice”;
- (b) for “either” substitute “state the officer’s conclusions and”.
- (4) In subsections (3) and (5), for “closure notice” substitute “partial or final closure notice”.
- (5) In subsection (7), for “a closure notice” substitute “the partial or final closure notice”.
- (6) After subsection (7) insert –
- “(8) In this section “the taxpayer” means the person to whom notice of enquiry was given or his successor.
- (9) In the Taxes Acts, references to a closure notice under this section are to a partial or final closure notice under this section.”
- 14 In section 29 (assessment where loss of tax discovered), in subsection (5), for paragraph (b) substitute –
- “(b) in a case where a notice of enquiry into the return was given –
- (i) issued a partial closure notice as regards a matter to which the situation mentioned in subsection (1) above relates, or
- (ii) if no such partial closure notice was issued, issued a final closure notice.”.
- 15 In section 29A (NRCGT disposals: determination of amount which should have been assessed), in subsection (5), for paragraph (b) substitute –
- “(b) in a case where a notice of enquiry into the return was given –

- (i) issued a partial closure notice as regards a matter to which the situation mentioned in subsection (1) relates, or
  - (ii) if no such partial closure notice was issued, issued a final closure notice.”.
- 16 In section 30 (recovery of overpayment of tax etc), in subsection (5)(b), for “28A(1)” substitute “28A(1B)”.
- 17 In section 30B (amendment of partnership statement where loss of tax discovered), in subsection (6), for paragraph (b) substitute—
- “(b) in a case where a notice of enquiry into that return was given—
  - (i) issued a partial closure notice as regards a matter to which the situation mentioned in subsection (1) above relates, or
  - (ii) if no such partial closure notice was issued, issued a final closure notice,”.
- 18 In section 31 (appeals: right of appeal), in subsection (2)—
- (a) after “in progress” insert “in relation to any matter to which the amendment relates or which is affected by the amendment”;
  - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.
- 19 In section 59AA (NRCGT disposals: payments on account of CGT), in subsection (8)(a), for “28A(1)” substitute “28A(1B)”.
- 20 In section 59B (payment of income tax and capital gains tax), in subsection (4A)(a), for “28A(1)” substitute “28A(1B)”.
- 21 In Schedule 3ZA (day by which payment to be made after amendment etc of self-assessment), in paragraph 2(3)(b)—
- (a) for the first “the closure notice” substitute “a partial or final closure notice”;
  - (b) for the second “the closure notice” substitute “that closure notice”.

*FA 1998*

- 22 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.
- 23 (1) Paragraph 30 (amendment of self-assessment during enquiry to prevent loss of tax) is amended as follows.
- (2) In sub-paragraph (1)—
    - (a) for “before the enquiry is completed” substitute “while the enquiry is in progress in relation to a matter”;
    - (b) after “deficiency” insert “so far as it relates to the matter”.
  - (3) After sub-paragraph (5) insert—
    - “(6) For the purposes of this paragraph, the period during which an enquiry is in progress in relation to any matter is the whole of the period—

- (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued.”
- 24 (1) Paragraph 31 (amendment of return by company during enquiry) is amended as follows.
  - (2) In sub-paragraph (1), for “is in progress into the return” substitute “into the return is in progress in relation to any matter to which the amendment relates or which is affected by the amendment”.
  - (3) In sub-paragraph (3)(b) for “until after the enquiry is completed” substitute “while the enquiry is in progress in relation to any matter to which the amendment relates or which is affected by the amendment”.
  - (4) In sub-paragraph (4)(a) –
    - (a) for “the closure notice” substitute “a partial or final closure notice”;
    - (b) for “on the completion of the enquiry” substitute “when a partial closure notice is issued in relation to the matters to which the amendment relates or which are affected by the amendment or, if no such notice is issued, a final closure notice is issued”.
  - (5) In sub-paragraph (5) –
    - (a) after “in progress” insert “in relation to any matter”;
    - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.
- 25 (1) Paragraph 31A (referral of questions to the tribunal during enquiry) is amended as follows.
  - (2) In sub-paragraph (1), for “into” substitute “in relation to any matter relating to”.
  - (3) In sub-paragraph (5) –
    - (a) after “in progress” insert “in relation to any matter”;
    - (b) for “the enquiry is completed” substitute “a partial closure notice is issued in relation to the matter or, if no such notice is issued, a final closure notice is issued”.
- 26 In paragraph 31C (effect of referral on enquiry), in sub-paragraph (1) –
  - (a) for paragraph (a) substitute –
    - “(a) no partial closure notice relating to the question referred shall be given,
    - (aa) no final closure notice shall be given in relation to the enquiry, and”;
  - (b) in paragraph (b), for “such a notice” substitute “a notice referred to in paragraph (a) or (aa)”.
- 27 (1) Paragraph 32 (completion of enquiry) is amended as follows.
  - (2) For sub-paragraph (1) substitute –
    - “(1) Any matter to which an enquiry relates is completed when an officer of Revenue and Customs informs the company by notice (a

“partial closure notice”) that they have completed their enquiries into that matter.

(1A) An enquiry is completed when an officer of Revenue and Customs informs the company by notice (a “final closure notice”) –

- (a) in a case where no partial closure notice has been given, that they have completed their enquiries, or
- (b) in a case where one or more partial closure notices have been given, that they have completed their remaining enquiries.

(1B) A partial or final closure notice takes effect when it is issued.”

(3) In subsection (2), after “concludes” insert “in a partial or final closure notice”.

(4) After sub-paragraph (3) insert –

“(4) In the Taxes Acts, references to a closure notice under this paragraph are to a partial or final closure notice under this paragraph.”

28 In paragraph 33 (direction to complete enquiry), in sub-paragraphs (1) and (3), for “closure notice” substitute “partial or final closure notice”.

29 (1) Paragraph 34 (amendment of return after enquiry) is amended as follows.

(2) In sub-paragraph (1), for “closure notice” substitute “partial or final closure notice”.

(3) In sub-paragraph (2) –

- (a) for “closure notice” substitute “partial or final closure notice”;
- (b) after “must” insert “state the officer’s conclusions and”.

30 In paragraph 44 (situation not disclosed by return or related document etc), in sub-paragraph (1), for paragraph (b) substitute –

- “(b) in a case where a notice of enquiry into the return was given –
  - (i) issued a partial closure notice as regards a matter to which the situation mentioned in paragraph 41(1) or (2) relates, or
  - (ii) if no such partial closure notice was issued, issued a final closure notice.”.

31 (1) Paragraph 88 (conclusiveness) is amended as follows.

(2) In sub-paragraph (3)(b), at the end insert “(or is completed so far as relating to the matters to which the amount relates by the issue of a partial closure notice)”.

(3) In sub-paragraph (4)(b), at the end insert “(or the completion of the enquiry so far as relating to the matters to which the amount relates by the issue of a partial closure notice)”.

#### *Tax Credits Act 2002*

32 (1) Section 20 of the Tax Credits Act 2002 (decisions on discovery) is amended as follows.

- (2) In subsection (2)(f), for “a closure notice” substitute “a partial or final closure notice”.
- (3) In subsection (3)(b), at the end insert “as specified in subsection (1)”.

*FA 2008*

- 33 In Schedule 36 to FA 2008 (information and inspection powers), in paragraphs 21(4) and 21ZA(3), at the end insert “so far as relating to the matters to which the taxpayer notice relates”.

*Commencement*

- 34 The amendments made by this Schedule have effect in relation to an enquiry under section 9A, 12ZM or 12AC of TMA 1970 or Schedule 18 to FA 1998 where –
  - (a) notice of the enquiry is given after the day on which this Act is passed, or
  - (b) the enquiry is in progress immediately before that day.

SCHEDULE 20

Section 92

PENALTIES FOR ENABLERS OF DEFEATED TAX AVOIDANCE

PART 1

LIABILITY TO PENALTY

- 1 (1) Where –
  - (a) a person (“T”) has entered into abusive tax arrangements, and
  - (b) T incurs a defeat in respect of the arrangements,a penalty is payable by each person who enabled the arrangements.
- (2) Parts 2 to 4 of this Schedule define –
  - a “abusive tax arrangements”;
  - a “defeat in respect of the arrangements”;
  - a “person who enabled the arrangements”.

PART 2

“ABUSIVE” AND “TAX ARRANGEMENTS”: MEANING

- 2 (1) Arrangements are “tax arrangements” for the purposes of this Schedule if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.
- (2) Tax arrangements are “abusive” for the purposes of this Schedule if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances.

- (3) The circumstances to which regard must be had under sub-paragraph (2) include—
- (a) whether the substantive results of the arrangements are, or are intended to be, consistent with any principles on which the relevant tax provisions are based (whether express or implied) and the policy objectives of those provisions,
  - (b) whether the means of achieving those results involves one or more contrived or abnormal steps, and
  - (c) whether the arrangements are intended to exploit any shortcomings in those provisions.
- (4) Where the tax arrangements form part of any other arrangements regard must also be had to those other arrangements.
- (5) Each of the following is an example of something which might indicate that tax arrangements are abusive—
- (a) the arrangements result in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes,
  - (b) the arrangements result in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes, and
  - (c) the arrangements result in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid,
- but in each case only if it is reasonable to assume that such a result was not the anticipated result when the relevant tax provisions were enacted.
- (6) The fact that tax arrangements accord with established practice, and HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice, is an example of something which might indicate that the arrangements are not abusive.
- (7) The examples given in sub-paragraphs (5) and (6) are not exhaustive.
- (8) The Treasury may by regulations make provision enabling or requiring the GAAR Advisory Panel to provide opinions, in relation to arrangements, as to whether the arrangements are abusive tax arrangements.

### PART 3

#### “DEFEAT” IN RESPECT OF ABUSIVE TAX ARRANGEMENTS

##### *“Defeat” in respect of abusive tax arrangements*

- 3 T incurs a “defeat” in respect of abusive tax arrangements entered into by T (“the arrangements concerned”) if—
- (a) Condition A (in paragraph 4) is met, or
  - (b) Condition B (in paragraph 5) is met.

##### *Condition A*

- 4 (1) Condition A is that—

- (a) T, or a person on behalf of T, has given HMRC a document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 (returns etc),
  - (b) the document was submitted on the basis that a tax advantage (“the relevant tax advantage”) arose from the arrangements concerned,
  - (c) the relevant tax advantage has been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of this paragraph the relevant tax advantage has been “counteracted” if adjustments have been made in respect of T’s tax position on the basis that the whole or part of the relevant tax advantage does not arise.
- (3) 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.
- (4) In this paragraph “adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, the amendment or disallowance of a claim, the entering into of a contract settlement or otherwise.  
Accordingly, references to “making” adjustments include securing that adjustments are made by entering into a contract settlement.
- (5) Any reference in this paragraph to giving HMRC a document includes –
  - (a) communicating information to HMRC in any form and by any method;
  - (b) making a statement or declaration in a document.
- (6) Any reference in this paragraph to a document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 includes a document amending a document of a kind so listed.

*Condition B*

- 5 (1) Condition B is that (in a case where Condition A does not apply) –
  - (a) HMRC has made an assessment in relation to tax,
  - (b) the assessment counteracts a tax advantage that it is reasonable to assume T expected to obtain from the arrangements concerned (“the expected tax advantage”), and
  - (c) the counteraction is final.
- (2) For the purposes of this paragraph an assessment “counteracts” the expected tax advantage if the assessment is made on a basis which prevents T from obtaining (or obtaining the whole of) the expected tax advantage.
- (3) For the purposes of this paragraph a counteraction is “final” when the assessment in question, and any amounts arising from the assessment, can no longer be varied, on appeal or otherwise.

## PART 4

## PERSONS WHO “ENABLED” THE ARRANGEMENTS

*Persons who “enabled” the arrangements*

- 6 (1) A person is a person who “enabled” the arrangements mentioned in paragraph 1 if that person is –
- (a) a designer of the arrangements (see paragraph 7),
  - (b) a manager of the arrangements (see paragraph 8),
  - (c) a person who marketed the arrangements to T (see paragraph 9),
  - (d) an enabling participant in the arrangements (see paragraph 10), or
  - (e) a financial enabler in relation to the arrangements (see paragraph 11).
- (2) This paragraph is subject to paragraph 12 (excluded persons).

*Designers of arrangements*

- 7 (1) For the purposes of paragraph 6 a person is a “designer” of the arrangements if that person was, in the course of a business carried on by that person, to any extent responsible for the design of –
- (a) the arrangements, or
  - (b) a proposal which was implemented by the arrangements;
- but this is subject to sub-paragraph (2).
- (2) Where a person would (in the absence of this sub-paragraph) fall within sub-paragraph (1) because of having provided advice which was used in the design of the arrangements or of a proposal, that person does not because of that advice fall within that sub-paragraph unless –
- (a) the advice is relevant advice, and
  - (b) the knowledge condition is met.
- (3) Advice is “relevant advice” if –
- (a) the advice or any part of it suggests arrangements or an alteration of proposed arrangements, and
  - (b) it is reasonable to assume that the suggestion was made with a view to arrangements being designed in such a way that a tax advantage (or a greater tax advantage) might be expected to arise from them.
- (4) The knowledge condition is that, when the advice was provided, the person providing it knew or could reasonably be expected to know –
- (a) that the advice would be used in the design of abusive tax arrangements or of a proposal for such arrangements, or
  - (b) that it was likely that the advice would be so used.
- (5) For the purposes of sub-paragraph (3), advice is not to be taken to “suggest” anything –
- (a) which is mentioned in the advice, but
  - (b) which the advice can reasonably be read as recommending against.
- (6) In sub-paragraph (3) –

- (a) the reference in paragraph (a) to arrangements or an alteration of proposed arrangements includes a proposal for arrangements or an alteration of a proposal for arrangements, and
  - (b) the reference in paragraph (b) to arrangements includes arrangements proposed by a proposal.
- (7) For the purposes of this paragraph advice is “used” in a design if the advice is taken account of in that design.

