HM Treasury

Finance Bill
Explanatory Notes

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8 September 2017

Introduction 3
Part 1: Direct Taxes 4
Clause 1: Taxable benefits: time limit for making good 4
Clause 2: Taxable benefits: ultra-low emission vehicles 6
Clause 3: Pensions advice 8
Clause 4: Legal expenses etc 10
Clause 5: Termination payments etc: amounts chargeable on employment income 12
Clause 6: PAYE settlement agreements 16
Clause 7: Money purchase annual allowance 17
Clause 8: Dividend nil rate for tax year 2018-19 etc 18
Clause 9: Life insurance policies: recalculating gains on part surrenders etc 19
Clause 10: Personal Portfolio bonds 23
Clause 11: EIS and SEIS: the no pre-arranged exits requirement 24
Clause 12: VCTs: follow-on funding 26
Clause 13: VCTs: exchange of non-qualifying shares and securities 28
Clause 14 and Schedule 1: Social investment tax relief 30
Clause 15: Business investment relief 34
Clause 16 and Schedule 2: Calculation of profits of trades and property businesses 36
Clause 17 and Schedule 3: Trading and property allowances 55
Clause 19: Losses: counteraction of avoidance arrangements 117
Clause 20 and Schedule 5: Corporate interest restriction 120
Clause 21 and Schedule 6: Relief for production of Museum and gallery exhibitions 161
Clause 22: Grassroots sport 171
Clause 23: Profits from the exploitation of patents: cost-sharing arrangements 175
Clause 24: Hybrid and other mismatches 180
Clause 25 and Schedule 7: Trading profits taxable at the Northern Ireland rate 183
Clause 26: Elections in relation to assets appropriated to trading stock 188
Clause 27: Substantial shareholding exemption 190
Clause 28: Substantial shareholding exemption: institutional investors 192
Clause 29 and Schedule 8: Deemed domicile: income tax and capital gains tax 196
Clause 30: Deemed domicile: inheritance tax 212
Clause 31 and Schedule 9: Settlements and transfer of assets abroad: value of Benefits received 215
Clause 32: Exemption from attribution of carried interest gains 217
Clause 33 and Schedule 10: Inheritance tax on overseas property representing UK residential property 218
Clause 34 and Schedule 11: Employment income provided through third parties 224
Clause 35 and Schedule 12: Trading income provided through third parties 230
Clause 36: Disguised remuneration schemes: restriction of income tax relief 238
Clause 37: Disguised remuneration schemes: restriction of corporation tax relief 241
Clause 39: Disposals concerned with land in United Kingdom 245
Clause 40: Co-ownership authorised contractual schemes: capital allowances 247

Clause 41: Co-ownership authorised contractual schemes: information requirements 250
Clause 42: Co-ownership authorised contractual schemes: offshore funds....251
Part 2: Indirect Taxes....252
Clause 43: Air passenger duty: rates of duty from 1 April 2018....253
Clause 44: Petroleum revenue tax: elections for oil fields to become non-taxable....254
Clause 45: Rates of Gaming Duty....255
Clause 46: Remote gaming duty: freeplay....256
Clause 47: Tobacco products manufacturing machinery: licensing scheme....259
Part 3: Fulfilment Businesses....261
Clause 48: Carrying on a third country goods fulfilment business....262
Clause 49: Requirement for approval....263
Clause 50: Register of approved persons....264
Clause 51: Regulations relating to approval, registration etc.....265
Clause 52: Disclosure of information by HMRC....267
Clause 53: Offence....268
Clause 54: Forfeiture....269
Clause 55 and Schedule 13: Penalties....270
Clause 56: Appeals....273
Clause 57: Regulations....274
Clause 58: Interpretation....275
Clause 59: Commencement....276
Part 4: Administration, avoidance and enforcement....277
Clause 60: Digital reporting and record-keeping for income tax etc....278
Clause 61 and Schedule 14: Digital reporting and record-keeping for income tax etc: further amendments....285
Clause 62: Digital reporting and record-keeping for VAT....293
Clause 63 and Schedule 15: Partial closure notices....296
Clause 64: Errors in taxpayers' documents....304
Clause 65 and Schedule 16: Penalties for enablers of defeated tax avoidance....307
Clause 66 and Schedule 17: Disclosure of tax avoidance schemes: VAT and other indirect taxes....318
Clause 67 and Schedule 18: Requirement to correct certain offshore tax non-compliance....324
Clause 68: Penalty for transactions connected with VAT fraud etc....331
Clause 69: Data-gathering from money service businesses....335
Part 5: Final....337
Clause 70: Northern Ireland welfare payments: updating statutory reference....338
Clause 71: Interpretation....339
Clause 72: Short title....340
Territorial extent and application in the United Kingdom....342

Introduction

1. These explanatory notes relate to the Finance Bill as introduced into Parliament on 8 September 2017. They have been prepared jointly by HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

Part 1: Direct Taxes

Clause 1: Taxable benefits: time limit for making good

Summary

1. This clause introduces a date for 'making good' on benefits-in-kind which are not accounted for in real time through Pay As You Earn (PAYE). The date is 6 July following the end of the tax year in which the tax liability of the benefit-in-kind arises. The date has effect for benefits-in-kind which give rise to a tax liability for the tax year 2017-18 or any subsequent tax year.

Details of the clause

2. Subsection 1 introduces amendments to Part 3 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. Subsection 2(a) amends section 87 by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of a non-cash voucher. Subsection 2(b) defines the relevant tax year for calculating the cash equivalent of the benefit of a non-cash voucher.

4. Subsection 3 applies the definition that the time at which a cheque voucher is treated as handed over is when it is posted for the purposes of calculating the relevant tax year.

5. Subsection 4 amends section 94(2) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of a credit token.

6. Subsection 5 amends section 105(2) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of living accommodation costing £75,000 or less.

7. Subsection 6 amends section 106(3) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of living accommodation costing over £75,000.

8. Subsection 7 amends section 144 by introducing the date of 6 July as the date for making good when calculating the deduction for payments for private use of a car.

9. Subsection 8 amends section 151(2) by introducing the date of 6 July as the date for making good when calculating whether the cash equivalent of the benefit of car fuel is nil.

10. Subsection 9 amends section 152(2) by introducing the date of 6 July as the date for making good when calculating the proportionate reduction in the cash equivalent of car fuel.

11. Subsection 10 amends section 158 by introducing the date of 6 July as the date for making good when calculating the reduction for payments for private use of a van.
12. Subsection 11 amends section 162(2) by introducing the date of 6 July as the date for making good when calculating whether the cash equivalent of the benefit of van fuel is nil.
13. Subsection 12 amends section 163(3) by introducing the date of 6 July as the date for making good when calculating the proportionate reduction in the cash equivalent of van fuel.
14. Subsection 13 amends section 203(2) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of benefit treated as earnings.
15. Subsection 14 provides that these changes have effect for the tax year 2017-18 or any subsequent tax year.

Background note

16. An employee can receive remuneration from their employment which does not take the form of money and this is known as a benefit-in-kind. Benefits-in-kind are subject to tax and the majority are also liable for employer's Class 1A National Insurance contributions. It is the cash equivalent of the benefit-in-kind which is subject to tax and liable to NICs. The cash equivalent is usually calculated as the cost to the employer of providing the benefit-in-kind, although in some cases it is calculated in a different way.
17. 'Making good' is where the employee makes a payment in return for the benefit-in-kind they receive. The making good payment has the effect of reducing the taxable value of the benefit-in-kind, often to zero. This reduces the amount of the employee's taxable earnings. The employee might make good if the employer requires the employee to make a contribution towards the provision of the benefit-in-kind; or if the employer or employee wants to reduce the tax due on the benefit-in-kind.
18. At present, there is a range of dates for making good on benefits-in-kind and, for some benefits-in-kind, there is no date in legislation. Employers have said that the current dates cause difficulties for employers and have requested clarity.
19. The measure sets a date of 6 July after the end of the tax year for making good on benefits-in-kind which are not accounted for in real time through Pay As You Earn ('payrolled'). The taxable value, and the value on which Class 1A National Insurance contributions are payable, will be reduced only if the benefit-in-kind is made good by that date.
20. The clauses introduce amendments to legislation on specific benefits-in-kind and also to the provision on calculating the cash equivalent of benefits treated as earnings.
21. The changes introduce greater clarity into the rules on making good and help employers and employees understand their obligations.
22. The measure does not affect the existing dates in legislation for making good on benefits-in-kind which are payrolled.

Clause 2: Taxable benefits: ultra-low emission vehicles

Summary

1. This clause amends the appropriate percentage for ultra-low emission vehicles (cars with CO2 emissions of 0-75 grams per kilometre) for the purpose of calculating the taxable benefit of a company car. It also makes related changes to the appropriate percentage for conventionally fueled cars.

2. The effect of the changes is that the appropriate percentage for cars in the lowest CO2 emissions category (1-50 grams CO2 per kilometre driven) will be based both on CO2 emissions as well as on the electric range of the car, which is the distance the vehicle can travel in pure electric mode. For cars with emissions of 51 grams CO2 per kilometre and upwards, the appropriate percentage remains based on CO2 only.

3. The changes have effect for the tax year 2020-21 and subsequent tax years.

Details of the clause

4. Subsection (1) introduces amendments to Chapter 6 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (taxable benefits: cars, vans and related benefits).

5. Subsection (2) amends section 139 of ITEPA by replacing paragraphs (1) to (6) of that provision with new paragraphs (1) to (5).

6. Paragraph (1) provides for the appropriate percentage for a year for a car with CO2 emissions of 75 grams per kilometre and below in accordance with the table in that paragraph. It introduces a new zero-emission band for cars with no CO_2 emissions; 5 new bands for cars with CO2 emissions of 1 to 50 grams per kilometre, which are based on the electric range figure of the car; and 5 new bands for cars with CO2 emissions figure of 51 to 74 grams per kilometre, based on the CO_2 emissions figure only.

7. Paragraph (2) requires a car's CO2 emissions figure or electric range figure to be rounded down to the nearest whole number for the purpose of the table in paragraph (1).

8. Paragraph (3) introduces a new rule for determining the appropriate percentage for cars with a CO2 emissions figure of 75 grams per kilometre and above. This is 20% plus 1% for each 5 grams per kilometre by which a car's CO2 emissions figure exceeds 75 grams per kilometre (up to a maximum of 37%).

9. Paragraph (4) requires a car's CO2 emissions figure to be rounded down to the nearest multiple of 5 for the purpose of the rule in paragraph (3).

10. Paragraph (5) defines the "electric range figure" for the purpose of section 139.

11. Subsection (3) amends section 140 of ITEPA to increase the appropriate percentage for cars without a registered CO2 emissions figure. This increases from 23% to 24% for cars with a cylinder capacity of 1400cc or less, and from 34% to 35% for cars with a cylinder capacity of 1401 to 2000cc. Subsection 3(b) decreases the appropriate percentage from 16% to 2% for cars that cannot emit CO2 under any circumstances when driven.

12. Subsection (4) amends section 142 of ITEPA to increase the appropriate percentage for cars first registered before 1 January 1998. This increases from 23% to 24% for cars with a cylinder capacity of 1400cc or less, and from 34% to 35% for cars with a cylinder capacity of 1401 to 2000cc.

13. Subsection (5) repeals section 170(3) of ITEPA which was an enabling power allowing for the amendment of the "relevant threshold". This is no longer relevant as the concept of the "relevant threshold" no longer exists.

14. Subsection (6) provides for these changes to have effect for the tax year 2020-21 and subsequent years.

Background note

15. Section 139 ITEPA sets out the basis for determining the appropriate percentage for cars with a registered CO2 emissions figure. From 6 April 2020, the graduated table of company car tax bands now includes a differential for cars with emissions of 1 to 50 grams per kilometre based on the electric range of the car. A separate zero-emission band is also introduced.

16. These changes will support the transition to cleaner, zero and ultra-low emission cars which will help to improve air quality in towns and cities and protect the environment for the next generation. It will encourage the take-up of the lowest CO2 emitting cars which use the most advanced technologies beyond 2020-21.

17. Section 140 of ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars without a registered CO2 emissions figure and all but the highest band have been increased.

18. Section 142 of ITEPA 2003 sets out the basis for calculating the appropriate percentages for cars registered before 1 January 1998 and these have been increased in line with other changes.

19. The government is committed to legislating in advance of the implementation date, so that employers and employees can make informed choices about what type of vehicles they use and future tax implications.

Clause 3: Pensions advice

Summary

1. This clause introduces a new income tax exemption to cover the first £500 worth of pensions advice provided to an employee (including former and prospective employees) in a tax year. It will allow advice not only on pensions, but also on the general financial and tax issues relating to pensions, allowing individuals to make more informed decisions about saving for their retirement. The changes replace existing provisions which limited the exemption solely to pensions advice and was capped at £150 per employee per year.

Details of the clause

2. Paragraph (1) introduces new section 308C to Chapter 9 of Part 4 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. New section 308C provides an exemption where relevant pensions advice is provided by the employer or where the employer pays for or reimburses the cost of advice when incurred by, or in respect of, an employee, a former employee or a prospective employee.

4. Subsections (2) and (3) limit the amount of the exemption to the first £500 of the benefit in the relevant tax year.

5. Subsection (4) ensures this is set by the employment, so that if an individual has more than one employment and each employer provides the benefit in the relevant tax year, the exemption will apply in respect of both.

6. Subsection (5) defines "relevant pensions advice". This covers advice on a person's pension arrangements, as well as more general advice relating to the use of a person's pension funds.

7. The exemption only applies if either of the Conditions A or B set out in new sections 308C(6) and (7) are met. Condition A sets out availability conditions so that, for example, the benefit cannot just be provided to the board of directors of a company. Condition B allows the employer to provide advice to certain groups of employees on grounds of age or ill-health without breaching the generally available or available by location aspects of Condition A. This still relies on the benefit being made available to all those employees in the same situation.

8. Paragraph (2) makes a consequential amendment to s228 ITEPA 2003.

9. Paragraph (3) revokes Regulation 5 of the Income Tax (Exemption of Minor Benefits) Regulations 2002 (S.I. 2002/205). This provided the previous, more limited exemption of £150 per employee per year. Paragraph (4) makes a consequential amendment in respect of this revocation.

10. Paragraph (5) provides for the amendment to take effect for the tax year 2017-18 and subsequent tax years.

Background note

11. This exemption was recommended as an outcome of the recent Financial Advice Market Review (FAMR) conducted jointly by HM Treasury (HMT) and the Financial Conduct Authority (FCA). It reflects the government's acknowledgement that individuals aged 55 or more are making significant decisions on the application of their pension savings and may wish to seek advice.

12. The FAMR concluded that there is a particular advice gap in relation to pensions. The government is keen to ensure that financial advice is affordable and accessible to consumers, especially those nearing the point of retirement. The government wants to encourage employers to provide advice to employees to help them make informed choices about what to do with their pension savings.

13. The exemption will be available for pensions advice covered by the clause undertaken from 6 April 2017.

Clause 4: Legal expenses etc

Summary

1. This clause extends existing reliefs for employees (or former employees) who may require legal advice or indemnity insurance which is funded by their employer. Currently, such costs are only deductible from earnings for employees who have had allegations made against them in their capacity as an employee (a liability). This clause provides equivalent deductions to be available in relation to proceedings where no allegation has been made or is expected to be made against the employee, for example, where an employee is asked to give evidence before a public hearing when they might also require legal advice and support. It also extends the reliefs for individuals on termination of employment (or for individuals now deceased) so that a deduction is allowable if the relevant costs are met by the employer on behalf of the individual.

Details of the clause

2. Subsection 1 introduces amendments to Parts 4, 6 and 8 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. Subsection 2 amends section 346 ITEPA 2003 (deduction for employee liabilities) by changing the heading and inserting, in paragraph (b) new paragraphs BA and BB. These paragraphs provide for a deduction from earnings to be available for costs or expenses unrelated to an employee's liability. In the case of new paragraph BA, where these are incurred in connection with an employee giving evidence about matters related to the employment. In the case of new paragraph BB, where there are other costs or expenses not falling within the provisions of existing paragraph B or new paragraph BA, but which are related to the employment.

4. Paragraph 2(f) provides a number of definitions relating to certain wording such as "acts", "giving evidence" and "proceeding or other process" to be inserted as new section 346(4).

5. Subsection 3 amends section 349 ITEPA 2003 (meaning of "qualifying insurance contract") so that the contract of insurance can also cover costs or expenses relating to the giving of evidence and other costs or expenses related to the employment but which are unrelated to an employee's liability.

6. Subsection 4 amends section 409 ITEPA 2003 (exception for payments and benefits in respect of employee liabilities and indemnity insurance) by allowing a deduction from earnings when an employer meets the cost on behalf of the individual.

7. Subsection 5 introduces similar provisions in respect of section 410 ITEPA 2003 by allowing a deduction when a former employer meets the cost on behalf of the individual's personal representatives.

8. Subsection 6 amends section 558 ITEPA 2003 (meaning of "deductible payment") to mirror the provisions set out in section 346 ITEPA 2003 for employees to apply in the same way to former employees.

9. Subsection 7 similarly amends section 560 ITEPA 2003 in relation to contracts of insurance.

10. Subsection 8 provides for the amendment to take effect for the tax year 2017-18 and subsequent tax years.

Background note

11. This measure ensures that employees (or former employees) who may require legal advice or indemnity insurance which is funded by their employer, for example in preparation for an appearance before a public enquiry, will not be taxed on the benefit provided by virtue of a deduction being available from earnings.

12. Currently, when an employer funds legal support or pays a premium for legal indemnity insurance for their employees to cover costs connected with proceedings related to their employment, it is only tax-free for employees who have had allegations made against them in their capacity as an employee (a liability). There is no equivalent deduction or relief in relation to proceedings where no allegation is made against the employee. This leads to unfair outcomes.

13. In addition, the requirement that individuals subject to a termination payment or the personal representatives of those who are deceased could only have access to the deductions available by paying for the costs of the deductible amounts first leads to unfair outcomes.

14. As a result, the government has decided to introduce legislation which removes this unfairness.

15. The relief will be available to legal expenses covered by the clause incurred from 6 April 2017.

Clause 5: Termination payments etc: amounts chargeable on employment income

Summary

1. This clause introduces amendments to tighten and clarify the income tax treatment of termination payments. The measure has effect for the tax year 2018-19 and subsequent tax years.

Details of the clause

2. Subsection (1) provides for amendments to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

3. Subsection (2) makes a consequential amendment to section 7(5) of ITEPA by inserting a new paragraph (ca) which is necessary as a result of this new legislation.

4. Subsection (3) inserts new sections 402A to 402E into Chapter 3 of Part 6 (Payments and Benefits on Termination of Employment etc) of ITEPA.

New Section 402A

5. New section 402A determines how payments and other benefits made on termination should be split between Sections 402B (termination awards not benefitting from the threshold) and 403 (termination awards that benefit from the tax and National Insurance contribution-free threshold).

6. New subsection 402A(1) defines "termination award".

7. New subsection 402A(2) sets out when new section 402B applies to a termination award.

8. New subsection 402A(3) states that section 403 of ITEPA will now only apply if the new section 402B does not apply, i.e. if the termination payment is not to be treated as general earnings then it will fall into the termination payments charge and benefit from the £30,000 threshold.

9. New subsection 402A(4) clarifies that section 403 also applies to other types of payment to which Chapter 3 of Part 6 of ITEPA applies by virtue of section 401(1)(b) or (c) (payments made in relation to change in duties or earnings). This means that the new general earnings charge under new section 402B only applies to those payments arising from termination and not to the other types of payment provided for in Chapter 3 of Part 6.

New Section 402B

10. New subsection 402B(1) sets out that termination awards falling under this section should be treated as earnings from the employment.

11. New subsection 402B(2) cross refers to section 7(3)(b) and 7(5)(ca) of ITEPA which relate to payments treated as general earnings.

12. New subsection 402B(3) dis-applies the rules which determine when termination awards are deemed to be received under section 403(3).

New Section 402C

13. New subsection 402C(1) states that the purpose of this section is to identify when new section 402B must apply to a termination award (and is therefore treated as general earnings).

14. New subsection 402C(2) ensures that redundancy payments or approved contractual payments, which are exempt under section 309 ITEPA, are not brought into new section 402B (and are therefore not general earnings). Both phrases used in new section 402C(2) have the meanings given in section 309(4) to (6) of ITEPA.

15. New subsections 402C(3) and 402C(4) establish the concept of the post-employment notice pay and how that pay should be treated in relation to new section 402B. The amount of the post-employment notice pay is the amount of a termination award which should be treated as general earnings. These subsections explain how section 402B applies if the post-employment notice pay is less than, greater than or equal to the total termination award.

16. New subsection 402C(5) signposts the meaning of redundancy payment and approved contractual payment at section 309 ITEPA.

New Section 402D

17. New subsections 402D(1) and 402D(2) provide a formula for determining the post-employment notice pay and what happens if the figure produced by the formula is negative. The formula relies on figures that are defined elsewhere in new section 402D. If the employee has received a payment in connection with their termination that has already been taxed as general earnings under section 62 ITEPA, such as a payment in lieu of notice (PILON), this is taken into account in determining the post-employment notice pay so that it is not effectively taxed twice. Holiday pay and bonuses paid for the termination are excluded from T.

18. New subsections 402D(3) to (6) provide various situations for the application of the general formula set out in section 402D(1). New subsection 402D(3) provides for the meanings of “BP”, “P” and “D” in the formula referred to in section 402D(1). Here, BP, the employee’s basic pay in the last pay period before the trigger date (trigger date is explained in new section 402E of ITEPA) is multiplied by D, the number of days in the post-employment notice period (also explained in new section 402E of ITEPA). This is then divided by P, which is the number of days in that pay period.

19. New subsection 402D(4) signposts the meanings of “post-employment notice period” and “trigger date”.

20. New subsection 402D(5) sets out how to apply the formula where there is no pay period which ends before the trigger date. In this case, BP is the employee's total basic pay over the length of their employment up to the trigger date and P is the number of days of the employment. D is the number of days in the post-employment notice period.

21. New subsection 402D(6) sets out a simplified way to apply the formula where the pay period is a month and both the minimum notice and the post-employment notice period are expressed in whole months.

22. New subsections 402D(7) and (8) provide a definition of "basic pay" for the purposes of new section 402D and makes provision for various amounts which are to be excluded from that definition.

23. New subsections 402D(9) and (10) provide a power to amend the definition of basic pay through the affirmative resolution procedure.

24. New subsection 402D(11) provides a targeted anti-avoidance rule which captures any arrangements designed to reduce the post-employment notice pay for the purposes of avoiding tax, and where this is the case such arrangements will have no effect.

25. New subsection 402D(12) provides a definition of "arrangements" as referred to in new section 402(10).

New Section 402E

26. New subsection 402E(1) states that subsections (2) and (4) to (6) of that section provide definitions for concepts which are set out in new section 402D.

27. New subsections 402E(2) and (3) provide a meaning for "trigger date" and "notice case". The trigger date varies depending on whether or not the termination is a notice case.

28. New subsection 402E(4) provides a meaning for "minimum notice" by reference to the law or the employee's contract. It varies depending on whether or not the termination is a notice case.

29. New subsections 402E(5) to 402E(7) provide the meaning of the "post-employment notice period" and "earliest lawful termination date". The earliest lawful termination date is used to establish the length of the post-employment notice period which is then used to establish the employee's post-employment notice pay.

30. New subsections 402E(8) to 402E(10) set out how to establish the post-employment notice period when the employment is a limited-term contract with no express notice period. In particular, new subsection (10) provides a signpost to the definitions of "limited term contract" and "limiting event" as used in new section 402E.

31. Subsections (4) and (5) of the clause make consequential amendments to sections 403 and 404 of ITEPA which are necessary as a result of this new legislation.

32. Subsection (6) provides a power to vary the threshold through insertion of new section 404B into Chapter 3 of Part 6 ITEPA. It provides that the Treasury may make regulations subject to the negative resolution procedure to this effect unless those regulations reduce the amount of the threshold, in which case the regulations must be subject to the affirmative resolution procedure.

33. Subsection (7) inserts new text into section 406 of ITEPA to define "injury" to reflect what HM Revenue & Customs considers to be its correct interpretation.

34. Subsection (8) amends section 414(2) of ITEPA (reduction in certain cases of foreign service) so that the proportionate reduction provided by this section may apply to termination awards treated as earnings under new section 402B and those treated as employment income under section 403.

35. Subsection (9) makes consequential amendments to section 717(4) ITEPA (regulations etc not subject to negative procedure) as a consequence of new subsections 402D(10) and 404B(4).

36. Subsection (10) provides that the amendments made by this new legislation take effect from the tax year 2018-19.

Background note

37. The current rules for taxation of termination payments are complex and the exemptions incentivise employers to manipulate the rules by structuring arrangements to include payments that are ordinarily taxable to minimise the tax and National Insurance contributions (NICs) due.

38. At Budget 2016, the government announced that it would align the employer NICs treatment of termination payments with income tax and that it would tighten the scope of the £30,000 exemption to prevent that manipulation.

39. This clause is intended to bring fairness and clarity to the taxation of termination payments by making it clear that all payments in lieu of notice, not just contractual payments in lieu of notice, are taxable earnings. All employees will pay tax and Class 1 NICs on the amount of basic pay that they would have received if they had worked their notice in full, even if they are not paid a contractual payment in lieu of notice. This means the tax and NICs consequences will no longer depend on how the employment contract is drafted or whether payments are structured in some other form, such as damages.

40. The existing £30,000 income tax exemption will be retained and employees will continue to benefit from an unlimited employee NICs exemption for payments associated with the termination of employment.

Clause 6: PAYE settlement agreements

Summary

1. This clause amends the provisions of Chapter 5 of Part 11, Income Tax (Earnings and Pensions Act) 2003 (ITEPA). It removes the need for PAYE settlement agreements (PSAs) to be agreed with an officer of HM Revenue & Customs (HMRC).

Details of the clause

2. Subsection 1 amends sections 703(a) and 704(1) (a) ITEPA, substituting "an officer of HM Revenue and Customs" with "HM Revenue and Customs".
3. Subsection 2 arranges for the amendment to have effect from the tax year 2018/19 and subsequent tax years.

Background note

4. PSAs are arrangements under which employers can, in a single payment, settle their employees' income tax liabilities for certain benefits and expenses. The government aims to reduce the administrative burden on employers of operating PSAs in their current form. This measure aligns with the principles of HMRC's wider digital transformation strategy.
5. The proposed simplification is the removal the requirement for an employer to submit a request, and obtain agreement of terms, in advance of their end of year reporting obligations. The proposed process will allow for employers to submit their PSA request at the year end, and to make ad hoc requests during the year.
6. Currently, the process relies on the submission of paper returns. HMRC will develop a digital solution, in line with its digital strategy. It will be a largely automated process, although HMRC will be able to intervene manually to mitigate compliance risk.
7. This clause paves the way for automated agreements with HMRC. Consequential changes to Part 6 of the Income Tax (PAYE) Regulations 2003 will be required with effect from 6 April 2018.
8. HMRC's guidance will be strengthened, reducing errors and providing certainty for employers

Clause 7: Money purchase annual allowance

Summary

1. This clause reduces the money purchase annual allowance (MPAA) from £10,000 to £4,000 with effect from 6 April 2017. Individuals who flexibly access or have already flexibly accessed registered pension scheme savings will be subject to a £4,000 MPAA.

Details of the clause

2. Subsection (1) introduces the amendments that subsections (2) to (5) make to Part 4 of the Finance Act 2004 which sets out the pension tax legislation.

3. Subsection (2) amends section 227ZA(1)(b) by substituting the £10,000 figure with £4,000. This section specifies whether the chargeable amount is the default chargeable amount or the alternative chargeable amount.

4. Subsection (3) amends section 227B(1)(b) and (2) by substituting the £10,000 figure with £4,000. This section specifies how the alternative chargeable amount is calculated and the alternative annual allowance for the tax year.

5. Subsection (4) amends section 227D(4) steps 4 and 5 by substituting the £10,000 figure with £4,000. This section specifies how the pension input amount for certain hybrid arrangements is calculated for MPAA purposes.

6. Subsection (5) provides for the amendments to take effect for the tax year 2017-18 and subsequent tax years.

Background note

7. There are no limits on the amount that an individual can save into a registered pension scheme each year, but there is a limit on the amount of tax relieved pension savings that can be made each year. This is the annual allowance. Where pension savings are made in excess of the annual allowance, a tax charge is applied to the excess to recover the tax relief previously given on the excess savings

8. The pension flexibilities introduced in April 2015 gave individuals with savings in money purchase arrangements much greater flexibility in how they can take their benefits from age 55. However, individuals who flexibly access a money purchase arrangement in certain circumstances will trigger the money purchase annual allowance (MPAA) rules whereby any future savings they make into money purchase arrangements are subject to a £10,000 MPAA.

9. The government published a consultation document at Autumn Statement 2016 on reducing the MPAA from £10,000 to £4,000, from April 2017. A government response to the consultation was published on 20 March 2017.

Clause 8: Dividend nil rate for tax year 2018-19 etc

Summary

1. This clause reduces the amount to be charged at the nil dividend rate from £5,000 to £2,000. The change has effect for tax year 2018 to 2019 and subsequent years.

Details of the clause

2. Subsection 1 changes the amount to which the dividend nil rate applies from £5,000 to £2,000. The amount is set out in section 13A Income Tax Act 2007.

3. Subsection 2 applies the change for the tax year 2018 to 2019 and subsequent years.

Background note

4. The Chancellor announced at Spring Budget 2017 that the amount of dividend income to which the nil rate applies will reduce to £2,000 from tax year 2018 to 2019.

5. This will reduce the tax difference between someone working through a company and an employed or self-employed person, and ensures that support for investors is more effectively targeted.

Clause 9: Life insurance policies: recalculating gains on part surrenders etc

Summary

1. This clause introduces an application process by which policyholders who have part surrendered or part assigned their life insurance policies (including capital redemption policies and contracts for life annuities) and generated a wholly disproportionate taxable gain can apply to HM Revenue & Customs (HMRC) to have their gain recalculated on a just and reasonable basis. The clause introduces new sections 507A and 512A (Trading and Other Income) Act (ITTOIA) 2005 which have effect from Royal Assent. It also amends section 538 Income Tax which allows individuals who are liable to tax on gains to recover tax from the trustees who hold the policy.

Details of the clause

2. Subsection (1) provides for the amendments of ITTOIA 2005.

3. Subsection (2) introduces new section 507A into ITTOIA 2005 which provides for gains arising under section 507 to be recalculated in certain circumstances.

4. Subsection (3) introduces new section 512A into ITTOIA 2005 which provides for gains arising under section 511 to be recalculated in certain circumstances.

5. Subsection (4) introduces changes to section 538 of ITTOIA 2005 by the introduction of new subsections 7, 8 and 9.

6. Subsection (5) clarifies that the changes made by subsection (4) apply to amounts recovered by individuals from trustees before as well as after Royal Assent.

Section 507A ITTOIA 2005: Recalculating gains under section 507

7. Subsection 1 allows an interested person who has made a part surrender of a life insurance policy which gives rise to a gain under section 507 to apply to an officer of HMRC to have the gain reviewed if they consider that it is wholly disproportionate.

8. Subsection 2 clarifies that an interested person for the purposes of subsection (1) is a person who would be liable to tax on the gain arising under section 507.

9. Subsection 3 requires that applications under subsection (1) must be made in writing and received by an officer of HMRC within 4 years after the end of the tax year in which the gain under section 507 arose. A longer period may be allowed if the officer agrees.

10. Subsection 4 provides a non-exhaustive list of factors that the officer of HMRC may take into account when considering whether the gain is wholly disproportionate. Whilst there are a number of factors that can be considered nevertheless "wholly disproportionate" sets a high threshold for the gains that can be recalculated.

11. Subsection 5 provides that if the officer considers that the gain arising under section 507 is wholly disproportionate then the gain must be recalculated on a just and reasonable basis.

12. Subsection 6 replaces the gain arising under section 507 with the gain recalculated under subsection (5) for the purposes of Chapter 9 of ITTOIA 2005. This ensures that on termination of the policy the recalculated gain is deductible rather than the gain arising under section 507.

13. Subsection 7 instructs an officer of HMRC to notify the applicant of the result of the recalculation of the gain.

14. Subsection 8 requires that if two or more persons are interested persons in relation to a calculation under section 507 then the application has to be made jointly and following a recalculation an officer of HMRC must notify each of these interested persons.

15. Subsection 9 requires all necessary adjustments and repayments of income tax to be made to give effect to the recalculation.

16. Subsection 10 does not require a calculation to be made if the gain under section 507 arises as a result of arrangements, the main purpose, or one of the main purposes of which, is to obtain a tax advantage for any person.

17. Subsection 11 defines "arrangements" and "tax advantage" for the purposes of subsection (10).

Section 512A ITTOIA 2005: Recalculating gains under section 511

18. Subsection 1 allows an interested person who has made a part assignment for money (or money's worth) or a part surrender followed by an assignment (otherwise than for money) of a life insurance policy which gives rise to a gain under section 511 to apply to an officer of HMRC to have the gain reviewed if they consider that it is wholly disproportionate.

19. Subsection 2 clarifies that an interested person for the purposes of subsection (1) is a person who would be liable to tax on the gain arising under section 511 and any other person who would be liable if the policy were surrendered immediately afterwards and a gain arose. If A assigns part of their policy to B then A is an interested person if they would be liable to tax on the gain. B is also an interested person if they would be liable to tax if the policy were fully surrendered immediately after and a gain arose.

20. Subsection 3 requires that applications under subsection (1) must be made in writing and received by an officer of HMRC within 4 years after the end of the tax year in which the gain under section 511 arose. A longer period may be allowed if the officer agrees.

21. Subsection 4 provides a non-exhaustive list of factors that the officer of HMRC may take into account when considering whether the gain is wholly disproportionate. Whilst there are a number of factors that can be considered nevertheless "wholly disproportionate" sets a high threshold for the gains that can be recalculated.

22. Subsection 5 provides that if the officer considers that the gain arising under section 511 is wholly disproportionate then the gain must be recalculated on a just and reasonable basis.

23. Subsection 6 replaces the gain arising under section 511 with the gain recalculated under subsection (5) for the purposes of Chapter 9 of ITTOIA 2005. This ensures that on termination of the policy the recalculated gain is deductible rather than the gain arising under section 511.

24. Subsection 7 instructs an officer of HMRC to notify the applicant of the result of the recalculation of the gain.

25. Subsection 8 requires that if two or more persons are interested persons in relation to a calculation under section 511 then the application must be made jointly and following a recalculation an officer of HMRC must notify each of these interested persons.

26. Subsection 9 requires all necessary adjustments and repayments of income tax to be made to give effect to the recalculation.

27. Subsection 10 does not require a calculation to be made if the gain arising under section 511 arises as a result of a transaction or transactions, the main purpose, or one of the main purposes of which, is to obtain a tax advantage for any person.

    Subsection 11 defines "arrangements" and "tax advantage" for the purposes of subsection (10).

Section 538 ITTOIA 2005: Recovery of tax from trustees

28. Subsection 7 to 9 apply where an individual has recovered tax from trustees and subsequently the individual's liability to tax under Chapter 9 of Part 4 ITTOIA 2005 has been reduced following a recalculation under section 507A or 512A. The individual is required to repay the trustees the difference between what was recovered and the revised entitlement to recover following the recalculation.

Background note

29. At Budget 2016 the government announced its intention to change the tax rules for part surrenders and part assignments of life insurance policies to ensure that wholly disproportionate gains were no longer charged to tax. This was to provide a fairer outcome for those policyholders that inadvertently generated such gains. A consultation on possible options for change was held from 20 April to 13 July 2016.

30. Following consultation, the government decided to introduce legislation to retain the existing tax rules for part surrenders and part assignments but allow policyholders who had triggered a wholly disproportionate gain to apply to an officer of HMRC to have their gain recalculated on a just and reasonable basis. This legislation is expected to have limited application as it is considered that wholly disproportionate gains will arise very infrequently.

Clause 10: Personal Portfolio bonds

Summary

1. This clause provides a power to make secondary legislation to amend the property categories that may be selected without triggering the personal portfolio bonds (PPB) anti-avoidance rules contained in sections 515 to 526 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). The power has effect from Royal Assent to Finance Act 2017.

Details of the clause

2. Clause 11 introduces new subsections (5), (6) and (7) to section 520 of ITTOIA 2005.

3. Subsections (5), (6) and (7) give the Treasury the power to add, remove or change the property categories listed in subsection (2) and their definitions (currently in subsection (4)), and to make consequential amendments. A statutory instrument which removes a property category requires the 28 day affirmative procedure in the House of Commons.

Background note

4. The PPB legislation prevents an individual placing personal assets in a life insurance policy to avoid a tax charge on income arising from those assets. At Budget 2016 the government announced its intention to review the property categories a policyholder may select to have within their life insurance policy without triggering the provisions of the PPB legislation. A consultation was held seeking views on current and new property categories. Following consultation the government decided to take a power to update the legislation in regulations to take account of recent changes in the investment landscape and to respond quickly to further changes that may occur in the future. Additions to the property categories will be subject to the negative procedure. Removing property categories will require the affirmative procedure as they could bring policies within the charge to tax.

Clause 11: EIS and SEIS: the no pre-arranged exits requirement

Summary

1. This clause amends the Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) rules to allow companies that issue shares with rights to a future conversion into shares of another class in that company to qualify for relief. The amendments have had effect to shares issued on or after 5 December 2016.

Details of the clause

2. Subsection 1 introduces the amendments to be made to Parts 5 and 5A of the Income Tax Act (ITA) 2007.
3. Subsection 2 amends Section 177, the "no pre-arranged exits requirement" of the EIS, to exclude arrangements for the conversion or exchange of shares in the company from one class to another from being considered as arrangements for the disposal of those shares.
4. Subsection 3 provides a matching amendment for Section 257CD and the SEIS.
5. Subsection 4 provides for commencement.

Background note

6. The EIS and SEIS encourage investment in smaller, higher risk trading companies by offering tax reliefs to individual investors who subscribe for new shares in qualifying companies.
7. Sections 177 and 257CD ITA 2007 act to deny tax relief if certain arrangements exist, in connection with the issue of the shares, that provide for the disposal of shares or securities in the company. Where a company converts or exchanges one class of shares into, or for, another within the qualifying period of the EIS and SEIS, this would be considered to be a disposal of the shares. Therefore, where such future rights or other such arrangements exist at the time of the share issue, sections 177 and 257CD would apply, preventing the company from accessing either the EIS or SEIS.
8. HM Revenue & Customs has been discussing the issue of share conversion rights with industry members and advisers for over a year to understand the implications of allowing companies to include share conversion rights in their articles of association and elsewhere.

9. Companies often issue shares with these rights for commercial reasons to enable them to simplify their share structures at some future date, for example before listing on a stock exchange or private refinancing. These amendments are intended to allow companies to issue shares with these rights without limiting their access to the EIS or SEIS. However, the amendments do not change the treatment that would apply if shares are converted or exchanged in this manner within the qualifying period. Neither do the amendments exclude any other aspects of the issuing arrangements from the application of Sections 177 or 257CD.

Clause 12: VCTs: follow-on funding

Summary

1. This clause amends the Venture Capital Trust (VCT) rules to enable a new parent company, which has acquired an old company through a certain type of share for share exchange, to receive follow-on funding from a VCT on the basis of the old company's funding history. The clause has effect for investments made, and relevant holdings issued, on or after 6 April 2017.

Details of the clause

2. Subsection (1) introduces amendments to Chapter 6 of Part 6 of the Income Tax Act (ITA) 2007.
3. Subsection (2) makes consequential changes to section 326 of ITA 2007.
4. Subsection (3) inserts new section 327A ITA 2007 in Chapter 6 of Part 6 of ITA 2007.
5. Section 327A(1) specifies that the provisions of the section apply only if a new company has acquired an old company through a share for share exchange within the requirements of section 326(1) and (2). Among other conditions, the shares in the old company must have been exchanged for new shares and securities in the new company on a proportionate basis. "Shares" include securities under the provisions of section 328(1) ITA 2007.
6. Section 327A(2) and (3) clarify the application of sections 280C (the permitted maximum age condition) and 294A (the permitted company age requirement) ITA 2007 respectively, where a share for share exchange has taken place within section 326(1) and (2).
7. Section 327A(2)(a) and (3)(a) specify that condition A in sections 280C(4) and 294A(3) will be met if the old company had received a relevant investment before the end of its initial investing period. The money raised by the new company must be used for the same business activities of the old company as the initial investment in the old company.
8. Section 327A(2)(b) and (3)(b) specify that condition C in sections 280C(6) and 294A(5) will be met if the old company had received a relevant investment under condition B of sections 280C(5) and 294A(4). The money raised by the new company must be used for the same business activities of the old company as the initial investment in the old company.
9. Section 327A(4) clarifies the meaning of a relevant holding in section 327A(3).
10. Subsection (4) specifies that the provisions of new section 327A will apply to new investments made in, or relevant holdings issued by, the new parent company on or after 6 April 2017.

Background note

11. Venture Capital Trusts (VCTs) are one of the tax-advantaged venture capital schemes. The schemes are intended to encourage individuals to invest in certain early stage, higher risk, trading companies to support their growth and development. Companies that are eligible for investment by a VCT are also eligible to receive investments by individuals under the Enterprise Investment Scheme (EIS).
12. Additional rules introduced by Finance (No. 2) Act 2015 restrict the age of companies that are eligible to receive an investment by a VCT or under the EIS. In general, the investment must be received before the end of the company's initial investing period. The initial investing period ends seven years after the company's first commercial sale unless the company is a knowledge-intensive company. In that case, the initial investing period ends 10 years after the company's first commercial sale.
13. The detailed rules on the age limits for companies are at section 175A ITA 2007 for the EIS and sections 280C and 294A ITA 2007 for VCTs. Section 280C provides for investments under Chapter 3 of Part 6 of ITA 2007 and section 294A provides for qualifying holdings within Chapter 4 of Part 6 of ITA 2007.
14. There are three exceptions to the general age limit described above:
    - condition A: a company may receive follow-on funding after the end of the initial investing period if the initial investment was received before the end of the initial investing period
    - condition B: a company may receive initial funding after the end of the initial investing period if the amount of the investment is at least 50% of the company's turnover, averaged over the previous five years, and the company uses the money to enter a new product market or geographic market
    - condition C: a company may receive follow-on funding if it received an initial investment under condition B.
15. This clause arises from technical discussions with advisers and VCTs following the introduction of the additional rules by Finance (No. 2) Act 2015.
16. The EIS rules already allow a new parent company that has carried out a share-for-share exchange within section 247 ITA 2007 to receive follow-on funding, where the old company had issued shares before the end of the initial investing period or under condition B. However the VCT share-for-share exchange rules are drafted differently from the EIS rules and do not make provision for the new parent company to take on the old company's funding history. Clause 13 makes provision to align the effect of the VCT rules with the existing EIS rules.

Clause 13: VCTs: exchange of non-qualifying shares and securities

Summary

1. This clause provides a power for HM Treasury to make regulations on the exchange of non-qualifying investments held by a Venture Capital Trust (VCT) for new shares or securities in the course of a share reorganisation or company reconstruction. This power has effect from Royal Assent.

Details of the clause

2. Subsection 1 amends section 330 (Power to facilitate company reorganisations etc involving exchange of shares) of the Income Tax Act (ITA) 2007.

3. Subsection (2) extends the regulatory power in section 330 by introducing new subsection (1A). This allows provision to be made for cases where shares or securities that are exchanged do not meet the requirements of Chapter 4 of ITA 2007.

4. Subsections (3), (4) and (6) make consequential amendments to the references in section 330.

5. Subsection (5) inserts new subsection (3A). This sets out a non-exhaustive list of matters that may be provided for by regulation under the extended power.

6. Subsection (7) ensures that the power in section 330 to make provision having retrospective effect does not extend to provision made under new subsection (1A)

Background note

7. Venture Capital Trusts (VCTs) are one of the tax-advantaged venture capital schemes. The schemes are intended to encourage individuals to invest directly or indirectly in certain early stage, higher risk, trading companies to support their growth and development. VCTs are approved listed investment companies offering tax incentives to their individual investors. In order to be approved and retain approval the VCT is required to meet certain conditions with regard to its investments.

8. The Finance Act 2016 introduced rules that prescribe the non-qualifying holdings that a VCT may make. These rules took effect from 6 April 2016 but do not apply to non-qualifying investments made before that date. These investments can continue to be held by a VCT.

9. In the course of a commercial restructuring or buy-out it is sometimes the case that a VCT is obliged to exchange one form of investment for another. The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (SI 2002/2661) allow concessions where a qualifying investment is exchanged for investments that do not meet some or all of the qualifying holding conditions in Chapter 4. In accordance with these regulations the new investments are deemed to be qualifying investments, subject to certain limitations, so that the VCT is not immediately at risk of a breach of its approval.

10. The relief provided in SI 2002/2661 applies only in the circumstance that the original investment was a qualifying investment. This measure arises from technical discussions with advisers and VCTs, and provides for a similar relief in relation to non-qualifying investments. This will allow a VCT to dispose of non-qualifying investments through an exchange for new non-qualifying investments without immediate loss of its approved status.

11. Draft regulations will be published for consultation in due course.

Clause 14 and Schedule 1: Social investment tax relief

Summary

1. This clause and Schedule make a number of changes to the Social Investment Tax Relief (SITR) scheme. The changes include an increase in the amount of money newer social enterprises may raise from individual investors under the scheme. These amendments also include provisions to better target the scheme on higher risk activities and deter abuse. The changes take effect for investments made on or after 6 April 2017.

Details of the clause and Schedule

Schedule 1

Part 1: Amendments of Part 5B of ITA 2007

2. Paragraph 1 introduces amendments to the Income Tax Act (ITA) 2007.

3. Paragraph 2 extends the period in which investments can qualify for SITR.

4. Paragraph 3 inserts new section 257LDA.

5. Section 257LDA introduces a requirement for an investor who claims tax relief under SITR to be independent from the social enterprise. At the time the investment is made, the investor must hold no other shares or debentures in the enterprise, or its subsidiary companies. The only exceptions are if the existing investments are a risk finance investment or are permitted subscriber shares. For the purposes of SITR risk finance investments can include debentures. A debenture is defined as any instrument that creates or acknowledges indebtedness.

6. Paragraph 4 inserts new section 257LEA

7. Section 257LEA introduces a "no disqualifying arrangements" requirement. Arrangements are disqualifying arrangements if they are entered into with a main purpose of ensuring that tax reliefs under SITR, EIS, SEIS, Venture Capital Trusts or share loss relief are available in relation to the activities of a social enterprise. This is subject to the conditions that either:

   - All or most of the monies raised by the investment are paid to or for the benefit of any party to the arrangements; or

- In the absence of the arrangements, it would be reasonable to expect those activities to be carried on by some other person party to those arrangements.

8. Paragraph 5 makes consequential amendments to section 257SH. This provides for a power to obtain information relating to arrangements.
9. Paragraph 6 repeals sections 257MA and 257MB, and inserts new sections 257MNA, 257MNB, 257MNC, 257MND and 257MNE.
10. Section 257MNA specifies a limit of £1.5 million on the total amount of qualifying investments a social enterprise can receive if it meets the conditions in this section and new section 257MNB. The limit applies where the enterprise receives a relevant investment prior to the end of a period ending seven years after its first commercial sale, or where follow on funding of such a relevant investment is received after the end of the period. For an accredited social impact contractor the first commercial sale is taken to be the date on which it entered its first social impact contract.
11. Section 257MNB defines "relevant investments" for the purpose of determining whether or not a social enterprise, together with its 51% subsidiaries, has reached the investment limit in section 257MNA. These investments include investments made in companies that have previously been 51% subsidiaries of the enterprise, and investments made in a trade prior to that trade being acquired by the enterprise or one of its subsidiaries.
12. Section 257MNC specifies a limit on the amount of qualifying investments a social enterprise can receive where section 257MNA does not apply. The limit under this section replicates the former limit in section 257MA, but with an additional limit on the total amount of investments to align with the limit in section 257MNA.
13. Section 257MND applies the total investment limit in sections 257MNA and 257MNC after a relevant investment has been made, where the money raised from the relevant investment is used for the activities of a subsidiary or trade acquired by the enterprise or its subsidiary after the investment was made. This prevents a social enterprise from exceeding the investment limits by acquiring a company or trade that has benefitted from other qualifying social investments after the date the relevant investment is made in the enterprise.
14. Section 257MNE provides for the investment limits to be changed by Treasury regulations.
15. Paragraph 7 amends the limit on the number of employees in section 257MH from 500 full-time equivalent employees (FTEs) to 250 FTEs.
16. Paragraph 8 inserts new section 257MIA.
17. Section 257MIA introduces a requirement for the social enterprise to be in financial health at the time the investment is made.
18. Paragraph 9 inserts new subsection (3A) into section 257MM. Section 257MM(3A) prevents repayment of a loan being a qualifying use of money raised under SITR.

19. Paragraph 10 amends section 257MQ, which lists the activities excluded from the scope of SITR. An investment in an excluded activity is not eligible for SITR.

20. Sub-paragraph 10(2) extends the list of excluded activities by inserting new paragraphs (ba) – (bg) in section 257MQ(1).

21. Sub-paragraph 10(3) ends the exception that allowed the lending of money to a social enterprise to be a qualifying activity.

22. Sub-paragraph 10(4) inserts new subsection 257MQ(3) to define "exporting electricity" for the purposes of the section.

23. Sub-paragraph 10(5) inserts new section 257MQA. This defines nursing homes and residential care homes that are excluded activities for the purposes of section 257MQ.

Part 2: Consequential Amendment

24. Paragraph 11 adds SITR under Part 5B to the list of relevant tax reliefs in the no disqualifying arrangements requirement provisions of Part 5, Part 5A and Part 6.

25. Paragraph 12 repeals a provision made redundant by the amendment of section 257MQ.

26. Paragraph 13 adds Part 5B to the list of reliefs for which HMRC has power to obtain information relating the granting of the relief.

Part 3: Commencement

27. Paragraph 14 provides for the amendments made by paragraphs 3 to 9 of the clause to have effect in relation to investments made on or after 6 April 2017. Additionally, it provides that the new section 257LEA will only apply to arrangements that do not involve transactions entered into before that date.

28. Paragraph 15 provides for the changes to the list of excluded activities to take effect on 6 April 2017.

29. Paragraph 16 provides for the amendment to the lists of relevant tax reliefs made by paragraph 11 of the clause to have effect in relation to shares issued on or after 6 April 2017, and whether investments made by a VCT on or after that date are comprised in the VCT's qualifying holdings. The amendments to these lists however will not apply in respect of arrangements involving transactions entered into before that date.

Background note

30. SITR was introduced in 2014 to encourage individuals to invest in certain social enterprises carrying out higher risk trading activities. The social enterprise must use the money raised to support the qualifying trading activity. Individual investors are eligible for a range of tax reliefs including income tax relief of 30% on their investment.

31. SITR is currently a de minimis state aid scheme and restricts the amount of investments a social enterprise may raise under the scheme over a three year rolling period. The government announced at Autumn Statement 2014 that the limit would be raised, subject to state aid approval. This measure increases the amount newer eligible social enterprises may raise under the SITR to £1.5 million and makes further changes to align the rules with the European Union General Block Exemption Regulation for risk finance investments.

32. The limit for older social enterprises remains the same as now, subject to an overall lifetime limit of £1.5 million.

33. The measure excludes certain lower risk trading activities. Energy generation activities are excluded, as announced at Autumn Statement 2015. An anti-abuse provision is also included, based on similar provisions in the Enterprise Investment Scheme.

Clause 15: Business investment relief

Summary

1. Generally, a UK resident non-domiciled individual who is taxed on the remittance basis will be subject to UK tax on any overseas income or gains which they bring to the UK, regardless of the purpose for which such funds are used. The Business Investment Relief (BIR) was introduced to attract foreign investment without incurring a tax liability on remitted income and gains providing it was invested in UK business.

2. This clause introduces a number of changes to the rules governing BIR to encourage foreign investors to make greater investment into UK business. The changes have effect for investments made on or after 6 April 2017.

Details of the clause

3. Subsection 1 amends Chapter A1 of part 14 of ITA 2007.

4. Subsection 2 introduces a change to section 809VC to allow an investor to claim BIR on the acquisition of existing shares in a company in which they have made an investment.

5. Subsection 3 amends section 809VD to provide for the extension of the start- up period for a company from 2 to 5 years. It also introduces a new section 3A which provides a definition of the new eligible hybrid company available for investment. This company will be a combination of both a stakeholder and trading company as previously investment could only be made in a company that carried out either of these roles rather than a combination of both.

6. Subsection 4 clarifies the position in relation to corporate partners by amending section 809VE. Investment in partnerships was excluded from BIR from the outset. It has always been the government's position that this exclusion extends to corporate members of partnerships and HM Revenue & Customs (HMRC) have consistently refused claims for BIR on investment in such corporate members. This amendment addresses this issue by making clear that a company which is a partner in a partnership is not to be regarded as carrying on the trade of the partnership, meaning that unless the target company is carrying on commercial trade in its own right, it will not qualify for BIR.

7. Subsection 5 provides for a number of changes to be made to section 809VH which deals with a potential tax charge being incurred if a benefit is received either directly or indirectly as a result of an investment. Currently this rule is breached if an investor receives any benefits directly or indirectly from the company they have invested in or any company associated to this company, whether or not the benefit is connected to the investment. The revised legislation will remove any reference to an involved company in the rules.

   This change means that the legislation will instead treat the rule as having been breached where a benefit is received from anyone in circumstances directly or indirectly attributable to the investment.

8. Subsection 6 amends section 809VJ to extend the grace period allowed to remove income or gains from a company that becomes non-operational to 2 years from the date that the investor first becomes aware, or ought reasonably to have become aware, that the company has become non-operational.

9. A change to Subsection 7 makes consequential changes to section 809VN to insert reference to an eligible hybrid company for the purpose of determining the order in which investments sold.

10. Subsection 8 provides for all the amendments shown above to come into force from 6 April 2017.

Background note

11. The measure supports the policy of expanding the scope of BIR to make it easier and more attractive to potential investors to bring their money from overseas to invest in UK businesses.

12. At Autumn Statement 2015 the government announced it would consult on ways the BIR rules can be amended to increase take-up. The changes set out in the clause expand the types of businesses in which an investment can be made and ensure that the anti-avoidance rules do not discourage genuine investment. They also clarify parts of the rules which were previously unclear.

13. Finally there is further clarification that a company which is a partner in a partnership is not to be regarded as carrying on the trade of the partnership, meaning that unless the target company is carrying on a commercial trade in its own right, it will not qualify for BIR.

14. A consultation on the proposed changes commenced on 19 August 2016 and ran for 8 weeks before closing on 20th October 2016. The response paper was published on 5th December 2016.

15. HMRC will produce updated guidance to support these changes.

Clause 16 and Schedule 2: Calculation of profits of trades and property businesses

Summary

1. This clause and Schedule introduce new rules relating to the calculation of the taxable profits of unincorporated businesses. This includes a simplified treatment of capital expenditure under the cash basis for trades, professions and vocations and the introduction of the cash basis for the calculation of taxable profits of property businesses.

Details of the Clause

2. Section 17 provides for the enactment of Schedule 2 which contains provisions relating to the calculation of profits of trades, professions, vocations and property businesses particularly under the cash basis.

Details of the Schedule

Schedule 2: Part 1: Trades, professions and vocations: Amendments of ITTOIA 2005

3. Paragraph 1 introduces amendments to the Income Tax (Trading and Other Income) Act (ITTOIA) 2005.

4. Paragraph 2 replaces section 33A Cash basis: capital expenditure.

5. New Section 33A(1) provides for the section to have effect for calculating taxable trading profits using the cash basis.

6. New Section 33A(2) prevents any deduction for capital expenditure to acquire or dispose of a business or part of a business.

7. New Section 33A(3) prevents any deduction for capital expenditure in connection with the undertaking of education or training.

8. New Section 33A(4) prevents any deduction for capital expenditure on the provision, alteration, or disposal of certain types of assets: land, financial assets, "non-qualifying" intangible assets, cars and assets that are not "depreciating assets" or which are not for use in the trade.

9. New Section 33A(5) limits the application of subsection 4 to land so that it does not prevent a deduction for the provision and installation of a depreciating property fixture.

10. New Sections 33A(6) and (7) defines a "depreciating asset" as an asset which, within 20 years, is either no longer of use as a business asset or has a value of ten percent or less of its value at the time expenditure on it was originally incurred.
11. New Section 33A(8) provides a definition of "intangible asset", for the purposes of the section.
12. New Section 33A(9) provides that an intangible asset should be regarded as "non-qualifying" unless the asset expires within 20 years of expenditure being incurred.
13. New Section 33A(10) provides that an intangible asset should be regarded as "non-qualifying" if there is a right to renew or replace it so that an asset can continue to exist more than 20 years after expenditure is incurred.
14. New Section 33A(11) provides that an intangible asset should also be regarded as "non-qualifying" if it is a license or other right in respect of an intangible asset which the taxpayer already holds.
15. New Section 33A(12) provides a definition of "financial asset", for the purposes of the section.
16. New Section 33A(13) ensures that the provisions in the clause apply to possible or would-be capital expenditure.
17. New Section 33A(14) provides definitions of various terms used in the section.
18. Paragraph 3 reformulates section 95A so that the previous calculation of profits in some cases, using the cash basis, is included for section 96A.
19. Paragraph 4 and subparagraphs (1) and (2) amend section 96A and change the heading to 'Capital receipts under, or after leaving, cash basis'.
20. New section 96A (1) provides that section 96B applies where either the conditions to meet Case 1 or Case 2 apply.
21. New sections 96A (2), (3), (3A) set out Case 1, which is that an asset is disposed of or receives a capital refund in a cash basis tax year and that a deduction was made for all or part of the capital expenditure on when it was acquired. If this deduction was made under GAAP, a deduction must have also been allowable if cash basis had instead been used for Case 1 to apply.
22. New sections 96A (3B), (3C), (3D) and (3E) set out Case 2, which is that in the year of the disposal of an asset or receives a capital refund, profits of the business are calculated using GAAP but had been previously calculated using cash basis in an earlier year, and there was a deduction for the capital expenditure on that asset in that cash basis year or a GAAP year preceding it.
23. New section 96A (3F) defines "disposal proceeds" for the purposes of this section as meaning proceeds of whole or part-disposal, from granting of rights, damages, insurance proceeds, compensation or refunds.
24. New section 96A (3G) defines "capital refund" as being a refund of capital expenditure relating to an asset.

25. New section 96A (3H) defines "capital expenditure" for the purposes of this section as meaning expenditure incurred on the potential provision, alteration or disposal of the asset.
26. New section 96A (3I) requires that the disposal proceeds or capital refund in condition A or C are recognized as receipts in calculating the profits of the business.
27. New section 96A (3J) requires that where only part of the expenditure on the asset was relieved, the disposal proceeds brought into account under subsection (3H) are reduced proportionately.
28. New section 96A (3K) states that subsection (3H) won't apply if the amount which would normally be brought into account has already been done so as a receipt in calculating profits of the trade under 96A or under any other provision of ITTOIA (except 240D(3) or any part of CAA 2001 as a disposal value.
29. New section 96A (3L) allows new section (3H) to apply to part of an amount, so that the remainder is still brought into account by new section (3J).
30. Sub-paragraph 4 removes current subsection (7) from 96A.
31. Paragraph 5 inserts a supplementary section to 96A, which has effect for the purposes of section 96A.
32. New section 96B(2) introduces a just and reasonable test to any expenditure which is brought into account in calculating the profits of a trade.
33. New section 96B(3) details the meaning of 'enters the cash basis'
34. New section 96B(4) states that capital expenditure is "cash basis deductible" for the purposes of this section to the extent that a deduction would be allowed for the expenditure under the cash basis if it were paid in that year.
35. New section 96B(5) details the meaning of expenditure being 'brought into account under CAA 2001' in calculating the profits of a trade for the purposes of section 96A.
36. New section 96B(6) details the requirements for offsetting qualifying expenditure against different disposal receipts.
37. New section 96B(7) clarifies that qualifying expenditure incurred before they enter the cash basis is not to be dismissed as not carried forward.
38. New section 96B(8) clarifies the definitions of disposal value, market value amount, mixed pool, provision, qualifying expenditure, and unrelieved qualifying expenditure as used in this section and in new section 96A.
39. Paragraph 6 changes the name of the heading in 106D to be "(capital receipts under, or after leaving, cash basis)".
40. Paragraph 7, sub-paragraph (1) & (2) amends section 240C.
41. Sub-paragraph (3) & (4) substitute terms to subsection (1)(b) and (3) so that it includes an unrelieved qualifying expenditure provision having effect in relation to trade, and broadens the scope of the relevant portion of expenditure to include cash basis deductible of the expenditure.

42. Sub-paragraph (5) defines 'cash basis deductible amount' in subsection (4).
43. Sub-paragraph (6) replaces 'relevant portion' with 'cash basis deductible amount' in subsection (5).
44. Sub-paragraph (7), after subsection (5), inserts (5A), which, for the purposes of (1)(b), disregards sections of CAA 2001 which state that unrelieved qualifying expenditure cannot be carried forward when a person enters the cash basis.
45. Sub-paragraph (8) clarifies the definition of 'unrelieved qualifying expenditure' in relation to other legislation.
46. Paragraph 8 inserts new section 240CAwhich applies to those entering the cash basis who are also carrying on a mineral extraction trade. It does not apply if section 240D applies.
47. New section 240CA (3) allows a deduction for any expenditure which would have been unrelieved qualifying expenditure (apart from section 419A(1) CAA 2001) and are allowed in calculating the profits of the trade on the assumption is was paid in the current tax year.
48. Paragraph 9, sub-paragraph (1) amends section 240D.
49. Sub-paragraph (2) adds the condition of 'incurred relevant expenditure' to subsection (1)(b)
50. Sub-paragraph (3) inserts section (1A), which defines 'relevant expenditure'.
51. Sub-paragraph (4) adds that if there is a question to whether expenditure is relevant, the amount of capital allowance obtained, then it will be subject to a just and reasonable test to subsection (4).
52. Sub-paragraph (5) clarifies that this applies to what is given under Part 2 of CAA 2001 as part of subsection (5).
53. Paragraphs 10 & 11 change the heading of subsections 786(6) and 805(5) to "(capital receipts under, or after leaving, cash basis)", making it clearer what the sections concerns.

Schedule 2: Part 2: Property Businesses: Amendments of ITTOIA 2005

54. Paragraph 12 amends ITTOIA 2005 as set out in paragraphs 13 to 41.
55. Paragraph 13 introduces new sections 271A, 271B, 271C, 217D and 271E, forming the basic framework of the property cash basis:

Cash basis for property businesses: general rules

56. New Section 271A sets out the general eligibility criteria for use of the cash basis to calculate the profits of a property business.
57. New Section 271A(1) requires that GAAP is used for the calculation of the profits of a property business if one of Conditions A, B, C, D or E is met.

58. New Section 271A(2) contains Condition A which lists certain categories of person who may not use the property cash basis. These are companies, limited liability partnerships, corporate firms, and trustees.

59. New Section 271A(3) defines a corporate firm as a partnership having a non-individual member for the purposes of Condition A.

60. New Sections 271A(4) and (5) contains Condition B which is that the cash basis receipts of the business exceed £150,000, specifically those amounts which would be brought into account in calculating the profits under new section 271D.

61. New Section 271A(6) provides that the sum in subsection (4) is proportionally reduced if the property business is only carried out for part of the tax year.

62. New Section 271A(7) and (8) contains Condition C which requires that where a person carries on property business jointly with a spouse or civil partner, and no declaration of the shares of ownership of the property is made, then they must use the same basis to calculate profits of their property businesses.

63. New Section 271A(9) contains Condition D which is that a business premises renovation allowance is made in calculating the profits of the property business, and a balancing event in the tax year would give rise to a balancing adjustment.

64. New Sections 271A(10) and (11) contains Condition E which allows an election not to use the cash basis to be made by the person carrying on the property business. The election must be made within one year following the ordinary filing date for that tax year.

65. New Section 271A (12), (13) and (14) allow Conditions A and B to be amended by Treasury regulations following the draft affirmative procedure for statutory instruments. However, where regulations remove paragraphs in section 271A(2) the negative procedure will apply in accordance with section 873.

66. New section 271B defines references to calculating profits of a property business in accordance with GAAP as meaning generally accepted accounting requirements subject to adjustments required by law. This does not include any requirements of the Companies Act 2006 or audit and disclosure requirements.

67. New section 271C requires the profits of a property business to be calculated on the cash basis if the conditions in section 271A do not apply.

68. New section 271D(1), (2) and (3) provides that what is meant by calculating profits on the cash basis in this Part is accounting for income and expenses of the business as they are actually received and paid, subject to any adjustment authorised or required by law.

69. New Section 271D(4) refers to new section 276A for the application of Chapter 4 regarding lease premiums to a cash basis property business.

70. New Section 271D(5) refers to new section 307A for the application of Chapter 5 regarding deductions and receipts to a cash basis property business.

71. New Section 271D(6) refers to new sections 272ZA and new Chapter 7A as provisions applying only to cash basis property businesses.

72. Paragraph 14 inserts a heading after section 272.

73. Paragraph 15 inserts new section 271E which requires that profits of a property business are calculated in the same way as a trade, subject to section 272 for non-cash basis businesses and new section 272ZA for cash basis businesses. These set out the provisions from Part 2 of ITTOIA 2005 which apply to these property businesses respectively.

74. Paragraph 16 amends section 272 to restrict this section to apply only where profits of a property business are calculated in accordance with GAAP.

75. Paragraph 17 inserts new section 272ZA which sets out which of the rules in Part 2 ITTOIA 2005 for calculating the profits of a trade also apply to calculating the profit of a property businesses under the cash basis as a result of new section 271E(1).

76. Paragraph 18 inserts a heading before section 272A.

77. Paragraph 19 amends the finance cost restriction rules in section 272A to refer to the additional new rule restricting loan costs in new section 307D for property businesses using the cash basis.

78. Paragraph 20 amends section 274(1)(b) and section 274(3) to add references to sections 38 and 55 as applied by section 272ZA and new sections 272A and 307D . These subsections give exceptions to the general rule in section 274(1)(a) that permissive rules take priority over prohibitive rules in this Part.

79. Paragraph 21 amends section 276(5) to refer to section 276A regarding the treatment of deductions for premiums paid by a property business using the cash basis.

80. Paragraph 22 inserts new section 276A which prevents any deductions for a premium paid by a property business using the cash basis by ceasing to apply sections 291 to 294, 296 and 298 to such businesses.

Cash basis for property businesses: particular items

81. Paragraph 23 inserts a new Chapter: *Cash basis: application of chapter* and new sections 307A, 307B, 307C, 307D, 307E and 307F which contain rules regarding capital expenditure, finance costs, and capital receipts.

82. New Section 307A states that new sections 307B, 307C and 307D only apply to property businesses using the cash basis. New sections 307E and 307F may apply to capital receipts of a property business which currently uses cash basis or has done so in the past.

Capital expenditure

83. New Section 307B restricts the items of capital expenditure for which deductions can be allowed in a property business using the cash basis as follows:

84. New Section 307B(1) provides for the clause to have effect for calculating taxable property business profits using the cash basis.

85. New Section 307B(2) prevents any deduction for capital expenditure to acquire or dispose of a business or part of a business..

86. New Section 307B(3) prevents any deduction for capital expenditure in connection with the undertaking of education or training.
87. New Section 307B(4) prevents any deduction for capital expenditure on the provision, alteration, or disposal of land
88. New Section 307B(5) limits the application of subsection 4 to land so that it does not prevent a deduction for the provision and installation of a depreciating property fixture.
89. New Section 307B(6) prevents any deduction for capital expenditure on the provision, alteration, or disposal of an asset for use in an ordinary residential property.
90. New Section 307B(7) requires a just and reasonable apportionment of the expenditure where the asset is partly used in an ordinary residential property and partly for other purposes
91. New Sections 307B(8) and (9) define an ordinary residential property to be residential property not constituting a furnished holiday letting, and qualifying land to be any land not part of ordinary residential property.
92. New Sections 307B(10) and (11) prevent any deduction for an asset that is not depreciating. For these purposes is an asset should be regarded as a “depreciating asset” which, within 20 years, is either no longer of use as a business asset or has a value of ten percent or less of its value at the time expenditure on it was originally incurred
93. New Section 307B(12) provides that the useful life of an asset should be regarded as ending when the asset is of no use as a business asset.
94. New Section 307B(13) provides a definition of “intangible asset”, for the purposes of the clause.
95. New Section 307B(14) provides that an intangible asset should be regarded as “non-qualifying” unless the asset expires within 20 years of expenditure being incurred.
96. New Section 307B(15) provides that an intangible asset should be regarded as “non-qualifying” if there is a right to renew or replace it so that an asset can continue to exist more than 20 years after expenditure is incurred.
97. New Section 307B(16) provides that an intangible asset should also be regarded as “non-qualifying” if it is a license or other right in respect of an intangible asset which the taxpayer already holds.
98. New Section 307B(17) provides a definition of “financial asset”, for the purposes of the clause.
99. New Section 307B(18) ensures that the provisions in the clause apply to possible or would-be capital expenditure.
100. New Section 307B(19) requires just and reasonable apportionments to be made where the expenditure relates to a property only part of which constitutes a furnished holiday letting.

101. New Section 307B(20) provides definitions of various terms used in the clause.

Deductions for costs of loans

102. New Section 307C applies new section 307D to restrict the deduction for the cost of loans in a property business using cash basis where the total outstanding amount of relevant loans is greater than the value of the properties involved in the property business. It applies so that the outstanding amount and the value of the properties are considered on the last day of any tax year. The total outstanding amounts of relevant loans is the amount of the outstanding business amount of any loans which is given by the loan on the last day of the tax year multiplied by the proportion of the deduction for that loan in that year which is wholly and exclusively incurred for the purpose of the business. The value of the properties involved in the property business is their market value when first introduced into the property business.

103. New Section 307D restricts deductions for loans which come within new section 307C. It does so by first calculating the fraction of the value of the property divided by the business loan amount. It then takes the deduction which would otherwise be allowed - but for this section – and multiplying it by this fraction, giving the allowable cash basis deduction under this section. For loans relating to residential properties, this amount is then also subject to the general finance cost restriction under section 272A.

Capital receipts & deemed capital receipts

104. New Section 307E introduces new rules relating to capital receipts under, or after leaving, cash basis.

105. New Section 307E(1) provides that section 307F applies where either the conditions to meet Case 1 or Case 2 apply.

106. New Sections 307E(2), (3), and (4) set out Case 1, which is that disposal proceeds in respect of an asset disposal are received in a cash basis tax year, and that a deduction for an amount of the capital expenditure relating to the asset was made in calculating profits of a tax year. If this deduction was made under GAAP, a deduction must have also been allowable if cash basis had instead been used for Case 1 to apply.

107. New Sections 307E(5), (6), (7) and (8) set out Case 2, which is that in the year of the disposal of an asset, profits of the business are calculated using GAAP but had been previously calculated using cash basis in an earlier year, and there was a deduction for the capital expenditure on that asset in that cash basis year or a GAAP year preceding it.

108. New Section 307E(9) defines “disposal proceeds” for the purposes of this section as meaning proceeds of whole or part-disposal, from granting of rights, damages, insurance proceeds, compensation or refunds.

109. New Section 307E(10) defines “capital refund” for the purposes of this section.

110. New Section 307E(11) defines “capital expenditure” for the purposes of this section as meaning expenditure incurred on the acquisition, provision, alteration or disposal of the asset, as well as expenditure on possible or would-be such actions.

111. New Section 307E(12) requires that the disposal proceeds or capital refund are recognised as receipts in calculating the profits of the property business

112. New Section 307E(13) requires that where only part of the expenditure on the asset was relieved, the disposal proceeds brought into account are reduced proportionately.

113. New Section 307E(14) lifts the requirement to bring disposal proceeds into account under new section 307E(12) where the amount has previously been brought into account as a receipt under this section, under any provision of this part except new section 334D(4), or under CAA 2001.

114. New Section 307E(15) allows new section 307E(13) to apply to part of an amount, so that the remainder is still brought into account by new section 307E(11) if it has not previously been brought into account

115. New Section 307E(16) requires a just and reasonable apportionment of the expenditure treated as brought into account under new section 307E(4)

116. New Section 307E(17) provides that expenditure that has been incurred in one year and would be cash basis deductible in a later year is "relevant expenditure" for the purposes of subsection (4)(b).

117. New Section 307E(18) defines a person carrying on a property business to have entered the cash basis for the purposes of new section 307E(11) where they calculate profits using the cash basis for the tax year and GAAP for the preceding tax year.

118. New Section 307E(19) provides that capital expenditure is "cash basis deductible" for the purposes of this section to the extent that a deduction would be allowed for the expenditure under the cash basis if it were paid in that year.

119. New Section 307E(20) defines the meaning of "brought into account under CAA 2001" for the purposes of this section.

120. New Section 307E(21) defines what is meant by an amount of qualifying being "set off against different disposal receipts" in subsection (19)

121. New Section 307E(22) defines what is meant by a "relevant qualifying activity" for the purposes of subsection (19) and (20)

122. New Section 307E(23) excludes a person entering the cash basis from being within the meaning of an amount of qualifying expenditure not carried forward for the purpose of subsection (21).

123. New Section 307E(24) provides definitions of various terms used in the section.

124. New Section 307F introduces new rules relating to deemed capital receipts under, or after leaving, cash basis, supplementary to new section 307E.

125. New Section 307F(2) provides that if an asset ceases to be used for business purposes without an actual disposal, it is to be regarded as a disposal of the asset at market value for the purposes of new section 307E.

126.New Section 307F(3) provides that if the non-business use of an asset increases, this is to be regarded as a disposal of the relevant portion of the asset at market value for the purposes of new section 307E.

127.New Section 307F(4) defines what is meant by an increase in non-business use and "the relevant proportion" for the purposes of new section 307F(3).

128.New Section 307F(5) provides that where the person carrying on an overseas property business moves overseas, an asset that has previously been relieved is treated as being disposed for the purposes of new section 307E.

129.New Section 307F(6) defines what is meant by a "move overseas" for the purposes of new section 307F(5)

130.New Section 307F(7) deems when the move overseas is considered to have occurred for the purposes of new section 307F(5) & (6).

131.New Section 307F(8) defines what is meant by "capital expenditure" and "the market value amount" for the purposes of this section.

Cash basis for property businesses: miscellaneous

132.Paragraph 24 amends the definitions of the "capital expenditure rule" and "the wolly and exclusively rule" for the purposes of the replacement of domestic items relief in section 311A(15). This will now give separate definitions in relation to property businesses using the cash basis and property businesses not using the cash basis. The "capital expenditure rule" for GAAP property businesses means the rule in section 33 as applied by section 272. The "capital expenditure rule" for cash basis property businesses means the rules in new section 307B.

