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Clause 82 and Schedule 15: Inheritance tax: increased nil-rate band

Summary

1. This clause ensures that an estate will continue to qualify for an increased residence nil-rate band for inheritance tax when an individual downsizes from a higher value residence to a lower value one or ceases to own a residence, and other assets are left on death to direct descendants. The Schedule sets out the conditions for the entitlement to the additional amount (the downsizing addition), the effect of the addition, and how the amount of the residence nil-rate band that has been lost as a result of downsizing or disposal should be calculated. The change will apply for deaths on or after 6 April 2017 and for downsizing moves or disposals on or after 8 July 2015.

Details of the clause and Schedule

Schedule 1: Inheritance tax: Increased nil-rate band

2. Paragraph 1 amends Inheritance Tax Act (IHTA) 1984.

3. Paragraph 2 makes a minor amendment to section 8D(4) to bring section 8M into the calculation of the residence nil-rate amount and explains the meaning of "consumer prices index" in section 8D(9) IHTA 1984.

4. Paragraph 3 makes consequential amendments to section 8E IHTA 1984 to take into account the new provisions introduced by the Schedule. It also amends section 8E(7) IHTA 1984 to ensure that this works as intended to give the correct amount of residence nil-rate band and carry-forward amounts to transfer to a spouse or civil partner's estate.

5. Paragraph 4 makes consequential amendments to the list of other relevant sections in section 8F(4) IHTA 1984 as a result of new section 8FD.

6. Paragraph 5 inserts new sections 8FA to 8FE into IHTA 1984.

Section 8FA: Downsizing addition: entitlement: low-value death interest in home

7. New section 8FA applies where a person has downsized from a more valuable residence and there is a less valuable residence left in the estate on death. It gives the conditions that have to be met for an estate to be entitled to the increased amount of the residence nil-rate band (downsizing addition) in these circumstances and how that amount is calculated.

8. Subsection (1) provides that the downsizing addition will be taken into account when calculating the amount of the residence nil-rate band if all the conditions in this section are met. This gives the entitlement to the downsizing addition.

9. Subsection (2) sets out Condition A, which is that either

   a. there is a residence in the estate on death which qualifies for the residence nil-rate band (a qualifying residential interest) but the full amount is not due because the value of the residence, or the proportion inherited by direct descendants (i.e. closely inherited), is below the maximum residence nil-rate band available for that person, or

   b. there is a residence in the estate on death but none of it is closely inherited and the value of the residence is less than the maximum residence nil-rate band available for that person.

   For the purposes of paragraph (a), sections 8E(6) and 8E(7) and the entitlement to the downsizing addition are ignored because Condition A only tests whether there is scope for any downsizing addition but does not give effect to it.

10. Subsection (3) sets out Condition B, which is that the value transferred by the chargeable transfer on death (VT) is more than the value of the residence (the person's qualifying residential interest).

11. Subsection (4) gives Condition C, which is that the person previously had a residence which could have qualified for the residence nil-rate band (the qualifying former residential interest).

12. Subsection (5) gives Condition D, which is that the value of the former residence has to be more than the chargeable value of the residence in the estate at death.

13. Subsection (6) sets out Condition E which is that at least some of the other assets in the estate (the remainder) must be inherited by direct descendants (closely inherited).

14. Subsection (7) gives Condition F which is that a claim has to be made for the downsizing addition.

15. Subsection (8) gives the amount of the downsizing addition. This is equal to the lost residence nil-rate band (the lost relievable amount) as a result of the downsizing move, which is calculated in accordance with section 8FE IHTA 1984. However, the amount is limited to the value of other assets, or proportion of that value, which is closely inherited.

16. Subsection (9) provides that the amount of the downsizing addition is subject to a reduction in certain cases involving conditional exemption as set out in section 8M(2G).

17. Subsection (10) identifies other provisions which explain the effect of this section or which give the meaning of the terms used in this section.

Section 8FB: Downsizing addition: entitlement: no residential interest at death

18. New section 8FB applies where a person no longer owns a residence so that there is no residence in the estate on death. It sets out the qualifying conditions for an estate to be entitled to the downsizing addition in these circumstances and how that amount is calculated.

19. Subsection (1) provides that the downsizing addition will be taken into account when calculating the amount of the residence nil-rate band if all the conditions in this section are met. This gives the entitlement to the downsizing addition.

20. Subsection (2) sets out Condition G which is that there is no residence in a person's estate at

the date of death. Residence in this context means a house which the person has lived in at some stage while they owned it.

21. Subsection (3) gives Condition H, which is that the value transferred by the chargeable transfer on death (VT) has to be greater than nil.

22. Subsection (4) gives Condition I, which is that the person previously had a residence which could have qualified for the residence nil-rate band (the qualifying former residential interest).

23. Subsection (5) gives Condition J, which is that at least some of the other assets in the estate are inherited by direct descendants (closely inherited).

24. Subsection (6) gives Condition K which is that a claim has to be made for the downsizing addition.

25. Subsection (7) gives the amount of the downsizing addition. This is equal to the lost residence nil-rate band (the lost relievable amount) as a result of disposing of the residence, which is calculated in accordance with section 8FE IHTA 1984. The amount is limited to the value of other assets, or proportion of that value, which is closely inherited.

26. Subsection (8) provides that the amount of the downsizing addition is subject to a reduction in certain cases involving conditional exemption as set out in section 8M(2G).

27. Subsection (9) identifies other provisions which explain the effect of this section or which give the meaning of the terms used in this section.

Section 8FC: Downsizing addition: effect: section 8E case

28. New section 8FC gives the effect of the entitlement to the downsizing addition where some or all of the residence in the estate is left to direct descendants.

29. Subsection (1) provides that the effect applies if there is an entitlement to the downsizing addition because a person has downsized and the residence in their estate, or a part of it, is left to direct descendants.

30. Subsection (2) has the effect that the downsizing addition is added to the amount of the residence nil-rate band that would otherwise be due, in order to arrive at the total residence nil-rate band for the estate.

Section 8FD: Downsizing addition: effect: section 8F case

31. New section 8FD gives the effect of the entitlement to the downsizing addition where there is no residence left to direct descendants.

32. Subsection (1) provides that the effect applies if there is an entitlement to the downsizing addition because a person has downsized but none of the residence has been inherited by direct descendants, or has disposed of a residence so that it cannot be inherited by direct descendants.

33. Subsection (2) provides that this section applies instead of section 8F so that the downsizing addition will still apply even if no part of the residence is inherited by direct descendants.

34. Subsection (3) provides that in these cases the residence nil-rate band will be equal to the downsizing addition.

35. Subsection (4) sets out the circumstance where there is no carry-forward amount. This is

where the downsizing addition is equal to the residence nil-rate band plus any transferred residence nil-rate band (the default allowance where the value of the estate is below the taper threshold, or adjusted allowance if it is above the taper threshold). In that case, the downsizing addition is fully used and nothing is available to be transferred to a spouse or civil partner's estate.

36. Subsection (5) determines the carry-forward amount where the value of the estate is equal to or below the taper threshold and the downsizing addition is less than the residence nil-rate band plus any transferred residence nil-rate band (the default allowance). In that case, the difference between the downsizing addition and the default allowance is available for transfer to a spouse or civil partner's estate.

37. Subsection (6) determines the carry-forward amount where the value of the estate is above the taper threshold and the downsizing addition is less than the residence nil-rate band plus any transferred residence nil-rate band (the adjusted allowance). In that case, the difference between the downsizing addition and the adjusted allowance is available for transfer to a spouse or civil partner's estate.

Section 8FE: Calculation of lost relievable amount

38. New section 8FE sets out how the value of the residence nil-rate band which has been lost as a result of downsizing or disposal of a residence (the lost relievable amount) should be calculated.

39. Subsection (1) specifies the purpose of the section, which is to show how to calculate the lost relievable amount

40. Subsection (2) defines the value of a person's former residence which could have qualified for the residence nil-rate band (the qualifying former residential interest). This is the open market value of the residence, or interest in it, at the time when the disposal of it was completed.

41. Subsection (3) gives a person's "former allowance". This is the total of

    a. the maximum residence nil-rate band available at the time of the disposal,

    b. any transferred residence nil-rate band (brought-forward allowance) that would have been due if the person had died at the time of the disposal, and

    c. any difference between the brought-forward allowance which would have been due at the time of disposal and the actual brought-forward allowance at the time of the person's death.

42. Subsection (4) gives further rules for calculating the brought-forward allowance that would have been due had the person died at the time of disposal of the former residence.

43. Subsection (5) gives steps for calculating the brought-forward allowance for the purposes of section 8FE(3)(c) where the estate on death exceeds the taper threshold. It reduces the brought-forward allowance, ensuring that the taper reduction applies proportionally to the residential enhancement and the brought-forward allowance.