#### *Managers of arrangements*

- 8 For the purposes of paragraph 6 a person is a “manager” of the arrangements if that person was, in the course of a business carried on by that person, to any extent responsible for the organisation or management of the arrangements.

#### *Marketers of arrangements*

- 9 For the purposes of paragraph 6 a person “marketed” the arrangements to T if, in the course of a business carried on by that person –
- (a) that person made available for implementation by other persons a proposal which has since been implemented in relation to T by the arrangements, or
  - (b) that person communicated information to T or another person about a proposal which has since been implemented by the arrangements and –
    - (i) the communication was made with a view to T entering into the arrangements or transactions forming part of the arrangements, and
    - (ii) the information communicated included an explanation of the advantage in relation to any tax that might be expected to be obtained from the arrangements.

#### *Enabling participants*

- 10 For the purposes of paragraph 6 a person is “an enabling participant” in the arrangements if –
- (a) that person is a person (other than T) who enters into the arrangements or a transaction forming part of the arrangements,
  - (b) without that person’s participation in the arrangements or transaction (or the participation of another person in the arrangements or transaction in the same capacity as that person), the arrangements could not be expected to result in a tax advantage for T, and
  - (c) when that person entered into the arrangements or transaction, that person knew or could reasonably be expected to know that what was being entered into was abusive tax arrangements or a transaction forming part of such arrangements.

#### *Financial enablers*

- 11 (1) For the purposes of paragraph 6 a person is a “financial enabler” in relation to the arrangements if –

- (a) in the course of a business carried on by that person, that person provided a financial product (directly or indirectly) to a relevant party,
  - (b) it is reasonable to assume that the purpose (or a purpose) of the relevant party in obtaining the financial product was to participate in the arrangements, and
  - (c) when the financial product was provided, the person providing it knew or could reasonably be expected to know that the purpose (or a purpose) of obtaining it was to participate in abusive tax arrangements.
- (2) In this paragraph “a relevant party” means T or an enabling participant in the arrangements within the meaning given by paragraph 10.
- (3) In this paragraph a “financial product” includes any of the following –
- (a) a loan;
  - (b) a share;
  - (c) a derivative contract within the meaning given by section 576 of CTA 2009;
  - (d) a repo in respect of securities within the meaning given by section 263A(A1) of TCGA 1992;
  - (e) a creditor repo, creditor quasi-repo, debtor repo or a debtor quasi-repo (within the meanings given by sections 543, 544, 548 and 549 of CTA 2009 respectively);
  - (f) a stock lending arrangement within the meaning given by section 263B(1) of TCGA 1992;
  - (g) an alternative finance arrangement within Chapter 6 of Part 6 of CTA 2009 or Part 10A of ITA 2007;
  - (h) a contract which, whether alone or in combination with one or more other contracts –
    - (i) is in accordance with generally accepted accounting practice required to be treated as a loan, deposit or other financial asset or obligation, or
    - (ii) would be required to be so treated by the person entering into the arrangements were that person a company to which the Companies Act 2006 applies.
- (4) The Treasury may by regulations amend sub-paragraph (3).

*Excluded persons*

- 12 (1) A person who –
- (a) would (in the absence of this paragraph) be regarded for the purposes of this Schedule as having enabled particular arrangements mentioned in paragraph 1, but
  - (b) is a person within sub-paragraph (2),
- is not to be regarded as having enabled those arrangements.
- (2) The persons within this sub-paragraph are –
- (a) T;
  - (b) where T is a company, any company in the same group as T.

*Powers to add categories of enabler and to provide exceptions*

- 13 (1) The Treasury may by regulations add to the categories of persons who, in relation to arrangements mentioned in paragraph 1, are for the purposes of this Schedule persons who enabled the arrangements.
- (2) The Treasury may by regulations provide that a person who would otherwise be regarded for the purposes of this Schedule as having enabled arrangements is not to be so regarded where conditions prescribed by the regulations are met.
- (3) Regulations under this paragraph may –
- (a) amend this Part of this Schedule;
  - (b) make supplementary, incidental, and consequential provision (including provision amending any other Part of this Schedule or any other enactment);
  - (c) make transitional provision.

PART 5

AMOUNT OF PENALTY, APPEALS ETC

*Amount of penalty*

- 14 (1) For each person who enabled the arrangements mentioned in paragraph 1, the penalty payable under paragraph 1 is the total amount or value of all the relevant consideration received or receivable by that person (“the person in question”).
- (2) Particular consideration is “relevant” for the purposes of this paragraph if –
- (a) it is consideration for anything done by the person in question which enabled the arrangements mentioned in paragraph 1, and
  - (b) it has not previously been taken into account in calculating the amount of a penalty payable under paragraph 1.
- (3) For the purposes of this paragraph a thing done by a person “enabled” the arrangements mentioned in paragraph 1 if, by doing that thing (alone or with anything else), the person fell within the definition in Part 4 of this Schedule of a person who enabled those arrangements.
- 15 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) Where consideration for anything done by a person (“A”) is, under any arrangements with A, paid or payable to a person other than A, it is to be taken to be received or receivable by A.
- (3) The “consideration” for anything done by a person does not include any amount charged by that person in respect of value added tax.
- (4) Consideration attributable to two or more transactions is to be apportioned on a just and reasonable basis.
- (5) Any consideration given for what is in substance one bargain is to be treated as attributable to all elements of the bargain, even though –
- (a) separate consideration is, or purports to be, given for different elements of the bargain, or

- (b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

*Assessment of penalty*

- 16 (1) Where a person is found liable for a penalty under paragraph 1 HMRC must –
- (a) assess the penalty, and
  - (b) notify the person.
- (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) Where –
- (a) a person is found liable for a penalty under paragraph 1,
  - (b) HMRC do not have all the information required to determine the amount or value of the relevant consideration within the meaning of paragraph 14(1), and
  - (c) HMRC have taken all reasonable steps to obtain that information,
- HMRC may assess the penalty on the basis of a reasonable estimate by HMRC of that consideration.

*Special provision about assessment for multi-user schemes*

- 17 (1) This paragraph applies where –
- (a) a proposal for arrangements is implemented more than once, by a number of tax arrangements which are substantially the same as each other (“related arrangements”),
  - (b) paragraph 1 applies in relation to particular arrangements (“the arrangements concerned”) which are one of the number of related arrangements implementing the proposal, and
  - (c) at the time when the person who entered into the arrangements concerned incurs a defeat in respect of them, the required percentage of relevant defeats has not been reached.
- (2) HMRC may not assess any penalty payable under paragraph 1 in respect of the arrangements concerned until the required percentage of relevant defeats is reached.
- (3) For the purposes of this paragraph the “required percentage of relevant defeats” is reached when HMRC reasonably believes that defeats have been incurred in the case of more than 50% of the related arrangements implementing the proposal.
- (4) Sub-paragraph (2) does not apply in relation to a penalty if the person by whom the penalty is payable requests assessment of the penalty sooner than the time allowed by sub-paragraph (2).

*Time limit for assessment*

- 18 (1) An assessment of a person as liable to a penalty under paragraph 1 may not take place after the relevant time.
- (2) The relevant time is, subject to sub-paragraphs (3) to (6), the end of 2 years beginning with the date on which T incurs the defeat mentioned in paragraph 1.
- (3) Where paragraph 17 prevents a penalty from being assessed before the required percentage of relevant defeats is reached, the relevant time in relation to that penalty is the end of 2 years beginning with the date on which the required percentage of relevant defeats is reached (within the meaning of paragraph 17).
- (4) Sub-paragraph (5) applies where at any time a penalty is imposed by virtue of paragraph 31 on a person in relation to a declaration (“a false declaration penalty”).
- (5) The relevant time in respect of any penalty under paragraph 1 payable by that person in relation to the relevant arrangements is the end of 2 years beginning with the date on which the false declaration penalty was imposed.
- (6) In sub-paragraph (5) “the relevant arrangements” means the arrangements in connection with which the declaration was made.

*Mitigation of penalty*

- 19 (1) HMRC may in their discretion mitigate a penalty under paragraph 1, or stay or compound any proceedings for such a penalty.
- (2) HMRC may also, after judgment, further mitigate or entirely remit the penalty.

*Appeals*

- 20 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.
- 21 (1) An appeal under paragraph 20 is to be treated in the same way as an appeal against an assessment to the tax to which the arrangements mentioned in paragraph 1 relate (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 a person to pay a penalty under paragraph 1 before an appeal against the assessment of the penalty is determined;
  - (b) in respect of any other matter expressly provided for by this Schedule.
- 22 (1) On an appeal under paragraph 20(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.

- (2) On an appeal under paragraph 20(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) On an appeal the tribunal may rely on paragraph 19 –
- (a) to the same extent as HMRC (which may mean applying the same mitigation as HMRC to a different starting point), or
  - (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 19 was flawed.
- (4) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 21(1)).

*Interaction with other penalties, and double jeopardy.*

- 23 The amount of a penalty for which a person is liable under paragraph 1 is to be reduced by the amount of any other penalty incurred by the person in respect of conduct for which the person is liable to the penalty under paragraph 1.
- 24 A person is not liable to a penalty under paragraph 1 in respect of conduct for which the person has been convicted of an offence.

*Consequential amendment of TMA 1970*

- 25 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 (i), and
  - (b) after paragraph (j) insert “or  
“(k) paragraph 1 of Schedule 20 to FA 2017 (enablers of defeated tax avoidance).”

PART 6

INFORMATION

*Information and inspection powers: application of Schedule 36 to FA 2008*

- 26 (1) Schedule 36 to FA 2008 (information and inspection powers) applies for the purpose of checking a relevant person’s position as regards liability for a penalty under paragraph 1 as it applies for checking a person’s tax position, subject to the modifications in paragraphs 27 to 29.
- (2) In paragraphs 27 to 29 –
- “relevant person” means a person an officer of Revenue and Customs has reason to suspect is or may be liable to a penalty under paragraph 1;
- “the Schedule” means Schedule 36 to FA 2008.

*General modifications of Schedule 36 to FA 2008 as applied*

- 27 In its application for the purpose mentioned in paragraph 26(1) above, the Schedule has effect as if –

- (a) any provisions which can have no application for that purpose were omitted,
- (b) references to “the taxpayer” were references to the relevant person whose position as regards liability for a penalty under paragraph 1 is to be checked, and references to “a taxpayer” were references to a relevant person,
- (c) references to a person’s “tax position” were to the relevant person’s position as regards liability for a penalty under paragraph 1,
- (d) references to prejudice to the assessment or collection of tax included prejudice to the investigation of the relevant person’s position as regards liability for a penalty under paragraph 1, and
- (e) references to a pending appeal relating to tax were to a pending appeal relating to an assessment of liability for a penalty under paragraph 1.

*Specific modifications of Schedule 36 to FA 2008 as applied*

- 28 (1) The Schedule as it applies for the purpose mentioned in paragraph 26(1) above has effect with the modifications in sub-paragraphs (2) to (4).
- (2) Paragraph 10A (power to inspect business premises of involved third parties) has effect as if the reference in sub-paragraph (1) to the position of any person or class of persons as regards a relevant tax were to the position of a relevant person as regards liability for a penalty under paragraph 1.
- (3) Paragraph 49A (increased daily default penalty) has effect as if –
- (a) in sub-paragraphs (1)(c) and (2) for “imposed” there were substituted “assessable”;
  - (b) for sub-paragraphs (3) and (4) there were substituted –
    - “(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 40 has effect in the person’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” there were substituted “the new maximum amount”.
- (4) Paragraph 49B (notification of increased daily default penalty) has effect as if –
- (a) in sub-paragraph (1) for “a person becomes liable to a penalty” there were substituted “the tribunal makes a determination”;
  - (b) in sub-paragraph (2) for “the day from which the increased penalty is to apply” there were substituted “new maximum amount and the day from which it applies”;
  - (c) sub-paragraph (3) were omitted.
- 29 Paragraphs 50 and 51 are excluded from the application of the Schedule for the purpose mentioned in paragraph 26(1) above.

*Declarations about contents of legally privileged documents*

- 30 (1) Subject to sub-paragraph (5), HMRC or (on an appeal) the tribunal must accept any declaration under this paragraph as evidence of the things stated in the declaration.
- (2) A declaration under this paragraph is a declaration which—
- (a) is made by a person who is a relevant lawyer (“the relevant person”),
  - (b) relates to advice given by that person which falls within sub-paragraph (3), and
  - (c) meets such requirements as may be prescribed by regulations under sub-paragraph (4).
- (3) Advice falls within this sub-paragraph if—
- (a) it is privileged, and
  - (b) if it were not privileged, it would be relied on by the relevant person for the purpose of establishing that that person is not liable to a penalty under paragraph 1.
- (4) The Treasury may by regulations impose requirements as to the form and contents of declarations under this paragraph.
- (5) Sub-paragraph (1) does not apply where HMRC or (as the case may be) the tribunal is satisfied that the declaration contains information which is incorrect.
- (6) In this paragraph “relevant lawyer” means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to legal professional privilege or, in Scotland, protected from disclosure in legal proceedings on the grounds of confidentiality of communication.
- (7) For the purpose of this paragraph, advice is privileged if it is advice in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications as between client and professional legal adviser, could be maintained in legal proceedings.
- (8) In this paragraph—
- (a) any reference to an appeal is to an appeal notified to the tribunal by virtue of Part 5 of this Schedule;
  - (b) “the tribunal” has the same meaning as in paragraph 22.