133.Paragraph 25 adds a new subsection to section 315 (deductions for expenditure on sea walls) so that any reference in this section to the incurring of expenditure is taken to mean the paying of expenditure where the profits of a property business are calculated using the cash basis.

134.Paragraph 26 amends section 322 to add a reference to new section 307B as one of the rules where it matters whether a UK or overseas property business consists of or includes "commercial letting of furnished holiday accommodation".

Cash basis for property businesses: adjustment income

135.Paragraph 27 inserts New Section 329A, which states that Chapter 7 relating to adjustment income applies to property businesses using the cash basis when they transition into calculating profits on the cash basis from GAAP or vice versa.

136.Paragraph 28 amends section 331 to add that these provisions become subject to the new section 334A which determines the effect of spreading adjustment income on leaving the cash basis.

137. Paragraph 29 inserts new section 334A, and new Chapter 7A with new sections 334B, 334C, 334D, 334E:

138. New Section 334A applies the existing sections 239A and 239B to the property cash basis. Section 239A requires the spreading of any adjustment income over 6 tax years whilst section 239B allows an election to bring an additional amount into charge in a tax year than would otherwise be brought in under the section 239A spreading rule.

139. New Section 334B defines where a person carrying on a property business is considered to have entered the cash basis for a tax year for the purposes of this chapter, which is where they use the cash basis for the current tax year and used GAAP in the previous tax year.

140. New Section 334C applies where a person enters the cash basis for a tax year with unrelieved qualifying expenditure, relating to an item that would qualify for a cash basis deduction. This gives a deduction for the cash basis deductible amount which would be allowed if the unrelieved expenditure was treated as paid in that year. This does not apply if section 334D applies.

141. New Section 334D applies where a person enters the cash basis for a tax year with expenditure on plant and machinery that has not been fully paid for but for which capital allowances have been claimed. The asset must be one which would qualify for a cash basis deduction. The difference between the amount actually paid and the amount of capital allowances received at the date of entering the cash basis is treated as a deduction of the business where the amount paid is the greater amount, or a receipt of the business where it is the lesser amount.

142. New Section 334E provides that where a section 267 CAA 01 election is made under the cash basis, new Chapter 7A applies as if the asset was owned by one person throughout the year, and any actual expenditure on the asset by the successor is to be ignored.

143. Paragraph 30 inserts new subsections (3) and (4) to section 351. These determine when a tax year is considered to be a "cash basis tax year" for the purposes of applying sections 254 and 353.

144. Paragraph 31 inserts a new subsection (1A) to section 353, which requires that where a UK property business using the cash basis ceases, post-cessation receipts are only to be recognised if they would be recognised under the cash basis.

145. Paragraph 32 amends section 356 to include references to the new subsections 351(3) and (4) and 353(1A) introduced by paragraphs 21 and 22.

146. Paragraph 33 inserts a new subsections (6A) and (6B) to section 786 so that certain capital receipts brought into account by section 96A and new section 307E under the cash basis are recognised as rent-a-room receipts where they otherwise satisfy the criteria of rent-a-room receipts under section 786.

147. Paragraph 34 amends section 860(5) to add that an election made under section 239B, as applied by new section 334A, must be made by all members of a firm where the property business this relates to is carried on by a partnership.

148. Paragraph 35, 36, 37, 38, 39 and 40 amend sections 866, 867, 868, 869, 870 and 872 respectively to include references to new section 272ZA alongside references to section 272.

149. Paragraph 41 adds to the index of defined expressions in Part 2 of Schedule 4 the definition of "the cash basis" and "in accordance with GAAP" for Part 3 of ITTOIA.

Schedule 2: Part 3: Trades, professions and vocations and property businesses: Amendments of other acts

Taxes Management Act 1970

150. Paragraph 42 amends section 42 of TMA 1970 to add a reference to the new section 271A(9) ITTOIA 2005 – election to use GAAP – to the list of provisions to which the claims procedures in section 42 apply.

Taxation of Chargeable Gains Act 1992

151. Paragraphs 43 to 47 amend the Taxation of Chargeable Gains Act (TCGA) 1992.

152. Paragraph 44 inserts new subsections (1A), (1B) and (1C) into section 37.

153. New subsection (1A) excludes any receipts brought into account under the cash basis by new section 96A or 307E ITTOIA 2005 from the consideration on disposal of an asset for capital gains purposes.

154. New subsection (1B) restricts the application of new subsection (1A) where the sum has been excluded from an earlier disposal of the asset.

155. New subsection (1C) defines new sections 96A(4) and (6) and 307F ITTOIA 2005 as deemed disposal provisions for the purpose of this section.

156. Paragraph 45 amends section 41 of the TCGA 1992.

157. Sub-paragraph 2 adds a deduction for capital expenditure given under the cash basis to the definition of a 'capital allowance' in subsection (4).

158. Sub-paragraph 3 inserts new subsection (6A) defining certain terms used in the extended definition of 'capital allowance' introduced by sub-paragraph 2.

159. Sub-paragraph 4 amends subsection (7) to apply the changes of the new subsection (6A).

160. Sub-paragraph 5 defines calculating profits on the cash basis with regard to a trade, profession or vocation or property business, "capital expenditure" and "property business" for the purpose of this section.

161. Paragraph 46 amends section 47A of the TCGA 1992.

162.Sub-paragraph 2 amends the title of section 47A to make it clear the section can apply to a disposal made when a cash basis election is in effect and to a disposal made after a cash basis election ceases.

163.Sub-paragraph 3 omits Condition C from subsection (1).

164.Sub-paragraph 4 introduces a new, simpler, condition A at subsection (2).

165.Sub-paragraph 5 extends Condition B at subsection (3) so that Condition B will be met if the asset disposed of has been used for the purposes of a property business (see subsection (10)).

166.Sub-paragraph 6 omits Condition C. This is so that the section can apply to a disposal made after a cash basis election ceases.

167.Sub-paragraph 7 substitutes Condition D at subsection (5) with a new Condition D to more closely align the treatment of capital receipts by ITTOIA 2005 and TCGA 1992. Condition D is now met where a capital receipt is brought into account under new sections 96A(3I) or 307E(12) of ITTOIA 2005. New subsection (5A) defines "relevant disposal proceeds" for the purposes of this section.

168.Sub-paragraph 8 substitutes subsection (6) so as to allow subsection (7) to also apply in cases where expenditure only partly qualified for capital allowances. This allows two capital gains computations to be produced where an asset only partly qualified for capital allowances.

169.Sub-paragraph 9 amends subsection (7) (a) and (c) so that the exemption under subsection (1) applies to the gain corresponding to the use of the asset in the property business.

170.Sub-paragraph 10 inserts a definition of 'property business' as subsection (8).

171.Paragraph 47 omits section 47B of the TCGA 1992.

Capital Allowances Act 2001

172.Paragraph 48 amends CAA 2001 as set out in paragraphs 49 - 59

173.Paragraph 49 removes current subsections (4) and (5) from section 1.

174.Paragraph 50 inserts a new section 1A.

175.New Section 1A(1) applies this section to persons who have calculated profits of a trade, profession, vocation or property business "the relevant activity" on the cash basis.

176.New Section 1A(2) provides that a person cannot be entitled to an allowance or liable for a charge except as provided for by subsections (4) and (7).

177.New Section 1A(3) provides that no disposal value can be brought into account except where it is covered by subsections (5) and (8).

178.New Section 1A(4) provides that if an allowance or charge in connection with the provision of a car would arise but for subsection (2), that allowance or charge still applies.

179. New Section 1A(5) provides that where but for subsection (3) a disposal value arising in connection with a car would be brought into account, that disposal value is still brought into account.

180. New Section 1A(6) provides that subsections (7) and (8) apply when a person carrying on a relevant activity enters the cash basis after incurring qualifying expenditure in an earlier year, and no deduction would be allowable for that expenditure under the cash basis

181. New Section 1A(7) provides that if subsection (6) applies, the person is still liable to any charges which arise in connection with that expenditure.

182. New Section 1A(8) provides that if subsection (6) applies, any disposal values which arise in connection with that expenditure must still be brought into account.

183. New Section 1A(9) sets out the circumstances when a person carrying on a trade, profession or vocation "enters the cash basis" for the purposes of this section as when an election has been made under section 25A of ITTOIA 2005 for a tax year following a tax year in which no such election was made.

184. New Section 1A(10) sets out the circumstances when a person carrying on a property business "enters the cash basis" for the tax year. The person enters the cash basis when profits are calculated on the cash basis under new section 271D ITTOIA 2005 and in accordance with GAAP in the previous tax year.

185. New Section 1A(11) defines "calculating the profits on a cash basis" as when an election has been made under section 25A of ITTOIA 2005 for a trade, profession or vocation or when section 271D of ITTOIA 2005 applies for a property business.

186. New Section 1A(12) defines "car", "disposal value" and "qualifying expenditure" for the purpose of this new section 1A.

187. Paragraph 51 amends section 4 as follows:

188. Sub-paragraph 2 amends subsection (2) to exclude any cash basis expenditure apart from expenditure on the provision of a car, within the meaning of capital expenditure for the purpose of this Act.

189. Sub-paragraph 3 defines "cash basis expenditure" and applies the definition of "car" from Part 2 for the purpose of section 4.

190. Paragraph 52 amends section 59 as follows:

191. Sub-paragraph (2) amends subsection (4) to prevent any cash basis deductible amount being carried forward as unrelieved qualifying expenditure from the previous tax year when a person carrying on a trade, profession or vocation enters the cash basis.

192. Sub-paragraph (3) inserts a new subsection (4A) to section 59 so any cash basis deductible amount cannot be carried forward as unrelieved qualifying expenditure from the chargeable period which is the previous tax year.

193. Sub-paragraph (5) inserts a new subsection 5A which defines a “cash basis deductible amount” as expenditure that would be allowed as a deduction in calculating the profits of the trade, profession, vocation or property business on the cash basis, assuming the expenditure was paid in the tax year when the person enters the cash basis.

194. Sub-paragraph (7) applies the definitions of “enters the cash basis” and “calculating the profits on the cash basis” in new section 1A to section 59 and inserts a definition of “relevant qualifying activity” for the purpose of new subsection (4A).

195. Paragraph 53 amends the capital allowances provisions for persons leaving the cash basis in section 66A as follows:

196. Sub-paragraph (2) replaces subsection (1) to extend the scope of this section to apply to property businesses, and to where expenditure was incurred when profits were calculated on the cash basis that was deductible under the cash basis and would have been qualifying expenditure for the purpose of this Act if profits had not been calculated on the cash basis at the time the expenditure was paid.

197. Sub-paragraph (3) amends subsection (2) to include property businesses (see new subsections 66A(7)).

198. Sub-paragraph (4) inserts new subsections 66A(7) and (8) to define the meaning of a property business leaving the cash basis for the purposes of this section as meaning that its profits are calculated using GAAP in a tax year, and using the cash basis in the previous tax year and applies the meaning of calculating profits on a cash basis in subsection 1A(8) to this section.

199. Paragraph 54 inserts new section 419A Unrelieved qualifying expenditure: entry to cash basis into Part 5 of the Act.

200. New Section 419A(1) outlines that for a person carrying on mineral extraction trade, their unrelieved qualifying expenditure for the chargeable period ending with the basis period in the tax year that they enter the cash basis will only be the non-cash basis deductible portion of their qualifying expenditure incurred before this chargeable period.

201. New Section 419A(2) defines the “non-cash basis deductible portion” of qualifying expenditure for the purpose of this new section as the amount of qualifying expenditure for which a deduction is not allowed in calculating the profits on a cash basis, assuming the expenditure was paid in the tax year the person enters the cash basis.

202. New Section 419A(3) applies the definition of “enters the cash basis” and “calculating the profits of a trade on the cash basis” in new section 1A to this new section.

203. Paragraph 55 inserts new section 431D Person leaving cash basis into Part 5 of the Act.

204. New Section 431D(1) applies this new section when a person carrying on a mineral extraction trade leaves the cash basis in a chargeable period, had paid expenditure when calculating profits on a cash basis that was deductible in calculating the profits of this trade and the expenditure would have been qualifying expenditure if the person was not using the cash basis at the time the expenditure was paid.

205. New Section 431D(2) defines the "relieved portion" of expenditure and "unrelieved portion of expenditure for the purpose of this new section.

206. New Section 431D(3) provides that any amount by which the unrelieved portion of expenditure exceeds the relieved portion of expenditure is treated as qualifying expenditure incurred in the chargeable period.

207. New Section 431D(4) defines for the purpose of this section that a person carrying on a trade leaves the cash basis when an election under section 25A ITTOIA 2005 has effect immediately before the start of the chargeable period and does not have effect for the chargeable period.

208. Paragraph 56 inserts new section 461A Unrelieved qualifying expenditure: entry to cash basis into Part 7 of the Act.

209. New Section 461A(1) outlines that if a person carrying on a trade enters the cash basis for a tax year, no cash basis deductible amount may be carried forward as unrelieved qualifying expenditure from the chargeable period ending with the basis period for the previous tax year.

210. New Section 461A(2) defines "cash basis deductible amount" as qualifying expenditure that would be an allowable deduction in calculating the profits of the trade on the cash basis, assuming that the expenditure is paid in the tax year that the person enters the cash basis.

211. New Section 461A(3) applies a just and reasonable apportionment to determining any cash basis deductible amount.

212. New Section 461A(4) applies the definition of "enters the cash basis" and "calculating the profits of a trade on the cash basis" in new section 1A to this new section.

213. Paragraph 57 inserts new section 462A Person leaving cash basis into Part 7 of the Act.

214. New Section 462A(1) applies this new section when a person carrying on a trade leaves the cash basis in a chargeable period, had paid expenditure when calculating profits on a cash basis that was deductible in calculating the profits of this trade and the expenditure would have been qualifying expenditure if the person was not using the cash basis at the time the expenditure was paid.

215. New Section 462A(2) defines the "relieved portion" of expenditure and "unrelieved portion of expenditure for the purpose of this new section.

216. New Section 462A(3) outlines how to determine the person's available qualifying expenditure in the pool for the trade for the chargeable period

217. New Section 462A(4) outlines that for the purpose of section 462 expenditure incurred by the person is treated as qualifying expenditure.

218. New Section 462D(5) defines for the purpose of this section that a person carrying on a trade leaves the cash basis when an election under section 25A ITTOIA 2005 has effect immediately before the start of the chargeable period and does not have effect for the chargeable period.

219. Paragraph 58 inserts new section 475A Unrelieved qualifying expenditure: entry to cash basis into Part 8 of the Act.

220. New Section 475A(1) outlines that if a person carrying on a trade enters the cash basis for a tax year, no cash basis deductible amount may be carried forward as unrelieved qualifying expenditure from the chargeable period ending with the basis period for the previous tax year.

221. New Section 475A(2) defines "cash basis deductible amount" as qualifying expenditure that would be an allowable deduction in calculating the profits of the trade on the cash basis, assuming that the expenditure is paid in the tax year that the person enters the cash basis.

222. New Section 475A(3) applies a just and reasonable apportionment to determining any cash basis deductible amount.

223. New Section 475A(4) applies the definition of "enters the cash basis" and "calculating the profits of a trade on the cash basis" in new section 1A to this new section.

224. Paragraph 59 inserts new section 477A Person leaving cash basis into Part 8 of the Act.

225. New Section 477A(1) applies this new section when a person carrying on a trade leaves the cash basis in a chargeable period, had paid expenditure when calculating profits on a cash basis that was deductible in calculating the profits of this trade and the expenditure would have been qualifying expenditure if the person was not using the cash basis at the time the expenditure was paid.

226. New Section 477A(2) defines the "relieved portion" of expenditure and "unrelieved portion of expenditure for the purpose of this new section.

227. New Section 477A(3) outlines how to determine the person's available qualifying expenditure in the pool for the trade for the chargeable period

228. New Section 477A(4) outlines that for the purpose of section 476 expenditure incurred by the person is treated as qualifying expenditure.

229. New Section 477A(5) defines for the purpose of this section that a person carrying on a trade leaves the cash basis when an election under section 25A ITTOIA 2005 has effect immediately before the start of the chargeable period and does not have effect for the chargeable period.

Income Tax Act 2007

230. Paragraph 60 amends ITA 2007 as follows:

231. Paragraph 61 expands the scope of Part 4 subsection 59 (3), rules about calculating losses, to include new section 272ZA ITTOIA 2005.

232. Paragraph 62 amends the loss provisions for property businesses in Chapter 4 of Part 4:

233. Subparagraph (2) amends section 120 ITA 2007 to prevent this section from applying where the new section 127BA applies to restrict relief.

234. Subparagraph (3) inserts new section 127BA which prevents losses from a property business using the cash basis from being set against general income.

235. Paragraph 63 amends Chapter 1 of Part 8, section 384B(1) ITA 2007 to extend this restriction to partnerships where their profit for a tax year is calculated on the cash basis.

Schedule 2: Part 4: Commencement

236. Paragraph 64 provides that the amendments in this Schedule take effect for tax years from 2017-18 onwards.

237. Subparagraph (2) allows a deduction in 2017-18 for items in a trade, profession and vocation which would have been allowable but for the introduction of the new section 33A.

238. Subparagraph (3) requires subparagraph (2) to be disregarded for the purposes of determining whether an amount of expenditure coming within certain provisions of CAA 2001 and ITTOIA 2005 would be brought into account in 2017-18, assuming it was paid in 2017-18.

239. Subparagraph (4) requires that subparagraph (2) is not disregarded where an amount of expenditure actually is brought into account in the tax year 2017-18

Background note

240. This measure provides for simplifications of the rules for the calculation of the profits of unincorporated businesses on the cash basis, and also allows those with income from unincorporated property businesses to use a version of the cash basis.

241. The simplification of the capital rules within the cash basis provides a workable definition in order to simplify the rules for allowable deductions within the cash basis. This supports the government's commitment to reduce administrative burdens on businesses.

242. Current tax rules for calculation of profits under the cash basis do not allow a deduction for expenditure of a capital nature unless such expenditure would qualify for plant and machinery capital allowances under the ordinary tax rules.

243. This means that taxpayers still need to consider firstly whether an item of expenditure is capital in nature, and secondly whether the expenditure would qualify for capital allowances.

244. This measure replaces the general disallowance of capital expenditure with a more limited disallowance of capital expenditure incurred in relation to assets which are not used up in the business over a limited period.

245. The cash basis is a simpler method of calculating taxable profits and having been introduced for small unincorporated trade businesses in 2013, this measure now allows unincorporated property businesses to use a version of the cash basis.

246. This is simpler as it generally requires only accounting for income actually received and expenses actually paid during the year, and lessens the need for accounting adjustments at the year end.

247. The property cash basis may be used to calculate the profits of unincorporated property businesses with receipts not exceeding £150,000, subject to certain exclusions. The property cash basis is now the default option for the calculation of the profits of eligible property businesses, although the person carrying on the business may elect to use GAAP to calculate profits instead.

248. At Budget 2016, the government announced that it would explore options to simplify the tax rules for businesses, self-employed people and landlords. A consultation covering four discrete areas of simplifying tax paid by unincorporated businesses was published on 15 August 2016 and ran until 7 November 2016. The consultations were published as part of a collection on Making Tax Digital.

249. Following consultation, it was decided to proceed with simplifying the capital/revenue divide in the cash basis, and also introducing the cash basis to property businesses. A further technical consultation ran from 31 January 2017 to 28 February 2017, and comments from these were taken into consideration around the final formulation of the legislation. The commencement date was 6 April 2017.

Clause 17 and Schedule 3: Trading and property allowances

Summary

1. This clause and Schedule provide for a new trading and property allowance for individuals of £1,000 each. The allowances provide for full relief on trading and property income of up to £1,000. This clause and Schedule also provides for partial relief where there is relevant income above the level of the allowance, if the individual elects for an alternative method of calculating profits by deducting the allowance from their receipts, instead of the actual allowable expenses. The trading allowance applies to certain miscellaneous income from providing assets or services. Any income which attracts rent-a-room relief is not eligible for either of the allowances. The allowances do not apply to income of a participator in a close company or to any income of a partner from their partnership. These allowances take effect from the tax year 2017 to 2018.

Details of the Clause

2. This clause introduces a Schedule which provides for a trading allowance and property allowance that give relief from income tax.

Details of the Schedule

Part 1: Main provisions

3. Paragraph 1 inserts a new Part 6A "Income charged under this Act: Trading and Property Allowances" to the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). The new Part has 2 new chapters, "Chapter 1 Trading allowance" comprised of new sections 783A-AR and "Chapter 2 Property allowance" comprised of new sections 783B-BQ.

Chapter 1 – Trading allowance

4. New section 783A sets out an overview of the trading allowance.

5. New section 783AA defines "relevant trade" and "rent-a-room trade". It provides that trades carried out in partnership or rent-a-room trades are not relevant trades for the purposes of relief under this chapter. Partnerships are excluded to avoid adding extra complexity to the rules. The section is also intended to prevent claims for the new allowance and rent-a-room relief on the same trading income.

6. New section 783AB defines "miscellaneous income" as the income before any expenses are deducted in determining the amount chargeable to tax under Chapter 8 of Part 5, ITTOIA. This is intended to prevent people from claiming both expenses and the allowance against the same receipts. Miscellaneous income for the purposes of this section does not include income charged under any other Chapter of Part 5, ITTOIA. Sub-section (2) excludes miscellaneous income that attracts rent-a-room relief to prevent claims for the new allowance and rent-a-room relief on the same miscellaneous income.

7. New section 783AC defines an individual's "relevant income", eligible for relief under this chapter as the total of the receipts of an individual's relevant trades and miscellaneous income for the tax year. The trade receipts are those otherwise brought in to account under generally accepted accounting practice (GAAP) or cash basis in calculating the profits of a trade for a tax year chargeable to income tax under Chapter 2 of Part 2, ITTOIA. This excludes items such as adjustment income and post cessation receipts, chargeable under other chapters of Part 2, ITTOIA. The period for which the trade receipts are brought in to account will be determined by the basis period rules in Chapter 15 of Part 2, ITTOIA.

8. New section 783AD sets the amount of the allowance, which can be increased by Treasury regulations.

9. New sections 783AE-AG set out the rules for when an individual's relevant income for a tax year is less than the trading allowance defined in section 783AD. The default position set out in section 783AE subsection (1) is that this income is not chargeable to income tax ("full relief"), unless there is an election under new section 783AL for full relief not to be given. Subsection (2) and (3) of 783AE provide that where GAAP applies and full relief is not otherwise available under subsection (1), for the purposes of calculating the relevant income, cash basis is used rather than GAAP, where the impact reduces the relevant income so that it does not exceed the trading allowance. Subsection (2) does not apply if there is an election under new section 783AL for full relief not to be given or an election for Partial relief (see new section 783AM). Subsection (3) (d) of section 783AE is to prevent continuing trades with receipts of higher than the cash basis relevant maximum in the preceding year from qualifying for full relief because of subsection (2) and (3) of 783AE.

10. New Section 783AF provides that where there is full relief in a tax year and there are trade profits or losses, they are treated as nil. New Section 783AG provides that any miscellaneous income or expenses from that income applies they are treated as nil.

11. New Sections 783H-AK set out the rules for when an individual's relevant income for a tax year is more than the trading allowance defined in section 783D.

12. New section 783AH provides for partial relief where an individual with relevant income is not eligible for full relief, if they make an election under new section 783AM for an alternative method of calculation of their profits from all relevant trades and miscellaneous income. This method overrides the profit calculated under Chapter 2 of Part 2, ITTOIA and the calculation of miscellaneous income under Chapter 8 of Part 5, ITTOIA. The effect of this section applying to all relevant income is to prevent individuals from using the trading allowance, if they choose to deduct actual expenses in calculating the profits of any other relevant trade.

13. New section 783AI sets out the alternative method and provides that the profits of each of the individual's relevant trades will be calculated in steps 1 and 2 of subsection (2). The profits or losses are calculated by deducting the allowance from the receipts of the trades for the tax year, as defined in section 783AC (2), instead of deducting the actual trading expenses. Step 3 provides for a deduction for overlap profits in calculating the profits of the final tax year of the trade and on change of accounting date, where this is provided for in Chapter 15, of Part 2, ITTOIA (section 204 and new section 204A, overlap profit and trading allowance).

14. New section 783AJ provides that, using the alternative method, the allowance is deducted from miscellaneous income for the year, as defined by new section 783AB, instead of deducting the actual expenses.

15. New section 783AK provides that an individual with multiple sources of trading and/or miscellaneous income, can choose how to allocate the trading allowance between the different sources. The deduction of the allowance at step 2 of new section 783AI cannot create a loss.

16. New section 783AL permits an individual to elect to dis-apply new sections 783AF and 783AG, on a tax return and has effect for the tax year for which it is made. The section also sets out the time limits for making the election.

17. New section 783AM this sets out the rules for an election for partial relief under new sections 783AI and 783AJ. This can be made on a tax return and has effect for the tax year for which it is made and for all of the relevant trades carried on by the individual in the tax year. The section also sets out the time limits for making the election.

18. Sections 783AN-AQ set out the circumstances where no relief will be given under Chapter 1.

19. New section 783AN excludes individuals from relief under this chapter in two circumstances where the individual qualifies for rent-a-room relief in respect of rent-a-room receipts. The first is where those receipts are below the rent-a-room relief limit given in section 789 ITTOIA and the individual makes an election under section 799 to dis-apply the full rent-a-room relief for the tax year. The second is where the individual's rent-a-room receipts exceed the rent-a-room relief limit given in section 789, and the individual chooses not to make an election for the alternative calculation of profits described in section 800 but instead opts to calculate profits by deducting expenses. The intention is to prevent individuals from using the trading allowance if they choose to deduct actual expenses in calculating the profits of any other trade.

20. New section 783AO is an anti-avoidance provision to prevent employers from trying to reclassify some payments to employees or employees' spouse or civil partner as trading or miscellaneous income.

21. New sections 783AP-AQ are anti-avoidance provisions to prevent the trading allowance from applying to trading income or miscellaneous income of a participator in a close company or to trading income or miscellaneous income of a partner (or persons connected with the partner) from their partnership. Persons connected is defined by section 993 Income Tax Act 2007 (ITA) to include spouse, civil partner, relative (brother, sister, ancestor and lineal descendants) etc. The effect of these new sections together with the general principle that the allowance must apply to all sources of trading income from sole trades, is that an individual within 783AP-AQ will not be eligible for the allowance on any other sources of trading income or miscellaneous income.

22. Section 783R defines certain terms for the purposes of Chapter 1.

Chapter 2 – Property Allowance

23. New section 783B sets out an overview of the property allowance.

24. New section 783BA-BD provide basic definitions for the purposes of Chapter 2. New Section 783BA defines "relevant property business" of an individual, and provides that distributions of income from a property Authorised Investment Fund or a Real Estate Investment Trust and any property income comprising of rent-a-room receipts of an individual who qualifies for rent-a-room relief are not relevant property businesses. An individual's share of a partnership property business is already excluded by section 859(2) and (3) of ITTOIA, so is not expressly excluded in this section.

25. New section 783BB defines "relievable receipts" and provides that relievable receipts are only those brought in to account in calculating the profits of a UK or overseas property business chargeable under Chapter 3 of Part 3, ITTOIA. This excludes items such as adjustment income and post cessation receipts, chargeable under other chapters of Part 3, ITTOIA. Balancing charges which arise from an excluded source of receipts such as rent-a-room receipts are excluded from scope.

26. New section 783BC defines an individual's "relevant property income", which is eligible for relief under this chapter as the total relievable receipts from relevant property businesses for the tax year.

27. New Section 783BD sets the amount of the allowance, which can be increased by Treasury regulations.

28. New sections 783BE-BF set out the rules for when an individual's relevant property income for a tax year is less than the allowance defined in new section 783BD. The default position is that this income is not chargeable to income tax ("full relief"). There is an election under new section 783BJ for full relief not to be given.

29. New sections 783BG-BH provide for partial relief where an individual is not eligible for full relief, if they make an election under new section 783BK for the alternative method to calculate the profits of all relevant property businesses. This method overrides the profit calculated under Chapter 3 of Part 3, ITTOIA. Under this method deductions allowable in calculating profits charged to income tax under Chapter 3 of Part 3, ITTOIA do not form part of the calculation of profit. Instead the property allowance can be deducted from the relievable receipts, as defined by section 783BB. The effect of this section applying to all relevant property income is to prevent individuals from using the property allowance if they choose to deduct actual expenses in calculating the profits of any other relevant property business.

30. New section 783BI provides that an individual with both a UK and an overseas property business can choose how to allocate the allowance between the different property businesses. This cannot create or increase a loss.

31. New section 783BJ permits an individual to elect to dis-apply new section 783BF on a tax return and has effect for the tax year for which it is made. The section also sets out the time limits for making the election.

32. New section 783BK this sets out the rules for an election for partial relief under new section 783BH. This has effect for the tax year for which it is made and for all of the relevant property businesses carried on by the person in the tax year. This also sets out the time limits for making the election.

33. New Sections 783BL-BP set out the circumstances where no relief will be given under Chapter 2.

34. New section 783BL provides that individuals who report their mortgage interest and claim a tax reduction in lieu of non-deductible costs of mortgage interest are excluded from relief under this chapter.

35. New section 783BM excludes individuals from relief under this chapter in two circumstances where the individual qualifies for rent-a-room relief in respect of rent-a-room receipts. The first is where those receipts are below the rent-a-room relief limit given in section 789 ITTOIA and the individual makes an election under section 799 to dis-apply the full rent-a-room relief for the tax year. The second is where the individual's rent-a-room receipts exceed the rent-a-room relief limit given in section 789, and the individual chooses not to make an election for the alternative calculation of profits described in section 800 but instead opts to calculate profits by deducting expenses incurred from their rental income. The intention is to prevent individuals from using the property allowance if they choose to deduct actual expenses in calculating the profits of any other property business.

36. New section 783BN is an anti-avoidance provision which prevents relief from being available if the individual's relievable receipts include an amount paid by or on behalf of a person of which the individual is an employee (or to the employees' spouse or civil partner) at the time the payment is made.

37. New sections 783BO-BP are anti-avoidance provisions to prevent the property allowance from applying to property income of a participator in a close company or to any property income of a partner (or person connected to a partner) from their partnership. Persons connected is defined by section 993 Income Tax Act 2007 (ITA) to include spouse, civil partner, relative (brother, sister, ancestor and lineal descendants) etc. The effect of these new sections together with the general principle that the allowance must apply to all sources of property income is that an individual within 783BO-BP will not be eligible for the allowance on any source of property income. This is consistent with the trading allowance.

38. Section 783BQ defines certain terms for the purposes of Chapter 2.

Part 2: Consequential amendments

39. Paragraph 2 makes consequential changes to ITTOIA that flow from this new legislation.

40. Paragraph 4 inserts a new section 22A in Chapter 2, of Part 2, ITTOIA, to have the effect that the profits of the trade calculated in accordance with Chapter 1 of the New Part, will override the rules for calculating profits of a trade, apart from this new section, under Chapter 2, of Part 2, ITTOIA.

41. Paragraph 5 inserts a new section 204A in Chapter 15, of Part 2, ITTOIA, to set out how overlap profit is to be calculated for a tax year where relief is given for the trading allowance. The intention of this new section is to restrict overlap profit by the amount of the allowance.

42. New section 204A subsection (2)(a) provides that overlap profit will be nil for an overlap period falling within the basis period of two tax years where full relief under section 783AF applies to one or both years.

43. New subsections (6) and (8) of new section 204A provide for overlap profits to be calculated by deducting the trading allowance amount for the trade (or the higher of the two amounts where 783AI applies in both tax years) from the overlap profits that would arise apart from Chapter 1 of Part 6A and this new section (defined in subsection (9) as "non-adjusted overlap profit"). Where the trading allowance exceeds the non-adjusted overlap profit, subsection 2(b) provides that overlap profit is nil. This could happen for example in the second tax year of a trade (where section 200(2) applies), a change of accounting date (where section 216(2) applies) or where an individual has more than one trade.

44. Paragraph 6 amends section 227A of Chapter 17, of Part 2, ITTOIA where cash basis is used.

45. Paragraph 7 inserts new sections 227B and 227C of Chapter 17, of Part 2, ITTOIA. This is intended to ensure that no receipts or expenses fall out of account as a result of subsection (2) and (3) of 783AE.

46. New section 227B subsection (2) provides that individuals are treated as having made a cash basis election for those years where subsection (2) and (3) of 783AE apply.

47. New section 227C subsection (2)(a) provides that adjustment income or expenses are brought into account at the end of the first year when the taxpayer first becomes chargeable to tax, where the taxpayer is not chargeable to tax in the year the new basis is adopted. This prevents a taxpayer from having to report adjustment income or expenses in a tax year where they have no chargeable profits from the trade.

48. New section 227C subsection (2)(b) provides that where an amount of adjustment income arises because of this chapter, it is brought in to account wholly in one year and cannot be spread over 6 years.

49. Paragraph 8 inserts a new section 307G in Chapter 5, of Part 3, ITTOIA, to have the effect that the profits of a property business calculated in accordance with Chapter 2, of the New Part, will override the rules for calculating profits, apart from this new section, under Chapter 3, of Part 3, ITTOIA.

50. Paragraph 9 makes consequential changes to section 688 ITTOIA.

51. Paragraphs 10 to 12 make consequential amendments to refer to the new section 204A and the defined expressions in new sections 783BD; 783 AD; 783AB; 783 AC; 783BA; 783BC; 783AA and 783BB.

Part 3 - Commencement

52. Paragraph 13 provides for commencement in tax year 2017 to 2018.

Background note

53. At Budget 2016, the government announced two new £1,000 allowances each for property and trading income to take effect from 6 April 2017. The aim of the measure was to provide simplicity and certainty regarding income tax obligations on small amounts of income from providing goods, services, property or other assets and to help the UK become leaders in the digital and sharing economy. The government announced at Autumn Statement 2016 that the trading allowance will also apply to certain miscellaneous income from providing assets or services.

54. The new Part 6A inserted by this clause and Schedule will provide for full relief on trading and property income of up to each allowance of £1,000. Individuals with gross income of up to the allowance will no longer have to declare or pay tax on this income. This eliminates the need for individuals to determine allowable expenses or contact HM Revenue & Customs (HMRC) to declare the income. The new Part 6A also introduces partial relief, which will apply when gross income is above the level of the allowance, if individuals choose to make an election to pay tax using the alternative method, broadly on their receipts less the value of the allowance, instead of deducting actual expenses. This would also mean that individuals would not have to determine their allowable expenses, providing simplification and certainty. Individuals that have expenses above the level of the allowance such as a typical landlord or person who is self-employed can do the same as now and pay tax on their profits calculated after deducting their actual expenses, and not to elect to use the allowance.

Clause 18 and Schedule 4: Carried-forward losses

Summary

1. This clause and Schedule reform the tax treatment of certain types of carried-forward loss for corporation tax purposes. The legislation takes effect from 1 April 2017.

2. The reform has two aspects. It provides more flexibility in how losses arising on or after 1 April 2017 can be relieved when they are carried forward; and it limits the amounts against which all carried-forward losses (whenever they arise) can be relieved to 50% of profits, subject to an annual allowance.

3. Schedule 1 is set out in 12 parts. Part 1 creates separate rules for losses arising before 1 April 2017, and for losses arising on or after 1 April 2017. Part 2 sets out how the restriction of relief to 50% of profits will operate. Part 3 sets out a new form of group relief for carried-forward losses. Part 4 contains specific rules for insurance companies. Part 5 contains specific rules for creative industries. Part 6 contains specific rules for oil and gas activities. Part 7 contains rules for companies carrying out oil contractor activities. Part 8 contains rules relating to transferred trades. Part 9 contains anti-avoidance provisions. Part 10 contains rules specific to the Northern Ireland rate of corporation tax. Part 11 contains minor and consequential amendments. Part 12 contains commencement provisions.

Details of the clause and Schedule

4. Clause 18 introduces Schedule 14. Clause 1 also includes a power to make further consequential amendments by statutory instrument.

Schedule 4:

Part 1: Amendment of general rules about carrying forward losses

5. Paragraphs 1 to 3 amend the heading and introduction to Chapter 16 of Part 5 of the Corporation Tax Act (CTA) 2009. Chapter 16 will now apply only to non-trading loan relationship deficits arising before 1 April 2017, or arising at any time to companies that are charities.

6. Paragraph 4 inserts new Chapter 16A, comprising new sections 463A to 463I, into Part 5 of CTA 2009.

7. New section 463A introduces Chapter 16A, which applies to non-trading loan relationship deficits arising in accounting periods beginning on or after 1 April 2017 where the company that incurred the deficit is not a charity.

8. New section 463B allows a claim to be made for the whole or part of the deficit arising to be set against profits of any description for the period in which the deficit arises, or to be carried back and set against profits of earlier accounting periods.

9. New section 463C specifies the time limit for making a claim under section 463B, which is 2 years after the end of the period in which the deficit arose, or such further period as an officer of HM Revenue and Customs (HMRC) allows. Section 463C also permits a different claim to be made for different parts of the non-trading deficit for the period.

10. New section 463D applies where the claim under section 463B is for the deficit to be set off against profits for the period in which the deficit arose. The claim must specify the amount of the deficit to be relieved and identify the profits against which it is to be set. Section 463D(4) contains a priority rule - relief under this section is given before any relief for certain losses arising in the year or carried back to the accounting period from a later period. Section 463D(5) prevents relief under this section against ring fence profits in the oil and gas sector, as defined in Part 8 of CTA 2010, or against ring fence profits of oil contractors as defined in Part 8ZA of CTA 2010.

11. New section 463E sets out what happens when a claim is made under section 463B to carry back a deficit to an earlier period. Relief can only be given for an amount that is the smaller of the deficit remaining after relief under section 463D and the company's relievable profits (defined in new section 463F).

12. New section 463F sets out what profits can be relieved under section 463E by carrying back a non-trading loan relationship deficit to an earlier period, which must be a period ending within the period of 12 months immediately before the period in which the deficit arises (see section 463F(2) to (4)). Those profits are profits chargeable under Part 5 of CTA 2009 (loan relationships), but reduced by any relief which must be given in priority (see section 463F(5) for the list of those reliefs).

13. New section 463G sets out how relief is given in later periods for any unrelieved deficits, after giving relief against profits of the same or an earlier period and after any amounts surrendered as group relief. The company may claim to set off some or all of the remaining deficit against its total profits of the next period. The claim must be made within 2 years of the end of the accounting period for which the claim is made or such further period as an officer of HMRC allows. The company does not have to claim the whole amount, and any amount remaining is carried forward and considered under section 463I. Relief under this section cannot be given against profits arising under Part 8 of CTA 2010 or Part 8ZA of CTA 2010.

14. Section 463G(12) and (13) sets out specific rules in the case of a deficit that is partly a "shock loss" arising to a company that is a Solvency 2 insurance company.

15. New section 463H applies where an investment business becomes small or negligible in the period in which a deficit arose or a later period. A non-trading loan relationship deficit may be carried forward and set only against non-trading profits in future accounting periods. Section 463H also applies where the accounting period immediately following the period in which the deficit arose is an excluded accounting period of a general insurance company, or where the amount that would otherwise be eligible to be carried forward is wholly a "shock loss".

16. New section 463I applies where an amount is carried forward under section 463G but is not set off against profits of the first period in which those deficits could be relieved or surrendered as group relief. Any remaining amount can be the subject of a claim by the company under section 463G for set-off against total profits in a later period. This applies where in the later period the company has neither ceased to be a company with investment business, nor, where it was a company with investment business immediately before the beginning of the later period, had an investment business become small or negligible. Again, the company does not have to claim the full amount available.

17. Paragraph 5 amends section 753(3) of CTA 2009, part of the Intangible Fixed Assets legislation. It introduces a different term so that amounts of non-trading losses on intangible fixed assets that are carried forward to a later period can be treated separately and given the correct treatment under the new rules. Under current rules a non-trading loss on intangible fixed assets is carried forward and treated as a debit arising in a later period and aggregated with any non-trading intangible credits of the later period. This amendment has the effect that a non-trading loss on intangible fixed assets that is not used in an accounting period will be carried forward and set against a company's total profits of a later accounting period under the rules for carried-forward losses, instead of being aggregated with any intangible non-trading credits of a later accounting period. Where the company ceases to have investment business, its non-trading losses on intangible fixed assets may no longer be carried forward and claimed against future profits.

18. Paragraph 6 amends section 1223 of CTA 2009 (expenses of management of an investment business).

19. Paragraph 6(2) amends section 1223(1)(b) of CTA 2009 to bring within the scope of section 1223 amounts brought forward from an earlier period where a company is unable to, or decides not to, claim all of those amounts in the current period. This then permits any remaining unclaimed amounts to be carried forward to a later period under section 1223(3). Paragraph 144 makes a further amendment to section 1223(1)(b) of CTA 2009. Taken together these amendments ensure that section 1223 applies correctly where expenses of management are eligible to be carried forward and set against total profits of a later accounting period.

20. Paragraph 6(3) inserts new subsections (3A) to (3E) into section 1223 of CTA 2009. Subsections (3B) to (3D) require that a claim must be made to deduct excess expenses of management in the next accounting period, but the claim need not be made for the full amount available. Before this change, a claim was not required. Where expenses of management are carried forward to a later period, subsection (3E) removes the requirement in section 1219(1A) of CTA 2009 that those expenses of management must be set off before any other deductions against total profits.
21. Paragraph 7 introduces amendments to Chapter 2 of Part 4 of CTA 2010 (trade losses).
22. Paragraph 8 amends the wording of section 36(1) of CTA 2010 so that it refers to all forms of relief for trade losses.
23. Paragraph 9 amends the heading before section 37 of CTA 2010.
24. Paragraph 10 amends section 45 of CTA 2010, which provides relief for trade losses carried forward against trade profits of a subsequent period, so that it applies only to losses arising before 1 April 2017.
25. Paragraph 10(5) introduces new subsections (4A) to (4C) into section 45. These new subsections allow a claim to be made to specify that an amount of trade profits of an accounting period beginning on or after 1 April 2017 are not to be reduced by a trade loss carried forward. The claim must be made within two years after the end of the accounting period specified, or within such further period as an officer of HMRC allows.
26. Paragraph 11 inserts new sections 45A to 45H into Part 4 of CTA 2010.
27. New section 45A provides for relief for a trade loss where all or part of the loss is not relieved against total profits in the period of the loss nor surrendered as group relief in that period. Any remaining part of the loss is carried forward (section 45A(4)) and may, on the making of a claim, be set against total profits of a later period (section 45A(5)).
28. Section 45A(2) excludes from section 45A any losses arising in a “ring fence trade” within Part 8 of CTA 2010 (oil activities).
29. Section 45A(3) imposes restrictions such that a trade loss may not be carried forward to the later period and set against total profits if:
    - The trade became small and negligible in the period in which the loss arose;
    - Relief was unavailable in the year the loss arose under section 37 CTA 2010 because of certain specific exclusions, for example, section 37(5) CTA 2010 (trade carried on wholly abroad), section 44 CTA 2010 (trade not carried on a commercial basis), section 1209 CTA 2009 (losses of a separate film trade in a pre-completion period); or,

- Relief would be unavailable under section 37 CTA 2010 for any loss that arose in the period to which the claim relates because in that period, the trade was not carried on commercially (section 44 CTA 2010).
- The loss is made by an insurance company and is a shock loss

30. Where one or more of these conditions applies, the loss may be available to be carried forward and set against profits from the same trade under new section 45B of CTA 2010.
31. Section 45A(7) sets out that the claim must be made within two years after the end of the later period or within such further period as an officer of HMRC allows.
32. New section 45B applies where a trade loss arises on or after 1 April 2017, the trade is carried on in the next accounting period, but the conditions for carrying forward the loss and claiming relief against total profits in section 45A are not met. The amount of the unrelieved loss is carried forward and relief given against profits of the same trade of the next accounting period (section 45B(3) and (4)). The company may however make a claim within two years of the end of that next accounting period for any part of that loss not to be relieved against the trade profits of that period (section 45B(5)).
33. New section 45C allows a trade loss carried forward under section 45A that remains unrelieved to be carried forward to a further period in which the trade is carried on, and a claim to be made under section 45A for the whole or a part of that loss to be relieved against the company's total profits of that further period.
34. Section 45C(2) specifies that the loss may not be carried forward to that further period and set against total profits if:

    - The trade became small or negligible in the period from which the loss was carried forward under section 45A; or
    - Relief would be unavailable under section 37 of CTA 2010 for any loss that arose in the further period because, in that further period, the trade was not carried on commercially (section 44 of CTA 2010).

    Where either of these conditions is not satisfied, relief may be considered under new section 45D.

35. New section 45D applies where a trade loss carried forward under section 45A CTA 2010 remains unrelieved, but the loss cannot be carried forward to a further period and relief claimed against total profits under section 45A because the conditions in section 45C(2) of CTA 2010 (outlined above) are not met. Providing the trade continues in that further period, the amount of the unrelieved loss is carried forward under section 45B and relief given against profits of the same trade of the further accounting period. The company may make a claim under section 45B for any part of that loss not to be relieved against the trade profits of that further period.

36. New section 45E allows a trade loss carried forward under section 45B that remains unrelieved to be carried forward to a further period in which the trade is carried on, and relief given against profits of the same trade of that further accounting period under section 45B (see section 45E(2)). The company may make a claim under section 45B for any part of that loss not to be relieved against the trade profits of that period.

37. New section 45F introduces a form of terminal loss relief where trade losses are carried forward to an accounting period in which a trade ceases. Any unrelieved trade losses may be set against profits of the 3-year period ending with the end of the period in which the trade ceased (section 45F(3)). Relief cannot be claimed under this section for the period in which the loss arose, any prior period and any period beginning before 1 April 2017 (section 45F(4)). The loss is set off either against profits of the same trade where losses are carried forward under section 45 or 45B, or against total profits where losses are carried forward under section 45A (section 45F(7)). The claim must be made within two years after the end of the accounting period in which the trade ceases, or within such further period as an officer of HMRC allows (section 45F(6)).

38. New section 45G sets out how to compute the relief where an accounting period falls partly within the 3 year period set out in section 45F.

39. New section 45H is an anti-avoidance rule to counteract arrangements involving a cessation of a trade and a transfer of all or part of the trade to a party outside the charge to corporation tax. The section denies relief under section 45F where the conditions are met. This rule is the equivalent to section 41 of CTA 2010, which applies to the existing relief for terminal losses.

40. Paragraph 12 introduces amendments to Chapter 4 of Part 4 of CTA 2010 (losses from a property business).

41. Paragraph 13 amends section 62 of CTA 2010. It introduces new subsections (5A) to (5D) which require a claim to be made for these types of losses to be carried forward and set against profits of a later period, and which also permit the company to claim some or all of the amount available.

42. Paragraph 14 amends section 63 of CTA 2010. This section applies where a company ceases to carry on a UK property business, but the company continues to carry on an investment business after the UK property business has ceased. Any unrelieved losses from the property business can be carried forward and relieved as expenses of management of the investment business. New subsections (4) to (7) are inserted. A claim will now be required for these carried-forward amounts to be set against later profits. The company may claim some or all of the amount available. In addition, the priority rule in section 1219(1A) of CTA 2009 is disapplied where expenses of management are carried forward to a later period so that the company will not be required to set off those expenses of management in priority to other reliefs.

Part 2: Restriction on deductions in respect of carried-forward losses

43. Paragraph 15 introduces amendments to CTA 2010.

44. Paragraph 16 inserts a new Part 7ZA, comprising new sections 269ZA to 269ZZB, into CTA 2010.

45. New section 269ZA gives an overview of the new Part 7ZA, which provides for restrictions in the amount of certain deductions that can be made in computing taxable total profits.

46. New section 269ZB sets out how the new restriction applies where trading losses are carried forward and can only be set against later profits from the same trade (section 269ZB(2)). These are all trade losses arising before 1 April 2017 (pre-1 April 2017 losses) and certain types of trade losses arising on or after 1 April 2017 (post-1 April 2017 losses) such as those arising from uncommercial activities. The maximum that can be deducted under this section (the "relevant maximum") is set out in section 269ZB(5). It is the sum of the proportion (if any) of the annual £5m allowance that the company has designated to be set against trading profits plus 50% of the company's trading profits in excess of that proportion of the annual allowance ("relevant trading profits", defined in new section 269ZF). Section 269ZB(8) ensures that the trading profits deductions allowance cannot exceed the difference between:

    - the company's total deductions allowance available for the period, and
    - the non-trading deductions allowance (see new section 269ZC) plus the BLAGAB trade profits deductions allowance (see new section 124D of FA 2012).

47. New section 269ZC has the same effect as section 269ZB, but in respect of non-trading loan relationship deficits that can be carried forward and set only against non-trading profits of later periods. These are pre-1 April 2017 non-trading loan relationship deficits, and deficits arising at any time to a company that is a charity. Section 269ZC(6) ensures that the non-trading deductions allowance cannot exceed the difference between:

    - the company's total deductions allowance available for the period, and
    - the trading deductions allowance (section 269ZB) plus the BLAGAB trade profits deductions allowance (section 124D of FA 2012).

48. New section 269ZD sets out how the amount of profit that can be relieved by carried-forward losses is determined where relief is given against total profits of a later period. The maximum amount of carried-forward losses that can be set against total profits is the difference between the "relevant maximum" and the amounts given under section 269ZB, sections 457(3) and 463H of CTA 2009, and sections 124(5), 124A(5) and 124C(6) of FA 2012 (see section 269ZD(2)). The types of carried-forward relief involved ("relevant deductions") are set out at section 269ZD(3). The "relevant maximum" (section 269ZD(4)) is the sum of the company's share of the annual deductions allowance plus 50% of the company's "relevant profits" (section 269ZD(5), section 124D of FA 2012 and new section 269ZF).

49. Section 269ZD(5) sets out how to compute "relevant profits" for an accounting period. "Relevant profits" are the sum of "relevant trading profits", "relevant non-trading profits" (both defined in new section 269ZF) and "relevant BLAGAB trade profits" (see section 124D of FA 2012).

50. New section 269ZD(6) specifies that the amount of a company's deductions allowance is computed in accordance with either new section 269ZR where the company is a member of a group, or new section 269ZW otherwise.

51. New section 269ZE applies only to insurance companies and provides a restriction on deductions from total profits.

52. Section 269ZE(1) amends section 269ZD(2) where certain conditions are met so that the amount of relevant deductions arising for the accounting period cannot exceed the modified loss cap as determined under section 269ZE(6). Section 269ZE(2) sets out the conditions, which are:

    - The company carries on basic life assurance and general annuity business and is charged to corporation tax under section 68 of FA 2012 and has an I minus E profit for the accounting period,
    - The policyholders share of the I minus E is not the whole of the I minus E profit
    - The "adjusted shareholders' I minus E profits for the accounting period is less than the "BLAGAB-related loss capacity".

53. Section 269ZE(4) defines "adjusted shareholders' I minus E" as being equal to the shareholders' share of the I minus E profit (see section 269ZE(9)) less any "excess capacity". "Excess capacity" is defined in section 269ZE(8) and is the amount by which the step 2 amount within section 269ZF(3) is less than the step 2 amount would have been had total profits been modified to exclude only the policyholders' share of the I minus E profit (see section 269ZE(10)) for the accounting period rather than the whole of the I minus E profit for the accounting period.

54. Section 269ZE(4) defines "BLAGAB-related loss capacity" as being equal to A + B – C where:

- A is 50% of the company's relevant BLAGAB trade profits for the accounting period,
- B is the company's BLAGAB trade profits deduction allowance for the period,
- C is the total of any carried forward BLAGAB trade losses deducted by the company for the accounting period under sections 124(5), 124A(5) and 124C(6).

55. Section 269ZE(5) determines how the modified loss cap is calculated using the following steps:

    - Step 1 requires the "basic loss cap" to be found. Section 269ZE(6) defines this as the difference referred to in the opening words of section 269ZD(2),
    - Step 2 provides that the basic loss cap is reduced by the BLAGAB-loss related capacity (as determined by section 269ZE(5)),
    - Step 3 provides that the amount that arises from steps 1 and 2 is increased by the amount if the adjusted shareholders' I minus E profit (as determined by section 269ZE(4)). The result provides the amount of the modified loss cap and the amount of relevant deductions that can be made for the accounting period.

56. New section 269ZF sets out how to calculate "relevant trading profits" and "relevant non-trading profits" for the purposes of section 269ZD. "Relevant trading profits" is the difference between "qualifying trading profits" and the "trading profits deductions allowance" (section 269ZF(1)); and "relevant non-trading profits" is the difference between "qualifying non-trading profits" and the "non-trading profits deductions allowance" (section 269ZF(2)). In neither case can the "relevant" profit be less than zero. Both types of "qualifying profit" are computed in accordance with section 269ZF(3) and (4).

57. Section 269ZF(3) contains 5 steps:

    - Step 1 is to compute the company's "modified total profits" (as defined in section 269ZE(4)).
    - Step 2 is to identify any amounts that can be relieved against total profits (such as group relief for current year losses), ignoring any "excluded deductions": see section 269ZE(5).
    - Step 3 is to divide the profits computed under step 1 into "trade profits" and "non-trade profits".

- Step 4 is then to apply the reliefs identified at step 2 to reduce the profits at Step 3, but without reducing any amount below zero. This gives the final amounts of the company's "qualifying trading profits" and "qualifying non-trading profits" (step 5).

58. Section 269ZF(4) sets out the modifications to be made to total profits for the purposes of the loss restriction calculation. The modifications exclude from the calculation of total profits for these purposes the following:

    a. Any income from distributions within the scope of Part 9A of CTA 2009. However, where that income constitutes trading income within Part 3 of CTA 2009 it will not be excluded from total profits for the purposes of computing the carried-forward losses that the company can use;

    b. Any oil ring-fence profits or oil contractor ring-fence profits; and

    c. Any "I minus E" profit of an insurance company, but not BLAGAB trade profits.

    d. pre-1 April 2017 trade losses, or post-1 April 2017 trade losses that can be set only against profits of the same trade (for example those arising from uncommercial activities), with the exception of certain losses that are excluded from the restriction (losses of a film trade, television programme trade, video game trade, theatrical trade, orchestral trade, UK or EEA furnished holiday lettings business, insurance company shock losses, oil ring fence losses and oil contractor ring fence losses,);

    e. restricted deductions relating to oil activities under section 303B or section 303D of CTA 2010 (inserted by Part 6); and

    f. pre-1 April 2017 non-trading deficits from loan relationships.

59. Section 269ZF(5) sets out the "excluded deductions" for the purposes of the calculation at step 2 in section 269ZF(3). These are deductions that are subject to the loss restriction and losses that arose in a period earlier than the period in which the loss or other amount arose.

60. New section 269ZG sets out that accounting periods of general insurance companies are excluded from the restrictions in sections 269ZB to 269ZE when conditions A and B are met (section 269ZG(2)). When these conditions are met the company can deduct its losses against its profits of that accounting period in full.

    - Condition A is comprised of three parts. The first is that the company is subject to insolvency procedures at the end of the accounting period. Second, immediately before the company became subject to those procedures it was unable to pay its debts as they fell due. Finally, at that date there was no realistic prospect of the company writing new insurance business because of its liabilities in respect of qualifying latent claims.

- Condition B is that at the end of the accounting period there is no realistic prospect that the company will write new insurance business because of its liabilities in respect of qualifying latent claims (section 269ZG(4)).
- A company is a general insurance company if it is authorised to effect or carry out contracts of general insurance as defined in section 269ZG(8). However, friendly societies and insurance special purpose vehicles within the meaning of section 139 of FA 2012 are not general insurance companies (section 269ZG(7)).
- Liabilities for the purposes of Conditions A and B include both contingent and prospective liabilities (section 269ZG(8)).

61. New section 269ZH sets out the circumstances in which a company is considered to be subject to insolvency procedures for the purposes of section 269ZG. There are four circumstances – the company is in liquidation, in administration, or in receivership; or a "relevant scheme" has effect in relation to the company. A relevant scheme means a scheme or arrangement as defined in the Companies Act or if the company is resident outside of the United Kingdom an equivalent scheme of that country (section 269ZH(5)).
62. New section 269ZI defines qualifying latent claims for the purposes of section 269ZG. A claim is a qualifying latent claim if it meets conditions A to C.

- Condition A is that the claim relates to a risk that could not reasonably have been foreseen by the company at the time it wrote the insurance policy, and it is likely that the terms of the policy would have been significantly different if it was aware of this risk. For example, the health risk of exposure to asbestos was not known in the 1970s and was consequently not taken into account in employer liability policies written at that time. However, the condition will not be met when the company was aware of that type of claim but failed to adequately anticipate the scale or cost of claims.
- Condition B is that the latency period of the claim is greater than 10 years. This is the period between the insured event and the notification of the claim. It is calculated by taking the mean period for each type of claim satisfying Condition A.

- Condition C is that the insurance policy, or part of the insurance policy, under which the claim was made is either an employer's liability policy or a public or product liability policy. These terms are defined in section 269ZI(9). An employer's liability policy is a policy insuring against the risk of an employer incurring liabilities to their employees in the course of their business. A public or products liability policy is a policy that insures a business against the risk of incurring liabilities to third parties arising in the course of its business. This would include for instance liabilities arising from its products or operations. The condition will be met if the claim is made under a general liability policy so long as part of the policy covers employer's liability or public or product liabilities.
- For the purposes of this section it does not matter whether the claim has already been notified or not.

63. New section 269ZJ sets out that shock losses made by an insurance company are not restricted under this Part. An insurance company is defined in new section 269ZP. The meaning of shock loss is defined in new section 269ZK.

    a. Section 269ZJ(1) sets out that shock losses carried forward to an accounting period and deducted from trading profits under section 45B are excluded from the calculation of relevant trading profits in section 269ZB(3). This means that an insurance company can deduct shock losses up to the amount of its trading profits.

    b. Section 269ZJ(2) sets out that shock losses carried forward to an accounting period and deducted under section 463H of CTA09 are excluded from the calculations of relevant non-trading profits (section 269ZC). This means that an insurance company can deduct shock losses up to the amount of its non-trading profits.

    c. Section 269ZJ(3) sets out that shock losses are not relevant deductions for the purpose of section 269ZD.

64. New section 269ZK provides for an insurance company to claim that losses of an accounting period are shock losses to the extent that they arose in a solvency shock period (defined in new section 269ZM). The company must specify which losses are included in the claim and the solvency shock period. This can be any 12 month period provided it is a solvency shock period. The company can make a claim in respect of more than one solvency shock period. The ability to make a claim is subject to the conditions in section 269ZK(3). The first condition is that the accounting period in which the loss specified in the claim arose (the loss making period) began on or after 1 April 2017 (paragraph 190 provides rules for determining the accounting periods for periods that straddle 1 April 2017). Second, that loss must be capable of being carried forward to an accounting period. Finally, there must be one or more days in common between the loss making period and the 12 month period specified in the claim. If these conditions are satisfied then the loss specified in the claim will be a shock loss. If the loss making period and the 12 month solvency shock period are not the same then the losses of the accounting period are apportioned by the number of days in the accounting period that fall within the solvency shock period (section 269ZK(6)). The result is the shock loss. Where there is more than one solvency shock period, and part of these overlap, section 269ZK(2) ensures that the overlapping days are not included twice in the time apportionment. If time apportionment produces a result that is unjust or unreasonable then the apportionment should be made on a just and reasonable basis.

65. New section 269ZL sets out the requirements for a claim to be valid. The claim must state the company's solvency capital requirement at the beginning of the solvency shock period, as well as the company's shock loss threshold (new section 269ZN) and solvency loss (new section 269ZO). The company must also submit with the claim information corresponding to the information it submits in its regulatory returns (section 269ZL(1)(b)(i)) and a report provided by the chief actuary. For a third country insurance undertaking the report should be prepared by a person with equivalent functions to the chief actuary. In this report the chief actuary must confirm that the information submitted with the return is prepared in accordance with the relevant requirements (defined in section 269ZL(3)) for its report on solvency and financial condition and that the calculations of the shock loss threshold and solvency loss comply with sections 269ZN and 269ZO.

66. New section 269ZM defines a solvency shock period. This is any 12 month period in which the insurance company's solvency loss exceeds its shock loss threshold. The threshold will be passed when the reduction in the insurance company's basic own funds exceeds 90% of its solvency capital requirement, which represents a 1 in 100 year loss event. Both the movement in basic own funds and the solvency capital requirement are subject to adjustments outlined in sections 269ZN and 269ZO. These adjustments ensure the comparison is like for like so that less severe loss events do not exceed the shock loss threshold.

67. New section 269ZN defines the shock loss threshold. The threshold is equivalent to 90% of the shareholder's part of the company's solvency capital requirement. It is calculated by determining the company's solvency capital requirement. If this includes an adjustment for loss absorbing capacity of deferred taxes (see section 269ZN(7)) then this should be calculated under the assumption that the losses are shock losses and not subject to the restrictions under this Part. The result is the company's adjusted SCR. The next step is to calculate the deductible amount for each of the company's relevant ring fenced funds (defined in section 269ZN(2)). This is the lesser of the policyholder's basic own funds within the fund at the beginning of the 12 month period and the notional solvency capital requirement (section 269ZP) of that fund. The policyholder's basic own funds is found by deducting the value of future transfers to attributable to shareholders and certain restricted own-fund items from the total basic own funds within the relevant ring-fenced fund. These restricted own-fund items are those which are certified by the with-profits actuary as meeting the conditions in subsection (4). These conditions reflect items of value that the company could withdraw from the relevant ring-fenced fund in certain circumstances. The total of the deductible amounts is then subtracted from the gross of tax SCR. This ensures that the shock loss threshold is reduced by any basic own funds in a with profits fund attributable to shareholders. However, if the with profits fund is under capitalised and the insurance company is required to support the fund in accordance with Solvency II then the company's capital providing this support is still included in the shock loss threshold. After the deductible amount is subtracted, the shock loss threshold is the resulting figure multiplied by 90%. If an insurance company is a third country insurance undertaking as defined in new section 269ZP then it should calculate its shock loss threshold as though it were an insurance undertaking. This means it will have to calculate its Solvency Capital Requirements in accordance with the Solvency II directive and make the relevant adjustments.

68. New section 269ZO sets out how to calculate the company's solvency loss. The solvency loss is the reduction in basic own funds over the 12 month period. It is calculated by deducting basic own funds at the end of the period from those at the start of the period. In order to ensure that the calculation of the solvency loss is aligned with the calculation of the threshold (in section 269ZN), the calculation of basic own funds (in section 269ZO(2)) must be determined on a basis that fairly represents the method that the company uses to calculate its solvency capital requirement. This ensures that the calculation in section 269ZO(2) only takes into account movements in basic own funds that would be taken account of in the company's solvency capital requirement calculation (section 269ZO(5)). For example, movements such as dividends or capital issues which are not attributable to losses modelled in the solvency capital requirement are removed from the calculation. Movements in the risk margin and pension liabilities are also ignored because these are not included in the solvency capital requirement calculation. There are two further adjustments to the company's opening and closing basic own funds for the purposes of the comparison at subsection (2). Basic own funds within a with-profits fund that are attributable to policyholders are deducted from the company's opening and closing basic own funds. Basic own funds attributable to policyholders are calculated by deducting shareholder support arrangements (subsection 10(b)) and the value of future transfers attributable to shareholders. This ensures that only losses borne by shareholders are included in the solvency loss calculation. The second adjustment is that closing basic own funds is calculated on the basis that the 12 month period is a solvency shock period. This means that the value of the deferred tax assets created because of the solvency shock losses should not be restricted to 50%.

69. New section 269ZP provides definitions for sections 269ZI to 269ZO.

70. New section 269ZQ gives the Treasury the power to amend by regulation sections 269ZJ to 269ZP, and sections 124A to 124E of FA 2010. This power is limited to changes that become necessary in consequence of changes to financial regulation.

71. New section 269ZR sets out how to calculate the deductions allowance for a company that is part of a group. The group may allocate a share of the group's annual £5m allowance to the company (see new sections 269ZS to 269ZV) and in addition the company may have a proportion of its own annual allowance (for a part of a period when it was not a member of a group) - but in aggregate a company can never receive an allowance greater than £5m for any period of 12 months (section 269ZR(2)).

72. New section 269ZS sets out the arrangements for determining and allocating a group deductions allowance. The section enables a group to make a “group allowance nomination” whereby a nominated company is appointed by the members of a group (section 269ZS(1)(b)). All members of the group must agree to the nomination (section 269ZS(1)(b) and section 269ZS(6)). The nomination can take effect before the date it is made (see section 269ZS(5)). Where the nomination is in effect throughout an accounting period of the nominated company, the group will have a total allowance of £5m for that accounting period (section 269ZS(2)); otherwise the allowance is reduced proportionately (section 269ZS(3)). If the nominated company’s accounting period is less than 12 months the allowance is again reduced proportionately (section 269ZS(4)).

73. Section 269ZS(7) sets out the circumstances in which the group allowance nomination ceases to have effect.

74. New section 269ZT sets out certain requirements for submission of a “group allowance allocation statement”. The statement must be filed by the nominated company no later than 12 months after the end of the accounting period (section 269ZT(4)) or a later period if an officer of HMRC allows it (section 269ZT(5)).

75. New section 269ZU sets out the circumstances in which a revised group allowance allocation statement may be submitted. The time limit for doing so is the later of:

   - 12 months from the filing date for the company tax return for the nominee’s accounting period, and
   - the time when any enquiry into that return is finalised (section 269ZU(4)).

   A revised allocation statement may be submitted at a later time if an officer of HMRC allows (section 269ZU(5)).

76. New section 269ZV sets out the requirements for what must be included in a group allowance allocation statement. The total amounts allocated must not exceed the “group deductions allowance” for the nominee’s accounting period (section 269ZV(6)) and the amount allocated to a company must not exceed the proportion of that allowance due for the period in which the company is a group member (section 269ZV(5)). If the amounts allocated exceed these limits, the statement must be amended (section 269ZV(7) and (8)). If it is not amended, an officer of HMRC may make an amendment and must notify each company (section 269ZV(9) and (10)). The normal time limits for amendment of a company tax return do not apply where the amendment is a consequence of the submission of a group allowance allocation statement (section 269ZV(11)).

77. New section 269ZW provides for the deductions allowance for a company that is not a member of a group. The allowance is £5m for an accounting period of 12 months, reduced proportionately for any accounting period that is less than 12 months.

78. New section 269ZX increases a company's deductions allowance in certain circumstances where there has been a reversal of an onerous lease provision. Where a company's "specified profits" are greater than nil and a "relevant reversal credit" has been brought into account, then the company's deductions allowance for the accounting period is increased by the amount of the relevant reversal credit or, if lower, the amount of the specified profits. "Specified profits" means the sum of the company's total profits, calculated with the modifications in section 269ZF(4), plus any I-E profit of the accounting period.

79. New section 269ZY defines "relevant reversal credit". It is a credit or other income brought into account in respect of the "relevant reversal" of a "relevant onerous lease provision".

80. Section 269ZY(2) defines "relevant onerous lease provision". A provision in a company's accounts is a "relevant onerous lease provision" if it relates to a lease of land in which the company is the tenant, the provision is required for accountancy purposes as a provision for an onerous lease, and the lease was entered into at arm's length.

81. Section 269ZY(3) defines "relevant reversal". The reversal of a relevant onerous lease provision is a "relevant reversal" if the reversal is required for accountancy purposes due to an arrangement made at arm's length under which the tenant company's obligations under the lease are varied or cancelled, section 269ZY(4) does not apply and at least one of conditions X, Y and Z in section 269ZY(7) is met. Section 269ZY(4) applies where the tenant company and the landlord are connected when the arrangement to amend the company's obligations is made, or the landlord who granted the lease and the tenant to whom the lease was granted were connected at the time the lease was granted.

82. Section 269ZY(5) gives a further definition of "relevant reversal" where the reversal would be a relevant reversal under section 269ZY(3) but for the tenant company and the landlord being connected. This definition applies where the tenant company and the landlord are in the same group of companies, with a group relationship having the meaning in section 152 of CTA 2010. The lease must be granted out of another lease, known as "the superior lease". The reversal is only a "relevant reversal" where it would have been a relevant reversal under section 269ZY(3) but for the connection test. Therefore the other conditions within section 269ZY(3) must be met by the arrangement for section 269ZY(5) to apply. The arrangement to vary or cancel the tenant company's lease must substantially reflect the arrangement made at arm's length by the landlord company in respect of its obligations under the superior lease. If section 269ZY(6) applies then the reversal is not a relevant reversal.

83. Section 269ZY(6) applies if the landlord or tenant company is connected to the landlord under the superior lease at the time that the arrangement to vary or cancel the obligations under the superior lease is made, or if the landlord who granted the superior lease and the tenant to whom that lease was granted were connected when the lease was granted. The combined effect of section 269ZY(5) and (6) is that where a group has a property management company that enters into leases with third parties, and then the property management company subsequently enters into leases with other companies in the group, the reversal of an onerous lease provision relating to the lease between the group companies can still be a "relevant reversal", subject to the other conditions being met, despite the tenant and landlord companies being connected..

84. Section 269ZY(7) sets out the conditions referred to in 269ZY(3). One of the following conditions must be met for the reversal of a relevant onerous lease provision to be a "relevant reversal":

    i. Condition X: it is reasonable to suppose that immediately before the tenant company entered into the arrangement varying or cancelling its obligations under lease, there was a material risk that at some time in the next 12 months the company would be unable to pay its debts as they fell due, and the sole or main purpose of the arrangement was to avert that risk.

    ii. Condition Y is that the tenant company is in insolvent administration.

    iii. Condition Z is that the tenant company's arrangement is, or is part of, a statutory insolvency arrangement.

85. The effect of section 269ZY(7) is that the reversal of an onerous lease provision is only a "relevant reversal", and therefore the deductions allowance is only increased, where the company has either entered into a formal insolvency arrangement, or has entered into the arrangement to vary or cancel its obligations under the lease with the sole of main purpose of averting the risk that the company cannot pay its debts as they fall due within the next 12 months.

86. New section 269ZZ requires a company to specify the amount of its deductions allowance in its company tax return for the accounting period.

87. New section 269ZZA requires a company to amend its company tax return if it has specified an amount of deductions allowance, trading profits deductions allowance or non-trading profits deductions allowance that is excessive. HMRC has the power to make assessments to recover tax where the amount of a deductions allowance is excessive.

88. New section 269ZZB sets out the meaning of a group for the purposes of the deductions allowance. It is based on, but wider in scope than, the definition used in Part 5 of CTA 2010 for group relief purposes. A group comprises the ultimate parent and its subsidiary companies. The ultimate parent is a company that is a parent of another company where no other company is the parent of both companies (see section 269ZZB(3)).

89. Section 269ZZB(4) specifies that a company (A) is a parent company of another company (B) if:

    - B is a 75% subsidiary of A;
    - A is beneficially entitled to at least 75% of B's profits available for distribution to equity holders; or
    - A would be beneficially entitled to at least 75% of any of B's profits available for distribution to equity holders on a winding up.

90. Section 269ZZB(5) defines equity holders as for group relief (see chapter 6 of Part 5 CTA 2010).

91. Section 269ZZB(7)(a) provides that in the case of a company without ordinary share capital, the tests in section 269ZZB(4) are instead applied to any holding or interest which provides economic rights that correspond to those provided by ordinary share capital ("corresponding ordinary holding," see section 269ZZB(8)). The tests can also be applied to an unincorporated association (section 269ZZB(7)(b)) and to ownership through entities (other than companies), trusts or arrangements (section 269ZZB(7)(c)).

92. Paragraph 17 amends section 269C of CTA 2010, which is part of the legislation on the restriction of certain deductions for banking companies (bank loss restriction) in Part 7A of CTA 2010. The amendment makes it clear that for banking companies, Part 7A applies in addition to the new Part 7ZA (general loss restriction) introduced by this Schedule.

93. Paragraph 18 amends section 269CA of CTA 2010 (which covers the restriction for pre-1 April 2015 trading losses in Part 7A) so that the definition of "relevant trading profits" used for the purposes of the bank loss restriction is the same as that used for general loss restriction (see section 269ZE).

94. Paragraph 19 amends section 269CB of CTA 2010 (which covers the restriction for pre-1 April 2015 non-trading deficits from loan relationships) so that the definition of "relevant non-trading profits" used for the purposes of the bank loss restriction is the same as that used for general loss restriction (see section 269ZE).

95. Paragraph 20 amends section 269CC of CTA 2010 (which covers the restriction for expenses of management arising before 1 April 2015) so that the definition of "relevant profits" used for the purposes of the bank loss restriction is the same as that used for general loss restriction (see section 269ZF). The amendment also specifies that the maximum expenses of management that can be relieved ("relevant maximum") is the difference between 25% of the "relevant profits" and the amounts of any relief given for:

- pre-1 April 2017 trade losses;
- post-1 April 2017 trade losses that can be set only against profits of the same trade, (for example those arising from uncommercial activities);
- pre-1 April 2017 non-trading deficits from loan relationships; and
- non-trading deficits from loan relationships arising at any time to companies that are charities.

96. Paragraph 21 omits section 269CD of CTA 2010 which is no longer required as the definitions of "relevant trading profits", "relevant non-trading profits" and "relevant profits" used are the same as for the general loss restriction (see sections 269ZE and 269ZF).

97. Paragraph 22 amends section 269CN of CTA 2010 to bring the definitions of "relevant trading profits", "relevant non-trading profits" and "relevant profits" in line with the definitions for the general loss restriction (see sections 269ZE and 269ZF).

Part 3: Group relief for carried-forward losses

98. Paragraph 23 inserts a new Part 5A, comprising new sections 188AA to 188FD, into CTA 2010.

99. New section 188AA (Chapter 1) introduces the new Part 5A of CTA 2010, which brings in a new relief named "group relief for carried-forward losses". This relief applies for groups and consortia.

100. New section 188BA provides an overview of Chapter 2 of Part 5A, which covers the surrender of a company's carried-forward losses. Chapter 2 sets out rules relating to how amounts may be surrendered, and how the amount that may be surrendered is calculated.

101. New section 188BB permits a company to surrender certain types of carried-forward losses (specified in section 188BB(1)) for use by another group company as relief for carried-forward losses. These are losses arising on or after 1 April 2017 that can be carried forward and set against a company's total profits. For example, trading losses carried forward under new section 45A of CTA 2010 may be surrendered under Part 5A, but trading losses carried forward under new section 45B cannot, as these can only be set against profits of the same trade. Section 188BB(3)-(5) provides similar rules for life insurance companies. Sections 124A and 124C of FA 2012 require carried-forward BLAGAB trade losses that arise on or after 1 April 2017 to be set first against trading profits, and section 188BB(3)-(5) allows any remaining unused amounts to be surrendered. The surrender is effected by way of consent to one or more claims (section 188BB(6)).

102. New section 188BC prevents the surrender of any carried-forward losses arising before 1 April 2017, and any qualifying charitable donations that are treated as expenses of management.