44. Subsection (6) explains what the maximum residence nil-rate band (the residential enhancement) and the brought-forward allowance should be if the residence was disposed of before 6 April 2017. The residence nil-rate band is treated as £100,000 and there is no brought-forward allowance.

45. Subsection (7) defines a person's "allowance on death" as their default allowance if the value of the estate is less than or equal to the taper threshold, or their adjusted allowance if the value of the estate is above the taper threshold.

46. Subsection (8) defines the time of completion of the disposal of the residence, or interest in it.

47. Subsection (9) sets out the steps in the calculation of the lost residence nil-rate band as a result of downsizing to a less valuable residence (the lost relievable amount). Step 1 calculates the percentage of the residence nil-rate band that was 'lost' at the time of the disposal. Step 2 calculates the percentage of the residence nil-rate band at death that is used up by the residence at death. Step 3 calculates the difference between these percentages and Step 4 multiplies the person's allowance on death by this percentage to determine the lost relievable amount.

48. Subsection (10) sets out the steps in the calculation of the lost residence nil-rate band as a result of the disposal of the residence (the lost relievable amount). Step 1 calculates the percentage of the residence nil-rate band that was 'lost' at the time of the disposal. Step 2 multiplies the person's allowance on death by this percentage to determine the lost relievable amount.

49. Paragraph 6 of the Schedule makes a consequential amendment to the provisions dealing with the transfer of the residence nil-rate band (the brought-forward allowance) in section 8G to include a reference to new section 8FD in the calculation of the amount transferred.

50. Paragraph 7 makes various consequential amendments to provisions in section 8H defining the residence qualifying for the residence nil-rate band (the "qualifying residential interest") and any other residence ("residential property interest") so that they also include the former residence (the qualifying former residential interest) which has been disposed of before the person's death, and bring in the provisions in section 8M.

51. Sub-paragraph (5) inserts new subsections (4A) to (4E) into section 8H.

52. Subsection (4A) states that new subsection (4B) or (4C) apply where a person has disposed of their former house(s) on or after 8 July 2015 and the person's personal representatives nominate one such house. This means that personal representatives can nominate only one disposal of a residence, or of an interest in it, to qualify for the downsizing addition.

53. Subsection (4B) provides that where a person disposes of only one nominated residence, or interest in it, that residence or interest will be the qualifying one for the purposes of any downsizing addition.

54. Subsection (4C) provides that where a person disposes of two or more interests in the nominated residence, the person's personal representatives can only nominate one of those interests. That nominated former interest will be the qualifying one for the purposes of the downsizing addition.

55. Subsection (4D) provides that where a person disposes of a former residence and that transfer was conditionally exempt, the disposal of that residence does not count for the purposes of the downsizing addition if the conditions for the exemption are still met at the time of the person's death.

56. Subsection (4E) ensures that the person must have lived in the house at some point before disposal of it in order for it to be treated as a qualifying former residence. A house which the

person has never lived in, such as a property bought solely as an investment or rental property, would not qualify.

57. Subsection (4F) clarifies that if a residence is disposed of under the two-stage exchange of contract followed by completion process, the disposal time for these purposes is the completion date.

58. Paragraphs 8, 9 and 10 make minor amendments to sections 8J, 8K and 8L respectively to include references to new sections 8FA, 8FB, 8FD, 8M and the downsizing addition.

59. Paragraph 11 amends the provisions in section 8M for cases involving conditional exemption to take into account downsizing situations.

60. Sub-paragraph (2) replaces sections 8M(1) and (2) with revised subsections (1) to (2I).

61. Subsection (1) explains that section 8M applies where a person would be entitled to the residence nil-rate band and some or all of the assets in the estate are conditionally exempt. The conditionally exempt assets can include the nominated qualifying residence (the qualifying residential interest), and any other residence(s) or other assets which are wholly or partly inherited by direct descendants (closely inherited).

62. Subsection (2) ensures that the conditionally exempt part of any qualifying residential interest is not eligible for the residence nil-rate band and that subsections (2B) to (2E) only apply when at least some of the qualifying residential interest is closely inherited.

63. New subsection (2A) gives the proportion of the conditionally exempt qualifying residential interest which is not eligible for the residence nil-rate band.

64. Subsections (2B) and (2C) deal with cases where the whole of the qualifying residential interest is conditionally exempt so that none of it qualifies for the residence nil-rate band. Where there is no entitlement to the downsizing addition because none of the assets in the estate are closely inherited, all of the unused residence nil-rate band is carried forward. Where some or all of the assets are closely inherited, the residence nil-rate band will be equal to the downsizing addition, and any unused amount will be available to carry forward.

65. Subsections (2D) and (2E) deal with cases where not all the qualifying residential interest is conditionally exempt. The residence nil-rate band is restricted to the proportion which is closely inherited, and also to the percentage which is not conditionally exempt.

66. Subsection (2F) ensures that subsection (2G) applies when assets other than the qualifying residential interest are conditionally exempt, the deceased is entitled to the downsizing addition because assets are closely inherited, and the downsizing addition is more than the value of non-conditionally exempt other assets (Y). This means that the downsizing addition applies to any non-conditionally exempt assets first and is not reduced under section 8M(2G) if it is equal to or less than Y.

67. Subsection (2G) provides that the downsizing addition is also reduced for assets other than the qualifying residential interest which are conditionally exempt.

68. Subsection (2H) defines various terms in subsections (2F) and (2G). Y is the value of non-conditionally exempt assets (excluding the qualifying residential interest) which are closely inherited. Z is the total of closely inherited conditionally exempt residences and other assets apart from the qualifying residential interest.

69. Subsection (2I) clarifies the meaning of the "closely inherited conditionally exempt value" of a residence to be the portion which is conditionally exempt and closely inherited.

70. Sub-paragraph (3) amends section 8M(3) which applies when conditional exemption ceases to apply following a chargeable event and a tax charge arises.

71. Subsection (3) ensures that the residence nil-rate band and any downsizing addition applies when conditional exemption ceases in respect of the qualifying residential interest and any other assets in the estate. The provisions reverse any reduction in the downsizing addition and enable the residence nil-rate band to be recalculated.

72. Sub-paragraph (4) makes consequential changes to section 8M(3) and clarifies that the unrelieved portion in subsection (3)(c) cannot be a negative amount.

73. Sub-paragraphs (5) to (7) extend the provisions to cover conditionally exempt assets other than the qualifying residential interest.

Background note

74. The Summer Budget 2015 announced the introduction of an additional nil-rate band when a residence is passed on death to a direct descendant. This would be £100,000 in 2017 to 2018, £125,000 in 2018 to2019, £150,000 in 2019 to 2020, and £175,000 in 2020 to 2021. It will then increase in line with CPI for 2021 to 2022 onwards. Any unused nil-rate band will be transferred to a surviving spouse or civil partner. For estates with a net value of more than £2m there will be a tapered withdrawal of the additional nil-rate band at a rate of £1 for every £2 over this threshold.

75. In addition, the announcement also said that the new residence nil-rate band will be available when a person downsizes or ceases to own a home on or after 8 July 2015 and assets of an equivalent value, up to the value of the additional nil-rate band, are passed on death to direct descendants. This clause and Schedule provide for this extension of the residence nil-rate band.

Clause 83: Inheritance tax: pension drawdown funds

Summary

1. This clause introduces an exemption so that an inheritance tax (IHT) charge will not arise where a person has failed to exercise their rights to draw designated funds from a drawdown pension fund or a flexi-access drawdown fund during their lifetime and so has left unused funds when they die.

Details of the clause

2. Subsection 1 amends Inheritance Act (IHTA) 1984.
3. Subsection 2 amends the heading for sections 10 to 17, which deal with dispositions that are not transfers of value for IHT purposes, to include a reference to deemed dispositions.
4. Subsection 3 makes a minor consequential amendment to the definition of "entitled" in section 12(2G) to include when a beneficiary becomes entitled to income withdrawal as a result of new section 167(1A) of Finance Act 2004.
5. Subsection 4 inserts new section 12A into IHTA1984.

Section 12A: Pension drawdown fund not used up: no deemed disposition

6. New section 12A applies where a person has become entitled to a drawdown pension fund or flexi-access drawdown fund but has omitted to exercise their right to draw down all of the designated funds in their lifetime and as a result there are undrawn funds at the time they die in that drawdown fund.
7. Subsection (1) provides that a person who omits to exercise a right to draw down, or use up, their drawdown funds during their lifetime is not to be treated as making a disposition. This means that the value of their estate is not reduced by the omission to draw down all the funds, so the omission is not treated as a transfer of value and is therefore not liable to IHT.
8. Subsection (2) clarifies the meaning of a drawdown fund for the purposes of subsection (1) in relation to registered pension schemes.
9. Subsection (3) clarifies the meaning of a drawdown funds for the purposes of subsection (1) in relation to similar "corresponding schemes" that are not registered pension schemes.
10. Subsection (4) defines "corresponding schemes", "money purchase arrangement" and the various types of drawdown funds.
11. Subsection 5 of the clause sets out when new section 12A of IHTA will apply. For member's and dependants' drawdown pension funds, the provisions will have effect where a person with the unused funds dies on or after 6 April 2011 and the provisions will be treated as

coming into force on 6 April 2011. For flexi-access drawdown funds, which came into existence for tax purposes from 6 April 2015, the date that new section 12A comes into effect and is treated as coming into force is modified to take into account that later commencement date.