31 After section 98C of the Taxes Management Act 1970 insert—

**“98D Declarations under Schedule 20 to FA 2017**

Where a person fraudulently or negligently gives any incorrect information in a declaration under paragraph 30 of Schedule 20 to FA 2017 (enablers of defeated tax avoidance), the person shall be liable to a penalty not exceeding £5,000.”

PART 7

PUBLISHING DETAILS OF PERSONS FOUND LIABLE TO PENALTIES

- 32 (1) The Commissioners may publish information about a person if—

- (a) the person has incurred one or more penalties under paragraph 1, and
  - (b) the total amount of the penalties under paragraph 1 that the person has incurred exceeds [£....].
- (2) 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 total amount of the penalty or penalties in question,
  - (e) the number of the penalties in question, and
  - (f) any other information that the Commissioners consider it appropriate to publish in order to make clear the person’s identity.
- (3) The information may be published in any way that the Commissioners consider appropriate.
- (4) Before publishing any information the Commissioners 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.
- (5) 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.
- (6) No information may be published for the first time after the end of the period of one year beginning with that day.
- (7) No information may be published (or continue to be published) after the end of the period of one year beginning with the day on which it is first published.
- (8) No information may be published if the amount of the penalty is reduced to nil or stayed.
- (9) For the purposes of this paragraph a penalty becomes final—
  - (a) if it has been assessed, when 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, and
  - (b) if a contract settlement has been made, at the time when the contract is made.
- (10) In this paragraph “contract settlement”, in relation to a penalty, means a contract between the Commissioners and the person under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.
- (11) The Treasury may by regulations amend this paragraph so as to—
  - (a) vary the sum for the time being specified in sub-paragraph (1)(b);
  - (b) insert provision, additional to sub-paragraph (1), enabling the Commissioners to publish information about a person under this paragraph where the person has incurred one or more penalties under paragraph 1 and specified conditions are met.

## PART 8

## GENERAL

*Meaning of “tax”*

- 33 (1) 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) apprenticeship levy,
  - (g) inheritance tax,
  - (h) stamp duty land tax, and
  - (i) annual tax on enveloped dwellings.
- (2) The Treasury may by regulations amend sub-paragraph (1) so as to add, or remove, a tax for the time being mentioned there.
- (3) Regulations under this paragraph may –
- (a) make supplementary, incidental, and consequential provision (including provision amending this Schedule or any other enactment);
  - (b) make transitional provision.

*Meaning of “tax advantage”*

- 34 In this Schedule “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, an assessment of tax or a liability to pay tax,
  - (e) avoidance of a possible assessment to tax or liability to pay 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.

*Other definitions*

- 35 (1) In this Schedule –
- “abusive tax arrangements” has the meaning given by paragraph 2;
  - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
  - “business” includes any trade or profession;
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “company” has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010);

“the GAAR Advisory Panel” has the meaning given by paragraph 1 of Schedule 43 to the Finance Act 2013;  
“group” is to be read in accordance with sub-paragraph (2);  
“HMRC” means Her Majesty’s Revenue and Customs;  
“tax” is to be read in accordance with paragraph 33;  
“tax advantage” is to be read in accordance with paragraph 34.

- (2) For the purposes of this Schedule two companies are members of the same group if—
- (a) one is a 75% subsidiary of the other, or
  - (b) both are 75% subsidiaries of a third company;
- and in this paragraph “75% subsidiary” has, subject to sub-paragraph (3), the meaning given by section 1154 of CTA 2010.
- (3) So far as relating to 75% subsidiaries, section 151(4) of CTA 2010 (requirements relating to beneficial ownership) applies for the purposes of this Schedule as it applies for the purposes of Part 5 of that Act.
- (4) In this Schedule references to an assessment to tax, in relation to inheritance tax and petroleum revenue tax, include a determination.

#### *Regulations*

- 36 (1) Any regulations under this Schedule must be made by statutory instrument.
- (2) A statutory instrument which contains (alone or with other provision) any regulations within sub-paragraph (3) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (3) Regulations within this sub-paragraph are—
- (a) regulations under paragraph 11;
  - (b) regulations under paragraph 13(1);
  - (c) any regulations under paragraph 13(2) which amend any enactment;
  - (d) regulations under paragraph 32;
  - (e) regulations under paragraph 33.
- (4) A statutory instrument containing any other regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

#### *Commencement*

- 37 (1) Subject to sub-paragraph (2), paragraphs 1 to 36 of this Schedule have effect in relation to arrangements entered into on or after the day on which this Act is passed.
- (2) In determining in relation to any particular arrangements whether a person is a person who enabled the arrangements, any action of the person carried out before the day on which this Act is passed is to be disregarded.

## SCHEDULE 21

Section 93

## DISCLOSURE OF AVOIDANCE SCHEMES: VAT AND OTHER INDIRECT TAXES

## PART 1

## DUTIES TO DISCLOSE AVOIDANCE SCHEMES ETC

*Preliminary: application of definitions*

- 1 The definitions in paragraphs 2, 3, and 7 to 10 apply for the purposes of this Schedule.

*“Indirect tax”*

- 2 (1) “Indirect tax” means—  
VAT,  
insurance premium tax,  
general betting duty,  
pool betting duty,  
remote gaming duty,  
machine games duty,  
gaming duty,  
lottery duty,  
bingo duty,  
air passenger duty,  
hydrocarbon oils duty,  
tobacco products duty,  
duties on beer, cider, wine and spirits,  
aggregates levy,  
landfill tax,  
climate change levy,  
customs duties.
- (2) The Treasury may by order amend the list in sub-paragraph (1) by adding, varying or omitting an entry for a tax.

*“Notifiable arrangements” and “notifiable proposal”*

- 3 (1) “Notifiable arrangements” means any arrangements which—  
(a) fall within any description prescribed by the Treasury by regulations,  
(b) enable, or might be expected to enable, any person to obtain a tax advantage in relation to any indirect tax that is so prescribed in relation to arrangements of that description, and  
(c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that tax advantage.
- (2) “Notifiable proposal” means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).

- 4 (1) HMRC may apply to the tribunal for an order that –
  - (a) a proposal is notifiable, or
  - (b) arrangements are notifiable.
- (2) An application must specify –
  - (a) the proposal or arrangements in respect of which the order is sought, and
  - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that paragraph 3(1)(a) to (c) applies to the relevant arrangements.
- 5 (1) HMRC may apply to the tribunal for an order that –
  - (a) a proposal is to be treated as notifiable, or
  - (b) arrangements are to be treated as notifiable.
- (2) An application must specify –
  - (a) the proposal or arrangements in respect of which the order is sought, and
  - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that HMRC –
  - (a) have taken all reasonable steps to establish whether the proposal or arrangements are notifiable, and
  - (b) have reasonable grounds for suspecting that the proposal or arrangements may be notifiable.
- (4) Reasonable steps under sub-paragraph (3)(a) may (but need not) include taking action under paragraph 29 or 30.
- (5) Grounds for suspicion under sub-paragraph (3)(b) may include –
  - (a) the fact that the relevant arrangements fall within a description prescribed under paragraph 3(1)(a),
  - (b) an attempt by the promoter to avoid or delay providing information or documents about the proposal or arrangements under or by virtue of paragraph 29 or 30,
  - (c) the promoter’s failure to comply with a requirement under or by virtue of paragraph 29 or 30 in relation to another proposal or other arrangements.
- (6) Where an order is made under this paragraph in respect of a proposal or arrangements, the relevant period for the purposes of sub-paragraph (1) of paragraph 11 or 12 in so far as it applies by virtue of the order is the period of 11 days beginning with the day on which the order is made.
- (7) An order under this paragraph in relation to a proposal or arrangements is without prejudice to the possible application of any of paragraphs 11 to 15, other than by virtue of this paragraph, to the proposal or arrangements.

*“Tax advantage” in relation to VAT*

- 6 (1) A person (P) obtains a tax advantage in relation to VAT if –
  - (a) in any prescribed accounting period, the amount by which the output tax accounted for by P exceeds the input tax deducted by P is less than it would otherwise be;

- (b) P obtains a VAT credit when P would otherwise not do so, or obtains a larger credit or obtains a credit earlier than would otherwise be the case;
  - (c) in a case where P 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;
  - (d) in any prescribed accounting period, the amount of P's non-deductible tax is less than it otherwise would be.
- (2) In sub-paragraph (1) “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,
  - (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.
- (3) For the purposes of sub-paragraph (2)(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 paid or payable by the person on the importation of any goods from a place outside the member States,
- (4) A person who is not a taxable person obtains a tax advantage in relation to VAT if that person's non-refundable tax is less than it otherwise would be.
- (5) In sub-paragraph (4) “non-refundable tax” 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 goods,
  - (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 HMRC by virtue of any provision of VATA 1994.
- (6) Terms used in this paragraph which are defined in section 96 of VATA 1994 have the meanings given by that section.

*“Tax advantage” in relation to taxes other than VAT*

- 7 “Tax advantage”, in relation to an indirect tax other than VAT, means –
- (a) relief or increased relief from, or repayment or increased repayment of, that tax,
  - (b) the avoidance or reduction of a charge to that tax or an assessment to that tax,
  - (c) the avoidance of a possible assessment to that tax,
  - (d) the deferral of any payment of tax or the advancement of any repayment of tax, or
  - (e) the avoidance of any obligation to deduct or account for any tax.

*“Promoter”*

- 8 (1) This paragraph describes when a person (P) is a promoter in relation to a notifiable proposal or notifiable arrangements.
- (2) P is a promoter in relation to a notifiable proposal if, in the course of a relevant business, P—
- (a) is to any extent responsible for the design of the proposed arrangements,
  - (b) makes a firm approach to another person (C) in relation to the proposal with a view to P making the proposal available for implementation by C or any other person, or
  - (c) makes the proposal available for implementation by other persons.
- (3) P is a promoter in relation to notifiable arrangements if—
- (a) P is by virtue of sub-paragraph (2)(b) or (c) a promoter in relation to a notifiable proposal which is implemented by the arrangements, or
  - (b) if in the course of a relevant business, P is to any extent responsible for—
    - (i) the design of the arrangements, or
    - (ii) the organisation or management of the arrangements.
- (4) In this paragraph “relevant business” means any trade, profession or business which—
- (a) involves the provision to other persons of services relating to taxation,
  - (b) is carried on by a bank or securities house.
- (5) In sub-paragraph (4)(b)—
- “bank” has the meaning given by section 1120 of the Corporation Tax Act 2010, and
  - “securities house” has the meaning given by section 1009(3) of that Act.
- (6) For the purposes of this paragraph anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within sub-paragraph (4)(b) carried on by another company which is a member of the same group.
- (7) Section 170 of the Taxation of Chargeable Gains Act 1992 has effect for determining for the purposes of sub-paragraph (6) whether two companies are members of the same group, but as if in that section—
- (a) for each of the references to a 75 per cent subsidiary there were substituted a reference to a 51 per cent subsidiary, and
  - (b) subsection (3)(b) and subsections (6) to (8) were omitted.
- (8) A person is not to be treated as a promoter by reason of anything done in prescribed circumstances.
- (9) In the application of this Schedule to a proposal or arrangements which are not notifiable, a reference to a promoter is a reference to a person who would be a promoter under this paragraph if the proposal or arrangements were notifiable.

*“Introducer”*

- 9 (1) A person is an introducer in relation to a notifiable proposal if the person makes a marketing contact with another person in relation to the proposal.
- (2) A person is not to be treated as an introducer by reason of anything done in prescribed circumstances.
- (3) In the application of this Schedule to a proposal or arrangements which are not notifiable, a reference to an introducer is a reference to a person who would be an introducer under this paragraph if the proposal or arrangements were notifiable.

*“Makes a firm approach” and “marketing contact”*

- 10 (1) A person makes a firm approach to another person in relation to a notifiable proposal if the person makes a marketing contact with the other person in relation to the proposal at a time when the proposed arrangements have been substantially designed.
- (2) A person makes a marketing contact with another person in relation to a notifiable proposal if –
- (a) the person communicates information about the proposal to the other person,
  - (b) the communication is made with a view to that other person, or any other person, entering into transactions forming part of the proposed arrangements, and
  - (c) the information communicated includes an explanation of the tax advantage that might be expected to be obtained from the proposed arrangements.
- (3) For the purposes of sub-paragraph (1) proposed arrangements have been substantially designed at any time if by that time the nature of the transactions to form part of them has been sufficiently developed for it to be reasonable to believe that a person who wished to obtain the tax advantage mentioned in sub-paragraph (2)(c) might enter into –
- (a) transactions of the nature developed, or
  - (b) transactions not substantially different from transactions of that nature.