103. New section 188BD applies where an investment business has become small or negligible. When this happens, the company may not surrender under Part 5A any carried-forward amounts that are non-trading loan relationship deficits, expenses of management or UK property business losses.

104. New section 188BE prevents the surrender of losses under Part 5A if the company has the capacity to use the losses against its own profits. For example, where the company has carried-forward losses but has chosen not to use these up to the maximum limit set out in section 269ZD(2).

105. New section 188BF prevents a company surrendering losses under this Part where it has no assets capable of producing income at the end of the period. This is to prevent groups maintaining otherwise dormant companies in order to access their losses.

106. New section 188BG prevents certain insurance companies from surrendering particular losses under this Part. Section 188BG(1) applies where a company is a general insurance company and the surrender period is an excluded accounting period in accordance with section 269ZG. Section 188BG(3) applies where the company is a Solvency 2 insurance company. A Solvency 2 insurance company cannot surrender particular losses so far as the amount is a shock loss. The losses restricted by this section, for both general insurance companies and Solvency 2 insurance companies, are non-trading losses on intangible fixed assets, management expenses and property losses.

107. New section 188BH applies certain restrictions to the amount of loss that may be surrendered by a UK resident company. A loss may not be surrendered if it is attributable to an overseas permanent establishment and relief for that loss could be obtained in the territory where the permanent establishment is situated.

108. New section 188BI applies certain restrictions to the amount of loss that may be surrendered by a non-UK resident company trading in the UK through a permanent establishment in the UK. A loss may only be surrendered by an EEA-resident company if conditions A and B are met and by any other company if conditions A, B and C are met (see below).

- Condition A requires that the losses must arise from an activity in respect of which the company is within the charge to UK corporation tax in the period in which the loss was made;
- Condition B requires that the loss is not attributable to any activity that is exempt for double taxation purposes;
- Condition C requires that the loss cannot be relievable against profits of any person in any other territory.

109. New section 188BJ applies the effect of section 109 of CTA 2010 (which is in Part 5 that covers group relief) to group relief for carried-forward losses, such that a loss may not be surrendered by a dual resident company if certain conditions are met.

110. New section 188CA gives an overview of Chapter 3 of Part 5A. This Chapter covers claims for group relief for carried-forward losses. It applies to situations where companies are members of the same group, or where the companies meet the requirements for making a claim under one of four different consortium conditions. Both the group and consortium conditions are equivalent to those that currently apply in Part 5 of CTA 2010.

111. New section 188CB sets out the requirements for making a claim for group relief for carried-forward losses in certain situations. These are based on the requirements for making a claim under Part 5 of CTA 2010 (group relief) and are as follows:

- the surrendering company consents to the claim;
- there is a period ("the overlapping period") that is common to both the period to which the claim relates and the period for which the losses are surrendered (see new section 188DG); and
- during this period, the "group condition" is met (see new section 188CE), or one of two alternative consortium conditions are met (see new sections 188CF and 188CG). These two conditions relate to situations where the claimant company is owned by a consortium.

112. New section 188CC sets out the requirements for making a claim for group relief for carried-forward losses where certain conditions are met. These conditions apply where the surrendering company is owned by a consortium (see new sections 188CH and 188CI for the detailed conditions).

113. New section 188CD specifies that a company may not make a claim for relief under Part 5A where there are carried-forward losses (see section 188BB(1) and section 124B of FA 2012) that have not been relieved in full against the company's total profits, or where it makes a claim under section 45(4A) of CTA 2010, section 45B(5) of CTA 2010, or section 458(1) of CTA 2009 for trading losses or non-trading deficits from loan relationships not to be set against trading or non-trading profits (as appropriate).

114. New section 188CE sets out the requirements for a company to be considered a member of a group for these purposes ("the group condition"). The requirements are the same as for group relief under Part 5 of CTA 2010 (see new section 188FB). The group condition is met if the surrendering company and claimant company are members of the same group (section 188CE(1)) and both are UK related (see new section 188CJ).

115. New section 188CF sets out consortium condition 1, which is one of the alternative consortium conditions for an amount to be claimed under section 188CB. This condition applies where the claimant company is owned by a consortium and meets the consortium conditions; and where the surrender is by a member of the consortium. This is equivalent to the second part of consortium condition 1 in section 132 of CTA 2010 – see in particular section 132(3). For each of consortium conditions 1 to 4, the rules in Part 5 of CTA 2010 are applied to determine whether a company is a member of a consortium or is owned by a consortium (see new section 188FB).

116. New section 188CG sets out consortium condition 2, which is the other alternative consortium condition for an amount to be claimed under section 188CB. This condition applies where the claimant company is owned by a consortium and meets the consortium conditions; and where the surrender is by a member of the same group as a member of the consortium (the consortium member is referred to as a "link company"). This is equivalent to the rule in section 133 of CTA 2010 – see consortium condition 3 in section 133(2).

117. New section 188CH sets out consortium condition 3. This is one of the alternative conditions for a claim to be made under section 188CC. This condition applies where the surrendering company is owned by a consortium and the claimant company is a member of the same consortium. This is equivalent to the first part of consortium condition 1 in section 132 of CTA 2010 – see in particular section 132(2).

118. New section 188CI sets out consortium condition 4, which is the other alternative condition for an amount to be claimed under section 188CC. This condition applies where the surrendering company is owned by a consortium and meets the consortium conditions; and where the claim is made by a member of the same group as a member of the consortium (the consortium member is referred to as a "link company"). This is equivalent to consortium condition 2 in section 133 of CTA 2010 – see in particular section 133(1).

119. New section 188CJ sets out the meaning of a "UK related" company for the purposes of determining a group or consortium relationship. This is the same definition as in section 134 of CTA 2010 for the purposes of Part 5 of CTA 2010.

120. New section 188CK permits an amount claimed under section 188CB (claims where the group condition is met (see section 188CE) and claims by the consortium company) or section 188CC (surrenders by the consortium company) to be set against the total profits of the claimant company. This is subject to the restriction in section 269ZD (the restriction related to the total amount of profit that may be relieved by carried-forward losses: see section 188CK(3)(c) and (5)(c)). Relief is to be given after all other forms of relief apart from relief for losses carried back from a later period (section 188CK(6) and (7)). For this purpose the claimant company is treated as having made all available claims for certain losses carried back from a later period (section 188CK(8)).

121. New section 188DA introduces Chapter 4 of Part 5A. This chapter applies to claims made under section 188CB, which covers situations where the companies are in a group relationship; or where the claimant company is owned by a consortium, and the surrendering company is a member of the consortium or is a member of the same group as a "link company".

122. New section 188DB sets out certain limits on the amount that may be claimed by the consortium company under section 188CB in all cases. The amount that may be surrendered is the lower of the amounts derived under new section 188DC on the one hand, and under new sections 188DD and DE (taken together) on the other. These are, in summary:

- The amount that can be surrendered, minus any amount that has already been surrendered (a "prior surrender"); and
- The amount that can be claimed, taking into account the restrictions in the new Part 7ZA of CTA 2010, minus any amounts subject to the restriction that the claimant company has already claimed for the same period.

123. Further conditions in new sections 188DH to 188DL also apply to claims and surrenders involving consortium condition 1 and/or 2.

124. New section 188DC determines the "unused part" of the "surrenderable amount". It identifies the overlapping period and the "surrenderable amount" for that period, and then deducts any prior surrenders made for that same period (i.e.: the amounts already surrendered as group relief for carried-forward losses) to give the "unused part". The overlapping period is the period that is common to the accounting periods of the surrendering company and the claimant company (see new section 188DG).

125. New section 188DD sets out how to determine the claimant company's relevant maximum for the overlapping period. The standard calculation is given in section 188DD(1). The starting point at Step 1 is to calculate the company's relevant maximum for the claim period in accordance with section 269ZD(4) and at Step 2 to deduct from that amount any deductions the company has already made in respect of losses or other amounts listed in Step 2 (other than those excluded in section 188DD(2)). As with the unused part of the surrenderable amount, the overlapping period must be identified and the relevant maximum for that period must be calculated (see Step 3).

126. Section 188DD(2) sets out the losses that are not to be deducted at Step 2 from the relevant maximum. These are the losses that are not subject to the restriction. The effect is that at Step 2 the company deducts from the relevant maximum the losses it has already used that are subject to the loss restriction.

127. Section 188DD(3) sets out an amendment to how a company must calculate its relevant maximum where the amount of its relevant profits for the claim period, as calculated in accordance with section 269ZD(5), is less than its deductions allowance for the claim period, determined in accordance with section 269ZD(6). Where that is the case, Step 1 of the calculation in section 188DD(1) is amended so that the company starts with its relevant profits for the claim period, rather than its relevant maximum. Section 188DD(5) has the effect that section 188DD(2) is ignored where this is the case, so that the losses deducted from the company's relevant profits at Step 2 are any deductions made under the relevant sections, whether or not those losses are subject to the loss restriction.

128. Section 188DD(4) sets out the calculation where the modifications in section 269ZE(1) apply to the company. This will be relevant for insurance companies in certain cases. In this instance, the calculation of the company's relevant maximum in section 188DD(1) is modified so that at Step 1 the company determines, in accordance with section 269ZE(5), the modified loss cap for the claim period, and at Step 2 reduces that amount by the total of any deductions the company has made of losses within paragraphs (a) to (i) and (k) of section 269ZD(3). Those amounts are the losses set against total profits which are subject to the loss restriction.

129. New section 188DE sets out how to compute the amount of group relief for carried-forward losses previously claimed for the overlapping period. A "prior claim" is one that has been made before the claim currently being considered and has not been withdrawn (section 188DE(2)). The amount that has been allowed must be computed on the basis of the part of the overlapping period that is common to both the current claim and the prior claim (section 188DE(3) and (4)).

130. New section 188DF provides an ordering rule where two or more claims are made at the same time. These are treated as made in such order as the company or companies making them elect, or as an officer of HMRC directs where there is no election.

131. New section 188DG sets out how to identify the overlapping period for the purposes of sections 188DC and 188DE. This is the period that is common to the accounting periods of the surrendering company and the claimant company.

132. New section 188DH sets out a further condition that must be applied where there is a claim under section under 188CB on the basis that consortium condition 1 applies. Relief is limited to the "ownership proportion" (section 188DH(3)) applied to the claimant company's "relevant profits". For example, if the surrendering company owns 25% of the ordinary share capital of the claimant company, and the claimant company's "relevant profits" for the overlapping period are £10,000, the claimant company may claim no more than £2,500 relief in respect of the surrendering company's losses (subject to any other conditions that also apply).

133. New section 188DI applies in the same way as section 188DH, but it applies where the surrendering company is a member of the same group of companies as a "link company" under consortium condition 2. The "ownership proportion" must be determined on the basis of the relationship between the claimant company and the link company.

134. New section 188DJ also applies to consortium condition 2, where the claimant company claims relief for losses of companies in the link company's group (including the link company itself). The claim is limited to the proportion of the "relevant profits" of the claimant company that it could claim in relation to the link company's surrenderable losses (section 188DJ(3)). Continuing the example set out above in relation to section 188DH, the claimant company can claim no more than 25% of its "relevant profits" in total from the link company or members of the link company's group. This is equivalent to section 146 of CTA 2010.

135. New section 188 DK is an anti-avoidance rule that applies to situations where either consortium condition 1 or consortium condition 2 applies, and where there are arrangements in place to prevent the surrendering company or the link company (in either case alone or with one or more other consortium members) from controlling the claimant company. Where this rule applies the claimant company's "relevant profits" are to be no more than 50% of what it otherwise would be, but for this rule. This is equivalent to section 146B of CTA 2010.

136. New section 188DL limits the amount that may be claimed by a company based on consortium condition 1 or 2 where the claimant is also a member of a group of companies. The claimant's "relevant profits" are to be reduced by the amount that it could potentially claim under the group relief rules of Part 5 or Part 5A of CTA 2010 as a result of being a member of the group. This is equivalent to section 149 of CTA 2010.

137. New section 188EA sets out an overview of Chapter 5 of Part 5A. This chapter applies to claims made under section 188CC. This applies to situations where the surrendering company is owned by a consortium and the claim is made either by a member of the consortium (consortium condition 3); or by a member of the same group as the member of a consortium (the consortium member is referred to as the "link company": consortium condition 4).

138. New section 188EB applies to all claims made under section 188CC. It limits the amount of group relief for carried-forward losses to the lesser of three amounts, computed under new section 188EC, under new sections 188ED and 188EE (taken together), and under new section 188EF. These are similar to the rules where the consortium company is the claimant, the main differences being that the claim must relate to a specified loss-making period (the period in which the losses arose) and that there is a third limb to the calculation options. These are, in summary:

- The amount that can be surrendered, minus any amount that is attributable to the specified loss-making period that has already been surrendered (a "prior surrender");
- The amount that can be claimed, taking into account the restrictions in the new Part 7ZA of CTA 2010, minus any amounts that the claimant company has already claimed for the same period;
- The amount that could be claimed by the claimant company under the group relief rules in Part 5 of CTA 2010 for the specified loss-making period.

139. New section 188EC forms the first part of the comparison for the purposes of section 188EB. It sets out how to compute the unused part of the surrenderable amount attributable to the specified loss-making period. The unused part of the surrenderable amount is the amount that can be surrendered for the overlapping period (see new section 188EH) minus the amount of any prior surrenders (section 188EC(3) and (4)) in relation to claims made under either of section 188CB or section 188CC. In each case the period that is common to the current claim and the prior claim must be identified, and any prior claim amount must be apportioned to find the amount attributable to the common period. To determine the unused part of this amount that is attributable to the specified loss-making period, the proportion of the unused part of the surrenderable amount that relates to the loss-making period is computed using the fraction in new section 188EF(2).

140. New section 188ED forms the first element of the second part of the comparison for the purposes of section 188EB. This is the claimant company's "relevant maximum" for the overlapping period.

141. The standard calculation is given in section 188ED(1). The starting point at Step 1 is to calculate the company's relevant maximum for the claim period in accordance with section 269ZD(4) and at Step 2 to deduct from that amount any deductions the company has already made. Section 188ED(2) sets out the losses that are not to be deducted at Step 2 from the relevant maximum. These are the losses that are not subject to the restriction. The effect is that at Step 2 the company deducts from the relevant maximum the losses it has already used that are subject to the loss restriction. As with the unused part of the surrenderable amount, the overlapping period must be identified and the relevant maximum for that period must be calculated (see Step 3).

142. Section 188ED(3) sets out an amendment to how a company must calculate its relevant maximum where the amount of its relevant profits for the claim period, as calculated in accordance with section 269ZD(5), is less than its deductions allowance for the claim period, determined in accordance with section 269ZD(6). Where that is the case, Step 1 of the calculation in section 188ED(1) is amended so that the company starts with its relevant profits for the claim period, rather than its relevant maximum. Section 188ED(5) has the effect that section 188ED(2) is ignored where this is the case, so that the losses deducted from the company's relevant profits at Step 2 are any deductions made under the relevant sections, whether or not those losses are subject to the loss restriction.

143. Section 188ED(4) sets out the calculation where the modifications in section 269ZE(1) apply to the company. This will be relevant for insurance companies in certain cases. In this instance, the calculation of the company's relevant maximum in section 188ED(1) is modified so that at Step 1 the company determines, in accordance with section 269ZE(5), the modified loss cap for the claim period, and at Step 2 reduces that amount by the total of any deductions the company has made of losses within paragraphs (a) to (i) and (k) of section 269ZD(3). Those amounts are the losses set against total profits which are subject to the loss restriction

144. New section 188EE forms the second element of the second part of the comparison for the purposes of section 188EB. This is the amount of group relief for carried-forward losses that is the subject of a prior claim for the overlapping period. The difference between the amounts derived under section 188ED and section 188EE is taken into the comparison for the purposes of section 188EB.

145. New section 188EF forms the third part of the comparison for the purposes of section 188EB. This is the claimant company's "potential Part 5 group relief amount". This section considers the maximum amount that a claimant could receive in relief under Part 5 of CTA 2010, minus any such relief actually given, and minus any relief given for group relief for carried-forward losses on a related claim (see section 188EF(4)) under section 188CC. This therefore imports all the conditions of Part 5 of CTA 2010, including the ownership proportion in section 143 of CTA 2010, which limits the amount that may be claimed by a member of the consortium on a surrender by the consortium-owned company. However, it applies the ownership proportion on the basis of the proportion during the period when the relevant losses arose (the "specified loss-making period": see steps 1 and 2).

146. New section 188EG sets out the ordering rules to determine what is a "prior claim" for the purposes of sections 188EC and 188EE. It also permits the use of modified calculations where a calculation using a specified proportion would not give a just or reasonable result.

147. New section 188EH sets out how to determine the "overlapping period" for the purposes of sections 188EC and 188EE.

148.New section 188EI limits claims made under section 188CC based on consortium condition 4 (the surrendering company is owned by a consortium and the claimant company is a member of the same group of companies as a link company). The total amounts claimed by the link company and any companies in the same group as the link company cannot be more than the amount that could be claimed by the link company assuming there were no claims from members of the same group.

149.New section 188EJ is an anti-avoidance provision that applies to arrangements designed to secure that the link company (either alone or with other members of the same group) does not control the surrendering company. Where this section applies the available relief is to be reduced to 50% of what it otherwise would be.

150.New section 188EK reduces the amount that may be surrendered in relation to a claim under section 188CC by the amount that could have been claimed by members of the same group on the basis of the group condition.

151.New section 188FA sets out the treatment for corporation tax purposes of any payment made between the companies in respect of group relief for carried-forward losses. The payment is not taken into account for corporation tax purposes if it does not exceed the amount of the agreed loss.

152.New section 188FB applies to Part 5A relevant definitions found in Part 5 of CTA 2010.

153.New section 188FC provides definitions of a "trading company" and a "holding company" for the purposes of Part 5A.

154.New section 188FD provides further interpretation for the purposes of Part 5A.

Part 4: Insurance companies: carrying forward BLAGAB trade losses

155.Paragraph 24 introduces changes to the rules relating to BLAGAB trade losses that are contained within Chapter 9 of Part 2 of FA 2012.

156.Paragraph 25 amends section 124 FA 2012 so that it will subsequently only apply to the carry forward of BLAGAB trade losses arising in accounting periods beginning before 1 April 2017 (pre-1 April 2017 BLAGAB trade losses).

157.Paragraph 26 introduces:

- new section 124A FA 2012 which provides rules for carrying forward BLAGAB trade losses arising in accounting periods beginning on or after 1 April 2017 (post-1 April 2017 BLAGAB trade losses),
- new section 124B FA 2012 which provides rules for relieving carried forward post-1 April 2017 BLAGAB trade losses against total profits,

- new section 124C FA 2012 which provides rules for further carrying forward any post-1 April 2017 BLAGAB trade losses against subsequent profits,
- new section 124D FA 2012 which provides rules that restrict the amount of carried forward BLAGAB trade losses that can be relieved against BLAGAB trade profits,
- new section 124E of FA 2012, which provides rules that set out that carried forward BLAGAB shock losses made by a Solvency 2 insurance company (as defined by section 124B) are excluded from the restriction.

158. New section 124A applies where a BLAGAB trade loss arises on or after 1 April 2017, the trade is carried on in the next accounting period and where the loss is not utilised against the company's total profits of the current period or as group relief. This is known as "the unrelieved amount" and is carried forward and set against BLAGAB trade profits that arise in a later period.

159. New section 124B provides rules for allowing carried forward post-1 April 2017 BLAGAB trade losses to be relieved against total profits. It ensures that any carried-forward BLAGAB trade losses must be first set against BLAGAB trade profits of the later period. Any remaining 'unrelieved amounts' may be relieved against total profits of the later period following a claim.

160. New section 124C applies to a BLAGAB trade loss that is carried forward under section 124A(2) or under section 124C(3) and that has not been relieved by either;

- firstly setting it against BLAGAB trade profits of the later period under new section 124A(5) or new section 124C(6), then either by
- setting it against total profits of the later period following a claim under new section 124B, or
- surrendering it as group relief under new Part 5A of CTA 2010.

Any such unrelieved amounts are carried forward to a further later period in which a BLAGAB trade is carried on. The approach taken by subsection (2) means that this section will be reapplied in each successive period to which unrelieved amounts are carried forward.

161. New section 124D sets out how the amount of BLAGAB trade profit that can be relieved by carried-forward BLAGAB trade losses is determined. The maximum amount of carried-forward BLAGAB trade losses that can be set against BLAGAB trade profits cannot exceed the "relevant maximum". The "relevant maximum" is the sum of the company's BLAGAB trade profits annual deductions allowance plus 50% of the company's "relevant BLAGAB trade profits" (as determined by section 124D(3)) for the accounting period.

162. Section 124D(3) defines "relevant BLAGAB trade profits" as the company's BLAGAB trade profits before any carried forward BLAGAB trade losses are deducted (sections 124(5), 124A(5) or 124C(6)) less any BLAGAB trade profits deductions allowance (see section 124D(4 - 6)).

163. Section 124D(4) specifies that the amount of a company's deductions allowance is computed in accordance with either new section 269ZR where the company is a member of a group or new section 269ZW otherwise.

164. New section 124E provides that carried forward BLAGAB shock losses made by a Solvency 2 insurance company (as defined by section 124B) are excluded from the restriction.

165. Section 124E(2) ignores carried forward BLAGAB shock losses when calculating the sum of any deductions from BLAGAB trade profits in section 124D(1)and total profits in section 269ZD(2)(b)(iii) of CTA 2010. This means that a Solvency 2 insurance company can deduct carried forward BLAGAB shock losses up to the amount of its BLAGAB trade profit and that BLAGAB shock losses are not relevant deductions when calculating the restriction on total profits in section 269ZD.

166. New Section 124E(3) provides that 'relevant BLAGAB trade profits' in section 124D(3)(a) and (6) are the profits after carried forward BLAGAB shock losses have been taken into account. This ensures that carried forward BLAGAB shock losses are set against BLAGAB trade profits before carried forward BLAGAB trade losses.

167. New section 124E(4) aligns the definition of 'Solvency 2 insurance company' and 'shock loss' with that used in section 124B.

Part 5: Carrying forward trade losses made in certain creative industries

168. Paragraphs 27 to 30 amend Chapter 4 of Part 15 of CTA 2009 (losses of separate film trade).

169. Paragraph 28 amends section 1209 of CTA 2009, which restricts the use of losses of a separate film trade arising in accounting periods ending before the film is completed or abandoned (pre-completion periods). Section 1209(2) is amended and new section 1209(3) is introduced. Losses of pre-completion periods will continue to be available for relief only by deduction from profits of the same trade in subsequent periods. These deductions will be ignored for the purposes of calculating the new restriction on deductions from trading profits under section 269ZB of CTA 2010.

170. Paragraph 29 amends section 1210 of CTA 2009, which sets out how losses of a separate film trade can be used in 'relevant later periods'. These are the accounting period in which the film is completed or abandoned and subsequent periods in which the separate film trade continues.

171. Paragraph 29(2) and 29(3) amends sections 1210(2) and 1210(3) of CTA 2009. A loss made in the separate film trade may be carried forward under section 45 or 45B of CTA 2010 from a pre-completion period to a relevant later period. Where this is the case, the amount of that loss that is not attributable to film tax relief can be treated as a loss of the later period for the purposes of section 37 and Part 5 of CTA 2010. New sections 269ZD(3)(e) and (h) of CTA 2010 include losses used in this way as "relevant deductions" which means their use will be restricted under Part 7ZA of CTA 2010.

172. Paragraph 29(4) to 29(6) amends sections 1210(4) and 1210(5) of CTA 2009 and introduces new subsection (5A). If a loss is made in a relevant later period in the separate film trade, that loss may be deducted from total profits of later periods under section 45A of CTA 2010. The amount of the loss that can be used in this way is restricted to the amount not attributable to film tax relief. Section 269ZD(3)(f) of CTA 2010 includes losses used under section 45A as "relevant deductions" which means their use will be restricted under Part 7ZA CTA 2010. Where the loss cannot be deducted from total profits under section 45A, it may be deducted from profits of the same trade under section 45 or 45B of CTA 2010. Where this is the case, any part of the amount deducted that is attributable to film tax relief will be ignored for the purposes of calculating the new restriction at section 269ZB of CTA 2010.

173. Paragraph 30 amends section 1211 of CTA 2009. This section allows a company to treat certain losses of a separate film trade that has ceased ('trade X') as the losses carried forward of another trade of the same type ('trade Y or Z'). Trade Y or Z must be carried on by the same company or by a company in the same group for the purposes of Part 5 of CTA 2010. The conditions for the section to apply are amended to include circumstances where losses could have been carried forward under any one of sections 45, 45A and 45B of CTA 2010 if the trade had not ceased. Losses treated as those of trade Y or Z in accordance with this section will continue to be available for set off only against profits of the same trade under section 45 or 45B. Any resulting deductions from the profits of trade Y or Z will be ignored for the purposes of calculating the new restriction on deductions from trading profits under section 269ZB of CTA 2010.

174. Paragraphs 31 to 34 make provision similar to paragraphs 27 to 30 in respect of the losses of a television programme trade.

175. Paragraphs 35 to 38 make provision similar to paragraphs 27 to 30 in respect of the losses of a video game trade.

176. Paragraphs 39, 40 and 42 make provision similar to paragraphs 27, 28 and 30 in respect of the losses of a theatrical trade.

177. Paragraph 41 amends section 1217MB of CTA 2009. A loss made in a separate theatrical trade may be carried forward under section 45 or 45B of CTA 2010 to the period in which the company ceases to carry on the trade. Where this is the case, an amount of that loss can be treated as a loss of the period of cessation for the purposes of section 37 and Part 5 of CTA 2010. This amount is however much of the loss is not attributable to an additional deduction that the company has claimed under section 1217H of CTA 2009. A loss used in this way is subject to restriction under Part 7ZA CTA 2010.

178. Paragraphs 43, 44 and 46 make provisions similar to paragraphs 27, 28 and 30 in respect of the losses of an orchestral trade.

179. Paragraph 45 amends section 1217SB of CTA 2009. A loss made in a separate orchestral trade may be carried forward under section 45 or 45B of CTA 2010 to the period in which the company ceases to carry on the trade. Where this is the case, the amount of that loss that is not attributable to orchestra tax relief can be treated as a loss of the later period for the purposes of section 37 and Part 5 of CTA 2010.

Part 6: Oil activities

180. Paragraph 47 introduces amendments to Part 8 of CTA 2010 (oil activities).

181. Paragraph 48 inserts new sections 303A to 303D into chapter 4 of Part 8 of CTA 2010.

182. New section 303A defines a non-decommissioning loss where a company carries on a ring fence trade.

183. New section 303B provides that a non-decommissioning loss, which is not relieved under section 37 or section 42 of CTA 2010, or Part 5 of CTA 2010, is to be carried forward, and that relief is given by deducting the amount of the loss from profits of the same trade in a later period.

184. New section 303C provides that where an amount carried forward under section 303B or section 303D of CTA 2010 is not relieved in a later period against profits of the trade, the company may claim to deduct any such unrelieved amount from its total profits. However, no such claim can be made if the trade was not carried on commercially with a view to profit. Any claim must be made within two years of the end of the later period, or such further time as an officer of HMRC allows.

185. New section 303D provides that where an amount carried forward under s303B CTA 2010 has not been relieved against trade profits under s303B, or s303D(5), against total profits under s303C or surrendered by way of group relief for carried forward losses under Part 5A CTA2010, the amount continues to be carried forward to the next period. Relief is given for the unrelieved amount, by deducting that amount from the profits of the trade in the next period.

186. Paragraph 49 amends section 304 of CTA 2010. New subsections (1A) and (1B) provide that where a company makes a profit in a ring fence trade, that profit may not be reduced by a non-trading loss on intangible fixed assets, by a trade loss carried forward against total profits, or by a loss made in a UK property business.

187. Paragraph 49(3) amends section 304(5), to allow losses of a ring fence trade carried forward under section 45B, section 303B or section 303D CTA 2010 to be set against profits of related activities, where those related activities together with the activities of the ring fence trade would be considered to be one trade, but for the application of section 279 of CTA 2010.

188. Paragraph 49(4) inserts new subsection (7) into section 304 of CTA 2010. This subsection excludes ring fence losses, which are carried forward to be set against future profits of the trade, from the restriction on the use of carry forward losses. It achieves this by providing that a loss made in a ring fence trade, which is carried forward under section 45 or section 45B of CTA 2010 is not taken into account in calculating the restriction on deductions from trading profits in section 269ZB of CTA 2010.

189. Paragraph 50 amends section 305 of CTA 2010. New subsection (1A) provides that profits from a claimant company's ring fence trade may not be reduced by any amount of group relief for carried forward losses surrendered to the company.

190. Paragraph 51 amends section 307 of CTA 2010, which provides an overview of the Ring Fence Expenditure Supplement rules.

191. Paragraph 52 amends section 321 of CTA 2010, so that ring fence expenditure supplement of a post-commencement period beginning on or after 1 April 2017 is treated as if it were a loss of the ring fence trade carried forward under section 45B of CTA 2010.

192. Paragraph 53 amends section 323 of CTA 2010, which defines ring fence losses for the purposes of ring fence expenditure supplement. The amendments ensure that losses of a ring fence trade incurred in accounting periods beginning on or after 1 April 2017 are still able to generate ring fence expenditure supplement.

193. Paragraph 54 substitutes the existing section 327 of CTA 2010 with a new section 327. New section 327 sets out how reductions are to be made to the non-qualifying pool, and the ring fence pool, when losses are used under any of sections 45, 45B, 303B, 303C or 303D, or when claims are made not to use losses under section 45 or 45B.

194. Paragraph 55 amends section 328A of CTA 2010, so that the provisions also apply to losses incurred in accounting periods beginning on or after 1 April 2017.

Part 7: Oil contractors

195. Paragraph 56 introduces amendments to Part 8ZA of CTA 2010 (oil contractors).

196. Paragraph 57 amends section 356NE of CTA 2010. The amendments prevent trade losses carried forward under section 45A from being used to reduce profits arising from oil contractor activities, except where the loss arose as a result of oil contractor activities.

197. Paragraph 57(4) inserts new subsections (2) and (3) into section 356NE of CTA 2010. These prevent profits arising from oil contractor activities from being reduced by non-trading losses on intangible fixed assets, UK property business losses, or non-decommissioning losses of ring fence trades.

198. Paragraph 58 amends section 356NF of CTA 2010.

199. Paragraph 58(3) inserts new subsection (3A) into section 356NF. This provides that any profits from a company's oil contractor activities may not be reduced by any amount of group relief for carried forward losses surrendered to the company, except to the extent that the surrendered loss arose from oil contractor activities for the surrendering company.

200. Paragraph 59 inserts new sections 356NH to 356NJ into Part 8ZA of CTA 2010.

201. New section 356NH applies to losses from oil contractor activities carried forward under s45(4)(b), and losses under s45A and Part 5A CTA 2010 set against contractor's ring fence profits. The amount of these losses that can be deducted from total profits under these sections is capped at the sum of any amount of the deductions allowance allocated to the contractor's ring fence profits, plus 50% of the contractor's ring fence profits.

202. New section 356NI sets out how to calculate a company's deductions allowance where that company has oil contractor activity profits. Section 356NI(5) allows the company to specify such amount as it chooses to be its contractor's ring fence profits deductions allowance.

203. New section 356NJ provides that where a loss carried forward under section 45A or claimed under part 5A of CTA 2010 has been set against the contractor's ring fence profits for an accounting period, such amounts are not relevant deductions as defined when calculating restrictions on deductions form total profits under new section 269ZD CTA2010. Where a loss is carried forward under section 45(4)(b), it should not be taken into account in calculating the restriction on deductions from trading profits in new section 269ZB CTA2010 where the loss arises from oil contractor activities.

Part 8: Transferred trades

204. Paragraph 61 introduces changes to Chapter 1 of Part 22 of CTA 2010, which deals with the consequences of the transfer of a trade without a change of ownership.

205. Paragraph 62 amends the overview of the chapter to include reference to the newly inserted section 943A of CTA 2010.

206. Paragraph 63 inserts a new section 943A into CTA 2010, immediately before section 944. This new section removes the ability of the predecessor in the trade to claim loss relief under the extended time limits for terminal loss relief set out in section 39 of CTA 2010.

207. Paragraph 64 amends section 944 of CTA 2010 so that in future it will apply only to relief for trade losses arising before 1 April 2017 and carried forward under section 45 of CTA 2010.

208. Paragraph 65 inserts new sections 944A to 944E into Part 22 of CTA 2010.

209. New section 944A modifies the effect of section 45A of CTA 2010 so that losses made in, or carried forward to, the transferor's final period of trading are (subject to certain conditions) treated as carried forward and allowable to the transferee under section 45A.

210. New section 944B has a similar effect to section 944A, but in respect of losses carried forward and allowable under section 45B of CTA 2010.

211. New section 944C has the effect that the predecessor cannot make a claim under section 45F of CTA 2010 (terminal losses) where that loss was made in the transferred trade. For losses within section 45 of CTA 2010, this restriction does not apply where the trade is transferred before 13 July 2017.

212. New section 944D has a similar effect to section 944A, but in respect of losses carried forward and allowable under section 303B of CTA 2010.

213. New section 944E has a similar effect to section 944A, but in respect of losses carried forward and allowable under section 303D of CTA 2010.

214. Paragraph 66 expands the scope of section 945 of CTA 2010 to ensure that the limitation on loss relief in section 945 applies to relief under the new sections 944A to 944E as well as to relief given under section 944.

215. Paragraph 67 amends section 951 of CTA 2010 to ensure that the new rules apply appropriately where the transferee carries on the transferred trading activities as part of its trade.

216. Paragraph 68 makes a necessary amendment in section 952 of CTA 2010, consequent on the amendments to section 951.

Part 9: Tax avoidance

217. Paragraph 69 amends section 730F of CTA 2010, part of the rules in Part 14B of CTA 2010, known as "loss refresh". Those rules prevent arrangements designed to convert carried-forward losses into "in-year" losses that can be used more flexibly. Those rules do not currently apply to carried-forward UK property business losses and carried-forward non-trading losses on intangible fixed assets.

218. Paragraph 69(2) extends the rules to encompass those two types of loss.

219. Paragraph 69(3) applies the rules in Part 14B to post 1 April 2017 trade losses carried forward under the new provisions at sections 45A and 45B of CTA 2010.

220. Paragraph 69(4) applies the rules in Part 14B to non-trading loan relationship deficits arising on or after 1 April 2017 and carried forward under the new rules.

221. Paragraph 70 introduces amendments to Part 14 of CTA 2010 (changes in company ownership).

222. Paragraph 71 amends the overview of Part 14 in section 672 of CTA 2010.

223. Paragraph 72 amends section 673 of CTA 2010, which applies to trading losses. It changes the timeframe within which a major change in the nature or conduct of a trade can occur in order for Chapter 2 of Part 14 to apply. That timeframe is extended from a period within 3 years of a change in a company's ownership to a period of 5 years beginning no more than 3 years before the change in ownership. This extended timeframe applies only where both the change in ownership and the major change in the nature and conduct of the trade occur on or after 1 April 2017. Where either of those events takes place before 1 April 2017 the current 3 year timeframe continues to apply.

224. Paragraph 73 amends section 674 of CTA 2010. It extends the effect of section 674 to cover relief for post 1 April 2017 losses under sections 45A, 45B, 45F, 303B and 303C of CTA 2010. This change will ensure that where a company undergoes a change in ownership, and a major change in its business (within the relevant timescale) that involves a major change in a trade or business that has generated carried-forward losses, any losses arising from that trade or business before the change in ownership will be disallowed completely, and cannot be set against future profits or claimed as group relief under the new Part 5A of CTA 2010.

225. Paragraph 74 inserts new section 674A which has the effect that losses of a ring fence trade that are not non-decommissioning losses are not disallowed by section 674 of CTA 2010 where it is condition A in section 673 that is met and the major change did not occur within a period of 3 years in which the change in ownership occurs. In effect, this means that the amendment to section 673(2) extending the period of time during which a major change is considered does not have effect for losses of a ring fence trade that are not non-decommissioning losses. Instead, those losses continue to be disallowed where there is a major change within a period of 3 years in which a change in ownership occurs, rather than the extended period of 5 years beginning no more than 3 years before the change in ownership.

226. Paragraph 75 inserts a new Chapter 2A into Part 14 of CTA 2010, consisting of new sections 676AA to 676AL. Chapter 2A will apply to losses arising on or after 1 April 2017, but only where Chapter 2 or Chapter 3 does not apply to those losses.

227. New Section 676AA introduces the new Chapter 2A. This chapter will apply where there is both a change in company ownership and a major change in the nature or conduct of a company's business, or of a "co-transferred" company's business, on or after 1 April 2017. Section 676AA(4) introduces new timescales within which a major change in the business of a company or a co-transferred company must take place for Chapter 2A to apply. The rules apply where a major change in a trade takes place within a period of 5 years of the change in ownership, beginning no more than 3 years before the change in ownership, or where a major change in an investment business takes place within a period of 8 years beginning 3 years before the change in ownership. A "co-transferred" company is defined at new section 676AL.

228. New section 676AB sets out that Chapters 2 and 3 of Part 14 take priority over the new Chapter 2A. This means that where there is a major change in a trade or business that has generated carried-forward losses, any losses arising from that trade or business before the change in ownership will be disallowed completely, and cannot be carried forward against future profits or claimed as group relief under the new Part 5A of CTA 2010.

229. New Section 676AC sets out the meaning of a "major change in the business" of a company. This encompasses all aspects of a company's business and can therefore involve, for example, an expansion of a trade, or a major change in investments or property holdings. Section 676AC(4) disregards a transfer of a business between co-transferred companies (defined in new section 676AL) in considering whether there has been a major change.

230. New Section 676AD provides for the accounting period in which the change in ownership occurs to be split, such that a notional accounting period ends on the date of the change in ownership. It applies the rules in section 685 of CTA 2010 to apportion losses and deductions between the two notional periods.

231. New Section 676AE defines "affected profits" for the purposes of Chapter 2A. These are profits arising within 5 years of the end of the accounting period in which the change in ownership occurred that can fairly and reasonably be attributed to the major change. For example, profits arising from the introduction or expansion of a trade or business. Where the major change is in the trade or business that gave rise to the losses, Chapter 2 or Chapter 3 would apply to those losses in priority to Chapter 2A.

232. New Section 676AF ensures that, where the conditions are met, a company cannot deduct carried-forward trading losses against its total profits, to the extent that those profits are "affected profits" in any accounting period ending after the change in ownership. An accounting period is treated for these purposes as ending on the date of the change in ownership by section 676AE(3). This applies to losses within sections 45A, 45F and 303C of CTA 2010, and section 124B of FA 2012.

233. New Section 676AG restricts the amount of certain non-trading loan relationship debits (defined in section 730 of CTA 2010) that may be set off against total profits for the notional accounting period beginning with the change in ownership, or any later period. The amount that may be set off is limited to the amount by which those debits, minus any such debits set off in any earlier accounting period ending after change in ownership, exceed the profits of the notional period that ends with the change in ownership.

234. New Section 676AH prevents a non-trading loan relationship deficit that arose before the change in ownership from being set off against "affected profits" after the change in ownership.

235. New Section 676AI prevents a non-trading loss on intangible fixed assets that arose before the change in ownership from being set off against "affected profits" after the change in ownership.

236. New Section 676AJ prevents expenses of management that arose before the change in ownership from being set off against "affected profits" after the change in ownership.

237. New Section 676AK prevents a UK property business loss that arose before the change in ownership from being set off against "affected profits" after the change in ownership.

238. New Section 676AL defines a "co-transferred company" and a "related company". Without the extension of the rules to a co-transferred company, a company could surrender, under Part 5A of CTA 2010, losses arising before the change in ownership to another company that was transferred at the same time, where the trade or business of that other company could be significantly expanded by the new owner to absorb losses arising before the change in ownership.

239. Paragraph 76 inserts a new Chapter 2B into Part 14 of CTA 2010, comprising new sections 676BA to 676BE.

240. New Section 676BA sets out the scope of Chapter 2B. It applies where there is a change in ownership of a company, the company acquires an asset under the intra-group transfer rules such that no gain or loss arises on the transfer, and, within 5 years of the change in ownership, that company makes a gain on the disposal of the asset. It also applies where a gain is transferred to the company in accordance with sections 171A and 171B of TCGA 1992. Chapter 2B applies only to trading losses. Other forms of loss remain within Chapter 4 of CTA 2010, as amended by paragraphs 67, 69 and 70, to reflect the new loss relief rules; and relief under the new Part 5A of CTA 2010 is dealt with in the new Chapter 2D of Part 14, introduced by paragraph 63.

241. New Section 676BB provides for the accounting period in which the change in ownership occurs to be split, such that a notional accounting period ends on the date of the change. It also applies section 702 of CTA 2010 for the purpose of apportioning amounts to the two notional periods.

242. New Section 676BC prevents relief for any carried-forward trading losses under sections 45A, 45F and 303C of CTA 2010, and section 124B of FA 2012 against profits that represent a gain under the "relevant provisions" on any asset or gain falling within section 676BA.

243. New Section 676BD sets out the meaning of "relevant provisions" for the purposes of chapter 2B.

244. New Section 676BE sets out what is meant by profits which represent a relevant gain.

245. Paragraph 77 inserts a new Chapter 2C into Part 14 of CTA 2010, comprising new sections 676CA to 676CI.

246. New Section 676CA introduces the new Chapter 2C. It applies to group relief for carried-forward losses under the new Part 5A of CTA 2010, where there is a change in ownership of the company that wishes to surrender those losses.

247. New Section 676CB sets out the general rule. A company may not claim group relief under Part 5A of CTA 2010 for any losses arising in a company before that company was acquired. The restriction lasts for a period of 5 years following the end of the accounting period of the transferred company in which the change of ownership occurred (see section 676CE(1)). A notional accounting period is treated as ending on the date the company is acquired (section 676CB(5)), and a notional accounting period is treated as ending at the end of the 5 year period (section 676CE(3)).

248. New Section 676CC applies to circumstances where either of consortium conditions 1 or 2 (defined in the new Part 5A of CTA 2010) were met immediately before the change in ownership and the transferred company is the claimant. The amount of relief is limited for the 5 year period in section 676CE(1) based on the ownership proportion immediately before the change of ownership.

249. New section 676CD applies to circumstances where either of consortium conditions 3 or 4 (defined in the new Part 5A of CTA 2010) were met immediately before the change in ownership and the transferred company is the surrenderer. The amount of relief is limited for the 5 year period in section 676CE(1) based on the amount of losses the consortium company could have surrendered under section 188CC. In effect, this limits the relief for the 5 year period to the ownership proportion for the specified loss-making period (the year the loss arose).

250. New Section 676CE sets out further exceptions to the rule in section 676CB(3). Section 676CE(1) limits the restriction to a 5 year period beginning at the end of the accounting period of the transferred company in which the change of ownership occurred. Section 676CE(2) removes the restriction where the claimant company was eligible to claim group relief from the company that made the losses before the change in ownership. This would apply where two companies that meet the group relief conditions are transferred into the same new ownership at the same time.

251. New Section 676CF applies in circumstances where both this chapter and one of chapters 2, 2A or 3 also apply. This could occur, for example, when chapter 2 disallows all trading losses carried forward when there is a major change in the trade that gave rise to those losses following a change in ownership. Section 676CF(3) prevents relief being given under Part 5A of CTA 2010 against "affected profits" of the company (see new section 676CG).

252. New section 676CG defines "affected profits" for the purposes of section 676CF. These are profits that arise within 5 years of the end of the accounting period of the transferred company in which the change in ownership occurs and which can fairly and reasonably be attributed to the major change set out in chapter 2, 2A or 3.

253. New section 676CH defines what is meant by a "relevant pre-acquisition loss".

254. New section 676CI provides definitions of a "co-transferred company" and a "related" company.

255. Paragraph 78 inserts a new Chapter 2D into Part 14 of CTA 2010, comprising new sections 676DA to 676DE.

256. New Section 676DA introduces the new chapter. It applies where there is a change in ownership of a company, the company acquires an asset under the intra-group transfer rules such that no gain or loss arises on the transfer, and, within 5 years of the change in ownership, that company makes a gain on the disposal of the asset. It also applies where a gain is transferred to the company in accordance with sections 171A and 171B of TCGA 1992.

257. New Section 676DB provides for the accounting period in which the change in ownership occurs to be split, such that a notional accounting period ends on the date of the change.

258. New Section 676DC sets out the restriction. Group relief for carried-forward losses may not be claimed against gains arising from the transferred-in assets where the losses arose in a company before that company was acquired by the group.

259. New Section 676DD defines "relevant provisions".

260. New Section 676DE defines the profits which "represent a relevant gain".

261. Paragraph 79 inserts new Chapter 2E, comprising new sections 676EA to 676EE, into Part 14 of CTA 2010.

262. New Section 676EA introduces the Chapter and outlines that the Chapter applies if there is a change in ownership of a company on or after 1 April 2017.

263. New Section 676EB restricts the use of trade losses where there has been a transfer of trade after a change in ownership.

264. Section 676EB(1) states that section 676EB(2) applies where:

- there has been a transfer of trade to which Chapter 1 of Part 22 applies (Transfers of trade without a change in ownership),

- a trade is transferred by the transferred company to another company ("the successor company") within a period of 8 years beginning 3 years before a change in ownership, and
- the transferred company and the successor company are not related to one another both immediately before the change in ownership and at the time the trade is transferred.

265. Section 676EB(2) prevents a loss under section 45A or 303C of CTA 2010 from being deducted from the relevant profits of the successor company where those profits arise in an accounting period ending after the change in ownership.

266. Section 676EB(3) defines "relevant profits" as profits that arise before the 5th anniversary of the end of the transferred company's accounting period during which the change in ownership took place and which cannot be fairly and reasonably be attributed to the successor company's carrying on of the transferred trade.

267. Section 676EB(4) to (7) sets out how to treat the transferred company's losses and the successor company's profits where they arise in accounting periods that overlap the date of the change in ownership.

268. New Section 676EC restricts the surrender of carried-forward trade losses where there has been a transfer of a trade. The restriction applies where a transferred company or co-transferred company transfers a trade to a successor company within the period of 8 years beginning 3 years before the change in ownership, Chapter 1 of Part 22 of CTA 2010 applies to the transfer, and another company ("the claimant company") would, apart from section 676EC, be able to make a "relevant claim" under Part 5A of CTA 2010 for group relief for carried-forward losses.

269. Section 676EC(2) defines a "relevant claim" as one for an accounting period ending after the change in ownership, and which is in respect of a loss carried-forward under sections 45A(3), 303B(2) or 303D(3) and made in the trade by the transferred company or co-transferred company in an accounting period beginning before the change in ownership.

270. Section 676EC(3) sets out the general rule, which is that relief under Part 5A is not available. Section 676EC(4) and (5) sets out exceptions to the general rule. Section 676EC(4) has the effect that there is no restriction in the relief against the claimant company's profits where they arise after the 5th anniversary of the end of the accounting period of the transferred company in which the change in ownership occurred. Section 676EC(5) removes the restriction where the group condition was met in relation to the claimant company and the transferred company immediately before the change in ownership.

271. New Section 676ED applies to indirect transfers of a trade. Section 676ED(2) and (3) applies where the trade transferred by the transferred company or a co-transferred company is transferred to another company. The transferred trade is treated as having been transferred by the transferred company or (as the case may be) the co-transferred company and as having been transferred by that company at the time the trade was actually transferred to the other company.

272. Section 676ED(4) to (6) applies where the activities of the transferred trade ("the original trade") are included in the activities of another trade ("the composite trade") and the composite trade is transferred to another company. The transferred company or (as the case may be) the co-transferred company is treated for the purposes of Chapter 2E as having transferred the original trade to the other company and as having done so at the time the composite trade was actually transferred. If the transfer of the composite trade is a transfer to which Chapter 1 of Part 22 of CTA 2010 applies then the deemed transfer is treated as being a transfer within that Chapter.

273. New Section 676EE applies section 940B (meaning of "transfer of trade" and related expressions) to Chapter 2E as it applies to Chapter 1 of Part 22 of CTA 2010. The section also defines "co-transferred company" and "related" company for the purposes of this Chapter.

274. Paragraph 80 amends section 677 in Chapter 3 of CTA 2010. This rule currently applies to the profits of a company with investment business where there is a change in ownership. The existing rules for considering when a major change takes place apply 3 years before and 3 years after the change in ownership. The new rules apply for a period of 5 years following the change in ownership. As a result, references to an overall period of 6 years are amended to 8 years (paragraph 80(2) and 80(3)), but only where both the change in ownership and the major change take place on or after 1 April 2017 (paragraph 80(4)).

275. Paragraph 81 amends the reference in section 681 of CTA 2010 to a loss on intangible fixed assets to come into line with the changes made by paragraph 5.

276. Paragraph 82 amends the table in section 685 of CTA 2010 so that apportionments may be made under that section in connection with the new rules in Part 14 of CTA 2010. Where a change in ownership occurs before 13 July 2017, the additional references in the table to non-trading loan relationship deficits do not extend to deficits within section 463H of CTA 2009.

277. Paragraph 83 amends section 690 of CTA 2010 to extend the time limit to 5 years instead of 3 years where a change in ownership occurs on or after 1 April 2017.

278. Paragraph 84 amends section 692 of CTA 2010, which is part of Chapter 4 of Part 14 (transfer of assets following change of ownership). It extends the coverage of Chapter 4 to include gains that are treated as arising to the company by the operation of section 171B of TCGA 1992. The change only applies where both the change in ownership and the chargeable gain arise on or after 1 April 2017.

279. Paragraph 85 amends section 696 of CTA 2010 to insert a reference to debits under section 463B(1)(a) of CTA 2009.

280. Paragraph 86 amends the table in section 702 of CTA 2010 so that apportionments may be made under that section in connection with the new rules in Part 14 of CTA 2010. Where a change in ownership occurs before 13 July 2017, the additional references in the table to non-trading loan relationship deficits do not extend to deficits within section 463H of CTA 2009.

281. Paragraph 87 amends section 704 of CTA 2010, which is part of the rules that apply to a company carrying on a UK property business. It extends the period within which a "major change" in the nature or conduct of the company's business will cause the legislation to apply from 3 years to 5 years (from the date of the change in ownership), but only where both the change in ownership and the "major change" take place on or after 1 April 2017.

282. Paragraph 88 has the same effect as paragraph 87, but in respect of a company carrying on an overseas property business.

283. Paragraph 89 amends the definition of a "change in ownership" in section 719 of CTA 2010. It brings within that meaning a change whereby a company acquires an interest in another company such that the group condition in section 188CE is met.

284. Paragraph 90 extends the references in section 721 of CTA 2010 to include the new chapters 2A to 2D of Part 14 of CTA 2010.

285. Paragraph 91 amends section 727 of CTA 2010 to change the reference from 3 years to 5 years.

286. Paragraph 92 amends the "deduction-buying" rules in Part 14A of CTA 2010. Paragraph 92(2) extends the rules to cover group relief for carried-forward losses under Part 5A of CTA 2010. Paragraph 92(6) inserts a new subsection (7A) into section 730C of CTA 2010. This sets out an ordering rule for the use of losses that could be claimed as group relief for carried-forward losses, but where section 730C would prevent the use of those losses.

Part 10: Northern Ireland trading losses etc

287. Paragraph 93 introduces amendments to Part 8B of CTA 2010.

288. Paragraph 94 amends the italic heading before section 357JB of CTA 2010.

289. Paragraph 95 introduces new sections 357JB and 357JC into CTA 2010 in place of the existing sections 357JB to 357JE. New Section 357JB provides for the way in which loss relief under section 37 and new sections 45A to 45F works if a company has Northern Ireland losses or mainstream losses. New section 357JC restricts the deduction in respect of Northern Ireland losses to be made against mainstream profits where, in the accounting period in which relief is given, the Northern Ireland CT rate is lower than the main rate.

290. Paragraph 96 inserts new sections 357JHA to 357JHD into CTA 2010, after section 357JH. These new sections provide for modifications of the provisions in respect of group relief for carried forward losses in respect of Northern Ireland losses.

291. New section 357JHA provides priority rules in respect of Northern Ireland and mainstream losses.

292. New section 357JHB restricts the deduction in respect of Northern Ireland losses to be made against mainstream profits where, in the accounting period in which relief is given, the Northern Ireland CT rate is lower than the main rate.

293. New sections 357JHC and 357JHD make necessary modifications to Chapters 4 and 5 of Part 5A respectively.

294. Paragraph 97 makes consequential amendments to section 357JJ of CTA 2010 which contains the formula restricting the deduction available where a Northern Ireland loss is set off against mainstream profits in a period in which the Northern Ireland CT rate is lower than the main rate.

295. Paragraphs 98 and 99 make consequential amendments to sections 357RF and 357RG of CTA 2010 (losses of film trades).

296. Paragraph 100 and 101 make consequential amendments to sections 357SF and 357SG of CTA 2010 (losses of television programme trade).

297. Paragraphs 102 and 103 make consequential amendments to sections 357TF and 357TG of CTA 2010 (losses of video game trade).

298. Paragraphs 104 and 105 make consequential amendments to sections 357UF and 357UO of CTA 2010 (losses of theatrical trade).

Part 11: Minor and consequential amendments

299. Paragraph 106 amends section 826 of the Income and Corporation Taxes Act 1988 (ICTA). It sets out how to compute interest on tax overpaid where the company claims relief for a terminal loss against earlier profits under new section 45F of CTA 2010.

300. Paragraphs 107 to 122 make consequential amendments to Schedule 18 to FA 1998 to introduce the necessary returns, claims and other administrative requirements for giving effect to group relief for carried-forward losses.

301. Paragraphs 123 to 126 amend the Capital Allowances Act 2001 to insert necessary references to losses carried forward under section 45A and to group relief for carried-forward losses in section 212Q; and to insert references to losses carried forward under section 45A and 45B in section 138 and paragraph 20 of Schedule A1.

302. Paragraph 127 amends the Energy Act 2004 to insert necessary references to the new loss relief provisions.

303. Paragraph 128 introduces amendments to CTA 2009.

304. Paragraph 129 amends section 39(3) of CTA 2009 to insert a reference to group relief for carried-forward losses.

305. Paragraph 130 amends section 364(4) of CTA 2009 to insert a reference to group relief for carried-forward losses.

306. Paragraph 131 amends section 371 of CTA 2009 in line with the amendment to section 364(4).

307. Paragraph 132 amends section 387 of CTA 2009 to insert a reference to the new Chapter 16A of Part 5 of CTA 2009.

308. Paragraph 133 amends section 1048 of CTA 2009. Paragraph 133(2) inserts a reference to "the deemed loss-making period", which is then used in the new subsections (4A) to (4D), inserted by paragraph 133(4).

309. New section 1048(4A) of CTA 2009 states that section 1048(4B) applies where the deemed loss-making period begins on or after 1 April 2017, the company either begins a trade in that period and carries it on in the following accounting period, or begins to carry on a trade after the deemed loss-making period, and that trade is derived from the research and development in relation to which the relief under section 1045 has been obtained.

310. New section 1048(4B) treats the loss as if it were a loss brought forward to the 'relevant period' under the 'relevant provision', so far as the company has not obtained relief for the loss under any other provision and has not surrendered it under Part 5 of CTA 2010 (group relief).

311. New section 1048(4C) defines the 'relevant provision' as section 45A of CTA 2010 where the trade is not a ring fence trade within the meaning of Part 8 of CTA 2010 or a trade where any loss would have been denied relief under section 37 of CTA 2010 due to section 44 of that Act ('trade must be commercial or carried on for statutory functions'). If either of those conditions is not met, the 'relevant provision' is section 45B of CTA 2010.

312. New section 1048(4D) defines the 'relevant period'. Where the company began the trade in the deemed loss-making period and continued to carry it on in the following accounting period, that following accounting period is the 'relevant period'. Where the company began the trade in an accounting period after the deemed loss-making period, the accounting period in which the company begin the trade is the 'relevant period'.

313. Paragraph 134 amends section 1056 of CTA 2009 to insert references to losses carried forward under sections 45A and 45B of CTA 2010, and to group relief for carried-forward losses.

314. Paragraph 135 amends section 1062(2) of CTA 2009 to insert references to losses carried forward under sections 45A and 45B of CTA 2010.

315. Paragraph 136 amends section 1116 of CTA 2009 to insert references to group relief for carried-forward losses.

316. Paragraph 137 amends section 1153 of CTA 2009 to insert references to losses carried forward under sections 45A and 45B of CTA 2010, and to group relief for carried-forward losses.

317. Paragraph 138 amends section 1158(2) of CTA 2009 to insert references to losses carried forward under sections 45A and 45B of CTA 2010.

318. Paragraph 139 amends section 1201(2B)(b) of CTA 2009 to insert a reference to losses carried forward under section 45B of CTA 2010.

319. Paragraph 140 amends section 1216CH(4)(b) of CTA 2009 to insert a reference to losses carried forward under section 45B of CTA 2010.

320. Paragraph 141 amends section 1217CH(4)(b) of CTA 2009 to insert a reference to losses carried forward under section 45B of CTA 2010.

321. Paragraph 142 amends section 1217KA(3)(b) of CTA 2009 to insert a reference to losses carried forward under section 45B of CTA 2010.

322. Paragraph 143 amends section 1217RH(3)(b) of CTA 2009 to insert a reference to losses carried forward under section 45B of CTA 2010.

323. Paragraph 144 amends section 1223 of CTA 2009. Taken together with the amendment made by paragraph 6(2)(b) it ensures that section 1223 applies correctly where expenses of management are eligible to be carried forward and set against total profits of a later accounting period.

324. Paragraphs 145 to 174 make consequential changes to CTA 2010 to amend the overview of the Act and to expand references to section 45 of CTA 2010 to also refer to sections 45A and/or 45B as appropriate, and to add references to group relief for carried-forward losses.

325. Paragraph 145 introduces the amendments to CTA 2010.

326. Paragraph 146 amends the overview in section 1 of CTA 2010 to include references to group relief for carried-forward losses in Part 5A, and to the restriction on relief for carried-forward losses in Part 7ZA.

327. Paragraph 147 amends section 17 of CTA 2010 to expand references to losses that are carried back or carried forward to take account of the new legislation.

328. Paragraph 148 amends section 46 of CTA 2010 to expand the reference to section 45 of CTA 2010 to include relief under section 45B in cases where trade related interest and dividends are treated as trading profits for the purposes of loss relief.

329. Paragraph 149 amends section 47 of CTA 2010 to add a reference to section 45B of CTA 2010.

330. Paragraph 150 amends section 53 of CTA 2010 to add references to sections 45A and 45B of CTA 2010.

331. Paragraph 151 amends section 54 of CTA 2010 to add references to sections 45A and 45B of CTA 2010

332. Paragraph 152 amends section 56 of CTA 2010 to add references to section 45A and Part 5A of CTA 2010.

333. Paragraph 153 amends section 59 of CTA 2010 to add references to section 45A and Part 5A of CTA 2010.

334. Paragraph 154 amends section 61 of CTA 2010 to ensure that, where a company carries on a trade as a member of a Limited Liability Partnership, relief is calculated correctly under section 45A and Part 5A of CTA 2010, and to add references to section 45A and Part 5A of CTA 2010.

335. Paragraph 155 amends Chapter 4 of Part 4 of CTA 2010 (property losses).

336. Paragraph 155(2) amends section 65 of CTA 2010. This section applies if a company carries on a UK furnished holiday lettings business. Subsection (4A) is amended and new subsection (4B) is introduced. Losses of UK furnished holiday lettings businesses will continue to be unavailable for set off against total profits of the loss-making period and of previous periods. Where the business has a loss carried forward, that loss will be available for set-off only against profits of the same trade. Losses of a UK furnished holiday lettings business carried forward and set off against later profits in this way will be ignored for the purposes of calculating the new restriction on deductions from trading profits under section 269ZB.

337. Paragraph 155(3) amends section 67A of CTA 2010. This section applies if a company carries on an EEA furnished holiday lettings business. Subsection (5) is amended and new subsection (5A) is introduced. Losses of EEA furnished holiday lettings businesses will continue to be unavailable for set off against total profits of the loss-making period and of previous periods. Where the business has a loss carried forward, that loss will be available for set-off only against profits of the same trade. Losses of an EEA furnished holiday lettings business carried forward and set off against later profits in this way will be ignored for the purposes of calculating the new restriction on deductions from trading profits under section 269ZB.

338. Paragraph 156 amends section 95 of CTA 2010 to insert references to losses carried forward under section 45A and section 45B, and to add a reference to group relief for carried-forward losses.

339. Paragraph 157 amends section 99 of CTA 2010 so that non-trading loan relationship deficits arising on or after 1 April 2017 are available for group relief within Part 5 of CTA 2010.

340. Paragraph 158 amends section 104 of CTA 2010, which is part of the group relief legislation. This is an amendment relating to non-trading losses on intangible fixed assets that is consequential to the change made by paragraph 5.

341. Paragraph 159 amends the list in section 137 of CTA 2010 of deductions to be given after group relief under Part 5. That list is expanded to include references to relief for a post-1 April 2017 non-trading loan relationship deficit set against profits of the deficit period or an earlier period, and group relief for carried-forward losses.

342. Paragraph 160 amends section 189 of CTA 2010 to add group relief for carried-forward losses to the priority rule in the provisions about relief for qualifying charitable donations.

343. Paragraph 161 amends section 269DA of CTA 2010 to take account of group relief for carried-forward non-banking losses in determining profits for the purposes of the surcharge on banking companies.

344. Paragraph 162 inserts a new section 269DBA into CTA 2010 to add necessary definitions in relation to group relief for carried-forward losses.

345. Paragraph 163 amends section 269DC of CTA 2010 to insert references to trade losses carried forward under section 45A and 45B, and references to sections 463G and 463H of CTA 2009 in relation to non-trading loan relationship deficits.

346. Paragraph 164 amends section 385 of CTA 2010 to insert a reference to section 45F of CTA 2010.

347. Paragraph 165 amends section 398D of CTA 2010 to insert a restriction in relation to group relief for carried-forward losses.

348. Paragraph 166 amends section 427 of CTA 2010 to insert a reference to section 45F of CTA 2010.

349. Paragraph 167 amends Chapter 5 of Part 9 of CTA 2010 which contains anti-avoidance provisions relating to sales of lessors.

350. Paragraph 167(2) amends section 432 of CTA 2010 so that new section 433A of that Act will apply as well as section 433 if certain conditions are met.

351. Paragraph 167(3) amends section 433 of CTA 2010. This section denies certain reliefs in respect of a restricted loss amount created on the sale of a leasing company. The reliefs denied will now include both pre- and post-1 April 2017 carried-forward losses and group relief for carried-forward losses.

352. Paragraph 167(4) inserts new section 433A into CTA 2010. This provides that deductions for trading losses carried forward in respect of the restricted loss amount will be ignored for the purposes of calculating the new restriction on deductions from trading profits under section 269ZB. It also provides that deductions for UK property business losses carried forward in respect of the restricted loss amount will be ignored for the purposes of calculating the new restriction on deductions from total profits under section 269ZD.

353. Paragraph 168 amends section 599 of CTA 2010, part of the rules relating to UK Real Estate Investment Trusts (REITs). A new subsection (9) is inserted which has the effect that Part 7ZA of CTA 2010 (restrictions on the use of carried-forward losses) does not apply to a UK REIT.

354. Paragraph 169 amends section 601 of CTA 2010 to insert a reference to group relief for carried-forward losses.

355. Paragraph 170 amends section 705E of CTA 2010 as a consequence of the amendment made by paragraph 5 in relation to intangible fixed assets.

356. Paragraph 171 amends section 705F(2) of CTA 2010 to insert references to section 463G and 463H of CTA 2009, and to make other amendments consequential on those additions.

357. Paragraph 172 amends section 730C of CTA 2010 to insert references to section 45A and Part 5A of CTA 2010.

358. Paragraph 173 amends section 888 of CTA 2010 to insert references to sections 45A and 45B of CTA 2010, and to insert a reference to group relief for carried-forward losses.

359. Paragraph 174 updates the index of defined expressions in Schedule 4 to CTA 2010.

360. Paragraph 175 introduces amendments to the Taxation (International and Other Provisions) Act 2010 ("TIOPA").

361. Paragraph 176 amends section 54 of TIOPA to insert references to sections 463B(1), 463G(4) and 463H(3) of CTA 2009.

362. Paragraph 177 amends section 55 of TIOPA to insert references to section 463B(1)(a) of CTA 2009.

363. Paragraph 178 amends section 156(1) of TIOPA to expand the meaning of "losses" to include Chapter 16A of CTA 2009 and group relief for carried-forward losses.

364. Paragraph 179 amends section 371IF of TIOPA to insert a reference to Chapter 16A of CTA 2009.

365. Paragraph 180 inserts new section 371SKA into TIOPA. This prevents the deductions allowance (see new sections 269ZW and 269ZS) from being used in the calculation of a controlled foreign company's (CFC's) taxable total profits for the purposes of the new restrictions for carried-forward losses at Part 7ZA of CTA 2010. It also prevents the use of the deductions allowance where the provisions of Part 7ZA are applied for the purposes of Part 7A CTA 2010. Part 7A contains rules relating to banking companies and includes the bank loss restriction.

366. Paragraph 181 amends section 371SL of CTA 2010 so that group relief for carried-forward losses surrendered by a CFC will be ignored when determining the CFC's assumed taxable total profits.

367.Paragraph 182 amends paragraph 10 of Schedule 9 to the Finance (no 3) Act 2010, to make amendments to the new Part A1 to be introduced into Schedule 54 to the Finance Act 2009. These amendments ensure that interest provisions on repayments of tax operate correctly in relation to the new structure of loss relief.

368.Paragraphs 183 introduces amendments to FA 2012 in respect of insurance companies.

369.Paragraph 184 amends section 78(5) of FA 2012 so that post- 1 April carried forward BLAGAB trade losses that are surrendered as group relief in a later period or which are relieved against total profits of a later period are included within the meaning of "BLAGAB trade loss relieved for the accounting period" in that later period and will deducted from BLAGAB management expenses in step 5 of the calculation within section 76 for the later period.

370.Paragraph 185 amends section 93(2) of FA 2012 so that carried forward BLAGAB trade losses are taken into account in the calculation of adjusted BLAGAB trade profits for the purposes of section 93.

371.Paragraph 186 amends section 104 of FA 2012 so that carried forward BLAGAB trade losses are taken into account in the calculation of adjusted BLAGAB trade profits for the purposes of section 104.

372.Paragraph 187 includes within section 125 of FA 2012 a reference to new Part 5A of CTA 2010 and the rules for group relief for carried forward losses.

373.Paragraph 188 amends section 126 of FA 2012 to ensure that carried forward post-1 April 2017 BLAGAB trade losses that are relieved against total profits (under s124B) or that have been surrendered as group relief (under Part 5A CTA 2010) are reduced by the amount of any non-trading deficit arising in the year the loss arose. Section 126(1E) provides that losses are deemed to be used first in first out basis.

374.Paragraph 189 amends section 127 of FA 2012 to ensure that the policyholders' share of the 'I minus E' profit for an accounting period cannot be relieved by post-1 April carried forward BLAGAB trade losses that have been surrendered as group relief (under Part 5A CTA 2010) or which are relieved against total profits (under s124B).

Part 11: Commencement etc.

375.Paragraph 190 sets out the commencement rules for Parts 1 to 9 and 11. The changes take effect for accounting periods beginning on or after 1 April 2017. Where an accounting period begins before 1 April 2017 and ends after 1 April 2017 the period is treated as two separate accounting periods and profits and losses are apportioned to the two periods. Profits and losses within this paragraph are apportioned on a time basis (in accordance with section 1172 of CTA 2010) unless that method would produce a result that is unjust or unreasonable, in which case a just and reasonable basis is used. Where a time apportionment is unjust or unreasonable and so another just and reasonable method is used, it might be appropriate to apportion the entire actual profit or loss of the straddling period to one of the deemed accounting periods, with a result of nil in the other deemed period. The method of apportioning amounts set out in this paragraph is ignored where the accounting period includes an amount that either would not have arisen or would be less (in the case of a profit) or greater (in the case of a loss) if it were not for Part 10 of TIOPA 2010, corporate interest restriction. In those circumstances, the method of apportionment is set out in paragraphs 191 or 192.

376.Paragraph 191 applies where it is necessary to apportion an amount ("the amount concerned") to two deemed accounting periods and the amount concerned is either an amount chargeable to corporation tax which would have been less but for the corporate interest restriction, or an amount such as a loss in respect of which relief is available which would have been greater but for the corporate interest restriction. Where that is the case, the company is to establish what the amount concerned would have been but for the interest restriction in order to give "the notional amount". The company establishes what amount of the notional amount would have been apportioned to the first of the deemed accounting periods had the apportionment method set out in paragraph 190 applied to give "the notional apportioned amount". If that amount is equal to or greater than the amount concerned, the whole of the amount concerned is apportioned to the first deemed accounting period. Otherwise, the notional apportioned amount is apportioned to the first accounting period and the remainder of the amount concerned is apportioned to the second deemed accounting period.

377. For example, a company with an accounting period 1 January to 31 December 2017 has a profit of £20m. Its interest restricted under Part 10 TIOPA 2010 is £8m, meaning its profits would have been £12m if it had not been for the interest restriction. The company's amount concerned is £20m and its notional amount, the profit it would have had were it not for the interest restriction, is £12m. Apportioning the notional amount on a time basis does not give a result that is unjust or unreasonable, so £3m of the notional amount would have been apportioned to the first deemed accounting period, meaning the notional apportioned amount is £3m. This is less than the amount concerned of £20m and so £3m of the profit is apportioned to the first deemed accounting period. The remainder of the amount concerned is £17m and that is apportioned to the second deemed accounting period.

378. If, instead, the company had made a loss of £12m during an accounting period which would have been a loss of £96m but for a restriction of interest within Part 10 of TIOPA 2010 of £84m, the amount concerned is a loss of £12m and the notional amount is £96m. Using a time basis, the notional apportioned amount (three months out of twelve of the notional amount of £96m) is £24m. This gives a notional apportioned amount that is greater than the amount concerned and so the entire amount concerned of £12m is apportioned to the first deemed accounting period. The second deemed accounting period will have an amount of nil.

379. Paragraph 192 applies where a company would have had a loss or a result of nil if it were not for the corporate interest restriction in Part 10 of TIOPA 2010, which results in the company having a profit for the straddling period. If that is the case, the whole of the profit for the straddling period (the amount concerned) is apportioned to the second deemed accounting period.

380. The effect of Paragraphs 191 and 192 is that the outcome of the interest restriction measure in Part 10 of TIOPA 2010, which applies from 1 April 2017, is taken into account for the purposes of the loss reform commencement provisions entirely in the deemed accounting period beginning 1 April 2017.

381. Paragraph 193 amends the commencement rule applicable to the Corporation Tax (Northern Ireland) Act 2015 to take account of the amendments made by Part 10 of this Schedule. It provides that the changes made by Part 9 of the Schedule have effect as if they have always been part of Part 8B of CTA 2010.

382. Paragraph 194 applies a transitional provision in respect of non-trading loan relationship deficits within section 463H of CTA 2009. An amount within that section is disregarded for the purposes of sections 188DD, 188ED and 730F of CTA 2010 unless it is a deficit that arises after 13 July 2017. Paragraph 194(3) defines a deficit that arises after 13 July 2017 as one that arises in a period that begins on or after that date or, where the deficit arises in a period that begins before 13 July 2017 and ends after that date, the amount of the deficit that is apportioned to the part of the period that begins with 13 July 2017. Paragraphs 194(4) and (5) set out how the apportionment referred to in paragraph 194(3) is to be carried out.

Background note

383. These changes modernise how corporation tax loss relief is given by increasing companies' flexibility in the use of their losses, whilst ensuring that companies pay tax in each accounting period that they make substantial profits.

384. Currently losses can be set against the company's profits of the period in which the loss arose, or surrendered as group relief in the same period, with a fairly wide degree of flexibility. However, losses carried forward to a later period are more restricted. In particular, trading losses can only be set against later profits of the same trade and non-trading deficits on loan relationships can only be set against non-trading profits. Carried-forward amounts cannot be surrendered as group relief.

385. These reforms make two main changes. Firstly, they increase the company's flexibility to set off carried-forward losses, either against the company's own total profits in later periods, or in the form of group relief in a later period. Secondly, they limit the amount of profit against which carried-forward losses can be set to a maximum of 50% of the company's total profits for the period. Each group (or a company that is not part of a group) will have an annual allowance of £5m profits. Carried-forward losses can be set against that amount without restriction. The 50% restriction applies to profits above the £5m annual allowance.

386. No changes are made to relief for in-year losses or in-year group relief, and to losses carried-back to an earlier period: they can still be set off against all available profits of the same period. There is also no change to the treatment of allowable losses under the chargeable gains legislation.

387. The rules will apply to losses arising in the form of trading losses, expenses of management, non-trading loan relationship deficits, UK property business losses and non-trading losses on intangible fixed assets.

388. Existing anti-avoidance rules covering loss buying, deduction buying and 'loss refresh' are amended to reflect the changes set out above. Additional anti-avoidance rules are introduced to prevent exploitation and abuse of the new flexibility.

389. The new rules will apply to all losses arising on or after 1 April 2017. Losses arising before that date will remain subject to the existing rules and cannot benefit from the increased flexibility, but they will be subject to the restriction on the amount of profit that can be relieved by carried-forward losses.

390. Since the introduction of the legislation in March, this Schedule has been amended. Some changes have been introduced to ensure companies do not suffer an unwarranted restriction. These are changes to prevent the loss restriction:

a. impacting insurer's regulatory capital requirements,

b. applying to insolvent insurers with a long tail of health-related employer liability claims,

c. applying to the reversal of an onerous lease provision that arises from a corporate rescue.

391. The legislation now allows post-1 April 2017 trading losses to be transferred between companies under common ownership, while ensuring that this ability cannot be used for avoidance purposes.

392. The group relief rules have been amended to ensure that non-trading loan relationship deficits that arise on or after 1 April 2017 can be surrendered to other companies in a group.

393. Amendments have been made to the calculation of the “relevant maximum” for the purposes of group relief for carried-forward losses, so that the rules work as intended.

394. The oil and gas ring fence expenditure supplement rules have been amended so that companies can benefit from the supplement in respect of losses arising on or after 1 April 2017. In addition, the rules for oil and gas losses have been updated so that where an oil and gas trade becomes small or negligible, its losses lose certain flexibility. This aligns the treatment of oil and gas losses with that for non-oil and gas trading losses.

395. The commencement rules have been amended to ensure that adjustments as a result of the interest restriction measure in new Part 10 of TIOPA 2010 are apportioned appropriately for the purposes of this Clause, as well as setting out a transitional provision where amendments only have effect from 13 July 2017.

Clause 19: Losses: counteraction of avoidance arrangements

Summary

1. This clause is part of the legislation that reforms how relief for carried-forward losses is given. It puts in place an anti-avoidance rule to counteract arrangements that exploit or circumvent the new legislation to obtain more loss relief than is intended by the new legislation.