12. Subsection 6 provides for the extension of the normal time limit for a claim to repayment of any IHT or interest overpaid as a result of the retrospective commencement of new section 12A.

Background note

13. An IHT charge may arise if a person reduces the value of their estate by failing to exercise rights they have over property. This general rule does not apply to funds held in pension schemes to which a person fails to become entitled. When a person takes their pension benefits, or elects to draw down all or part of their pension, they become entitled to those funds. Having become entitled, if they fail to exercise their rights over those drawdown funds leaving funds undrawn on their death, the general rule applies and an IHT charge may arise.

14. From April 2015 the government introduced changes to the pension tax rules that allowed more people to flexibly access their money purchase pension funds from age 55. This flexibility and an increase in drawdown arrangements means the IHT charge could potentially apply to more people when they leave undrawn funds in their pension scheme when they die. It was not intended that an IHT charge should arise in these circumstances and this measure ensures that it does not do so.

Clause 84: Inheritance tax: victims of persecution during Second World War era

Summary

1. This clause puts on a statutory footing and extends Extra Statutory Concession (ESC) F20 which deals with certain one-off late financial compensation and ex-gratia payments for World War II era claims. The clause extends the scope of the existing concession to include a one- off compensation payment of €2,500 made under a recently created scheme known as the Child Survivor Fund. The clause also provides a power for the Treasury to add subsequent payments to the current list of exempted payments by way of regulations. The legislation will apply in respect of deaths on or after 1 January 2015.

2. The clause provides that the tax on the amount of the qualifying compensation or ex-gratia payment that are currently listed in the ESC and the payment from the Child Survivor Fund should be allowed as credit against the Inheritance tax (IHT) tax arising on the chargeable value of the recipient's estate.

Details of the clause

3. Subsection (1) inserts new section 153ZA into IHTA 1984, which provides for an IHT relief for certain late financial compensation payments received by the victims of National Socialist persecution, or ex-gratia payments received by British groups interned or imprisoned by the Japanese during the Second World War era.

New section 153ZA

4. New subsection (1) provides that the relief is to apply where a person ("P") has died and either the deceased at any time in his life or his personal representatives on P's behalf has received a qualifying payment.

5. New subsection (2) makes provision for a tax credit to be given on the tax chargeable on the value transferred on the persons death of an amount equal to the relevant percentage of the amount of the qualifying payment, or if lower, the amount of tax that would without this provision be chargeable on the value received by the deceased estate.

6. New subsection (3) defines the relevant percentage as the percentage specified in the last row of the third column of the Table 1 in Schedule 1 IHTA 1984, which is currently 40%.

7. New subsection (4) defines a "qualifying payment" as a payment that meets the conditions set out in subsection 5 (condition A), 6 (condition B) or 7 (condition C).

8. New subsection (5) sets out the criteria for condition A. Those conditions include:

   - that the payment is of a kind listed in Part 1 of Schedule 5A, and

- is made to a person, or the personal representatives of a person who was a victim of National Socialist persecution, or the spouse or civil partner of a victim of National Socialist persecution.

9. New subsection (6) provides that in order to be a "qualifying payment" the payment is of a kind listed in Part 2 Schedule 5A, which are payments of a fixed amount from the scheme established by the United Kingdom Government in 2000 and known as the Far Eastern Prisoners of War Ex Gratia Scheme.

10. New subsection 7 sets out the criteria for condition C. Those conditions are that the payment:

    - is of a kind specified in regulations made by the Treasury, and
    - is made to a person, or the personal representatives of a person who was held as a prisoner of war, or civil internee, during the Second World War, or is the spouse or civil partner of a person who was held as a prisoner of war , or civil internee during the Second World War.

11. New subsection (8) allows the Treasury to make regulations adding further payments to the current list of exempt qualifying payments in Part 1 of Schedule 5A.

12. New subsection (9) states that regulations that are made under this section of the legislation are to be made by statutory instrument.

13. New subsection (10) provides that a statutory instrument made under subsection 7 to add new payments to the qualifying list as set out in Part 1 Schedule 5A is subject to the negative resolution procedure.

14. Paragraph 1 subsection (2) inserts new schedule 5A to the IHTA 1984 and lists the compensation and ex-gratia payments which qualify for relief. The schedule is split into two parts, with part 1 dealing with payments to victims of National Socialist persecution, and Part 2 dealing with the ex-gratia payment that are made to the British groups interned or imprisoned by the Japanese.

15. Paragraph 1 subsection (3) contains commencement provisions and provides that the provisions will have effect for deaths occurring on or after 1 January 2015. The existing ESC F20 will have effect in respect of deaths occurring before 1 January 2015, after which new provisions in this clause will apply.

Background note

16. Under the present IHT rules, rights to compensation or ex-gratia payments, or the compensation or ex-gratia payment itself, would normally increase the value of a deceased person's chargeable estate at death and would form part of the claimant's estate for IHT purposes.

17. ESC F20 allows the amount of compensation or ex-gratia payment that fall within the terms of the concession not to be subject to IHT, whether the payment is made to the claimant before their death or is made subsequently to their personal representatives.

18. Schemes continue to be established in the UK and abroad which provide late compensation

payments for personal hurt suffered during World War II era. The feature that singled these payments out for the concessionary IHT treatment was their timing. That is, they were being made more than 50 years after the event. When this is received by the original victims, or their surviving spouse or civil partner, this often comes late in life when plans for the disposal of their wealth have already been made.

19. The concessionary treatment for the payments detailed in ESC F20 has been given because of the special circumstances in which these particular payments came to be paid, rather than simply the nature of the hurt suffered.

Clause 85: Inheritance tax: gifts for national purposes etc

Summary

1. This clause makes two minor technical changes to bring certain public museums and galleries back within the scope of existing legislation in Schedule 3 Inheritance Tax Act 1984 (IHTA). The clause also transfers the power to add national institutions to Schedule 3 from HM Revenue and Customs (HMRC) to the Treasury.

Details of the clause

2. Subsection (1) specifies that the current approval function to include additional public museums and galleries to the current list in Schedule 3 to IHTA 1984 is transferred from HMRC to HM Treasury.

3. Subsection (2) explains that the "Schedule 3 IHTA approval function", for the purposes of subsection (1) is the function conferred in the entry in Schedule 3 that begins "Any other similar national institution".

4. Subsection (3) states that the transfer of the approval function to the Treasury does not affect any approval given before this Act is passed.

5. Subsection (4) amends Schedule 3 IHTA 1984 to bring back within its scope any museum or gallery which has been maintained by a local authority or a university, for example those now constituted as independent charitable trusts which have been unable to benefit from the provisions because of that change.

Background note

6. Bodies listed in, or approved under, Schedule 3 to IHTA 1984 are known as Schedule 3 bodies. Donations to Schedule 3 bodies attract inheritance tax (IHT) and Capital Gains Tax (CGT) relief. Gifts and sales of Conditionally Exempt property to Schedule 3 bodies are not chargeable to IHT or CGT.

7. Recent changes in the way that local authorities administer their cultural services have caused many museums and galleries to now fall outside the advantageous tax provisions currently provided by the legislation. This is because they have placed their museum's collection in independent charitable trusts which are not within the terms of Schedule 3. This has happened at a time when in order for their collection to grow for the public enjoyment these advantages are needed to encourage individuals to donate or sell to such bodies. The problem has been brought to HMRC's attention by the Arts Council England and the Department for Culture, Media and Sports. Subsection (4) addresses this problem.

8. The administrative functions of the heritage provisions were transferred from the Treasury to HMRC in 1985. This includes the function of approving new national institutions for Schedule 3. This function is being transferred to HM Treasury.

Clause 86: Estate duty: objects of national, scientific, historic or artistic interest

Summary

1. This clause makes changes to Estate Duty (ED) legislation to correct a few technical issues with the current legislative framework and to ensure that the scheme works in line with the publicly stated policy. The provision to stop the use of existing statutory provisions to pay IHT at a lower rate than ED where a charge arises following a death will have effect in relation to deaths occurring on or after 16 March 2016. The new rules on when an ED exempt object is lost will come into force on Royal Assent to Finance Bill 2016.

Details of the clause

2. Subsection (1) introduces and inserts new subsections (2A) to (2I) in section 40 of Finance Act 1930 and section 2 of the Finance Act (Northern Ireland) 1931.