*Duties of promoter in relation to notifiable proposals or notifiable arrangements*

- 11 (1) A person who is a promoter in relation to a notifiable proposal must, within the relevant period, provide HMRC with prescribed information relating to the proposal.
- (2) In sub-paragraph (1) “the relevant period” is the period of 31 days beginning with the relevant date.
- (3) In sub-paragraph (2) “the relevant date” is the earliest of the following –
- (a) the date on which the promoter first makes a firm approach to another person in relation to the proposal,
  - (b) the date on which the promoter makes the proposal available for implementation by any other person, or

- (c) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the proposal.
- 12 (1) A person who is a promoter in relation to notifiable arrangements must, within the relevant period after the date on which the person first becomes aware of any transaction forming part of the arrangements, provide HMRC with prescribed information relating to the arrangements.
  - (2) In sub-paragraph (1) “the relevant period” is the period of 31 days beginning with that date.
  - (3) The duty under sub-paragraph (1) does not apply if the notifiable arrangements implement a proposal in respect of which notice has been given to HMRC under paragraph 11(1).
- 13 (1) This paragraph applies where a person complies with paragraph 11(1) in relation to a notifiable proposal for arrangements and another person is –
  - (a) also a promoter in relation to the proposal or is a promoter in relation to a notifiable proposal for arrangements which are substantially the same as the proposed arrangements (whether they relate to the same or different parties), or
  - (b) a promoter in relation to notifiable arrangements implementing the proposal or notifiable arrangements which are substantially the same as notifiable arrangements implementing the proposal (whether they relate to the same or different parties).
  - (2) Any duty of the other person under paragraph 11(1) or 12(1) in relation to the notifiable proposal or notifiable arrangements is discharged if –
    - (a) the person who complied with paragraph 11(1) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the proposed notifiable arrangements under paragraph 22(1), and
    - (b) the other person holds the information provided to HMRC in compliance with paragraph 11(1).
- 14 (1) This paragraph applies where a person complies with paragraph 12(1) in relation to notifiable arrangements and another person is –
  - (a) a promoter in relation to a notifiable proposal for arrangements which are substantially the same as the notifiable arrangements (whether they relate to the same or different parties), or
  - (b) also a promoter in relation to the notifiable arrangements or notifiable arrangements which are substantially the same (whether they relate to the same or different parties).
  - (2) Any duty of the other person under paragraph 11(1) or 12(1) in relation to the notifiable proposal or notifiable arrangements is discharged if –
    - (a) the person who complied with paragraph 12(1) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the notifiable arrangements under paragraph 22(1), and
    - (b) the other person holds the information provided by HMRC in compliance with paragraph 12(1).
- 15 Where a person is a promoter in relation to two or more notifiable proposals or sets of notifiable arrangements which are substantially the same (whether

they relate to the same parties or different parties) the person need not provide information under paragraph 11(1) or 12(1) if the person has already provided information under either of those paragraphs in relation to any of the other proposals or arrangements.

*Duty of promoter: supplemental information*

- 16 (1) This paragraph applies where—
- (a) a promoter (P) has provided information in purported compliance with paragraph 11(1) or 12(1), but
  - (b) HMRC believe that P has not provided all the prescribed information.
- (2) HMRC may apply to the tribunal for an order requiring P to provide specified information about, or documents relating to, the notifiable proposal or arrangements.
- (3) The tribunal may make an order under sub-paragraph (2) in respect of information or documents only if satisfied that HMRC have reasonable grounds for suspecting that the information or documents—
- (a) form part of the prescribed information, or
  - (b) will support or explain the prescribed information.
- (4) A requirement by virtue of sub-paragraph (2) is to be treated as part of P's duty under paragraph 11(1) or 12(1).
- (5) In so far as P's duty under sub-paragraph (1) of paragraph 11 or 12 arises out of an order made by virtue of sub-paragraph (2) above the relevant period for the purposes of that sub-paragraph (1) is—
- (a) the period of 11 days beginning with the date of the order, or
  - (b) such longer period as HMRC may direct.

*Duty of person dealing with promoter outside United Kingdom*

- 17 (1) This paragraph applies where a person enters into any transaction forming part of any notifiable arrangements in relation to which—
- (a) a promoter is resident outside the United Kingdom, and
  - (b) no promoter is resident in the United Kingdom.
- (2) The person must, within the relevant period, provide HMRC with prescribed information relating to the arrangements.
- (3) In sub-paragraph (2) “the relevant period” is the period of 6 days beginning with the day on which the person enters into the first transaction forming part of the arrangements.
- (4) Compliance with paragraph 11(1) or 12(1) by any promoter in relation to the arrangements discharges the person's duty under sub-paragraph (1).

*Duty of parties to notifiable arrangements not involving promoter*

- 18 (1) This paragraph applies to any person who enters into any transaction forming part of notifiable arrangements as respects which neither that person nor any other person in the United Kingdom is liable to comply with paragraph 11(1), 12(1) or 17(1).

- (2) The person must at the prescribed time provide HMRC with prescribed information relating to the arrangements.

*Duty to provide further information requested by HMRC*

- 19 (1) This paragraph applies where –
- (a) a person has provided the prescribed information about notifiable proposals or arrangements in compliance with paragraph 11(1), 12(1), 17(1) or 18(2), or
  - (b) a person has provided information in purported compliance with paragraph 17(1) or 18(2) but HMRC believe that the person has not provided all the prescribed information.
- (2) HMRC may require the person to provide –
- (a) further specified information about the notifiable proposals or arrangements (in addition to the prescribed information under paragraph 11(1), 12(1), 17(1) or 18(2));
  - (b) documents relating to the notifiable proposals or arrangements.
- (3) Where HMRC impose a requirement on a person under this paragraph, the person must comply with the requirement within –
- (a) the period of 10 working days beginning with the day on which HMRC imposed the requirement, or
  - (b) such longer period as HMRC may direct.
- 20 (1) This paragraph applies where HMRC –
- (a) have required a person to provide information or documents under paragraph 19, but
  - (b) believe that the person has failed to provide the information or documents required.
- (2) HMRC may apply to the tribunal for an order requiring the person to provide the information or documents required.
- (3) The tribunal may make an order imposing such a requirement only if satisfied that HMRC have reasonable grounds for suspecting that the information or documents will assist HMRC in considering the notifiable proposals or arrangements.
- (4) Where the tribunal makes an order imposing such a requirement, the person must comply with the requirement within –
- (a) the period of 10 working days beginning with the day on which the tribunal made the order, or
  - (b) such longer period as HMRC may direct.

*Duty of promoters to provide updated information*

- 21 (1) This paragraph applies where –
- (a) information has been provided under paragraph 11(1), or 12(1) about any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under paragraph 22, and
  - (b) after the provision of the information, there is a change in relation to the arrangements of a kind mentioned in sub-paragraph (2).
- (2) The changes referred to in sub-paragraph (1)(b) are –

- (a) a change in the name by which the notifiable arrangements, or proposed notifiable arrangements, are known;
  - (b) a change in the name or address of any person who is a promoter in relation to the arrangements or, in the case of proposed arrangements, the notifiable proposal.
- (3) A person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal must inform HMRC of the change mentioned in sub-paragraph (1)(b) within 30 days after it is made.
- (4) Sub-paragraphs (5) and (6) apply for the purposes of sub-paragraph (3) where there is more than one person who is a promoter in relation to the notifiable arrangements or proposal.
- (5) If the change in question is a change in the name or address of a person who is a promoter in relation to the notifiable arrangements or proposal, it is the duty of that person to comply with sub-paragraph (3).
- (6) If a person provides information in compliance with sub-paragraph (3), the duty imposed by that sub-paragraph on any other person, so far as relating to the provision of that information, is discharged.

*Arrangements to be given reference number*

- 22 (1) Where a person (P) complies or purports to comply with paragraph 11(1), 12(1), 17(1) or 18(2) in relation to any notifiable proposal or notifiable arrangements, HMRC may within 90 days allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements.
- (2) If HMRC do so it must notify the number to P and (where the person is one who has complied or purported to comply with paragraph 11(1) or 12(1)), to any other person—
- (a) who is a promoter in relation to—
    - (i) the notifiable proposal (or arrangements implementing the notifiable proposal), or
    - (ii) the notifiable arrangements (or proposal implemented by the notifiable arrangements), and
  - (b) whose identity and address has been notified to HMRC by P.
- (3) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by HMRC that the arrangements would or could as a matter of law result in the obtaining by any person of a tax advantage.
- (4) In this Part of this Schedule “reference number”, in relation to any notifiable arrangements, means the reference number allocated under this paragraph.

*Duty of promoter to notify client of number*

- 23 (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements is providing (or has provided) services to any person (“the client”) in connection with the arrangements.
- (2) The promoter must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number (or, if more

- than one, any one reference number) that has been notified to the promoter (whether by HMRC or any other person) in relation to –
- (a) the notifiable arrangements, or
  - (b) any arrangements substantially the same as the notifiable arrangements (whether involving the same or different parties).
- (3) In sub-paragraph (2) “the relevant date” means the later of –
- (a) the date on which the promoter becomes aware of any transaction which forms part of the notifiable arrangements, and
  - (b) the date on which the reference number is notified to the promoter.
- (4) But where the conditions in sub-paragraph (5) are met the duty imposed on the promoter under sub-paragraph (2) to provide the client with information in relation to notifiable arrangements is discharged
- (5) Those conditions are –
- (a) that the promoter is also a promoter in relation to a notifiable proposal and provides services to the client in connection with them both,
  - (b) the notifiable proposal and the notifiable arrangements are substantially the same, and
  - (c) the promoter has provided to the client, in a form and manner specified by HMRC, prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable arrangements.
- (6) HMRC may give notice that, in relation to notifiable arrangements specified in the notice, promoters are not under the duty under sub-paragraph (2) after the date specified in the notice.

*Duty of client to notify parties of number*

- 24 (1) In this paragraph “client” means a person to whom a person who is a promoter in relation to notifiable arrangements or a notifiable proposal is providing (or has provided) services in connection with the arrangements or proposal.
- (2) Sub-paragraph (3) applies where the client receives prescribed information relating to the reference number allocated to the arrangements or proposed arrangements,
- (3) The client must, within the relevant period, provide prescribed information relating to the reference number to any other person –
- (a) who the client might reasonably be expected to know is or is likely to be a party to the arrangements or proposed arrangements, and
  - (b) who might reasonably be expected to gain a tax advantage in relation to any relevant tax by reason of the arrangements or proposed arrangements.
- (4) In sub-paragraph (3) “the relevant period” is the period of 30 days beginning with the later of –
- (a) the day on which the client first becomes aware of any transaction forming part of the notifiable arrangements or proposed notifiable arrangements, and
  - (b) the day on which the prescribed information is notified to the client by the promoter under paragraph 23.

- (5) HMRC may give notice that, in relation to notifiable arrangements or a notifiable proposal specified in the notice, persons are not under the duty under sub-paragraph (3) after the date specified in the notice.
- (6) The duty under sub-paragraph (3) does not apply in prescribed circumstances.
- (7) For the purposes of this paragraph a tax is a “relevant tax”, in relation to arrangements or arrangements proposed in a proposal of any description, if it is prescribed in relation to arrangements or proposals of that description by regulations under paragraph 3(1).

*Duty of client to provide information to promoter*

- 25 (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements has provided a person (“the client”) with the information prescribed under paragraph 23(2).
- (2) The client must, within the relevant period, provide the promoter with prescribed information relating to the client.
- (3) In sub-paragraph (2) “the relevant period” is the period of 11 days beginning with the later of –
  - (a) the date the client receives the reference number for the arrangements, and
  - (b) the date the client first enters into a transaction which forms part of the arrangements.
- (4) The duty under sub-paragraph (2) is subject to any exceptions that may be prescribed.

*Duty of parties to notifiable arrangements to notify HMRC of number, etc*

- 26 (1) Any person (P) who is a party to any notifiable arrangements must provide HMRC with prescribed information relating to –
  - (a) any reference number notified to P under paragraph 23 or 24, and
  - (b) the time when P obtains or expects to obtain by virtue of the arrangements a tax advantage in relation to any relevant tax.
- (2) For the purposes of sub-paragraph (1) a tax is a “relevant tax” in relation to any notifiable arrangements if it is prescribed in relation to arrangements of that description by regulations under paragraph 3(1).
- (3) Regulations made by HMRC may –
  - (a) in prescribed cases, require the information prescribed under sub-paragraph (1) to be given to HMRC –
    - (i) in the prescribed manner,
    - (ii) in the prescribed form,
    - (iii) at the prescribed time, and
  - (b) in prescribed cases, require the information prescribed under sub-paragraph (1) and such other information as is prescribed to be provided separately to HMRC at the prescribed time or times.
- (4) In sub-paragraph (3) “prescribed” includes being prescribed in a document made under a power conferred by regulations made by HMRC.

- (5) HMRC may give notice that, in relation to notifiable arrangements specified in the notice, persons are not under the duty under sub-paragraph (1) after the date specified in the notice.
- (6) The duty under sub-paragraph (1) does not apply in prescribed circumstances.