Details of the clause

2. Subsection (1) provides that a "loss-related tax advantage" (see subsections (7) and (8)) that arises from "relevant tax arrangements" (see subsections (3) to (5)) is to be counteracted.

3. Subsection (2) sets out how counteraction adjustments may be made.

4. Subsection (3) introduces the term "relevant tax arrangements". Conditions A and B must be met in order for an arrangement to be a "relevant tax arrangement".

5. Subsection (4) sets out Condition A, which is that the arrangements give rise to a "loss-related tax advantage", defined in subsection (7).

6. Subsection (5) sets out Condition B. This considers the effect of the arrangements, in particular whether they achieve more relief than is intended by the loss relief legislation. This could involve, for example, obtaining relief against more than the limit on profits set out in the new Part 7ZA of CTA 2010, or obtaining the benefit of more than the amount of annual allowance set out in the legislation.

7. Subsection (6) supplements subsection (5) by setting out that all relevant circumstances must be taken into account. It gives examples of what those circumstances might involve, but these are not exhaustive.

8. Subsection (7) sets out that a "loss-related tax advantage" is a tax advantage that arises from a deduction under a provision set out in subsection (8).

9. Subsection (8) sets out the loss relief provisions that are to be considered in determining whether there is a "loss-related tax advantage".

10. Subsection (9) provides definitions of "arrangements" and "tax advantage".

11. Subsection (10) provides the commencement rule. This section has effect in relation to a tax advantage that relates to an accounting period beginning on or after 1 April 2017 regardless of when the arrangements in question were made.

12. Subsection (11) covers a situation where a company has an accounting period beginning before and ending on or after 1 April 2017 ("the straddling period"). The periods before and after 1 April 2017 are treated as separate accounting periods and profits and losses apportioned accordingly.

13. Subsection (12) sets out that where the provision under which a tax advantage was obtained is section 463H of CTA 2009, section 62(3), 303B, 303C or 303D of CTA 2010, or section 124A or 124C of the Finance Act 2012, subsections (10) and (11) have effect as if the references to 1 April 2017 were to 13 July 2017.

Background note

14. This measure is part of a wider reform of the loss relief legislation.

15. The measure will modernise how corporation tax loss relief is given by increasing companies' flexibility in the use of their losses, whilst ensuring that companies pay tax in each accounting period that they make substantial profits.

16. Currently losses can be set against the company's profits of the period in which the loss arose, or surrendered as group relief in the same period, with a fairly wide degree of flexibility. However, losses carried forward to a later period are more restricted. In particular, trading losses can only be set against later profits of the same trade and non-trading deficits on loan relationships can only be set against non-trading profits. Carried-forward amounts cannot be surrendered as group relief.

17. These reforms make two main changes. Firstly, they increase the company's flexibility to set off carried-forward losses, either against the company's own total profits in later periods, or in the form of group relief in a later period. Secondly, they limit the amount of profit against which carried-forward losses can be set to a maximum of 50% of the company's total profits for the period. Each group (or a company that is not part of a group) will have an annual allowance of £5m profits. Carried-forward losses can be set against that amount without restriction. The 50% restriction applies to profits above the £5m annual allowance.

18. No changes are made to relief for in-year losses or in-year group relief, and to losses carried-back to an earlier period: they can still be set off against all available profits of the same period. There is also no change to the treatment of allowable losses under the chargeable gains legislation.

19. The rules will apply to losses arising in the form of trading losses, expenses of management, non-trading loan relationship deficits, UK property business losses and non-trading losses on intangible fixed assets.

20. Existing anti-avoidance rules covering loss buying, deduction buying and 'loss refresh' will be amended to reflect the changes set out above. Additional anti-avoidance rules, including this clause, are being introduced to prevent exploitation and abuse of the new flexibility.

21. The new rules will apply to all losses arising on or after 1 April 2017. Losses arising before that date will remain subject to the existing rules and cannot benefit from the increased flexibility; but they will be subject to the restriction on the amount of profit that can be relieved by carried-forward losses.
22. Since the introduction of the legislation in March 2017, this clause has been amended to apply to basic life assurance and general annuity business (BLAGAB) losses and to oil and gas losses, and the reference to property losses has been amended so that it applies to in-year losses as well as those that are carried forward. These changes have effect from 13 July 2017.

Clause 20 and Schedule 5: Corporate interest restriction

Summary

1. This clause and Schedule introduce a restriction on the amount of interest and other financing amounts that a company may deduct in computing its profits for corporation tax purposes. The legislation takes effect from 1 April 2017.

Details of the clause and Schedule

2. Clause 20 introduces Schedule 5.

Schedule 5

Part 1: New Part 10 of TIOPA 2010

3. Part 1 of Schedule 1 introduces a new Part 10 into the Taxation (International and Other Provisions) Act 2010 (TIOPA). In consequence, the existing Part 10 of TIOPA is renumbered as Part 11, and certain further consequential changes are made (see paragraph 10 in Part 3 of the Schedule).

Chapter 1: Introduction

4. New Section 372 sets out an overview of the new Part 10 and provides brief details about the contents of each chapter. Chapters 2 to 5 contain the main rules by which any interest restriction is calculated. In particular, section 372(4) introduces key terms defined in Chapter 3 involving "tax-interest". This is a company's or group's interest and similar amounts which are included in the UK tax computations. These are the amounts that are potentially restricted under these provisions.

5. Chapters 6 and 7 define key concepts. In particular, section 372(7)-(8) introduces key terms defined in Chapters 6 and 7 involving "tax-EBITDA". This is a company's or a group's taxable earnings before interest, tax, depreciation and amortisation, and is an important part of the calculation of an interest restriction. These are the amounts that form the basis of the worldwide group's interest capacity for the period, and hence determine the amount of tax-interest amounts that may be deducted.

6. New section 373 sets out the meaning of certain terms used in the new Part 10. Those terms are described by reference to a "period of account" for a "worldwide group". Throughout this legislation "period of account" is used to describe the period by reference to which the group draws up its accounts. That period may not necessarily match the accounting periods used by some of the companies within the group. The term "accounting period" is used to refer to the period by reference to which a company computes its profits chargeable to UK corporation tax.

7. New Section 374 introduces new Schedule 7A to TIOPA. This Schedule contains administrative provisions including the interest restriction return, enquiry powers and information powers.

Chapter 2: Disallowance and reactivation of tax-interest expense amounts

8. New Section 375 sets out how tax deductions are disallowed where a full interest restriction return is submitted (section 376 covers the situation where only an abbreviated return, or no such return, is submitted). Section 375(2) specifies that a company must disallow deductions in the amounts set out in the return. There is further provision in section 377 as to which deductions must be disallowed.

9. Section 375(3)-(5) covers the situation where a "non-consenting company", as defined in paragraph 10 of Schedule 7A, does not give its agreement (or withdraws its agreement) to be bound by the amount allocated to it in the return. The distinction between consenting and non-consenting companies is made to help the group manage possible conflicts of interest where a member of the group has a significant shareholder who holds a minority interest in the company, or where insolvency arrangements come into effect. In such a case, the company may elect not to disallow the amount allocated to it in the interest restriction return. It might so elect if it disagrees with the way the amount to be allocated has been calculated. Such an election may be withdrawn. Where an election is in effect the company must disallow a pro-rated amount as allocated to the accounting period under paragraphs 23 and 24 of Schedule 7A.

10. New Section 376 sets out how tax deductions are disallowed where only an abbreviated interest restriction return, or no such return, is submitted (section 375 covers the situation where a full return is submitted). This section takes effect after 12 months have elapsed from the end of the period of account. Section 376(6) specifies that a company must disallow deductions in any accounting period in accordance with the amount of disallowance due to it under the pro-rating rules in paragraph 24 of Schedule 7A.

11. New Section 377 sets out how to identify the amounts to be restricted under section 375(2), 375(4) or 376(6). Section 377(2) sets out the default order in which amounts are disallowed. Section 377(3) allows a company to elect out of the default order and choose what tax-interest expense amounts it disallows.

12. New Section 378 provides that any deduction that has been disallowed under section 375 or section 376 may be carried forward to a later period where it may potentially be the subject of a "reactivation". Section 378(3) stops the carry-forward of disallowed trading expenses once the company ceases to trade or the trading activities have become small or negligible. Section 378(4)-(5) applies in a similar way where the trade becomes uncommercial and is not carried on in the exercise of a statutory function (within the meaning of section 44 of the Corporation Tax Act 2010 (CTA 2010)). Section 378(7) specifies, for the avoidance of doubt, that if a disallowed deduction is reactivated and allowed in a subsequent period, then it is extinguished and cannot be carried forward again.

13. New Section 379 provides for disallowed amounts to be reactivated and allowed in later periods. Section 379(1) allows the reactivation of amounts brought forward only in a period for which a full interest restriction return has been submitted (see paragraph 20(3) of Schedule 7A) and where that return includes a statement of allocated interest reactivations (see paragraph 20(3)(f)(iii) of Schedule 7A). Section 379(2)-(4) requires a company that has an accounting period to which a reactivation is allocated to give effect to that allocation.

14. New Section 380 sets out the amounts to be reactivated by a company when required to do so under section 379. Section 380(2) sets out the default order in which amounts are reactivated where the company does not exercise its right to choose. Section 380(3) allows a company to elect out of the default order and choose what tax-interest expense amounts it reactivates. Section 380(4) specifies that the tax-interest expense amounts reactivated are to be included in the company's election.

15. New Section 381 covers the uncommon situation where a company, in relation to one of its accounting periods, must disallow a deduction of that period and also reactivate an amount carried forward from an earlier period. The amounts of disallowance and reactivation must in effect be set off against each other, with only the net result being given effect.

Chapter 3: Tax-interest amounts

16. New Section 382 sets out the meaning of the term "tax-interest expense amount" by reference to three conditions, only one of which needs to be met to satisfy the definition. In particular the amount must be a relevant loan relationship debit (section 383), a relevant derivative contract debit (section 384) or a financing cost implicit in amounts payable under a relevant arrangement, which includes finance leases, debt factoring and service concession arrangements accounted for as a financial liability (section 382(5)).

17. Section 382(7)-(9) sets out the treatment of a "disregarded period", which is where the company's accounting period does not exactly align with the group's period of account. Amounts are attributed to the disregard period on a just and reasonable basis, for example having regard to:

    - The period in which amounts would be recognised in the company's financial statements if they were drawn up for particular periods.

- The period in which amounts would be brought into account by the company if it had a different accounting period.
- Ensuring that the amounts are in total fully attributed. In other words, if the accounting period is broken up into a number of periods which do not overlap and which, taken together, completely align with the accounting period in question, the total of the amounts attributed to those periods must equal the amount being attributed.

18. Section 382(10)-(11) operates in certain cases where tax rules provide for a deduction and amounts have previously been disallowed. Where the disallowed amounts would have been an amount of tax-interest expense then the amounts now deductible are likewise treated as being amounts of tax-interest expense.

19. New Section 383 sets out the meaning of "relevant loan relationship debits". These are debits brought into account under the loan relationship provisions provided they are not excluded debits. A debit will be excluded if it is in respect of an exchange loss or impairment loss.

20. New Section 384 sets out the meaning of "relevant derivative contract debits". These are certain debits brought into account under the derivative contract provisions, depending on the underlying subject matter of the derivative. A debit will be excluded if it is in respect of an exchange loss or impairment loss. A debit will also be excluded where it arises from a derivative that is not related to the capital structure of the company or the group.

21. New Section 385 sets out the meaning of "tax-interest income amounts" by reference to four conditions, only one of which needs to be met to satisfy the definition. In particular the amount must be a relevant loan relationship credit (section 386), a relevant derivative contract credit (section 387), a financing cost implicit in amounts receivable under a relevant arrangement which includes finance leases, debt factoring and service concession arrangements accounted for as a financial asset, (section 385(5)) or an amount receivable for providing a guarantee (section 385(6)).

22. Section 385(8)-(10) sets out the treatment of a "disregarded period" which is where the company's accounting period does not exactly align with the group's accounting period. Amounts are attributed to the disregarded period on a just and reasonable basis, for example having regard to:

- The period in which amounts would be recognised in the company's financial statements if they were drawn up for particular periods.
- The period in which amounts would be brought into account by the company if it had a different accounting period.

- Ensuring that the amounts are in total fully attributed. In other words, if the accounting period is broken up into a number of periods which do not overlap and which, taken together, completely align with the accounting period in question, the total of the amounts attributed to those periods must equal the amount being attributed.

23. New Section 386 sets out the meaning of "relevant loan relationship credits". These are credits brought into account under the loan relationship provisions provided they are not excluded credits. A credit will be excluded if it is in respect of an exchange gain or reversal of an impairment loss.

24. New Section 387 sets out the meaning of "relevant derivative contract credits". These are certain credits brought into account under the derivative contract provisions, depending on the underlying subject matter of the derivative. A credit will be excluded if it is in respect of an exchange gain or reversal of an impairment loss. A credit will also be excluded where it arises from a derivative that is not related to the capital structure of the company or the group.

25. New Section 388 provides for double taxation relief. It does this by excluding from the "tax-interest income amount" any amount to the extent that it consists of "notional untaxed income". The section sets out the formula used to calculate this amount, which is the amount of credit for foreign tax given by section 18(2) of TIOPA, divided by the rate of Corporation Tax. So, for example, where the amount of credit for foreign tax is £100 and the rate of Corporation Tax is 19%, the notional untaxed income is £526 (= £100 ÷ 19%).

26. New Section 389 sets out the meaning of the "net tax-interest expense" and "net tax-interest income" of a company. These are calculated by comparing the company's "tax-interest income amounts" (section 385) with its "tax-interest expense amounts" (section 382).

27. New Section 390 sets out the meaning of the worldwide group's "aggregate net tax-interest expense" and "aggregate net tax-interest income". These are the difference between the sum of each relevant company's "net tax-interest expense amount" and the sum of its "net tax-interest income amount" for the period.

28. New Section 391 sets out the meaning of "impairment loss". This is important for looking at which credits and debits are excluded from the definition of "tax-interest" (see, for example, section 383(3)(b)).

Chapter 4: Interest Capacity

29. New Section 392 defines the "interest capacity" of a worldwide group for a period of account. Interest capacity is the aggregate of the interest allowance of the period and any unused interest allowance carried forward from an earlier period that is available in the current period. However a *de minimis* amount of £2m per annum is used if that gives a bigger capacity. "Interest allowance" is defined in Chapter 5.

30. New Section 393 sets out how much interest allowance of a period ("the originating period") is available in a later period for the group. It is nil if a full interest restriction return has not been submitted for the period of account (section 393(5)). Otherwise it is the lower of two amounts: A and B:

    - "A" is a measure of how much interest allowance is available because it has not yet been used up. See section 394.
    - "B" is a measure of how much interest allowance is available because it has not yet expired (the carry-forward of unused interest allowance is subject to a five year time limit). See section 395.

31. New Section 394 determines the extent to which interest allowance is "used", for the purpose of calculating how much interest allowance of an originating period is available in a later period. Interest allowance is "used" where it allows the group to obtain a deduction for tax-interest amounts. Section 394(2) sets out how much interest allowance is used in the originating period, and section 394(3)-(5) sets out how much interest allowance of the originating period is used in a later "receiving" period. The sum of these two amounts is the amount of interest allowance that has been "used".

32. Section 394(3) sets out the amount of the interest allowance from the originating period that is used in a receiving period. It is the amount calculated in section 394(4), but this is limited so that it cannot exceed the total amount of the allowance from the originating period that is available in the receiving period (section 394(5)).

33. Section 394(4) defines "the relevant part of the aggregate net tax-interest expense of the group for the receiving period". This is the amount of the interest expense of the receiving period that is not covered or franked by either: (i) the interest allowance of the receiving period; or (ii) the interest allowance of any period that is earlier than the originating period, that is carried forward and used in the receiving period. It is therefore the amount of the interest expense of the receiving period left over that can consume the interest allowance carried forward from the originating period.

34. The formula used can give a negative amount where the amount of interest allowance of the receiving period exceeds the aggregate net tax-interest of the receiving period. In such a case, the amount calculated is set to nil by section 394(5).

35. New Section 395 determines the extent to which interest allowance is "unexpired", for the purpose of calculating how much interest allowance of an "originating period" is available in a later period under section 393. The rules set out how the five year limit for carrying forward unused interest allowance should be applied. Section 395(2) and (3) sets out the circumstances where, respectively, all or none of the interest allowance of the originating period is unexpired in a later "receiving period". The remainder of the section deals with situations where part is unexpired.

36. Section 395(4), (6), and (8) describes three different scenarios. There is a different result for each scenario, as laid out respectively in section 395(5), (7) and (9). Note that that the result in section 395(9) is the lower of the amounts given by section 395(5) and 395(7).

37. To understand the different scenarios, it can be helpful to think of the notional period that would result from moving the originating period forward five years.

    - Section 395(4): the receiving period falls entirely within the notional period.
    - Section 395(6): the notional period falls entirely within the receiving period.
    - Section 395(8): the receiving period overlaps the notional period, but starts after the notional period starts and ends after the notional period ends.

38. Section 395(5) determines the amount of interest allowance for the originating period that is unexpired in the receiving period where section 395(4) applies. This is an amount equal to the interest allowance of the originating period to the extent (if any) that it exceeds the aggregate net tax-interest expense for the originating period, multiplied by a fraction. The fraction is the number of days in the notional period that fall after the start of the receiving period, divided by the total number of days in the originating period. This effectively expires the amount of interest allowance generated in the part of the originating period that falls more than five years before the receiving period starts.

39. Section 395(7) determines the amount of interest allowance for the originating period that is unexpired in the receiving period where section 395(6) applies. In the circumstances described in section 395(6), all of the interest allowance from the originating period is "in time" to be used for the start of the receiving period. However not all of the interest expense in the receiving period can access the allowance. So section 395(7) prevents the inappropriate set off of interest allowance from the originating period against interest expense that arises more than five years after the originating period ends. This is achieved by looking at the aggregate net tax-interest expense in the receiving period to the extent it exceeds the interest allowance of that period, and excluding on a pro-rata basis the expense that arises more than five years after the originating period ends

40. The amount calculated under section 395(7) is equal to the aggregate net tax-interest expense of the receiving period to the extent (if any) that it exceeds the interest allowance for the receiving period, multiplied by a fraction. The fraction is the number of days in the receiving period that fall before the end of the notional period, divided by the total number of days in the receiving period.

41. The calculation could give an amount that exceeds the total interest allowance of the originating period. However, the calculation can never lead to an inappropriately large amount of interest allowance being available in a later period because of the way it feeds into section 393(4) and then section 393(2), which will ensure that the amount available cannot exceed the total amount of unused interest allowance from the originating period.

42. Section 395(9) determines the amount of interest allowance of the originating period that is unexpired in the receiving period where section 395(8) applies. In this case only part of the interest allowance from the originating period is in time and only part of the interest expense of the receiving period is in time. Both partial amounts must therefore be calculated (the partial amount of interest allowance under section 395(5) and the partial amount of interest expense under section 395(7)) and the lower amount used.

Chapter 5: Interest Allowance

43. New Section 396 defines the interest allowance for a period of account as, by default, the amount given by the "fixed ratio method" (section 397) or, by election, the amount given by the "group ratio method" (section 398). In addition, where in a period a group has an aggregate net tax-interest income then this is added to the interest allowance for the period.

44. New Section 397 sets out the calculation of the interest allowance by the fixed ratio method. It is the lower of two amounts. The first is 30% of a measure of the group's aggregate tax-EBITDA (defined at section 405). The second is a cap (see section 400) based on the "adjusted net group-interest expense" of the group (defined at section 413).

45. New Section 398 sets out the calculation of the interest allowance by the group ratio method. It is the lower of two amounts. The first is a proportion ("the group ratio percentage") of the group's aggregate tax-EBITDA (defined at section 405). The second is a cap based on the "qualifying net group-interest expense" of the group (see section 414), the calculation of which differs from the cap in section 397.

46. New Section 399 defines the "group ratio percentage". This is calculated as the ratio of the qualifying net group-interest expense for the group (see section 414) to the group-EBITDA for the group (see section 416). The percentage is capped at 100%, including where the group-EBITDA is zero or negative for the period. So, for example, where the qualifying net group-interest expense is £36m and the group-EBITDA is £80m then the group ratio percentage is 45%.

47. New Section 400 sets out how to calculate the "fixed ratio debt cap" (used in section 397) and the "group ratio debt cap" (used in section 398). In particular, this allows a group to carry forward an amount of "the excess debt cap" and for this to be included in the debt cap figures for the following period. This amount arises where there is a restriction in a period and there is "headroom" under the fixed ratio debt cap or the group ratio debt cap (as applicable for the period). The excess debt cap can accumulate over successive periods, but reduces in a period in which it is "used".

48. New Section 401 sets out the consequences of making a "group ratio (blended) election" in accordance with paragraph 14 of Schedule 7A. This election allows a group to calculate its group ratio percentage with reference to the group ratio percentage of one or more related party investors. In this case the group ratio percentage is determined by calculating a weighted average of the applicable percentages for each investor. Each applicable percentage is the highest of 30%, the ratio for the group calculated in accordance with section 399, and (if the investor is a member of a separate worldwide group) the group ratio for that investor's group. Each applicable percentage is weighted by that investor's interest in the group. Section 401(5) and (6) is used where the relevant periods of account of an investor overlap the relevant period of account of the worldwide group.

49. New Section 402 sets out the calculation of the "blended net group-interest expense". Where a group ratio (blended) election is made, the blended net group-interest expense is used in place of the qualifying net group-interest expense for the purposes of the group ratio debt cap at section 398(1)(b). The calculation of the blended net group-interest expense is described in the four steps in section 402(3).

50. New Section 403 allows the reporting company of the worldwide group for which the "blended" group ratio is being calculated to specify under the blended group-ratio election that particular elections under Schedule 7A are to be treated as being made or as not being made in respect of an investor's worldwide group.

51. New Section 404 defines "investor", "related party investor" and investor's "share" for the purposes of the interest restriction rules.

Chapter 6: Tax-EBITDA

52. New Section 405 sets out the meaning of the key term "aggregate tax-EBITDA" for the worldwide group in respect of a period of account. This total is used in sections 397 and 398 in determining any restriction under the fixed ratio method and the group ratio method.

53. New Section 406 sets out the meaning of "tax-EBITDA" for an individual company in respect of a period of account. In particular, it identifies particular amounts in respect of the period of account in question. The resultant amounts form the basis for the calculation of aggregate tax-EBITDA in section 405.

54. The amounts are identified through satisfying either condition A or condition B. Condition A covers amounts that are brought into account by the company in determining its taxable profits for the period. Condition B extends this to also include amounts that would be so brought into account if the company had sufficient taxable profits in the period. This ensures that amounts leading to a tax loss for the period are included in the definition. Tax-EBITDA can be a positive or negative amount for a particular company. Certain amounts are excluded from conditions A and B (see section 407).

55. Section 406(5) to 406(8) also sets out the rules for calculation where the company does not have a single, complete accounting period which coincides with the period of account of the worldwide group. Amounts are attributed to the disregarded period on a just and reasonable basis, for example having regard to:

- The period in which amounts would be recognised in the company's financial statements if they were drawn up for particular periods.
- The period in which amounts would be brought into account by the company if it had a different accounting period.
- Ensuring that the amounts are in total fully attributed. In other words, if the accounting period is broken up into a number of periods which do not overlap and which, taken together, completely align with the accounting period in question, the total of the amounts attributed to those periods must equal the amount being attributed.

56. New Section 407 provides details of the amounts to be excluded in arriving at a company's tax-EBITDA figure for a period of account. In particular, it excludes:

- Tax-interest income and tax-interest expense amounts (as defined in Chapter 3 of Part 10).
- Allowances and charges in connection with capital expenditure under the Capital Allowances Act 2001.
- Certain amounts of intangible debits under the Intangible Fixed Asset rules (Part 8 of the Corporation Tax Act 2009 (CTA 2009)) which relate to amounts capitalised in the company's accounts, and credits representing the reversal of such amounts.
- Losses (such as trading losses, property losses, losses on the disposal of shares, miscellaneous losses, non-trading losses on intangible fixed assets, but excluding capital losses), non-trade loan relationship deficits, management expenses from an earlier or later accounting period.
- Group relief (including consortium relief) except to the extent of any claim for group relief from a company outside of the group. This includes amounts of losses brought forward that are deducted under section 188CK of CTA 2010.
- Amounts of qualifying tax reliefs (as specified in section 407(3)).

57. Tax-EBITDA is to be calculated on the basis of including net chargeable gains under the Taxation of Chargeable Gains Act 1992 (TCGA 1992). As a result, section 407(4) provides that capital losses are only taken into account in the period in which they are actually deducted from a chargeable gain.

58. New Section 408 provides further interpretation for the purposes of section 407 in respect of the treatment of intangible fixed assets. This specifies certain debits arising in respect of intangible fixed assets which are always excluded from tax-EBITDA. It also specifies certain debits and credits in respect of intangible fixed assets which are excluded to the extent that they reflect debit and credit amounts that would have been excluded previously.

59. New Section 409 adjusts for circumstances where the corporation tax charge is reduced by reason of a credit for foreign tax. An amount derived by the formula at section 409(3) is treated as "notional untaxed income" (as in the calculation of tax-interest income, see section 388) and will not form part of the company's adjusted corporation tax earnings within section 406(2).

Chapter 7: Group-interest and group-EBITDA

60. New Section 410 sets out the meaning of the "net group-interest expense" of a worldwide group for a period of account. This comprises the amounts in respect of "relevant interest expense matters" and "relevant interest income matters" as recognised in the group's financial statements as items of profit or loss for the period.

61. Section 410(2) to 410(5) ensures that amounts are included in net group-interest expense where the amounts are capitalised in respect of an asset that is not a relevant asset and the cost of the asset is expensed or otherwise written off (for example as part of cost of sales). Amounts in respect of a relevant asset are not included to avoid amounts being included in both net group-interest expense and as part of the depreciation and amortisation adjustment. This ensures that group-EBITDA is calculated correctly (see section 416).

62. New Section 411 sets out the meaning of "relevant expense amount" and "relevant income amount". This aims to mirror the types of item that would be included within the scope of tax-interest expense amounts (see section 382), and tax-interest income amounts (see section 385). So, for example, it includes amounts which are loan relationships of a company within the group and also specific arrangements that would be treated as loan relationships of a company under UK tax rules. However, section 411(3) excludes amounts in respect of a group pension scheme.

63. New Section 412 provides further interpretation for the purposes of section 411.

64. New Section 413 sets out the meaning of "adjusted net group-interest expense" of a worldwide group for a period of account. This is used in the calculation of the fixed ratio debt cap (see section 400). This is based on the net group-interest expense of the group, adjusted for certain items.

    - Section 413(3)(a), 413(3)(b), 413(4)(a) and 413(4)(b) makes adjustments for amounts of interest and other items that are capitalised in the carrying value of an asset or liability of the company. These ensure that capitalised interest is included in adjusted net group-interest expense at the time it is capitalised and excluded at the time it is expensed in profit or loss.

- Section 413(3)(c) and 413(4)(c) makes adjustments for amounts of interest and other items that are recognised in equity in respect of instruments where amounts would be brought into account for tax under a "relevant enactment". These relate to (a) instruments entered into before an accounting period commencing on or after 1 January 2016 that are grandfathered under the F(No.2)A 2015 changes; and (b) instruments falling within the Regulatory Capital Securities Regulation 2013 (S.I. 2013/3209).

- Section 413(3)(d) and 413(4)(d) makes adjustments for amounts in respect of debt releases and modifications of debt that would be excluded from tax under sections 322 and 323A of CTA 2009.

- Section 413(4)(e) makes adjustments to exclude amounts of dividends payable on preference shares that are recognised as a liability in the group's financial statements.

65. New Section 414 sets out the meaning of "qualifying net group-interest expense". This is used in the calculation of the group ratio percentage (see section 399) and the group ratio debt cap (see section 400). This is based on the adjusted net group-interest expense of the group, were the following non-qualifying amounts of interest expense to be excluded.

    - Section 414(3)(a) excludes amounts arising on financial liabilities owed to related parties.

    - Section 414(3)(b) excludes amounts arising on results dependent securities.

    - Section 414(3)(c) excludes amounts arising on perpetual and very long-dated instruments.

66. New Section 415 provides interpretation for section 414. Guarantees, indemnities or other financial assistance provided by a related party of the debtor in respect of a liability under a loan relationship generally confer related party treatment for that loan relationship (see section 466(2)), but are ignored where the guarantee (i) is provided before 1 April 2017, (ii) is provided by a member of the group, (iii) is simply a share or loan pledge in respect of the group, or (iv) is a "performance guarantee" (a non-financial guarantee provided in respect of obligations to provide goods or services).

67. New Section 416 sets out the meaning of "group-EBITDA". This is based on the profit of the worldwide group recognised in its consolidated financial statements, before the inclusion of amounts relating to interest, taxation, depreciation and amortisation. This is based on the following concepts:

- Profit (or loss) before tax (PBT) is based on the consolidated financial statements as the profit for the period before taxation.
- Net group-interest expense (I) is the amount defined at section 410.
- Depreciation and amortisation adjustment (DA) is the aggregate of three adjustments to remove depreciation and amortisation, as well as revaluation movements. It also re-computes any profit or loss arising on the disposal of the asset in question.

68. New Section 417 sets out the meaning of the "capital (expenditure) adjustment". This adjustment removes amounts of capital expenditure on relevant assets from group-EBITDA. This will typically be amounts of depreciation and amortisation, but also includes for example amounts written off as incurred and provision for future capital expenditure. The reference to capital expenditure includes capitalised interest and other relevant expense amounts included in the carrying value of relevant assets.

69. It also excludes income amounts of a capital nature relating to relevant assets. In particular, this will exclude income recognised in respect of contributions received towards the costs of capital expenditure incurred by the group.

70. Relevant assets are defined at section 417(5) as comprising (i) plant, property and equipment; (ii) investment property; (iii) intangible assets; (iv) goodwill; (v) shares in a company; and (vi) interests in an entity which entitle the holder to a share of profits.

71. New Section 418 sets out the meaning of the "capital (fair value movement) adjustment". This adjustment removes revaluations and other fair value movements in respect of relevant assets from group-EBITDA.

72. New Section 419 sets out the meaning of the "capital (disposals) adjustment". This adjustment removes the actual profit or loss recognised in respect of relevant assets from group-EBITDA and replaces it with a re-computed profit on disposal. This is calculated disregarding any amounts written off or any revaluation adjustments. As such it calculates the profit on the assumption that the asset in question was not depreciated or amortised, and was not revalued. In most cases this should be the actual proceeds from the disposal less the actual cost of acquiring the asset.

73. New Section 420 deals with derivative contracts that are recognised at fair value in the accounts. This applies the effect of regulations 7, 8, and 9 of the Disregard Regulations (S.I. 2004/3256) to the calculation of amounts of group-interest and group-EBITDA. As such, it removes the fair value movements arising from derivative contracts in particular circumstances where they form part of an intended hedge. Instead, amounts under the derivative contract will be recognised in the calculation of group-interest and group-EBITDA in line with the hedged item.

74. New Section 421 provides interpretation for the purposes of section 420.

75. New Section 422 adapts the computation of relevant gains and losses on relevant assets under section 419 when a group-EBITDA (chargeable gains) election has effect (see paragraph 15 of Schedule 7A). This calculates the profit or loss on disposal of the asset in line with the provisions of TCGA 1992 on the assumption that all members of the group are within the charge of Corporation Tax. However, in making this calculation no regard is taken of the Substantial Shareholdings Exemption or of Double Taxation Relief.

76. New Section 423 adapts the computation under section 413 when an interest allowance (alternative calculation) election has effect (see paragraph 16 of Schedule 7A). This turns off the basic rules at section 413 in respect of amounts capitalised where the member of the group in question calculates (or would calculate if it were within the charge to Corporation Tax) the taxable profits from the asset in line with its accounting value. In particular, this will typically be the case in respect of interest capitalised as part of items of trading stock. This aligns the calculation of group-interest with the operation of sections 320 and 604 of CTA 2009.

77. New Section 424 adapts the computation under section 416 in relation to employers' pension contributions into a registered pension scheme when an interest allowance (alternative calculation) election has effect (see paragraph 16 of Schedule 7A). This replaces the accounting entries in respect of the registered pension scheme with the amounts that would fall to be deductible under sections 196 to 200 of FA 2004. Typically amounts would therefore be included on a paid basis. However, a different basis may be required for example where the amounts are being spread under section 197 of FA 2004.

78. New Section 425 adapts the computation under section 416 in relation to employees' share acquisition arrangements when an interest allowance (alternative calculation) election has effect (see paragraph 16 of Schedule 7A). This replaces the accounting entries in respect of employee share schemes which would fall within Part 11 or Part 12 of CTA 2009, with the amounts that would fall to be deductible under those provisions. This applies on the assumption that all members of the group are within the charge of Corporation Tax

79. New Section 426 applies when there is a change of accounting policy where an interest allowance (alternative calculation) election has effect (see paragraph 16 of Schedule 7A). This applies where there has at any time been a change in the accounting policy in the financial statements of the worldwide group. Where relevant, the tax provisions relating to changes of accounting policy are applied in the context of the worldwide group (ie: on the assumption that the worldwide group was a single company within the charge to Corporation Tax).

80. New Section 427 amends certain definitions where an interest allowance (non-consolidated investment) election has effect (see paragraph 17 of Schedule 7A). This election amends the financial statements of the worldwide group in respect of the group's interest in an associated worldwide group (for example, as investment in a joint venture). This election allows the principal group to include the appropriate proportion of the adjusted net group interest expense and of the qualifying net group interest expense for an associated group in its adjusted net group interest expense and its qualifying net group interest expense respectively. The group-EBITDA of the principal group is also increased by the same proportion of the group-EBITDA for the associated group.

81. New Section 428 provides further interpretation for the purposes of section 427.

82. New Section 429 provides the meaning of "non-consolidated associate" used in section 427. This defines a non-consolidated associate as an entity being accounted for in the financial statements as a joint venture or an associate using the equity or gross method of accounting or a partnership that has elected into the interest allowance (consolidated partnership) election.

83. New Section 430 adapts the computation when an interest allowance (consolidated partnerships) election has effect (see paragraph 18 of Schedule 7A). This has the effect of taking the items of profit or loss out of the financial statements of the worldwide group in respect of the consolidated partnership, and instead uses the equity method of accounting to adjust the financial statements of the worldwide group.

84. New Section 431 sets out additional interpretation for the Chapter about the meaning of amounts recognised as items of profit or loss, or as items of other comprehensive income.

Chapter 8: Public infrastructure

85. New Section 432 sets out an overview of the Chapter, which provides for the corporate interest restriction to have an altered effect for "qualifying infrastructure companies". To qualify, a company's income and assets must be referable to activities related to "public infrastructure assets", be fully taxable in the UK and the company must make an election, as explained in sections 433 to 437.

86. Amounts in respect of certain loans and other financial liabilities, if meeting further conditions explained in sections 438 and 439, are excluded from being tax-interest expense amounts. In addition, no amounts of the company are included in tax-interest income amounts and tax-EBITDA for the period. The Chapter also acts to adjust other amounts within the corporate interest restriction.

87. New Section 433 explains the conditions which must be met for a company to be a "qualifying infrastructure company". A company must be fully taxable in the UK and meet the "public infrastructure assets" and "public infrastructure income" tests throughout an accounting period and make an election to be a qualifying infrastructure company throughout an accounting period.

- The "public infrastructure income test" requires all but an insignificant proportion of a company's income to derive from a "qualifying infrastructure activity", or shares in, or loan relationships or other financing arrangements with "qualifying infrastructure companies";
- The "public infrastructure assets test" requires all but an insignificant proportion of the value a company's assets to derive from any of (i) tangible assets or (ii) service concession arrangements relating to a "qualifying infrastructure activity"; (iii) financial assets relating to a "qualifying infrastructure activity" of that company or an associated "qualifying infrastructure company"; (iv) shares in a "qualifying infrastructure company" and (v) loan relationships or other financing arrangements to which a "qualifying infrastructure company" is a party. If the "public infrastructure assets" test is failed as a result of circumstances which existed, and were always intended to exist, for a temporary and insignificant period within an accounting period, a company may still be a "qualifying infrastructure company" in that period.

88. New Section 434 sets out that an election to be a "qualifying infrastructure company" must be made in advance of an accounting period in which it is to have effect. It can be revoked after a period of five years, but will continue to have effect until the accounting period after a revocation. If a revocation is made, a company's subsequent election cannot have effect for an accounting period which begins less than five years after the revocation. Transferees in a transfer of a part of a business of a "qualifying infrastructure company" inherit any election made by the transferor. Once an election has been made by a company, it cannot make a claim for double taxation relief under Chapter 2 of Part 2 of TIOPA, or an election for foreign permanent establishment exemption under section 18A of CTA 2009.

89. New section 435 sets out an election available to members of the same worldwide group to make jointly which modifies the public infrastructure income test, public infrastructure asset test and how the election in section 433 works. A group election has effect from a date specified in the election, until the date specified in a joint revocation made by all members subject to that election, or a notification by one member to HMRC and all the other members. While a group election has effect:

    - in determining whether amounts are insignificant for the purpose of the public infrastructure income and public infrastructure assets test, each elected company is treated as having (in addition to its own) all the income and assets of all of the other elected companies;

- if one elected company fails the public infrastructure income test or the public infrastructure asset test, or is not fully taxed in the UK in an accounting period, all elected companies are treated as failing those tests for so much of their accounting periods that overlap and are within the period for which the election has effect. If, for the majority of elected companies that have also made an election under section 433, that election has had effect for at least five years, the rule in section 434 which prevents revocation of such an election less than five years after it took effect is turned off.

90. New Section 436 explains that a "qualifying infrastructure activity" is the "provision" of a "public infrastructure asset" including any ancillary or facilitating activities.

- A tangible infrastructure asset may be a "public infrastructure asset" if it meets a "public benefit test". That is, the asset is procured by a relevant public body, or its use is or could be regulated by an "infrastructure authority" (section 436(3) and (4)).
- Any building may also be a "public infrastructure asset" if it is part of a UK property business, and intended to be let on "short-term basis" to persons who are not related parties. "Short-term basis" is set out as having an effective duration of less than 50 years and not being considered a structured finance arrangement (section 436(5) to (9)).
- A "public infrastructure asset" must have, have had, or be likely to have an expected economic life of at least 10 years and be recognised on the balance sheet of a group company subject to corporation tax.
- "Provision" for these purposes includes acquisition, design, construction, conversion, improvement, operation and repair.

91. New Section 437 provides examples of what "infrastructure" might include, and also what would be considered an "infrastructure authority".

92. New Section 438 sets out the amounts of interest and similar financial expense which may be excluded from tax-interest expense. These are amounts in relation to a financial liability due to an unrelated party or to another qualifying infrastructure company, and amounts in relation to a "qualifying old loan relationship" (section 438(2) and (3)). In all cases amounts in respect of a financial liability cannot be excluded unless the creditor's recourse is limited to the income and assets of, or the shares in, or debt issued by, a qualifying infrastructure company (section 438(4)). Guarantees, indemnities or other financial assistance are ignored for the purposes of considering recourse where (i) provided before 1 April 2017, (ii) provided by a relevant public body or a person not related to the company, or (iii) if considered a "non-financial guarantee" provided in respect of obligations to provide goods or services by the guarantor (or a related party to them) and does not exceed the consideration for those goods or services (section 438(5) and (6)).

93. New Section 439 explains that a loan relationship entered into on or before 12 May 2016 is a "qualifying old loan relationship" if, at that date, at least 80% of the present value of the debtor's future "qualifying infrastructure receipts" for a period of 10 years (or, if shorter, the term of the loan relationship) are highly predictable by reference to "qualifying public contracts" ("the 80% test"). It must also meet the creditor's recourse conditions in section 438. Amendments to the loan relationship after 12 May 2016 are treated as having no effect for the purposes of section 438.

94. A loan relationship ceases to be a qualifying old loan relationship of a company if at any time it would not meet "the 80% test". In making this assessment, the following assumptions are made:

- The assets held at that time were the only assets held by the company on 12 May 2016;
- The assets held at that time by any other company in which it has interests (whether direct or indirect) arising as a result of shares or loans were the only assets that the other company held on 12 May 2016; and
- A "qualifying infrastructure receipt" could not be regarded as highly predictable if, on 12 May 2016, the "public infrastructure asset" in question did not exist or was not in the course of being constructed or converted.

95. For the purposes of section 439, the following definitions are used:

    a. "Qualifying infrastructure receipts" are receipts arising from "qualifying infrastructure activities" carried on by the company and any company it holds shares in or has lent to;

    b. "Qualifying public contracts" are contracts with a relevant public body, or entered into as a result of an auction run by one. In both cases the contract must have been entered into on or before 12 May 2016, and as at that time, was expected to have effect for at least 10 years.

96. New Section 440 provides that if in an accounting period a company is a "qualifying infrastructure company" it is treated as having no "tax-interest income amounts" in that period.

97. New Section 441 provides that if in an accounting period a company is a "qualifying infrastructure company" it has a "tax-EBITDA" of nil for that period.

98. New Section 442 provides that if in an accounting period a company is a "qualifying infrastructure company", exempt amounts must be excluded from the "adjusted net-group interest expense" and the "qualifying net group-interest expense" of the worldwide group for that period. Similarly the "group EBITDA" of the worldwide group is to be calculated as if the "qualifying infrastructure company" is not included.

99. New Section 443 turns off the "de minimis amount" of interest capacity (see section 392) for a worldwide group with a "qualifying infrastructure company". An exception is provided where the total interest restrictions calculated including the rules in Chapter 8 would exceed those which would arise if Chapter 8 did not apply and the interest capacity for the period equalled the "de-minimis amount". In this case the rules in Chapter 8 are ignored and the interest capacity of the group is set to the "de minimis amount".

100. New Section 444 sets out how the rules for infrastructure companies apply in the case of a joint venture company that is a qualifying infrastructure company and has at least one investor that is a qualifying infrastructure company and at least one investor that is not. It can mitigate the adverse tax consequences that might otherwise arise under this Part if such investors together formed a joint venture. Section 444(2) and (3) amends how section 401 and section 427 apply to a joint venture company that has elected into section 444. Section 444(5) and (6) affects the amounts of qualifying exempt amounts for this joint venture company. Section 444(9) allows the joint venture to have tax-EBITDA and determines this value of tax-EBITDA.

101. New Section 445 extends the rules of new section 444 for a joint venture company that has subsidiaries and forms a multi-company group. This replicates the effect of section 444 across the whole of the group.

102. New Section 446 contains supplementary rules and definitions for section 444.

103. New Section 447 sets out how the public infrastructure asset test is applied where a company has a significant interest in a partnership or other "transparent entities". In such cases, (i) where the company recognises that interest on its balance sheet, the value of that interest is considered to be derived from the underlying assets of that partnership or "transparent entity" in order to apply the "the public infrastructure assets test" (see section 433); and (ii) obligations of the partnership or "transparent entity" are considered to be obligations of the company for the purposes of determining the exempt amounts of interest expense under section 438(4). Transparent entities are defined for the purposes of this section as not chargeable to corporation tax or income tax as a person (ignoring the effect of any exemptions).

104. New Section 448 provides that the Chapter can apply to the "decommissioning" of a public infrastructure asset as well as the "provision" of one. It also provides that in considering whether a company is a qualifying infrastructure company, shares in or any loan relationship or other financing arrangement with a "decommissioning fund" can be ignored. A "decommissioning fund" is regarded as a qualifying infrastructure company. A "decommissioning fund" is defined as a company which holds investments for the sole purpose of funding decommissioning of public infrastructure assets and is prevented from using the proceeds for any other purpose other than returning surplus funds.

105. New Section 449 sets out some definitions for the purposes of the Chapter.

Chapter 9: Cases involving particular types of company or business

106. New Section 450 sets out how a banking company is to determine the amount of its tax-interest. Section 450(2) and (4) provides that debits and credits will be included within the definition of tax-interest (see sections 382 and 385) if they arise directly from dealing in financial instruments while section 450(5) and (6) aims to mirror this for the group ratio method (see section 411).

107. Section 450(1) ensures that this treatment is appropriate only if the dealing in financial instruments is part of the activities of the trade while section 450(7) sets out the meaning of banking company and financial instruments.

108. New Section 451 provides specific exemption from the interest restriction calculation of oil and gas ring-fence income, within the meaning of section 275 of CTA 2010, and gains/losses within the meaning of section 197(3) of TCGA 1992.

109. New Section 452 provides special rules for Real Estate Investment Trusts (REITs). The exempt property rental business and the residual business of the REIT are deemed to be regarded as separate members of the worldwide group. In addition the profits of the property rental business are assumed not to be exempted from Corporation Tax for the purposes of calculating tax-interest and tax-EBITDA. It specifies how the restricted interest should be allocated between these two businesses and allows for excess amounts to be carried forward in accordance with the rules in Chapter 2. These streamed amounts are then to be included within an interest restriction return.

110. New Section 453 provides special rules for investments held by insurance companies as part of a portfolio. Where such an investment would otherwise be a subsidiary that would be part of the insurer's worldwide group, this provision will ensure that it is not. In such a case the subsidiary is not considered to be a consolidated subsidiary of any member of the worldwide group of the insurer. This allows the subsidiary to form its own worldwide group separate from the insurance company's group.

111. New Section 454 provides that any interest of a company in respect of its underwriting business as a member of Lloyd's is included within the definition of tax-interest where brought into account under Part 3 of CTA 2009.

112. New Section 455 adapts the rules in the case of shipping companies subject to tonnage tax.

113. New Section 456 provides an option by way of an election for insurers and other companies which hold loan receivables (creditor relationships) at fair value to disapply that treatment and instead apply the corporate interest restriction rules on the basis that the loans had been accounted for on an amortised cost basis of account.

114. New Section 457 supplements section 456. It applies where a company applies an amortised cost basis of accounting in respect of a loan under section 456 and this would result in notional debit amounts being included within tax-interest. To facilitate the operation of the disallowance of such amounts, the company concerned must bring into account matching debit and credit amounts equal to the amount of the notional debits. This allows the company to make any disallowance of those debits required under this Part. Otherwise the recognition of the matching debit and credit amounts should leave the company unaffected.

115. New Section 458 applies to certain amounts payable by co-operative societies, community benefit societies, UK agricultural co-operatives or UK fishing co-operatives. Where amounts of distributions are treated as interest under a loan relationship solely by virtue of section 499 of CTA 2009, they are excluded from being a tax-interest expense amount or a tax-interest income amount for the purposes of Part 10 of TIOPA.

116. New Section 459 provides that certain interest payments to charity will be excluded from the "tax-interest expense amount". These are payments made to a charity parent under a loan relationship where the company would be able to claim relief on any donation it made to the parent under section 190 of CTA 2009.

117. New Section 460 makes provision for the calculation of tax-EBITDA in respect of long funding operating leases and finance leases that are not long funding finance leases. This will ensure that the treatment of amounts excluded from tax-EBITDA in respect of leases is aligned with the accounting classification of whether a lease is an operating lease or a finance lease, and not based on whether it is a long funding lease or not. This aligns the treatment with the definition of tax-interest which is based on whether a lease is a finance lease. The accounting classification is subject to section 53 of FA 2011, which disregards changes made since 1 January 2011 to accounting standards in respect of leasing.

118. Section 460(2) makes an equivalent adjustment for the purposes of the group ratio method, to ensure that amounts of "depreciation" in respect of an asset held under a finance lease are included in the capital (expenditure) adjustment.

Chapter 10: Anti-avoidance

119. New Section 461 is an anti-avoidance rule. This applies where there are arrangements that seek to obtain a tax advantage and that tax advantage derives, in whole or in part, from the interest restriction rules. The tax advantage arising from that arrangement is counteracted. Transitional provision is made by paragraph 34 in part 2 of this Schedule.

Chapter 11: Interpretation, etc

120. New Section 462 introduces the provisions that specify where a person is a "related party" for the purposes of Part 10 of TIOPA. In particular, it makes it clear that sections 468 to 472 take priority over sections 466 and 467.

121. New Section 463 sets out the main definition of a related party. A person is a related party where (i) they are part of the same consolidated group; (ii) there is common participation in the management, control or capital of the parties; or (iii) the 25% investment condition is met. Specific provision is made for securitisation companies held by a trustee (section 463(6)).

122. New Section 464 sets out the meaning of 25% investment in a company or other person. This is based on the "equity" in the company or other entity.

123. New Section 465 attributes rights and interests when considering where two persons are related parties. In particular, it applies:

- Between connected persons (e.g. relatives and companies under common control).
- Between partners in partnership (including through connected persons).
- Between persons where there are arrangements under which a person "acts together" with another person.
- Between persons where there is a "qualifying arrangement", being an arrangement whereby persons can reasonably be expected to act together to exert greater influence or to achieve a particular outcome.

124. New Section 466 sets out additional cases in which parties are to be considered to be related parties in respect of a particular instrument. Section 466(2) applies where a related party guarantees a particular instrument. Section 466(4) applies where a related party can be seen as the real lender or counterparty by virtue of a series of loan relationships or other arrangements.

125. New Section 467 sets out a further rule that parties are to be considered to be related parties in respect of a particular loan instrument where a number of loan investors also hold equity stakes in a company or other entity in the same, or similar, proportions. This also applies where loans were originally held in such a manner (e.g. because they were marketed in this way), even where the loans have since been separated from the equity stakes.

126. New Section 468 sets out a rule under which loans which would otherwise be regarded as being between related parties are not to be so regarded where at least 50% of debt with the same rights is held by unrelated parties.

127. New Section 469 sets out a rule under which loans which would otherwise be treated as being between related parties are not to be so treated where the loan becomes a related party debt as a result of a debt restructuring exercise in respect of distressed debt.

128. New Section 470 sets out a rule which treats the debtor and creditor of a loan relationship as not being related parties in certain situations, despite them being related parties as a result of particular circumstances. The rule can only apply where the creditor is not party to the loan relationship as a result of, or in any way connected with, any of the circumstances which make the two parties related. This could be relevant where, for example, rights of another person are attributed to the lender under section 465(1) and the lender had no knowledge of that the other person held those rights.

129. New section 471 excludes certain loans made by relevant public bodies (see section 491) from being loans made by a related party for the purposes of this legislation.

130. New Section 472 provides an exclusion for finance lease arrangements that are entered into before 20 March 2017. Such instruments are treated as not being between related parties for the purpose of the corporate interest restriction rules.

131. New Section 473 sets out the meaning of the key terms "worldwide group" and "ultimate parent". To be an "ultimate parent" the entity will need to be a relevant entity which is not a consolidated subsidiary of another entity that could be an "ultimate parent". The "worldwide group" will then be the ultimate parent and all of its consolidated subsidiaries. This is based on the treatment under International Accounting Standards.

132. New Section 474 sets out the meaning of a "relevant entity" for the purposes of section 473. This includes companies or other entities which have shares or other interests which are listed on a recognised stock exchange and are sufficiently widely held. Certain exclusions are listed at section 474(3).

133. New Section 475 sets out the meaning of "non-consolidated subsidiary" and "consolidated subsidiary". This provides that a subsidiary company held at fair value (and not consolidated on a line-by-line basis) is a "non-consolidated subsidiary". A non-consolidated subsidiary will not be a member of a parent's group. This is based on the treatment under International Accounting Standards.

134. New Section 476 sets out how to determine whether the identity of the worldwide group has changed when the entities which constitute the worldwide group change over time. This is done by reference to who the ultimate parent is at a given point in time.

135. New Section 477 provides for the treatment of "stapled entities". Section 477(3) sets out when an entity is to be treated as "stapled" to another and deems them to be consolidated subsidiaries of another entity.

136. New Section 478 provides for business combinations where, absent this section, two entities would each be treated as an ultimate parent despite their being treated as a single economic entity under international accounting standards. The section has effect as if both entities were consolidated subsidiaries of a deemed parent.

137. New Section 479 sets out the meaning of "financial statements". The financial statements will be based on the consolidated financial statements for a multi-company worldwide group and on the entity accounts for a single-company worldwide group where these are drawn up and are considered "acceptable".

138. New Section 480 sets out the meaning of "period of account" for a worldwide group. This is based on the period for which financial statements of the worldwide group are drawn up.

139. New Section 481 explains what is meant by "acceptable" financial statements and the consequence of such statements not being drawn up for a worldwide group. Acceptable statements are drawn up under International Accounting Standards (IAS), UK generally accepted accounting practice or in accordance with the accounting principles and policies of Canada, China, India, Japan, South Korea or the United States of America. Financial statements that do not materially differ from IAS statements are also acceptable. HMRC may by regulations update the circumstances in which accounts are considered to be "acceptable".

140. Where financial statements are drawn up and they are not acceptable, then these statements are to be ignored and IAS financial statements of the worldwide group treated as having been drawn up.

141. New Section 482 deals with the case where acceptable financial statements have been prepared but either include the results of companies that are not in the group or do not include the results of companies that are in the worldwide group. This could arise where the accounts are prepared under an accounting framework that differs to IAS. In this case, these statements should be ignored and statements treated as having been drawn up which align with the composition of the worldwide group, which is defined by reference to IAS (see sections 475 and 476). The statements treated as drawn up should be prepared in accordance with the same accounting principles and practice as was used to draw up the original statements.

142. New Section 483 deals with the case where the ultimate parent prepares accounts for a period and it is not the ultimate parent for the whole of the period. In this case these accounts are ignored and the ultimate parent is treated as if it had instead prepared consolidated financial statements including itself and its IAS subsidiaries for the period for which it was the ultimate parent of the worldwide group in question.

143. New Section 484 deals with the case where the worldwide group does not prepare consolidated accounts but the ultimate parent does prepare its own financial statements for a particular period. In this case, IAS accounts are treated as having been drawn up for that period. The ultimate parent may elect that this section does not apply (see section 486).

144. New Section 485 deals with the case where a multi-company worldwide group does not prepare consolidated financial statements, or a single-company worldwide group does not prepare entity accounts and where section 484 is not relevant. In this case it treats the ultimate parent as preparing financial statements for that period. Where this period extends for more than 12 months, it is treated as preparing financial statements for each 12 month period

145. New Section 486 allows the ultimate parent to elect for a different period to be used in place of a 12 month period under section 485, within limits set down in section 486(4). Section 485(4)(b) and (4)(c) would then apply from the end of the elected period to treat the group as preparing financial statements for each 12 month period.

146. New Section 487 requires financial statements to be prepared for no more than 18 months and to be drawn up within 30 months of the start of the period, otherwise they are to be ignored for the purpose of this Part.

147. New Section 488 sets out the meaning of "IAS financial statements" of a worldwide group.

148. New Section 489 sets out the meaning of "recognised" in financial statements. This clarifies that where an amount is included as part of another amount which is recognised in the financial statements, that amount is also regarded as being recognised. In addition, where an amount is expressed in a currency other than sterling then it is to be translated into sterling based on the average rates for the period.

149. New Section 490 sets out the definition of "relevant accounting period".

150. New Section 491 sets out the meaning of a "relevant public body". Section 491(1) lists specific bodies which fall into this definition, but also includes any other body which acts under any enactment for public purposes and not for its own profit. Some of these bodies cannot be a "relevant entity" (see section 474(3)).

151. New Section 492 sets out the meaning of a "UK group company". This covers UK resident companies and non-resident companies which have a permanent establishment in the UK. These are the members of a worldwide group that may be subject to disallowances or reactivations of tax-interest expense amounts.

152. New Section 493 applies the definitions in sections 415 and 585 of CTA 2009. This ensures that the definitions of loan relationship and derivative contract function correctly where a particular financial instrument is treated as being split for accounting purposes.

153. New Section 494 contains further interpretation for the purposes of Part 10.

154. New Section 495 contains a power to allow HMRC to make regulations to address differences between the way amounts are recognised in the group's financial statements and how they are recognised for accounting or tax purposes by any member of the group. Regulations may in such cases adjust the calculation of amounts in chapter 7 based on the worldwide group's financial statements (principally adjusted net group-interest expense, qualifying net group-interest expense and group-EBITDA).

155. In particular, regulations will be introduced under this power to apply from 1 April 2017 in the following two situations.

- As at 31 March 2017 a loan relationship is recognised in the worldwide group's financial statements such that it is subject to fair value accounting in the group accounts and is recognised at the amortised cost basis of accounting in the financial statements of the issuer company.

  In this case, the financial statements for the worldwide group are to be assumed to be prepared recognising this loan relationship on the amortised cost basis of accounting.

- As at 31 March 2017, there is a loan relationship between two group members. This loan relationship was previously recognised in the worldwide group's financial statements and the loan was derecognised before 31 March 2017 as a result of either (i) the loan being acquired by a group member; or (ii) the creditor becoming a group member. The situation is such that neither section 361 nor section 362 CTA 2009 applies or would apply.

  In this case, the financial statements of the worldwide group are to be assumed to be prepared on the basis that the gain or loss on the derecognition of the loan is spread over the remainder of the term of the loan on a just and reasonable basis.

156. New Section 496 contains a power to allow HMRC to make regulations in respect of capital market arrangements to allow liabilities of a company to be transferred to another UK group company.

157. New Section 497 contains a power to allow HM Treasury to make regulations to revise the legislation as a result of changes in accounting standards.

158. New Section 498 governs the making of regulations under Part 10, by Statutory Instrument.

Part 2 of Schedule 1: New Schedule 7A to TIOPA 2010

159. Part 2 of Schedule 1 inserts a new Schedule 7A into TIOPA. This covers administrative provisions relevant to the interest restriction rules.

Part 1: The reporting company

160. Paragraph 1 of Schedule 7A provides for the appointment of a "reporting company" for a period of account by a member of a worldwide group. The appointment is automatically rolled over for future periods (paragraph 1(3)), unless it is revoked under paragraph 2 or a replacement reporting company is appointed under paragraph 5.

161. The appointment must be made after the end of the period of account but no later than six months after the end of that period (paragraph 1(4)). The notice of appointment must be supported by a majority of eligible group members (paragraph 1(5)). The reporting company must be an "eligible company" (paragraph 1(8)).

162. Paragraph 2 provides that the appointment of a reporting company may be revoked by a member of a worldwide group with the support of a majority of eligible group members.

163. Paragraph 3 permits HMRC to make regulations in connection with the appointment of a reporting company and the revocation of an appointment.

164. Paragraph 4 permits HMRC to appoint an eligible company as the reporting company where the members of the worldwide group have not done so within the required time limit.

165. Paragraph 5 permits HMRC in certain circumstances to appoint a different reporting company, in place of the company appointed under paragraph 1 or paragraph 4.

166. Paragraph 6 requires that where a reporting company is appointed for a period of account, it must so notify each company that was a UK group company at any time during the period of account. It must also notify the ultimate parent, if that company would not otherwise be notified. A UK group company, defined in section 492, is a member of the group within the scope of UK corporation tax.

167. Paragraph 7 requires the reporting company to make an "interest restriction return". This return sets out the amounts of interest and other financing amounts that are to be disallowed or reactivated, and how they are allocated to companies in a group. The time limits for making the return are set out in paragraph 7(5) and 7(6).

168. Paragraph 8 permits the reporting company to submit a revised interest restriction return, and sets out circumstances where a reporting company must submit a revised interest restriction return.

169. Paragraph 9 permits a reporting company to submit a full interest restriction return within five years of the end of the period of account, where it had previously submitted an abbreviated return. Submission of full returns allows the group to access any available interest allowance in later periods.

170. Paragraph 10 sets out the meaning of a "consenting company" and a "non-consenting company". A "consenting company" is a company in a group that has agreed to accept the allocation of disallowed amounts made to it in the interest restriction return submitted by the reporting company. All other companies in the group are "non-consenting" companies.

171. Paragraph 11 provides that if a company is one which supported the appointment of a reporting company under paragraph 3 it is therefore deemed to be a consenting company, unless it expressly makes a statement to the contrary under paragraph 1(7) when the reporting company is appointed, or revokes its consent by giving a notice under paragraph 10(2)(b).

Part 2: Contents of interest restriction return

172. Paragraph 12 of Schedule 7A sets out the elections that must be made in an interest restriction return.

173. Paragraph 13 permits the reporting company to elect on behalf of the group that the group ratio method should be used to compute the group's interest disallowance.

174. Paragraph 14 permits the reporting company to elect on behalf of the group that the group ratio method should be used to compute the group's interest disallowance, but subject to the "blended group ratio provisions" (see sections 401 to 404).

175. Paragraph 15 permits the reporting company to elect on behalf of the group that the group ratio method should be subject to the group-EBITDA (chargeable gains) election (see section 422).

176. Paragraph 16 permits the reporting company to elect on behalf of the group that the group ratio method should be used to compute the group's interest disallowance, but subject to the "alternative calculation provisions" (see sections 423 to 426). These provisions are also relevant for the calculation of adjusted net group-interest expense for the purposes of the fixed ratio debt cap.

177. Paragraph 17 permits the reporting company to elect on behalf of the group that the group ratio method should be used to compute the group's interest disallowance, but subject to the "non-consolidated investment provisions" (see sections 427 and 428). These provisions are also relevant for the calculation of adjusted net group-interest expense for the purposes of the fixed ratio debt cap.

178. Paragraph 18 permits the reporting company to elect on behalf of the group that the group ratio method should be used to compute the group's interest disallowance, but subject to the consolidated partnership provisions (see section 430). These provisions are also relevant for the calculation of adjusted net group-interest expense for the purposes of the fixed ratio debt cap.

179. Paragraph 19 permits the reporting company to elect to submit an abbreviated return if the worldwide group is not subject to interest restrictions (see paragraph 19(3)).

180. Paragraph 20 sets out what must be included in an interest restriction return. Paragraph 20(3) sets out the requirements of the full return. Paragraph 20(5) sets out the requirements of an abbreviated return.

181. Paragraph 21 sets out the detail of the calculations that must be included in a full interest restriction return.

182. Paragraph 22 sets out the information that must be included in a statement of allocated interest restrictions. This statement sets out the amounts of interest restriction that will be applied to each company for the period. This statement must be included in the full return where there are amounts to be restricted for the period.

183. Paragraph 23 sets out the meaning of a "pro-rata share" of the total disallowed amount for a period of account. This sets the limit on the amounts of disallowance that can be allocated to "non-consenting" companies. It also forms the basis of the amounts to be restricted where no interest restriction return has been submitted. The pro-rata allocation is based on the proportion that a company's net tax-interest bears to the total of the net tax-interest expense amounts across the group for the period of account.

184. Paragraph 24 sets out how a company allocates a "pro-rata share" to its own accounting periods. The worldwide group's "period of account" used in computing the total disallowance and the allocated shares may not necessarily coincide with the corporation tax accounting period for every company in the group. Apportionment will therefore be necessary.

185. Paragraph 25 sets out what information must be included in a statement of allocated interest reactivations. An "interest reactivation" arises when an amount disallowed in one period of account could potentially be deductible in a later period of account because the group's tax-EBITDA in that later period is sufficient to permit a deduction greater than the interest arising in that period.

186. Paragraph 26 sets out how to calculate the amount available for reactivation by a company for a period of account of the group. Any reactivation will take effect in the "specified accounting period", which is the first accounting period that overlaps with the group's period of account in which the company was a part of the group.

187. The starting point ("A") is the total amount that has been disallowed under these rules by that company that is brought forward at the start of the specified accounting period. There are then four possible adjustments in relation to amounts that it must disallow in the current accounting period (amounts B to E). B and C deal with amounts disallowed and reactivated in the specified accounting period in respect of an earlier period of account of the worldwide group. D and E deal with amounts disallowed and reactivated in the specified accounting period in respect of a period of account of another worldwide group before the company joined the worldwide group that is the subject of the reactivation calculation.

188. Paragraph 27 permits the use of estimated amounts in the interest restriction return if necessary and requires disclosure of the amounts that are estimates.

189. Paragraph 28 permits HMRC to correct an interest restriction return. The correction must be made no later than nine months after the day on which the return was submitted.

190. Paragraph 29 sets out a penalty for failure to deliver an interest restriction return.

191. Paragraph 30 sets out a penalty for the submission of an incorrect return.

192. Paragraph 31 sets out what is meant by the term "concealed" for the purposes of paragraph 30. It also extends the meaning of a careless or deliberate inaccuracy to encompass an inaccuracy that is not brought to the attention of an officer of HMRC.

193. Paragraph 32 provides for a penalty to be imposed on a company that provides inaccurate information to another company for the purposes of an interest restriction return submitted by that other company.

194. Paragraph 33 provides for any penalty to be reduced to reflect the level of disclosure. It also empowers HMRC to consider and apply special circumstances, which are to be set out in regulations made by HMRC.

195. Paragraph 34 sets out how a penalty is to be assessed, paid and enforced.

196. Paragraph 35 provides a right of appeal against a penalty.

197. Paragraph 36 sets out the procedure for appeals against penalties.

198. Paragraph 37 sets out the tax treatment of any payment made between companies in respect of penalties charged on the recipient of the payment. Such payments are to be ignored for tax purposes, up to the amount of the penalty.

Part 3: Duty to keep and preserve records

199. Paragraph 38 of Schedule 7A requires a reporting company to keep and preserve certain records.

200. Paragraph 39 sets out the penalty for failure to comply with the requirements of paragraph 34.

Part 4: Enquiry into interest restriction return

201. Paragraph 40 of Schedule 7A provides a power for HMRC to open an enquiry into an interest restriction return. The provisions are similar to those in Part 4 of Schedule 18 to FA 1998, adapted for the purposes of interest restriction returns. In particular, an enquiry into an interest restriction return does not affect, and is not affected by, any enquiry into a company tax return of a member of the group. Paragraph 40(6) permits a company tax return to be amended in consequence of an enquiry into an interest restriction return, irrespective of the status of any enquiry into the company's tax return.

202. Paragraph 41 sets out the normal time limits within which an enquiry may be opened.

203. Paragraph 42 sets out certain extended time limits within which an enquiry may be opened. These time limits apply if the conditions set out in paragraph 42(1) are met.

204. Paragraph 43 sets out the scope of an enquiry into an interest restriction return. The enquiry cannot consider any matters contained in a company tax return that affect the interest restriction return. That is, the accuracy of any amounts of tax-interest or other components of tax-EBITDA of a company are matters for an enquiry into that company's tax return, and not for an enquiry into the interest restriction return. However, it is possible for HMRC to enquire into how such an amount should be treated for the purposes of Part 10.

205. Paragraph 44 permits the scope of an enquiry to include the composition of the worldwide group and whether the period of account is correctly identified.

206. Paragraph 45 allows HMRC to amend a company's self-assessment during the course of an interest restriction enquiry, where it is considered that the tax payable is understated in the company's return. Paragraph 45(3) and (4) sets out appeal rights.

207. Paragraph 46 applies where a reporting company amends an interest restriction return during the course of an enquiry. The amendment may be taken into account in the enquiry, but is not given effect until completion of the enquiry.

208. Paragraph 47 sets out what steps HMRC must take on completion of an enquiry. A closure notice must be issued. Where relevant, that notice must state any change to the period of account (paragraph 47(3)) or the composition of the group (paragraph 47(4) to (6)).

209. Paragraph 48 enables the reporting company to apply to the tribunal to issue a direction to HMRC to issue a closure notice in relation to an enquiry.

210. Paragraph 49 sets out the required contents of a closure notice. Paragraph 49(2)(b) covers all revisions that may be required to a return, including those that may arise as a result of paragraph 49(4): where the return was for the wrong period of account; or paragraph 49(6): where the composition of the group was incorrect. The notice need not specify how amounts are to be allocated.

211. Paragraph 49(7) covers the situation where the group composition was incorrect because some companies that were not members of the worldwide group have been included in the return.

212. Paragraph 49(8) covers the situation where one or more companies have been excluded incorrectly from the original worldwide group identified in the interest restriction return under enquiry, and the ultimate parent of the group identified in the closure notice is not the ultimate parent of a worldwide group for which a reporting company has been appointed. Paragraph 51 covers the situation where the ultimate parent is already the ultimate parent of another such group.

213. Paragraph 50 requires the reporting company to submit an amended interest restriction return or new interest restriction returns, to give effect to the conclusions in the enquiry closure notice, including any consequential effects. If the company does not do so, within the time limit set out in paragraph 50(2), HMRC may make a determination under paragraph 58.

214. Paragraph 50(2) requires that a return under paragraph 49 only has effect if it is submitted to an officer of HMRC within three months of the day on which the closure notice is given to the company.

215. Paragraph 51 applies where HMRC determines that the interest restriction return should have been submitted for a different group, where one or more entities was incorrectly excluded from the original group and where the ultimate parent is already the ultimate parent of another such group. HMRC must appoint a reporting company for the "new group", which must then undertake all the requirements regarding an interest restriction return. Any interest restriction return, notice of enquiry, and appeal in relation to the original group is treated as withdrawn.

216. Paragraph 52 provides a right of appeal against the conclusion stated in a closure notice under paragraph 49, or against a notice given under paragraph 51.

217. Paragraph 53 covers the situation where the worldwide group has a different composition to that for which the interest restriction return was originally submitted, and where the reporting company that submitted the original return is not a member of the revised group. HMRC may appoint a new reporting company. This may apply, for instance, if HMRC concludes that some of the members of a group for which a return was submitted are members of one or more different groups.

218. Paragraph 54 provides that where anything is to be done for the purposes of Part 10 of TIOPA on a just and reasonable basis, HMRC may, in setting out conclusions in relation to a closure notice, specify a different "just and reasonable" basis to that used initially by the reporting company in the interest restriction return. The basis specified may be questioned on the grounds that it is not just and reasonable (but not on any other grounds).

219. Paragraph 55 ensures full continuity of application of the provisions of Schedule 7A where there is more than one reporting company for a period of account.

Part 5: Determinations by officers of Revenue and Customs

220. Paragraph 56 of Schedule 7A provides HMRC with the power to make a determination where a reporting company has failed to make a compliant interest restriction return by the filing deadline and HMRC considers that a disallowance should be made. The disallowance is shared between UK group companies on a pro rata basis. HMRC must inform each company of its disallowance and notify the reporting company.

221. Paragraph 57 provides a time limit for the validity of an interest restriction return following a determination under paragraph 56 (but not after a determination under paragraph 58). Notwithstanding time limits that might otherwise apply, the return can have effect if submitted within 12 months of the issue of the notice of determination.

222. Paragraph 58 provides an officer of Revenue and Customs with a power to determine the pro-rata shares of the disallowed amounts where a closure notice given under paragraph 47 required the reporting company to make a return or returns, but the company has failed to do so within the time specified in paragraph 50(2). An officer may also make a determination if the return is considered not to comply with the requirements of the closure notice. The relevant group company and the reporting company must be informed, and the company tax return of the relevant company is amended accordingly. HMRC must take action under this paragraph within 3 months of the end of the period for revision of the interest restriction return by the reporting company.

223. Paragraph 59 sets out a company's right to appeal against an HMRC determination made under paragraph 58. The only permitted ground of appeal is that the determination is inconsistent with the closure notice to which it relates.

Part 6: Information powers exercisable by members of group

224. Paragraph 60 of Schedule 7A sets out what information must be provided by members of the group to the reporting company. It also requires the reporting company to send a copy of the interest restriction allocation to all relevant companies. A "relevant company" is a company that was a UK group company (defined in section 473) at any time in the group's period of account. In all cases the requirement is enforceable between the parties involved.

225. Paragraph 61 sets out what information may be required by a group company from other group companies, where a reporting company has not been appointed. Again, the requirement is enforceable between the parties involved.

Part 7: Information powers exercisable by officers of Revenue and Customs

226. Paragraphs 62 to 67 of Schedule 7A deal with information powers similar to those in Schedule 35 to FA 2008 but designed to be applied in connection with an enquiry into an interest restriction return.

227. Paragraph 62 provides that HMRC may serve a notice on a member of a group requiring it to provide information or documents reasonably required for checking an interest restriction return.

228. Paragraph 63 provides for a third party information notice to be served in connection with checking an interest restriction return. A third party is defined as a party that is not a member of the group. The service of such a notice requires either the consent of a UK group company or the approval of the tribunal.

229. Paragraph 64 provides that where a group has submitted an interest restriction return, a notice under paragraph 62 or 63 can only be served if that return is under enquiry.

230. Paragraph 65 provides a right of appeal against a notice under paragraph 62; and a right of appeal against a notice under paragraph 63, but only where the tribunal has not approved the giving of the notice.

231. Paragraph 66 applies certain provisions of Schedule 36 to FA 2008 to the information powers exercisable under paragraph 60 or 61.

232. Paragraph 67 explains what is meant by "checking an interest restriction return".

Part 8: Company tax returns

233. Paragraph 68 of Schedule 7A provides that certain elections affecting the amounts in a company's tax return for an accounting period must be made in the original or amended return to which the election relates.

234. Paragraph 69 makes further provision regarding the mechanics and time limits for elections, or their withdrawal, and consequential amendments to company tax returns under section 375, 377 and 380 and for amendments required under section 376.

235. Paragraph 70 provides that a company's tax return is treated as amended to take account of any changes to its profits or losses that arise from an interest restriction return. In particular, this will apply where the interest restriction return changes the amounts of disallowance or reactivation that are allocated to a particular company.

236. Paragraph 71 provides a regulation-making power in relation to amendments of a company tax return made in accordance with paragraph 70, or any other amendments of a company tax return in connection with the rules introduced by this Schedule.

237. Paragraph 72 permits a company to make, amend or revoke certain claims following amendments to its company tax return that are consequent on an interest restriction return.

238. Paragraph 73 specifies that "company tax return" means a return under Schedule 18 to FA 1998.

Part 9: Supplementary

239. Paragraph 74 of Schedule 7A ensures that a person cannot be liable to a penalty under this Schedule in addition to being convicted of an offence.

240. Paragraph 75 requires that a notice of appeal must specify the grounds of the appeal.

241. Paragraph 76 sets out when amounts included in an interest restriction return may be treated as conclusively determined. This is where the time limits for submitting revised returns have passed, or a return has been subject to an enquiry that has been concluded. This does not prevent HMRC from opening an enquiry under the extended time limits set out in paragraph 42, where an error is discovered, or from making a determination under paragraph 56 or 58.

Part 3 of Schedule 1: Consequential amendments

242. Paragraph 3 amends section 98 of the Taxes Management Act 1970

243. Paragraph 4 amends paragraph 88 of Schedule 18 to FA 1998.

244. Paragraph 5 amends section A1 of CTA 2009.

245. Paragraphs 6 to 9 amend CTA 2010.

246. Paragraph 10 deals with the consequences of inserting a new Part 10 into TIOPA. The existing Part 10 becomes Part 11, the existing sections 375 and 376 are repealed (subject to a saving provision), and the existing sections 372 to 374 and 377 to 382 are renumbered to follow on from the new Part 10.

247. Paragraph 11 repeals Part 7 of TIOPA (Tax Treatment of Financing Costs and Income, commonly referred to as the "Debt Cap"), which is superseded by the corporate interest restriction rules. The main rule is that the current Debt Cap legislation will cease to have effect for periods of account commencing on or after 1 April 2017. Certain related provisions are also repealed.