3. New section 40(2A) specifies that if an object with an outstanding ED exemption is lost then the ED due on that object will become chargeable on the value of the object at the date of loss.

4. New section 40 (2B) requires that where an item has been lost and subsection (2A) applies any owner of a conditionally exempt object is accountable for estate duty and must deliver an account in respect of the relevant charge.

5. New section 40 (2C) specifies, subject to subsection (2E), the period within which the owner must deliver the account under subsection (2B).

6. New section 40 (2D) specifies that subsection (2E) applies if no account has been delivered under (2B), and the Commissioners of HM Revenue and Customs (HMRC) have by notice required the owner of the object to confirm that the object has not been lost, the owner has not provided such confirmation, and the Commissioners are satisfied that the object is lost. The owner of the object should provide confirmation by the end of the period of three months beginning with the day on which the notice was sent, or such longer period as HMRC may allow.

7. New section 40 (2E) specifies that where it applies the objects are to be treated as lost for the purposes of subsection (2A) on the day on which the Commissioners are satisfied as specified in subsection (2D)(d) and that the account must be delivered within the period of one month of that date.

8. New section 40 (2F) states that the reference in new section 40(2A) to the value of objects is to the value of the object at the time of the loss.

9. New section 40 (2G) states that the loss provision at subsection (2A) does not apply in relation to a loss notified to the Commissioners before the coming into force of that subsection.

10. New section 40(2H) defines "owner" for the purposes of these provisions as any person who if the object were sold would be entitled to receive the proceeds of sale or any income arising from it.

11. New section 40(2I) provides that references in section 40 to the loss of objects include their theft or destruction, but does not include a loss which the Commissioners are satisfied was outside the owner's control.

12. Subsection (2) modifies section 48 of Finance Act 1950 to ensure that a charge does not arise on the loss of an object under section 40(2A) Finance Act 1930 where estate duty has already become chargeable, following a material breach of an undertaking given under that section, in respect of any death.

13. Subsection (3) modifies the application of section 39 of Finance Act 1969, so that the loss of an object will result in the chargeable deferred duty on that object being due.

14. Subsection (4) modifies section 6 of the Finance Act (Northern Ireland) 1969 taking account of the ED charge on loss of an object.

15. Subsection (5) modifies section 6 of the Finance Act (Northern Ireland) 1969 as amended by Article 7 of the Finance (Northern Ireland) Order 1972 taking account of the ED charge on loss of an object.

16. Subsection (6) modifies Schedule 6 to IHTA 1984 so that on the death of an owner of an ED exempted object, where conditional exemption from any IHT charge has been claimed, then on a subsequent chargeable event HMRC will have the option to choose either the ED or IHT charge. This change will harmonise the position on a transfer on death with that following a lifetime transfer.

17. Subsection (7) contains commencement provisions and provides that the provisions relating to changes to Schedule 6 to IHTA 1984 will have effect in relation to chargeable events occurring on or after 16 March 2016.

Background note

18. Estate Duty (ED) was introduced in 1894 and was replaced in 1975 by Capital Transfer Tax which in turn was abolished in 1984 when IHT was introduced.

19. The amendment to the existing ED legislation is being introduced to stop individuals from using the provisions to pay IHT, at a lower rate than ED would be payable, where a charge arises following a death. As a result of the gap in the existing legislation HMRC are seeing a growing number of cases where conditional exemption is being sought solely in order to facilitate a later sale at a lower rate of IHT.

20. When the transitional provisions were introduced the highest rate of Capital Transfer Tax was 75% which did not differ greatly from the highest rate of ED, so there was often little difference in the tax that was payable. However currently the highest rate which can be levied on the sale of a conditionally exempt object is the current IHT rate of 40% whereas for ED the rate can be as high as 80%. Consequently where there is an old ED exemption attached to an object and that object passes upon a death and conditional exemption is claimed, the earlier ED exemption is, as it were, made absolute leaving in many cases a lower rate on a

sale.

21. There is currently no legislation in place that allows HMRC to raise a charge when the owner of an ED exempt object loses it. This means that an individual can lose their object as a result of their own negligent actions but HMRC are unable to raise a charge for the deferred Duty. The loss of an object is dealt with in inheritance tax by section 32(2) IHTA 1984 which allows for a charge on loss due to negligence. Similarly, the new provisions will not apply to items which are lost if HMRC are satisfied that the owner did all that can reasonably be expected and the loss was not in any way caused by the owner's failure to take sufficient care.

Clause 87: Apprenticeship levy

Summary

1. This clause sets out that 'apprenticeship levy' will be charged, and that the Commissioners of Her Majesty's Revenue and Customs (HMRC) will be responsible for its collection and management.

Background

2. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a levy on employers to fund new apprenticeships. The levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their levy payment, which will mean the levy will be payable on pay bills in excess of £3 million a year.

3. The Department for Business, Innovation & Skills issued a response document following consultation on the levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

4. The levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 88: Charge to apprenticeship levy

Summary

1. This clause sets out the conditions under which Apprenticeship Levy will be charged, the relevant percentage it will be charged at, and the value of the annual Levy allowance to be offset against an employer's liability.

Details of the clause

2. Subsection 1 sets out that Apprenticeship Levy will be charged where a person has a pay bill for a tax year and the relevant percentage of that pay bill exceeds the annual Levy allowance for that tax year.

3. Subsections 2 & 3 set out that the amount charged in Apprenticeship Levy in a tax year will be equal to the "relevant percentage" of an employer's pay bill less the annual Levy allowance which they are entitled to for that year.

4. Subsection 4 sets out that a person will be entitled to an annual Levy allowance of £15,000 per tax year, except in so far as rules on connected persons and avoidance provide in sections 4, 5 and 6.

5. Subsection 5 sets out the relevant percentage as 0.5%.

Background

6. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

7. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

8. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 89: A person's pay bill for a tax year

Summary

1. This clause sets out which earnings will make up a person's pay bill for the purposes of the Apprenticeship Levy. Earnings are defined as those on which the employer has a liability to pay Class 1 National Insurance contributions, or would have had such a liability if the secondary threshold that applies for NICs was disregarded.

Details of the clause

2. Subsection 1 sets out that a person will have a pay bill for a tax year where they have a liability to pay secondary Class 1 National Insurance contributions for a tax year, as a consequence of being the secondary contributor in relation to payments of earnings.

3. Subsection 2 sets out that the total amount of a person's s pay bill will be equal to the total earnings paid in that tax year in respect of which the person is liable to pay secondary Class 1 National Insurance contributions.

4. Subsection 3 sets out that for this section, a person will be treated as having incurred National Insurance contributions liabilities as if the secondary threshold for Class 1 contributions did not exist.

5. Subsection 4 sets out that the Treasury may, by regulations, make provision for specified persons working in continental shelf operations to be treated as secondary contributors for the purposes of this section.

6. Subsection 5 makes it clear that for this section, "payments of earnings" are to be interpreted in the same way as for the liability to pay secondary Class 1 National Insurance contributions under the Social Security Contributions and Benefits Act 1992, and that earnings are to be calculated in the same manner as secondary Class 1 liability is calculated.

7. Subsection 6 sets out that references to liability to pay secondary Class 1 contributions in this section refer to liability incurred under Part 1 of the Social Security Contributions and Benefits Act.

Background

8. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

9. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November

2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

10. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 90: Connected companies

Summary

1. This clause sets out that where two or more companies are connected with one another, only one company will be entitled to the annual Levy allowance to be offset against the Apprenticeship Levy. The rules for determining which companies are considered 'connected' will be the same as those for the Employment Allowance.

Details of the clause

2. Subsection 1 applies where at the beginning of a tax year two or more qualified companies, which are not charities, are connected, and would apart from this section each be entitled to a Levy allowance for the tax year.

3. Subsection 2 sets out that only one qualified company can be entitled to the Levy allowance.

4. Subsections 3 sets out that it is up to the companies to decide which company will be entitled to claim the Levy allowance.

5. Subsection 4 sets out that the rules for determining whether companies are "connected" for the purposes of this section will be the same as the rules set out in Part 1 of Schedule 1 of the National Insurance Contributions Act 2014, which determines the connected companies rules for the Employment Allowance for National Insurance contributions.

6. Subsection 5 defines "company" for the purposes of this section.

7. Subsection 6 explains that the meaning of charity is that is provided in section 5.

Background

8. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

9. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

10. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 91: Connected charities

Summary

1. This clause sets out that at the beginning of the tax year where two or more qualified charities are connected with one another only one will be entitled to the Levy allowance to be offset against the Apprenticeship Levy.

Details of the clause

2. Subsection 1 applies where at the start of the tax year two or more charities are connected, and would apart from this section each be entitled to a Levy allowance for the tax year.
3. Subsection 2 sets out that only one of the qualified charities can be entitled to the Levy allowance.
4. Subsection 3 sets out that it is up to qualified charities to decide which charity will be entitled to claim the Levy allowance.
5. Subsections 4 and 5 set out the meaning of charity.
6. Subsection 6 provides that the meaning of connected can be found in sections 21 and 22.