*Duty of promoter to provide details of clients*

- 27 (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements is providing (or has provided) services to any person (“the client”) in connection with the arrangements and either –
- (a) the promoter is subject to the reference number information requirement, or
  - (b) the promoter has failed to comply with paragraph 11(1) or 12(1) in relation to the arrangements (or the notifiable proposal for them) but would be subject to the reference number information requirement if a reference number had been allocated to the arrangements.
- (2) For the purposes of this paragraph “the reference number information requirement” is the requirement under paragraph 23(2) to provide to the client prescribed information relating to the reference number allocated to the notifiable arrangements.
- (3) The promoter must, within the prescribed period after the end of the relevant period, provide HMRC with prescribed information in relation to the client.
- (4) In sub-paragraph (3) “the relevant period” means such period during which the promoter is or would be subject to the reference number information requirement as is prescribed.
- (5) The promoter need not comply with sub-paragraph (3) in relation to any notifiable arrangements at any time after HMRC have given notice under paragraph 23(6) in relation to the arrangements.

*Enquiry following disclosure of client details*

- 28 (1) This paragraph applies where –
- (a) a person who is a promoter in relation to notifiable arrangements has provided HMRC with information in relation to a person (“the client”) under paragraph 27(3) (duty to provide client details), and
  - (b) HMRC suspect that a person other than the client is or is likely to be a party to the arrangements.
- (2) HMRC may by written notice require the promoter to provide prescribed information in relation to any person other than the client who the promoter might reasonably be expected to know is or is likely to be a party to the arrangements.
- (3) The promoter must comply with a requirement under or by virtue of sub-paragraph (2) within –
- (a) the relevant period, or
  - (b) such longer period as HMRC may direct.

- (4) In sub-paragraph (3) “the relevant period” is the period of 11 days beginning with the day on which the promoter receives the notice under sub-paragraph (2).

*Pre-disclosure enquiry*

- 29 (1) Where HMRC suspect that a person (P) is the promoter or introducer of a proposal, or the promoter of arrangements, which may be notifiable, they may by written notice require P to state—
- (a) whether in P’s opinion the proposal or arrangements are notifiable by P, and
  - (b) if not, the reasons for P’s opinion.
- (2) The notice must specify the proposal or arrangements to which it relates.
- (3) For the purposes of sub-paragraph (1)(b) —
- (a) it is not sufficient to refer to the fact that a lawyer or other professional has given an opinion,
  - (b) the reasons must show, by reference to this Part of this Schedule and regulations under it, why P thinks the proposal or arrangements are not notifiable by P, and
  - (c) in particular, if P asserts that the arrangements do not fall within any description prescribed under paragraph 3(1)(a), the reasons must provide sufficient information to enable HMRC to confirm the assertion.
- (4) P must comply with a requirement under or by virtue of sub-paragraph (1) within—
- (a) the relevant period, or
  - (b) such longer period as HMRC may direct.
- (5) In sub-paragraph (4) “the relevant period” is the period of 11 days beginning with the day on which the notice under sub-paragraph (1) is issued.

*Reasons for non-disclosure: supporting information*

- 30 (1) Where HMRC receive from a person (P) a statement of reasons why a proposal or arrangements are not notifiable by P, HMRC may apply to the tribunal for an order requiring P to provide specified information or documents in support of the reasons.
- (2) P must comply with a requirement under or by virtue of sub-paragraph (1) within—
- (a) the relevant period, or
  - (b) such longer period as HMRC may direct.
- (3) In sub-paragraph (2) “the relevant period” is the period of 15 days beginning with the day on which the order concerned is made.
- (4) The power under sub-paragraph (1) —
- (a) may be exercised more than once, and
  - (b) applies whether or not the statement of reasons was received under paragraph 29(1)(b).

*Provision of information to HMRC by introducers*

- 31 (1) This paragraph applies where HMRC suspect –
- (a) that a person (P) is an introducer in relation to a proposal, and
  - (b) that the proposal may be notifiable.
- (2) HMRC may by written notice require P to provide HMRC with one or both of the following –
- (a) prescribed information in relation to each person who has provided P with any information relating to the proposal,
  - (b) prescribed information in relation to each person with whom P has made a marketing contact in relation to the proposal.
- (3) A notice must specify the proposal to which it relates.
- (4) P must comply with a requirement under or sub-paragraph(2) within –
- (a) the relevant period, or
  - (b) such longer period as HMRC may direct.
- (5) In sub-paragraph (4) “the relevant period” is the period of 11 days beginning with the day on which the notice under sub-paragraph (2) is given.

*Legal professional privilege*

- 32 (1) Nothing in this Part of this Schedule requires any person to disclose to HMRC any privileged information.
- (2) In this Part of this Schedule “privileged information” means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

*Information*

- 33 (1) This paragraph applies where a person is required to provide information under paragraph 23(2) or 24(3).
- (2) HMRC may specify additional information which must be provided by that person to the recipients under paragraph 23(2) or 24(3) at the same time as the information referred to in sub-paragraph (1).
- (3) HMRC may specify the form and manner in which the additional information is to be provided.
- (4) For the purposes of this paragraph “additional information” means information supplied by HMRC which relates to notifiable proposals or notifiable arrangements in general.
- 34 (1) HMRC may specify the form and manner in which information required to be provided by any of the information provisions must be provided if the provision is to be complied with.
- (2) The “information provisions” are paragraphs 11(1), 12(1), 17(1), 18(2), 19(2), 21(3), 23(2), 24(3), 26(1) and (3), 27(3), 28(2), 29(1), 31(2) and 33(2).
- 35 No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for

suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by or under this Part of this Schedule.

- 36 (1) HMRC may publish information about –
- (a) any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under paragraph 22;
  - (b) any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.
- (2) The information that may be published is (subject to sub-paragraph (4)) –
- (a) any information relating to arrangements within sub-paragraph (1)(a), or a person within sub-paragraph (1)(b), that is prescribed information for the purposes of section 11, 12, 17 or 18;
  - (b) any ruling of a court or tribunal relating to any such arrangements or person (in that person’s capacity as a promoter in relation to a notifiable proposal or arrangements);
  - (c) the number of persons in any period who enter into transactions forming part of notifiable arrangements within sub-paragraph (1)(a);
  - (d) any other information that HMRC considers it appropriate to publish for the purpose of identifying arrangements within sub-paragraph (1)(a) or a person within sub-paragraph (1)(b).
- (3) The information may be published in any manner that HMRC considers appropriate.
- (4) No information may be published under this paragraph that identifies a person who enters into a transaction forming part of notifiable arrangements within sub-paragraph (1)(a).
- (5) But where a person who is a promoter within sub-paragraph (1)(b) is also a person mentioned in sub-paragraph (4), nothing in sub-paragraph (4) is to be taken as preventing the publication under this paragraph of information so far as relating to the person’s activities as a promoter.
- (6) Before publishing any information under this paragraph that identifies a person as a promoter within sub-paragraph (1)(b), HMRC must –
- (a) inform the person that they are considering doing so, and
  - (b) give the person reasonable opportunity to make representations about whether it should be published.
- 37 (1) This paragraph applies if –
- (a) information about notifiable arrangements, or proposed notifiable arrangements, is published under paragraph 36,
  - (b) at any time after the information is published, a ruling of a court or tribunal is made in relation to tax arrangements, and
  - (c) HMRC is of the opinion that the ruling is relevant to the arrangements mentioned in paragraph (a)
- (2) A ruling is “relevant” to the arrangements if –
- (a) the principles laid down, or reasoning given, in the ruling would, if applied to the arrangements, allow the purported advantage arising from the arrangements in relation to tax, and
  - (b) the ruling is final.
- (3) HMRC must publish information about the ruling.

- (4) The information must be published in the same manner as HMRC published the information mentioned in sub-paragraph (1)(a) (and may also be published in any other manner that HMRC considers appropriate).
- (5) A 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.
- (6) Where a ruling is final by virtue of sub-paragraph (ii), (iii) or (iv) of sub-paragraph (5)(b), the ruling is to be treated as made at the time when the sub-paragraph in question is first satisfied.
- (7) In this paragraph “tax arrangements” means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the main purpose, or one of the main purposes, was the obtaining of a tax advantage.

*Power to vary certain relevant periods*

- 38 HMRC may by regulations amend this Part of this Schedule with a view to altering the definition of “the relevant period” for the purposes of –
- paragraph 5(6)
  - paragraph 11(1)
  - paragraph 12(1)
  - paragraph 16(5)
  - paragraph 17(2)
  - paragraph 24(3)
  - paragraph 25(2)
  - paragraph 27(3)
  - paragraph 28(3)
  - paragraph 29(4)
  - paragraph 30(2)
  - paragraph 31(4).

PART 2

PENALTIES

*Penalty for failure to comply with duties under Part 1 (apart from paragraph 26)*

- 39 (1) A person who fails to comply with any of the provisions of Part 1 of this Schedule mentioned in sub-paragraph (2) below is liable –
- (a) to a penalty not exceeding –

- (i) in the case of a failure to comply with paragraph 11(1), 12(1), 17(2), 18(2) or 19, £600 for each day during the initial period for which the failure continues (but see also paragraphs 40(4) and 41(1) and (2)), and
- (ii) in any other case, £5,000, and
- (b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (2) Those provisions are –
- (a) paragraph 11(1) (duty of promoter in relation to notifiable proposal),
  - (b) paragraph 12(1) (duty of promoter in relation to notifiable arrangements),
  - (c) paragraph 17(1) (duty of person dealing with promoter outside United Kingdom),
  - (d) paragraph 18 (duty of parties to notifiable arrangements not involving promoter),
  - (e) paragraph 19 (duty to provide further information requested by HMRC),
  - (f) paragraph 21 (duty of promoters to provide updated information),
  - (g) paragraph 23(2) (duty of promoter to notify client of reference number),
  - (h) paragraph 24(3) (duty of client to notify parties of reference number),
  - (i) paragraph 25 (duty of client to provide information to promoter),
  - (j) paragraph 27 (duty of promoter to provide details of clients),
  - (k) paragraph 28 (enquiry following disclosure of client details),
  - (l) paragraphs 29 and 30 (duty of promoter to respond to inquiry)
  - (m) paragraph 31 (duty of introducer to give details of persons who have provided information or have been provided with information, and
  - (n) paragraph 33 (duty to provide additional information).
- (3) In this paragraph “the initial period” means the period –
- (a) beginning with the relevant day, and
  - (b) ending with the earlier of the day on which the penalty under sub-paragraph (1)(a)(i) is determined and the last day before the failure ceases.
- (4) For the purposes of sub-paragraph (3)(a) “the relevant day” is the day specified in relation to the failure in the following table –

<i>Failure</i>	<i>Relevant day</i>
A failure to comply with paragraph 11(1) or 12(1) in so far as it applies by virtue of an order under paragraph 5	The first day after the end of the relevant period described in paragraph 5(6)

<i>Failure</i>	<i>Relevant day</i>
A failure to comply with paragraph 11(1) or 12(1) in so far as it applies by virtue of an order under paragraph 16(2)	The first day after the end of the relevant period (whether that is the period described in sub-paragraph 16(5)(a) or that period as extended by a direction under paragraph 16(5)(b))
Any other failure to comply with sub-paragraph (1) of paragraph 11	The first day after the end of the relevant period described in paragraph 11(2)
Any other failure to comply with sub-paragraph (1) of paragraph 12	The first day after the end of the relevant period described in paragraph 12(2)
A failure to comply with paragraph 17(2)	The first day after the end of the relevant period described in paragraph 17(3)
A failure to comply with paragraph 18(2)	The first day after the latest time by which paragraph 18(2) should have been complied with in the case concerned
A failure to comply with paragraph 19	The first day after the end of the period within which the person must comply with paragraph 19

- 40 (1) The amount of a penalty under paragraph 39(1)(a)(i) is to be arrived at after taking account of all relevant considerations.
- (2) Those considerations include the desirability of the penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)–
- (a) in the case of a penalty for a promoter’s failure to comply with paragraph 11(1), 12(1) or 19, to the amount of any fees received, or likely to have been received, by the promoter in connection with the notifiable proposal (or arrangements implementing the notifiable proposal), or with the notifiable arrangements, and
  - (b) in the case of a penalty for a relevant person’s failure to comply with paragraph 17(2), 18(2) or 19, to the amount of any advantage gained, or sought to be gained, by the person in relation to any tax prescribed under paragraph 3(1)(b) in relation to the notifiable arrangements
- (3) In sub-paragraph (2)(b) “relevant person” means a person who enters into any transaction forming part of notifiable arrangements.
- (4) If the maximum penalty under paragraph 39(1)(a)(i) appears inappropriately low after taking account of those considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.

- 41 (1) Where a failure to comply with a provision mentioned in paragraph 39(2) concerns –
- (a) a proposal or arrangements in respect of which an order has been made under paragraph 4
  - (b) a proposal or arrangements in respect of which an order has been made under paragraph 5,
- the amounts specified in paragraph 39(1)(a)(i) and (b) are increased to the prescribed sum in relation to days falling after the prescribed period.
- (2) In sub-paragraph (1) –
- (a) “the prescribed sum” means a sum prescribed by the Treasury by regulations, and
  - (b) “the prescribed period” means a period (beginning with the date of the order concerned) prescribed by HMRC by regulations.
- 42 (1) The Treasury may by regulations vary –
- (a) any of the sums for the time being specified in paragraph 39(1), and
  - (b) the sum for the time being specified in paragraph 40(4).
- (2) Regulations under paragraph 41(2) or sub-paragraph (1) above may include incidental or transitional provision.
- 43 Where it appears to an officer of Revenue and Customs that a penalty under paragraph 39(1)(a)(i) has been determined on the basis that the initial period begins with a day later than that which the officer considers to be the relevant day, an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

*Penalty for failure to comply with duties under paragraph 26*

- 44 (1) A person who fails to comply with –
- (a) paragraph 26(1), or
  - (b) regulations under paragraph 26(3),
- is liable to a penalty not exceeding the relevant sum.
- (2) The relevant sum is £5,000 in respect of each scheme to which the failure relates unless the person falls within sub-paragraph (3) or (4).
- (3) If the person has previously failed to comply with paragraph 26(1) or regulations under paragraph 26(3) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure began, the relevant sum is £7,500 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which the previous failure relates).
- (4) If the person has previously failed to comply with paragraph 26(1) or regulations under paragraph 26(3) on two or more occasions during the period of 36 months ending with the date on which the current failure began, the relevant sum is £10,000 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which any of the previous failures relates).
- (5) In this paragraph “scheme” means any notifiable arrangements.