248. Paragraphs 12 to 20 make consequential amendments to TIOPA.

249. Paragraph 21 amends Chapter 3 of Part 9A of TIOPA. This amends section 371CE and inserts a new section 371CEA which defines a group treasury company for the purposes of determining the charge gateway in the Controlled Foreign Company (CFC) rules. This provision replaces the definition from the repealed Debt Cap rules.

250. Paragraph 22 amends Chapter 9 of Part 9A of TIOPA. This replaces section 371IE, the existing rule that provides relief under the CFC rules for "matched interest", with an equivalent provision following the repeal of the current Debt Cap rules.

251. Paragraph 23 amends Chapter 19 of Part 9A of TIOPA. This includes the introduction of a new section 371SLA which sets out certain assumptions to be made in applying the corporate interest restriction rules in the calculation of chargeable profits of a CFC.

252. Paragraph 24 introduces a new index of defined expressions as Part 7 of Schedule 11 to TIOPA.

Part 4 of Schedule 1: Commencement and transitional provision

253. Paragraph 25 sets out the commencement rules, the main commencement provision being that the rules will have effect for periods of account commencing on or after 1 April 2017. Where the group draws up accounts (or is so treated as doing so) which straddle 1 April 2017, the rules apply as if accounts were drawn up for two separate periods, one ending 31 March 2017 and another starting on 1 April 2017.

254. Where it is just and reasonable to do so, groups may take accounts that have been prepared and apportion amounts to the respective notional periods; but if such an approach is not just or reasonable, the rules should have effect on the assumption that accounts had been prepared for the respective notional periods.

255. Paragraph 26 sets out specific commencement provisions relating to the repeal of Part 7 of TIOPA. This follows a similar approach to the commencement of the new rules.

256. Paragraph 27 extends the time limit for elections under section 484 and section 486 in the first year to 31 March 2018.

257. Paragraph 28 extends the time limits for the appointment of a reporting company and the revocation of such an appointment in the first year to 31 March 2018. It also extends the filing deadline in the first year to 30 June 2018.

258. Paragraph 29 makes transitional provision by excluding amounts that are being brought into account under the Change of Accounting Practice Regulations 2004 (S.I. 2004/3271) from the rules where the change of accounting policy occurred in a period that commenced before 1 April 2017. In particular, such amounts will be left out of account of both tax-interest and tax-EBITDA amounts.

259. Paragraph 30 makes transitional provision by excluding amounts that are being brought into account under the transitional rules as a result of the changes made to the loan relationship and derivative contract rules (Parts 5 and 7 of CTA 2009) made by Finance (No.2) Act 2015. In particular, such amounts will be left out of account of both tax-interest and tax-EBITDA amounts.

260. Paragraph 31 provides groups with an option to apply the corporate interest restriction rules on the assumption that companies had elected into regulations 7, 8 and 9 of the Disregards Regulations (S.I. 2004/3256). This therefore disregards the fair value movements on certain hedging derivative contracts from being included in the tax-interest and tax-EBITDA figures. Instead it brings these amounts into account in line with the hedged item. For this to have effect, all UK group companies as at 1 April 2017 must elect into this treatment. The election applies to all derivative contracts entered into before 1 April 2020.

261. Paragraph 32 provides for companies with accounting periods beginning on or before 1 April 2018, to make an election before that date under section 433 or section 444 to be treated as a qualifying infrastructure company within Chapter 8. It also allows companies to make a group infrastructure election under section 435 before 1 April 2018 and for this to have effect from a date before the election was made.

262. Paragraph 33 provides that a company may be a qualifying infrastructure company in an accounting period beginning before 1 April 2018, if it would meet the tests in section 432 in an accounting period including 1 April 2018 and being at least three months long. Amounts that would be exempted by sections 438, 440, 441 and 442 are reduced on a just and reasonable basis.

263. Paragraph 34 sets out a transitional rule relating to the anti-avoidance provision introduced as section 461.

264. Paragraph 35 provides that the Commissioners may make consequential amendments to secondary legislation which have effect under the same commencement rules.

265. Paragraph 36 sets out an interpretative rule for the preceding paragraphs.

Background note

266. This legislation has its origins in the G20/OECD project to tackle Base Erosion and Profit Shifting (BEPS) in relation to the taxation of international groups of companies. The BEPS project identified a number of key risks to be tackled. It was noted that BEPS risks in the area of interest payments may arise in three basic scenarios:

- Groups placing higher levels of third party debt in high tax countries.
- Groups using intragroup loans to generate interest deductions in excess of the group's actual third party interest expense.

- Groups using third party or intragroup financing to fund the generation of tax exempt income.

267. To address these risks, Action 4 of the OECD's Action Plan on Base Erosion and Profit Shifting, published in 2013, called for recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense. Following several rounds of discussions and public consultation, the OECD published recommendations on preventing base erosion through the use of interest expense in October 2015. Following further work, the OECD published additional guidance in December 2016 on the design and operation of the group ratio rule, and approaches to deal with risks posed by the banking and insurance sectors.

268. The recommended approach is based on a fixed ratio rule which limits an entity's net deductions for interest and payments economically equivalent to interest to a percentage of its taxable earnings before interest, taxes, depreciation and amortisation (EBITDA).

269. Recognising that some groups are highly leveraged with third party debt for non-tax reasons, the recommended approach proposes a group ratio rule alongside the fixed ratio rule. This would allow an entity with net interest expense above a country's fixed ratio to deduct interest up to the level of the net interest to EBITDA ratio of its worldwide group.

270. The recommended approach also allows countries to supplement the fixed ratio rule and group ratio rule with other provisions that reduce the impact of the rules on entities or situations which pose a lower BEPS risk, such as:

- A *de minimis* threshold which carves out entities which have a low level of net interest expense. Where a group has more than one entity in a country, it is recommended that the threshold be applied to the total net interest expense of the local group.

- An exclusion for interest paid to third party lenders on loans used to fund public-benefit infrastructure, subject to conditions. In these circumstances, an entity may be highly leveraged but, due to the nature of the assets and the close link to the public sector, the BEPS risk is reduced.

- The carry forward of disallowed interest expense and/or unused interest capacity (where an entity's actual net interest deductions are below the maximum permitted) for use in future years. This will reduce the impact of earnings volatility on the ability of an entity to deduct interest expense. The carry forward of disallowed interest expense will also help entities which incur interest expenses on long-term investments that are expected to generate taxable income only in later years, and will allow entities with losses to claim interest deductions when they return to profit.

271. This legislation looks to implement the OECD's recommendations as follows.

272. The rules will operate on a worldwide group basis for each period of account of the group's ultimate parent. This will allow groups to manage any restriction across their businesses. The rules will apply to the net interest expense within the charge to Corporation Tax, including other similar financing costs. Groups with less than £2 million of net interest expense within the scope of Corporation Tax per annum will not need to apply the rules. All groups will continue to be able to deduct current period net interest expenses and similar financing costs up to that amount.

273. The fixed ratio method will limit the amount of net interest expense that a worldwide group can deduct against its taxable profits to 30% of its taxable EBITDA. A modified debt cap within the new rules will ensure the net interest deduction does not exceed the total net interest expense of the worldwide group.

274. The group ratio method allows a "group ratio" to be substituted for the 30% figure. The group ratio is based on the net interest expense to EBITDA ratio for the worldwide group based on its consolidated accounts. Interest payable to shareholders and other related parties, and interest on instruments with equity-like features are not reflected in the group ratio.

275. Groups may make irrevocable "chargeable gains" and "alternative calculation" elections to make certain prescribed adjustments to the accounting figures more closely align them to how amounts of "interest" and "EBITDA" would be calculated under UK tax rules. This election has effect for both the operation of the modified debt cap rule and the group ratio method.

276. The public infrastructure rules provide rules which exclude from the scope of the main rules amounts of qualifying interest expense incurred by qualifying companies on funds invested in long-term infrastructure for the public benefit. These rules will not exclude interest payable to shareholders and other related parties (except in the case of some existing loans or where the other party is itself a qualifying company), nor where the lender has recourse to income or assets other than those connected with public benefit infrastructure that is fully within the scope of UK taxation.

277. There are rules to help address timing differences between interest expense and EBITDA. Amounts of restricted interest are carried forward indefinitely. They are deducted in a later period to the extent there is sufficient interest allowance. Unused interest allowance can be carried forward for up to five years.

278. There are special rules to deal with particular issues, for example: derivatives, Double Taxation Relief, the Patent Box and other tax incentives, joint ventures, the definition of interest in a banking trade, the oil and gas tax regime, Real Estate Investment Trusts (REITs), investments held by insurance companies, members of Lloyd's, the tonnage tax regime, fair value accounting, co-operative and community benefit societies, payments to charities, leases, related parties, and securitisation companies.

279. There is a regime-wide anti-avoidance rule.

280. Legislation for was originally included in the Finance (No.2) Bill 2017 introduced in March 2017. That bill was taken forward to become Finance Act 2017 on the basis of consensus with a number of clauses left out, including the corporate interest restriction.

281. The legislation is now included in this Finance Bill in line with the legislation from the previous bill. Some minor revisions to the legislation have been made as a result of points that have raised by external advisers and others, most of which simply clarify that the rules operate in the way intended. The legislation, including these revisions, takes effect from 1 April 2017, as announced in the business tax road map published in 2016 and reconfirmed at Spring Budget 2017.

282. The main revisions made to the legislation are follows:

- Section 382 is revised to treat amounts as tax-interest where those amounts are deductible under particular tax rules, amounts have previously been disallowed and those disallowed amounts would be included in tax-interest. For example, as a result of the hybrid rules at Part 6A of TIOPA 2010.
- Section 402 is revised to ensure that the blended net group-interest expense does not excessively limit the operation of the blended group ratio.
- Section 411 is revised to ensure that amounts in respect of pension schemes are not included in the group-interest figures.
- Section 417 is revised to ensure that the reference to capital expenditure includes capitalised interest and other financing amounts included in the carrying value of a relevant asset.
- Section 425 is revised to ensure that the provision has effect whenever an employee share acquisition arrangement falls to be treated under Parts 11 or 12 of the Corporation Tax Act 2009.

- Section 439 is revised to ensure that the grandfathering provision under the public infrastructure rules operates correctly where a company has an interest in another company.
- Section 443 is revised to ensure that groups electing into public infrastructure rules which would obtain interest deduction below de minimis should get a de minimis deduction *instead* of the treatment under the public infrastructure rules.
- Section 448 is revised to ensure that decommissioning activities can fall to be qualifying infrastructure activities.
- Section 456 is revised to ensure that this rule operates as a practical alternative to fair value accounting for insurers. It also ensures that the reference to creditor relationships held by an insurer extends to include loans held in connection with the regulation of underwriting business carried on by members of Lloyd's.
- Sections 462 to 472 which sets out the related party definition has been revised. This ensures that the rules which exclude certain arrangements from being related parties have priority over the rules that bring additional arrangements into the related party rules. The revisions also ensure that the main definition is limited to equity interests in an entity, and that 'normal commercial loans' would not normally make the parties related for the purposes of these rules.
- The time limit for appointing a reporting company (paragraph 1 of Schedule 7A) and the filing deadline for an interest restriction return (paragraph 7 of Schedule 7A) have been extended in the first year so that those time limits cannot expire before 31 March 2018 and 30 June 2018 respectively.

Clause 21 and Schedule 6: Relief for production of Museum and gallery exhibitions

Summary

1. This clause and Schedule introduce a relief from corporation tax for qualifying museum and gallery exhibitions.

Details of the Clause and Schedule

2. The clause brings in a Schedule which:

    - Introduces a new relief for museum and gallery exhibitions;
    - Provides for the consequential amendments to other parts of the Taxes Acts as a result of the new relief.
    - Provides for the commencement of the new museum and gallery exhibitions relief.

Part 1: Amendment of CTA 2009

3. Paragraph 1 introduces new Part 15E to Corporation Tax Act 2009 (CTA 2009).

Chapter 1

4. Chapter 1 contains sections 1218ZA to 1218ZAD which set out the overview of the relief and interpretation of: 'Exhibition', 'Primary production company' and, 'Secondary production company'.
5. Section 1218ZAA defines what is meant by 'exhibition:

    - An exhibition is a curated, planned, public display of an organised collection of objects, works and artefacts, which are considered to be of scientific, historic, cultural or artistic interest. A single object or work can make up an entire exhibition. The exhibition must be easily identifiable as a separate and distinct entity in its own right.

- The general public must have admittance to the exhibition, whether or not they are charged for admission. Restricting admittance entirely to an exhibition, for example, by membership requirements or a private viewing does not constitute admittance for the general public. A single session, for example, a restricted fundraising event will not put an exhibition outside the scope of the relief, although any costs associated with the preparation of the exhibition specifically for private viewing will not be eligible for relief.

- An exhibition will not qualify for relief if it is organized in connection with a competition of any kind, or its main purpose or one of its main purposes is to sell anything displayed. The sale of catalogues, posters or other merchandise associated with the exhibition will not exclude an exhibition from relief (but the costs of producing catalogues and merchandise are not allowable core expenditure). Exhibitions to specifically advertise or promote goods or services are excluded but, depending on the facts, sponsorship of an exhibition may not necessarily exclude an exhibition.

- Live performances by people and displays of anything alive (e.g. animals) are not exhibitions for the purposes of this relief. However, if a performance by a person is incidental to the exhibition this may not necessarily prevent a display from qualifying, for example if there are costumed guides or interpreters.

6. Section 1218ZAB defines a 'touring exhibition:

- The exhibition must be held at two or more geographically distinct venues (i.e. not in the same building).

- At least 25% of the objects, works and artefacts displayed at the first venue must be displayed at every subsequent venue at which the exhibition is held. This is to ensure that the touring exhibition remains the same exhibition in form but allowing for museums and galleries to supplement it with items complimenting the exhibition from their own collections.

- The period between the de-installing of the exhibition at one venue and the installation of the exhibition at the next venue must not exceed 6 months.

- There must be a primary production company for the exhibition (see 1218ZAC) and that company must be within the charge to corporation tax. For example, if the primary production company is outside the UK then it is not within the charge to corporation tax and a secondary production company cannot claim the touring rate of relief, although it may be able to claim the non-touring rate of relief for qualifying costs.
- The primary production company must intend that the conditions at 1218ZAC(4) to (6) must be met when planning the exhibition.

7. Section 1218ZAC sets out the general rules that govern whether a company is a primary production company in relation to a qualifying exhibition.

- The company must be actively engaged in decision-making, be responsible for putting on the exhibition from the start of the production process through running and de-installation and closing of the exhibition at the venue. Where there are two or more venues it must be responsible for the production of the exhibition at the first of those venues.
- The company must make an effective creative, technical or artistic contribution to the exhibition and directly negotiate for, contract for and pay for rights goods and services in relation to that exhibition.
- There can only be one primary production company in relation to the exhibition. Only one company may make a claim in relation to a qualifying exhibition. Partnerships are therefore not eligible for relief.
- If there is more than one primary production company that meets the conditions of a primary production company then it is that company most directly engaged in the activities set out in 1218ZAC that is the primary production company. This will be a matter of fact. However, if no company meets those conditions then there is no primary production company in relation to the exhibition.

8. Section 1218ZAD sets out the general rules that govern whether a company is a secondary production company in relation to a qualifying exhibition.

- There may be more than one secondary production company for an exhibition if it is held at two or more venues.
- A secondary production company cannot be a primary production company. It must be responsible for the production, running and closing of the exhibition at the venue (see 1218ZAD(4)).

- If there is more than one company that meets the conditions of a secondary production company in relation to a particular venue then it is that company most directly engaged in the activities set out in 1218ZAD at a venue that is the secondary production company at that venue. This will be a matter of fact. However, if no company meets those conditions then there is no secondary production company in relation to the exhibition at the venue.

Chapter 2

9. Chapter 2 sets out the taxation activities of the production company.

10. Section 1218ZB sets out how a company may make a claim for the additional deduction. A company making the claim for relief must treat each qualifying exhibition as a separate trade, this only applies to qualifying companies. A primary production company is treated as beginning to carry on the separate exhibition trade at the beginning of the production process at the first venue at which the exhibition is held or, if earlier at the time of the first receipt by the company of any income from the exhibition (see section 1218ZBB for what represents income from the production of an exhibition). The primary production company ceases to carry on that separate trade when the exhibition closes at the last venue at which it is held, if there is a tour. A secondary production company is treated as beginning to carry on the separate exhibition trade either at the beginning of the production stage of the exhibition at the venue where it is a secondary production company or, at the first receipt by the company of any income from the production of the exhibition. For a secondary production company the trade ceases when it closes at the last venue for which it is the secondary production company.

11. Section 1218ZBA sets out how the profits and losses of the separate exhibition trade are calculated for the first period of account and any subsequent periods.

12. Section 1218ZBB sets out what is income for the purposes of the calculation of the profits or losses of the separate exhibition trade. Income may include: receipts from the sale of tickets or rights in the exhibition, royalties or other payments for use of the exhibition or aspects of it (including loan of exhibits), specific grants paid to produce the exhibition.

13. Section 1218ZBC sets out that the costs of the production are to activities involved in developing, producing, running and deinstalling the exhibition or exploiting the exhibition.`

14. Section 1218ZBD sets out the rules of when costs are taken to have been incurred for the purposes of the relief. For example any amounts not paid, unless subject to an unconditional obligation to pay may not be included in the calculation of the relief.

15. Section 1218ZBE outlines the circumstances in which pre-trading expenditure, including expenditure on developing an exhibition before it was 'green lit', may be treated as expenditure of the separate exhibition trade, once that trade commences.

16. Section 1218ZBF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must take into account all relevant circumstances.

Chapter 3

17. Chapter 3 provides for how a company qualifies for relief.

18. Section 1218ZC introduces Chapter.

19. Section 1218ZCA provides the rules for determining how a company qualifies for relief.

    - A company must be a primary production company or a secondary production company for the qualifying exhibition.
    - The company must be a charitable company which maintains a museum or gallery, or a wholly owned subsidiary company of a charity which maintains a museum or gallery, or a wholly owned subsidiary company of a local authority which maintains a museum or gallery.
    - The company must intend from the outset that the exhibition is for the general public (see 1218ZAA).
    - A 'museum or gallery' includes a library or archive and also includes a site where a collection of objects which are considered to be of scientific, historic, artistic or cultural interest is exhibited out doors or partly outdoors, for example a sculpture park.
    - There is a requirement that a minimum EEA expenditure is incurred to qualify for the relief. At least 25% of the qualifying expenditure must be on goods or services that are provided from within the EEA (see 1218ZCC).
    - A company will not be a qualifying company if it is involved in tax avoidance arrangements (see 1218ZCM).

20. Section 1218ZCB sets out what is meant by a company being 'wholly owned by a charity'.

21. Section 1218ZCD provides the rules for what qualifies as core expenditure.

- Core expenditure means expenditure on the activities directly involved in producing the exhibition at a relevant venue, such expenditure may include curator fees, deinstalling and closing (but see 1218ZCD(3)) . Core expenditure will not include indirect expenditure such as marketing, raising of finance, or general legal services. A relevant venue is one where the company's activities in relation to the exhibition form part of the company's separate exhibition trade (see 1218ZB).

- Development expenditure that precedes production will not be allowable if the production does not get 'green-lit', in other words the production must have permission and approval to proceed. The intention is to separate speculative expenditure from expenditure undertaken in the knowledge that the decision has been taken to go ahead with the exhibition.

- If the period between opening and closing an exhibition at any relevant venue exceeds 12 months then the costs of deinstalling and closing are not eligible core expenditure.

- Expenditure on the storage of exhibits, objects and works for an exhibition held at just one venue (not touring) is not core expenditure. However, -where a company incurs expenditure on the storage of exhibits for an exhibition held at two or more venues that expenditure may qualify provided that the storage is off-site, -and the storage period does not exceed 4 months.

- Running costs from the day of opening will not be eligible for relief. For example invigilation costs when the exhibition is up and running are not allowable.

- Expenditure in relation to any live performance (where that performance is incidental to the exhibition) will not be eligible core expenditure.

- The costs of purchasing exhibits, works and objects will not be qualifying core expenditure. Similarly the costs of 'commissioning to collect' are not allowable costs for the purposes of the relief.

- Expenditure on infrastructure costs are not qualifying core expenditure unless that expenditure is incurred solely for the purposes of the exhibition. For example, if the museum or gallery has been repainted that cost is not a qualifying cost unless there has been a requirement for the exhibition to be painted a particular colour.

22. Section 1218ZCE sets out how a company may claim for the additional deduction. A company that makes the claim must treat each qualifying exhibition trade as separate for the accounting period concerned. Claims are made in respect of an accounting period.

23. Section 1218ZCF provides that a company may claim an additional deduction based on its qualifying expenditure. For the first period of account in which the separate exhibition trade is carried on, the additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure, or 80 per cent of the total amount of qualifying expenditure. For subsequent periods of account, the amount of the additional deduction is the lesser of qualifying expenditure which is EEA expenditure or 80 per cent of the total amount of qualifying expenditure minus any additional deductions given for previous periods.

24. Section 1218ZCG defines 'qualifying expenditure' and also provides that where expenditure is not otherwise relievable under other parts of the tax code, for example on entertainment, then it is not qualifying expenditure. Furthermore where relief has been given on expenditure relating to any other creative industry reliefs (for example film or television) or, R&D expenditure credit then that expenditure is not eligible for relief. This prevents a company claiming relief for the same expenditure under different regimes. Section 1218ZCG (1) (c) sets out that expenditure is only qualifying expenditure if it is incurred on or before 31 March 2022.

25. Section 1218ZCH provides that where a company qualifies for museums and galleries exhibition tax relief and has a surrenderable loss then that company may claim a museums and galleries exhibition tax credit for the period. The whole or part of the loss may be surrendered. The rates of relief are: 25% for touring exhibitions and, 20% for other exhibitions.

26. Section 1218ZCI defines a surrenderable loss and a relevant unused loss and sets out how the available loss and any loss carried forward are to be calculated.

27. Section 1218ZCJ provides that where a company is entitled to a museums and galleries exhibition tax credit for a period, and it claims that credit, the Commissioners for HM Revenue and Customs will pay the credit to the company. However where there are any other outstanding liabilities of the company (for example VAT, corporation tax or PAYE) then the credit is first applied against those outstanding liabilities. If the company's tax return is enquired into no payment of the credit needs to be made before the enquiries are complete.

28. Section 1218ZCK prescribes that the maximum amount of tax credit that may be payable to a company is £100,000 in respect of a touring exhibition and £80,000 in respect of other non-touring exhibitions.

29. Section 1218ZCL sets out that any costs which remain unpaid 4 months after the end of an accounting period are ignored for that period.

30. Section 1218ZCM sets out that a company does not qualify for relief if there are any tax avoidance arrangements relating to the production.

31. Section 1218ZCN sets out that where a transaction is attributable to arrangements entered into otherwise for genuine commercial reasons for example to inflate the amount of a claim then that transaction is disregarded when computing the additional deduction.

Chapter 4

32. Chapter 4 concerns the losses of the separate exhibition trade.

33. Section 1218ZDA provides that losses made before the completion period of a separate trade are only available to be carried forward to be set against the profits of the separate exhibition trade.

34. Section 1218ZDB provides for how losses are to be treated in the completion period.

35. Section 1218ZDC provides for how terminal losses are treated and the circumstances in which terminal losses can be transferred.

Chapter 5

36. Chapter 5 sets out the rules for entitlement to relief.

37. Section 1218ZE sets out the conditions for claiming provisional relief, such as a company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for the period a statement of the planned amount of EEA expenditure and that amount of expenditure meets the condition in section 1218ZCC.

38. Section 1218ZEA allows for the claw back of provisional relief where it subsequently appears that the EEA condition will not be met. It sets out what a company must do if it no longer qualifies for relief and also what to do if it ceases to carry on the separate exhibition trade.

Chapter 6

39. Section 1218ZF allows for the amendments of certain sections of Part 15E by regulations.

40. Section 1218ZFA sets out the interpretation of certain expressions within Part 15E.

Part 2: Consequential amendments

41. Paragraph 2 sets out the consequential amendments to ICTA in respect of interest payable.

42. Paragraphs 3 to 6 set out the consequential amendments to FA 1998 to accommodate museums and galleries tax relief in respect of claims and elections.

43. Paragraph 7 sets out an amendment to CAA2001to include museums and galleries tax relief.

44. Paragraph 8 sets out an amendment to FA2007 to include museums and galleries tax relief within penalties and errors.

45. Paragraphs 9 to 14 set out amendments to CTA2009 to include museums and galleries tax relief in the restriction of claiming other tax reliefs, intangible fixed assets, defined expressions and orders and regulations.
46. Paragraph 15 sets out an amendment to FA2009 to include museum and galleries tax relief in recovery of interest.
47. Paragraphs 16 to 18 set out amendments to CTA 2010 to include museums and galleries as new Chapter 14B after, 'Chapter 14A for provision of Orchestra tax relief in respect of the Northern Ireland rate'. Further information on the Northern Ireland rate is in the explanatory notes to the Corporation Tax (Northern Ireland Act) 2015.
48. Paragraph 19 sets out an amendment to FA2016 in respect of tax advantages constituting the grant of state aid.

Part 3: Commencement

49. Paragraphs 20 to 21 set out that all amendments made by the Schedule have effect in relation to accounting periods beginning on or after 1 April 2017. Where an accounting period straddles the 1 April date the profits of the trade are to be apportioned between a deemed accounting period ending on 31 March 2017 and one commencing on 1 April 2017 on a just and reasonable basis.
50. Paragraph 22 sets out the separate commencement provisions for amendments made by this Schedule in respect of the Corporation Tax (Northern Ireland) Act 2015.

Background note

51. The new tax relief for museum and gallery exhibitions will allow qualifying companies engaged in the production of exhibitions to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Only charitable museums or galleries or their wholly owned subsidiaries, or a wholly owned subsidiary of a local authority which maintains a museum or gallery are within the scope of this relief. A charity must be within the charge to corporation tax (this does not mean that a charity has to pay corporation tax to qualify).
52. Both the additional deduction and the payable credit are calculated on the basis of EEA core expenditure up to a maximum of 80 per cent of the total core expenditure by the qualifying company. The additional deduction is 100 per cent of qualifying core expenditure and the payable tax credit is 25 per cent of losses surrendered for touring exhibitions and 20 per cent for other exhibitions.
53. The credit is based on the company's qualifying expenditure on the production of a qualifying exhibition. This expenditure must be on activities directly involved in producing the exhibition. Qualifying expenditure will not include indirect costs such as: financing, marketing, running costs after the exhibition opens, infrastructure costs, exhibit acquisition costs and accountancy and legal fees.

54. At least 25 per cent of the qualifying expenditure must be on goods or services that are provided for from within the EEA.

55. The relief is capped at a maximum of £100,000 payable credit per exhibition for touring exhibitions and a maximum payable tax credit of £80,000 for other exhibitions. This is equivalent to an exhibition with £500,000 of qualifying expenditure (assuming that 80% or more of that expenditure takes place in the EEA)

56. Expenditure incurred on or after 1 April 2022 will not qualify for relief unless this date is extended. In 2020 the government will review the tax relief and set out plans beyond 2022.

57. Exhibitions, whose main purpose, or one of the main purposes, is to advertise goods and services, includes a competition, items for sale, live performances (unless that live performance is incidental) or display of live animals or plants will not qualify for relief.

Clause 22: Grassroots sport

Summary

1. This clause introduces a corporation tax deduction for contributions to grassroots sports. The deduction will have effect in relation to expenditure incurred by companies on or after 1 April 2017.

Details of the clause

2. Subsection (1) introduces amendments to the Corporation Tax Act 2010 (CTA 2010).
3. Subsection (2) amends the overview in section 1(2) of CTA 2010 to refer to the new Part 6A of CTA 2010, introduced by subsection (5).
4. Subsection (3) amends section 99 of CTA 2010 to expand the list of items eligible for group relief under Part 5 of CTA 2010 to include amounts allowable under Part 6A.
5. Subsection (4) amends section 105(4) of CTA 2010 to ensure that group relief for allowable amounts under Part 6A can only be given once the company has deducted the maximum amount available against its own profits; and to make changes to the ordering rule for the different categories of group relief to include allowable amounts under Part 6A.
6. Subsection (5) introduces a new Part 6A into CTA 2010, comprising new sections 217A to 217D.
7. New Section 217A(1) sets out that a payment made by a company which is ‘qualifying expenditure on grassroots sport’ (see new section 217B) is allowed as a deduction against the company’s total taxable profits, when calculating the corporation tax chargeable for the accounting period in which the payment is made. The payment made must not have been refunded, and if any part of it is refunded the deduction must be adjusted accordingly.
8. New Section 217A(2) explains that the payment can only be deducted from the company’s total taxable profits once all other corporation tax reliefs other than charitable donations relief, group relief, and group relief for carried forward losses have been given for the relevant accounting period.
9. New Section 217A(3) provides that an unlimited deduction is allowed for a payment by a ‘’qualifying sport body’’, which is later defined in new section 217C(1).
10. New Section 217A(4)(a) provides that a company that is not a sport governing body at the time of the payment is allowed an unlimited deduction if the payment is made to a qualifying sport body.

11. New Section 217A(4)(b) explains that where a company is not a qualifying sport body, and directs its payment directly to grassroots sport, rather than through a qualifying sport body, a different set of rules applies. These rules relate to ''direct payments'' by companies that are not qualifying sport bodies, and are set out in new section 217A(7) and (8).

12. New Section 217A(5) provides that a company cannot claim a deduction for a payment that is made out of an amount it has received for grassroots sport purposes, and which it has not brought into account in computing its taxable profits. This could arise, for example, where a company has made a payment to a qualifying sport body. The company will deduct that amount from its taxable profits, but the receipt may not necessarily be taxable in the hands of the qualifying sport body. In that case the qualifying sport body could not itself claim a deduction. The rule operates across accounting periods such that an amount received in one period can be taken into account in considering whether a payment made in a later period is allowable.

8. New Section 217A(6) provides the general rule that the deduction cannot reduce the company's total profits to below nil for the relevant accounting period. Any allowable amounts that cannot be deducted because of this subsection may potentially be surrendered as group relief for the same accounting period.

9. New Section 217A(7) provides that total direct payments by a company are allowed up to and equal to the annual maximum deductible amount, specified in new section 217A(9).

10. New Section 217A(8) provides that that where a company makes a payment that would qualify but is greater than the annual maximum deductible amount, a deduction may be allowed only for the part of the total expenditure that does not exceed the annual maximum.

11. New Section 217A(9) explains that where a company is not a qualifying sport body, and makes a direct payment to grassroots sports, rather than through a qualifying sport body, it can only receive a deduction up to an annual threshold of £2,500. Any direct payments to grassroots sports above this threshold will not qualify for a deduction against corporation tax profits. This new subsection also sets out that this threshold is reduced proportionately where the relevant accounting period is less than 12 months.

12. New Section 217A(10) gives the Treasury power to make regulations to increase the amount specified in new section 217A(9).

13. New Section 217B sets out the circumstances in which expenditure can be defined as ''qualifying expenditure''.

14. New Section 217B(1) requires two conditions to be met. First, the payment must be charitable in nature – charitable purposes under charity law include the advancement of amateur sport – and the payment must also facilitate participation in amateur sport. Second, no deduction is otherwise available for the payment. This prevents a deduction for any payment that would already qualify as an expense of a trade, or as a donation to a charitable body or a Community Amateur Sports Club (CASC).

15. New Section 217B(2) sets out a rule that applies where payments are made partly for grassroots sport purposes and partly for other purposes. This might, for example, include central costs that are incurred to manage both grassroots sport events and other events. The expenditure is to be apportioned on a just and reasonable basis to establish the amount that is allowable as qualifying expenditure.
16. New Section 217B(3)(a) explains that 'facilitating participation' for the purposes of section 217A(5) and section 217B(1) does not include paying players or participators to take part, but does include payments to coaches and officials. Payments of reasonable out of pocket expenses to amateur players and participants for attendance at competitions and coaching events will be allowable.
17. New Section 217B(3)(b) sets out the meaning of ''eligible sports'' for the purposes of section 217A(5) and section 217B(1).The same definition is used as the definition for the purposes of the CASC legislation.
18. New Section 217C(1) defines a "qualifying sport body" as a recognised sport governing body, defined in section 217C(2), or a body that is wholly owned by a recognised sport governing body.
19. New Section 217C(2) defines a recognised sport governing body by reference to its inclusion in a list of sport governing bodies maintained by the National Sports Councils (see section 217C(5)).
20. New Section 217C(3) provides the Treasury with the power to amend by regulations the meaning of a "qualifying sport body", and the power to designate by regulations bodies to be qualifying sport bodies. In both cases the regulations will be subject to the negative resolution procedure.
21. New Section 217C(4) enables regulations made under section 217C(3)(b) to designate a body by reference to its inclusion in a particular class or description of such bodies.
22. New Section 217C(5) sets out the list of bodies that are the National Sports Councils for the purposes of this legislation.
23. New Section 217C(6) makes provision for regulations made under subsection (3)(b) to have effect, if required, for periods before they are made, but only where the regulations are made before 1st April 2018.
24. New Section 217D ensures that the deduction will only apply where deductions as charitable donations (including payments to CASCs) under Part 6 of CTA 2010 are not available.
25. Subsection (6) sets out the commencement provision. The new rules apply to qualifying expenditure incurred on or after 1 April 2017.
26. Subsection (7) provides the commencement rule for accounting periods that straddle 1 April 2017. This affects only the annual limit of £2500 relating to "direct payments".

Background note

27. This measure extends the circumstances in which contributions to grassroots sports can be deducted from the taxable profits of corporation tax payers. Companies will be able to make deductions for all contributions to grassroots sports through "qualifying sport bodies" (recognised sport governing bodies, and any body wholly owned by a recognised sport governing body), and deductions of up to £2,500 in total annually for direct contributions to grassroots sports. Qualifying sport bodies will be able to make deductions for all their contributions to grassroots sports, subject to specified conditions.

28. This measure will make it easier for corporation tax payers to receive a deduction for contributions to grassroots sports, thereby encouraging sports participation at a local level, and reducing administrative burdens for some organisations which currently make contributions to grassroots sports.

29. This measure will not affect existing routes for tax-deductible expenditure to support grassroots sports. Currently, deductions can be made as sponsorship or as charitable donations (including payments to Community Amateur Sports Clubs). A deduction cannot be claimed under these new rules where it could be claimed under any existing rules.

Clause 23: Profits from the exploitation of patents: cost-sharing arrangements

Summary

1. This clause amends the rules in part 8A Corporation Tax Act 2010 (CTA 2010) – which provide a lower rate of Corporation Tax on profits from the exploitation of patents and similar intellectual property (IP) – where the IP is developed under a cost-sharing arrangement (CSA) – an arrangement where two or more persons share the costs and income from their research and development (R&D). The result is that the company's own contribution to the development work drives the amount of profit benefiting from the reduced rate.

2. The changes have effect for accounting periods beginning on or after 1 April 2017.

Details of the clause

3. Subsection 2 of clause 23 introduces a new Section 357BLEA to CTA 2010.

New section 357BLEA

4. Subsections (1) and (2) of new Section 357BLEA deal with expenditure on R&D which new Section 357GCZC, also inserted by clause 23, treats as having been subcontracted to an unconnected person in the CSA.

5. In calculating the R&D fraction, payments made by the company for this R&D under the CSA (balancing payments made under the terms of the CSA) may be offset against amounts received by the company (balancing receipts) under the CSA from unconnected persons for R&D which it carries on or subcontracts to another person.

6. Subsections (3) – (6) of new Section 357BLEA make similar provisions concerning expenditure on R&D which new section 357GCZC treats as having been subcontracted to a connected person in the CSA and amounts which new section 357GCZD treats as having been incurred on the acquisition or licensing of IP.

7. Again, in calculating the R&D fraction, such payments made by the company under the CSA may be offset against amounts received, which are specified in subsection (6) of new Section 357BLEA. These are payments from connected persons for R&D which the company carries on or subcontracts to another person, and payments made to cover acquisitions of IP rights.

New section 357GC

8. Subsection 3 of clause 23 inserts a new version of section 357GC CTA10 replacing the current version. The current section 357GC defines a cost-sharing arrangement.

9. Subsection 3 of clause 23 also inserts new sections 357GCZA-357CGZF.

10. The new definition of a CSA is similar to the old one but differs in that there is no requirement that one of the parties to the CSA owns IP, or has an exclusive licence to it. This recognizes that the CSA may, at the outset, have no IP but may intend to develop it.

11. Some of the other provisions currently in section 357GC are included elsewhere in the new legislation;

    - The exclusion of the case where the arrangement produces a return economically equivalent to interest is now in new sections 357GCZA(2) and 357GCZB(2));

    - The provisions treating a company as owning a qualifying IP right, or holding an exclusive licence over a right, where these are held by another party to the CSA, are in new sections 357GCZA(3) and 357GCZB(3). These provisions allow the company to potentially qualify for relief under the Patent Box, and the company's income from them to come within the Patent Box.

New section 357GCZA

12. New section 357GCZA provides for the company to be treated as holding a qualifying IP right if another person within the CSA holds the right. It also specifies when such a right is treated as a new qualifying IP right (that is, subject to the requirement for an R&D fraction).

13. This is the case if either the company or the person holding the right joined the CSA on or after 1 April 2017, or if the right was already a new qualifying IP right for its holder.

14. This condition is disapplied by subsection (5) where, immediately before joining the CSA, the company itself already held an exclusive licence which was granted before the relevant date (ie grandfathered). This covers the situation where, upon entering a CSA with the person who owns the IP, a company which previously held an exclusive licence which was grandfathered gives up that licence.

New section 357GCZB

15. New section 357GCZB similarly provides for the company to be treated as holding an exclusive licence to a qualifying IP right if another person within the CSA holds an exclusive licence to the right, rather than the right itself, and specifies when such a right is treated as a new qualifying IP right – again, this is the case if either the company or the person holding the right joined the CSA on or after 1 April 2017, or if the right was already a new qualifying IP right for its holder.

16. There is an equivalent exclusion in new section 357GCZB(6) to that in new section 357GCZA(5), covering the case where the company held an exclusive licence prior to joining the CSA which was granted before the relevant date and an additional exclusion in new section 357GCZB(5) where the company actually held the right (and it was applied for before 1 July 2016, or assigned (acquired) before the relevant date. Again, these exclusions ensure continuity of grandfathering, despite creation of or admission to a CSA.

New section 357GCZC

17. New section 357GCZC treats R&D directly undertaken by another member of the CSA as having been subcontracted to that person (subsection(2)), and R&D subcontracted by another member of the CSA, P, to a third person as having been directly subcontracted to P by the company (subsection(4)), for the purposes of calculating the R&D fraction.

New section 357GCZD

18. New section 357GCZD similarly treats IP acquisition (subsection(2)) and licensing costs (subsection(4)) of another member of the CSA as having been incurred by the company itself, for the purposes of calculating the R&D fraction.

New section 357GCZE

19. New section 357GCZE deals with various situations in which the company makes payments, and becomes entitled to benefit from, IP held within the CSA as part of changes to the structure of the CSA such as another company joining (and bringing in IP). The company is treated for the purpose of calculating the R&D fraction as having acquired IP.

20. This prevents the new Patent Box rules on acquisitions being circumvented by companies entering into CSAs and getting the use of IP but not actually owning or licensing the IP.

21. There are three cases.

- Subsection (1) applies where the company makes a payment to another person who holds IP and the two enter into a CSA.
- Subsection (2) applies where the company joins an existing CSA, and makes a payment to another person who is part of the CSA and holds IP.
- Subsection (3) applies where, within an existing CSA, the company makes a payment to another party to the CSA who holds rights, and thereby becomes entitled to some additional benefit. This might be a greater income share under the CSA, or it may be entitlement to exploit further rights.

22. In each case, a just and reasonable amount of the payment is treated as acquisition expenditure in the R&D fraction.

New section 357CGZF

23. New section 357GCZF deals with the converse situation to that addressed in new section 357CGZE, ie where a company receives a payment and another person becomes entitled to benefit, within a CSA, from IP which the company holds. An amount of the payment is treated as relevant IP income. Again, there are three cases.

- Subsection (1) applies where the company receives a payment from another person and the two enter into a CSA.
- Subsection (2) applies where the company is part of a CSA and receives a payment from another person who joins the CSA.
- Subsection (3) applies where, within an existing CSA, the company receives a payment from another person and that party to the CSA which thereby becomes entitled to some additional benefit. This might be a greater income share under the CSA, or it may be entitlement to exploit further rights.

24. In each case a just and reasonable amount of the amount received is treated as relevant IP income.

25. Subsection(4) of clause 23 amends the definition of "new qualifying IP right" in section 357BP CTA10 (which specifies when income from an IP right is taxed according to the original Patent Box rules, and when the new rules introduced in Finance Act 2016 apply) to take account of new sections 357GCZA and 357GCZB.

26. Subsection(5) of clause 23 provides when the amendments made will have effect: that is, for accounting periods beginning on or after 1 April 2017 (so accounting periods straddling that date are not split into notional periods).

Background note

27. The UK Patent Box gives companies a reduced rate of tax on their profits from patents and similar intellectual property (IP). It is intended to provide incentives for companies to patent IP developed in the UK and ensure new and existing patents are further developed and commercialised in the UK

28. The Organisation for Economic Cooperation and Development (OECD) has been coordinating a multinational effort to address Base Erosion and Profit Shifting (BEPS) - tax planning by multinational enterprises that exploits gaps and mismatches in tax rules to artificially shift profits to low tax locations where there is little or no economic activity. This resulted in a new internationally harmonised framework for preferential IP regimes (like the UK's Patent Box). This framework applies from 1 July 2016.

29. The central point is that for a business to gain the benefit of a preferential regime, it should have conducted the substantial activities which generated the income benefiting from that regime. The agreed approach uses R&D expenditure as a proxy for substantial activity and links benefits to the requirement to have undertaken the R&D expenditure incurred to develop the IP. This is referred to as the nexus approach. It is implemented in the UK legislation through a fraction, the "R&D fraction".

30. Legislation implementing the OECD framework was included in Finance Act 2016. That legislation did not specifically address cost-sharing arrangements.

31. Draft legislation covering cost-sharing arrangements was published in December 2016. The government considered views expressed on the draft and revised legislation was originally included in Finance Bill 2017. This clause contains the legislation originally proposed for that Finance Bill but deferred following the announcement of the 2017 general election.

Clause 24: Hybrid and other mismatches

Summary

1. This clause introduces amendments to the hybrid and other mismatch regime contained in Part 6A TIOPA 2010. The amendments make three minor technical changes to that legislation. The first change puts beyond doubt that the regime is intended to apply by reference to the relevant national rather than local tax by providing that local taxes are not treated as foreign taxes for the purposes of the regime. The second change removes the need for a formal claim in relation to permitted taxable periods for certain mismatches involving hybrid financial instruments (which are dealt with in Chapters 3 and 4 of Part 6A). The third change disregards deductions for amortisation in relation to certain Chapters of the hybrid mismatch regime (Chapters 5 to 8). The first change (local taxes) will have effect from 13 July 2017 while the second and third changes will have effect from the start of the hybrid mismatch regime, which came into force on 1 January 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Part 6A TIOPA 2010. All references below are to Part 6A TIOPA 2010 unless otherwise stated.

3. Subsection 2 introduces the first amendment, which provides that the local taxes referred to in section 259B(3) are not treated as foreign taxes for the purposes of the hybrid and other mismatches regime.

4. The next two amendments relate to Chapters 3 and 4 of the Hybrid and other mismatches regime, which cover hybrid financial instruments and hybrid transfers.

5. Subsection 3 amends s259CC(2)(b) by removing the requirement for a claim to be made in respect of a permitted taxable period in relation to Chapter 3.

6. Subsection 4 amends s259DD(2)(b) by removing the requirement for a claim to be made in respect of a permitted taxable period in relation to Chapter 4.

7. Subsections 5 to 9 introduce amendments which relate to the treatment of deductions for amortisation. Each amendment inserts an additional subsection into the relevant chapter of Part 6A TIOPA 2010. In each case, the amendment has the effect to disregard deductions for amortisation when considering whether a mismatch arises.

8. For the purposes of these amendments, amortisation is defined as either a debit which is brought into account under section 729 or 731 CTA 2009, or a deduction amount under any equivalent rule in another jurisdiction.

9. Subsection 5 inserts new subsection 1A into section 259EB, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for the purposes of Chapter 5, which deals with hybrid payer deduction/non-inclusion mismatches.

10. Subsection 6 inserts new subsection 1A into section 259FA, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for the purposes of Chapter 6, which deals with deduction/non-inclusion mismatches relating to transfers by permanent establishments.

11. Subsection 7 inserts new subsection 1A into section 259GB, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for the purposes of Chapter 7, which deals with hybrid payee deduction/non-inclusion mismatches.

12. Subsection 8 inserts new subsection 1A into section 259HB, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for the purposes of Chapter 8, which deals with multinational payee deduction/non-inclusion mismatches.

13. Subsection 9 inserts new subsection 3A into section 259KB, which sets out that deductions in respect of amortisation are to be disregarded as PE deductions for the purposes of Chapter 11, which deals with imported mismatches.

14. Subsection 10 provides commencement provisions in relation to the amendment in subsection 2 above (local taxes). This ensures that the amendment in relation to local taxes will have effect from 13 July 2017.

15. Subsection 11 deals with periods which fall either side of the 13 July 2017 commencement date for the local taxes amendment (straddling periods). It provides for apportionment either on a time basis, or, if more appropriate, on a just and reasonable basis.

16. Subsection 12 defines a straddling period for the purposes of the apportionment rules set out in subsection 11.

17. Subsection 13 provides that Part 6A TIOPA 2010 is deemed to always have effect in relation to the other amendments set out in this clause. This ensures that the commencement rules for Part 6A TIOPA 2010 also apply to the changes in relation to permitted periods and amortisation set out above.

Background note

18. The hybrid and other mismatch rules were introduced in Finance Act 2016. They are designed to deal with tax mismatches involving entities, financial instruments, permanent establishments and dual resident companies. A hybrid mismatch occurs because two or more jurisdictions apply a different tax treatment to a transaction, entity or arrangement. The UK regime was introduced following the 2015 OECD BEPS Action 2 Report on Hybrid Mismatches.

19. The government announced in a technical note, published at the Autumn Statement 2016, that it would introduce two minor changes to the hybrid and other mismatch regime. This announcement was made following extensive discussions with stakeholders, and will ease the compliance burden in relation to certain claims, and ensure that amortisation deductions are not within scope of the regime. Those two changes were included when the clause was introduced in March 2017.

20. The government has decided to make the change in relation to the treatment of local taxes, following further discussion with stakeholders, to ensure that the original policy intention continued to be met. That change is now being introduced by subsection 2 of this clause, as set out in paragraph 3 above.

Clause 25 and Schedule 7: Trading profits taxable at the Northern Ireland rate

Summary

1. Clause 35 and Schedule 12 amend Part 8B of the Corporation Tax Act 2010 (CTA10) and provisions of the Capital Allowance Act 2001 (CAA01) relating to Northern Ireland corporation tax. Once commenced, the Northern Ireland corporation tax regime provided for in Part 8B of the CTA10 will allow a Northern Ireland rate of corporation tax to apply to certain trading income arising in Northern Ireland.

2. This clause introduces a Schedule that amends the definitions of "Northern Ireland company", "Northern Ireland firm" and "Northern Ireland employer".

3. The Schedule also makes minor amendments to Part 8B and to provisions in the Capital Allowances Act 2001 relating to Northern Ireland corporation tax.

Details of the Clause and Schedule

4. Clause 35 introduces Schedule 12.

5. Schedule 12 amends Part 8B CTA 2010 and the Capital Allowances Act 2001 (CAA 01).

6. Part 1 and paragraph 1 introduce amendments to Part 8B CTA 2010 and CAA 01 in relation to SMEs trading in Northern Ireland that are not Northern Ireland employers.

7. Paragraph 2 makes consequential amendments to section 357H(5) of CTA 2010, which introduces the purpose of Chapter 7 of Part 8B, to reflect the changes made by the Schedule.

8. Paragraph 3 amends section 357KA of CTA 2010 which sets out the meaning of a "Northern Ireland company". To be a "Northern Ireland company", a company previously needed to carry on a qualifying trade in the period and meet either the SME or large company condition. Paragraph 3 renames the SME condition "the SME (Northern Ireland employer) condition". This condition is met where an SME is a Northern Ireland employer as defined at section 357KD. Paragraph 3 introduces a new condition which gives the option for a company that meets the SME limb of the SME condition but is not a Northern Ireland employer and is not a disqualified close company to elect to use the large company rules and allocate profits and losses to a Northern Ireland Regional Establishment (NIRE) which are chargeable at the Northern Ireland rate. This is known as the "SME (election) condition".

9. Sub-paragraph 3(6) inserts section 357KA(3A) which sets out how an election to meet the "SME (election) condition" should be made.

10. Paragraph 4 amends section 357KE(2) which sets out the workforce conditions a company must meet to be a Northern Ireland employer. The amendment made means that for the purposes of the workforce conditions, members of a company's workforce include individual participators in the company where the company is a close company or would be a close company if it were UK resident.

11. Sub-paragraph 4(3) inserts new subsections (7A) to (7E) in section 357KE. (7A) provides the meaning of the term participator in this context. New subsection (7B) provides that in calculating working time for the purposes of the workforce conditions, a participator's time is also included where it is spent providing services to a person other than a company and condition A or B as set out at subsections (7C) and (7D) is met. These changes are made to ensure that the NI employer test takes account of time spent by a participator where services he provides or rights the company has acquired from him contribute (directly or indirectly) to the company's income.

12. Paragraph 5 inserts section 357KEA which defines the new notion of "a disqualified close company". A company is a disqualified close company if the company is a close company at any time in the period and two conditions, A and B, are met. Condition A is that the company has a NIRE in the period as a result of tax-avoidance arrangements. Condition B is that 50% or more of working time spent in the United Kingdom is working time spent by participators in the company otherwise than in Northern Ireland or 50% or more of the company's workforce expenses attributable to working time in the United Kingdom is attributable to working time spent by participators in the company otherwise than in Northern Ireland.

13. Paragraphs 6 and 7 make consequential amendments to Chapter 6 of Part 8B, which provides the core rules for determining the Northern Ireland profits and losses of a SME company that is a Northern Ireland employer, to reflect the changes made by paragraph 3.

14. Paragraphs 8 and 9 extend the scope of Chapter 7 of Part 8B, which provides the core rules for a large company to determine its Northern Ireland profits and losses, so that those rules also apply to a company which is a Northern Ireland company by virtue of the new SME (election) condition.

15. Paragraphs 10 and 11 amend Chapter 8 of Part 8B, which deals with the calculation of Northern Ireland profits or losses where the company holds intangible fixed assets for the purposes of a trade carried on by it in Northern Ireland, to provide that the rules for large companies are extended to SMEs which have elected to be a Northern Ireland company under the provision made by the Schedule.

16. Paragraphs 12 and 13 similarly amend Chapter 15 of Part 8B which modifies the operation of Part 8A of CTA 2010 (profits from the exploitation of patents etc.) in relation to a Northern Ireland company, to reflect the changes made by the Schedule and extend the application of the rules for large companies to a company which is a Northern Ireland company by virtue of the new SME (election) condition.

17. Paragraph 14 deals with partnerships. Amendments are made to the meaning of a "Northern Ireland firm" at section 357WA of CTA 2010. A firm is a "Northern Ireland firm" if the firm carries on a qualifying partnership trade in the period and the "SME (Northern Ireland employer) partnership condition ", "the large partnership condition" or the new "the SME (election) partnership condition" is met. In much the same way as an election by an SME company, the "SME (election) partnership condition" allows a firm to elect for the large partnership rules to apply where the firm is a SME in relation to the firm's accounting period, has a NIRE but is not a Northern Ireland employer and is not a disqualified firm in relation to that period. Section 357WA(4) is amended to reflect the amendments made by new section 357WBA, which is inserted by paragraph 15 of the Schedule.

18. Paragraph 15 inserts new section 357WBA. As it stands under the rules in Part 8B the question of whether a firm is a Northern Ireland employer is answered by applying the workforce conditions which apply to a company in sections 357KD and 357KE as modified by section 357WA(4) and (5). The amendments made by paragraph 15 change this aspect of the structure of Part 8B to provide a standalone test for partnerships, and provide a change to the current rules by extending the scope of the workforce of a firm for these purposes to include an individual who is a partner.

19. Paragraph 15 also inserts new section 357WBB which provides that in this context partner includes a person who is entitled to a share of the income of the firm and that in calculating working time for the purposes of the workforce conditions, an individual partner's time is also included where it is spent providing services to a person other than the firm and condition A or B as set out at subsections (3) and (4) is met. These changes mean the Northern Ireland employer test for partnerships takes account of time spent by a partner where services he provides or rights the firm has acquired from him contribute (directly or indirectly) to the firm's income.

20. Paragraph 15 also inserts section 357WBC to define a "disqualified firm". A firm is disqualified if two conditions, A and B, are met. Condition A is that the firm has a NIRE in the period as a result of tax-avoidance arrangements. Condition B is that 50% or more of the working time spent in the United Kingdom is working time spent by individual partners otherwise than in Northern Ireland or 50% or more of the workforce expenses attributable to working time in the United Kingdom is attributable to working time spent by individual partners otherwise than in Northern Ireland.

21. Paragraph 16 is a consequential amendment reflecting the renaming of the "SME partnership condition" to the "SME (Northern Ireland employer) partnership condition".

22. Paragraph 17 amends section 357WD of CTA 2010 to provide that the rules in Chapter 7 of Part 8B as modified by that section for determining the Northern Ireland profits or losses of a trade which apply to large partnerships are extended to SME partnerships which are Northern Ireland firms by virtue of the new SME (election) partnership condition.

23. Paragraph 18 amends section 357WE because section 357WD as amended by paragraph 15 no longer contains the concept of a firm which is a SME.

24. Paragraphs 19 and 20 amend section 357WF which modifies Chapter 8 (intangible fixed assets) and section 357WG which modifies Chapter 15 (profits arising from the exploitation of patents) in their application to NI firms to take account of the new category of Northern Ireland firm by virtue of the SME partnership (election) condition.

25. Paragraph 21 amends Schedule 4 of CTA10 to include definitions of relevant terms in Part 8B.

26. Paragraphs 22, 23 and 24 amend the Capital Allowances Act 2001 to reflect the changes made by the Schedule to the various terms used in relation to Northern Ireland companies.

27. Paragraph 25 makes an amendment to deal with the changes to terminology made by paragraphs 21 in the transitional provision relating to capital allowances in Schedule 1 to the Corporation Tax (Northern Ireland) Act 2015.

28. Part 2 introduces minor amendments to Part 8B CTA10

29. Paragraph 26 amends section 357IA in subsection (2) to change the relevant Minister's name.

30. Paragraph 27 amends section 357QB(5)(b) to correct a minor drafting error.

31. Paragraph 28 makes a minor amendment to paragraph 2 of Schedule A1 to CAA01 to remedy a drafting error in paragraph 10 of Schedule 1 of the Corporation Tax (Northern Ireland) Act 2015 which made changes to Schedule A1

32. Part 3 and paragraph 30 provide commencement provisions for the amendments. They provide for the changes to be treated as if they had been made in the Corporation Tax (Northern Ireland) Act 2015 Act in the first place.

Background note

33. In March 2015, Parliament passed the Corporation Tax (Northern Ireland) Act 2015 which, subject to commencement regulations, will devolve corporation tax rate setting powers to the Northern Ireland Assembly. The government has committed to commencing the regime if the Northern Ireland Executive demonstrates its finances are on a sustainable footing.

34. Under the current rules, an SME company or SME firm which has 75% or more of its employment time and costs in Northern Ireland has all of its qualifying trading profits taxed at the Northern Ireland rate. Otherwise an SME has all trading profits taxed at the UK corporation tax main rate.

35. Following industry representations, the meanings of Northern Ireland company and Northern Ireland firm are being expanded. Changes made by the Schedule give an option for an SME which does not meet the employment test but has a trading presence in Northern Ireland to elect to be a Northern Ireland company (or a Northern Ireland firm in the case of a partnership) by virtue of the SME (election) condition and so have the Northern Ireland rate apply to its Northern Ireland profits and losses. In that case the SME company or firm will use the large company rules for identifying those profits and losses to which the Northern Ireland rate applies.

36. Changes are also made to minimize abuse of the rules for SMEs by maintaining the regime's focus on genuine economic activity in Northern Ireland.

37. The Schedule also makes minor amendments to the regime, first to update the rate setting power in section 357IA to reflect a change in title of the Minister of Finance and Personnel to the Minister of Finance resulting from a determination made by the First Minister and Deputy Minister of Northern Ireland on 1 March 2016. It also corrects two minor drafting errors made in the 2015 Act.

Clause 26: Elections in relation to assets appropriated to trading stock

Summary

1. This clause restricts the circumstances where an election may be made to compute a chargeable gain or allowable loss on an alternative basis when assets are appropriated into trading stock. The effect of the change is that an election may not be made where an allowable loss would arise on an appropriation into trading stock at market value.

Details of the clause

2. Subsection (1) introduces amendments to section 161 of the Taxation of Chargeable Gains Act 1992 (TCGA).

3. Subsection (2) amends section 161(3) of TCGA. That subsection provides for an election to be made where assets are appropriated into trading stock and a chargeable gain or allowable loss would arise because the disposal is deemed by section 161(1) of TCGA to take place at the market value of the asset. The election amends the disposal proceeds by deducting the amount of the chargeable gain or adding the amount of the allowable loss, thereby in effect giving the result that there is no chargeable gain or allowable loss. The cost of the stock for the calculation of future trading profits is reduced or increased accordingly.

4. Subsection (2)(a) restricts the application of section 161(3) of TCGA to cases where the application of section 161(1) gives rise to a chargeable gain on the disposal at market value.

5. Subsection (2)(b) consequently removes the reference in section 161(3) of TCGA to the disposal proceeds being increased by the amount of an allowable loss.

6. Subsection (3) amends section 161(3ZB) of TCGA. This subsection performs a similar function to section 161(3), but in respect of cases where an "ATED-related" gain or loss would arise. An "ATED-related" gain or loss can arise where an asset has been within the charge to ATED (the Annual Tax on Enveloped Dwellings). The election can only apply to a "non-ATED" related gain or loss. That is, the gain or loss that accrued whilst the asset was not within the charge to ATED.

7. Subsection (3)(a) and (3)(b) has the same effect for an election under section 161(3ZB) of TCGA as subsection (2)(a) and (2)(b) has for an election under section 161(3) of TCGA, but only in respect of a "non-ATED related" gain or loss.

8. Subsection 3(c) clarifies that a "non-ATED" related loss is therefore unaffected by an election under section 161(3ZB) of TCGA. Any "ATED-related" gain or loss is not currently eligible for the election, and that position is unchanged.

9. Subsection (4) sets out the commencement condition. The change applies to appropriations into trading stock made on or after 8th March 2017.

Background note

10. This change affects legislation in the chargeable gains code where an asset that is a fixed asset of a trade or that is held as an investment is appropriated into trading stock. For example, where a commercial property has been held to earn rental income and the owner then decides to take it into trading stock with a view to selling it.

11. The legislation treats that appropriation as taking place at market value, which can give rise to a chargeable gain or allowable loss. The legislation allows for an election that has the effect of reducing any chargeable gain or allowable loss to zero, and of making an equivalent adjustment to the cost of the trading stock in computing future trading profits.

12. The purpose of reducing a chargeable gain is to prevent a "dry" tax charge – that is, a charge to tax where no disposal proceeds have been received. However, in the case of an allowable loss the effect is to convert an amount that has accrued as a capital loss whilst the asset was held as a fixed asset or as an investment into a more flexible trading deduction. The change prevents this conversion so that the loss retains the character that it had when the loss accrued.

13. Where the asset is within ATED a similar election can be made, but only in respect of the "non-ATED related" part of any gain or loss. That is, any part of the gain or loss that accrued whilst the asset was not within the charge to ATED. A similar change to the election will be made, but this will only affect any "non-ATED related" loss.

Clause 27: Substantial shareholding exemption

Summary

1. This clause simplifies the conditions applying to the substantial shareholdings exemption (SSE). The SSE provides an exemption from corporation tax for capital gains and losses realised on the disposal of certain shareholdings. It has effect for disposals of substantial shareholdings on or after 1 April 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (TCGA)

3. Subsection 2 removes the requirement for the company making the disposal (the "investing company") to satisfy the requirements in paragraph 18 of Schedule 7AC TCGA before any gain or loss will be exempt from corporation tax, and makes consequential changes to the rest of the Schedule. The effect of omitting paragraph 18 is that the investing company does not have to be a sole trading company or a member of a trading group at any time before or after the disposal.

4. Subsection 3 extends the period during which the investing company needs to have satisfied the requirement that it has held a substantial shareholding in the company invested in for at least 12 months from two years before the disposal to six years before the disposal. This change allows companies to make an exempt disposal of shares up to five years after their interest in the company invested in falls below 10% of its ordinary share capital.

5. Subsection 4 extends the period that a UK company is treated as having held the shares so as to include the period when they were held by a non-resident group company.

6. Subsection 5 removes the general requirement that the company invested in must be a qualifying company immediately after the disposal if that disposal is to be exempt from corporation tax. A qualifying company is a trading company or the holding company of a trading group or a trading subgroup. This requirement will continue to apply in two cases. Where the disposal is to a person connected with the investing company and where the trade has been transferred into a new company within the previous 12 months. Whether a person is connected with the investing company is determined in accordance with section 1122 of the Corporation Tax Act 2010. The requirement is retained where the disposal is to a connected person because in those circumstances that the investing company is likely to be able to influence whether the company invested in continues to trade.

7. If the pre-disposal trading requirement is only satisfied by a trade that has been transferred into a new company such that in order to satisfy the requirement, the position in the previous company has to be taken into account (paragraph 15A of Schedule 7AC TCGA) then the general requirement that the company invested in must be a qualifying company immediately after the disposal if that disposal is to be exempt from corporation tax is retained. This is to prevent a trade from a qualifying trading company being combined with assets which would not qualify on their own to make the whole disposal exempt.

   Subsection 6 of the clause is the commencement rule. The changes made by this clause apply to disposals of a substantial shareholding that occur on or after 1 April 2017.

Background note

8. The government announced at Budget 2016 that it would consult over the summer of 2016 on a possible reform of SSE provisions. This consultation sought views on the extent to which the exemption could be simplified, made more certain, and how it could be updated to reflect changes to the domestic and international tax landscape since its introduction in 2002. The changes introduced by this measure represent the government's response to parts of that consultation.

Clause 28: Substantial shareholding exemption: institutional investors

Summary

1. This clause introduces a form of the substantial shareholdings exemption (SSE) that has fewer qualifying conditions for companies that are wholly or partly owned by certain institutional investors. The SSE provides an exemption from corporation tax for capital gains and losses realised on the disposal of certain shareholdings. The clause provides for an exemption without regard to the nature of the business activities of either the company making the disposal or the company in which it has a substantial shareholding. Partial exemption is given where the interest of qualifying institutional investors in the ordinary share capital of the company making a disposal is between 25% and 80%. It has effect for disposals of substantial shareholdings on or after 1 April 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (TCGA)

3. Subsection 2 inserts new paragraphs 3A and 3B of the Schedule which set out when the new exemption is available and how much of a gain or loss is exempt where the company making the disposal ("the investing company") is partly owned by qualifying institutional investors.

4. New subparagraphs (1) and (2) of paragraph 3A provide that the provisions of the new paragraph apply to an investing company if it has disposed of shares (or an interest in shares) in another company in which it had a substantial shareholding ("the company invested in") but SSE does not otherwise apply to that disposal because the company invested in fails to meet the requirements in paragraph 19 of the Schedule. Those requirements are that the company invested in is a sole trading company, or the holding company of a trading group or a trading sub-group at the specified times. They state that the new provisions do not apply if the investing company is a disqualified listed company.

5. New subparagraph (3) of paragraph 3A provides that any gain or loss on the disposal is exempt if qualifying institutional investors own at least 80% of the ordinary share capital of the investing company.

6. New subparagraph (4) of paragraph 3A provides for a proportionate part of the gain or loss to be exempt if qualifying institutional investors own between 25% and 80% of the ordinary share capital of the investing company.

7. New subparagraph (5) of paragraph 3A sets out what is meant by a "disqualified listed company". A listed company is disqualified if any of the shares forming part of the ordinary share capital are listed on a recognised stock exchange, except for companies that are qualifying institutional investors or qualifying UK REITs.

8. New subparagraph (6) of paragraph 3A sets out what is meant by a "qualifying UK REIT". A qualifying UK REIT is a UK REIT which is not a close company by virtue of having an institutional investor as a participant, or is not treated as a close company because it is controlled by or on behalf of Crown.

9. New paragraph 3B applies for the purposes of paragraph 3A.

10. New subparagraphs (2) and (3) of paragraph 3B set out that ownership is based on holdings of ordinary share capital in a company, and this can be held directly by the qualifying institutional investor, or indirectly through other entities, including through other companies. They set out what is meant by indirect ownership.

11. New sub-paragraph (4) (a) of paragraph 3B provides an exception to this general rule in the case of a disqualified listed company. A qualifying investor will not be regarded as having indirect ownership of the investing company to the extent that it is necessary to trace its ownership through a company whose shares are listed on a recognised stock exchange, unless that company is a qualifying institutional investor, or a UK REIT which is established by qualifying institutional investors. The effect of this rule is that a qualifying institutional investor is not treated as holding an interest in the ordinary shares of a subsidiary or joint venture company partly owned by the listed company.

12. New sub-paragraph (4)(b) of paragraph 3B ensures that an Exempt Unauthorised Unit Trust is treated in the same way as a body corporate for the purpose of tracing ownership of shareholdings by qualifying institutional investors (and references to ordinary share capital, in the case of such a trust, as references to units in the trust).

13. New subparagraph (5) of paragraph 3B ensures that where the shares of a company are subject to either a sale and repurchase agreement ('repo') or a stock lending arrangement, those arrangements are disregarded for the purposes of determining whether a qualifying institutional investor has a direct or indirect interest in the shares of the investing company.

14. New subparagraph (6) of paragraph 3B sets out how ownership of shares held through a partnership are to be regarded. It treats each partner as holding a proportion of the share capital equal to the partner's proportionate interest in the ordinary share capital.

15. New subparagraph (7) of paragraph 3B defines "exempt unauthorised unit trust" as having the same meaning as in the Unauthorised Unit Trusts (Tax) Regulations 2013 (SI 2013/2819)."

16. Subsection 3 of the clause inserts new paragraph 8A into the Schedule, which sets out when the exemption in paragraph 3 or 3A apply.

17. New subparagraph (1) of paragraph 8A provides for the exemption to apply where at least 25% of the ordinary share capital of the investing company is owned by qualifying institutional investors.

18. New subparagraph (2) of paragraph 8A provides that the requirement for a substantial shareholding to be at least 10% of the ordinary share capital of the company invested in is relaxed for the purposes of the new exemption if the shareholding, although less than 10%, was acquired for more than £20 million. This ensures that major investments by qualifying institutional investors will qualify for exemption.

19. New subparagraphs (3) to (8) of paragraph 8A set out the requirements of the investment in order to qualify for the exemption.

20. Subsection 4 of the clause makes further changes consequential to the provisions of subsection 3.

21. Subsection 5 inserts new paragraph 30A into the Schedule. New subparagraph (1) of paragraph 30A sets out the meaning of qualifying institutional investor for the purpose of the new exemption. Certain collective investment schemes will only be regarded as qualifying institutional investors if they meet a requirement that their shares or units are 'widely marketed' to appropriate investors, or have been approved as qualifying for their special tax status by HM Revenue and Customs. A charity will be a qualifying institutional investor if it has satisfied the conditions set out in Part 1 of Schedule 6 to the Finance Act 2010. It is a common feature of the qualifying institutional investors listed that their status under UK tax law means they are exempt from tax on chargeable gains where they dispose of an asset directly.

22. New subparagraph (2) of paragraph 30A provides a power for the Treasury to make regulations to amend the list of qualifying institutional investors, by adding or removing a class of investor, or by imposing or varying conditions which must be met by any class of investor.

23. Subsection 6 updates the index in paragraph 31 to include reference to Exempt Unauthorized Unit Trusts and Qualifying Institutional Investor.

24. Subsection 7 of the clause is the commencement rule. The changes made by this clause apply to disposals of a substantial shareholding that occur on or after 1 April 2017.

Background note

25. The SSE was introduced in 2002 with the aim of eliminating the potential double taxation of trading profits in a company or sub-group being disposed of when these are realised by the shareholder by way of a disposal of their shareholding rather than, for example, by way of a dividend which would be exempted from tax in the hands of a corporate shareholder, and to facilitate the restructuring of groups without triggering a tax charge.

26. The government announced at Budget 2016 that it would consult over the summer of 2016 on a possible reform of SSE provisions. This consultation sought views on the extent to which the exemption could be simplified, made more certain, and how it could be updated to reflect changes to the domestic and international tax landscape since its introduction in 2002. The consultation also sought views on the impact SSE is having on the UK's competitiveness as a holding company location for global investors. The changes introduced by this clause represent the government's response to that part of that consultation.
27. The definition of Qualifying Institutional Investor in respect of Life Assurance Businesses in new subparagraph (1) of paragraph 30A has been updated from the draft published in March 2017 to ensure that the legislation works as intended.
28. The conditions in new subparagraph 8A have also been updated from the draft published in March 2017 to ensure that the legislation works as intended.

Clause 29 and Schedule 8: Deemed domicile: income tax and capital gains tax

Summary

1. This clause and Schedule amend the Income Tax Acts and the Taxation of Chargeable Gains Act (TCGA) 1992, with the effect that certain non-domiciled individuals will be treated as if they were domiciled in the UK for the purposes of income tax and capital gains tax from the start of the 2017-18 tax year.

2. There are two categories of individual who will be affected by this rule: those who are domiciled outside the UK and were born in the UK with a UK domicile of origin; and those who have been resident in the UK for at least 15 of the preceding 20 tax years.

Details of the clause

3. Subsection (1) amends Chapter 2A of Part 14 of the Income Tax Act (ITA) 2007 by inserting new section 835BA. This is the deemed domicile rule.

4. Subsection 835BA(1) provides that the section applies for the Income Tax Acts and for all the parts of TCGA) 1992 which are relevant to an individual's domicile status.

5. Subsection 835BA(2) provides that any individual who is not domiciled in the UK is to be regarded as domiciled in the UK if they meet either of two conditions.

6. Subsection 835BA(3) provides the first of these two conditions, Condition A. This is that the individual was born in the UK with a UK domicile of origin and is resident in the UK for tax purposes in the relevant tax year.

7. Subsection 835BA(4) provides the second of these two conditions, Condition B. This is that the individual has been resident in the UK in at least 15 out of the 20 years preceding the relevant tax year

8. Subsection 835BA(5) provides that condition B is not met if the individual has not been resident in the UK after 5 April 2017.

9. Subsection (2) of the Clause provides that Schedule 12 includes further provisions which apply for the purposes of this section and new section 835BA.

Details of the Schedule

Part 1: Application of Deemed Domicile Rule

ICTA

10. Paragraph 1 of Schedule 12 amends the Income and Corporation Taxes Act (ICTA)1988

11. Paragraph 1(1) amends section 266A of ICTA which provides the tax treatment of employer paid life assurance premiums. Its effect is that anyone deemed UK domiciled for tax purposes under new section 835BA of ITA 2007 is treated in the same way as someone domiciled in the UK.

12. Paragraph 1(2) provides that the amendment made by paragraph 1(1) takes effect on 6 April 2017.

TCGA 1992

13. Paragraph 2 introduces the amendments to the Taxation of Chargeable Gains Act (TCGA) 1992.

14. Paragraph 3(1) amends section 16ZA TGCA which provides the tax treatment of capital losses incurred by non-UK domiciled individuals.

15. Paragraph 3(2) sets out the amendments made to subsections (1) to (3) to the making of an election under section 809B of ITA 2007 for use of the remittance basis and the tax years affected by this election after they become domiciled in the UK. Failure to make such an election could adversely affect any claim for foreign losses that have accrued. Further subsections (4), (5) and (6) in this paragraph advise that the deemed domicile rule will apply and that changes will commence from the start of the 2017-18 tax year. Finally, if any election for claiming losses under the remittance basis is made under section 16ZA of TCGA 1992 and the individual subsequently becomes UK domiciled then section 16ZB and 16ZC will not have effect by virtue of this election.

16. Paragraph 4(1) outlines the changes made to section 16ZB after an election for claiming losses has been made under section 16ZA to remit foreign chargeable gains in the subsequent year after they arise.

17. Paragraph 4(2) provides that the amendment made by paragraph 4(1) takes effect from the start of the 2017-18 tax year.

18. Paragraph 5(1) provides the changes made to section 16ZC after an election has been made under section 16ZA to remit foreign chargeable gains.

19. Paragraph 5(2) provides that the changes in paragraph 5 will come into effect from the start of the 2017-18 tax year.

20. Paragraph 6(1) amends section 69 of TGCA 1992, covering the residence of trustees of settlements. Paragraph 6(1) applies the new deemed domicile test in section 835BA of ITA 2007 for the purpose of determining the domicile of the settlor for the purposes of that section.

21. Paragraph 6(2) provides that the amendments made by paragraph 6(1) take effect in relation to settlements created on or after 6 April 2017.

22. Paragraph 7(1) provides that the deemed domicile rule in new section 835 BA applies for the purposes of section 86, TCGA. This means that settlors with interests in such settlements, and who are deemed UK domiciled for tax purposes under new section 835BA, will be subject to capital gains tax under section 86 in the same way as settlors domiciled in the UK under general law.
23. Paragraph 7(2) provides that the amendments made by paragraph 7(1) take effect on 6 April 2017.
24. Paragraph 8(1) amends section 275 of TCGA, by the insertion of a new subsection 3A, which provides that the new deemed domicile test in 835BA will apply for the purposes of 275(1) (l) (iii). This means that the location of foreign currency bank accounts held by an individual deemed UK domiciled for tax purposes under new section 835BA, will be treated as being located in the UK.
25. Paragraph 8(2) provides that the amendment made by paragraph 8(1) takes effect on 6 April 2017.
26. Paragraph 9(1) amends Schedule 5A by the insertion of a new subsection 3A, which provides that the new deemed domicile test in 835BA will apply for the purposes of settlements with a foreign element.
27. Paragraph 9(2) provides that the amendment made by paragraph 9(1) takes effect in relation to settlements created on or after 6 April 2017.