Background

7. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.
8. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.
9. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 92: Anti-avoidance

Summary

1. This clause sets out that where an employer stands to gain as a result of avoidance arrangements relating to the Levy allowance, they are not entitled to that Levy allowance.

Details of the clause

2. Subsection 1 defines "avoidance arrangements" for the purposes of this section, as any arrangements where the main purpose, or one of the main purposes, is to seek a tax advantage in relation to the Levy allowance.
3. Subsections 2 and 3 set out that where, as a consequence of avoidance arrangements, earnings are paid in one tax year rather than another, and the person would have obtained a benefit in relation to liability for the Levy, the pay bill is to be calculated as if the earnings had been paid in that tax year (rather than another tax year).
4. Subsections 4, 5 and 6 set out where, as a consequence of avoidance arrangements, an employer stands to benefit from the Levy allowance, or to benefit from any other tax advantage in relation to the Apprenticeship Levy, they are not entitled to the Levy allowance for the tax year.
5. Subsections 7 and 8 define "arrangements" and "an advantage in relation to apprenticeship Levy" respectively for the purposes of this section.
6. Subsection 9 clarifies that the connected companies and connected charities rules in sections 4 and 5 respectively are not taken into account for the purposes of calculating whether a person stands to gain as a result of avoidance arrangements.
7. Subsection 10 clarifies the meaning of "a particular tax year" for the purposes of this section.

Background

8. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.
9.
10. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland,

Wales and Northern Ireland.

11. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 93: Application of other regimes to apprenticeship levy

Summary

1. This clause makes amendments to existing legislation which is to apply in relation to the Apprenticeship Levy.

Details of the clause

2. Subsection 1 applies rules on the disclosure of tax avoidance schemes to the Apprenticeship Levy by amending the relevant section of the Finance Act 2004

3. Subsection 2 applies the general anti-abuse rule to the Apprenticeship Levy by amending the relevant section of the Finance Act 2013.

4. Subsections 3, 4 and 5 apply the system of accelerated payments in relation to avoidance schemes to the Apprenticeship Levy by amending the relevant sections in the Finance Act 2014.

5. Subsections 6, 7 and 8 apply rules on the promotion of tax avoidance schemes to the Apprenticeship Levy by amending the relevant sections of the Finance Act 2014.

Background

6. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

7. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

8. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 94: Assessment, payment etc

Summary

1. This clause sets out the powers of HMRC to make regulations covering the assessment, payment, collection and recovery of Apprenticeship Levy payments.

Details of the clause

2. Subsection 1 provides for the Commissioners of HMRC to make regulations regarding assessment, payment, collection and recovery of the Apprenticeship Levy.

3. Subsection 2 sets out that regulations under subsection (1) include provisions which apply with or without modification the PAYE regulations and for combining arrangements under these regulations with arrangements made under PAYE regulations.

4. Subsection 3 sets out that regulations under subsection (1) may require payment of the Levy on account , as well as determining the relevant tax period, times of payments, amounts payable, and provision for managing overpayments.

5. Subsection 4 sets out that regulations under subsection (1) may require a person to make returns in relation to the Levy, and to set out how those returns must be made. The returns will be made as part of HMRC's Real Time Information system.

6. Subsection 5 sets out that regulations under subsection (1) may give HMRC the power to assess the Levy amounts payable by persons, and to make provision for a process of assessing those amounts.

7. Subsections 6 and 7 set out that regulations under subsection (1) may make provision in relation to repayments of the Levy made in error, and related repayment interest.

8. Subsection 8 sets out that regulations under subsection (1) may make provision in relation to repayment or remission interest charged in respect of the Apprenticeship Levy.

9. Subsection 9 sets out that regulations under subsection (1) may determine a process for HMRC to make decisions on any matter arising under these regulations, and may make provision for a process of appeal.

10. Subsection 10 provides for the meaning of relevant assessment

11. Subsection 11 and 12 provide further detail on the right of appeal and payments on account.

Background

12. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill.

Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

13. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

14. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 95: Recovery from third parties

Summary

1. This section gives HMRC the power to provide, by regulations, for the collection of unpaid Levy from parties other than the person liable to pay the Levy.

Details of the clause

2. Subsections 1 and 2 provide for HMRC to make regulations under section 8(1) for the recovery of unpaid amounts from persons other than the person liable for the Levy. Such regulations would allow debt relating to non-payment of the Apprenticeship Levy to be transferred to others where it is irrecoverable for example from a managed service company. This is congruent with the treatment of debt relating to income tax and National Insurance contributions.

Background

3. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.
4. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.
5. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 96: Real time Information

Summary

1. Employer's returns relating to the Apprenticeship Levy will be made as part of HMRC's Real Time Information system. This clause sets out the powers of HMRC to make regulations providing for the supply of relevant information about payments of Apprenticeship Levy to HMRC.

Details of the clause

2. Subsection 1 provides that regulations under section 8 may make provision for relevant service providers, such as payroll administrators, to provide relevant information to HMRC for the purposes of the Apprenticeship Levy; to require the clients of those providers to supply information to the relevant service provider; to require relevant service providers to take steps to facilitate the provision of information to them from employers; and to require related compliance with any directions HMRC gives.

3. Subsection 2 sets out that any directions made under the regulations may make provision for different cases or different classes of case.

4. Subsection 3 sets out that definitions of relevant expressions for the purposes of this section.

Background

5. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

6. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

7. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 97: Time limits for assessment

Summary

1. This clause sets out the time limits for assessments to be made on an employer's Apprenticeship Levy payments.

Details of the clause

2. Subsection 1 determines that the general rule will be that no assessment may be made on an employer's Apprenticeship Levy payments more than 4 years after the end of the relevant tax year.

3. Subsection 2 sets out that this time limit will be 6 years rather than 4 in cases where the loss of the Apprenticeship Levy has been brought about carelessly by the person.

4. Subsections 3 and 4 set out that this time limit will be 20 years rather than 4 in cases where the loss of the Apprenticeship Levy brought about deliberately, or in relation to arrangements where the person has failed to comply with the listed obligations.

5. Subsection 5 sets out that for assessments made on Levy repayments made in error, the general rule in subsection 1 will not apply, and assessments on those amounts must instead be made before the end of the tax year after the amount assessed was repaid or paid.

6. Subsection 6 sets out that subsection 2, 3 and 5 do not limit each other.

7. Subsection 7 sets out that an objection to an assessment on the grounds the time limit has expired may be made by appealing the assessment.

8. Subsection 8 sets out that in subsections 2 and 4 where reference to loss brought about by a person is made, this also includes a loss brought about by another person acting on behalf of that person.

Background

9. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

10. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

11. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 98: No deduction in respect of levy to be made from earnings

Summary

1. This clause sets out that a person cannot make any deduction of the Levy for which that person is liable or recover the Levy from the relevant earner or enter into any agreement with any person to do so.

Details of the clause

2. Subsection 1 sets out that a person must not, by agreement or otherwise, make a deduction from an employee's earnings or seek to recover any of the cost of their Levy liability from the relevant earner.

3. Subsection 2 defines "relevant earner" for the purpose of this section.

Background

4. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

5. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

6. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 99: Collectors and court proceedings

Summary

1. This clause sets out that HMRC may recover amounts in respect of the Apprenticeship Levy that the employer has not paid and the relevant process of court proceedings

Details of the clause

2. Subsections 1 and (2) sets out that HMRC will have the power to recover amounts in respect of unpaid Apprenticeship Levy in the same way that it does for income tax under the relevant sections of the Taxes Management Act 1970. Those sections also set out the relevant court proceedings in relation to such recoveries.

Background

3. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

4. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

5. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 100: Records

Summary

1. This clause gives the Commissioners of HM Revenue and Customs (HMRC) the power to make regulations to prescribe what records need to be retained by persons in connection with the Apprenticeship Levy.

Details of the clause

2. Subsection 1 provides for the Commissioners of HMRC to make regulations to require the retention of records for the purposes of the Apprenticeship Levy for a specified period of time.
3. Subsection 2 sets out that the duty to record Levy records is discharged by preserving them in any form and by any means, subject to conditions specified in writing by the Commissioners of HMRC.
4. Subsection 3 sets out the meaning of specified.

Background

6. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

7. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter In Scotland, Wales and Northern Ireland.

8. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 101: Information and inspection powers

Summary

1. This clause applies HMRC's information and inspection powers under Schedule 36 of the Finance Act 2008 to the Apprenticeship Levy.

Background

2. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

3. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

4. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 102: Penalties

Summary

1. This clause sets out that HM Revenue and Customs (HMRC) may charge penalties for errors on returns relating to the Apprenticeship Levy, or for failure to make such a return, or for late payments.