*Penalty proceedings before First-tier tribunal*

- 45 (1) An authorised officer may commence proceedings before the First-tier Tribunal for any penalty under paragraph 39(1)(a).
- (2) In sub-paragraph (1) “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.
- (3) Proceedings for a penalty may not be commenced more than 12 months after evidence of facts sufficient to justify the bringing of proceedings comes to the knowledge of HMRC.
- (4) If the First-tier Tribunal decide that the penalty is payable by the person—
- (a) the penalty is for all purposes to be treated as if it were tax charged in an assessment and due and payable,
  - (b) the person may appeal to the Upper Tribunal against the decision that the penalty is payable, and
  - (c) the person may appeal to the Upper Tribunal against the decision as to the amount of the penalty.
- (5) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007, the person liable to the penalty may appeal to the Upper Tribunal against the decision in proceedings under subsection (1), but not against any decision which falls under section 11(5)(d) and (e) of TCEA 2007 and was made in connection with the decision as to the amount of the penalty.
- (6) Section 11(3) and (4) of the TCEA 2007 applies to the right of appeal under sub-paragraph (5) as it applies to the right of appeal under section 11(2) of the TCEA 2007.
- (7) On an appeal under sub-paragraph (4)(b) the Upper Tribunal may, if it appears that no penalty has been incurred, cancel the decision of the First-tier Tribunal.
- (8) On an appeal under sub-paragraph (4)(c) the Upper Tribunal may—
- (a) affirm the decision of the First-tier Tribunal as to the amount of the penalty, or
  - (b) substitute for that decision a decision that the First-tier Tribunal had power to make.

*Assessment of penalties under paragraph 39(1)(b)*

- 46 (1) Where a person is liable to a penalty under paragraph 39(1)(b) or 44 an authorised officer may assess the amount due by way of a penalty.
- (2) An assessment may not be made more than 12 months after evidence of facts sufficient to justify the making of the assessment first comes to the knowledge of HMRC.
- (3) A notice of an assessment under sub-paragraph (1) stating—
- (a) the date on which it is issued, and
  - (b) the time within which an appeal against the assessment may be made,
- must be served on the person liable to the penalty.

- (4) After the notice has been served the assessment may not be altered except in accordance with this paragraph or on appeal.
  - (5) If it is discovered by an authorised officer that the amount of a penalty assessed under this paragraph is or has become insufficient the officer may make an assessment in a further amount so that the penalty is set at the amount which, in the officer's opinion, is correct or appropriate.
  - (6) A penalty imposed by a decision under this paragraph –
    - (a) is due and payable at the end of the period of 30 days beginning with the date of the issue of the notice of the decision, and
    - (b) is to be treated for all purposes as if it were tax charged in an assessment and due and payable.
  - (7) In this paragraph “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.
- 47 (1) Where a person (P) is served with notice of an assessment under paragraph 46 –
- (a) P may appeal against the decision that a penalty is payable by P, and
  - (b) P may appeal against the decision as to the amount of the penalty.
- (2) An appeal under sub-paragraph (1) is to be treated for procedural purposes in the same way as an appeal against an assessment to the relevant tax (including by the application of any provision about the bringing of an 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)
- (3) Sub-paragraph (2) does not apply –
- (a) so as to require P to pay a penalty before an appeal under sub-paragraph (1) is determined, or
  - (b) in respect of any other matter expressly provided for by this Schedule.
- (4) On an appeal under sub-paragraph (1)(a) the tribunal may affirm or cancel the decision that a penalty is payable by P.
- (5) On an appeal under sub-paragraph (1)(b) the tribunal may –
- (a) affirm the decision as to the amount of the penalty, or
  - (b) substitute for that decision another decision that the authorised officer had power to make.
- (6) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007, the person liable to the penalty may appeal to the Upper Tribunal against the amount of the penalty which has been determined under sub-paragraph (5)(b) by the First-tier tribunal, but not against any decision which falls under section 11(5)(d) and (e) of TCEA 2007 and was made in connection with the determination of the amount of the penalty.
- (7) Section 11(3) and (4) of TCEA 2007 applies to the right of appeal under sub-paragraph (6) as it applies to the right of appeal under section 11(2) of TCEA 2007.
- (8) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (2)).

*Reasonable excuse*

- 48 (1) Liability to a penalty under this Part of this Schedule does not arise in relation to a particular failure to comply if the person concerned (P) satisfies HMRC or the relevant tribunal (as the case may be) that there is a reasonable excuse for the failure.
- (2) For this purpose –
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P’s control,
  - (b) where P relied on any other person to do anything, that cannot be a reasonable excuse unless P took reasonable care to avoid the failure,
  - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased, and
  - (d) reliance on advice is to be taken automatically not to be a reasonable excuse if the advice was addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.
- 49 (1) The making of an order under paragraph 4 or 5 against P does not of itself mean that P either did or did not have a reasonable excuse for non-compliance before the order was made.
- (2) Where an order is made under paragraph 4 or 5 then for the purposes of paragraph 48 –
- (a) the person identified in the order as the promoter of the proposal or arrangements cannot, in respect of any time after the end of the prescribed period mentioned in paragraph 41, rely on doubt as to notifiability as a reasonable excuse for failure to comply with paragraph 11(1) or 12(1), and
  - (b) any delay in compliance with that provision after the end of that period is not capable of being a reasonable excuse unless attributable to something other than doubt as to notifiability.
- 50 (1) Where a person fails to comply with –
- (a) paragraph 17(2) and the promoter for the purposes of paragraph 17 is a monitored promoter, or
  - (b) paragraph 18(2) and the arrangements for the purposes of paragraph 18 are arrangements of a monitored promoter,
- then for the purposes of paragraph 48 legal advice which the person took into account is to be disregarded in determining whether the person had a reasonable excuse, if the advice was given or procured by that monitored promoter.
- (2) In determining for the purpose of paragraph 48 whether or not a person who is a monitored promoter had a reasonable excuse for a failure to do something, reliance on legal advice is to be taken automatically not to constitute a reasonable excuse if either –
- (a) the advice was not based on a full and accurate description of the facts, or
  - (b) the conclusions in the advice that the person relied on were unreasonable.
- (3) In this paragraph “monitored promoter” means a person who is a monitored promoter for the purposes of Part 5 of the Finance Act 2014

PART 3

SUPPLEMENTAL

*Regulations*

- 51 (1) Any power of the Treasury or HMRC to make regulations is exercisable by statutory instrument.
- (2) Regulations made by the Treasury or HMRC may make different provision for different cases and may contain transitional provisions and savings.
- (3) A statutory instrument containing regulations made by the Treasury under paragraph 2(2), 41(2)(a) or 42(1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (4) Any statutory instrument containing –  
 (a) other regulations made by the Treasury, or  
 (b) regulations made by HMRC,  
 is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this paragraph “regulations” means regulations under any provision of this Schedule.

*Interpretation*

- 52 In this Schedule –
- “arrangements” includes any scheme, transaction or series of transactions;
  - “company” has the meaning given by section 1121 of the Corporation Tax Act 2010;
  - “HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “indirect tax” has the meaning given by paragraph 2(1);
  - “introducer” is to be construed in accordance with paragraph 9;
  - “makes a firm approach” has the meaning given by paragraph 10(1);
  - “makes a marketing contact” has the meaning given by paragraph 10(2);
  - “marketing contact” has the meaning given by paragraph 10(2);
  - “notifiable arrangements” has the meaning given by paragraph 3(1);
  - “notifiable proposal” has the meaning given by paragraph 3(2);
  - “prescribed” (except in or in references to paragraph 3(1)(a)), means prescribed by regulations made by HMRC;
  - “promoter” is to be construed in accordance with paragraph 8;
  - “reference number”, in relation to notifiable arrangements, has the meaning given by paragraph 22(4);
  - “TCEA 2007” means the Tribunals and Courts Act 2007;
  - “tax advantage” means a tax advantage within the meaning of –
    - (a) paragraph 6 (in relation to VAT), or
    - (b) paragraph 7 (in relation to indirect taxes other than VAT);
  - “trade” includes every venture in the nature of a trade;

“tribunal” means the First-tier tribunal, or where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

## SCHEDULE 22

Section 94

### REQUIREMENT TO CORRECT CERTAIN OFFSHORE TAX NON-COMPLIANCE

#### PART 1

##### LIABILITY FOR PENALTY FOR FAILURE TO CORRECT

##### *Failure to correct relevant offshore tax non-compliance*

- 1 A penalty is payable by a person who –
  - (a) at the end of the tax year 2016-17 has any relevant offshore tax non-compliance to correct, and
  - (b) fails to correct the relevant offshore tax non-compliance within the period beginning with 6 April 2017 and ending with 30 September 2018 (referred to in this Schedule as “the RTC period”).

##### *Main definitions: general*

- 2 Paragraphs 3 to 9 have effect for the purposes of this Schedule.

##### *“Relevant offshore tax non-compliance”*

- 3 (1) At the end of the 2016-17 tax year a person has “relevant offshore tax non-compliance” to correct if conditions A, B and C are satisfied in respect of any offshore tax non-compliance committed by that person on or before 5 April 2017 (“the original offshore tax non-compliance”).
  - (2) Condition A is that the original offshore tax non-compliance has not been fully corrected before the end of the 2016-17 tax year (see paragraph 9).
  - (3) Condition B is that –
    - (a) the original offshore tax non-compliance involved a potential loss of revenue when it was committed, and
    - (b) if the original offshore tax non-compliance has been corrected in part by the end of the 2016-17 tax year, the uncorrected part involves a potential loss of revenue.
  - (4) Condition C is that on 6 April 2017 it would have been lawful (disregarding paragraph 22) for HMRC to assess the person concerned to any tax the liability to which would have been disclosed to or discovered by HMRC –
    - (a) where the original offshore tax non-compliance has not been corrected before the end of the 2016-17 tax year, had that offshore tax non-compliance not occurred, or
    - (b) where the original offshore tax non-compliance has been corrected in part by that time, had the uncorrected part not occurred.

- (5) Where in respect of any original offshore tax non-compliance –
- (a) conditions A and B are satisfied, and
  - (b) condition C is satisfied by virtue of paragraph (b),
- the uncorrected part of that tax non-compliance is to be treated for the purposes of this Schedule as relevant offshore tax non-compliance that the person needs to correct.

*Tax non-compliance and offshore tax non-compliance*

- 4 (1) “Offshore tax non-compliance” means tax non-compliance involving an offshore matter or an offshore transfer (see paragraphs 5 to 7).
- (2) “Tax non-compliance” means any of the following –
- (a) a failure to comply on or before the filing date with an obligation under section 7 of TMA 1970 to give notice of chargeability to income tax or capital gains tax,
  - (b) a failure to comply on or before the filing date with an obligation to deliver to HMRC a return or other document which is listed in sub-paragraph (4), or
  - (c) delivering to HMRC a return or other document which is listed in sub-paragraph (4) or (5) and contains an inaccuracy which amounts to, or leads to –
    - (i) an understatement of a liability to tax,
    - (ii) a false or inflated statement of a loss, or
    - (iii) a false or inflated claim to repayment of tax.
- (3) In sub-paragraph (2) –
- (a) “filing date”, in relation to a notice of chargeability or a return or other document, means the date by which it is required to be given, made or delivered to HMRC,
  - (b) “loss” includes a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief, and
  - (c) “repayment of tax” includes a reference to allowing a credit against tax.
- (4) The documents relevant for the purposes of both of paragraphs (b) and (c) of sub-paragraph (2) are (so far as they relate to the tax or taxes shown in the first column) –

<i>Tax to which document relates</i>	<i>Document</i>
Income tax or capital gains tax	Return, accounts, statement or document required under section 8(1) of TMA 1970 (personal return)
Income tax or capital gains tax	Return, accounts, statement or document required under section 8A(1) of TMA 1970 (trustee’s return)

<i>Tax to which document relates</i>	<i>Document</i>
Income tax	Return, accounts, statement or document required under section 12AA(2) or (3) of TMA 1970 (partnership return)
Income tax	Return under section 254 of FA 2004 (pension schemes)
Capital gains tax	NRCGT return under section 12ZB of TMA 1970
Inheritance tax	Account under section 216 or 217 of IHTA 1984.