ITEPA 2003

28. Paragraph 10(1) amends the Income Tax (Earnings & Pensions) Act (ITEPA) 2003.
29. Paragraph 10(2) amends section 355 of ITEPA 2003, covering deductions for corresponding payments by non-domiciled employees with foreign employers. Paragraph 10(2) applies the new deeming section 835BA ITA into section 355 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK under general law.
30. Paragraph 10(3) amends section 373 of ITEPA 2003, covering non-domiciled employees' travel costs where the related duties are performed in the UK. Paragraph 10(3) applies new section 835BA ITA to section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK.
31. Paragraph 10(4) amends section 374 of ITEPA 2003, covering non-domiciled employees' spouses' travel costs and expenses where an employee's related duties are performed in the UK. Paragraph 10(4) applies the new section 835BA ITA on deeming to section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK.
32. Paragraph 10(5) amends section 376 of ITEPA 2003 covering non-domiciled employees' foreign accommodation and subsistence costs and expenses. It applies the new section 835 BA ITA 2007 to section 376 so that an individual deemed domiciled under that section will be treated the same as an individual domiciled in the UK.

33. Paragraph 10(6) provides that all the amendments made by paragraph 10 take effect on 6 April 2017.

ITA 2007

34. Paragraph 11 introduces the amendments to ITA 2007.

35. Paragraph 12 deals with section 476 of ITA 2007. Section 476 provides the rules for determining whether a settlor meets Condition C in section 475. Section 475 determines the residence of trustees for income tax purposes. Paragraph 12 (1) amends section 476(2) (b) and section 476(3) (b) so that the treatment of a settlor treated as domiciled by new section 835BA will be the same as that for a settlor domiciled in the UK.

36. Paragraph 12(2) provides that the amendments made by paragraph 12(1) take effect for deaths and settlements made on and after 6 April 2017.

37. Paragraph 13 deals with section 718 ITA. Section 718 covers the meaning of a `person abroad` for the purpose of Chapter 2 of Part 13 ITA 2007 -Transfer of Assets Abroad legislation (ToAA).

38. Paragraph 13(1) amends section 718(1)(b) so that the treatment of an individual affected by the deemed domicile rule in new section 835BA will be the same as that for an individual domiciled in the UK.

39. Paragraph 13(2) provides that the amendments made by paragraph 13(1) take effect on 6 April 2017.

40. Paragraph 14 introduces the amendments made to the remittance basis in Chapter A1 of Part 14 of ITA.

41. Paragraph 14(2) amends section 809B of ITA 32007 so that a claim to the remittance basis cannot be made by anyone affected by section 835BA.

42. Paragraph 14(3) consequentially amends section 809C ITA so that individuals who are deemed domiciled in the UK by virtue of new section 835BA, because they have been resident in the UK for at least 15 of the preceding 20 years, will not be liable to pay the annual charge for long-term remittance basis taxpayers.

43. Paragraph 14(4) amends section 809E ITA (application of the remittance basis without a claim), so that the treatment of an individual affected by new section 835BA under section 809E will be the same as that for an individual domiciled in the UK.

44. Paragraph 14(5) makes a further provision to remove any references in section 809H to the `17 years` residence test.

45. Paragraph 14(6) provides that the amendments made by paragraph 9(1)-(5) take effect on 6 April 2017.

46. Paragraph 15(1) will apply if section 10A of TCGA 1992, as originally enacted, is applicable to an individual and the year of return is 2017-18.

47. Paragraph 15(2) provides that the amendments made under paragraphs 14(2) have no effect on paragraph 15(1) cases where `foreign chargeable gains` accrue in an intervening year.

48. Paragraph 15(3) provides that where an individual makes a remittance basis claim in a paragraph 15(1) case, he will not be liable to pay the remittance basis charge or lose entitlement to personal allowances.

49. Paragraph 15(4) sets out the statutory definitions of 'year of return', `intervening year` and 'foreign chargeable gains' for the purposes of paragraph 15.

50. Paragraph 16(1) applies to cases where section 10A substituted by paragraph 119 of FA 2013 applies in relation to an individual.

51. Paragraph 16(2) disapplies the effect of the amendment in the `period of return` made under paragraphs 14(2), and where the related `temporary period of non-residence` began before 8 July 2015.

52. Paragraph 16(3) provides that where an individual makes a remittance basis claim in a paragraph 16(1) case, they will not be liable to pay the remittance basis charge or lose entitlement to personal allowances.

53. Paragraph 16(4) provides that the definition of `foreign chargeable gain` for the purposes of paragraph 16 is the same as in section of 12(4) TCGA 1992.

54. Paragraph 16(5) advises that part 4 of Schedule 45 FA to 2103 explains the meaning of the terms 'temporary period of non-residence' and 'period of return'.

55. Paragraph 17(1) deals with the residence of personal representatives. Paragraph 17(1) amends section 834 of ITA 2007 so that the residence of the personal representatives of individuals affected by new section 835BA will be the same as that for an individual domiciled in the UK.

56. Paragraph 17(2) provides that all the amendments made by paragraph 17 will take effect from the start of the 2017-18 tax year.

Part 2: Protection of overseas trusts

TCGA 1992

57. Paragraph 18 of the Schedule amends Schedule 5 to TCGA 1992 (provisions supplementing section 86 of TCGA 1992) by inserting new paragraph 5A.

58. New subsection 5A (1) provides that section 86 TCGA 1992 does not apply in relation to a tax year – referred to as 'the particular year' – where certain conditions are met. These are that:

- Per Condition A, the tax year is 2017/18 or later;
- Per Condition B, the settlor is not domiciled in the UK at the time when the settlement was created;
- Per Condition C, at no time in the particular year is the settlor UK domiciled or where a settlement is created on or after 6 April 2017, deemed domicile in the UK under section 835BA ITA 2007.
- Per Condition D, where the settlor is treated as domiciled in the UK by virtue of section 835BA ITA 2007 because they were resident in the UK for at least 15 of the previous tax years, they or the trustees of another settlement of which the settlor is the beneficiary or the settlor, have not provided any property or income directly or indirectly for the purposes of the settlement at any time between whichever is the later of, the date when the settlement was created and 6 April 2017 and the date of the end of tax year.

59. New subsection 5B(1) and (2) provide that, when considering property or income provided directly or indirectly for the purposes of the settlement by the settlor or by the trustees of another settlement of which the settlor is a beneficiary or a settlor, the following should be disregarded:

- any property or income which is provided on arm’s length terms;
- any property or income provided outside of a loan as long as a free benefit is not intended;
- a loan made to the trustees of the settlement on arm's length terms
- any interest paid to the trustees of the settlement under a loan on arm's length terms ;
- repayment of a loan made by the trustees of the settlement, and
- any property or income provided to meet the excess of the settlement's expenses relating to administration or taxation for the year over its income, or so much of its income as can be used for payment of those expenses.

60. New subsection 5B(3) provides that where a loan is made to the trustees of the settlement by the settlor on arm's length terms, the loan will be regarded as provided to the trustees where there is a relevant event.

61. New subsection 5B(4) defines a "relevant event".

62. New subsections 5B(5) to (9) outline the conditions required for sub-paragraph 6 to take effect.

FA 2004

63. Paragraph 19 of the Schedule inserts new sub paragraph 4 into paragraph 8 of Schedule 15 to FA 2004. This is a consequential amendment to ensure that the new rules under the reforms to the taxation of non-domiciled individuals do not affect the operation of the Pre Owned Assets Tax rules.

ITTOIA 2005

64. Paragraph 20 introduces amendments to Chapter 5 of Part 5 of ITTOIA 2005.

65. Paragraph 21 updates section 624 at subsection (3) to advise of a new section 628A to cover the exception for protected foreign-source income.

66. Paragraph 22 of the Schedule inserts new section 628A and 628B of ITTOIA 2005.

67. New section 628A provides for an exception for protected foreign-source income.

68. New section 628A (1) to (13) outlines the conditions which must be fulfilled before any exemption can be granted.

69. New subsection 628B provides that, when considering property or income provided directly or indirectly for the purposes of the settlement by the settlor, or by the trustees of any other settlement of which the settlor is a beneficiary or settlor, the following should be disregarded:

- any property or income which is provided on arm's length terms;
- any property or income provided outside of a loan as long as a free benefit is not intended;
- a loan made to the trustees of the settlement on arm's length terms
- any interest paid to the trustees of the settlement under a loan on arm's length terms ;
- repayment of a loan made by the trustees of the settlement, and
- any property or income provided to meet the excess of the settlement's expenses relating to administration or taxation for the year over its income, or so much of its income as can be used for payment of those expenses.

70. New subsection 628B (3) provides that where a loan is made to the trustees of the settlement by the settlor on arm's length terms, the loan will be regarded as provided to the trustees where there is a relevant event.

71. New subsection 628B (4) defines a "relevant event".

72. New subsection 628B(6) and (7) deal with where an outstanding loan account is to be regarded as property directly provided by the settlor and new subsections 628B(5) and (7) to (9) outline the conditions required for new subsection 628B(6) to take effect.

73. New subsections 628B(8) and (9) define terms used in the new section 628B.

74. New subsection 628C provides for relief for transitional trust income treated as arising to the settlor before 6 April 2017 but not remitted until later where the remittance is made by the trustees.

75. New section 628C(2) defines transitional trust income.

76. New section 628C(3) states that section 648(3) to (5) do not apply for the purposes of transitional trust income.

77. Paragraph 23 introduces a new section at 630A of ITTOIA 2005.

78. New section 630A provides for an exception for protected foreign-source income.

79. New section 630A(1) disapplies section 629(1) of ITTOIA 2005 if income from a settlement is protected foreign-source income.

80. New section 630A(2) advises section 628A(2) to (4) have effect for this purpose.

81. Paragraph 24 updates section 635 as follows:

- In subsection (2), before “income” insert “unprotected”.
- Subsection (4) explains the meaning of unprotected income.

82. Paragraph 25 introduces amendments to section 636 by inserting the word "unprotected" in front of the word "income" where it occurs in subsection (1).

83. Paragraph 26 introduces amendments to section 645 by inserting “s628A and”.

ITA 2007

84. Paragraph 27 introduces amendments to Chapter 2 of Part 13 of ITA 2007 on transfer of assets abroad.

85. Paragraph 28 amends section 721 of ITA 2007 by substituting a new subsection (3B) which introduces two new rules to determine the amount of income arising under subsection (1). Rule 1 provides that the amount is equal to the amount of income of the person abroad if the individual is domiciled in the UK at any time in the tax year or is regarded as domiciled in the United Kingdom at any time in the tax year as a result of being born in the UK with a UK domicile of origin. Rule 2 provides that, in all other cases, the amount is equal to the amount of the income of the person abroad which is not protected foreign-source income.

86. New subsection (3BA) explains the meaning of protected income for the purposes of the charge under section 733A.

87. Paragraph 29 adds a new section 721A, which defines the meaning of 'protected foreign-source income' for the purposes of new section 721(3B).

88. New subsection (2) provides that income of the person abroad is 'protected foreign source income' if it is within subsection (3) or (4).

89. New subsection (3) provides that income is protected foreign source income where:

- it would be relevant foreign income if were the income of the individual,
- the person abroad is the trustees of a settlement,
- the trustees are non-UK resident for the tax year,
- the settlement was created when the individual is neither domiciled in the UK nor treated as so domiciled by virtue of section 835BA, and
- no property or income is provided indirectly or directly for the purposes of the settlement by the individual, or by the trustees of any other settlement of which the individual is a beneficiary or settlor, at a time starting from whichever is the later date of when the settlement was created and the start of 6 April 2017 and ending with the end of the tax year in which the individual is domiciled in the UK or so regarded a result of section 835BA.

90. New subsection (4) is aimed at foreign source income. It explains that seven conditions (a) to (g) must be met if that income is to be treated as 'protected foreign-source income'. New subsection (4)(c) requires that the trustees must be 'participators' in the company.

91. New subsection (5) provides that for the purposes of new subsections (3)(e) and (4)(g), the addition of value to settlement property is to be treated as the direct provision of property for the purposes of the settlement.

92. New subsection (6) explains section 721B contains further provisions for the purposes of new subsections (3)(e) and (4)(g).

93. New subsection (7) provides the definitions of a 'participator' in relation to a company and 'deemed domiciled' regarded for the purposes of section 718(1)(b).

94. Paragraph 29 also adds a further subsection 721B covering tainting and anti-tainting.

95. New section 721B provides that, when considering property or income provided directly or indirectly for the purposes of the settlement by the individual, or by the trustees of any other settlement of which the individual is a beneficiary or settlor, the following should be disregarded:

- any property or income which is provided on arms' length terms;

- any property or income provided outside of a loan as long as a free benefit is not intended;
- a loan made to the trustees of the settlement on arm's length terms;
- any interest paid to the trustees of the settlement under a loan on arm's length terms;
- repayment of a loan made by the trustees of the settlement; and
- any property or income provided to meet the excess of the settlement's expenses relating to administration or taxation for the year over its income, or so much of its income as can be used for payment of those expenses.

96. New subsection 721B(3) provides that where a loan is made to the trustees of the settlement by the settlor on arm's length terms, the loan will be regarded as provided to the trustees where there is a relevant event.

97. New subsection 721B(4) defines a 'relevant event'.

98. New subsection 721B(5) to (9) outlines the conditions required for sub-paragraph 6 to take effect.

99. Paragraph 30 inserts new subsection (6) and (7) into section 726 which provides that in applying Chapter A1 of Part 14 for the 2017-18 tax year and after, in relation to income treated under section 721 as arising to an individual earlier than the 2017-18 tax year, this does not include any transitionally protected income which has not been distributed by the trustees prior to 6 April 2017.

100. New subsection (7) defines the terms 'remitted to the UK' and 'transitionally protected income'.

101. Paragraph 31 adds new subsections (1A) and (1B) to section 728 and defines the rules at section 728 (1) around income of a person abroad arising in the UK.

102. New subsection (1B) explains the meaning of protected income for the purposes of the charge under s733A.

103. Paragraph 32 inserts new section 729A into ITTOIA 2005.

104. New subsection 729A defines 'protected foreign-source income' for the purposes of Rule 2 in new section 728(1A).

105. New subsection 729A(2) confirms income of a person abroad is protected foreign-source income so far as it is within subsection (3) or (4).

106. New subsection 729A(3) defines protected foreign source income where the person abroad is the trustee of a settlement.

107. New subsection 729A(4) defines protected foreign source income where the person abroad is a company.

108. New subsections (5) and (6) further qualify subsections (3) and (4).

109. New subsection (6) provides that the new rules at section 721B will now apply to subsections (3)(e) and (4)(h).

110. New subsection (7) defines the definition of 'participator' in relation to a company.

111. Paragraph 33 inserts new subsection (6) and (7) into section 730 and advises that section 832 of ITTOIA 2005 does not apply to any transitionally protected income that arises prior to the tax year 2017-18 provided it was not distributed by the trustees prior to 6 April 2017. Subsection (7) defines the terms 'remitted to the UK' and 'transitionally protected income'.

112. Paragraph 34 provides for a number of changes to section 731 and in particular includes a new section 731(1A) dealing with matching and chargeability of a non-UK resident person if section 733A applies.

113. Paragraph 35 introduces changes to section 732 which concerns those receiving a benefit in a particular tax year. In particular it now applies to settlors (other than a settlor who is relevantly domiciled, that is UK domiciled or treated as domiciled in the UK as a result of Condition A in section 835BA) as well as non transferors and to benefits received by those who are non-resident (subject to the provision at section 731(1A) above).

114. New subsection 732(4) describes the conditions were an individual will be considered to be 'relevantly domiciled'.

115. Paragraph 35(5) amends s731 to limit deductions to cases where tax has been charged under section 731 for an earlier tax year.

116. Paragraph 36 adds a new section 733A. This explains when a Settlor is liable for a charge on closely-related beneficiary for the purposes of section 731.

117. New subsection 733A(1) provides that new subsection (2) applies if the six conditions (a) to (f) are met.

118. New subsection 733A(2) provides that where those tests are met and the individual is either non-UK resident or is on the remittance basis and nothing is remitted to the UK, then the settlor is liable for the tax charged under section 731 on the amount mentioned in subsection (1)(a).

119. New subsection 733A(3) provides that if the individual is on the remittance basis and part of the amount mentioned in subsection (1)(a) is remitted to the UK, then the settlor will be liable to tax under section 731 as if the remainder was his income.

120. New subsection 733A(4) provides that the amounts mentioned in (1)(a) can be either all or part of the amounts arising under section 732.

121. New subsection 733A(5) provides where the settlor is liable for tax under new subsection (2) or (3), the settlor is entitled to recover the amount of the tax from the individual.

122. New subsection 733A(6) provides that in order to recover that amount, the settlor is entitled to require HMRC to provide a certificate specifying the amount of tax paid.

123. New subsections 733A(7) and (8) define a close member of the family for the purposes of new subsection (1)(b)(ii).

124. New subsection 733A(9) advises that the normal remittance basis rules apply to this section.

125. Paragraph 37 amends section 735A(6) to insert a reference to a person other than the individual being charged to tax under section 733A

126. Paragraph 38 amends section 735 by adding new section 735B, which provides that this section applies in relation to income where the income is treated as arising to a beneficiary for a tax year and the settlor, to whom the remittance basis applies for that year, is liable for tax on the income.

127. New subsection (1) explains that this section applies in relation to income if conditions (a) to (c) are met.

128. New subsections (2) and (3) provide that the income is treated as relevant foreign income of the settlor and for the purposes of Chapter A1 of Part 14 is treated as remitted to the UK in the year.

129. New subsection (4) provides when subsection (2) of section 832 of ITTOIA 2005 is applied in relation to the income, it has the effect with omission of its paragraph (b).

Commencement of amendments in FA 2004, ITTOIA 205 and ITA 2007

130. Paragraph 39 provides that all amendments made by paragraphs 20 to 38 will commence and have effect from the start of the 2017-18 tax year onwards.

FA 2008

131. Paragraph 40 advises of changes to Part 2 of Schedule 7 to FA 2008 around the conditions for domicile at paragraph 172.

Part 3: Capital Gains Tax rebasing

132. Paragraph 41 provides that an individual who was a non-UK domiciled remittance basis user prior to 2017-18 and becomes treated as UK domiciled under the 15 out of 20 rule from 6 April 2017 may, in computing the gain or loss accruing on the disposal of an asset on or after then, treat the acquisition cost of the asset as being its value at 5 April 2017 ('rebasing') provided that during the person's ownership the asset was not situated in the UK in the period 16 March 2016 to 5 April 2017 (the 'relevant period'), and the person remains deemed domiciled under the 15 out of 20 rule at all times until disposal.

133. Paragraph 42 provides that assets brought to, or received or used in the UK are treated as not situated in the UK under certain circumstances.

134. Paragraph 43 provides for an irrevocable election to be made to stop paragraph 41 applying to any disposal made.

Part 4: Cleansing of Mixed Funds

135. Paragraph 44(1) introduces Part 4 of the Schedule which enables individuals who have previously been taxed on the remittance basis to rearrange their overseas funds so that they will be able to bring money to the UK without being subject to the rules which normally apply for remittance basis purposes.

136. Paragraph 44(2) disapplies section 809R(4) of ITA 2007 to any transfer of funds made between two overseas accounts, one of which is a mixed fund, provided certain conditions are met. A mixed fund is defined as money or other property containing or deriving from a mixture of income, gains and capital or income, gains and capital from different tax years.

137. These conditions are provided in subsections (a) to (f) of paragraph 43(2) of the Schedule. These are that

- the transfer is a transfer of money which is made at any time during the 2017-18 tax year or the 2018-19 tax year;
- the transfer is made from an account which is a mixed fund;
- the transfer is made into a different receiving account;
- the transfer is nominated as a transfer for the purposes of paragraph 26(2);
- at the time when the transfer is made, no other transfer has been so nominated from that mixed fund into the receiving account; and
- the transfer is made in relation to a qualifying individual.

138. Paragraph 44(3) defines a qualifying individual for these purposes. These are that the individual in question

- was taxed on the remittance basis in any tax year before 2017-18; and
- was not born in the UK with a UK domicile of origin.

139. Paragraph 44(4) provides that any transfer subject to paragraph 43(2) is to be treated as containing those amounts of income, gains and capital which were within the mixed fund immediately before that transfer took place, provided these amounts are specified when making the nomination under paragraph 43(2)(d).

140. Paragraph 44(5) provides that the amounts of income, gains and capital specified under paragraph 43(4) cannot exceed the amounts of income, gains and capital which were in the mixed fund immediately before the transfer was made.

141. Paragraph 44(6) provides that the terms 'mixed fund' and 'offshore transfer' have the same definition as they do in section 809R(4) of ITA 2007.

142. Paragraph 45 provides that Part 4 of the Schedule which enables individuals who have previously been taxed on the remittance basis to rearrange their overseas mixed funds will apply to transfers from a mixed fund arising before 6 April 2008 that are contained within those overseas mixed funds.

143. Paragraph 45(1) sets the conditions for which the provisions will apply to a transfer made by a person from a mixed fund.

144. Paragraph 45(2) defines a qualifying individual as someone who

- was taxed on the remittance basis in any tax year before 2017-18; and
- was not born in the UK with a UK domicile of origin.

145. Paragraph 45(3) provides that any transfer subject to paragraph 44 is to be treated as containing those amounts of income, gains and capital which were within the mixed fund immediately before that transfer took place, provided these amounts are specified when making the nomination under paragraph 44(1)(e).

146. Paragraph 45(4) provides that the amounts of income, gains and capital specified under paragraph 44(3) cannot exceed the amounts of income, gains and capital which were in the mixed fund immediately before the transfer was made.

147. Paragraph 45(5) provides definitions for the terms 'mixed fund', 'overseas account' and 'pre-6 April 2008 income or chargeable gains'.

148. Paragraph 46(1) applies to determine, for the purposes of paragraph 45, the composition of the mixed fund referred to in paragraph 45(1).

149. Paragraph 46(2) to 46(5) provide the steps that apply to determine the composition of a mixed where a transfer of money is made before 6 April 2008 from the mixed fund to another overseas account.

150. Paragraph 46(6) to 46(8) provide the steps that apply to determine the composition of a mixed where:

- a transfer of money is made before 6 April 2008 from another overseas account to the mixed fund, and
- there is insufficient evidence to determine the composition of the transfer.

151. Paragraph 46(9) provides that for the purposes of the steps in sub-paragraph 45(7), where there is insufficient evidence to determine whether an amount is income or chargeable gains, that amount is to be treated as income.

Background note

152. The clause and Schedule is related to a series of reforms announced at the summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under general law. It will broadly align the existing deemed domicile rules for Inheritance Tax with those for income tax and capital gains tax.

153. This clause and Schedule provides that those individuals who are not domiciled in the UK will be deemed to be UK domiciled for tax purposes if they are either resident in the UK for 15 of the past 20 tax years, or if they are born in the UK with a UK domicile of origin and return to the UK having obtained a domicile of choice elsewhere.

154. They will be taxed on any arising worldwide income and gains in the same way as UK domiciles. At the same time the existing IHT deeming provisions will be aligned with the new 15 years out of 20 rule.

155. Transitional protections are now included where an individual becomes deemed-UK domicile under the 15 years out of 20 rule in April 2017, including the facility to rebase offshore assets for CGT purposes. The new rules will also ensure that those non-doms who set up a qualifying trust before becoming deemed domiciled under the 15 years out of 20 rule would not pay Income Tax or CGT on income or gains in the trust, as long as they did not receive a benefit from the trust. However, once a benefit is taken, CGT would be payable on trust gains and income tax on family benefits received.

156. Specific changes made to allow transitional protections include:

- Paragraph 19 – A consequential amendment to ensure that the new rules do not affect the operation of the Pre Owned Assets Tax rules.
- Paragraph 20 – A technical amendment to clarify that we test to see if income is protected in the year it actually arises.
- Paragraph 22 - New section 628C provides transitional relief for income treated as arising to the settlor before 6 April 2017 but not remitted until later where the remittance is made by the trustees. This is an equivalent provision to that in sections 726 and 727 of ITA 2007 (transfer of assets abroad)
- Paragraph 29 - New rules defining ‘protected income’ for the purposes of the section 733A charge.
- Paragraph 29 - Trust protections: Changes to section 721A(3) and (4) to remove references to property originating from the individual to make clear which income is protected where there is a company underlying the settlement.
- Paragraph 31 - A similar amendment to that in section 721(3BA).
- Paragraph 32 – A similar changes to those in section 721A.
- Paragraph 34 - Technical changes which limits the tax charge on individuals receiving benefits whilst they are non-resident.

- Paragraph 34 - Technical change to section 733(1) to limit deductions to cases where tax has been charged under section 731 for an earlier tax year.
- Paragraph 36 - Minor drafting changes to section 733A(1)(b)(i).
- Paragraph 36 - Minor drafting change to section 733A(9).

157. There will also be a facility for remittance basis taxpayers to rearrange their overseas mixed funds to allow them to remit clean capital from overseas ahead of income and gains. Further clarifications on the process have now been added to legislation. In addition a further legislative change has been made to enable remittance basis users to cleanse any pre- April 2008 funds they may hold too.

158. Specific changes made to the cleansing rules can be found at:

- Paragraph 44 - Technical amendment that extends the scope of the legislation to include amounts arising pre-6 April 2008 that are contained in a mixed fund.
- Paragraph 45 - Technical amendment which allows the composition of a mixed fund to be determined, for the purposes of paragraph 44, where there has been a transfer of money before 6 April 2008.

Clause 30: Deemed domicile: inheritance tax

Summary

1. This clause amends the inheritance tax (IHT) legislation relating to individuals who will be treated as domiciled in the United Kingdom. It provides that an individual is treated as UK domiciled for IHT purposes if they have been resident in the UK for at least 15 out of the previous 20 tax years rather than 17 out of the 20 tax years ending with the tax year in question. The clause also introduces a separate rule to provide that an individual born in the UK with a UK domicile of origin who has acquired a domicile of choice elsewhere will be treated as domiciled for IHT purposes if at any time they are resident in the UK and have been resident in the UK in at least one out of the two previous tax years.

2. The changes take effect from the start of the 2017-18 tax year on 6 April 2017.

Details of the clause

3. Subsection (1) amends section 267(1) of the Inheritance Tax Act (IHTA) 1984 to insert new paragraph (aa). This sets out another situation in which an individual is treated as being domiciled in the UK. It relates to individuals who are formerly domiciled residents, a phrase that is explained in paragraph 12 below.

4. Subsection (1) also amends section 267(1)(b). The amendment reduces the time for which an individual has to be resident in the UK in order to be treated as being domiciled here for the tax year in which a relevant time falls. Rather than being resident in the UK in not less than 17 of the 20 years of assessment ending with that in which the relevant time falls, an individual will have to be resident in the UK only for at least 15 of the 20 tax years immediately preceding the tax year in question. However, a person who would otherwise satisfy the test will not be deemed domiciled if they are non UK resident in that tax year and have been non-resident for the previous three consecutive tax years.

5. Subsection (2) omits subsection 267(3)

6. Subsection (3) makes an amendment to section 267(4) by substituting "any year of assessment" with "any tax year".

7. Subsection (4) inserts new section 48(3E) into IHTA 1984 and makes consequential amendments to section 48(3). New section 48(3E) provides that any foreign assets settled into trust by a formerly domiciled resident while they were domiciled outside the UK will, no longer be treated as excluded property for a tax year in which the formerly domiciled resident is resident in the UK.

8. Subsection (5) makes an amendment to section 64 of IHTA 1984 to ensure that the provision at section 64(1B) does not apply if the settlor meets the conditions in new section 48(3E). This means that long-retained income that is invested abroad (or in an authorised unit trust or an open ended investment company) cannot be excluded property while the settlor is a formerly domiciled resident.

9. Subsection (6) makes an amendment to section 65 of IHTA 1984 to ensure that tax is not charged under this section if property that was settled by an individual who then became a formerly domiciled resident subsequently becomes excluded property once more by virtue of the fact the settlor is no longer resident in the UK.

10. Subsection (7) makes an amendment to section 82 of IHTA 1984 so that the tests in section 82 are aligned with the test under new section 48(3E). This will ensure that where there is property to which section 80 or section 81 applies then not only must the settlor of the first or second settlement as appropriate not have been a UK domiciliary when the settlement was made, but they must also not be a formerly domiciled resident in the tax year concerned in order for foreign property to benefit from excluded property status.

11. Subsection (8)(a) makes an amendment to the definition of "foreign owned" in section 272 of IHTA 1984. Property settled by a formerly domiciled resident cannot be foreign owned.

12. Subsection (8)(b) defines the term "formerly domiciled resident". This means an individual who was born in the UK, with a UK domicile of origin and who was resident in the UK for the tax year and at least one of the two immediately preceding tax years.

13. Subsection (9) contains the commencement provision and provides that the amendments will take effect in relation to times after 5 April 2017 subject to subsections (10) to (12).

14. Subsection (10) inserts a transitional provision to ensure that a person leaving the UK before 6 April 2017 will not be subject to the 15/20 test provided that they do not return.

15. Subsection (11) also ensures that the 15/20 test will not be relevant in determining the excluded property status of property added to a settlement before 6 April 2017.

16. Subsection (12) preserves the transitional provisions as originally enacted in section 267(3) to the extent that they are still needed to determine the excluded property status of property added to a settlement on or before 9 December 1974.

17. Subsections (13) to (17) amend the date from when interest payable on late payments of IHT is calculated and the date when accounts provided by trustees are due to be delivered where, in either case, the amount of IHT payable is, because of this clause, greater than it would otherwise have been. The date is moved to the later of the normal date of payment or delivery, or the last day of the month following the month in which this Act is passed.

Background note

18. The clause is related to a series of reforms announced at the summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law. It will broadly align the existing IHT deemed domicile provisions for individuals with the proposed changes for income tax and capital gains tax.

19. The new rules will also ensure that individuals who are born in the UK, with a UK domicile of origin at birth and who reside in the UK are treated for tax purposes in the same way as an individual domiciled in the UK under general law. It also means that when an individual who was born in the UK and who had a UK domicile of origin has created a trust whilst they were non domiciled, that trust will be subject to IHT, whilst they are UK resident, in the same way as a trust which had been created by somebody who was domiciled in the UK.

20. Since it was first introduced in March 2017, subsections 30(13) to (17) have been added which provide transitional relief for chargeable events that are reportable or would have interest accruing on unpaid IHT from a date on or before the end of the month that the Act comes into force.

21. HM Revenue & Customs will produce updated guidance to support these changes.

Clause 31 and Schedule 9: Settlements and transfer of assets abroad: value of benefits

Summary

1. This clause and Schedule amend the Taxation of Chargeable Gains Act (TGCA) 1992 and the Income Tax Acts.

2. Schedule contains provisions to determine the taxable value of benefits received from non-resident trusts and other entities either by way of loan or of the use of land or chattels for the purposes of Capital Gains Tax and Income Tax.

3. The changes take effect from the start of the 2017-18 tax year on 6 April 2017

Details of the clause

4. Clause 31 introduces Schedule 9.

Schedule 9

5. Paragraph 1 makes a number of changes to the TCGA. These changes set out supplementary provisions in relation to the calculation of the value of benefits conferred by certain capital payments.

6. Paragraphs 1(1) and (2) add new sections 97A to 97C TCGA and amend section 97(4) TCGA to make reference to those new sections. Section 97(4) provides that for the purposes of sections 86A to 96 TCGA the amount of capital payment made by way of loan, or other capital payment which is not a payment of money, is equal to the value of the benefit conferred by it.

7. New sections 97A to 97C set out how to quantify the value of a benefit conferred by a capital payment made by way of loan (new section 97A), making chattels available without any transfer of the property in it (new section 97B) or making available land for use without any transfer of the land itself (new section 97C). It also makes clear the definition of "official rate" for interest purposes.

8. Paragraph 2 amends the Income Tax Act 2007 (ITA), by adding new sections 742B to 742E. These sections apply where it is necessary to calculate a charge to income tax under Part 13, Chapter 2 Transfer of Assets abroad in order to determine the value of a benefit provided to a person by way of (a) a payment by way of loan (new section 742C), (b) making chattels, such as art, available without any transfer of the property in it (new section 742D), or (c) making available land for use without any transfer of the land itself (new section 742E). It also makes clear the definition of "official rate" for interest purposes.

9. Paragraph 3 provides that the new valuation provisions will apply to capital payments or benefits received in the tax year 2017-18 and subsequent tax years.

Background note

10. The clause is related to a series of reforms announced at the summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law. During the consultation process it became clear that the rules for valuing certain benefits was unclear. Schedule sets out the procedures to be followed when valuing these benefits for both capital gains and income tax purposes.

Clause 32: Exemption from attribution of carried interest gains

Summary

1. This clause amends the Taxation of Chargeable Gains Act (TGCA) 1992 to ensure that any gains representing carried interest in section 103KA (Part III, Taxation of Chargeable Gains Act 1992) are excluded from sections 13 (1A), 86 (4ZA) and 87 (5A) in the same way as gains within the non-resident CGT regime for residential property are excluded from these provisions.

Details of the clause

2. Subsection 1 advises that TCGA 1992 will be amended to reflect the new rules.
3. Subsection 2 amends section 13(1A) to provide that section 13 TCGA which attributes gains to member of non-resident companies will not apply to carried interest gains.
4. Subsection 3 inserts subsection 86 (4ZB) to provide that section 86 which attributes gains arising to settlors with interest in non-resident or dual resident settlements will not apply to carried interest gains.
5. Subsection 4 inserts subsection 87 (5B) to provide that gains attributable to beneficiaries under section 87 will not include carried interest gains.
6. Subsection 5 provides that the amendments listed above will have effect on any carried interest gains treated as accruing under either s.103KA (2) or (3) of TCGA 1992 at any time whether before or after the Finance Bill receives Royal Assent.

Background note

7. The clause is related to a series of reforms announced at the summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law.

Clause 33 and Schedule 10: Inheritance tax on overseas property representing UK residential property

Summary

1. This clause and Schedule extend the scope of Inheritance Tax (IHT) to residential properties situated in the UK where they are held or financially supported by or through overseas structures by trustees or individuals domiciled outside the UK. It does so by amending the definition of excluded property in the Inheritance Tax Act (IHTA) 1984 which has the effect of excluding any property of such trustees and individuals from IHT where it is situated outside the UK.

2. The extended charge will be effective from 6 April 2017.

Details of the clause

3. Clause 33 introduces Schedule 10.

Details of the Schedule

4. Paragraph 1 of Schedule 10 inserts new Schedule A1 into IHTA 1984.

5. Paragraph 1 of new Schedule A1 provides that property is not excluded property to the extent that it falls within paragraphs 2 and 3 of Schedule A1. It applies where :

   - the beneficial owner of the property is an individual domiciled outside the UK; and
   - the property is held in a settlement where the settlor was domiciled outside the UK when the settlement was made.

6. Paragraph 2 applies to property which is an interest in a close company or partnership where the value of that interest is attributable to a UK residential property interest.

7. Subparagraph 2(1) provides that paragraph 2 applies to any interest in a close company or a partnership to the extent that the interest meets the conditions in paragraph 2(2).

8. Subparagraph 2(2) sets out the condition referred to in paragraph 2(1). The condition is that the value of the interest in a close company or partnership is either directly attributable to a UK residential property interest, or indirectly attributable by virtue of an interest in a close company, an interest in a partnership or by virtue of loans and security, collateral or guarantees for loans within paragraph 3 of Schedule A1. The term ' UK residential property interest' is defined in paragraph 8 of the Schedule A1.

9. Subparagraph 2(3) provides that, for the purpose of determining whether subparagraph 2(1) and (2) apply, any interest in a close company or partnership will be ignored where its value is less than 5% of the total value of the rights or interests in that company or partnership.

10. Subparagraph 2(4) provides that when determining whether to disregard a person's interest in a close company or partnership in subparagraph 2(3) any connected persons' interest in that close company or partnership should be included in valuing the person's interest.

11. Subparagraph 2(5) provides that, in determining the value of the interest in a close company or a partnership that is attributable to a UK residential property interest for the purpose of subparagraph 2(1), the liabilities of the close company or partnership are to be attributed to all the property it holds on a rateable basis. This means that, where a close company or partnership holds a UK residential property as well as other property any liabilities of that company or partnership will be attributed to each property in proportion to its value.

12. Paragraph 3 applies to any rights of a creditor in a relevant loan and to money or money's worth which is used or made available as collateral or security for a relevant loan but only to the extent that the money or money's worth does not exceed the value of the relevant loan. The term 'relevant loan' is defined in subparagraph 4(1).

13. Subparagraph 4(1) defines the term 'relevant loan' for the purposes of Schedule A1 as any loan to the extent that it makes money or money's worth available to finance the acquisition of a UK residential property interest, or any property to which paragraph 2 applies, by an individual, partnership or trustee. It also includes any loan used to finance the acquisition, either by an individual, a partnership or a trustee, of an interest in a close company, or an interest in a partnership and the acquisition by that close company or partnership of a UK residential property interest or any property to which paragraph 2 applies.

14. Subparagraph 4(2) provides that paragraph 4 also applies to a loan made to acquire any property which is sold and the proceeds used to acquire a UK residential property interest or the making or repayment of a loan to purchase such property.

15. Subparagraph 4(3) provides that references to the acquisition of a UK residential property interest includes the maintenance, or the enhancement of the value of a UK residential property interest.

16. Subparagraph 4(4) provides that a loan ceases to be a relevant loan where the UK residential property interest which made it a relevant loan is disposed of.

17. Subparagraph 4(5) provides that where there is a partial disposal of a UK relevant property interest, the loan ceases to be a relevant loan on a proportionate basis.

18. Subparagraph 4(6) provides that references to a loan also include an acknowledgement of a debt, such as an IOU, or any other arrangement where a debt arises. In such cases, it also provides that references to money or money's worth made available under the loan should be taken as the amount of the debt.

19. Paragraph 5 makes provision for the treatment of certain disposals and repayments.
20. Subparagraph 5(1) provides that paragraph 5 applies to:
    - property representing the consideration for the disposal of an interest or right in a close company or an interest in a partnership or of a relevant loan, whether in money or otherwise;
    - any money or money's worth which is paid in relation to a creditor's interest in a relevant loan; and
    - any property which directly or indirectly represents the consideration for a disposal of an interest or right in a close company or an interest in a partnership or a relevant loan or paid for a creditor's interest in, a relevant loan.
21. Subparagraph 5(2) provides that where paragraph 5 applies to any property, such property is not excluded property for a two-year period. Where that property is held within a qualifying foreign currency account as defined in section 157 of IHTA 1984, that section does not apply for the two-year period. This will mean that the property will be included in determining the value of a person's estate at death. The two-year period is defined in subparagraph 5(3).
22. Subparagraph 5(3) defines the term 'two-year period' as the period of two years starting with the date of a disposal or the date of a payment made for a creditor's interest in a relevant loan.
23. Subparagraph 5(4) provides that the value of property directly or indirectly representing property within subparagraphs 5(1)(a) and (b) shall not exceed the relevant amount which is defined in subparagraph 5(5).
24. Subparagraph 5(5) defines the relevant amount as :
    a. where the property within subparagraph 5(1)(c) directly or indirectly represents consideration in money or money's worth for the disposal of an interest or right in a close company or an interest in a partnership or of a relevant loan applies, the value of that consideration at the time of the disposal; and
    b. where the property within subparagraph 5(1)(c) directly or indirectly represents any money or money's worth paid for a creditor's interest in a relevant loan, the amount of money or money's worth paid.
25. Paragraph 6 introduces a targeted anti-avoidance rule which applies where arrangements are entered into where the sole or one of the main purposes of doing so is to avoid or minimise the effect of paragraphs 1 or 5.
26. Subparagraph 6(2) defines the term 'tax advantage' as having the meaning given in section 208 of the Finance Act 2013. It also defines 'arrangements' as any scheme , transactions, agreement or understanding and any associated operations, no matter whether they are legally enforceable and whenever they were entered into.
27. Paragraph 7 provides for the application of double taxation arrangements.

28. Subparagraph 7(1) provides that nothing within any double taxation arrangement between the UK and another jurisdiction will prevent a person from being liable for IHT by virtue of paragraphs 1 or 5 where no similar tax is charged under that jurisdiction or where there is such a tax but its effective rate is 0%. For these purposes, an effective rate of 0% does not include cases where the rate which applies is 0% as a result of a relief or exemption.

29. Subparagraph 7(2) defines the terms 'double taxation relief arrangements' as arrangements having effect under section 158(1) IHTA and 'effective rate' as the rate found by expressing the tax chargeable as a percentage of the amount by reference to which it is charged.

30. Part 3 of Schedule A1 is an interpretation section and provides the definitions of certain terms as used in Schedule A1.

31. Subparagraph 8 defines a UK residential property interest for the purposes of the new Schedule A1.

32. Subparagraph 8(1) provides that a “residential property interest” is any interest in UK land which consists of or includes a dwelling or which subsists under a contract to purchase a dwelling off-plan.

33. Subparagraph 8(2) provides that the extent to which land includes a dwelling is to be determined on a just and reasonable basis.

34. Subparagraph 8(3) defines certain terms used in subparagraph 8(1). An 'interest in UK land' has the meaning given by paragraph 2 of Schedule B1 to TCGA 1984; ‘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 and ‘contract for an off-plan purchase’ has the meaning given by paragraph 1(6) of that Schedule.

35. Paragraph 9 defines the term 'close company' as a company within the meaning of the Corporation Tax Acts which is a close company for the purpose of those Acts or would be a close company if resident in the UK. It also defines the term 'participator' as any person who is (or would be if the company were resident in the UK) a participator in relation to a close company within the meaning given by section 454 of the Corporation Tax Act 2010. Finally, it provides that any rights and interests in a close company include references to rights and assets of the company available for distribution among the participators in the event of a winding-up or in any other circumstances.

36. Paragraph 10 defines the term 'partnership' as a partnership within the Partnership Act 1890, a limited partnership registered under the Limited Partnership Act 1907, a limited liability partnership formed under the Limited Liability Partnerships Act (Northern Ireland) 2002 or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom.

37. Paragraphs 2 to 8 of Schedule 10 make consequential amendments to IHTA 1984.

38. Paragraph 5 of Schedule 10 provides that tax will not be charged under section 65 only because property ceases to be property to which paragraph 2 or 3 of the new Schedule A1 applies and so becomes excluded property under section 48(3)(a). It also provides that tax will not be charged where property in a settlement is not excluded property for the two year period as per subparagraph 5(2)(a) but then becomes excluded property at the end of that period.

39. Paragraph 7 of Schedule 10 provides that where tax is charged under the new Schedule A1, references to 'property to the value of which the value transferred is wholly or partly attributable' in section 237(1)(a) includes the UK residential property interest that the charge relates to.

40. Paragraph 9 of Schedule 10 provides the commencement provision for the new clause and Schedule.

41. Subparagraph 9(1) of Schedule 10 provides that the amendments made by the Schedule to IHTA have effect on or after 6 April 2017.

42. Subparagraph 9(2) of Schedule 10 provides that subparagraph 5(1) of Schedule A1 does not apply to disposals of property before 6 April 2017 or to payments of money or money's worth made before 6 April 2017.

43. Paragraphs 10 and 11 of Schedule 10 amend the date from when interest payable on late payments of IHT is calculated and the date when accounts provided by trustees are due to be delivered where, in either case, the amount of IHT payable is, because of this clause, greater than it would otherwise have been. The date is moved to the later of the normal date of payment or delivery, or the last day of the month following the month in which this Act is passed.

Background note

44. At summer Budget 2015, the government announced its intention of extending IHT to UK residential property held by a non-domiciled individual through an overseas structure. This was the subject of public consultation between 19 August and 20 October 2016 and the government published its formal response on 5 December.

45. Under IHTA 1984, an individual who is domiciled outside the UK is not liable to tax on any property they own which is situated overseas, unlike UK domiciled individuals who are liable to IHT on their worldwide property. This difference in treatment has been used by some non-doms as a means of avoiding IHT by holding UK residential properties indirectly through overseas structures such as companies, trusts and partnerships. This clause and Schedule extends the scope of IHT to include such properties.

46. Some minor drafting and technical changes have been made to the legislation since it was first introduced in March 2017, as outlined below:

    a. At paragraph 1 of Schedule 10 there is a new paragraph 2(4) in Schedule A1 to IHTA 1984 that introduces provisions to tackle potential avoidance using the 5% rule in paragraph 2(3).

b. Schedule A1, Paragraph 4(6) - Drafting change to make clear that references to a loan include any arrangement under which a debt arises and the references to money or money's worth are to the amount of the debt.

c. Schedule A1, Paragraph 5(1)(a) - Technical change to make clear that the disposal and repayments rule in paragraph 5 applies to the disposal of relevant loans (paragraph 3(a)).

d. At paragraph 7 of Schedule 10 (new section 237(2A) to IHTA 1984) there is a minor drafting change.

e. There are also two new paragraphs 10 and 11 that provide transitional relief for chargeable events that are reportable or would have interest accruing on unpaid IHT from a date on or before the end of the month that the Act comes into force.

Clause 34 and Schedule 11: Employment income provided through third parties

Summary

1. This clause introduces a new charge on outstanding loans from disguised remuneration schemes (the loan charge). This will apply to loans made after 5 April 1999 that are outstanding on 5 April 2019. There are several exemptions and the charge can be postponed in certain circumstances.

2. Schedule 1, introducing the loan charge has five parts, as follows:

   - Part 1 sets out the conditions, and definitions, that must be met for the new loan charge to apply;
   - Part 2 sets out the circumstances, and process, when the loan charge can be postponed;
   - Part 3 sets out the exclusions for the new loan charge;
   - Part 4 sets out some supplementary provisions, such as the interaction between the new loan charge and the remittance basis; and
   - Part 5 sets out some consequential changes to existing legislation.

Details of the clause and Schedules

3. This clause introduces Schedule 1.

Schedule 1: Part 1: Application of Part 7A of ITEPA 2003

4. Part 1 of the Schedule introduces the new charge on outstanding disguised remuneration loans.

Relevant step

5. Paragraph 1 deems the outstanding loan balance to be a relevant step, which means all the provisions within Chapter 2 of Part 7A apply to the outstanding loan balance.

6. Sub-paragraphs (1) to (3) deem loans that are outstanding to be a relevant step within Part 7A, taken by the person who has made the loan. The relevant step occurs on 5 April 2019 unless a postponement has been granted. The taking of a relevant step will result in a tax charge arising under Part 7A, where the other gateway conditions in section 554A of Part 7A are met.

7. Sub-paragraphs (4) and (5) ensure the relevant sections of Part 7A apply identically to the loan charge.

8. Sub-paragraph (6) makes clear that the application of the loan charge is subject to specific provisions where an Accelerated Payment has been paid.

9. Sub-paragraph (7) makes clear that the loan charge can apply to loans even where the loan no longer exists.

Meaning of "loan", "quasi-loan" and "approved repayment date"

10. Paragraph 2 sets out the meaning and definition of some of the terms used in this Schedule.

11. Sub-paragraph (1) defines a loan.

12. Sub-paragraphs (2) and (3) defines a quasi-loan. This is a similar definition to the definition of a loan transfer in subsection 554C(1)(aa).

13. Sub-paragraphs (4) and (5) make clear that loans and quasi-loans that have been replaced are within the scope of the loan charge.

14. Sub-paragraph (6) defines "approved repayment date".

Meaning of "outstanding": loans and quasi-loans

15. Paragraphs 3 to 18 set out the how the outstanding loan, and quasi-loan, balance is calculated including how non-sterling currencies are taken into consideration. The starting point is the initial amount lent, plus any further amounts lent, which is then reduced by any repayments.

16. Paragraph 3 sets this principle out for loans in sub-paragraphs (1) and (2). Sub-paragraph (3) requires repayments to be only in money after 16 March 2016.

17. Paragraph 4 provides that repayments in money after 16 March 2016 will be ignored in the calculation if they are made as part of a further avoidance arrangement, or if they are subsequently subject to a relevant step and tax is due but unpaid.

18. Paragraph 5 provides that loans made by a third party and subsequently acquired by the employer or employee will be treated as outstanding and subject to the loan charge on 5 April 2019.

19. Paragraph 6 defines the loan currency and that any currency conversion should be at the spot rate.

20. Paragraph 7 provides that where the loan and repayment are both in the same non-sterling currency the outstanding balance is calculated and then converted to sterling.

21. Paragraph 8 provides that where a repayment is made in a currency different to the loan it is converted to the loan currency on the date it is made.

22. Paragraphs 9 and 10 provide that where a loan is made in a currency other than sterling in the expectation that it will depreciate in value the principal amounts and repayments are converted to sterling on the day they are made.

23. Paragraphs 11 to 18 set out the same underlying principles for quasi-loans. Where the quasi-loan is a money debt the same conditions as for loans in paragraph 3 apply. However, quasi-loans also include situations where the right to repayment is in an asset, so paragraph 4 sets out how the principle applies and what repayments are acceptable. Paragraphs 14 to 18 set out how quasi-loans and repayments in non-sterling currencies are taken into consideration.

Meaning of "approved fixed term loan"

24. Paragraph 19 defines an "approved fixed term loan". The loan must have been made before a certain date and have certain conditions that cannot have been changed. The loan must also have been approved by HMRC under paragraph 20.

Schedule 1: Part 2: Approval of a qualifying loan etc.

25. Part 2 of the Schedule sets out the conditions and processes to apply for postponement of the new loan charge.

Application to HMRC

26. Paragraphs 20 sets out who can make an application for a postponement for an "approved fixed term loan", when and how the application can be made, as well as what information they must provide.

Conditions

27. Paragraphs 21 and 22 set out the two conditions, only one of which must be met, to qualify for approval. Paragraph 7 sets out the condition for loans where regular repayments of principal have been made. Paragraph 8 sets out the commercial terms condition that can apply to loans that don't meet the existing exclusion at section 554F of Part 7A.

Accelerated payments

28. Paragraphs 23 and 24 allow the loan charge to be postponed where the relevant person has paid an Accelerated Payment.

29. Paragraph 23 sets out the conditions that must be met to qualify for the postponement. Sub-paragraph (1) sets out the conditions. Sub-paragraphs (2) to (4) define some of the terms used in sub-paragraph (1) and also require the Accelerated Payment to be related to the same arrangement. Sub-paragraphs (5) to (6) make clear that the provision applies equally to National Insurance contributions, and that where tax and National Insurance contributions are relevant a joint application can be made.

30. Paragraph 24 sets out the process and the effect of the postponement. Sub-paragraphs (1) and (2) give effect to the postponement and ensure, if the Accelerated Payment is repaid, the loan charge applies 30 days after the Accelerated Payment is repaid. Sub-paragraphs (3) to (6) define how, and when, the claim to postponement must be made. Sub-paragraphs (7) to (8) set out when a postponement can be withdrawn and the effect of the withdrawal.

Schedule 1: Part 3: Exclusions

31. Part 3 of the Schedule sets out the exclusions that, if met will, prevent the loan charge from applying.

Commercial transactions

32. Paragraphs 25 and 26 set out the exclusion for loans made on commercial terms. This closely follows the existing exclusion at section 554F of Part 7A.

Transfer of employment-related loans

33. Paragraphs 27 and 28 set out the exclusion for transferring employment-related loans between new and old employers. This closely follows the new exclusion at section 554OA of Part 7A.

Transactions under employee benefit packages

34. Paragraphs 29 and 30 set out the exclusion for loans made under an employee benefit package available to employees. This closely follows the existing exclusion at section 554G of Part 7A.

Cases involving employment-related securities

35. Paragraphs 31 and 32 set out the exclusion for loans used to purchase employment-related securities. This closely follows the existing exclusion at subsections 554N(13) to (16) of Part 7A.

Employee car ownership schemes

36. Paragraphs 33 and 34 set out the exclusion for loans made under an employee car ownership scheme. This closely follows the existing exclusion at section 554O of Part 7A.

Acquisition of unlisted employer shares

37. Paragraph 35 is an exclusion from the loan charge unrelated to any existing exclusion in Part 7A. It applies to loans, or quasi-loans, made before 9 December 2010 used to purchase shares in the unlisted employer, and provides that the loan charge will not apply to such a loan if it is repaid within 12 months from when the shares are sold.

Schedule 1: Part 4: Supplementary provision

38. Part 4 of the Schedule introduces some supplementary provisions that will ensure the loan charge operates as intended.

Duty to provide loan balance information to B

39. Paragraph 36 creates an obligation on the parties of an arrangement that is within the scope of the loan charge to provide information to the employer. This will help ensure the employer has the right information to calculate the outstanding loan balance and decide if the loan charge applies.

40. Sub-paragraph (1) defines which loans are within the scope of the obligation to provide information to the employer.

41. Sub-paragraph (2) requires both the employee and the third party to provide the information within ten days after the loan charge applies.

42. Sub-paragraph (3) defines the information that must be provided, which is everything the employer needs to decide if the loan charge applies.

43. Sub-paragraph (4) defines the loan charge date and ensures this takes into consideration any postponements.

44. Sub-paragraphs (5) and (6) require the employer and third party to inform HMRC if they were unable to contact the employer.

45. Sub-paragraph (7) defines some of the terms used in sub-paragraph (1).

Double taxation

46. Paragraphs 37 and 38 prevent a benefit under the cheap taxable loans rules in Chapter 7 of Part 3 of ITEPA 2003 applying once the loan charge has arisen on the same underlying loan.

Remittance basis

47. Paragraphs 39 to 43 make amendments to the existing remittance basis rules in Part 7A to make reference to the loan charge.

48. Paragraphs 40 and 41 amend sections 554Z9 and 554Z10 of Part 7A to ensure the loan charge is taxable specific income in the tax year the loan charge arises or when it is later remitted to the UK.

49. Paragraphs 42 and 43 make consequential amendments to sections 554Z11 and 554Z11A of Part 7A to include the additions made in paragraphs 40 and 41.

Interpretation: "tax avoidance arrangement" etc.

50. Paragraph 44 defines a tax avoidance arrangement.

51. Paragraph 45 ensures "A" and "B" take the same meaning as in Part 7A.

Schedule 1: Part 5: Consequential amendments

52. Part 5 of the Schedule introduces some minor consequential amendments.

53. Paragraph 46 make consequential amendments to Part 7A to include references to the new loan charge.

54. Paragraph 47 amends paragraph 59 of Schedule 2 to the Finance Act 2011 to include the new loan charge. This will ensure that the relief under that paragraph extends to the new loan charge.

Background note

55. These changes are part of a package of proposals announced at Budget 2016 to tackle existing and prevent future use of disguised remuneration avoidance schemes.

56. Changes to strengthen the current rules were enacted in Finance Act 2017 to prevent the future use of schemes.

57. The existing use of schemes will be tackled by the introduction of a new charge on disguised remuneration loans that were made after 5 April 1999 and remain outstanding on 5 April 2019. Comprehensive provisions to ensure there is no double taxation are also being introduced in this clause. All of these changes were subject to a technical consultation that ran from 10 August 2016 to 5 October 2016.

58. These changes will help to meet the government's objective of tackling tax avoidance and will ensure that users of disguised remuneration avoidance schemes pay their fair share of tax and National Insurance contributions.

59. Since the Finance Bill 2017 was first published in March 2017 there have been six minor technical amendments. These changes do not reflect a change in policy and have been made to make clear the application of the legislation. The changes include:

    - an amendment to paragraph 4 to make clear the outstanding loan balance includes money repayments that are subsequently subject to a relevant step and tax is due but unpaid. A corresponding amendment is made to paragraph 12 for quasi-loans;

    - an amendment to paragraph 23 to make clear the Accelerated Payment postponement provision applies equally to National Insurance contributions, as well as tax, and that where tax and National Insurance contributions are relevant a joint application can be made; and

    - amendments to paragraphs 20 and 24 to set out when a postponement can be withdrawn and the effect of the withdrawal.

Clause 35 and Schedule 12: Trading income provided through third parties

Summary

1. This clause and Scheduleintroduce new provisions to counter the avoidance of income tax and National Insurance Contributions (NICs) by the self-employed. Clause 35 introduces a charge to income tax on trading profits disguised as other receipts. Schedule 12 introduces a charge to tackle the existing use of these schemes, which will charge to tax any loan amounts that are sourced from the avoidance arrangements and remain outstanding on 5 April 2019. The changes have effect from 6 April 2017

Details of the clause

2. Subsection (1) introduces amendments to the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).
3. Subsection (2) inserts new sections 23A to 23H of ITTOIA.
4. New section 23A sets out the circumstances in which a charge under section 23E will arise, together with relevant definitions.
5. Section 23A(1) sets out that Conditions A to E are to be met for section 23E to apply.
6. Section 23A(2) to Section 23A(6) sets out Conditions A to E in more detail:

- Condition A is that a person, referred to as "T", is or has been carrying on a trade, referred to subsequently as the "relevant trade". This includes those trading through a partnership;
- Condition B is that T is either party to an arrangement on their own account, or the arrangements will affect or relate to T and are connected with the "relevant trade", and the purpose of the arrangements is to provide "relevant benefits" to T, or to any person who has been or is currently connected with T;
- Condition C is that a relevant benefit arises to T, or to a person connected with T as part of the arrangements, or the relevant benefit arises to any other person, as part of the arrangement, and any of the enjoyment conditions are met (see section 23F);
- Condition D is that it is a reasonable assumption that the relevant benefit has a link with a qualifying third party payment; and

- Condition E is designed to ensure that the legislation only applies to situations where tax advantages are obtained as a consequence of the arrangements by T or a person connected with T.

7. Section 23A(7) sets out that all the relevant circumstances are considered as a whole in determining, in particular, whether an arrangement is a means of providing a relevant benefit.
8. Section 23A(8) ensures that sections 23A to 23H are to be read together when referred to as a group.
9. Section 23A(9) ensures that the legislation applies to professions and vocations as well as to trades.
10. Section 23A(10) provides a signpost to Schedule 12 which introduces a charge in respect of loans etc outstanding on 5 April 2019.
11. New Section 23B defines the meaning of relevant benefit.
12. Section 23B(2) defines a "relevant benefit". The purpose is to cover a benefit of any description. It therefore covers any kind of payment be that a loan, any transfer of money's worth or any other benefit.
13. Section 23B(3) ensures that the definition also includes circumstances where another person, not T, takes on a liability belonging to T.
14. Section 23B(4) also ensures that where someone, other than T, assumes a liability of a person, referred to as "C" who is, or has been, connected with T then the relevant benefit still arises to that person "C".
15. Section 23B(5) defines "loan" as including any form of credit and any payment that is purported to be by way of loan.
16. New Section 23C sets out the meaning of a qualifying third party payment.
17. Section 23C(2) defines a "third party payment" as a payment that is made, by T or another person, to:
    - T acting as a trustee; or
    - any person other than T.
18. Section 23C(3) defines a qualifying third party payment as one that is a third party payment which meets either the deduction or trade connection condition.
19. Section 23C(4) sets out that the deduction condition is satisfied when a payment is brought into account as a deduction in calculating the profits of the relevant trade. This includes any deduction made in calculating the amount liable to tax on T's share of a partnership's trading profits.
20. Section 23C(5) sets out that the trade connection condition is satisfied in either of two circumstances:

- Firstly, broadly that the payment is effectively consideration for goods or services received as part of the relevant trade; or

- There is some other connection, between the relevant payment and the provision of goods and services in the course of the relevant trade.

21. Section 23C(6) ensures that when considering whether these conditions are satisfied, and in particular the trade connection condition, all relevant circumstances are to be taken into account.

22. New Section 23D provides interpretation for the purposes of sections 23A to 23H.

23. New section 23E sets out the tax treatment of "relevant benefits".

24. Section 23E(1) treats the amount of the relevant benefit as profits of the relevant trade, for income tax purposes, in the tax year in which the relevant benefit arises. If the relevant trade ceases in a tax year before the relevant benefit arises then the relevant benefit is treated as a profit of the trade in the tax year the trade ceased.

25. Section 23E(2) defines the "relevant benefit amount". It includes any payment, loan or the value of any other benefit.

26. Section 23E(3) and (4) provides further interpretation concerning the value of a relevant benefit.

27. New section 23F sets out provisions defining when a relevant benefit is provided to a person other than T or to a person connected with T.

28. Section 23F(1) sets out the "enjoyment conditions" as referred to in Section 23A(4). These are:

    - That the relevant benefit (in whole or part) can be calculated so as to be for T's benefit at some point in time,

    - The provision of the benefit can operate to either increase the value of any assets which T holds, or which are held for the benefit of T,

    - T actually receives, or is entitled to receive, at any time a benefit which is provided or derived, either now or in the future, from the third party benefit,

    - Where the third party benefit is a sum of money, including a loan, then T becomes beneficially entitled to any or part of the sum by the exercise, in whatever sequence, of powers by any person, with consent or otherwise, and

    - Where the third party benefit is a sum of money, including a loan, T can control, directly or indirectly, in any manner the application of that sum, or any part of it.

29. Section 23F(2) deals with cases where the enjoyment conditions are met in relation to part only of the payment, benefit or loan so that that part is treated as a separate payment, benefit or loan for the purposes of section 23A(4).

30. Any references to T in section 23F(1) include any person who is or has been connected with T (section 23F(3)).

31. Section 23F(4) ensures that when the enjoyment conditions are to be determined then consideration must be given to the effect of all relevant circumstances and the substantial result in relation to any sum.

32. New Section 23G is an anti-avoidance provision, which disregards arrangements that have a purpose to secure that section 23E does not apply in relation to the whole or part of any relevant benefit.

33. Section 23G(2) ensures that where arrangements are disregarded by section 23G(1) a relevant benefit is treated as arising on or after 6 April 2017 if the effect of the arrangements would have been for the relevant benefit to arise before that date.

34. New Section 23H ensures that where any amount brought into charge by section 23E has already been charged to tax under any other provision, an individual may make a claim for adjustments to be made to prevent double taxation of that amount.

35. Subsection (3) makes an amendment to section 7(2) of ITTOIA by adding words to ensure that amounts treated as profits by the changes introduced here are within the income charged under Part 2 of ITTOIA.

36. Subsection (4) sets out the commencement provision. The amendments made by this clause are to have effect in relation to relevant benefits arising on or after 6 April 2017.

37. Subsection (5) inserts Schedule 12 which introduces a charge on certain amounts outstanding on 5 April 2019.

Schedule 12: Trading income provided through third parties: loans etc. outstanding on 5 April 2019

38. Schedule 12 introduces a new charge on outstanding loans provided through third parties.

39. Paragraph 1 applies sections 23A to 23H of ITTOIA to loans etc. outstanding on 5 April 2019.

40. Paragraph 1(1) treats a loan or quasi-loan, as referred to in paragraph 1(2), as a relevant benefit to which sections 23A to 23H of ITTOIA apply.

41. Loans or quasi-loans will be caught by the provisions if the loan, or quasi-loan, was made on or after 6 April 1999, but before 6 April 2017, and it remained outstanding immediately before the end of 5 April 2019.

42. Paragraph 1(3) determines how the relevant benefit provisions in new section 23E

apply to loans or quasi-loans. The relevant benefit amount is measured by reference to the amount of the loan or quasi-loan that is outstanding immediately before either

- the end of the approved repayment date (see paragraph 2), if the benefit is an approved fixed term loan on 5 April 2019 (see paragraph 15), or
- the end of 5 April 2019 in any other case.

43. Paragraph 1(3)(b) and (c) then specifies that the outstanding amount is brought into charge to tax in the 2018/19 tax year, unless there is a later approved repayment date.

44. Paragraph 2 defines the meaning of loan, quasi-loan and the approved repayment date for the purposes of the Schedule.

45. Paragraph 2(1) defines loans as including any form of credit and any payment that is purported to be made by way of a loan.

46. Paragraph 2(2) defines a "quasi-loan" by reference to circumstances where a person acquires a right, referred to as the acquired debt. An acquired debt is a right to a payment or a transfer of assets where there is any connection between the acquisition of that right and a payment, by way of loan or otherwise to T, or where there is a transfer of assets to T.

47. Paragraph 2(4) and 2(5) ensures that where the loans or quasi-loans are replaced by other loans or quasi-loans then these replacement loans or quasi-loans are within the scope of the legislation.

48. Paragraph 2(6) defines the term "approved repayment date" in relation to a fixed term loan as meaning the date by which, as stated in the terms of the loan at the time of making an application under paragraph 16, the whole of the loan must be repaid.

49. Paragraph 2(7) defines T, confirms that references to T include persons connected to T, now or at any time, and defines "connected".

50. Paragraphs 3 and 4 define the meaning of "outstanding" loans. The loan is outstanding if the amount of the "relevant principal amount" exceeds any "repayment amount".

51. Paragraph 3(2) defines "relevant principal amount" as the original amount lent plus any further amounts which have been subsequently added to the principal, but not any capitalised interest that has been added to the principal of the loan.

52. Paragraph 3(3) defines "repayment amounts" as including any amount of the principal that has been repaid prior to 5 December 2016 plus any payments of money made by T on or after 5 December 2016 that are repayments of the principal amount. Certain repayments on or since 5 December 2016 may be disregarded if there is any connection between the payment and a tax avoidance arrangement.

53. Paragraph 3(5) to 3(8) sets out the meaning of tax avoidance arrangement and how it is determined that a payment has a connection with a tax avoidance arrangement. This includes looking not only at one arrangement in isolation but also a series of

arrangements where the tax avoidance occurs at one end of the series. It is irrelevant whether the person making the payment is aware of the avoidance arrangement or not.

54. Paragraph 4 introduces the rules in paragraphs 5 to 8 concerning loans made in a currency other than sterling. Paragraph 4 defines the loan currency and that any currency conversion should be at the appropriate spot rate.

55. Paragraph 5 provides that where the loan and repayment are both in the same non-sterling currency the outstanding balance is calculated in that currency and then converted to sterling.

56. Paragraph 6 provides that where a repayment is made in a currency different to the loan currency, the repayment is converted into the loan currency on the date the repayment is made.

57. Paragraphs 7 and 8 provide that where a loan is made in a currency other than sterling in the expectation that the currency will depreciate in value, the amount of the loan and any repayments are converted to sterling on the day that they are made.

58. Paragraph 9 sets out how the outstanding amount of a quasi-loan is to be determined.

59. Paragraph 9(2) defines how the "initial debt amount" is calculated. It is the total of an amount equal to the value of the debt when acquired plus the value of any additional debt that occurs on the acquisition of further rights, either to a payment or a transfer of assets, as referred to in paragraph 2(3)(a) and (b). The value to be used is defined in paragraph 9(3).

60. Paragraph 9(4) defines "repayment amount" for the purposes of quasi-loans. Similar to the provision for loans this includes any amount that reduces the initial debt amount prior to 5 December 2016. It also includes money payments, made by T, on or after 5 December 2016. Where the acquired debt, or additional amount, is a right to the transfer of assets, and the assets have been transferred, the market value rule applies to value the asset at the time of the transfer.

61. Paragraph 9(5) applies to disregard any payment or transfer where a tax avoidance arrangement is connected with the payment or transfer. As in the loans section the original arrangement that created the quasi-loan is excluded from this disregard rule.

62. Paragraphs 10 to 14 make similar provision in the case of quasi loans denominated in a currency other than sterling as is made by paragraphs 4 to 8 in the case of loans denominated in a currency other than sterling.

63. Paragraph 15 defines the meaning of "approved fixed term loan". In essence this is a loan which, following an application to the Commissioners for HMRC, has been approved as a qualifying loan under paragraph 16.

64. A loan must meet three conditions to be a "qualifying loan", (paragraph 15(2)):

- It must have been made before 9 December 2010,

- Its term cannot exceed 10 years, and
- It must not be an excluded loan.

65. A loan will be an excluded loan if it is a replacement loan or the terms have been altered so that it would meet the 10 year term condition or the date on which the whole loan must be repaid is postponed, paragraph 15(3).

66. Paragraph 16 provides for applications to be made to HMRC to seek approval of a qualifying loan. The application has to be made to the Commissioners for Revenue and Customs (paragraph 16(1)).

67. Paragraph 16(2) sets out two main conditions to be satisfied as part of the approval process. These are, firstly a qualifying payments condition and secondly, a commercial terms condition.

68. Applications can only be made in 2018, although an officer of Revenue and Customs can accept an application made after that date if the officer considers that it is reasonable for a late application to be made (paragraph 16(3) and 16(4)).

69. Applications have to be made in a form and manner, containing such information, as may be prescribed and applicants must be notified of the decision on an application, (paragraph 16(5) and 16(6)).

70. Paragraph 17 provides that the qualifying payments condition is met in relation to a qualifying loan if repayments of the principal of the loan have been made at intervals not exceeding 53 weeks. These repayments must be made during the relevant period which commences when the loan was made and ends with the date on which the application for approval is made.

71. Paragraph 18 sets out a number of legs to the commercial terms condition. The initial condition requires that it has to be reasonable to assume that if the qualifying loan had been made in the ordinary course of a lending business then its terms would be comparable to any terms that would have been available to the public at large. The alternative condition is that the qualifying loan was made in the ordinary course of a lending business. In addition the borrower must have complied with the terms of the loan, in all material respects.

72. Paragraph 18(2) defines what is meant by an ordinary lending business in this context.

73. Paragraphs 19 and 20 set out how the loan charge provisions interact with the accelerated payment rules in Chapter 3 of Part 4 of FA 2014.

74. Paragraph 19 sets out the conditions that must be met. T must have made an accelerated payment that relates to a charge to income tax under section 23E of ITTOIA (paragraph 19(1)(d)) and the amount of the loan or quasi-loan that is outstanding must be equal to or less than the amount of the accelerated payment (paragraph 19(1)(f)).

75. Paragraph 20 sets out the consequences of the conditions in paragraph 19 being met.

T may make an application (paragraph 20(1)) to treat an amount of the loan as not outstanding until such time as the whole or part of the accelerated payment is repaid (paragraph 20(2)).

76. For example, T has an outstanding loan of £100,000 at the end of 5 April 2019 and has paid an accelerated payment, relating to a relevant benefit in respect of that loan, of £40,000 prior to 5 April 2019. Provided T has repaid at least £60,000 of that loan (so that the amount of the outstanding loan is equal to or less than the amount of the accelerated payment), T can make an application under paragraph 20(1) to postpone the time at which the relevant benefit is deemed to have arisen to 30 days after any part of the accelerated payment is repaid.

77. Paragraph 20(3) specifies that an application under paragraph 20 must be made in 2018 unless an officer of Revenue and Customs considers it reasonable for the application to be made at a later date (paragraph 20(4)).

Background note

78. These changes have been introduced to tackle avoidance by the self-employed and those trading through a partnership where their taxable income has been replaced by loans and other non-taxable amounts to avoid tax. The objective is to ensure that the full earnings of the self-employment remain part of the individual's taxable income subject to income tax and National Insurance Contributions and that attempts to circumvent this position and still reward the individual are ignored.

79. The changes are part of the continued strategy by the government to clamp down on avoidance by people who continue to attempt to avoid paying tax and NICs on the money they earn. There are part of a suite of measures first announced at Budget 2016 and were the subject of consultation in the summer of 2016.

Clause 36: Disguised remuneration schemes: restriction of income tax relief

Summary

1. This clause denies deductions in computing an unincorporated employer's taxable profits for contributions to a disguised remuneration tax avoidance scheme unless any associated charge to PAYE and NICs is paid within a specified time. It has effect for contributions made, or to be made, on or after 6 April 2017. Clause 37 makes related changes for employers within the charge to corporation tax.

Details of the clause

2. Subsection (1) sets out that section 38 ITTOIA 2005 is to be amended.

3. Subsection (2) inserts new subsection (1A) into section 38 ITTOIA 2005. This sets out an additional condition to obtain a deduction under section 38. No deduction will be allowed for an employee benefit contribution in any period of account that begins more than 5 years after the end of the period in which the contribution is made.

4. Subsection (3) inserts new subsections (2AA) and (2AB) into section 38 of ITTOIA 2005. Subsection (2AA) makes section 38(2) subject to section 38(1A) and (2AB). Subsection (2AB) makes section 38(2) subject to a further condition set out at (3C) to (3F).

5. Subsection (4) inserts new subsections (3A), (3B), (3C), (3D), (3E) and (3F) into section 38 of ITTOIA 2005.

6. New section 38(3B) sets out that, where section 38(3C) applies, a deduction previously disallowed under section 38(2) can only be allowed for a subsequent period in so far as it is a qualifying amount, defined in new section 38(3D).

7. New section 38(3C) sets out that the new conditions apply where the provision of qualifying benefits leads to both an employment income tax charge and an NIC charge.

8. New section 38(3D) sets out a condition for an amount to be a "qualifying amount". The condition is that the relevant tax charges have to be paid before the end of the relevant period (see new section 38(3E) for definitions of these two terms).

9. New sections 38(3E) and 38(3F) set out necessary definitions.

10. Subsection (5) inserts new subsection 38(3G) into ITTOIA 2005. This ensures that the new rules will apply to a deduction which can be characterised as remuneration but which also meets the description of a contribution to a disguised remuneration avoidance scheme. The deductibility of this amount will be considered only under section 38 and not under another provision that would otherwise apply to amounts of remuneration, such as section 36 of ITTOIA.
11. Subsection (6) sets out that section 866 ITTOIA 2005 is to be amended. Section 866 applies similar rules where deductions for employee remuneration are made other than in the course of a trade or a property business.
12. Subsection (7) inserts new subsection (2A) into section 866 ITTOIA 2005. This sets out an additional condition to obtain a deduction under section 866. No deduction will be allowed for an employee benefit contribution in any period of account that begins more than five years after the end of the period in which the contribution was made.
13. Subsection (8) inserts new subsections (3A) and (3B) into section 866 ITTOIA 2005. Subsection (3A) makes section 866(3) subject to section 866(2A) and (3B). Subsection (3B) makes section 866(3) subject to a further condition set out at new subsections (4C) to (4F).
14. Subsection (9) inserts new subsections (4A), (4B), (4C), (4D), (4E) and (4F) into section 866 of ITTOIA 2005.
15. New section 866(4B) sets out that, where section 866(4C) applies, a deduction previously disallowed under section 866(3) can only be allowed for a subsequent period in so far as it is a qualifying amount, defined in new section 866(4D).
16. New section 866(4C) sets out that the new conditions apply where the provision of qualifying benefits leads to both an employment income tax charge and an NIC charge.
17. New section 866(4D) sets out a condition for an amount to be a "qualifying amount". The condition is that the relevant tax charges have to be paid before the end of the relevant period (see new section 866(4E) for definition of these two terms).
18. New sections 866(4E) and 866(4F) set out necessary definitions.
19. Subsection (10) inserts new subsection (4G) into section 866 of ITTOIA 2005. This ensures that the new rules will apply to a deduction which can be characterised as remuneration but which also meets the description of a contribution to a disguised remuneration avoidance scheme. The deductibility of this amount will be considered under section 866 and not under another provision that would otherwise apply to amounts of remuneration, such as section 865 of ITTOIA.
20. Subsections (11) and (12) set out the date from which the legislation takes effect.

Background note

21. Section 38 of ITTOIA 2005 sets out the conditions under which income tax relief may be allowed for an employee benefit contribution. Section 38(2) of ITTOIA 2005 currently allows a deduction to be claimed for employee benefit contributions when a qualifying benefit is paid out of those contributions.