Details of the clause

2. Subsections 1 to 4 add Apprenticeship Levy returns to the list of documents on which HMRC may charge penalties for errors in a document. This means that the rules in Schedule 24 of the Finance Act 2007 which set out the liability, amounts and procedures for penalties will apply to the Apprenticeship Levy.

3. Subsections 5 to 8 add Apprenticeship Levy returns to the list of returns or other documents on which HMRC may charge penalties for failure to make returns. This means that the rules in Schedule 55 of the Finance Act 2009 which set out the liability, amounts and procedures for such penalties will also apply to the Apprenticeship Levy.

4. Subsections 9 to 15 add Apprenticeship Levy payments to the list of payments on which HMRC may charge penalties for failure to make payments on time. This means that the rules in Schedule 56 of the Finance Act 2009 which set out the liability, amounts and procedures for such penalties will also apply to the Apprenticeship Levy. Subsection 18 sets out that this is to come into effect on the date this Act is passed.

5. Subsection 16 sets out that subsections 1 to 4 will come into force by regulations made by the Treasury.

6. Subsection 17 sets out that where section 106 of the Finance Act 2009, covering penalties for failure to make returns, refers to Schedule 55 of that Act, those references are to be taken as references to Schedule 55 as amended by this section. This has the effect that the changes to Schedule 55 for the Apprenticeship Levy will come into force on a day appointed by the Treasury under the power in section 106 of the Finance Act 2009.

Background

7. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

8. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding

system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

9. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 103: Appeals

Summary

1. This clause sets out that appeals may be brought against assessment of the Apprenticeship Levy made by HMRC under section 8.

Details of the clause

2. Subsection 2 sets out how and when notice of appeal must be given to HMRC.

3. Subsection 3 sets out that part 5 of the Taxes Management Act 1970 which deals with appeals for income tax will apply to appeals In relation to the Apprenticeship Levy.

Background

4. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

5. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

6. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 104: Tax agents: dishonest conduct

Summary

1. This clause applies HM Revenue and Customs (HMRC) information and inspection powers under Schedule 38 of the Finance Act 2008 for tax agents (engaging in or who have engaged in dishonest conduct) to the Apprenticeship Levy.

Background

2. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

3. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

4. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 105: Provisional collection of apprenticeship levy

Summary

1. This clause amends the Provisional Collection of Taxes Act 1968 to facilitate future changes to the Apprenticeship Levy.

Background

2. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

3. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

4. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 106: Crown application

Summary

1. This clause sets out that this Part binds the Crown.

Background

2. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

3. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

4. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 107: Charities which are "connected" with one another

Summary

1. This clause sets out the rules for determining where two or more charities are "connected" for the purposes of the Levy allowance to be offset against the Levy allowance.

Details of the clause

2. Subsection 1 sets out that two charities are connected with one another for the purposes of section 5(1) if they are connected under the definition of "connected persons" in section 993 of the Income Tax Act 2007, and their purposes and activities are the same or substantially similar.

3. Subsections 2 and 3 set out that the rules for determining the connection and treatment of charities which are trusts, including definitions for "control" by and of charities which are trusts.

4. Subsections 4 sets out that the rules for determining whether persons are connected with trustees of a charity in this section are the same as the connected persons rules in the relevant section of the Income Tax Act 2007, except for the subsection in that Act which concerns the trustees of settlements.

5. Subsection 5 sets out that for the purposes of the connected charities rules for the Apprenticeship Levy, companies which are controlled by charities are to be treated as charities themselves, and are connected to the controlling charity.

6. Subsections 6 and 7 set out that "control" for the purposes of subsection 5 has the same meaning as in Part 10 of the Corporation Tax Act 2010, except that a person is also deemed to have control of a limited liability partnership where they have a right to a share of more than half the assets or income of that partnership.

Background

7. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

8. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November

2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

9. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 108: Connection between charities: further provision

Summary

1. This clause provides if charity ("A") is connected with another charity ("B") and B is connected with another charity ("C") then A and C are also connected with one another (if that would not otherwise be the case).

Details of the clause

2. Subsection 1 sets out that this section applies where two charities, "A" and "B", are connected, and B is connected to a further charity, "C".

3. Subsection 2 provides that charity "C" is connected to charity "A" for the purposes of the connected charities rules in section 5(1).

4. Subsection 3 sets out that charities are "connected" under this section if they are connected under section 5(1) or connected under the rules in this section or section 21.

Background

5. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

6. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

7. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 109: General interpretation

Summary

1. This clause defines expressions used in the Part relating to the Apprenticeship Levy.

Background

2. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

3. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

4. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 110: Regulations

Summary

1. This clause sets out the process for making regulations under the powers in this Part.

Details of the clause

2. Subsection 1 sets out that regulations made under the powers in this part may make different provision for different types of case, and for provisions incidental, consequential, supplementary or transitional nature.

3. Subsections 2 and 3 set out that regulations made under the powers in this part are to be made by statutory instrument, subject to the negative procedure in the House of Commons.

4. Subsection 4 sets out that any regulations to bring into force penalties for errors on returns in relation to the Apprenticeship Levy, made under section 17(16), are not subject to any Parliamentary procedure.

Background

5. The Apprenticeship Levy was announced at Summer Budget 2015. It will be a Levy on employers to fund new apprenticeships. The Levy will support the Government's commitment to improving productivity by increasing the quantity and quality of apprenticeships. The Levy will be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive an allowance of £15,000 to offset against their Levy payment, which will mean the Levy will be payable on pay bills in excess of £3 million a year.

6. The Department for Business, Innovation & Skills issued a response document following consultation on the Levy, alongside the Chancellor's Autumn Statement on 25 November 2015. The response document sets out further details on the operation of the new funding system in connection with the Levy in England. Skills policy is a devolved matter in Scotland, Wales and Northern Ireland.

7. The Levy will be introduced from 6 April 2017 and will apply across the UK.

Clause 111: VAT: power to provide for persons to be eligible for refunds

Summary

1. This clause allows non-departmental public bodies, and similar arms-length bodies, to recover the VAT they incur when they enter into cost-sharing arrangements. Refunds of VAT are subject to certain funding agreements with the Treasury. This will commence from the date of Royal Assent to the Finance Bill.

Details of the clause

2. Subsection (1) of the clause adds a new section 33E into the Value Added Tax Act 1994.

3. Subsections (1) and (2) of section 33E provide for refunds to be made to specified persons (non-departmental public bodies and similar arms-length bodies specified in an order) of the VAT they incur on purchases made, and goods imported or acquired, for non-business purposes in so far as the Treasury directs for this to happen. Subsection (2) of section 33E allows for HMRC to determine how and when claims are to be made.

4. Because the specified persons will all be publicly funded bodies, subsection (3) of section 33E requires that they enter into agreements with the Treasury to adjust their overall funding by the amount of VAT now recoverable.

5. Subsections (4) and (5) of section 33E determine the latest time at which a claim may be made.

6. Subsections (6) and (7) of section 33E require an apportionment to be made where goods and services are purchased both for business and for non-business purposes.

7. Subsections (8) and (9) of section 33E provide for the Treasury to make orders naming the specified persons who will be entitled to reclaim VAT under this measure.

8. Subsection (10) of section 33E excludes certain purchases from credit under this measure.

9. Subsections (2) to (4) of the clause make consequential amendments to the Value Added Tax Act 1994.

Background note

10. The purpose of this clause is to allow departmental public bodies and similar arms-length bodies to benefit from refunds of VAT when they enter into certain cost-sharing arrangements, in the same way that government departments and NHS bodies already do. This will be so whether they enter into such arrangements between themselves or with government departments, or whether they purchase eligible services from third parties.

11. The eligible services are those listed in a Treasury direction which presently applies to government departments and the NHS.

12. To prevent double-funding of those bodies which will benefit from this clause, they must first agree with the Treasury whether their existing public funding needs to be reduced on account of the VAT now recoverable. Once this has happened the Treasury will name the bodies in an order.

13. Because the clause is aligned with the overall funding of the public sector, the bodies in question will be required to make their claims within the financial year in which the VAT has been incurred.

Clause 112: VAT: representatives and security

Summary

1. This clause amends section 48 of the Value Added Tax Act 1994 ("VATA"). Section 48 gives the Commissioners power to direct a taxable person, whose business is not established in the EU, to appoint a VAT representative. The VAT representative is then responsible to the same extent as the taxable person for all aspects of the taxable person's VAT affairs including liability for VAT. The amendment will:

    - ensure that a VAT representative appointed under section 48 is established in the UK,
    - require a taxable person who is subject to a direction to ensure the VAT representative is registered in a register maintained for that purpose,
    - allow security to be required from a taxable person who is not established in the UK whether or not there has been any direction regarding the appointment of a VAT representative.
    - update references to mutual assistance provisions between the UK and EU and other states
    - extend the Commissioners' powers to make regulations regarding the maintenance of a register of VAT representatives.