- (5) The documents relevant for the purposes only of paragraph (c) of subparagraph (2) are (so far as they relate to the tax or taxes shown in the first column) –

<i>Tax to which document relates</i>	<i>Document</i>
Income tax or capital gains tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief
Income tax or capital gains tax	Accounts in connection with ascertaining liability to tax
Income tax or capital gains tax	Statement or declaration in connection with a partnership return
Income tax or capital gains tax	Accounts in connection with a partnership return
Inheritance tax	Information or document under regulations under section 256 of IHTA 1984
Inheritance tax	Statement or declaration in connection with a deduction, exemption or relief.
Income tax, capital gains tax or inheritance tax	Any other document given to HMRC by a person (“P”) which is likely to be relied on by HMRC to determine, without further inquiry, a question about – <ol style="list-style-type: none"> <li>(a) P’s liability to tax,</li> <li>(b) payments by P by way of or in connection with tax,</li> <li>(c) any other payment by P (including penalties),</li> <li>(d) repayments, or any other kind of payment or credit, to P.</li> </ol>

*“Involves an offshore matter and “involves an offshore transfer” etc*

- 5 (1) This paragraph applies to any tax non-compliance consisting of a failure to comply with an obligation under section 7 of TMA 1970 to notify chargeability to income tax or capital gains tax.
- (2) The tax non-compliance “involves an offshore matter” if the potential loss of revenue is charged on or by reference to –
- (a) income arising from a source in a territory outside the UK,
  - (b) assets situated in a territory outside the UK,
  - (c) activities carried on wholly or mainly in a territory outside the UK, or
  - (d) anything having effect as if it were income, assets or activities of a kind described above.
- (3) The tax non-compliance “involves an offshore transfer” if –
- (a) it does not involve an offshore matter, and
  - (b) the applicable condition is satisfied (see sub-paragraphs (4) and (5)).
- (4) Where the tax at stake is income tax the applicable condition is satisfied if the income on or by reference to which tax is charged, or any part of the income –
- (a) was received in a territory outside the UK, or
  - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
- (5) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds –
- (a) were received in a territory outside the UK, or
  - (b) were transferred on or before 5 April 2017 to a territory outside the UK.
- (6) In the case of a transfer falling within sub-paragraph (4)(b) or (5)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.
- (7) The tax non-compliance “involves an onshore matter” if it does not involve an offshore matter or an offshore transfer.
- (8) In this paragraph and paragraphs 6 and 7 “assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.
- 6 (1) This paragraph applies where –
- (a) any tax non-compliance by a person consists of a failure to comply with an obligation to deliver a return or other document, and
  - (b) a complete and accurate return or other document would have included information that would have enabled or assisted HMRC to assess the person’s liability to tax.
- (2) The tax non-compliance “involves an offshore matter” if the liability to tax that would have been shown in the return or other document is or includes a liability to tax charged on or by reference to –
- (a) income arising from a source in a territory outside the UK,
  - (b) assets situated in a territory outside the UK,
  - (c) activities carried on wholly or mainly in a territory outside the UK, or

- (d) anything having effect as if it were income, assets or activities of a kind described above.
  - (3) The tax non-compliance “involves an offshore transfer” if –
    - (a) it does not involve an offshore matter, and
    - (b) the applicable condition is satisfied in respect of the liability to tax that would have been shown by the return or other document (see sub-paragraphs (4) to (6)).
  - (4) Where the tax at stake is income tax the applicable condition is satisfied if the income on or by reference to which tax is charged, or any part of the income –
    - (a) was received in a territory outside the UK, or
    - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
  - (5) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds –
    - (a) was received in a territory outside the UK, or
    - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
  - (6) Where the liability to tax which would have been shown in the document is a liability to inheritance tax, the applicable condition is satisfied if –
    - (a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable involves a transfer of assets, and
    - (b) after that disposition but on or before 5 April 2017 the assets, or any part of the assets, are transferred to a territory outside the UK.
  - (7) In the case of a transfer falling within sub-paragraph (4)(b), (5)(b) or (6)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.
  - (8) The tax non-compliance “involves an onshore matter” if it does not involve an offshore matter or an offshore transfer.
- 7
- (1) This paragraph applies to any tax non-compliance by a person if –
    - (a) the tax non-compliance consists of delivering or giving HMRC a return or other document which contains an inaccuracy, and
    - (b) the inaccuracy relates to information that would have enabled or assisted HMRC to assess the person’s liability to tax.
  - (2) The tax non-compliance to which this paragraph applies “involves an offshore matter” if the information that should have been given in the tax document relates to –
    - (a) income arising from a source in a territory outside the UK,
    - (b) assets situated in a territory outside the UK,
    - (c) activities carried on wholly or mainly in a territory outside the UK, or
    - (d) anything having effect as if it were income, assets or activities of a kind described above.
  - (3) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (2) 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

- (4) Tax non-compliance to which this paragraph applies “involves an offshore transfer” if –
- (a) it does not involve an offshore matter, and
  - (b) the applicable condition is satisfied in respect of the liability to tax that would have been shown by the return or other document (see sub-paragraphs (5) to (7)).
- (5) Where the tax at stake is income tax the applicable condition is satisfied if the information that should have been given in the tax document relates to income which –
- (a) was received in a territory outside the UK, or
  - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
- (6) Where the tax at stake is capital gains tax, the applicable condition is satisfied if –
- (a) the information that should have been given in the tax document relates to the proceeds of the disposal on or by reference to which the tax is charged, and
  - (b) the proceeds, or any part of the proceeds –
    - (i) were received in a territory outside the UK, or
    - (ii) were transferred on or before 5 April 2017 to a territory outside the UK.
- (7) Where the tax at stake is inheritance tax, the applicable condition is satisfied if –
- (a) the information that should have been given in the tax document relates to the disposition that gives rise to the transfer of value by reason of which the tax becomes payable relates to a transfer of assets, and
  - (b) after that disposition but on or before 5 April 2017 the assets or any part of the assets are transferred to a territory outside the UK.
- (8) In the case of a transfer falling within sub-paragraph (5)(b), (6)(b) or (7)(b), references to the income, proceeds or assets transferred are to be read as including references to any assets derived from or representing the income, proceeds or assets.
- (9) The tax non-compliance “involves an onshore matter” if it does not involve an offshore matter or an offshore transfer.

“Tax”

- 8 (1) References to “tax” are (unless in the context the reference is more specific) to income tax, capital gains tax or inheritance tax.
- (2) References to “capital gains tax” do not include capital gains tax payable by companies in respect of chargeable gains accruing to them to the extent that those gains are NRCGT gains in respect of which the companies are chargeable to capital gains tax under section 14D or 188D of TCGA 1992 (see section 1(2A)(b) of that Act).
- (3) In sub-paragraph (2) “company” has the same meaning as in TCGA 1992.

*Correcting offshore tax non-compliance*

- 9 (1) This paragraph sets out how offshore tax non-compliance may be corrected.
- (2) References to the correction of offshore tax non-compliance of any description are to the taking of any action specified in this paragraph as a means of correcting offshore tax non-compliance of that description.
- (3) Offshore tax non-compliance consisting of a failure to notify chargeability may be corrected by –
- (a) giving the requisite notice to HMRC (unless before doing so the person has received a notice requiring the person to make and deliver a tax return) and giving HMRC the relevant information by any means mentioned in paragraph (b),
  - (b) giving HMRC the relevant information –
    - (i) by making and delivering a tax return,
    - (ii) using the digital disclosure service or any other service provided by HMRC as a means of correcting tax non-compliance,
    - (iii) communicating it to an officer of Revenue and Customs in the course of an enquiry into the person’s tax affairs, or
    - (iv) using a method agreed with an officer of Revenue and Customs.
- (4) In sub-paragraph (3) the relevant information is the information relating to offshore tax that, had the requisite notice been given in time, would have been required to be included in a tax return and which would have enabled or assisted HMRC to calculate the offshore tax due.
- (5) Offshore tax non-compliance consisting of a failure to make or deliver a return or other document may be corrected by giving HMRC the relevant information by –
- (a) making or delivering the requisite return or document,
  - (b) using the digital disclosure service or any other service provided by HMRC as a means of correcting tax non-compliance,
  - (c) communicating it to an officer of Revenue and Customs in the course of an enquiry into the person’s tax affairs, or
  - (d) using a method agreed with an officer of Revenue and Customs.
- (6) In subsection (5) “the relevant information” means the information relating to offshore tax that should have been included in the return or other document and which would have enabled or assisted HMRC to calculate the offshore tax due.
- (7) Offshore tax non-compliance consisting of making and delivering a return or other document containing an inaccuracy may be corrected by giving HMRC the relevant information by –
- (a) in the case of an inaccurate tax document, amending the document or delivering a new document,
  - (b) using the digital disclosure service or any other service provided by HMRC as a means of correcting tax non-compliance,
  - (c) communicating it to an officer of Revenue and Customs in the course of an enquiry into the person’s tax affairs, or
  - (d) using a method agreed with an officer of Revenue and Customs.

- (8) In sub-paragraph (7) “the relevant information” means the information relating to offshore tax that should have been included in the return but was not (whether due to an omission or the giving of inaccurate information) and which would have enabled or assisted HMRC to calculate the offshore tax due.
- (9) In this paragraph “offshore tax”, in relation to any offshore tax non-compliance, means tax corresponding to the offshore PLR in respect of the non-compliance.

## PART 2

### AMOUNT OF PENALTY

#### *Amount of penalty*

- 10 (1) The penalty payable under paragraph 1 is 200% of the offshore PLR attributable to the uncorrected offshore tax non-compliance (subject to any reduction under a provision of this Part of this Schedule).
- (2) In this Part of this Schedule “the uncorrected offshore tax non-compliance” means –
- (a) the relevant offshore tax non-compliance, in a case where none of it is corrected within the RTC period, or
  - (b) so much of the relevant offshore tax non-compliance as has not been corrected within the RTC period, in a case where part of it is corrected within that period.

#### *Offshore PLR*

- 11 (1) In this Schedule “offshore PLR”, in relation to any offshore tax non-compliance means the potential loss of revenue attributable to that non-compliance, to be determined as follows.
- (2) The potential lost revenue attributable to any tax non-compliance is (subject to sub-paragraphs (3) and (4)) –
- (a) if the non-compliance is a failure to notify chargeability, the potential lost revenue under the applicable provisions of paragraph 7 of Schedule 41 to FA 2008,
  - (b) if the non-compliance is a failure to deliver a return or other document, the amount of the liability to tax under the applicable provisions of paragraph 24 of Schedule 55 to FA 2009, and
  - (c) if the non-compliance is delivering a return or other document containing an inaccuracy, the potential lost revenue under the applicable provisions of paragraphs 5 to 8 of Schedule 24 to FA 2007.
- (3) In sub-paragraphs (4) and (5) “combined tax non-compliance” is tax non-compliance that –
- (a) involves an offshore matter or an offshore transfer, but
  - (b) also involves an onshore matter.
- (4) Any combined tax non-compliance is to be treated for the purposes of this Schedule as if it were two separate acts of tax non-compliance, namely –

- (a) the combined tax non-compliance so far as it involves an offshore matter or an offshore transfer (which is then offshore tax non-compliance within the meaning of this Schedule), and
  - (b) the combined tax non-compliance so far as it involves an onshore matter.
- (5) The potential lost revenue attributable to the offshore tax non-compliance referred to in sub-paragraph (4)(a) is to be taken to be such share of the potential lost revenue attributable to the combined tax non-compliance as is just and reasonable.

*Reduction of penalty for disclosure etc by person liable to penalty*

- 12 (1) This paragraph provides for a reduction in a penalty under paragraph 1 for any uncorrected relevant offshore tax non-compliance if the person (“P”) who is liable to the penalty discloses any matter mentioned in sub-paragraph (2) that is relevant to the non-compliance or its correction or to the assessment or enforcement of the offshore tax attributable to it.
- (2) The matters are –
- (a) chargeability to income tax or capital gains tax (where the tax non-compliance is a failure to notify chargeability),
  - (b) a missing tax return,
  - (c) an inaccuracy in a document,
  - (d) a supply of false information or a withholding of information, or
  - (e) a failure to disclose an under-assessment.
- (3) A person discloses a matter for the purposes of this paragraph only 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),
  - (c) informing HMRC of any person who acted as an enabler of the relevant offshore tax non-compliance or the failure to correct it, and
  - (d) allowing HMRC access to records –
    - (i) for any reasonable purpose connected with resolving the matter (for example for the purpose of ensuring that an inaccuracy in a document is fully corrected), and
    - (ii) for the purpose of ensuring that HMRC can identify all persons who may have acted as an enabler of the relevant offshore tax non-compliance or the failure to correct it.
- (4) Where a person liable to a penalty under paragraph 1 discloses a matter HMRC must reduce the penalty to one that reflects the quality of the disclosure.
- (5) But the penalty may not be reduced below 100% of the offshore PLR.
- (6) In relation to disclosure or assistance, “quality” includes timing, nature and extent
- 13 (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*

- 14 (1) Where a person is found liable for a penalty under paragraph 1 HMRC must –
  - (a) assess the penalty,
  - (b) notify the person, and
  - (c) state in the notice –
    - (i) the uncorrected relevant offshore tax non-compliance to which the penalty relates, and
    - (ii) the tax period to which that offshore tax non-compliance relates.
- (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),
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with 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 offshore 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, and
  - (b) may be made after the last day on which the assessment in question could have been made under paragraph 15.
- 15 (1) An assessment of a penalty under paragraph 1 in respect of uncorrected relevant offshore tax non-compliance must be made before the end of the relevant period for that non-compliance.
- (2) If the non-compliance consists of a failure to notify chargeability, the relevant period is the period of 12 months beginning with –
  - (a) the end of the appeal period for the assessment of tax unpaid by reason of the failure, or

- (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the failure is ascertained.
- (3) If the non-compliance consists of a failure to submit a return or other document, the relevant period is the period of 12 months beginning with—
  - (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
  - (b) if there is no such assessment, the date on which that liability is ascertained.
- (4) If the non-compliance consists of making and delivering a tax document containing an inaccuracy, the relevant period is the period of 12 months beginning with—
  - (a) the end of the appeal period for the decision correcting the inaccuracy, or
  - (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.
- (5) In this paragraph references to the appeal period are to the period during which—
  - (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been finally determined or withdrawn.