22. This clause adds further conditions – it will deny deductions in computing an employer's taxable profits for contributions to an employee benefit scheme unless any associated charge to PAYE and NICs is paid within 12 months of the end of the relevant period. The relevant period is that for which the employer seeks a deduction in computing their taxable profits. The restrictions will also apply where a payment of remuneration is or becomes an employee benefit contribution.

23. Further, this clause imposes an overarching time limit such that if the employer does not claim a deduction within 5 years of the end of the period in which the contribution is made, that amount cannot be deducted when computing taxable profits.

24. The clause makes similar amendments to section 866 ITTOIA which deals with employee benefit contributions as they relate to non-trades and non-property businesses.

25. These changes have been introduced as part of a package of legislation to further deter the use of disguised remuneration avoidance schemes.

Clause 37: Disguised remuneration schemes: restriction of corporation tax relief

Summary

1. This clause denies deductions in computing an employer's taxable profits for contributions to a disguised remuneration tax avoidance scheme unless any associated charge to PAYE and NICs is paid within a specified time. It has effect for contributions made, or to be made, on or after 1 April 2017. Clause 36 makes related changes for employers within the charge to income tax.

Details of the clause

2. Subsection (1) sets out that section 1290 of CTA 2009 is to be amended.

3. Subsection (2) inserts new subsection (1A) into section 1290 of CTA 2009. This sets out an additional condition to obtain a deduction under section 1290. No deduction will be allowed for an employee benefit contribution in any accounting period that begins more than 5 years after the end of the period in which the contribution is made.

4. Subsection (3) inserts new subsections (2A) and (2B) into section 1290 of CTA 2009. Subsection (2A) makes section 1290(2) subject to section 1290(1A) and (2B). Subsection (2B) makes section 1290(2) subject to a further condition set out at (3C) to (3F).

5. Subsection (4) inserts new subsections (3A), (3B), (3C), (3D), (3E) and (3F) into section 1290 of CTA 2009.

6. New section 1290(3B) sets out that, where section 1290 (3C) applies, a deduction previously disallowed under section 1290(2) can only be allowed for a subsequent period in so far as it is a qualifying amount, defined in new section 1290(3D).

7. New section 1290(3C) sets out that the new conditions apply where the provision of qualifying benefits leads to both an employment income tax charge and an NIC charge.

8. New section 1290(3D) sets out a condition for an amount to be a "qualifying amount". The condition is that the relevant tax charges have to be paid before the end of the relevant period (see new section 1290(3E) for definitions of these two terms.

9. New sections 1290(3E) and 1290(3F) set out necessary definitions.

10. Subsection (5) inserts new subsection (3G). This ensures that the new rules will apply to a deduction which can be characterised as remuneration but which also meets the description of a contribution to a disguised remuneration avoidance scheme. The deductibility of this amount will be considered only under section 1290 and not under another provision that would apply to amounts of remuneration, such as section 1288 of CTA 2009.

11. Subsections (6) and (7) set out the date from which the new measure takes effect.

Background note

12. Section 1290 of CTA 2009 sets out the conditions under which corporation tax relief may be allowed for an employee benefit contribution. Section 1290(2) of CTA 2009 currently allows a deduction to be claimed for employee benefit contributions when a qualifying benefit is paid out of those contributions.

13. This clause adds further conditions – it will deny deductions in computing an employer's taxable profits for contributions to an employee benefit scheme unless any associated charge to PAYE and NICs is paid within 12 months of the end of the relevant accounting period. The relevant accounting period is that for which the employer seeks a deduction in computing their taxable profits. The restrictions will also apply where a payment of remuneration is or becomes an employee benefit contribution.

14. The clause will also impose an overarching time limit such that if the employer does not claim a deduction within 5 years of the end of the accounting period in which the contribution is made, that amount cannot be deducted when computing taxable profits.

15. These changes have been introduced as part of a package of legislation to further deter the use of disguised remuneration avoidance schemes.

Clause 38: First year allowance for expenditure on electric vehicle charging points

Summary

1. This clause introduces a new tax relief for eligible expenditure on electric charge-point equipment. The relief is already in effect, having taken effect for transactions on or after 23 November 2016.

Details of the clause

2. Subsection 1 provides for amendments to Capital Allowances Act 2001 (CAA2001) which are set out in the rest of the clause.
3. Subsection 2 amends section 39 to introduce a new first year allowance in section 45EA to CAA 2001.
4. Subsection 3 inserts a new Section 45EA which provides tax relief for the purchase of electric vehicle charge-points.
5. New subsection 45EA(1) defines the type of expenditure which qualifies for the relief.
6. New subsection 45EA(2) defines the type of charge-point to which the relief applies and limits the scope of the relief to plant or machinery which installed only for charging electric vehicles.
7. New subsection 45EA(3) defines the relevant period when the relief will be claimable.
8. New subsection 45EA(4) provides the Treasury with a power to extend the relevant period by secondary legislation.
9. New subsection 45EA(5) defines electric vehicles and charge-points.
10. Subsection 4 amends section 46 of the CAA 2001 to introduce a new general exclusion in section 46(1).
11. Subsection 5(a) amends section 52(3) to set out the amount of qualifying expenditure which qualifies for relief under new section 45EA.
12. Subsection 5(b) inserts two new subsections into section 52. New subsections 52(3A) and (3B) provide the Treasury with a power to amend by secondary legislation the amount of qualifying expenditure that qualifies for the relief.

Background note

13. This tax relief has been introduced to support the development and installation of electric charge-point equipment for electric vehicles to promote the wider uptake of such vehicles. It will encourage the use of cleaner vehicles by making electric charge-points a more common feature on the high street.

14. The clause complements the 100% FYA for cars with low carbon dioxide (CO2) emissions, and the 100% FYA for cars powered by natural gas, biogas and hydrogen.

15. HM Revenue & Customs will publish guidance after Royal Assent about the operation of the relief.

Clause 39: Disposals concerned with land in United Kingdom

Summary

1. This clause introduces a change to the commencement rules in respect of legislation introduced in Finance Act 2016 concerning profits from trading in and developing land in the UK. The change applies from the date it was announced at Spring Budget 2017. All profits recognised in the accounts on or after 8th March 2017 will be taxed, regardless of the date the contract was entered into.

Details of the clause

2. Subsection (1) provides that the legislation introduced by sections 76 to 80 of FA 2016 will now apply to all amounts recognised in accounts drawn up under generally accepted accounting practice (GAAP) for any period of account beginning on or after 8 March 2017. Where there is a period of account which starts before 8 March 2017 and finishes on or after 8 March 2017, a notional period commences on 8 March, and any profits that would be recognised in that notional period are brought into charge accordingly (subsection (1)(b)).

3. Subsection (2) provides necessary definitions.

4. Subsection (3) corrects an incorrect reference in the amendment made by section 79(10) of FA 2016, by substituting ITA 2007 for CTA 2010 in section 161 of TCGA 1992.

5. Subsection (4) provides that section 161 TCGA 1992 should be regarded as always having had effect with the amendment at subsection (3).

Background note

6. The UK's corporation tax system previously charged non-resident companies to corporation tax on their profits from a trade carried on through a permanent establishment in the UK, and only on the profits attributable to that permanent establishment. The equivalent rules for income tax operated on a broadly similar basis.

7. Legislation introduced in FA2016 (sections 76 to 82) brought non-resident developers of UK property fully into UK tax on their profits from dealing in or developing land in the UK, ensuring a level playing field between UK developers and those based in offshore jurisdictions.

8. The legislation excluded profits arising from contracts entered into before the commencement date of 5 July 2016, with the intention of excluding the standard type of property contract where the sale is committed on contract and the transfer (which gives rise to the profit) takes place shortly afterwards. However, some contracts have been entered into many months before the property is transferred and the profit recognised. It was not the intention to exclude profits arising several months or even years after the contract was agreed. This clause changes the commencement rules so that all profits recognised in the accounts on or after 8th March 2017 are taxed, regardless of the date the contract was entered into.

Clause 40: Co-ownership authorised contractual schemes: capital allowances

Summary

1. This clause introduces the option for the operator of a co-ownership authorised contractual scheme (CoACS) to elect for an administrative simplification when complying with the capital allowances legislation. The election can be made for periods that start on or after 1 April 2017.

Details of the clause

2. Subsection 1 introduces new Sections into Chapter 20 of Part 2 of Capital Allowances Act (CAA) 2001, which concerns plant and machinery.

Section 262AA

3. Subsections 1 and 2 ensure that when considering the qualifying activity of each participant in the scheme, you must take account of the qualifying activity carried on by all of the participants viewed collectively.

4. Subsection 3 states that subsection 2 only applies, in relation to a participant, to the extent that the participant is chargeable to tax on the qualifying activity.

5. Subsection 4 provides that when considering the qualifying activity of the scheme, no account need be taken of the taxable status of the participants.

Section 262AB

6. Subsections 1, 2 and 3 state that the operator of the scheme may make an election, the election must specify an accounting period and that period may not be longer than 12 months or start before 1 April 2017.

7. Subsections 4, 5 and 6 state that the election applies to that first accounting period and all subsequent periods, is irrevocable and must be made by notice to an officer of Revenue and Customs.

Section 262AC

8. Subsection 1 states that this section applies where an accounting period is covered by a valid election. It also defines "the relevant period" for the scheme.

9. Subsection 2 provides that the operator of the scheme is to calculate the allowances for the relevant period based on the assumptions listed in Subsection 3.

10. Subsection 3 lists the assumptions which the operator of the scheme must use to calculate the allowances.

11. Subsections 4 and 5 require the operator to allocate those allowances to the participants in the scheme based on proportionality of the allowances and on a just and reasonable basis.
12. Subsection 6 sets some parameters for what just and reasonable means.
13. Subsection 7 provides that the scheme must do separate calculations and allocations if it has more than one qualifying activity.
14. Subsection 8 prohibits the participant from claiming allowances for the qualifying activity carried on through the scheme, except those allocated by the operator.
15. Subsections 9, 10 and 11 define tax written-down value.

Section 262AD

16. Subsection 1 states that this section applies if an election has been made.
17. Subsection 2 states that for the purposes of Sections 61(1) and 196(1) CAA, a participant in the scheme at the start of an election is treated as having disposed of any property that was subject to that scheme; and the disposal value is the tax written-down value.
18. Subsections 3 and 4 define "tax written-down value" for the purpose of subsection 2.

Section 262AE

19. Subsection 1 lists the conditions needed for this section to apply.
    a. An election has been made.
    b. Property that consists of a fixture ceased to be owned by the scheme
    c. The operator had to account for a disposal value because the property had ceased to be owned by the scheme.
    d. The current owner owns the fixture as a result of incurring capital expenditure.
20. Subsection 2 states that the current owner's qualifying expenditure is nil unless the disposal value statement requirement is met and otherwise limits the qualifying expenditure to the assumed disposal value.
21. Subsection 3 defines "the disposal value statement requirement".
22. Subsection 4 ensures that Sections 185 and 187A CAA do not apply in these circumstances.
23. Subsection 5 states that the assumed disposal value referred to in Subsection 2 is the disposal value brought into account by virtue of Section 262AC(3)(h).

Section 262AF

24. Section 262AF sets out a number of interpretations for terms used in Sections 262AA to 262AF.

Background note

25. Co-ownership authorised contractual schemes (CoACS) are a type of collective investment scheme which are transparent for tax purposes. That means that, for example, the income arising from investments in the CoACS is the income of its investors.

26. Under the current legislation it can be administratively burdensome, in some circumstances, for participants in a CoACS to comply with their obligations. This measure significantly reduces those burdens.

27. HM Revenue & Customs (HMRC) will publish guidance about this measure after Royal Assent of Finance Bill 2017.

28. This clause is one of three clauses relating to CoACS which clarify the process for calculating any capital allowances which may be claimed by investors in CoACS, introduce new requirements for information which the operator of a CoACS must provide to investors and to HMRC and introduce new rules to clarify what is to be treated as an investor's income when a CoACS has invested in an offshore fund.

Clause 41: Co-ownership authorised contractual schemes: information requirements

Summary

1. This clause gives the Treasury the power to make regulations requiring the operator of a co-ownership authorised contractual scheme (CoACS) to provide information to investors and to HM Revenue & Customs (HMRC).

Details of the clause

2. Subsection 1 enables the Treasury to make regulations requiring the operator of a CoACS to provide information to participants in the scheme and to HMRC.
3. Subsection 2 sets out for what purpose the Treasury may make regulations requiring information to be provided to investors in the CoACS.
4. Subsection 3 sets out a non-exhaustive list of what kind of information the Treasury may require the operator of a CoACS to provide to HMRC.
5. Subsections 4 to 10 contain supplementary provisions and definitions.

Background note

6. Co-ownership authorised contractual schemes (CoACS) are a type of collective investment scheme which are transparent for tax purposes. That means that, for example, the income arising from investments in the CoACS is the income of its investors. A CoACS is not subject to tax itself, but the operator of the CoACS holds information which would help its investors to comply with their own tax obligations and assist HMRC in its functions.
7. This measure will enable the Treasury to make regulations requiring operators of CoACS to provide investors with sufficient information to complete their tax returns and to provide certain information to HMRC.
8. Draft regulations made pursuant to this provision were published on 20 March 2017.
9. This clause is one of three clauses relating to CoACS which clarify the process for calculating any capital allowances which may be claimed by investors in CoACS, introduce new requirements for information which the operator of a CoACS must provide to investors and to HMRC and introduce new rules to clarify what is to be treated as an investor's income when a CoACS has invested in an offshore fund.

Clause 42: Co-ownership authorised contractual schemes: offshore funds

Summary

1. This clause gives the Treasury the power to make regulations about how participants in a co-ownership authorised contractual scheme (CoACS) are to be treated for income tax and corporation tax purposes where the CoACS has invested in an offshore fund.

Details of the clause

2. Subsection 1 enables the Treasury to make regulations concerning the income tax position of participants in a CoACS in relation to investments in an offshore fund.

3. Subsection 2 sets out a non-exhaustive list of what those regulations might provide for, including what may be allocated as the income of participants and the time income tax is due.

4. Subsections (3) to (7) contain supplementary provisions and definitions.

Background note

5. Co-ownership authorised contractual schemes (CoACS) are a type of collective investment scheme which are transparent for tax purposes. That means that, for example, the income arising from investments in the CoACS is the income of its investors.

6. This measure will enable the Treasury to make regulations requiring CoACS to allocate certain amounts as the income of participants in the accounting period in which those amounts accrue to the CoACS. Regulations will also bring those amounts within the charge to tax.

7. Draft regulations made pursuant to this provision were published on 20 March 2017.

8. This clause is one of three clauses relating to CoACS which clarify the process for calculating any capital allowances which may be claimed by investors in CoACS, introduce new requirements for information which the operator of a CoACS must provide to investors and to HMRC and introduce new rules to clarify what is to be treated as an investor's income when a CoACS has invested in an offshore fund

Part 2: Indirect Taxes

Clause 43: Air passenger duty: rates of duty from 1 April 2018

Summary

1. This clause provides for changes to the rates of air passenger duty (APD). The rates for APD are set out in section 30 of the Finance Act 1994. The rates of APD for flights to Band A destinations are unchanged. Rate changes to Band B destinations will be as follows;

   - Reduced rates will rise by £3 (from £75 to £78)
   - Standard rates will rise by £6 (from £150 to £156)
   - Higher rates will rise by £18 (from £450 to £468)

   These changes to the rates of APD in relation to the carriage of passengers will come into effect beginning on or after 1 April 2018.

Details of the clause

2. Subsection 1 amends the APD rates for flights to Band B destinations.
3. Subsection 2 states that these changes apply to the carriage of passengers beginning on or after 1 April 2018.

Background note

4. APD rates are dependent on a passenger's class of travel and final destination. The reduced rates apply to the lowest class of travel available on the aircraft, the standard rates to any other class, and the higher rates to travel in aircraft of 20 tonnes or more equipped to carry fewer than 19 passengers. There are two destination bands: band A includes destinations whose capital is up to 2,000 miles from London and band B includes all other destinations.
5. The airline industry made a request to the government to give sufficient advance notice of changes in APD rates. In response to this it was announced at the Spring Budget 2017 that APD rates for 2018 – 2019 would increase in line with inflation (based on the retail price index RPI)).

Clause 44: Petroleum revenue tax: elections for oil fields to become non-taxable

Summary

1. This clause removes the conditions for opting fields out of Petroleum Revenue Tax (PRT) so that opting out can be achieved by a simple election. It has effect from 23 November 2016.

Details of the clause

2. Subsection 1 amends Schedule 20B of Finance Act 1993 so that the procedure for opting a field out of the PRT regime is changed to a simple election. The election must be made in writing by the responsible person, who must notify HMRC of the election. The election will be deemed to be made on the date that the notification was sent to HMRC, and will have effect for the first chargeable period beginning after it is made. No allowable loss that accrues from that oil field will be an unrelievable field loss. It removes the existing paragraphs 2 to 12 of Schedule 20B.

3. Subsection 2 amends section 6 (1A) of the Oil Taxation Act 1975 to change "paragraph 5" to "paragraph 6" to reflect the changes made to Schedule 20B of Finance Act 1993.

4. Subsection 3 amends paragraph 15 (9A) of Schedule 17 of Finance Act 1980 to change "paragraph 5" to "paragraph 6" to reflect the changes made to Schedule 20B of Finance Act 1993.

5. Subsection 4 allows for the legislation to be treated as coming into force on 23 November 2016.

Background note

6. Petroleum Revenue Tax (PRT) was permanently zero-rated at the 2016 Budget. However, participators still have to submit returns, which are complex and time-consuming. Many participators find the existing process to opt fields out to be too complex and expensive.

7. This measure has been introduced to reduce administrative burdens for companies in the UK oil and gas industry by making it simpler to opt fields out of the PRT regime. It builds on the government's support for the UK oil and gas industry and supports HM Revenue and Customs' (HMRC) commitment to reduce administrative burdens for business by £400m by 2019-20

8. The measure removes the conditions for opting out so that a responsible person for a field can opt out by making an election and notifying HMRC. The election will come into effect from the first chargeable period beginning after the election is made.

Clause 45: Rates of gaming duty

Summary

1. This clause increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2017.

Details of the clause

2. Subsection 1 substitutes a new table for the existing table in section 11(2) of the Finance Act 1997 which has the effect of increasing the gross gaming yield bands for gaming duty.

3. Subsection 2 provides for this change to have effect for accounting periods beginning on or after 1 April 2017.

Background note

4. Gaming Duty is charged on any premises in the UK where dutiable gaming takes place. Dutiable gaming includes the playing of casino games such as roulette, baccarat, and blackjack. The amount of duty is calculated by reference to bands of GGY (i.e. gross profits) for that accounting period. For example, duty will be paid at a rate of 15 per cent on the first £2,423,500 of GGY, then 20 per cent for the next £1,670,500 of GGY, and so on. Gaming Duty is charged on premises in respect of accounting periods of six months, normally beginning on 1 April and 1 October, with an interim payment which is calculated and due after three months.

5. The change made by this measure increases the GGY bands but makes no changes to the rates. This ensures that casino operators' profits are not subject to the higher gaming duty bands simply as a result of inflation. There is therefore no duty increase in real terms. The basis of revalorisation of the bands is the Retail Price Index (RPI) for the year ended 31 December 2016. In this case the RPI was calculated at 2.24 per cent.

Clause 46: Remote gaming duty: freeplay

Summary

1. This clause amends the remote gaming duty (RGD) provisions in Part 3 of the Finance Act 2014 (FA14) to make certain freeplays chargeable with duty. The amendment has effect for RGD accounting periods beginning on or after 1 August 2017.

Details of the clause

2. Subsection (1) introduces an amendment to the RGD provisions in Part 3 of FA14.
3. Subsection (2) amends section 159 of FA14, which defines 'gaming payments' for the purpose of RGD, to substitute new subsections (4), (5), (6) and (7).
4. The new subsection (4) imposes a value for duty purposes on any offer that waives the normal payment to participate in remote gaming. Where someone makes use of such an offer they will be deemed to have paid the amount that would have been required without the offer.
5. The new subsection (5) provides for the participant's deemed payment under subsection (4) to be treated as being made at the time they take part in the gaming, and to be treated as not returned to the participant or used as a prize.
6. The new subsection (6) provides for the Commissioners of HMRC to specify, by secondary legislation, additional ways of treating payments deemed to have been made under subsection (4).
7. The new subsection (7) provides for section 159 to have effect subject to the provisions of section 159A.
8. Subsection (3) introduces a new section to FA14, 159A, to deal with play using the winnings from successful freeplay.
9. The new subsection (1) provides that an amount is not to be treated as a "gaming payment" under section 159 if it meets both of the conditions to qualify as "excluded winnings" as defined in subsections (2) and (3).
10. The new subsection (2) requires that the money has been won from participation in gaming by means of a freeplay or, that it has been won from participation in gaming by means of a payment from money that can only be used for participating in gaming.
11. The new subsection (3) defines the second qualifying condition and requires that an amount can only qualify as "excluded winnings" if it is money that can only be used for participation in gaming.

12. The new subsections (4) and (5) combine to provide that where a person participates in gaming by means of a freeplay, and that freeplay has itself been won from gaming in which no alternative benefit was offered, the use of that freeplay will not be treated as a gaming payment under section 159.

13. The new subsection (6) provides that where a payment is made from money that includes both "excluded winnings" and "other funds" only the part of the payment that comes from "other funds" will be treated as a gaming payment under section 159.

14. The new subsection (7) of section 159A defines money for the purposes of that section.

15. Subsection (4) amends section 160 of FA14 to limit the definition of a prize in that section so that where winnings are credited to a person's account, only winnings in the form of money that can be withdrawn on demand can be treated as a prize. Section 160 is further amended so that it is to have effect subject to the provisions of section 160A.

16. Subsection (5) inserts a new section, section 160A, in the FA14 that makes provision about prizes in the form of a freeplay.

17. The new subsection (1) of that new section provides that where a freeplay is given as a prize by the gaming provider, and it has not been obtained from an unconnected person, that freeplay will have nil value as a prize for the purpose of calculating a gaming provider's RGD profits.

18. The new subsection (2) makes valuation provisions for a prize in the form of a voucher that is obtained from an unconnected person, and which may be used in exchange for a freeplay or other benefit. For the purpose of calculating a gaming provider's profits for RGD the value of such a prize is the cost of obtaining it from that person, but only when used other than in exchange for a freeplay. Otherwise, the value is nil.

19. The new subsection (3) provides a definition of "freeplay" and "freeplay offer" for the purpose of the new section 160A.

20. Subsection (6) amends the definition of "game of chance" in section 188 so that for the purposes of RGD a game is not a game of chance if it is a game that can only be played by more than one person, and no person pays or is required to pay any amount in respect of or on account of or in connection with participation in the game.

21. Subsection (7) amends the Index of expressions in section 190 to take account of the amended definition of game of chance introduced by subsection (6).

22. Subsection (8) provides for the regulation-making powers under new section 159(6) to be exercised subject to the affirmative procedures in section 194(5).

23. Subsection (9) provides that the changes made by this section will have effect for RGD accounting periods that begin on or after 1 August 2017.

Background note

24. Gambling operators make use of a range of incentives and promotions including free bets, freeplays and other similar discounts and offers. For the purpose of this measure these are collectively referred to as freeplays.

25. This amendment has been introduced to bring the treatment of freeplays for RGD more into line with the treatment of freeplays for general betting duty. This will mean that remote gaming freeplays that are used by a customer will, in certain circumstances, have a value for the purpose of calculating an operator's remote gaming profit. This will also mean that freeplays that are given out by an operator cannot be treated as prizes and will have no value for the purposes of calculating the profit.

26. HM Revenue & Customs will update the RGD guidance to reflect this change.

Clause 47: Tobacco products manufacturing machinery: licensing scheme

Summary

1. This clause amends part 8 of the Tobacco Products Duty Act (TPDA) 1979 to introduce new legislation requiring owners and leasers of tobacco manufacturing machinery to secure a licence for each machine. The scheme is due to take effect in 2018.

Details of the clause

2. Subsection (1) inserts a new section 8V in the TPDA 1979.

3. Subsection (2) provides for regulations made under the new powers to be subject to the negative procedure.

Section 8V: Tobacco products manufacturing machinery: licensing scheme

4. Subsection (1) defines the machinery covered by the scheme.

5. Subsection (2) describes the prohibitions that may be made in respect of this machinery and grants the power for such machinery to be liable to forfeiture if the prohibitions are breached.

6. Subsection (3) and Subsection (4) provide regulation making powers for the operation of the scheme.

7. Subsection (5) provides that the regulations may make provision about the circumstances in which the Commissioners may grant a licence to an applicant. It also provides that the regulations may specify the form and manner of an application, make provision about renewal, surrender and transfer of licences and make provision about electronic communications.

Background note

8. This clause has been introduced to give HMRC additional powers to tackle the evasion of excise duty on tobacco products through the control and ownership of tobacco products manufacturing machinery and to help prevent the illicit manufacture of tobacco products.

9. At Autumn Statement 2015 the government announced that HMRC would launch a formal consultation on the implementation of Article 6 of the Framework Convention on Tobacco Control Illicit Trade Protocol, which includes the requirement to license tobacco products manufacturing machinery. This is the final element of the Protocol which needs to be implemented in the UK before Parliament can consider ratification. A formal consultation concerning Article 6 ran from 20 February 2016 to 25 May 2016.

10. HMRC intends to accept licence applications for each machine three months in advance of the scheme taking effect on a date in 2018 to be announced later.

Part 3: Fulfilment Businesses

Clause 48: Carrying on a third country goods fulfilment business

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. This clause 48 sets out those businesses in scope of the new scheme.

Clause 48: Carrying on a third country goods fulfilment business

3. Subsection 1 defines what is meant by a fulfilment business and sets out who is in scope of the scheme.

4. Subsection 2 outlines the conditions referred to in Subsection 1. The goods must not have been already supplied by definition of the VAT Act 1994 at the point they are stored by the fulfilment business, and they must be goods that are being offered for sale.

5. Subsection 3 specifically excludes businesses for whom activities set out in section 1(1), namely storage, are incidental. This includes delivery companies for whom storage of goods is incidental.

6. Subsection (4) defines the term 'third country goods'.

7. Subsection (5) defines the term 'established' for the purposes of subsection 1.

Background note

8. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

9. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

10. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 49: Requirement for approval

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. Following on from clause 48, this clause sets out that to be registered in the scheme, a person carrying on a fulfilment business will need approval from HMRC.

Clause 49: Requirement for approval

3. Subsection (1) imposes a restriction on the carrying on of a fulfillment business other than in accordance with an approval from HMRC.
4. Subsection 2 provides that HMRC may approve a person to carry on a fulfilment business only if HMRC is satisfied that a person is fit and proper to do so.
5. Subsection 3 provides that HMRC may attach conditions and restrictions to the approval for the carrying on of a fulfilment business. These conditions and restrictions can include lengths of time for which the approval will last.
6. Subsection 4 allows HMRC to vary or revoke the terms of an approval for a reasonable cause. This may be done at any time.
7. Subsection 5 defines 'approved person' as a person who is approved by HMRC to carry on a fulfilment business.

Background note

8. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
9. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.
10. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 50: Register of approved persons

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. This clause sets out that HMRC will hold and may publish a register of registered fulfilment businesses.

Clause 50: Register of approved persons

3. Subsections (1) (2) (3) and (4) provide that HMRC must maintain a register of all registered fulfilment businesses. This register will be made available to the public by such means considered appropriate, including the internet. This will enable anyone doing business with a fulfilment business storing third country goods to make a check that they are registered with HMRC.

Background note

4. The purpose of the register would be to allow businesses to check whether they are dealing with compliant fulfilment businesses.

5. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

6. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

7. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 51: Regulations relating to approval, registration etc.

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. This clause provides for regulations to be made in relating to approval, registration etc under the scheme.

Clause 51: Regulations relating to approval, registration etc

3. This clause allows HMRC to make regulations regarding the approval, registration and obligations of fulfilment businesses. It also allows HMRC to make specific regulatory provisions in certain circumstances.

4. Subsection 1 allows for regulations covering the approval and registration process, the variation or revocation of any approval or registration or condition or restriction attached to it, the register required to be maintained under HMRC, the general carrying on of a fulfilment business and other obligations to be imposed upon approved persons.

5. Subsection 2 allows for regulations to make provisions that applications and communications with the Commissioners are to be made electronically, regulating the procedure for the approval and registration of companies and requiring approved persons to keep and make available for inspection specified records.

Background note

6. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

7. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

8. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers

Clause 52: Disclosure of information by HMRC

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. This clause sets out a specific disclosure gateway for the disclosure of information held by HMRC for the purposes of enabling an approved person to meet their obligations under the Fulfilment House Due Diligence Scheme.

Clause 52: Disclosure of information by HMRC

3. Subsection 1 provides that, under the Fulfilment House Due Diligence Scheme, HMRC may disclose information that it holds to an approved person. This information may only be disclosed for the purposes set out in subsection 2.
4. Subsection 2 defines the purpose stated in subsection 1, which is to assist an approved person in meeting their obligations under the Fulfilment House Due Diligence Scheme.
5. Subsection 3 (a) places restrictions on an approved person in respect to the information disclosed to them. The approved person to whom information is disclosed may only use the disclosed information in order to comply with their obligations under the scheme. Part (b) states that the approved person may not make any further disclosure of information without the consent of the Commissioners.
6. Subsection 4 sets out that if the approved person does make a disclosure in contravention of 3 (b) then they are committing an offence under section 19 of the Commissioners for Revenue and Customs Act 2005.

Background note

7. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
8. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.
9. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 53: Offence

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. This clause links to clause 48 and clause 49 and sets out that it will be an offence to trade as a fulfilment business without approval.

Clause 53: Offence

3. Subsection 1 sets out that trading as a fulfilment business without approval is an offence.

4. Subsections 2 and 3 explain that it is a defence that a person did not know and had no reasonable grounds to suspect that they were carrying on a third country goods fulfilment business without approval.

5. Subsection 4 sets out the sanctions that can be imposed for an offence under this section on summary conviction.

6. Subsection 5 sets out the sanctions that can be imposed for an offence under this section on indictment.

7. Subsection 6 sets out a transitional provision until such time as section 154(1) of the Criminal Justice Act 2003 commences.

Background note

8. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

9. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

10. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 54: Forfeiture

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. Clause 54 sets out that goods are liable to forfeiture if they are stored by a fulfilment business which is not approved under clause 49

Clause 54: Forfeiture

3. Subsections 1 and 2 provide that any goods that are stored in a fulfilment business that is being carried on without approval are liable to forfeiture under the relevant provisions of the Customs and Excise Management Act 1979.

Background note

4. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
5. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.
6. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 55 and Schedule 13: Penalties

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. This clauseprovides for penalties under the scheme including powers to make regulations and links to Schedule 13.

3. Schedule 13 provides for a penalty for carrying on a business without approval.

Clause 55: Penalties

4. Subsection 1 explains that the penalty for carrying on a third country fulfilment business without approval is laid out in Schedule 13.

5. Subsection 2 allows for HMRC to make regulations imposing penalties for contraventions of any conditions or restrictions imposed, and for contraventions of the regulations. These penalties will be additional to that set out in Schedule 13.

6. Subsection 3 provides that any penalties imposed by regulations cannot exceed £3000.

7. Subsection 4 allows for any regulations made under this clause to make provisions for the assessment and recovery of the penalties specified.

8. Subsection 5 allows for regulations to be made making provision for joint and several liability for corporate groups.

Schedule 13: Third country goods fulfilment businesses: penalty

9. Schedule 13 sets out the liability to penalty for a person carrying out a third country goods fulfilment business without approval. It outlines the amount of the penalty, reductions for disclosure, assessment, reasonable excuse, liability for officers in a company and double jeopardy. It also defines the maximum amount and the definition of the “appeal tribunal”.

Liability to penalty

10. Paragraph 1 sets out that a person carrying out a third country goods fulfillment business without approval is liable to a penalty.

Amount of penalty

11. Paragraph 2 sub-paragraphs (1) to (3) set out the levels of penalty that can be charged, depending on whether the offence is considered deliberate and concealed, deliberate but not concealed or otherwise. Sub-paragraph (4) defines "deliberate and concealed" and "deliberate but not concealed".

Reductions for disclosure

12. Paragraph 3 sub-paragraph (1) provides for reductions in penalties for disclosure.

13. Paragraph 3 sub-paragraph (2) describes how a person may disclose a contravention by advising HMRC, assisting in highlighting additional contraventions and providing all records requested.

14. Paragraph 3 sub-paragraph (3) describes how a disclosure will be considered "unprompted" if it is notified to HMRC prior to them identifying a contravention. All other cases will be considered "prompted".

15. Paragraph 4 provides that following disclosure the Commissioners must reduce the penalty to reflect the quality of the disclosure. It also sets out the minimum levels of the penalties. The amount that the penalty can be reduced by depends upon the quality of the disclosure and whether it is prompted or unprompted.

Special reduction

16. Paragraph 5 allows HMRC to reduce the amount of the penalty where special circumstances apply.

Assessment

17. Paragraph 6 provides for the assessment of a penalty and outlines how this assessment will be made. This provides that HMRC will notify the person by way of a penalty notice, setting out the reason for the penalty. Penalties raised will be due thirty days after the date of issue of the penalty notice. Two or more contraventions may be assessed as one contravention for the purpose of raising a penalty. A penalty must be raised within 12 months of HMRC discovering the contravention.

Reasonable excuse

18. Paragraph 7 provides that a penalty will not be levied for non-deliberate contraventions if a person is able to demonstrate that they have a valid excuse. Paragraph 7 however makes clear that a valid excuse does not encompass a person entrusting someone else to fulfil their obligations.

Companies: Officer's liability

19. Paragraph 8 describes how penalties or a proportion of a penalty that is levied on a company can also be levied against an officer of that company, if the officer was responsible or partly responsible for a contravention.

Double Jeopardy

20. Paragraph 9 provides that a penalty will not be levied for a contravention for which a person has already been convicted of an offence.

The maximum amount

21. Paragraph 10 allows for regulation to change the maximum amount of a penalty under paragraph 2(1) (Amount of Penalty) where HM Treasury consider there has been a change in the value of money. Penalties at the revised amount cannot be levied for a contravention that occurred prior to the date that the Regulations containing the new amount come into force.

Appeal Tribunal

22. Paragraph 11 defines the term 'appeal tribunal'.

Background note

23. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

24. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

25. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 56: Appeals

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. This clause sets out the appeal and review provisions for the scheme.

Clause 56: Appeals

3. Subsection 1 provides for amendments of the Finance Act 1994 for the purposes of ensuring decisions made under these clauses are subject to review and appeal.
4. Subsection 2 inserts a new paragraph (paragraph 'gc') as to the meaning of a 'relevant decision' as provided for in section 13(2) of the Finance Act 1994 so that a decision to issue a penalty is subject to review and appeal.
5. Subsection 3 inserts a new paragraph (paragraph '9B') to Schedule 5 to the Finance Act 1994 so that any decision as to approval or the conditions under which a person is approved is a decision falling within Schedule 5 to the Finance Act 1994 for the purposes of review and appeal.

Background note

6. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
7. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.
8. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 57: Regulations

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. This clause,, along with regulations made under Clause 51, sets out how secondary legislation for the scheme will be made.

Clause 57: Regulations

3. Subsection 1 sets out how separate regulations relating to the specific aspects of the scheme will be made.

4. Subsections 2 and 3 set out that regulations will be made by statutory instrument subject to annulment to a resolution of the House of Commons.

5. Subsection 4 clarifies that the provisions of this clause do not apply to regulations made under section 59 (namely the commencement orders).

Background note

6. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

7. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

8. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 58: Interpretation

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. This clause contains definitions of terms used in these clauses.

Clause 58: Interpretation

3. Subsection 1 provides for the meaning of 'approved person' and 'the Commissioners'.
4. Subsections 2, 3 and 4 provide for when two or more companies will be considered to be members of a group company.

Background note

5. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
6. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.
7. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Clause 59: Commencement

Summary

1. Clauses 48 to 59 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. This clause sets out when the legislation will commence provides for commencement of the scheme by regulations.

Clause 59: Commencement

3. Subsection 1 (a) sets out that the powers to make regulations will come into force on the day the Act is passed. Subsection 1(b) sets out that for all other purposes the legislation will come into force on a day appointed by HMRC by statutory instrument.

4. Subsection 2 allows for Regulations made under subsection (1) to appoint different commencement days for different purposes.

Background note

5. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

6. Fulfilment businesses in the UK will have to register with HMRC from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

7. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

Part 4: Administration, avoidance and enforcement

Clause 60: Digital reporting and record-keeping for income tax etc

Summary

1. This clause provides powers to make regulations about digital record-keeping and reporting requirements for businesses within the charge to income tax and sets out to which businesses such regulations will apply. The clause cannot have effect before an appointed day Order is made by the Treasury.

Details of the clause

2. Subsection 1 is preparatory and states that the clause makes amendments to the Taxes Management Act 1970 (TMA).

3. Subsection 2 inserts Section 12C into the TMA.

4. Subsection 3 inserts Schedule A1 into the TMA.

Details of Schedule A1: Digital reporting and record-keeping

Part 1: Application

Application: Persons

5. Paragraph 1 sets out the persons to whom the Schedule will apply, subject to exclusions in Paragraph 2. They are persons within the charge to income tax who are carrying on (or have carried on in a relevant tax year) trades, professions, vocations or property businesses, the profits of which are chargeable to income tax under Parts 2 or 3 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). The Schedule will also apply to a person carrying on or who has previously carried on any other activity which may give rise to profits or other income chargeable to income tax under Parts 2 or 3 of ITTOIA.

6. Paragraphs 2(1) to 2(3) exclude specific persons and activities from the requirements. Excluded persons are the trustees of charitable trusts and exempt unauthorised unit trusts; the exclusion only applies when the person is acting in that capacity and the Schedule may apply to the person when they are acting in another capacity. Excluded persons can elect into the requirements of the Schedule if they want to (Paragraph 2(1)). Excluded activities are: Lloyd's underwriting businesses; holding shares in a real estate investment trust; and participation in an open-ended investment company which receive property income distributions. Only these activities are excluded and the Schedule may apply to the person in respect of other activities. A person may elect to have the Schedule apply to them in respect of an excluded activity (Paragraph 2(2)).

7. Paragraph 2(4) allows HMRC Commissioners, by regulations to make provision about elections and withdrawal of elections under Paragraph 2.

Application: partnerships

8. Paragraph 3 describes which partnerships will be in scope for the obligations created by the Schedule, subject to exclusions in Paragraph 4. The partnerships in scope are those where one or more of the partners is within the charge to income tax.

9. Paragraph 4(1) sets out that where all the activities of a partnership that may give rise to profits are excluded activities then the partnership is excluded from the requirements of the Schedule. It also provides that excluded partnerships can elect into the requirements of the Schedule.

10. Paragraph 4(2) defines excluded activities, in similar terms to Paragraph 2(3), as a Lloyd’s underwriting business, or holding shares in real estate investment trust, or participating in an open-ended investment company.

11. Paragraph 4(3) provides a similar power to Paragraph 2(4) allowing HMRC Commissioners to make regulations about elections and withdrawal of elections by excluded partnerships.

12. Paragraph 5 provides that obligations on partnerships imposed by regulations under the Schedule are to be met by a nominated partner (but see Paragraph 11(4), where this is disapplied for record-keeping requirements). This Paragraph also defines a nominated partner, sets out when a nomination or revocation of a nomination has effect and who may nominate a partner (either the partners or HMRC). It also provides a power for HMRC Commissioners to make regulations about nominations and their revocation.

Part 2: Digital reporting and record-keeping

Interpretation

13. Paragraph 6 defines the term “business” for the purposes of Part 2 of the Schedule.

Periodic updates

14. Paragraph 7 gives HMRC Commissioners power to make regulations requiring persons or partnerships within the Schedule to submit specified information to HMRC electronically; sets out that specified information includes certain types of financial information; and states that the regulations may specify reporting periods for which information is to be provided. This is subject to the restriction that financial information in relation to each business may not be required more often than once every three months.

End of period statement

15. Paragraph 8 gives HMRC Commissioners power to make regulations requiring persons within the Schedule to submit a statement containing specified information to HMRC in relation to each relevant period (an end of period statement).

16. Paragraph 8(2) defines "relevant period" for those persons to whom the Schedule applies as either a basis period for those with income from a trade, profession or vocation; and in all other cases a tax year.

17. Paragraph 8(3) states that the information which may be specified in regulations includes information relevant to the calculation of profits, losses, or income of the business.

18. Paragraph 8(4) confirms that regulations may require that the end of period statement includes a declaration that the information included in it is correct and complete.

19. Paragraph 8(5) confirms that an end of period statement must be provided at or before the time at which the person delivers a return under Section 8 or 8A TMA or, if earlier, by the end of 31 January following the tax year.

20. Paragraph 8(6) defines references to an "end of period statement", and an "end of period statement for the tax year", for the purposes of the TMA.

Facility for complying with notice to file under Section 8 or 8A

21. Paragraph 9 gives HMRC Commissioners power to make regulations that will enable taxpayers to file or deliver, by electronic communications, any information that is required to be provided under Section 8 or Section 8A TMA. The practical effect is that a taxpayer will have the option to provide information about both business and non-business income and capital gains through their digital reporting software (as set out in regulations under Schedule A1) for the purposes of meeting their obligations under Sections 8 or 8A.

Partnership return

22. Paragraph 10(1) gives HMRC Commissioners power to make regulations that require partnerships within the Schedule to submit a return containing specified information to HMRC in relation to each tax year.

23. Paragraphs 10(2) and (3) state that the information which may be specified includes any information which may currently be required as part of a Section 12AA TMA (partnership return) or under Section 12AB TMA (partnership statement).

24. Paragraph 10(4) confirms that regulations may require that the return includes a declaration that the information included in it is correct and complete.

25. Paragraph 10(5) confirms that the return must be provided to HMRC on or before 31 January following the end of the tax year.

26. Paragraph 10(6)(a) defines references to a "Schedule A1 partnership return" for the purposes of the TMA.

27. Paragraph 10(6)(b) defines references to a "partnership statement", in relation to a Schedule A1 partnership return, for the purposes of the TMA.

28. Paragraph 10(7) clarifies that, in the Taxes Acts, references (whether general or specific) to returns under the TMA include a reference to a Schedule A1 partnership return.

Record-keeping

29. Paragraph 11(1) enables HMRC Commissioners to make regulations requiring a person or partnership within the Schedule to maintain electronic records. The requirement is to both keep and preserve relevant records; HMRC may specify what must be kept, the form it should take, and for how long it should be kept.

30. Paragraph 11(2) clarifies that the records that HMRC may require to be kept are those relevant to periodic updates, end of period statements and partnership returns.

31. Paragraph 11(3) clarifies that the record-keeping requirements imposed by regulations under this Paragraph will not replace any other record-keeping requirements, and are in addition to those requirements.

32. Paragraph 11(4) clarifies that Paragraph 5(1) of the Schedule (nominated partners) does not apply to the requirements imposed by regulations under this Paragraph.

33. Paragraph 12(1) to (4) imposes a penalty, not exceeding £3,000, on any person or each partner in a partnership who fails to keep or preserve records as required by regulations made under Paragraph 11. Partners are only liable for a penalty for a failure occurring during the period in which they were partners in the partnership.

34. Paragraph 12(5) disapplies the penalty if a person or partner is liable to a penalty under Section 12B(5) TMA for the period in question.

Electronic communications and records: supplementary powers

35. Paragraph 13(1) sets out the scope of HMRC's regulation-making powers in relation to electronic communications and records that may be required to meet the requirements of the Schedule, including what constitutes electronic communications and records.

36. Paragraph 13(2) sets out that regulations made under the relevant Paragraphs of the Schedule (namely 7, 8, 9, 10 and 11) may make provision for the electronic form of information required to be provided and records to be kept or preserved, and make other provision pertaining to electronic information and records.

37. Paragraph 13(3) states that the regulations may make provision about the manner of proving various matters concerned with electronic information and records.

38. Paragraph 13(4) states that the regulations may make provision for the use of intermediaries in connection with providing and authenticating electronic information.

39. Paragraph 13(5) states that the regulations may allow authorisations or requirements to be given by a specific or general direction by HMRC Commissioners.

40. Paragraph 13(6) states that the regulations may provide that the information must meet standards of accuracy and completeness set by HMRC Commissioners' directions and that a failure to meet those standards may be treated as a failure to comply with the regulations.

Part 3: Exemptions

41. Paragraph 14(1) requires HMRC Commissioners to make regulations to exempt those whom they are satisfied are digitally excluded from certain requirements of the Schedule.

42. Paragraphs 14(2) and (3) set out that a person is digitally excluded where the digital exclusion condition is met, and that a partnership is digitally excluded where each partner meets the digital exclusion condition.

43. Paragraph 14(4) explains the digital exclusion condition. It is met by practising members of religious societies whose beliefs are incompatible with using electronic communications or keeping electronic records, and by those for whom it is not reasonably practicable to use electronic communications or keep electronic records.

44. Paragraph 15(1) enables HMRC Commissioners to make regulations to provide for further exemptions.

45. Paragraph 15(2) states that such further exemptions may be based on income or other financial criteria.

Part 4: Supplementary provision

Appeals

46. Paragraph 16 provides for a right of appeal against any decision made by the Commissioners under regulations under the Schedule. It also provides that a notice of appeal must be made in writing within 30 days and must specify the grounds of appeal.

Interpretation

47. Paragraph 17 states that any power in the Schedule to require information includes power to require accounts, statements or documents relating to the information.

Regulations

48. Paragraph 18(1) makes further provision about the regulations which may be made under the Schedule, and that these may make different provision for different cases or purposes. In particular, it provides that HMRC's regulation-making power allows for matters to be specified by the Commissioners in accordance with the regulations, for example in a public notice.

49. Paragraph 18(2) provides that matters pertaining to intervals, times or periods for periodic updates must be specified in regulations and cannot, for example, be specified in a public notice.

50. Paragraph 18(3) provides that regulations may allow persons or partnerships, to whom the Schedule applies but who would not otherwise be subject to a requirement under the regulations, to elect to be subject to that requirement.

51. Paragraph 18(4) provides that regulations may make provision for changes to a business's accounting date to be disregarded for the purpose of any provision of the Schedule or the regulations and the business's period of account determined accordingly.

52. Paragraph 18(5) clarifies that the power to make regulations under the Schedule is exercisable by statutory instrument

53. Paragraph 18(6) explains that the regulation-making power is subject to the negative procedure for statutory instruments.

54. Subsection 4 of the clause provides that subsections (1) to (3) above come into force only following the making of an appointed day Order by the Treasury.

55. Subsection 5 provides that regulations under subsection (4) may appoint different coming into force dates for different purposes.

Background note

56. This clause enables the government to make business taxes digital for income tax purposes, as announced at Autumn Statement 2015, from a future date still to be decided.

57. The clause enables regulations to be made giving effect to the requirement that individuals carrying on a trade, profession, vocation, or a property business, and partnerships that have partners who pay income tax on their share of the profits, must keep digital records and provide regular digital updates to HMRC. (Chargeable income for an individual will continue to be established by reference to their income for a tax year, and in particular for an unincorporated trading business the profits of its basis period for that tax year.)

58. Specifically, this clause inserts new provisions into the TMA which set out to whom the requirements apply and give authority to HMRC to make regulations about the new digital reporting and record-keeping obligations. No such regulations can be made until the clause enters into force following the making of an Appointed Day Order.

59. There are some who genuinely cannot use digital tools, due to individual circumstances such as disability, religion or geographical location. They are to be exempted from these obligations and alternatives will be provided.

60. The aims of Making Tax Digital are to bring the tax system in line with what businesses and individuals now expect from other services provided: a modern digital experience. It will help give businesses greater certainty that they have got their tax right by reducing the likelihood of making errors when submitting information to HMRC.

Clause 61 and Schedule 14: Digital reporting and record-keeping for income tax etc: further amendments

Summary

1. This clause and Schedule introduce amendments to existing provisions of tax legislation to facilitate, and consequential on, the introduction of new digital record-keeping and reporting requirements for businesses within the charge to income tax. Part 1 of the Schedule amends provisions of the Taxes Management Act 1970 (TMA). In particular, it provides a new method for such taxpayers to make a final declaration about their total income and capital gains for a tax year and make a self-assessment of their liabilities to income tax and capital gains tax. Part 2 of the Schedule amends provisions of other enactments.

Details of the clause

2. Subsection 1 inserts Schedule 14.

3. Subsections 2 to 5 provide powers which allow the Commissioners of HMRC to make consequential amendments to other provisions of the Taxes Acts by regulations subject to an affirmative resolution of the House of Commons.

4. Subsection 6 provides that subsections (1) to (5) and Schedule 14 come into force only following the making of an appointed day Order by the Treasury.

5. Subsection 7 provides that regulations under subsection (6) may appoint different coming into force dates for different purposes.

Details of the Schedule

Part 1 – Amendments of the Taxes Management Act 1970

6. Paragraph 1 is introductory.

7. Paragraph 2 amends Section 7 of the TMA (notice of liability). In particular, it ensures that all persons who have received a notice to file under Section 8 of the TMA (as amended by the Schedule) will continue to be discharged from the obligations set out in Section 7 to notify chargeable income and gains.

8. Paragraph 3 amends and renames Section 8 of the TMA (personal return). It ensures that those individuals with income which falls within the scope of new Schedule A1 to the TMA continue to be able to fulfil their obligations under Section 8.

9. Subparagraphs 3(1) and (2) are introductory.

10. Subparagraph 3(3) amends Section 8(1) in recognition of the fact that the requirement is now to file information, a self-assessment and final declaration in response to a notice.

11. Subparagraph 3(4) amends Section 8(1AA)(a) to make clear that amounts chargeable take into account information provided in response to a notice to file under Section 8 or in any end of period statement required to be provided by regulations under Paragraph 8 of Schedule A1 to the TMA.

12. Subparagraph 3(5) inserts a number of new subsections and carries over some of the existing obligations to enable individuals in a variety of circumstances to fulfil their obligations in response to a notice to file under Section 8. These are:

    a. Subsection (1AB), which establishes what things a notice to file requires a person to provide. They are: such information as may reasonably be required to establish tax liability; a self-assessment; and a final declaration. The subsection also maintains the requirement to deliver such accounts, statements or other documents as may be reasonably required.

    b. Subsection (1AC)(a), which sets out that, where a person is not required to provide an end of period statement (because they are not subject to digital reporting and record-keeping), the obligation to provide the things required by a notice to file is fulfilled by making and delivering a return.

    c. Subsection (1AC)(b), which sets out that where a person is required to provide an end of period statement (because they are subject to digital reporting and record-keeping), they must either provide the things required by Subsection (1AB)(a) by making and delivering a return containing these things, or by using the facility in Paragraph 9 of Schedule A1 to the TMA. The facility allows persons to provide these things through their digital reporting software (as set out in regulations under Schedule A1).

    d. Subsection (1AD), which provides that information required by Subsection (1AB)(a)(i) can be provided by the appropriate method before the date of the notice.

13. Subparagraph 3(6)(a) amends Section 8(1B) in recognition of fact that the requirement is now to file information, a self-assessment and a final declaration in response to a notice.

14. Subparagraphs 3(6)(b) and (7) amend Section 8(1B) and (1C) to make clear that a person who carries on a trade, profession or vocation in partnership must include each amount that is equal to their share of the partnership income as detailed in the partnership statement (whether that is contained in a partnership return under Section 12AA TMA or under regulations under Schedule A1 to the TMA).

15. Subparagraph 3(8) makes consequential changes to the provisions which lay down different filing dates for electronic and paper returns.

16. Subparagraph 3(9) amends Section 8(1F) in recognition of fact that the requirement is now to file information, a self-assessment and a final declaration in response to a notice.

17. Subparagraph 3(10) amends Section 8(1G) in recognition of fact that the requirement is now to file information, a self-assessment and a final declaration in response to a notice.

18. Subparagraph 3(11) inserts a new Subsection (1HA) which establishes the deadline for those individuals who use the facility in Paragraph 9 of Schedule A1 to provide the things required under Subsection (1AB) through their digital reporting software. The deadline is either 31 January in the year following the year of assessment or, if later, 3 months after the date of the Section 8 notice.

19. Subparagraph 3(12) substitutes subsection (2) of Section 8. Subsection (2) now provides that the final declaration required under subsection (1AB) is a declaration that the information and self-assessment filed in response to a Section 8 notice are, when taken together, correct and complete.

20. Subparagraphs 3(13) and (14) amend subsections (3) to (4B) of Section 8 in recognition of the fact that the requirement is now to file information, a self-assessment and a final declaration in response to the notice.

21. Subparagraph 3(15) inserts new subsections (6) and (7) into Section 8 of the TMA, which provide interpretations, unless a contrary intention appears elsewhere, as follows:

    a. In Section 8, "notice to file" means a notice to file under that Section;

    b. In the Taxes Acts, a reference (whether specific or general) to a return under Section 8 for a year of assessment is a reference to the information, self-assessment and final declaration filed for the year under Section 8 (however they are provided) and any end of period statement provided to comply with regulations under Schedule A1 to the TMA;

    c. In the Taxes Acts, a reference (whether specific or general) to anything required to be included in a return under Section 8 is a reference to the information, self-assessment and final declaration required under Section 8 (however they may be provided) and any end of period statement required for the year of assessment;

    d. In the Taxes Acts, a reference (whether specific or general) to making and delivering a return under Section 8 is a reference to making and delivering a return under Subsections (1AC)(a) or (b)(i) or, if the facility in Paragraph 9 of Schedule A1 to the TMA is used, to making the final declaration.

22. Paragraph 4 amends Section 8A of the TMA (trustee's return) in line with those changes made to Section 8 in Paragraph 3 of the Schedule, where relevant.

23. Paragraph 5 amends Section 8B of the TMA (withdrawal of a notice under Section 8 or 8A). It ensures that all persons who have received a notice to file under Section 8 or 8A of the TMA will (subject to the existing qualifications set out in Section 8B) continue to be able to request that HMRC withdraw the notice.

24. Paragraph 6 makes consequential amendments to Section 9 of the TMA (returns to include self-assessment) in recognition of the fact that the obligation to make a self-assessment in response to a notice to file under Section 8 now sits in Sections 8 and 8A TMA.

25. Paragraph 7 amends Section 12ZH of the TMA dealing with Non Resident Capital Gains Tax (“NRCGT”) returns and self-assessment to reflect the changes to Sections 8 and 9 TMA.

26. Paragraph 8 amends Section 12ZI of the TMA dealing with trustees’ NRCGT returns and self-assessment to reflect the changes to Sections 8A and 9 TMA.

27. Paragraph 9 limits the existing definition of a partnership return in Section 12AA(10A) to a return made in response to a notice under Section 12AA TMA.

28. Paragraph 10 amends Section 12AB of the TMA (partnership return to include partnership statement) to clarify that this provision applies to Section 12AA partnership returns (and not to Schedule A1 partnership returns, which are returns required under regulations under Paragraph 10 of Schedule A1).

29. Paragraph 11 amends Section 12ABA of the TMA (amendment of partnership return by taxpayer) to clarify that the provision applies to both Section 12AA partnership returns and Schedule A1 partnership returns.

30. Paragraph 12 amends Section 12ABB of the TMA (HMRC power to correct partnership return). It ensures that HMRC can correct both Section 12AA partnership returns and Schedule A1 partnership returns.

31. Paragraph 13 amends Section 12AC of the TMA (notice of enquiry into partnership return). It enables HMRC to enquire into both Section 12AA partnership returns and Schedule A1 partnership returns.

32. Paragraph 14 amends Section 12B of the TMA (records to be kept for purposes of returns). Subparagraph 14(1) is introductory.

33. Subparagraph 14(2) ensures the record keeping requirements also apply to those who may be required to submit a Schedule A1 partnership return, in addition to those who may be given a notice to file under Section 8, 8A or 12AA of the TMA. The records that must be kept are those that may be requisite for making a return.

34. Subparagraphs 14(3) and (4) carry over the existing obligation to preserve records until HMRC enquiries into the return are complete or may no longer be made, and extends it to Schedule A1 partnership returns.

35. Subparagraph 14(5) carries over the existing obligation to preserve records where notices under Sections 8, 8A or 12AA are given late.

36. Subparagraphs 14(6), (7) and (8) are consequential to subparagraph 14(2).

37. Paragraph 15 ensures that Section 28ZA of the TMA (referral of questions during enquiry) can provide for questions to be referred to the tribunal during enquiries into Section 12AA partnership returns and Schedule A1 partnership returns, as well as other returns.

38. Paragraph 16 amends Section 28B(8) of the TMA (completion of enquiry into partnership return), consequential to the partial closure notice provision in Schedule 15 to this Bill, so that it extends a closure notice, or partial closure notice, to an enquiry into a Schedule A1 partnership return and continues to apply to an enquiry into a Section 12AA partnership return.

39. Paragraph 17 amends Section 28C(3) of the TMA (determination of tax where no return delivered) to reflect the changes to Sections 8, 8A and 9 TMA.

40. Paragraph 18 amends Section 28H of the TMA (simple assessments) to clarify that subsection (1) does not apply to a person who has received a notice to file under Section 8 TMA.

41. Paragraph 19 amends Section 28I of the TMA (simple assessments for trustees) and clarifies that subsection (1) does not apply to a settlement if the relevant trustees have received a notice to file under Section 8A TMA.

42. Paragraph 20 amends Section 29 of the TMA (assessment where loss of tax discovered). Subparagraph 20(1) is introductory.

43. Subparagraph 20(2) adds that a discovery assessment shall not be made where the loss of tax is attributable to an error or mistake contained in an end of period statement which was provided in accordance with the practice generally prevailing at the time.

44. Subparagraph 20(3) confirms that any information provided by the taxpayer under regulations under Paragraph 7 of Schedule A1 to the TMA (periodic updates) is information made available to the officer for the purposes of Section 29(5).

45. Paragraph 21 amends Section 30B of the TMA (amendments of partnership statement where loss of tax is discovered). Where Schedule A1 partnership returns are concerned, references in Section 30B to the "representative partner" will be to the nominated partner, namely the partner defined in Paragraph 5 of Schedule A1.

46. Paragraph 22 amends Section 42 of the TMA (procedure for making claims) to ensure this Section also applies to claims made in a Schedule A1 partnership return.

47. Paragraphs 23 and 24 amend respectively Sections 59A and 59B of the TMA (payments of tax; assessments other than simple assessments) to reflect the changes to Sections 8, 8A and 9 TMA.

48. Paragraph 25 amends Section 106C of the TMA (offence of failing to deliver a return) to ensure it applies to any information which is required to be submitted in response to a notice to file under Section 8 TMA or any end of period statement.

49. Paragraph 26 amends Section 106D of the TMA (offence of making inaccurate return) to ensure it applies to inaccuracies in any information which is submitted in response to a notice to file under Section 8 TMA or any end of period statement.

50. Paragraph 27 makes a consequential amendment to Section 106E of the TMA (exclusions from offences under Section 106B to 106D TMA).

51. Paragraph 28 extends Section 107A(2) of the TMA (trustee liability for penalties) to any penalty for which a trustee may be liable under Paragraph 12 of Schedule A1 to the TMA (failure to keep and preserve digital records).

52. Paragraph 29 amends Section 118 of the TMA, which provides definitions of terms used in that Act. In particular, it inserts (or indexes) new definitions of "end of period statement", "nominated partner", "partnership statement", "Schedule A1 partnership return" and "section 12AA partnership return". It is also amends the existing definition of a "partnership return" and the existing definition of "successor" (in relation to a person who is required to make and deliver (or has delivered) a partnership return).

53. Paragraph 30 amends Schedule 1AB to the TMA (recovery of overpaid tax etc) to ensure that claims for overpayment relief can apply in relation to mistakes made in a Schedule A1 partnership return.

Part 2 – Amendments of Other Acts

54. Paragraph 31 amends Section 188J of the Taxation of Chargeable Gains Act 1992 (representative company of an NRCGT group) to reflect the fact that the duty on any person to make a final declaration about their total income and gains for a tax year now sits in new Section 8(1AB) of the TMA.

55. Paragraph 32 amends Paragraph 12 of Schedule 18 to the Finance Act 1998 (information about business carried on in partnership) to ensure it also covers the information required as part of a Schedule A1 partnership return.

56. Paragraph 33 amends Section 201 of the Capital Allowances Act 2001 (elections) so that the reference to tax returns in Section 201(6) also covers Schedule A1 partnership returns.

57. Paragraph 34 amends Section 19(4)(a) of the Tax Credits Act 2002 (power to enquire) to reflect the changes to Section 8 TMA.

58. Paragraph 35 amends Section 217(2) of the Income Tax (Trading and Other Income) Act 2005 (conditions for basis period to end with new accounting date) so that it also covers Schedule A1 partnership returns.

59. Paragraph 36 amends Section 964(4)(b) of the Income Tax Act 2007 (collection through self-assessment return) to reflect the changes to Sections 8, 8A and 9 TMA.

60. Paragraph 37 amends Paragraph 44 of Schedule 13 to the Crossrail Act 2008 (modification of transfer schemes) so that it also covers Schedule A1 partnership returns.

61. Paragraph 38 amends Paragraphs 21 and 37 of Schedule 36 to the Finance Act 2008 (information and inspection powers) so that they also apply to Schedule A1 partnership returns.

62. Paragraphs 39 to 42 amend various sections of the Taxation (International and Other Provisions) Act 2010 so that they also apply to Schedule A1 partnership returns.

63. Paragraphs 43 to 46 amend various provisions of the Finance Act 2014. Paragraph 43 is introductory.

64. Paragraph 44 amends Section 253 of that Act (duty of persons to notify the Commissioners) so that the definition of a "tax return" in Section 253(6) also covers a Schedule A1 partnership return.

65. Paragraph 45 amends Paragraphs 2, 3 and 5 of Schedule 31 to that Act (follower notices and partnerships) to ensure they also cover Schedule A1 partnership returns and nominated partners.

66. Paragraph 46 amends Paragraphs 1 to 3 of Schedule 32 to that Act (accelerated payments and partnerships) to ensure they also cover Schedule A1 partnership returns and nominated partners.

67. Paragraphs 47 to 49 amend various provisions of the Finance Act 2016. Paragraph 47 is introductory.

68. Paragraph 48 amends Schedule 18 to that Act (serial tax avoidance), with subparagraph 48(1) being introductory. Subparagraph 48(2) amends Paragraph 51(8)(b) of that Schedule (partnerships: information) to ensure that reference to amounts stated under Section 12AB(1) also covers equivalent information which may be required, by regulations made under Paragraph 10 of Schedule A1, to be included in a Schedule A1 partnership return.

69. Subparagraph 48(3) amends Paragraph 52 of Schedule 18 (partnerships: special provision about taxpayer emendations). This ensures that reference to amounts stated under Section 12AB(1)(b) also covers equivalent information which may be required, by regulations made under Paragraph 10 of Schedule A1, to be included in a Schedule A1 partnership return. It also ensures that Paragraph 52(3) covers nominated partners in relation to Schedule A1 partnership returns as well as successors to representative partners.

70. Subparagraph 48(4) amends the definitions in Paragraph 53 of Schedule 18 (supplementary provision relating to partnerships) to ensure the relevant paragraphs of the Schedule also apply to any nominated partner in relation to a Schedule A1 partnership return.

71. Subparagraph 48(5) amends the general interpretation provisions in Paragraph 58 of Schedule 18 to ensure that references to a "partnership return" in that Schedule include a Schedule A1 partnership return.

72. Paragraph 49 amends the interpretative provisions in Schedule 19 to the Finance Act 2016 (large business: tax strategies and sanctions), in particular to ensure that, in that Schedule, the representative partner of a UK partnership also includes the nominated partner in relation to a Schedule A1 partnership return. It also amends the definition of "financial year" in consequence of the new definition of partnership statement.

Background note

73. This clause is one of three clauses in the Bill which will deliver the government's decision to make business taxes digital for income tax purposes, as announced at Autumn Statement 2015.

74. Those clauses give effect to the requirement that individuals carrying on a trade, profession, vocation, or a property business, and partnerships that have partners who pay income tax on their share of the profits, must keep digital records and provide regular digital updates to HMRC. Chargeable income for an individual will continue to be established by reference to their income for a tax year, and in particular for an unincorporated trading business the profits of its basis period for that tax year.

75. This clause introduces a Schedule which amends various provisions of the Taxes Management Act 1970 (TMA) as well as other enactments.

76. The changes to the TMA in Part 1 of the Schedule provide for a new method by which taxpayers can make a self-assessment of their liability to income tax and capital gains tax, and a final declaration of their income and gains for a tax year. They also make changes to the provisions about partnership returns and simple assessments. This will enable delivery of the government's commitment to abolish separate tax returns for partners where they have no other income to report other than their share of the profits from a partnership.

77. There are also some consequential amendments to HMRC's compliance powers so that it can continue to administer tax effectively.

78. Part 2 of the Schedule makes miscellaneous consequential amendments to other enactments.

Clause 62: Digital reporting and record-keeping for VAT

Summary

1. This clause amends the existing powers to make regulations about the administration and enforcement of Value Added Tax (VAT). This will enable the Commissioners of HMRC to make regulations requiring businesses to keep digital records and report digitally for VAT purposes (in addition to existing powers to make regulations requiring returns to be rendered digitally). It also amends the existing legislation to make provision for a right of appeal to the Tribunal against decisions of the Commissioners (including decisions relating to the imposition of penalties) relating to the keeping of digital records and reporting digitally for VAT purposes.

Details of the clause

2. Subsection 1 is preparatory and states that the subsections (2) to (4) of the clause make amendments to Schedule 11 to the VAT Act 1994, which provides for regulations about the administration, collection and enforcement of VAT.

3. Subsection 2 extends the powers in Schedule 11, paragraph 2(1), allowing the Commissioners of HMRC to make regulations requiring the keeping of accounts and making of returns, to include the submission of information. It also inserts a new paragraph 2(11A) into Schedule 11, extending the regulation making powers under that paragraph to enable incidental, supplemental, consequential, saving or transitional provisions to be made.

4. Subsection 3 amends paragraph 6 of Schedule 11 to the VAT Act 1994, which concerns record-keeping obligations.

5. Subsection 3(a) omits paragraph 6(4).

6. Subsection 3(b) inserts a number of new subparagraphs.

7. New Paragraph 6(5) enables the Commissioners to make provision by regulations about the form in, and means by which, records are to be kept and preserved.

8. New Paragraph 6(6) provides that regulations under paragraph 6(5) may make different provisions for different cases, may provide for conditions and exceptions in notices and may include incidental, supplemental, consequential, saving or transitional provisions.

9. New Paragraph 6(7) provides that if the regulations under paragraph 6(5) require records to be kept or preserved electronically, then they must also exempt taxable persons from those requirements for any month ('the current month') where the value of the taxable supplies over the 12 month period ending with the month before the current month was less than the VAT threshold and the person was not subject to the requirement to keep or preserve records electronically in the month before the current month.

10. New Paragraph 6(8) provides that the exemption described in paragraph 6(7) may be modified where a business is transferred as a going concern.

11. New Paragraph 6(9) establishes that the VAT threshold is the amount specified in paragraph 1(1)(a) of Schedule 1 on the first day of the current month (as defined in paragraph 6(7)).

12. New Paragraph 6(10) provides that regulations under paragraph 6(5) may make provision relating to the keeping and preservation of records electronically. This includes provision about the electronic form in which records are kept or preserved, the production of records kept or preserved, the conditions to be complied with in keeping and preserving records, the treating of records as not having been kept or preserved unless conditions are met, authenticating records, and the manner of proving the contents of any records.

13. New Paragraph 6(11) provides that regulations under paragraph 6(5) may make provision as to the form in which electronic records may be kept, for production of those records, for conditions relating to compliance and may allow the authorisations or requirements provided for in those regulations to be given by a specific or general direction of the Commissioners. It also allows regulations to provide how the conditions of such authorisations or requirements are to be satisfied.

14. Subsection 4 substitutes a new sub-paragraph (7) in paragraph 6A of Schedule 11, which concerns powers to direct taxable persons to keep specific records, to provide that regulations made under the new paragraph 6(5) apply also for the purposes of paragraph 6A.

15. Subsection 5 substitutes a new paragraph (zc) in section 83(1) of the VAT Act 1994 to provide for a right of appeal against decisions of the Commissioners (including decisions about the imposition of penalties) about the application of regulations made under paragraph 2 or 6 of Schedule 11 to that Act or of regulations made under sections 135 or 136 of the Finance Act 2002 where those regulations require returns or information to be submitted by electronic communications or require records to be kept or preserved in electronic form.

16. Subsection 6 preserves the effect of the existing paragraphs 6(4) and 6A(7) of Schedule 11 to the VAT Act 1994 until the first regulations under new paragraph 6(5) of that Schedule come into force.

17. Subsection 7 prohibits the use of the regulatory powers provided for under the amended paragraph 6(5) of Schedule 11 to the VAT Act 1994 to make regulations requiring records to be kept preserved in electronic form which have effect before 1 April 2019.

Background note

18. This clause delivers the government's decision to make business taxes digital for VAT purposes, as announced at Autumn Statement 2015.

19. This clause will enable regulations to be made requiring VAT-registered persons with turnover above the VAT registration threshold to keep digital records and provide regular digital updates to HMRC.

20. This clause amends HMRC powers to make regulations so that they may require businesses which are registered for VAT or liable to be registered for VAT to use digital tools to keep records and to provide VAT information and VAT returns through the use of digital tools. The clause also enables regulations to provide for exemptions to those obligations. In particular, if regulations are made providing for records to be kept or preserved digitally then VAT-registered persons with turnover below the registration threshold will be exempted. Regulations providing for digital record keeping cannot come into force before 1 April 2019.

21. There are some who genuinely cannot use digital tools, due to individual circumstances such as disability, religion or geographical location. They will be exempted from these obligations and alternatives will be provided.

Clause 63 and Schedule 15: Partial closure notices

Summary

1. This clause and Schedule amends the Taxes Management Act 1970 and Schedule 18 of the Finance Act 1998 and introduces a new power to allow HM Revenue and Customs (HMRC) and its customers to resolve matters during a tax return enquiry ahead of full closure through the issue of Partial Closure Notices.
2. The clause and Schedule come into effect at Royal Assent toi the Finance Bill and will apply in relation to any enquiry which has not been concluded on that date by means of a closure notice under existing provisions.

Details of the clause

3. Clause 63 introduces Schedule 15**.**

Details of the Schedule

4. Paragraph 1 introduces amendments to the Taxes Management Act 1970 (TMA).
5. Paragraph 2 amends section 9A. The amendments to subsections (5)(a) and (b), and new subsection (c), have the effect that, where notice of enquiry is given as a result of a taxpayer amendment (under section 9ZA) and following the issue of a Partial Closure Notice relating to the amendment, or a Final Closure Notice, the enquiry is limited to matters to which the taxpayer amendment relates.
6. Paragraph 3 amends section 9B. The amendments to subsections (1), (3), (3)(a), (3)(b), and (4) allow any taxpayer amendment that relates to any matters in an open enquiry to be concluded by Partial or Final Closure Notice.
7. Paragraph 4 amends section 9C. The amendments to subsections (1), (2) and (4) allow the amendment of a self-assessment during an enquiry to prevent loss of tax in relation to matters that have not been concluded by a Partial Closure Notice.
8. Paragraph 5 amends section 12ZM. The amendments to subsections (4)(a) and (b) and new subsection (c) have the effect that, where notice of enquiry is given as a result of a taxpayer amendment (under section 12ZK) and following the issue of a Partial Closure Notice relating to the amendment, or a Final Closure Notice, the enquiry is limited to matters to which the taxpayer amendment relates.

9. Paragraph 6 amends section 12ZN. The amendments to subsections (1), (3), 3(a), 3(b), and (4) allow any taxpayer amendment that relates to any matters in an open enquiry to be concluded by Partial or Final Closure Notice.

10. Paragraph 7 amends section 12AC. The amendments to subsections (5)(a) and (b), and new subsection (c), have the effect that, where notice of enquiry is given as a result of a taxpayer amendment (under section 12ABA) and following the issue of a Partial Closure Notice relating to the amendment, or a Final Closure Notice, the enquiry is limited to matters to which the taxpayer amendment relates.

11. Paragraph 8 amends section 12AD. The amendments to subsections (1), (3), (3)(a), (3)(b), (4)(a) and (5) allow any partnership amendment that relates to any matters in an open enquiry to be concluded by Partial or Final Closure Notice.

12. Paragraph 9 amends section 12B. The amendments to subsection (1)(b)(i), which defines one of the dates by reference to which the relevant day (until which records are to be kept) is determined, have the effect that the date defined by this subsection is the date on which a Final Closure Notice is issued, even if a Partial Closure Notice has previously been issued.

13. Paragraph 10 amends section 28ZA. The amendments to subsections (1) and (5), have the effect that any question relating to a matter in an enquiry under sections 9A(1) or 12AC(1) may be referred jointly to the tribunal until either a Partial or Final Closure Notice is issued in relation to the matter.

14. Paragraph 11 amends section 28ZD. The amendments to subsection (1)(a), which is replaced by new subsection (1)(a) and (aa), and to subsection (1)(b), have the effect that neither Partial nor Final Closure Notices may be issued relating to questions referred under section 28ZA while subject to proceedings.

15. Paragraph 12 amends section 28A. The amendments to subsections (1), (2), (3), (4) and (6) plus new subsections (1A), (1B), (7) and (8) define closure of enquiries into personal or trustee returns and Non-resident Capital Gains Tax returns. Sections 28A(1A) and (1B) introduce a new procedure to close any matter in an enquiry with the issue of a Partial Closure Notice in advance of a Final Closure Notice. Section 28A(4) extends the right to taxpayers to apply to the tribunal for a direction that HMRC issue a Partial Closure Notice in relation to any matter. Section 28A(8) explains that existing Taxes Acts references to “closure notice” under this section now refer to Partial or Final Closure Notices.

16. Paragraph 13 amends section 28B. The amendments to subsections (1), (2), (3), (5) and (7) plus new subsections (1A), (1B), (8) and (9) define closure of enquiries into partnership returns. Sections 28B(1A) and (1B) introduce a new procedure to close any matter in an enquiry with the issue of a Partial Closure Notice in advance of a Final Closure Notice. Section 28B(5) extends the right to the taxpayer to apply to the tribunal for a direction that HMRC issue a Partial Closure Notice in relation to any matter. Section 28B(9) explains that existing Taxes Acts references to “closure notice” under this section now refer to Partial or Final Closure Notices.