This clause is linked to 1067a and takes effect from Royal Assent.

Details of the clause

2. Subsection (1) provides that s.48 is amended in accordance with subsections (2) to (11).
3. Subsection (2) amends the heading for s.48.
4. Subsection (3) amends subsection (1) of s.48 to apply a new subsection (1ZA) where a person meets criteria specified in subsection (1) regarding establishment and to amend one of the criteria.
5. Subsection (4) inserts a new subsection (1ZA) which gives the Commissioners power to require a person who fulfils the criteria in subsection (1) of s.48 to appoint a UK-established VAT representative.
6. Subsection (5) updates the definition of 'mutual assistance provisions'.
7. Subsections (6) and (7) amend subsection (2) and (2A) of s.48 so that they refer to existing subsection (1) and new subsection (1ZA) and the phrase 'UK-established' where appropriate.

8. Subsection (8) amends subsection (4) of s.48 to give the Commissioners a new power to make regulations, in relation to any register kept about VAT representatives, to entitle them to refuse to register and to deregister a VAT representative in circumstances to be specified in the regulations.

9. Subsection (9) amends subsection (7) of s.48 to give the Commissioners power to require security or further security from a person who is not established in the UK.

10. Subsection (10) inserts new subsections (7B) and (7C) into s.48. Subsection (7B) gives the Commissioners power to specify a time limit for compliance with, and a power to vary, a direction to appoint a VAT representative under subsection (1ZA), and provides that a direction continues in effect until it is withdrawn or the conditions in subsection (1) are no longer satisfied. Subsection (7C) provides that a direction to provide security may specify a time limit for compliance, may be varied and continues to have effect (subject to any variation) until withdrawn.

11. Subsection (11) inserts a new subsection (8A) into s.48 which defines, for the purposes of subsections (1ZA) and (2), the phrase "UK-established".

12. Subsection (12) makes a consequential amendment to paragraph 19 of Schedule 3B to VATA to substitute a reference to subsection (1) of s.48 with a reference to subsection (1ZA).

Background note

13. These new provisions are part of a package of measures announced at Budget 2016 supporting the Government's policy of tackling online fraud and creating a level and fair playing field for all businesses selling goods online.

14. A guidance note was published on Budget Day on GOV.UK.

15. Budget day guidance note - VAT: overseas businesses and joint and several liability for online marketplaces

Clause 113: VAT: joint and several liability of operators of online marketplaces

Summary

1. This clause deals with joint and several liability of operators of online marketplaces.

Details of the clause

2. Subsection (1) provides that the Value Added Tax Act 1994 ("VATA") is to be amended in accordance with subsections (2) to (4).

3. Subsection (2) introduces three new sections into the VATA. Section 77B gives the Commissioners of HMRC power to make the operator of an online marketplace liable for VAT on goods sold in the UK via the marketplace by an overseas business. Section 77C gives the Commissioners the power to assess the operator for the VAT owed. Section 77D allows HMRC to assess and recover interest on assessments if they are not paid within 30 days of the notice of assessment. Subsections (3) and (4) make some consequential amendments to VATA which are required because of the introduction of the new sections. This clause is linked to 112and takes effect from Royal Assent.

4. New Section 77B sets out the circumstances in which an operator of an online marketplace may become jointly and severally liable for the VAT on goods sold via the marketplace by an overseas business.

5. New Subsection 77B(1) provides that the section applies where the seller of the goods is not 'UK-established' and has failed to comply with UK VAT rules whether they are contained in the VATA itself or in secondary legislation made using powers conferred by VATA. The failure need not relate to the goods sold via the marketplace and so includes, for example, any failure to register for VAT, and to render and pay returns.

6. New subsection 77B(2) to (5) give the Commissioners a discretion to issue a notice ("the liability notice") to an operator of an online marketplace about a person selling goods through the marketplace. Those subsections also provide for the effect of the notice. The effect of the notice is to make the operator (as well as the seller) liable for the VAT due on goods sold via the marketplace. The operator is only liable if he fails to stop the seller offering his goods for sale within the time limit specified in the notice. If the operator fails to comply with the notice he will be liable for the VAT for the whole of the period the notice remains in force.

7. New subsection 77B(6) specifies that a liability notice will remain in force from the day after it is issued until either the Commissioners issue a withdrawal notice pursuant to the power given to them by subsection (7) or the provisions of subsection (8) apply.

8. New subsection (8) provides that a liability notice will cease to have effect from the date an operator ceases to operate an online marketplace. However, if the operator fails to tell the Commissioners of his change of status until after the event, the liability notice will remain in force until the operator tells the Commissioners about his change of status.

9. New subsections 77B(9) and (10) provide definitions for 'online marketplace', 'operator', and 'UK-established'. A person is 'UK-established' if that person is established in the UK in accordance with Article 10 of the Implementing Regulation (EU) No 282/2011. Article 10 provides that the place of establishment of a person's business is determined by reference to where the functions of the business's central administration are carried out. In order to determine this account is to be taken of the place where essential decisions concerning the general management of the business are taken, the place where a registered office of the business is located and the place where the management meets. Where these criteria leave any doubt as to the place of establishment then the place where essential decisions concerning the general management of the business are taken takes precedence.

10. New subsection 77(11) gives the Treasury the power to make regulations which provide for the circumstances in which supplies of goods are or are not to be treated as having been offered for sale or made through an online marketplace.

11. New subsection 77B(12) gives the Treasury power to amend, by regulations, the definitions of 'online marketplace', 'operator, and 'UK-established' contained in subsections (9) and (10).

12. New section 77C gives the Commissioners power to raise an assessment against the operator of an online marketplace who is liable for VAT in accordance with section 77B and specifies the time limits applicable to such an assessment.

13. New subsection 77C(1) permits the Commissioners to assess to the best of their judgment and notify the assessment to the operator.

14. New subsection 77C (2) gives the Commissioners discretion to choose the period or periods to be covered by an assessment but that discretion is subject to the time limits specified in subsections (3) to (6).

15. New subsection 77C (3) provides the basic time limits for an assessment.

16. New subsections 77C (4) and (5) provide together a basic time limit for an additional assessment raised in relation to a period already assessed.

17. New subsection 77C (6) provides an overall time limit applicable to both assessments and additional assessments.

18. New subsection 77C (7) provides that an amount assessed (except to the extent it is reduced or the assessment is withdrawn) is deemed to be an amount of VAT due from the person assessed and may be recovered accordingly.

19. New subsection 77C (8) makes subsection (7) subject to the provisions in VATA regarding appeals.

20. New subsection 77C (9) applies definitions in section 77B to this section.

21. New section 77D which makes provision for interest on assessments under section 77B that are not paid on time.

22. New subsection 77D (1) makes provision for when interest will become due on an assessment.

23. New subsection 77D (2) makes provision for the rate of interest.

24. New subsection 77D (3) gives the Commissioners power to assess for interest and to notify the operator.

25. New subsection 77D (4) requires the notice of assessment to specify the date to which the interest is calculated.

26. New subsection 77D (5) allows the Commissioners to make further assessments of interest due.

27. New subsection 77D (6) provides that interest assessed is recoverable as if it were VAT.

28. New subsection 77D(7) provides for appeals.

29. New subsection 77D (8) provides that the interest payments are to be made without any deduction of income tax.

30. New subsection 77D (9) applies definitions in section 77B to this section.

31. Subsection (3) makes consequential changes to VATA to provide a right of appeal against an assessment raised under section 77C and to ensure the application of certain other provisions relating.

Background note

32. These new provisions are part of a package of measures announced at Budget 2016 supporting the Government's policy of tackling online fraud and creating a level and fair playing field for all businesses selling goods online. A guidance note can be found here:

    https://www.gov.uk/government/publications/vat-overseas-businesses-and-joint-and-several-liability-for-online-marketplaces/vat-overseas-businesses-and-joint-and-several-liability-for-online-marketplaces

Clause 114: VAT: Isle of Man charities

Details of the clause

1. For enactments relating to Value Added Tax, the clause amends paragraph 2(2) of Schedule 6 to the Finance Act 2010 to make it clear that the High Court of the Isle of Man is a relevant UK court. This has the effect of ensuring that organisations on the Isle of Man that are subject to the jurisdiction of the High Court of the Isle of Man are capable of being recognised as charities for Value Added Tax purposes and can benefit from the Value Added Tax relief that is available to charities subject to the jurisdiction of a UK Court.

Background note

2. This amendment will put it beyond doubt that charities subject to the jurisdiction of the High Court of the Isle of Man are capable of qualifying for UK Value Added Tax reliefs for charities. Isle of Man organisations are entitled to this treatment by virtue of the Principal VAT Directive and the 1979 Customs and Excise Agreement between the Isle of Man and United Kingdom.