### Appeals

- 16 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.
- 17 (1) An appeal under paragraph 16 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.
- 18 (1) On an appeal under paragraph 16(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
  - (2) On an appeal under paragraph 16(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 12 or 13 (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 17(1)).

*Reasonable excuse*

- 19 (1) Liability to a penalty under paragraph 1 does not arise in relation to a particular failure to correct any relevant offshore tax non-compliance within the RTC period if the person concerned (P) satisfies HMRC or the relevant tribunal (as the case may be) that there is a reasonable excuse for the failure.
- (2) For this purpose –
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P’s control,
  - (b) where P relied on any other person to do anything, that cannot be a reasonable excuse unless P took reasonable care to avoid the failure,
  - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased, and
  - (d) reliance on advice is to be taken automatically not to be a reasonable excuse if –
    - (i) the advice was addressed to, or was given to, a person other than P,
    - (ii) the advice took no account of P’s individual circumstances, or
    - (iii) the person who gave the advice did not have appropriate expertise for giving the advice (but this is subject to sub-paragraph (3)).
- (3) Where advice would otherwise be disqualified under sub-paragraph (2)(d)(iii) the advice is not disqualified if at the end of the RTC period P –
- (a) has taken reasonable steps to find out whether or not the person had appropriate expertise, and
  - (b) reasonably believes that the person had such expertise.

*Double jeopardy*

- 20 (1) Where by reason of any conduct a person –
- (a) has been convicted of an offence, or
  - (b) is liable to a penalty otherwise than under paragraph 1 for which the person has been assessed (and the assessment has not been successfully appealed against or withdrawn),
- that conduct does not give rise to liability to a penalty under paragraph 1.
- (2) In sub-paragraph (1) the reference to a penalty otherwise than under paragraph 1 includes a penalty under paragraph 6 of Schedule 55 to FA 2009, but does not include penalties under any other provision of that Schedule.

- (3) But the aggregate of—
- (a) the amount of a penalty under paragraph 1, and
  - (b) the amount of a penalty under paragraph 5 of Schedule 55 which is determined by reference to a liability to tax, must not exceed 200% of that liability to tax.
- (4) In sub-paragraph (1) “conduct” includes a failure to act.

*Application of provisions of TMA 1970*

- 21 Subject to the provisions of this Part of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Part of this Schedule 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 3

FURTHER PROVISIONS RELATING TO THE REQUIREMENT TO CORRECT

*Extension of period for assessment etc of offshore tax*

- 22 (1) This paragraph applies where—
- (a) at the end of the tax year 2016-17 a person has relevant offshore tax non-compliance to correct, and
  - (b) the last day on which it would (disregarding this paragraph) be lawful for HMRC to assess the person to any offshore tax falls within the period beginning with 6 April 2017 and ending with 4 April 2021.
- (2) The period in which it is lawful for HMRC to assess the person to the offshore tax is extended by virtue of this paragraph to end with 5 April 2021.
- (3) In this paragraph “offshore tax”, in relation to any relevant offshore tax non-compliance, means tax corresponding to the offshore PLR in respect of the non-compliance.

*Further penalty in connection with offshore asset moves*

- 23 (1) Schedule 21 to FA 2015 (penalties in connection with offshore asset moves) is amended as follows.
- (2) In paragraph 2 (original penalties triggering penalties under Schedule 21) omit “and” after paragraph (b) and after paragraph (c) insert “, and
- “(d) a penalty under paragraph 1 of Schedule 22 to FA 2017 (requirement to correct relevant offshore tax non-compliance).”
- (3) In paragraph 3 (meaning of deliberate failure), after paragraph (c) insert—
- “(d) in the case of a penalty within paragraph 2(d), P was aware at any time during the RTC period that at the end of the 2016-17 tax year P had relevant offshore tax non-compliance to correct;
- and terms used in paragraph (d) have the same meaning as in Schedule 22 to FA 2017.”

- (4) In paragraph 5 (meaning of “relevant time”), after sub-paragraph (4) insert –

“(5) Where the original penalty is under paragraph 1 of Schedule 22 to FA 2017, the relevant time is the time when that Schedule comes into force.”

*Asset-based penalty in addition to penalty under paragraph 1*

- 24 (1) Schedule 22 to FA 2016 (asset-based penalty for offshore inaccuracies and failures) is amended as follows.

- (2) In paragraph 2 (meaning of standard offshore penalty) –

- (a) in sub-paragraph (1) for “or (4)” substitute “(4) or (4A)”,  
 (b) after sub-paragraph (4) insert –

“(4A) A penalty falls within this paragraph if –

- (a) it is imposed on a person under paragraph 1 of Schedule 22 to FA 2017 (requirement to correct relevant offshore tax non-compliance),  
 (b) the person was aware at any time during the RTC period that at the end of the 2016-17 tax year P had relevant offshore tax non-compliance to correct, and  
 (c) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.”, and

- (c) after sub-paragraph (5) insert –

“(5A) Sub-paragraph (5) does not apply to a penalty imposed under paragraph 1 of Schedule 22 to FA 2017.”

- (3) In paragraph 3 (tax year to which standard offshore penalty relates) after sub-paragraph (3) insert –

“(4) Where a standard offshore penalty is imposed under paragraph 1 of Schedule 22 to FA 2017, the tax year to which that penalty relates is –

- (a) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is income tax or capital gains tax, the tax year or years to which the failure or inaccuracy constituting the relevant offshore tax non-compliance in question relates;  
 (b) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.

- (5) In sub-paragraph (4) references to uncorrected relevant offshore tax non-compliance are to the relevant offshore tax non-compliance in respect of which the standard offshore penalty is imposed.”

- (4) In paragraph 5 (meaning of offshore PLR), in sub-paragraph (1)(a) after “FA 2008” insert “or Schedule 22 to FA 2017”.

- (5) In paragraph 6 (restriction on imposition of multiple asset-based penalties for same asset) in sub-paragraph (1)(a) after “penalty” insert “(other than one imposed under paragraph 1 of Schedule 22 to FA 2017)”.
- (6) After that paragraph insert –
- “6A Where –
- (a) a penalty has been imposed on a person under paragraph 1 of Schedule 22 to FA 2017, and
- (b) the potential loss of revenue threshold has been met, only one asset-based penalty is payable by the person in relation to any given asset.”
- (7) In paragraph 19(2) (interpretation: incorporation of definitions from other legislation for “or Schedule 55 to FA 2009” substitute “Schedule 55 to FA 2009 or Part 1 of Schedule 22 to FA 2017”.
- 25 (1) TMA 1970 is amended as follows.
- (2) In section 103ZA (disapplication of sections 100 to 103 in the case of certain penalties) omit the “or” after paragraph (g) and after paragraph (h) insert “,
- (i) Schedule 22 to the Finance Act 2017.”
- (3) In section 107A (relevant trustees) –
- (a) in subsection (2)(a) after “Finance Act 2009” insert “or Schedule 22 to the Finance Act 2017”, and
- (b) in subsection (3), after paragraph (c) insert –
- “(d) in relation to –
- (i) a penalty under Schedule 22 to the Finance Act 2017, or
- (ii) interest under section 101 of the Finance Act 2009 on a penalty within sub-paragraph (i), the end of the RTC period (within the meaning of Schedule 22 to the Finance Act 2017);”.

*Publishing details of persons assessed to penalty or penalties under paragraph 1*

- 26 (1) The Commissioners of Her Majesty’s Revenue and Customs (“the Commissioners”) may publish information about a person (P) if in consequence of an investigation they consider that sub-paragraph (2) or (3) applies in relation to P.
- (2) This sub-paragraph applies if –
- (a) P has been found to have incurred one or more relevant penalties under paragraph 1 (and has been assessed or is the subject of a contract settlement), and
- (b) the offshore potential lost revenue in relation to the penalty, or the aggregate of the offshore potential lost revenue in relation to each of the penalties, exceeds £25,000.
- (3) This sub-paragraph applies if P has been found to have incurred 5 or more relevant penalties under paragraph 1.
- (4) A penalty incurred by P under paragraph 1 is “relevant” if –

- (a) P was aware at any time during the RTC period that at the end of the 2016-17 tax year the person had relevant offshore tax non-compliance to correct, and
  - (b) the penalty relates to the failure to correct that non-compliance.
- (5) The information that may be published is—
  - (a) P’s name (including any trading name, previous name or pseudonym),
  - (b) P’s address (or registered office),
  - (c) the nature of any business carried on by P,
  - (d) the amount of the penalty or penalties,
  - (e) the offshore potential lost revenue in relation to the penalty or the aggregate of the offshore potential lost revenue in relation to each of the penalties,
  - (f) the periods or times to which the uncorrected relevant offshore tax non-compliance relates,
  - (g) any other information that the Commissioners consider it appropriate to publish in order to make clear the person’s identity.
- (6) In sub-paragraph (5)(f) the reference to the uncorrected relevant offshore tax non-compliance is to so much of P’s relevant offshore tax non-compliance at the end of the 2016-17 tax year as P failed to correct within the RTC period.
- (7) The information may be published in any manner that the Commissioners consider appropriate.
- (8) Before publishing any information the Commissioners must—
  - (a) inform P that they are considering doing so, and
  - (b) afford P the opportunity to make representations about whether it should be published.
- (9) 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.
- (10) No information may be published for the first time after the end of the period of one year beginning with that day.
- (11) No information may be published (or continue to be published) after the end of the period of one year beginning with the day on which it is first published.
- (12) No information may be published if the amount of the penalty—
  - (a) is reduced under paragraph 12 to the minimum permitted amount (being 100% of the offshore PLR), or
  - (b) is reduced under paragraph 13 to nil or stayed.
- (13) For the purposes of this paragraph a penalty becomes final—
  - (a) if it has been assessed, when 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, and
  - (b) if a contract settlement has been made, at the time when the contract is made.
- (14) In this paragraph “contract settlement”, in relation to a penalty, means a contract between the Commissioners and the person under which the

Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.

- 27 (1) The Treasury may by regulations amend paragraph 26(2) to vary the amount for the time being specified in paragraph (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.

#### PART 4

#### SUPPLEMENTARY

#### *Interpretation: minor*

- 28 (1) In this Schedule (apart from the amendments made by Part 4) –
- “HMRC” means Her Majesty’s Revenue and Customs;
  - “tax period” means a tax year or other period in respect of which tax is charged (or in the case of inheritance tax, the year beginning with 6 April and ending on the following 5 April in which the liability to tax first arose);
  - “tax year”, in relation to inheritance tax, means a period of 12 months beginning on 5 April and ending on the following 5 April;
  - “UK” means the United Kingdom, including its territorial sea.
- (2) A reference to making a return or doing anything in relation to a return includes a reference to amending a return or doing anything in relation to an amended return.
- (3) References to delivery (of a document) include giving, sending and any other similar expressions.
- (4) A reference to delivering a document to HMRC includes –
- (a) a reference to communicating information to HMRC in any form and by any method (whether by post, fax, email, telephone or otherwise, and
  - (b) a reference to making a statement or declaration in a document.
- (5) References to an assessment to tax, in relation to inheritance tax, are to a determination.
- (6) An expression used in relation to income tax has the same meaning as in the Income Tax Acts.
- (7) An expression used in relation to capital gains tax has the same meaning as in the enactments relating to that tax.
- (8) An expression used in relation to inheritance tax has the same meaning as in IHTA 1984.

*Terms defined or explained for purposes of more than one paragraph of this Schedule*

<i>Term</i>	<i>Paragraph</i>
capital gains tax	paragraph 8(2)
HMRC	paragraph 27(1)
involves an offshore matter (in relation to failure to notify chargeability)	paragraph 5(2)
involves an offshore matter (in relation to failure to deliver a return or other document)	paragraph 6(2)
involves an offshore matter (in relation to delivery of a return or other document containing an inaccuracy)	paragraph 7(2) and (3)
involves an offshore transfer (in relation to failure to notify chargeability)	paragraph 5(3) to (6)
involves an offshore transfer (in relation to failure to deliver a return or other document)	paragraph 6(3) to (7)
involves an offshore transfer (in relation to delivery of a return or other document containing an inaccuracy)	paragraph 7(4) to (8)
involves an onshore matter (in relation to failure to notify chargeability)	paragraph 5(7)
involves an onshore matter (in relation to failure to deliver a return or other document)	paragraph 6(8)
involves an onshore matter (in relation to delivery of a return or other document containing an inaccuracy)	paragraph 7(9)
offshore tax non-compliance	paragraph 4(1)
offshore PLR	paragraph 11(1)
potential lost revenue	paragraph 11(2)
RTC period	paragraph 1
relevant offshore tax non-compliance	paragraph 3
tax non-compliance	paragraph 4(2)
tax period	paragraph 27(1)
tax year (in relation to inheritance tax)	paragraph 27(1)
tax	paragraph 8(1)
UK	paragraph 27(1)
uncorrected offshore tax non-compliance	paragraph 10(2)