17. Paragraph 14 amends section 29. The amendments to subsection (5)(b) and new subsections (5)(b)(i) and (ii) concern the second of the two conditions, either of which must be satisfied before a discovery assessment may be made if a return has been delivered in respect of the relevant year of assessment. The effect of the amendments is that, where a notice of enquiry has been given, this second condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to the situation mentioned in subsection (1) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

18. Paragraph 15 amends section 29A of TMA1970. The amendment to subsection (5)(b) and new subsections (5)(b)(i) and (ii) for Non-Resident Capital Gains Tax disposals concern the second of the two conditions, either of which must be satisfied before a discovery assessment may be made if a return has been delivered in respect of the relevant year of assessment. The effect of the amendments is that, where a notice of enquiry has been given, this second condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to the situation mentioned in subsection (1) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

19. Paragraph 16 amends section 30. The amendment to subsection (5)(b) concerns one of the dates by which the time limit for an assessment under section 30 to recover overpayment of tax is determined. The effect is that the date in subsection (5)(b) is determined by reference to the issue of a Final Closure Notice.

20. Paragraph 17 amends section 30B. The amendments at subsection (6)(b) and new subsections (b)(i) and (ii) refer to partnership statements and concern the second of the two conditions, either of which must be satisfied before a discovery assessment may be made if a return has been delivered in respect of the relevant year of assessment. The effect of the amendments is that, where a notice of enquiry has been given, this second condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to the situation mentioned in subsection (1) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

21. Paragraph 18 amends section 31. The amendment to subsection (2) has the effect that where there is an appeal in an open enquiry against a section 9C amendment of a self-assessment, the appeal cannot proceed further until a Partial or Final Closure Notice has been issued in respect of the matter(s) related to the amendment.

22. Paragraph 19 amends section 59AA. The amendment to subsection (8)(a) refers to the time limit for a repayment under section 59AA where there is an enquiry into the Non-Resident Capital Gains Tax return. It has the effect that the repayment need not be made before a Final Closure Notice is issued. (Subsection 8(b) however is unchanged and allows for provisional repayment to be made.)

23. Paragraph 20 amends section 59B. The amendment to subsection (4A)(a) refers to the time limit for a repayment where there is an enquiry into a return. It has the effect that the repayment need not be made before a Final Closure Notice is issued. (Subsection (4A)(b) however is unchanged and allows for provisional repayment to be made.)

24. Paragraph 21 amends Schedule 3ZA. The amendment to paragraph 2, sub-paragraph (3)(b) and new sub-paragraphs (4), (4)(a) and (4)(b) refer to the dates when an amount is payable or repayable where a self-assessment is amended under section 9B(3) by a taxpayer during an enquiry. The amendments have the effect that any amount repayable would not be due for repayment until the issuing of a Final Closure Notice.

TCGA1992

25. Paragraph 22 amends section 184I. The amendments to subsections (4), (5) and (7)(a) relate to the restrictions on giving notices under sections 184G and 184H (relevant notices) after completion of an enquiry. The amendment to subsection (10) relates to the restriction on discovery assessments following a relevant notice given after completion of an enquiry. The effect of the amendments is that these restrictions will apply when an enquiry has been completed into all matters to which the relevant notice relates. New subsection (9A) relates to the restriction on giving closure notices when a relevant notice has been given after an enquiry has been opened but not completed. Its effect is that there is no restriction on giving a Partial Closure Notice unconnected with the relevant notice.

Finance Act 1998: Schedule 18

26. Paragraph 23 introduces amendments to Schedule 18 to Finance Act 1998.

27. Paragraph 24 amends paragraph 30. The amendment at sub-paragraph (1) and new sub-paragraph (6)(a) and (b) maintain the power of amendment of a self-assessment during an enquiry to prevent loss of tax in relation to matters that have not been concluded by a Partial Closure Notice.

28. Paragraph 25 amends paragraph 31. The amendments to subsections (1), (3)(b), (4)(a) and (5) maintain the rule that a company amendment that relates to any matters in an open enquiry do not take effect to amend the tax due until after the matter is concluded by Partial or Final Closure Notice.

29. Paragraph 26 amends paragraph 31A. The amendments to sub-paragraphs (1) and (5) have the effect that any question relating to a matter in an enquiry under paragraph 24 may be referred jointly to the tribunal until either a Partial or Final Closure Notice is issued in relation to the matter.

30. Paragraph 27 amends paragraph 31C. Sub-paragraph (1)(a) is replaced by sub-paragraph (1)(a) and (aa) and sub-paragraph (1)(b) is amended, with the effect that neither Partial nor Final Closure Notices may be issued relating to questions referred under paragraph 31A while subject to proceedings.

31. Paragraph 28 amends paragraph 32. The amendments to sub-paragraph (1), (which is substituted by (1), (1A) and (1B)), and sub-paragraph (2) define closure of enquiries into company returns. Sub-paragraphs (1A) and (1B) introduce a new procedure to close any matter in an enquiry with the issue of a Partial Closure Notice in advance of a Final Closure Notice. New sub-paragraph (4) explains that existing Taxes Acts references to a "closure notice" under this section now refer to a Partial or Final Closure Notice.

32. Paragraph 29 amends paragraph 33. The amendments to sub-paragraphs (1) and (3) extend the right to a company to apply to the tribunal for a direction that HMRC issue a Partial Closure Notice in relation to any matter.

33. Paragraph 30 amends paragraph 34. The amendments to sub-paragraphs (1), (2), (2A), (4)(c) and (5) have the effect that a Partial or Final Closure Notice must state the officer's conclusions and either state that no amendment to the return is required, or make the amendments that are required.

34. Paragraph 31 amends paragraph 42. The amendment to sub-paragraph (2A) concerns the conditions that must be satisfied before a discovery assessment can be made relating to matters following completion of an enquiry. The effect of the amendment is that the restrictions within sub-paragraph (2A) do not apply as regards income or gains in relation to which certain notices have been given following the completion of an enquiry relating to matters to which such a notice relates.

35. Paragraph 32 amends paragraph 44. The amendment replaces sub-paragraph (1)(b) with new sub-paragraphs (1)(b)(i) and (ii) and concerns a condition which must be satisfied before a discovery assessment or determination may be made if a company tax return has been delivered in respect of the relevant year of assessment. The effect of the amendment is that, where a notice of enquiry has been given, this condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to situation mentioned in paragraph 41(1) or (2) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

36. Paragraph 33 amends paragraph 61. The amendment to sub-paragraphs (1)(a) and (3)(a) has the effect that certain consequential claims, amendments, etc. can be allowed or varied following amendment of a company tax return by Partial or Final Closure Notice.

37. Paragraph 34 amends paragraph 88. The amendments to sub-paragraphs (3)(b) and (4)(b) have the effect the relevant amounts stated in a return will be conclusive when a Partial Closure Notice relating to the amounts has been issued.

Tax Credits Act 2002

38. Paragraph 35 amends section 20. The amendments to subsections (2)(f) and (3)(b) have the effect that HMRC has a period of one year from each revision of a person's income tax liability for a tax year (whether the revision is as a consequence of a Partial Closure Notice or a Final Closure Notice) to decide whether to revise its decision on that person's entitlement to a tax credit for that year.

FA 2008: Schedule 36

39. Paragraph 36 amends Schedule 36 (information and inspection powers). Paragraphs 21(4) and 21ZA(3) are amended so as to refer to matters to which the taxpayer notice relates in regard to providing information or documents.

TIOPA 2010

40. Paragraph 37 introduces amendments to TIOPA 2010.

41. Paragraph 38 amends section 92. The amendments to subsections (3), (4), and (5)(a) relate to the restrictions on giving a counteraction notice after completion of an enquiry. The effect of the amendments is that these restrictions will apply when an enquiry has been completed into all matters to which the counteraction notice relates.

42. Paragraph 39 amends section 93. The new subsection (3A) relates to the restriction on giving closure notices when a counteraction notice has been given after an enquiry has been opened but not completed. Its effect is that there is no restriction on giving a Partial Closure Notice unconnected with the counteraction notice. The amendment to subsection (4) relates to the restriction on discovery assessments following a counteraction notice given after completion of an enquiry. The effect of the amendment is that this restriction will apply when an enquiry has been completed into all matters to which the counteraction notice relates.

43. Paragraph 40 amends section 171. The new subsection (2A) relates to the restriction on giving closure notices when a transfer pricing notice has been given after an enquiry has been opened but not completed. Its effect is that there is no restriction on giving a Partial Closure Notice unconnected with the transfer pricing notice.

44. Paragraph 41 amends section 256 (so far as that section continues to have effect following its repeal by the Finance Act 2016). The amendments to subsections (2) and (6)(a) relate to the restrictions on giving a deduction notice or a receipt notice after completion of an enquiry. The effect of the amendments is that these restrictions will apply when an enquiry has been completed into all matters to which the deduction notice or receipt notice relates.

45. Paragraph 42 amends section 257 (so far as that section continues to have effect following its repeal by the Finance Act 2016). The new subsection (4A) relates to the restriction on giving closure notices when a deduction notice or a receipt notice has been given after an enquiry has been opened but not completed. Its effect is that there is no restriction on giving a Partial Closure Notice unconnected with the deduction notice or receipt notice. The amendment to subsection (5) relates to the restriction on discovery assessments following a deduction notice or a receipt notice given after completion of an enquiry. The effect of the amendment is that this restriction will apply when an enquiry has been completed into all matters to which the deduction notice or receipt notice relates.

46. Paragraph 43 amends section 371IJ. The amendment to subsection (4)(b) amends one of the dates by reference to which the deadline for making, amending or withdrawing a claim under Chapter 9 of Part 9A of TIOPA 2010 is determined. The effect of the amendment is that the relevant date is 30 days after completion of an enquiry into matters to which the claim relates.

Commencement

47. Paragraph 44 relates to commencement date of this Schedule. The amendments made by this Schedule relate to any enquiries under sections 9A, 12ZM or 12AC of TMA 1970, or under Schedule 18 FA 1998, which have not been concluded by means of a closure notice under existing provisions following the day on which this Act is passed.

Background note

48. The clause and Schedule was announced at Autumn Statement 2014 and consulted on in the document - Tax Enquiries: Closure Rules on 18 December 2014, which asked for views on earlier closure of certain aspects during an enquiry. Options included HMRC being able to conclude such aspects or matters in an enquiry into a Self-Assessment (SA) or Corporation Tax Self-Assessment (CTSA) tax return where more than one issue is open.

49. Responses received following the consultation were summarized in the document - Tax Enquiries: Closure Rules Summary of Responses, on 28 September 2015, in which the main consensus from respondents was that taxpayers should have a reciprocal power on the basis of fairness. This view was listened to and carefully considered and in consequence the government has agreed with the consensus that taxpayers will be able to have an equivalent power.

50. This will mean that taxpayers will be apply to the First-tier Tax Tribunal for a direction requiring HMRC to issue a Partial Closure Notice in relation to a matter or matters in an open enquiry.

51. As a safeguard, where HMRC issues a Partial Closure Notice and makes an amendment to the tax return, taxpayers will be able to appeal against, and apply for postponement of, any tax arising from the amendment to the tribunal.

52. HMRC will issue Partial Closure Notices only in enquiries where a customer's tax affairs are complex or where there is avoidance or where there are large amounts of tax at risk. HMRC may, however, also agree to issue a Partial Closure Notice where requested by the taxpayer, by mutual agreement.

Clause 64: Errors in taxpayers' documents

Summary

1. This clause amends Schedule 24 to Finance Act 2007, which provides for penalties to be charged in respect of inaccuracies in taxpayers' documents where those inaccuracies are the result of careless or deliberate behavior by the taxpayer. The measure provides that where a person receives advice in relation to certain tax avoidance arrangements, they cannot rely on that advice to demonstrate they have taken reasonable care to avoid an inaccuracy arising from their use of the arrangements in certain circumstances. These occur where: that advice is received from or commissioned by a person connected to the arrangements; does not take account of the person's individual circumstances; or is given by a person not having the expertise necessary to give it. The measure will come into effect when the Act is passed and will apply to inaccuracies in documents relating to tax periods which begin on or after 6 April 2017 and end on or after the day the Act is passed.

Details of the clause

2. Clause 65 introduces new paragraphs into Schedule 24 to Finance Act 2007.

3. Subsection (1) provides for Schedule 24 to be amended.

4. Subsection (2) introduces new paragraphs 3A and 3B.

5. New Paragraph 3A(1) provides that Paragraph 3A applies when a person gives HMRC a document containing an inaccuracy which leads to an understatement of tax, a false or inflated loss or a false or inflated claim for repayment of tax and the inaccuracy relates to certain tax avoidance arrangements.

6. New Paragraph 3A(2) provides that it is presumed that a relevant inaccuracy was careless unless, either the inaccuracy was deliberate, or the person shows they took reasonable care to avoid inaccuracy.

7. New Paragraph 3A(3) provides that when determining whether a person has taken reasonable care to avoid an inaccuracy, no account is to be taken of evidence showing that the person relied on disqualified advice.

8. New Paragraph 3A(4) defines disqualified advice.

9. New Paragraph 3A(5) provides that advice will not be treated as disqualified on certain specified grounds as long as the person has taken reasonable steps to determine whether or not the advice is disqualified on those grounds and, at the time the document containing the inaccuracy is submitted, reasonably believes the advice not to be so disqualified.

10. New Paragraph 3A(6) provides a definition of who will be "an interested person" for the purposes of new paragraph 3A(4).

11. New Paragraph 3A(7) excepts from advice disqualified by virtue of Paragraph 3A(4)(a), certain advice received in connection with Targeted Anti-Avoidance Rules (TAARs).
12. New Paragraph 3A(8) provides special rules for when a personal representative acts in relation to a deceased person's affairs.
13. New paragraph 3A(9) includes definitions for the purposes of new paragraph 3A.
14. New Paragraphs 3B(1) and (2) provide for the definition of those tax arrangements to which the new paragraphs apply.
15. New Paragraph 3B(3) provides that certain arrangements that accord with established practice are not avoidance arrangements for the purposes of new paragraph 3A even though they fall within new paragraph 3B(2).
16. New Paragraph 3B(4) provides that (while the new paragraphs may also apply to other arrangements) arrangements meeting any of a range of five conditions set out in new paragraph 3B(5) are to be taken to fall within the scope of the new paragraphs.
17. New Paragraph 3B(5) defines those conditions as: the arrangements are ones which under the Disclosure of Tax Avoidance Schemes legislation (DOTAS) are disclosed disclosable arrangements; the arrangements are notifiable under the Indirect Tax Avoidance Disclosure Regime (DASVOIT); the arrangements are ones which have been counteracted under the General Anti-Abuse Rule (GAAR); the arrangements have been counteracted by the issue of a Follower Notice to the person; and the arrangements are ones which have been counteracted by reference to an avoidance-related rule (TAAR).
18. New Paragraphs 3B(6)-(9) include further definitions relevant to whether arrangements fall within the conditions in new paragraph 3B(5).
19. New Paragraph 3B(10) includes definitions for the purposes of new paragraph 3B.
20. Subsection(3) inserts new sub-paragraph (6) into paragraph 18 of Schedule 24 to provide that new paragraph 3A applies where a document is given to HMRC on behalf of a person as it applies where a document is given to HMRC by the person.
21. Subsection (4) makes a consequential adjustment to FA 2014.
22. Subsection (5) contains the commencement provisions for the measure.
23. Subsection (6) provides for the definition of "tax period" as it is used in clause 1(5).

Background note

24. Tax avoidance takes money away from public services and places disproportionate demands on the government's resources. The government's objective is to influence and promote behavioural change in the minority of taxpayers who benefit financially from the use of avoidance schemes. The aim of the measure is to act as a disincentive to entering into tax avoidance. It ensure that those who submit documents that contain inaccuracies in relation to their use of avoidance schemes cannot sidestep a penalty by claiming they took reasonable care based on advice which is supplied by those not qualified to give it or who are themselves connected to the avoidance in question. The measure will come into effect when the Act is passed and will apply to inaccuracies in documents given to HMRC on or after the day the Act is passed, relating to tax periods which begin on or after 6 April 2017 and end on or after the day the Act is passed.

Clause 65 and Schedule 16: Penalties for enablers of defeated tax avoidance

Summary

1. This clause and Schedule introduce a new penalty for any person who enables the use of abusive tax avoidance arrangements, which are later defeated. Enablers are those who design, market or otherwise facilitate tax avoidance. Arrangements are defeated either in the courts or the tribunal or where otherwise counteracted. The penalty charged will be equal to the amount of consideration received or receivable by an enabler for their role in enabling the tax avoidance arrangements which were defeated. Where an enabler has enabled more than one person to implement the same proposal for arrangements, further rules will apply to determine when the penalties will be charged.

2. The new penalty will apply to steps taken by an enabler and in respect of a taxpayer's arrangements entered into on or after the date of Royal Assent to the Finance Act 2017.

Details of the clause and Schedule

Clause 65: Penalties for Enablers of Defeated Tax Avoidance

3. Clause 65 introduces Schedule 16.

The Schedule to Clause 65: Part 1: Liability to Penalty

4. Paragraph 1 provides that a penalty is payable by each person who has enabled abusive tax arrangements which are later defeated.

5. Paragraph 2 provides an overview of each Part to the Schedule.

Part 2: "Abusive" and "Tax Arrangements": Meaning

6. Sub-paragraph 3(1) defines "tax arrangements" for the purpose of this Schedule.

7. Sub-paragraph 3(2) defines "abusive" for the purpose of this Schedule. Sub-paragraph 3(3) sets out the circumstances that must be considered in determining whether arrangements are "abusive" for the purposes of this Schedule.

8. Sub-paragraphs 3(5), (6) and (7) provide examples of circumstances which might indicate that tax arrangements are abusive or not abusive. The examples are not exhaustive.

Part 3: "Defeat" in Respect of Abusive Tax Arrangements

9. Part 3 provides the rules concerning when abusive tax arrangements are considered to be defeated. This will be by reference to a decision of the Courts or a Tribunal, or absent this, where the tax advantages sought to be obtained by the arrangements have been counteracted by adjustments to the tax position of, or assessment of, the person who has entered into them and those adjustments or assessment can no longer be varied on appeal or otherwise.

10. Paragraph 4 states that a "defeat" in respect of abusive tax arrangements will arise where Condition A or B is met.

11. Sub-paragraph 5(1) defines Condition A. It applies where a person who has entered into abusive tax arrangements, or a person on their behalf, gives a specified document to HMRC on the basis that a tax advantage arose from the arrangements concerned, the tax advantage has been counteracted and that counteraction is final.

12. Sub-paragraph 5(2) to (4) define "counteracted", "final", "adjustments" and "making" adjustments for the purpose of paragraph 5.

13. Sub-paragraph 6(1) defines Condition B. It applies where condition A does not apply and HMRC has made an assessment to counteract a tax advantage which it is reasonable to assume was expected to arise as a result of abusive tax arrangements and that counteraction is final.

14. Sub-paragraph 6(2) and (3) define "counteracts", and "final" for the purpose of paragraph 6.

Part 4: Persons Who "Enabled" the Arrangements

15. Part 4 provides the rules concerning who is an enabler. It sets out the types of actions that define enablers (and those actions that are not caught by the legislation). The giving of second-opinion advice which only provides an opinion on arrangements designed or marketed by others and that does not contribute to the design of the arrangements does not make the adviser an enabler. Advice or an opinion which goes on to suggest how the arrangements could be modified to achieve the intended or other tax advantages would constitute enabling unless the reasonable conclusion to draw from reading that advice or opinion is that it is recommending against the arrangements, for instance because there is a high risk that they would be considered abusive.

16. Paragraph 7 describes five different activities which would make a person an "enabler" of arrangements for the purposes of paragraph 1. The circumstances in which a person will fall within one of those descriptions is set out in paragraphs 8 to 12.

17. Paragraph 8 sets out the circumstances in which a person is a "designer" of arrangements for the purposes of paragraph 7. This applies to a person who, in the course of a business carried on by that person, is to any extent responsible for the design of arrangements or a proposal for arrangements that have been implemented. This means that an employee of an employer is not a designer.
18. Sub-paragraph 8(2) explains that a person providing advice or an opinion that is used in the design of the arrangements or proposal will fall within the definition of "designer" only if the advice or opinion is "relevant advice" and the "knowledge condition" is met.
19. Sub-paragraph 8(3) defines "relevant advice" as advice or an opinion which suggests arrangements or alterations to proposed arrangements with a view to designing arrangements in such a way that a tax advantage or greater tax advantage might be expected to arise from them.
20. Sub-paragraph 8(4) defines the "knowledge condition". This ensures that a person who is unaware, or could not reasonably be expected to be aware, that their advice or opinion would be, or is likely to be taken into account in the design of abusive tax arrangements or a proposal for such arrangements is not an enabler and will not face a penalty under this Schedule.
21. Sub-paragraph 8(5) prevents advice or an opinion from being "relevant advice" in circumstances where the information put forward for consideration can reasonably be read as recommending against the arrangements or proposal or modified arrangements or proposal, for instance because there is a high risk that they would be considered abusive.
22. Paragraph 9 provides that a person who, in the course of a business carried on by that person, is to any extent responsible for the organisation or management of the arrangements and knew or could reasonably be expected to know that the arrangements were abusive tax arrangements is a "manager" of arrangements for the purposes of paragraph 7.
23. Sub-paragraph 9(2) provides that a person will not be treated as an enabler where their management of the arrangements in question is for the purpose of enabling a person "T" to withdraw from those arrangements in circumstances where T does not have the obtaining of a tax advantage as one of their purposes for withdrawal from those arrangements.
24. Paragraph 10 provides that a person who, in the course of a business carried on by that person, made a proposal available for implementation or who communicated a proposal to another person with a view to it being implemented is a "marketer" of the arrangements for the purpose of paragraph 7.
25. Paragraph 11 sets out circumstances in which a person who knowingly enters into the arrangements or transactions forming part of the arrangements is an "enabling participant" for the purpose of paragraph 7.

26. Paragraph 12 explains that a person who, in the course of a business carried on by that person, provides a financial product listed in paragraph 12(3), to enable arrangements to be implemented is a "financial enabler" for the purpose of paragraph 7 if that person knew or could reasonably be expected to know that the purpose of obtaining such a financial product was to participate in abusive tax arrangements. The Treasury may by regulation amend the list of financial products in paragraph 12(3).

27. Paragraph 13 excludes certain persons from being an enabler. A person who would otherwise be regarded as an enabler of abusive tax arrangements is not to be so regarded in relation to those arrangements if they are the person who suffers the defeat in respect of them. Where that person is a company, any company in the same group will not be an enabler.

28. Paragraph 14 provides that the Treasury may, by regulations, add to the categories of enabler or provide that a person who would otherwise be an enabler is not to be treated as an enabler for the purposes of this Schedule.

Part 5: Amount of Penalty

29. Paragraph 15 provides that for each person who enabled arrangements mentioned in paragraph 1 the penalty payable is the total amount or value of all the consideration received or receivable for anything done by that person to enable the arrangements.

30. Sub-paragraph 15(2) provides that particular consideration received or receivable by a person may only be taken into account once in calculating a penalty payable by that person under this Schedule.

31. Paragraph 16 sets out certain provisions relating to the calculation of the amount or value of consideration received or receivable.

32. Sub-paragraph 16(2) provides that consideration paid or payable for anything done by a person who enabled the arrangements but which is paid or payable to some other person is to be treated as received or receivable by that enabler for the purposes of calculating a penalty.

33. Sub-paragraph 16(3) excludes any amount charged in respect of value added tax from being classed as consideration.

34. Paragraph 17 provides that the amount of a penalty to which a person is liable under paragraph 1 must be reduced by the amount of any other penalty incurred by that person under any provision other than paragraph 1 where that penalty is in respect of the same conduct as the penalty under paragraph 1.

35. Paragraph 18 provides that HMRC may exercise their discretion to reduce or remit a penalty under paragraph 1 or stay or agree a compromise in relation to proceedings for the recovery of such a penalty.

Part 6: Assessment of Penalty

36. Paragraph 19 outlines the responsibilities of HMRC to assess a penalty and notify a person of their liability to a penalty.

37. Sub-paragraph 19(2) explains that if HMRC does not have the information to establish the total amount or value of the relevant consideration, but has taken all reasonable steps to obtain the information, it can make a reasonable estimate the amount of that consideration.

38. Paragraph 20 states the date by which a penalty must be paid.

39. Paragraph 21 provides that where more than one person has implemented the same proposal for arrangements by entering into abusive tax arrangements which are substantially the same, HMRC must refrain from issuing assessments to charge penalties under paragraph 1 until it can reasonably conclude that more than half of the arrangements implementing that proposal have been defeated.

40. Sub-paragraph 21(4) provides that where an enabler of any such arrangements which have already been defeated specifically asks, a penalty can be assessed on that enabler notwithstanding the provision for deferral of the assessment of that penalty made by paragraph 21.

41. Paragraph 22 provides the time limits within which penalties under paragraph 1 may be assessed. Sub-paragraph (1) provides that the assessment of a penalty under paragraph 1 may not take place after the relevant time except where any of the circumstances set out in sub-paragraphs (3) to (6) apply.

42. Sub-paragraph 22(2) defines “the relevant time” subject to sub-paragraphs (3) to (6).

43. Sub-paragraphs 22(3) provides that where paragraph 21 applies to the arrangements in question, the relevant time is the later of the time specified in sub-paragraph (2) and the end of 12 months beginning with the date specified in paragraph 21(2).

44. Sub-paragraph 22(4) provides that where a person requests assessment of a penalty under paragraph 21(4), the relevant time is the later of the time specified in sub-paragraph (2) and the end of the 12 months beginning with the date the request was made.

45. Sub-paragraphs 22(5) and (6) provide that where information comes to the Commissioners’ knowledge that a declaration made under paragraph 44 contains a material inaccuracy, the relevant time for assessing any penalty under paragraph 1 is the later of the time given in sub-paragraphs (2), (3) or (4) and the end of 12 months beginning with the date the facts relied upon by the Commissioners in forming their opinion came to their knowledge.

Part 7: GAAR Advisory Panel Opinion and Representations

46. Paragraph 23 provides that an opinion of the GAAR Advisory Panel must have been obtained in respect of, or which can be applied to, the arrangements to which the penalty relates before a penalty may be charged under paragraph 1.

47. Sub-paragraph 23(2) explains that where a GAAR final decision notice has been given in respect of the arrangements (or equivalent arrangements) to which the penalty relates, the opinion of the GAAR Advisory Panel which was considered in deciding whether to issue that GAAR final decision notice will also apply for the purposes of charging a penalty under paragraph 1. A designated HMRC officer deciding to charge a penalty must consider the opinion of the GAAR Panel as well as any representations made by the enabler under sub-paragraph 25(3) where this is relevant.

48. Sub-paragraph 23(3) explains that where an opinion of the GAAR Advisory Panel has been given under paragraph 26 in respect of the arrangements (or equivalent arrangements) to which the penalty relates, that opinion will apply for the purposes of charging a penalty under paragraph 1. A designated HMRC officer must then consider that opinion and representations made by the enabler under paragraph 32 where these are relevant in deciding whether to charge a penalty under paragraph 1.

49. Sub-paragraph 23(4) specifies that a notification of a penalty under paragraph 1 must be accompanied by an HMRC report on the opinion of the GAAR Advisory Panel that is relevant to the arrangements to which the penalty relates.

50. Paragraph 24 provides definitions for the purposes of this part of the Schedule.

51. Sub-paragraph 24(3) defines “equivalent” for the purposes of Part 7 of this Schedule.

52. Paragraph 25 provides that where a GAAR final decision notice has been given in respect of arrangements that are equivalent to the arrangements concerned for the purposes of the penalty under paragraph 1 and no GAAR final decision notice has been given in respect of the arrangements concerned, a designated HMRC officer may apply the GAAR Advisory Panel opinion that was considered in deciding to issue the GAAR final decision notice to the arrangements concerned for the purposes of this Schedule.

53. Sub-paragraph 25(2) specifies that a designated HMRC officer must notify the enabler of the arrangements concerned of this in writing, and sub-paragraph (3) states that the enabler may make representations to the designated officer as to why the arrangements which the enabler enabled are not equivalent to the arrangements in respect of which the GAAR Advisory Panel opinion was given and taken into consideration in issuing the GAAR final decision notice.

54. Paragraph 26 states that a designated HMRC officer may make a referral to the GAAR Advisory Panel where they consider that there are defeated tax arrangements that are abusive, and a penalty is payable under paragraph 1 by one or more enablers of those arrangements.

55. Sub-paragraph 26(2) explains that a referral under this paragraph may not be made if a GAAR final decision notice has already been given in relation to the arrangements (or equivalent arrangements) in question.

56. Paragraph 27 specifies the form that a referral to the GAAR Advisory Panel under paragraph 26 must take.

57. Paragraph 28 requires HMRC to notify each "relevant person" prior to a referral under paragraph 26.

58. Sub-paragraph 28(2) defines a "relevant person", sub-paragraph 28(3) sets out the form that a notification under paragraph 28 must take, and sub-paragraph 28(4) explains that a "relevant person" may make representations to the designated HMRC officer in response to the notice.

59. Paragraph 29 explains that a designated HMRC officer must notify each "relevant person" under paragraph 28 when they decide whether to make a referral to the GAAR Advisory Panel under paragraph 26.

60. Paragraph 30 sets out the information that must be included in a referral under paragraph 26, which includes representations made by relevant persons under paragraph 28.

61. Paragraph 31 sets out the information that must be included in the notification to a "relevant person" of the referral under paragraph 26.

62. Paragraph 32 explains that a person who is notified under paragraph 31 has 21 days to make representations to the GAAR Advisory Panel. It also specifies the matters about which those representations may be made and the procedure that applies where such representations are made.

63. Paragraph 33 sets out the procedure that the GAAR Advisory Panel must follow on receiving a referral under paragraph 26.

64. Sub-paragraph 33(1) explains that the Chair of the GAAR Advisory Panel must arrange for a sub-panel to consider a referral made under paragraph 26.

65. Sub-paragraph 33(2) provides that the GAAR Advisory Panel may invite further information from the designated HMRC officer or any person that has been given a notice under paragraph 28.

66. Sub-paragraph 34(1) requires that the sub-panel must produce an opinion notice or notices in respect of the referral.

67. Sub-paragraph 34(3) explains the form that an opinion notice must take.

68. Sub-paragraph 34(4) explains the matters that must be considered by the sub-panel in forming their opinion for the purposes of paragraph 33(3).

69. Paragraph 35 sets out the procedure where an opinion of the GAAR Advisory Panel has been given on a referral under paragraph 26 and it applies to the arrangements in question for the purposes of charging a penalty under paragraph 1 on a person who has not been given a notice under paragraph 28.

70. Sub-paragraph 35(2) specifies that a designated HMRC officer must notify the person of this in writing, and sub-paragraph 35(3) states that the person may make representations to the designated HMRC officer as to why the GAAR Advisory Panel opinion does not apply to the arrangements which the enabler enabled.

71. Paragraph 36 provides for what evidence a Court or Tribunal must take into account when considering whether arrangements are abusive in connection with the assessment of a penalty under paragraph 1.

72. Sub-paragraph 36(2) sets out that a Court or Tribunal must take into account the opinion of the GAAR Advisory Panel considered when assessing the penalty under paragraph 1, and may take into account guidance or other material in the public domain and evidence of established practice at the time the arrangements in question were entered into.

Part 8: Appeals

73. Paragraph 37 provides that a person may appeal against HMRC's decision that a penalty is payable or the amount of the penalty.

74. Paragraph 38 sets out certain provisions in respect of an appeal made under paragraph 37.

75. Paragraph 39 provides that the tribunal may affirm or cancel HMRC's decision that a penalty is payable, or affirm or otherwise vary, in any way in which HMRC could vary, the decision of HMRC as to the amount of the penalty.

76. Sub-paragraph 39(3) provides that the Tribunal may rely on the provision to mitigate a penalty in paragraph 18 to the same extent as HMRC, or to a different extent if it thinks that HMRC's decision in respect of the application of that paragraph was flawed. The meaning of flawed is described for this purpose in sub-paragraph (4).

Part 9: Information

77. Part 9 sets out HMRC's information and inspection powers for the purpose of this Schedule.

78. Paragraph 40 provides that Schedule 36 to the Finance Act 2008 applies for the purposes of this Schedule by making the changes described in paragraphs 41 to 43.

79. Paragraph 44 provides that where a person cannot provide information to demonstrate that they are not liable to a penalty under paragraph 1 because communications made by a relevant lawyer are subject to legal professional privilege (in Scotland, protected from disclosure in legal proceedings on the grounds of confidentiality of communication), that or a different relevant lawyer may make a declaration that the person is not an enabler.

80. Sub-paragraph 44(1) provides that a declaration made under paragraph 44 will be accepted as conclusive evidence that the person is not an enabler unless HMRC, the tribunal or a court is satisfied that the declaration contains information which is incorrect.

81. Sub-paragraph 44(2) provides that a declaration can be made by a relevant lawyer within the meaning of sub-paragraph (6) in relation to communications made by that or another relevant lawyer which are legally privileged.

82. Sub-paragraph 44(4) provides that the content and form of the declaration may be set out in regulations. Regulations will only be able to provide for a declaration that does not in itself breach legal professional privilege. It is intended that a declaration will consist of a list of the exemptions from being within the meaning of an enabler provided in paragraphs 8 to 12. The relevant lawyer who signs the declaration on behalf of the person will indicate that at least one of those exemptions applies to prevent that person being an enabler for the purposes of this Schedule but will not specify which. The declaration will not specify the name of the client, or what the communications were to ensure that it does not contain information which would breach legal professional privilege.

83. Sub-paragraph 44(5) provides that sub-paragraph (1) does not apply where HMRC, the Tribunal or a Court is satisfied that the declaration contains information which is incorrect.

84. Sub-paragraph 44(6) explains that a "relevant lawyer" is a barrister, advocate, solicitor or other legal representative, whose communications may be subject to a claim to legal professional privilege (in Scotland, protected from disclosure in legal proceedings on the grounds of confidentiality of communication).

85. Paragraph 45 provides for a penalty for carelessly or deliberately giving incorrect information in a declaration under paragraph 44.

Part 10: Publishing Details of Persons Who Have Incurred Penalties

86. Paragraph 46 provides that HMRC may publish information about a person assessed to a penalty under paragraph 1, which has become final when a condition in sub-paragraph (2) or (3) is met.

87. Sub-paragraph 46(2) provides that HMRC may publish information about an enabler if that person has incurred at least 50 other reckonable penalties under paragraph 1 at the time sub-paragraph (1) is being considered.

88. Sub-paragraph 46(3) provides that HMRC may publish information about an enabler when the total amount of a penalty, or the total amount of a penalty combined with other reckonable penalties, incurred under paragraph 1 in relation to other defeated arrangements, exceeds £25,000.

89. Sub-paragraphs 46(4) and (5) set out the information HMRC can publish and the manner in which that information can be published.

90. Sub-paragraph 46(6) sets out when a penalty becomes "final" for the purpose of this Part.

91. Paragraph 47 defines "reckonable penalty" for the purpose of paragraph 46.

92. Paragraph 48 sets out the specific circumstances in which a penalty is not a "reckonable penalty".

93. Paragraphs 49 and 50 provide for the actions HMRC must perform before publishing information and places restrictions on when and for how long information can be published.

94. Paragraph 51 provides that the Treasury may, by regulations, amend the figure specified in paragraph 46(2), the sum specified in paragraph 46(3) and the time period specified in paragraph 47(1)(b) or 47(4).

Part 11: Miscellaneous

95. Paragraph 52 explains a person is not liable to a penalty under paragraph 1 in respect of conduct for which they have been convicted of an offence.

96. Paragraph 53 explains that certain provisions of the Taxes Management Act 1970 apply for the purposes of this Schedule.

Part 12: General

97. Paragraph 54 defines "tax" for the purpose of this Schedule and explains that for the purposes of this Schedule it also includes national insurance contributions.

98. Sub-paragraph 54(2) provides that the Treasury may, by regulations, amend sub-paragraph 54(1) to add or remove a tax or references to national insurance contributions.

99. Paragraph 55 defines "tax advantage" for the purpose of this Schedule.

100. Paragraph 56 provides other definitions for the purposes of this Schedule.

101. Sub-paragraph 56(2) sets out when two companies are members of the same group for the purpose of this Schedule.

102. Paragraph 57 provides for any regulations under this Schedule to be made by statutory instrument and sets out the processes for making such regulations.

103. Paragraph 58 makes consequential amendments to section 103ZA of the Taxes Management Act 1970, which disapplies sections 100 to 103 of that Act. It adds references to a penalty under paragraph 1 and paragraph 45.

104. Paragraphs 59 to 60 provide that a penalty incurred under this Schedule is not an allowable deduction from liability to income tax or corporation tax.

105. Paragraph 61 provides that an opinion of the GAAR Advisory Panel under sub-paragraph 34(3)(b) that the arrangements are not a reasonable course of action is to be included in the Finance Act 2014 Promoters of Tax Avoidance Schemes regime threshold conditions.

106. Paragraph 62 provides that this Schedule takes effect from Royal Assent to the Finance Act 2017 in respect only of actions of an enabler carried after that date and arrangements entered into on or after the date of Royal Assent.

Background note

107. At Budget 2016, the government signaled its intention to explore options to introduce downsides for those who enable or otherwise facilitate tax avoidance so that they also bear some risk. A consultation was published on 17 August and ran to 12 October 2016. It received significant engagement from individuals, businesses and representative bodies.

108. This measure supports the government's objective to influence and promote behavioral change in the minority of tax agents, intermediaries and others who design, market or facilitate the use of abusive tax arrangements. It will ensure that enablers of abusive arrangements can be held accountable for their activities, while ensuring that the vast majority of professionals who provide clients with advice on genuine commercial arrangements will not be impacted.

109. The penalty will apply to any person who, after the measure comes into effect, enables another person to enter into abusive tax arrangements which have later been defeated. Defeat and enabling are defined in the legislation and do not include the provision of second-opinion advice on arrangements or a proposal for arrangements designed or made available by others provided no modifications are suggested to the arrangements or, if modifications are suggested, there is a recommendation that the modified arrangements are not implemented.

110. The penalty will apply where the defeated arrangements are abusive. Arrangements will be treated as abusive if they meet a ‘double reasonableness test’. This will ensure that the measure does not inhibit genuine commercial transactions. External scrutiny will be provided by the GAAR Advisory Panel, and any penalty HMRC decides to charge having considered the Panel opinion in relation to the arrangements in question or substantially similar arrangements will be appealable.

Clause 66 and Schedule 17: Disclosure of tax avoidance schemes: VAT and other indirect taxes

Summary

1. This clause replaces the regime for disclosure of VAT avoidance schemes to HM Revenue & Customs (HMRC) under Schedule 11A to Value Added Tax Act 1994. It moves the primary responsibility for disclosing schemes from users to promoters of arrangements. It also extends the scope of the disclosure regime to include insurance premium tax, all duties of excise, the soft drinks industry levy, landfill tax, aggregates levy, climate change levy and customs duties. Provision is also made for tests to apply, known as hallmarks, to determine if arrangements need to be disclosed. These will be set in regulations. The measure comes into effect on 1 January 2018.

Details of the clause and Schedule

2. Clause 66 introduces Schedule 17.

Schedule 17

Part 1: Duties to disclose avoidance schemes etc.

3. Paragraph 1 introduces some definitions and Paragraph 2 lists the taxes to which the Schedule applies.

4. Paragraph 3 defines the arrangements and proposals which must be disclosed to HMRC.

5. Paragraph 4 provides that HMRC may apply to the Tribunal for an order that arrangements or proposals are notifiable. The Tribunal can only make such an order if it is satisfied that the arrangements or proposals accord with the definitions provided in Paragraph 3.

6. Paragraph 5 provides that where HMRC has grounds for suspicion that arrangements or proposals are notifiable, they may apply to the Tribunal for an order that the arrangements or proposals are treated as if they are notifiable.

7. Paragraph 5(3) provides that the Tribunal may only grant such an order if it is satisfied that HMRC has taken all reasonable steps to determine whether the arrangements or proposals are notifiable and has reasonable grounds for believing them to be notifiable.

8. Paragraph 6 defines the circumstances when a person obtains a tax advantage in relation to VAT.

9. Paragraph 7 defines the circumstances when a person obtains a tax advantage in relation to taxes other than VAT.

10. Paragraph 8 defines a 'promoter'.

11. Paragraph 8(2) defines a 'promoter' of a notifiable proposal as a person with **any** responsibility for the design of the proposed arrangements, not just the person primarily responsible for the design; anyone who makes a 'firm approach' to another person with the object of making the proposal available to that person; and anyone who makes the proposal available for implementation by another.

12. Paragraph 8(3) defines a promoter of notifiable arrangements as a person who is a promoter of a notifiable proposal which a person then implements; or a person responsible for any part of the design of the arrangements, or who organizes or manages the arrangements.

13. Paragraph 8(4) defines those businesses that can be promoters.

14. Paragraph 9 defines an 'introducer'.

15. Paragraph 10 defines a firm approach as a 'marketing contact' when the arrangements have been 'substantially designed' and explains these concepts.

16. Paragraph 11 provides that regulations may be made to determine what information a promoter of a notifiable proposal must provide to HMRC. The required information must be provided within 31 days. Paragraph 12 makes the same provision in respect of promoters of notifiable arrangements.

17. Paragraph 13 provides that where there is more than one promoter of a proposal, or of a proposal substantially the same as those already disclosed, only one person is required to disclose the relevant information to HMRC. This applies provided that person gives HMRC the name and address of any other promoter, or the other promoters are given the scheme reference number, and those promoters hold the information which is disclosed to HMRC. Paragraph 14 makes the same provision in respect of notifiable arrangements.

18. Paragraph 15 provides that where a promoter has already notified HMRC about proposals or arrangements, he need not make a further notification in respect of proposals or arrangements which are substantially the same as those already notified.

19. Paragraph 16 provides that where a promoter has notified HMRC of proposals or arrangements, but HMRC believe the person has not provided all of the prescribed information, they may apply to the Tribunal for an order for the person to provide further information or documents. A tribunal may make an order only if satisfied that HMRC has reasonable grounds for suspecting the information or documents form part of the prescribed information or will support or explain the prescribed information.

20. Paragraph 17 provides that where a person engages in a transaction which is part of notifiable arrangements, that person must disclose the relevant information to HMRC within 6 days of the first transaction, if the only promoter or promoters of the arrangements belong outside the UK.

21. Paragraph 18 provides that if there is no promoter of notifiable arrangements and no client of the promoter in the UK, any person who engages in a transaction which is part of the arrangements must disclose the required information to HMRC.

22. Paragraph 19 allows HMRC to require further information or documents from a person who has made a notification under Paragraphs 11(1), 12(1), 17(2) or 18(2) if HMRC believe the person has not provided all the prescribed information.

23. Paragraph 20 provides for HMRC to apply to the Tribunal for an order requiring further information or documents if they believe the person has failed to provide them under Paragraph 19.

24. Paragraph 21 provides that where information about a proposal or arrangements has been provided to HMRC but there is a change in the name of the arrangements or in the name or address of the promoter, the promoter must inform HMRC of the changes within 30 days. If there is more than one promoter and a promoter who did not make the initial disclosure changes his or her name or address, that person is required to provide the new address to HMRC.

25. Paragraph 22 provides that when a person gives the required information about notifiable proposals or arrangements, HMRC may issue a reference number to anyone who is a promoter of the proposal or arrangements.

26. Paragraph 22(3) explains that by giving a reference number in relation to notifiable arrangements or a notifiable proposal, HMRC is not to be seen as endorsing, approving or agreeing the proposal or arrangements in any way.

27. Paragraph 23 provides that the promoter of notifiable arrangements must forward the reference number to any client to whom he is providing services in connection with the arrangements within 30 days. The exception to this is when the promoter is also providing services to the client in respect of a notifiable proposal which is substantially the same and the promoter has already given the client the reference number.

28. Paragraph 24 provides that where the client might reasonably be expected to be aware of anyone else who is party to the arrangements, and who might obtain a tax advantage in relation to them, he should pass the reference number and any other required information to that person.

29. Paragraph 25 requires a client to provide certain prescribed information to a promoter of notifiable arrangements within 11 days.

30. Paragraph 26 provides that anyone who is party to notified arrangements must inform HMRC of the fact by advising them of the scheme reference number and any other details as may be required. Paragraphs 26(3) and 26(4) allow HMRC to determine how such information must be provided to them in regulations or in a document under those regulations.
31. Paragraph 27 provides that a promoter of notifiable arrangements must provide details to HMRC of the clients in connection with those arrangements. The information required is to be prescribed in regulations.
32. Paragraph 28 provides that HMRC may issue a notice to a promoter of notifiable arrangements, requiring the promoter to provide details of anyone they believe to be party to the arrangements, other than the client.
33. Paragraph 29 provides for HMRC to issue a notice to someone they believe is the promoter of notifiable proposals or arrangements, requiring that person to give their opinion about whether the proposals or arrangements are notifiable, and if they believe them not to be notifiable, to give reasons.
34. Paragraph 30 allows HMRC to apply to the Tribunal for an order requiring further information from a promoter to support the promoter's view that proposals or arrangements are not notifiable.
35. Paragraph 31 provides that HMRC may issue a notice requiring a person they believe to be an introducer in relation to a proposal which is or may be notifiable, to provide them with specified information within 11 days.
36. Paragraphs 32 and 35 deals with legal and professional privilege and confidentiality.
37. Paragraph 33 provides that where a promoter is required to notify clients of a scheme reference number, or a user of a scheme is required to forward the number to another person who they believe to be party to the arrangements, HMRC may specify that further information must also be provided.
38. Paragraph 34 enables HMRC to specify how information required under this Schedule is to be provided.
39. Paragraph 36 allows HMRC to publish details of notified proposals and arrangements. HMRC may not publish details which identify users of the arrangements, but promoters who also used the arrangements may be identified in their capacity as promoter.
40. Paragraph 37 provides that where details of arrangements are published under paragraph 36 and there is a subsequent ruling in a Tribunal or court about those arrangements which cannot be further appealed, HMRC must publish details of that ruling.
41. Paragraph 38 provides for HMRC to vary the 'relevant periods' for complying with obligations under this Schedule by regulations.

Part 2: Penalties

42. Paragraph 39 provides for an initial penalty to be charged of up to £600 per day for a failure by a promoter, client or another person party to the arrangements to meet a requirement under paragraphs 11(1), 12(1), 17(2), 18(2) or 19(3) of this Schedule. In the case of a failure to meet any other requirement under this Schedule, a penalty can be charged of up to £5,000 per day.

43. Paragraph 39(4) details when a failure to meet an obligation occurs for the purposes of a penalty.

44. Paragraph 40 provides that, when deciding the level of penalty, all relevant factors must be taken into account.

45. Paragraph 40(2) provides that these factors include setting the penalty at an appropriate level to have a deterrent effect, as well as the amount of fees earned by a promoter in respect of arrangements, or the amount of any tax advantage sought by a party to arrangements.

46. Paragraph 40(4) provides that a penalty of up to £1 million can be issued for any failure by a promoter, or another person when there is no promoter or no promoter in the UK, to inform HMRC about notifiable proposals or arrangements if the maximum penalty chargeable under Paragraph 39(1)(a)(i) appears to be inappropriately low, taking into account the relevant considerations in Paragraph 40(2).

47. Paragraphs 41, 42 and 43 make further provision in relation to penalties.

48. Paragraph 44 provides for a penalty of up to £5,000 for each scheme a person party to arrangements fails to correctly disclose to HMRC.

49. Paragraph 44(3) provides for that penalty to be up to £7,500 per scheme if the person has failed to make another such disclosure in the preceding 36 months.

50. Paragraph 44(4) provides for that penalty to be up to £10,000 per scheme if the person has failed to make two or more such disclosures in the preceding 36 months.

51. Paragraph 45 provides that a penalty in respect of an initial period is to be decided by the First-tier Tribunal on application by an authorised officer of HMRC.

52. Paragraph 46 provides that HMRC may charge a penalty for continued failure to comply with a requirement after a penalty has been charged under Paragraph 39(1)(a), or for a failure by a party to arrangements to notify HMRC of the scheme reference number.

53. Paragraph 47 provides that a person may appeal against a penalty charged by HMRC.

54. Paragraphs 48 and 49 provide that a person who satisfies HMRC, or a Tribunal, that there was a reasonable excuse for the failure to meet an obligation under the Schedule is not liable to a penalty, but that the making of an order under Paragraph 4 or Paragraph 5 does not of itself mean the person did or did not have a reasonable excuse for failing to comply before the order was made.

55. Paragraph 50 provides that where a user of arrangements has to notify HMRC because there is no promoter in the UK, any legal advice relied on by the person which was given or obtained by a monitored promoter is not to be taken into account when deciding if there was a reasonable excuse.

Part 3: Consequential amendments

56. Paragraph 51 makes consequential amendments to the Value Added Tax Act 1994.

57. Paragraph 52, Paragraph 53, and Paragraph 54 make amendments to the regime for promoters of tax avoidance schemes to include arrangements disclosable under this Schedule in the provisions relating to defeated arrangements.

58. Paragraph 55 amends the serial tax avoidance regime to include arrangement disclosable under this Schedule.

Part 4: Supplemental

59. Paragraph 56 sets out the parliamentary procedure for making regulations under the Schedule.

60. Paragraph 57 defines terms used in the Schedule.

Background note

61. This measure reforms the way indirect tax avoidance is notified to HMRC so that it more closely resembles the regime for disclosure of avoidance of direct taxes (Disclosure of Tax Avoidance Schemes, or DOTAS) and places the primary responsibility for disclosing schemes to HMRC on scheme promoters. This forms an important part of the government's fight against tax avoidance by giving HMRC earlier and more comprehensive details about VAT and other indirect tax avoidance schemes as they emerge, and provides a coherent approach to the requirements to disclose tax avoidance schemes.

62. The measure also extends the scope of the disclosure regime to encompass for the first time all duties of excise, insurance premium tax, landfill tax, soft drinks industry levy, aggregates levy, climate change levy and customs duties. This will allow HMRC early insight into emerging avoidance in these areas and better enable them to take any action required to counter those trends.

Clause 67 and Schedule 18: Requirement to correct certain offshore tax non-compliance

Summary

1. This clause introduces a Requirement to Correct (RTC) for taxpayers who have undeclared past UK tax liabilities in respect of their offshore interests. The taxpayer will be expected to review their offshore interests and correct any UK tax irregularities by disclosing the relevant information to HM Revenue & Customs (HMRC).
2. Failure to carry out the necessary correction on or by 30 September 2018 in relation to their offshore matters will render taxpayers liable to a new penalty as a result of their ''failure to correct'' (FTC).
3. The corrections must be made in respect of Income Tax, Capital Gains Tax and Inheritance Tax which involve offshore matters. The matters requiring correction result from failures by taxpayers such as:
    - Failure to notify chargeability to tax
    - Failure to make and deliver a return
    - Delivering an inaccurate document (for example, a return) to HMRC

Details of the clause and Schedule

4. Clause 67 provides for the Schedule.

Schedule 18: Part 1: Liability for Penalty for Failure to Correct

5. Paragraphs 1-2 create a penalty for those who have "relevant offshore tax non-compliance" at the end of tax year 2016-17 and who 'fail to correct' it within the 'requirement to correct' period starting on 6 April 2017 and ending on 30 September 2018 (RTC period).
6. Paragraphs 3-6 set out the conditions determining whether a person has "relevant offshore tax non-compliance" at the end of the 2016-17 tax year, The conditions are:
    - Offshore tax non-compliance has not been fully corrected before the end of the tax year 2016-17 (Condition A);

- The offshore tax non-compliance that has not been fully corrected by that time involves a potential loss of revenue (Condition B); and
- On the relevant date (6 April 2017 for income tax and capital gains tax and the day after the Act is passed for inheritance tax), HMRC would have been able to assess the person concerned to the tax liability which should have otherwise been disclosed and corrected (condition C).

7. Paragraph 7 defines "offshore tax non-compliance". Offshore tax non-compliance means tax non-compliance involving an offshore matter or an offshore transfer as defined in paragraphs 9-11 of the Schedule. Any other tax non-compliance "involves an onshore matter".
8. Paragraph 8 defines Tax non-compliance. Tax non-compliance means any of:
    - A failure to notify chargeability to income tax or capital gains tax before the required date (paragraph 8(1)(a)).
    - A failure to deliver a return, or any other document required to establish a person's liability to tax, before the required date (paragraph 8(1)(b)).
    - Delivering a return or any other document to HMRC that contains an inaccuracy causing an understatement of tax liability, a false or inflated statement of loss or an inflated claim to a repayment of loss (paragraph 8(1)(c)).
9. Paragraphs 9-11 set out the circumstances where "offshore tax non-compliance" involves 'an offshore matter' or 'an offshore transfer'. Paragraph 9 defines those terms in relation to the "tax non-compliance" described in paragraph 8(1)(a) of the Schedule (failure to notify chargeability to income tax or capital gains tax). Paragraph 10 does so in relation to paragraph 8(1)(b) of the Schedule (failure to deliver a return or other document). Paragraph 11 correlates to paragraph 8(1)(c) of the Schedule (delivering an inaccurate return or document). The definitions in paragraphs 9-11 differ only as required to meet the particular circumstances covered by paragraph 8(1)(a)-(c) of the Schedule and as necessary for the purposes of Income Tax, Capital Gains Tax and Inheritance Tax. In summary:
    - It is 'an offshore matter' if the tax at stake relates to income arising outside the UK, assets situated outside the UK, activities carried out wholly or mainly outside the UK, or anything that has the effect of any of these.
    - It is 'an offshore transfer' if it is not an offshore matter and the "applicable condition" is met (which varies depending upon the tax in question).

10. Paragraph 12 provides that references to 'tax' in the Schedule mean income tax, capital gains tax, and inheritance tax, but excludes capital gains tax on certain capital gains payable by companies as part of their corporation tax liability.

11. Paragraph 13 explains what is required to correct a failure relating to an offshore matter or transfer and how that inaccuracy may be corrected. As with paragraphs 9-11, bespoke adaptations are necessary to meet the circumstances covered in paragraph 8(1)(a)-(c) and for the purposes of the tax in question. Broadly, correcting a failure is done by providing relevant information to HMRC by means of:

    - Delivering to HMRC the document that should have been given to HMRC such as a notice of chargeability to tax or tax return;
    - Using a facility provided by HMRC for that purpose; or
    - Telling an officer of HMRC in the course of an enquiry, or another method agreed with HMRC.

Part 2: Amount of Penalty

12. Paragraph 14 specifies the FTC penalty as 200% of the potential lost revenue (PLR) relating to the relevant offshore tax non-compliance that has not been corrected within the RTC period (but this starting point can be reduced if the person discloses information as described in paragraph 16).

13. Paragraph 15 determines the PLR attributable to the offshore tax non-compliance. The calculation of the PLR in relation to each of the circumstances described in paragraph 8(1)(a)-(c) is done by reference to rules for calculating PLR in the corresponding circumstances in Schedule 41 to the Finance Act 2008 (for paragraph 8(1)(a)), Schedule 55 to the Finance Act 2009 (for paragraph 8(1)(b)) and Schedule 24 to the Finance Act 2007 (for paragraph 8(1)(c)) (or the relevant legislation before those provisions came into force). Paragraph 15(3) provides that, for the purposes of the requirement to correct an inaccuracy in a return or other document referred to in paragraph 8(1)(c), paragraph 6 of Schedule 24 of Finance Act 2007 has effect so that, where P is liable to a penalty in respect of two or more inaccuracies in a return or other document (at least one of which constitutes offshore tax non-compliance) and the calculation of the PLR attributable to each inaccuracy depends on the order they are corrected, the PLR attributable to the offshore tax non-compliance is to be calculated on a just and reasonable basis. In addition, in circumstances where Schedules 24, 41 and 55 to the Finance Acts 2007-2009 do not wholly distinguish offshore matters and offshore transfers from other matters (onshore matters) for the purposes of determining the PLR used for the amount of the penalties set out in those Schedules, an apportionment must be made on a just and reasonable basis to identify the PLR relating offshore tax non-compliance for the purposes of this Schedule and the PLR relating to tax non-compliance involving onshore matters (which is irrelevant for the purposes of this Schedule).

14. Paragraph 16 requires HMRC to reduce the FTC penalty if the person discloses the matters listed in paragraph 16(2) (such matters are within the scope of paragraph 8(1)(a)-(c)). The amount of the reduction must reflect the quality of the disclosure (including its timing, nature and extent) but cannot reduce the penalty below 100% of the PLR. Paragraph 16(3) specifies that a person makes a disclosure for the purposes of paragraph 16 by:

    - Telling HMRC about the failure;
    - Giving HMRC reasonable help in resolving the matter (for example, quantifying an inaccuracy in a document);
    - Informing HMRC of any person who acted as an enabler of the offshore non-compliance;
    - Allowing HMRC access to records related to the non-compliance, and the enabling, if applicable.

15. Paragraph 17 provides that, in special circumstances, HMRC may reduce or stay a penalty, or agree a compromise in relation to penalty proceedings. Special circumstances do not include ability to pay, or that loss of revenue due to underpayment by one taxpayer is balanced by overpayment by another.

16. Paragraph 18 describes the statutory procedure for assessing the penalty, and sets a deadline of 30 days from the notification to the taxpayer for payment of the penalty. HMRC may make supplementary assessments if a previous penalty assessment is found insufficient due to an underestimate of liability to tax. An assessment may be amended where there has been an overstatement of liability to tax but does not affect the original penalty payment deadline.

17. Paragraph 19 specifies the periods of time within which an assessment of the RTC penalty in accordance with paragraph 18 must be made. The relevant period is the period of 12 months beginning with the end of the appeal period defined in paragraph 18 in respect of each of the circumstances described in paragraph 8(1)(a)-(c) or the other times specified in relation to those circumstances by paragraph 19.

18. Paragraph 20 gives a right to appeal against the decision to charge a penalty, or the amount of the penalty.

19. Paragraph 21 ensures that penalty appeals are to be treated in the same way as appeals against an assessment to tax. A person cannot be required to pay a penalty before an appeal against it is determined.

20. Paragraph 22 gives the First-Tier or Upper-Tier tribunal power to affirm or cancel HMRC's penalty decision and to affirm the amount of the penalty or substitute a different amount (provided HMRC had the power to set that revised amount of penalty).

21. Paragraph 23 provides that no liability to the FTC penalty arises if the person satisfies HMRC or a relevant tribunal that the person has a reasonable excuse for the failure. Paragraphs 23(2) and (3) provide that certain circumstances are not acceptable as reasonable excuses.

22. Paragraph 24 ensures against 'double jeopardy' and provides that a person is not liable to a RTC penalty in respect of conduct (which includes a failure to act) if the person has already been convicted of an offence or assessed to a penalty for that conduct under a different provision (apart from a penalty under paragraph 6 of Schedule 55 to the Finance Act 2009 (failure to submit a return which is overdue by 12 months or more)). Where a person is liable for both the FTC penalty and a penalty under paragraph 5 of Schedule 55 to the Finance Act 2009 (failure to submit a return which is overdue by 6 months or more) the amount of which has been determined by reference to a liability to tax, the aggregate of the penalties must not exceed 200% of the liability to tax.

23. Paragraph 25 applies certain provisions in the Taxes Management Act 1970 (TMA) for the purposes of Part 2 of the Schedule. The relevant TMA provisions relate to:

- responsibility of company officers (section 108);
- want of form (section 114);
- delivery and service of documents (section 115).

Part 3: Further provisions relating to the Requirement to Correct

24. Paragraph 26 extends, until 5 April 2021, the period in which HMRC may assess a person to tax in respect of relevant offshore tax non-compliance where the normal assessment period for assessing the tax concerned would otherwise expire during the period beginning with 6 April 2017 and ending with 4 April 2021.

25. Paragraph 27 amends paragraphs 2, 3 and 5 of Schedule 21 to the Finance Act 2015 (penalties in connection with offshore asset moves) so that a person will be liable to a penalty under Schedule 21 to the Finance Act 2015 if the person is aware that there is relevant offshore tax non-compliance in relation to their affairs and moves an asset between territories after this Schedule comes into force, and before the end of the RTC period intending to escape the RTC penalty.

26. Paragraph 28 amends Schedule 22 to the Finance Act 2016 (asset-based penalty for offshore inaccuracies and failures) so that a person upon whom a penalty under paragraph 1 of this Schedule is imposed may also be subject to the asset based penalty if, during the RTC period, the person was aware that, at the end of the 2016-17 tax year, the person had relevant offshore tax non-compliance to correct. Only one asset-based penalty may be imposed in relation to an asset by reference to a RTC penalty.

27. Paragraph 29 amends sections 103ZA and 107A of the TMA 1970. The amendment to section 103ZA adds the FTC penalty to the list of penalties excluded from the provisions in sections 100-103 of the TMA 1970 about the determination of, time limits and right to appeal penalties (those matters are covered by paragraphs 19-21 of the Schedule). The amendments to section 107A ensure that the RTC penalty (and interest) can be recovered from any one or more of the trustees liable to the penalty (but not a person who first became a trustee after the end of the RTC period (30th September 2018).

28. Paragraph 30 provides that HMRC may publish information about a person who incurs one or more FTC penalties involving PLR exceeding £25,000 or if the person incurs 5 or more FTC penalties. Only FTC penalties relating to failure to correct relevant offshore tax non-compliance existing at the end of the 2016-17 tax year of which the person was aware at any time during the RTC period are taken into account. Information cannot be published before the time limit for appealing the penalty has expired or, in the event of an appeal, finally determined; and cannot be published for the first time more than one year after those times. Publication must stop after one year from the date of first publication. No publication can be made in relation to FTC penalties that are reduced to the minimum permitted amount under paragraph 15 of the Schedule or reduced to nil or stayed under paragraph 16 Before publication, HMRC must advise the person concerned that publication is being considered and allow the person to make representations about whether the person's details should be published. The information that HMRC may publish is:

    - The person's name and address (or registered office)
    - The nature of any business carried on by the person
    - The amount of penalty/penalties and the PLR in question
    - The periods or times the offshore non-compliance occurred that they failed to correct within the RTC period
    - Any other information the Commissioners deem necessary to make the person's identity clear.

29. Paragraph 31 allows the Treasury to amend the amount specified in paragraph 30(2)(b) (currently £25,000) and provide that regulations made under this paragraph must be made by Statutory Instrument (SI).

Part 4: Supplementary

30. Paragraph 32 defines "HMRC", "tax period", "tax year" and "UK" for the purposes of the Schedule and provides that references to making a return or doing anything in relation to a return include amending a return etc. and makes provision concerning the delivery of documents etc. It also provides that references to an assessment to tax in relation to inheritance tax, are to a determination and that expressions used in relation to Income Tax, Capital Gains Tax and Inheritance Tax have the same meanings as in the enactments relating to those taxes. Also included is an index of terms defined elsewhere in the Schedule.

Background note

31. This legislation has been introduced to support the government's commitment to tackling offshore tax non-compliance whilst promoting tax compliance.

32. The objective is to get taxpayers with undeclared UK tax relating to offshore interests into a compliant position. At the end of the RTC period (30 September 2018) there will be simplified and tougher sanctions for offshore tax non-compliance. The measure will introduce an obligation for taxpayers to put past affairs in order and strongly penalise those who do not meet this requirement. In doing so, the measure will drive taxpayers with offshore interests who are unsure whether they have declared the right UK tax to review their affairs to either:

- Satisfy themselves they are compliant, or
- Correct the non-compliance by disclosing the relevant information to HMRC.

Clause 68: Penalty for transactions connected with VAT fraud etc

Summary

1. This clause introduces a new penalty for participating in VAT fraud into the VAT Act 1994. This will be enacted by the insertion of a new section 69C to the VAT Act, which will give HMRC the power to apply a penalty where a person has entered into a transaction connected with fraudulent evasion of VAT; and they knew or should have known of that connection ('the knowledge principle'). The penalty will be 30% of the potential lost VAT that being the amount of VAT denied under the knowledge principle. A new section 69D provides that the penalty liability can be attributable to company officers where they personally knew or should have known that the relevant transactions were connected with fraud. A new section 69E allows HMRC to name those liable to a penalty under section 69C. This clause takes effect from Royal Assent.

Details of the clause

Section 69C – Transactions connected with VAT fraud

2. Subsection (2) of the clause will insert the new sections 69C, 69D and 69E to the VAT Act 1994.

3. New section 69C sets out the circumstances under which a taxable person becomes liable to a penalty because they knew or should have known that their transactions were connected with VAT fraud.

4. New subsection 69C(1) sets out when a penalty will apply. The penalty will apply when there is a supply for VAT purposes and three conditions (A-C), detailed below, are met.

5. New subsection 69C (2)-(4) set out the three conditions. Condition A is that the transaction was connected with a fraudulent evasion of VAT. This evasion by another taxable person can occur either before or after the transaction to which the penalty applies, as it is not uncommon for the default to occur afterwards in missing trader fraud cases. The Court of Appeal judgment in *The Commissioners for HM Revenue & Customs v Mobilx Ltd (in administration), Blue Sphere Global Ltd and Calltel Telecom Ltd &* Anr [2010] EWCA Civ 517 concluded that the knowledge principle applies regardless of the timing of the fraudulent VAT default. Condition B is that the trader knew or should have known that the transaction was connected with the fraudulent evasion. Condition C is that HM Revenue & Customs ('HMRC') have issued a denial decision in relation to the above which prevents the taxable person from relying on a VAT right on the basis of relevant EU case law.

6. New subsection 69C (5) stipulates that "VAT right," referred to in (4)(a), means the right to deduct input VAT; the right to apply a zero rate to an intra-community transaction; or any other VAT right relating to a supply.

7. New subsection 69C (6) sets out the relevant principles of European case law. These are: joined Cases C-439/04 and C440/04 *Axel Kittel v Belgian State; Belgian State v Recolta Recycling* (concerning the denial of the right to deduct input VAT); Case C-273/11 *Mecsek-Gabona Kft v Nemzeti Ado-es Vamhivatal Deldunantuli Regionalis Ado Foigazgatosaga* (concerning the denial of the right to apply the zero rate to intra-community dispatches); and other cases applying the principle that the benefit of rights arising under the VAT Directive (2006/112) should be denied where the person claiming the right knew or should have known that the relevant transaction was connected with VAT fraud.

8. New subsection 69C (7) sets the level of the penalty at 30% of the potential lost VAT.

9. New subsection 69C (8) defines "the potential lost VAT" to which the penalty rate will be applied to calculate the amount of penalty due.

10. New subsection 69C (9) explains that where a person is liable to the penalty then HMRC may assess the amount of the penalty and notify the person accordingly.

11. New subsection 69C (10) sets out the time limit within which assessments for the penalty must be made.

12. New subsection 69C (11) states that the penalty can be assessed at the same time as the denial decision.

13. New subsection 69C (12) stipulates that HMRC cannot issue a section 69C penalty where a taxable person has been assessed to a penalty under Schedule 24 of Finance Act 2007 or convicted of a criminal offence, relating to the same supply.

69D Penalties under section 69C: officers' liability

14. New subsection 69D (1) specifies the conditions under which a company officer, or company officers, can be made liable for all or part of a company's penalty.

15. New subsection 69D(2) explains what HMRC must do before making a company officer liable for a penalty.

16. New subsection 69D(3) limits the time period within which a company officer may be given a decision notice. A decision notice can only be given either alongside or after the assessment of the company's penalty; and no more than two years after the denial decision is made.

17. New subsection 69D(4)(a) specifies that the penalty may be reduced by the tribunal or HMRC where there are mitigating circumstances.

18. New subsection 69D(4)(b) requires the officer to pay any portion of the penalty allocated to them within 30 days of notification.

19. New subsection 69D(4)(c) deems that any portion of a penalty allocated to an officer shall be recoverable as if it were VAT due from him or her.

20. New subsection 69D(4)(d) permits a further notice to be issued to an officer to make them liable for an additional amount where an additional penalty has been assessed against the company.

21. New subsection 69D(5) precludes HMRC from recovering more than 100% of the penalty liability calculated under section 69C.

22. New subsection 69D(6) provides that HMRC cannot hold an officer liable for a section 69C penalty where that person has been convicted of a criminal offence, relating to the same supply.

23. New subsection 69D(7) defines the term "company" for the purposes of section 69D.

24. New subsections 69D (8), (9) and (10) define the scope of the term "officer" for the purposes of this clause.

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

25. New subsection 69E (1) states that a person can be named when they are liable for a section 69C penalty and the potential lost VAT in relation to the penalty or penalties exceeds £50,000

26. New subsection 69E (2) details the information that may be published about a person.

27. New subsection 69E (3) explains the circumstances under which information about an officer, held liable to a penalty under section 69D above, may also be published.

28. New subsection 69E (4) details the information about the officer that HMRC may publish.

29. New subsection 69E (5) allows HMRC to publish information under this section in any manner that they consider appropriate.

30. New subsection 69E (6) requires HMRC to inform the person or officer and allow them the opportunity to make representations prior to publishing their details.

31. New subsection 69E (7)-(11) set out the time limits within which information can be published under section 69E.

32. New subsection 69E (12) explains when a penalty or decision notice becomes final for the purposes of the time limits outlined above.

33. New subsections 69E (13) and (14) permit the Treasury to amend the threshold laid down at 69E(1)(b) and 69E(3)(d) for the amount of "potential lost VAT" that is required in any case before information may be published.

Further subsections of the main clause

34. Paragraph (1)(3) alters the existing VAT Act legislation for mitigation so that it applies to the new penalty.

35. Paragraph (1)(4) amends the existing VAT Act legislation on assessments so that it applies to the new penalty.

36. Paragraph (1)(5) provides for rights of appeal against any decision to impose the new penalty or to allocate a portion of penalty to an officer.

37. Paragraph (1)(6) amends Schedule 24 of the Finance Act 2007 so that a person cannot be liable for a penalty under that section if they have already been assessed for a penalty under the new section 69C of the VAT Act.

38. Paragraph (1)(7) details the effective date from which the new penalty can be applied to transactions.

Background note

39. The measure will introduce a new and more effective penalty against participation in VAT fraud. It will be applied to businesses and company officers when they knew or should have known that their transactions were connected with VAT fraud (also known as the ‘knowledge principle’).

40. The penalty will be issued at the same time as the tax decision. This should reduce the prospect of the tax decision and the penalty being litigated separately, which will prevent businesses, HMRC and the tribunal service incurring additional related costs. It also supports the government's objective of bearing down on fraud and evasion.

41. The new penalty will:

- Be a fixed rate of 30% for participants in VAT fraud
- Apply to businesses but can also be applied to company officers
- Give HMRC the option to name those that participate in the fraud
- Not include reductions for disclosure.

Clause 69: Data-gathering from money service businesses

Summary

1. This clause extends Schedule 23 of Finance Act (FA) 2011 which covers HM Revenue & Customs' (HMRC) bulk data-gathering powers. The powers enable HMRC to collect data from certain third parties to assist with the efficient and effective discharge of HMRC's tax functions.

2. It does so by introducing Money Service Businesses as a new category of data-holder from whom HMRC may require bulk data. Access to this data will help HMRC identify those acting in the hidden economy and who use Money Services Businesses to conceal their income. The clause does not impose any additional data or record keeping requirements on data holders.

Details of the clause

3. Subsection 1 amends Part 2 of Schedule 23 to FA2011 to insert a new paragraph 13D, which introduces Money Service Businesses as a category of relevant data-holder for the purposes of Schedule 23.

4. The new paragraph 13D(1) sets out, at sub-paragraphs (a) to (c), the conditions that bring a person within the new category of relevant data-holder. These are that the person: (a) does certain activities by way of business (those activities being defined in paragraph 13D(2)); (b) is a person within regulation 8(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; and (c) is not one of certain excluded credit institutions (defined in paragraph 13D(3)).

5. New Paragraph 13D(2) describes the activities, referred to in paragraph 13D(1)(a), that bring a person within the scope of this provision.

6. New Paragraph 13D(3) defines "excluded credit institutions", which will fall outside the scope of this Schedule by virtue of paragraph 13D(1)(c). In practice, banks and building societies operating in the UK and either regulated in the UK or regulated in another EEA country and with "passporting" rights in the UK will be excluded credit institutions.

7. New Paragraph 13D(5) explains the meaning of "credit institution" for the purpose of this clause.

8. Subsection 2 provides that data can be required which relates to periods before the law comes into effect. This approach follows that taken for Schedule 23 FA 2011 and is subject to the time limits in Schedule 23.

Background note

9. Greater use of digital record-keeping by businesses, and the use of electronic transaction methods, has meant the government has introduced a series of targeted extensions of HMRC's bulk data-gathering powers to include new types of data-holders. The data may be used to assist with the efficient and effective discharge of HMRC's tax functions, including for example for risk analysis, enabling HMRC to target its compliance work more accurately.

10. The hidden economy places an unfair burden on the vast majority of people and businesses who pay their fair share of tax. Hidden economic activity also disadvantages compliant businesses. Competition between businesses is distorted when a small minority seek to hide under the radar from their tax obligations. The data will help HMRC tackle the hidden economy by identifying businesses that are receiving income but are not registered for tax, as well as those who are registered but under-declare their income to HMRC. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power.

11. The Money Service Business industry can be used by those operating in the hidden economy to move or transfer income. HMRC plans to employ the extended Schedule 23 powers to seek data that will help HMRC identify trends or areas where reporting of income is incomplete. Money Service Businesses are not explicitly specified as data-holders in Schedule 23 FA2011 as originally enacted and this clause extends the definition of data holder to these businesses.

12. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance.

13. Treasury regulations are needed to specify the relevant data that HMRC may require from Money Service Businesses. Draft regulations were published on 5 December 2016 and the government intends to introduce them to Parliament by the end of 2017.

Part 5: Final

Clause 70: Northern Ireland welfare payments: updating statutory reference

Summary

1. This clause amends section 44(2) of Finance Act 2016 to refer to the correct Statutory Instrument made by the Department for Work and Pensions.

Details of the clause

2. The clause amends section 44(2) of Finance Act 2016 to refer to the Statutory Instrument currently in force made by the Department for Work and Pensions.

Background note

3. As part of an agreement to implement welfare reform equivalent to that established in the rest of the United Kingdom since 2012, the Northern Ireland Executive ('NIE') agreed to provide 'transitional protection' to claimants if their income is reduced compared to pre-reform levels. This is in the form of supplementary payments which will, for a transitional period, top up claimants' benefits to the level of income they were receiving prior to welfare reform.
4. The government legislated in Finance Act 2016 for a power through which supplementary payments, paid by the NIE, to social security benefits that are themselves currently exempt from income tax, can be exempted from income tax.

Clause 71: Interpretation

1. This clause provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of “CAA 2001” as an abbreviation for the Capital Allowances Act 2001.

Clause 72: Short title

1. This clause provides for the bill to be known as “Finance (No. 2) Act 2017” upon Royal Assent.

Territorial extent and application in the United Kingdom

1. In the view of HM government, each of the clauses and Schedules of the Bill extends, and applies, to the whole of the United Kingdom.

2. Clause 43 deals with air passenger duty. Air passenger duty currently applies across the whole of the UK. The Scottish Parliament does have a power in section 80L of the Scotland Act 1998 to make provision for the taxation of the carriage of passengers from airports in Scotland but that power may only be used to impose a charge on the carriage of passengers boarding aircraft on or after a date that is yet to be appointed by the Treasury.

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ISBN **978-0215090706**