Clause 115: VAT: women's sanitary products

Summary

1. This clause reduces the VAT rate on the supply of women's sanitary products from 5 % to zero %. This change follows discussions at the European Council which has agreed to increased flexibility for Member States on tax rates. The UK is using this opportunity to provide for the reduction of the VAT rate on women's sanitary products to the zero-rate.

Details of the clause

2. Subsection (1) amends the VAT Act 1994

3. Subsection (2) amends Schedule 7A of the VAT Act 1994 by withdrawing Group 4, the reduced rate for women's sanitary products, and its entry in the index to that schedule.

4. Subsection (3) inserts a new entry of Group 19 into the index of Schedule 8 of the VAT Act 1994.

5. Subsection (4) inserts the new Group 19 into Schedule 8. This new group is for the zero-rate for the supply of women's sanitary products and is a replica of the legislation used previously in Group 4 of Schedule 7A. This ensures that supplies that were previously subject to the reduced rate are now subject to the zero-rate.

6. Subsection (5) provides for commencement on or after such day as the Treasury may by regulations made by statutory Instrument appoint.

Background note

7. This clause has been introduced following Conclusions of the European Council to permit Member States greater flexibility on VAT rates. This has presented the government with the opportunity to meet an existing commitment to seek and apply a zero-rate to the supply of women's sanitary products.

Clause 116: SDLT: Calculating tax on non-residential and mixed transactions

Summary

1. This clause introduces changes to the way Stamp Duty Land Tax (SDLT) is calculated in relation to non-residential property transactions and transactions involving a mixture of residential and non-residential properties.

Details of the clause

2. Subsection (1) amends section 55 of Finance Act 2003, which sets out the general rules for calculating the amount of SDLT on non-residential and mixed transactions.

3. Subsection (2) removes the reference to section 55(2) of Schedule 4A to Finance Act 2003, which is now omitted.

4. Subsection (3) substitutes new Table B into section 55(1B), which sets out the revised rates and bands for calculating stamp duty land tax on non-residential and mixed transactions. The amount of tax is calculated by applying each rate of tax to the appropriate part of the relevant consideration and adding together the different amounts. This subsection also makes consequential amendments to section 55(1B) take account of this change.

5. Subsection (4) makes amendments to subsection (1C), in relation to transactions that are linked.

6. Subsections (5) to (7) omit section 55(2) from Schedule 4A to Finance Act 2003 and makes consequential changes to section 55(3) and (4) of Schedule 4A.

7. Subsections (8) to (11) amend Schedule 5 to Finance Act 2003, which provides for the amount of tax chargeable in relation to transactions where the consideration includes rent.

8. Subsection (9) amends Table B in paragraph 2(3) of Schedule 5 to Finance Act 2003 and provides for an additional rate of 2% to be applied to non-residential or mixed transactions where the net present value of the rent exceeds £5 million.

9. Subsections (10) and (11) omit paragraph 9A, which applied to a consideration other than rent, from Schedule 5 to Finance Act 2003, and make a consequential change to paragraph 9 of Schedule 5.

10. Subsection (12) provides that these changes have effect in relation to any land transaction where the effective date is on or after 17 March 2016.

11. Subsections (13) provides that the purchaser may elect that the new calculation rules do not apply in certain circumstances. The first of these is where contracts were exchanged before 17 March and the contract was "substantially performed" (that is, the purchaser occupied the property or paid over the whole, or substantially the whole, of the consideration) before that date. The second is where contracts were exchanged before 17 March and the contract is completed on or after that date, provided that there is no event of a kind listed in subsection

(15), which results in the effect of the contract on completion being different from the effect of the contract when first entered into.

12. Subsection (14) provides that an election must be made in a land transaction return or an amendment to such a return and must meet any requirements specified by the Commissioners for Her Majesty's Revenue and Customs.

13. Subsection (15) sets out the situations which will result in the new rules applying, even if contracts were exchanges before 17 March 2016. These situations are:

- where there has been a variation of the contract or assignment of rights under the contract on or after 17 March 2016,
- where completion of the transaction follows the exercise of an option or similar right on or after 17 March 2016, or
- where the land subject to the contact has been assigned or subject to a sub-sale to another person on or after 17 March 2016.

14. Subsection (16) defines the terms "land transaction return", "purchaser" and "substantially performed" as those set out in section 76, 43(4) and 44(5) respectively in Finance Act 2003.

Background note

15. These changes, to the way in which SDLT is calculated for non-residential and mixed property transactions, build on reforms to residential SDLT introduced at Autumn Statement 2014.

16. The changes will mean that rather than charging a single rate of tax on a transaction, each rate of tax is payable on the portion of the chargeable consideration which falls within each rate band. New rates and bands have also been introduced.

17. The changes eliminate the "cliff edge" increases in SDLT liability which occurred under the old rules as prices rose above a rate threshold.

Clause 117 SDLT: Higher rates for additional dwellings etc

Summary

1. This clause introduces new rates of Stamp Duty Land Tax for certain purchases of dwellings. The purchases subject to these new rates are those undertaken by individuals who already own other dwellings (and are not replacing a main residence) and purchases by any person who is not an individual.

Details of the clause

2. Subsection 2 inserts new subsection (4A) into section 55 Finance Act 2003. This provides that a new table of rates will apply to the relevant consideration of a residential transaction in accordance with schedule 4ZA.

Schedule 4ZA Finance Act 2003

3. Subsection 3 insert new schedule 4ZA after schedule 4 in Finance Act 2003.

Schedule 4ZA: Part 1: Higher rates

4. Sub-paragraph 1(1) provides that where a chargeable transaction is a higher rates transaction, the normal table of rates of tax applicable to residential transactions (Table A) is replaced by a new table in sub-paragraph 1(2).

5. Sub-paragraph 1(2) sets out the new Table A which set out the rates applicable to a higher rates transaction. The new Table A, like that which it replaces for higher rate transactions, applies on a "slice" basis, where progressive rates apply to different portions of the total consideration. The first £125,000 of consideration is always charged at 3%, the next £125,000 (if any) is always charged at 5% and so on.

Schedule 4ZA: Part 2: Meaning of "higher rates transaction"

6. Part 2 prescribes whether a chargeable transaction is a higher rates transaction.

7. Paragraph 2 defines a higher rate transaction.

8. Sub-paragraph 2(2) sets out the meaning of higher rate transaction where a chargeable transaction is undertaken by only one purchaser. The chargeable transaction is a higher rate transaction only if the transaction is within any of paragraphs 3 to 7 with regard to the purchaser.

9. Sub-paragraph 2(3) sets out the meaning of higher rate transaction where a chargeable transaction is undertaken by more than one purchaser. The chargeable transaction is a higher rate transaction if the transaction is within any of paragraphs 3 to 7 with regard to any of the purchasers. This test also applies to married couples and civil partners who purchase properties as a sole purchaser because of the provision at paragraph 9.

10. Sub-paragraph 2(4) modifies the meaning of "major interest" in the schedule. "Major interest" is defined in section 117 Finance Act 2003 and means a freehold or leasehold interest. For the purposes of the Schedule a leasehold interest is treated as not being a major interest if the lease was originally granted for a period of 7 years or less.

11. Paragraphs 3 and 4 deal with chargeable transactions involving only a single dwelling.

12. Paragraph 3 sets out the test for when a chargeable transaction is a higher rate transaction for an individual purchasing a major interest in a single dwelling. A transaction is a higher rate transaction under paragraph 3 if it meets all of Conditions A to D in sub-paragraphs 3(2) to (5).

13. Sub-paragraph 3(2) sets out Condition A. Condition A is that the chargeable consideration for the chargeable transaction is equal to or more than £40,000.

14. Sub-paragraph 3(3) sets out Condition B. Condition B is met unless the interest purchased is a freehold or superior leasehold that is reversionary on a lease with more than 21 years left to run at the date of the transaction.

15. Sub-paragraph 3(4) sets out Condition C. Condition C is met if the purchaser has a major interest meeting certain criteria in one or more other dwellings at the end of the day of the effective date of the transaction. The major interests that are relevant for Condition C are those:

    - with a market value of more than £40,000, and,
    - that are not reversionary on a lease with more than 21 years left to run at the date of transaction.

16. Sub-paragraph 3(5) to 3(7) set out Condition D. Condition D is met if the chargeable transaction is not a replacement of the purchaser's only or main residence. Sub-paragraph 3(6) deals with the situation where a previous main residence has been disposed of before or on the same day as the chargeable transaction. Sub-paragraph 3(7) deals with the situation where a previous main residence has been sold after the chargeable transaction.

17. Sub-paragraph 3(6) provides that a chargeable transaction will be a replacement of the purchaser's only or main residence if:

    - the purchaser intends the purchased dwelling to be their only or main residence,
    - the purchaser, their spouse or their civil partner have disposed of a major interest in a previous main residence in the three years before the purchase, and
    - the purchaser, their spouse or civil partner have not acquired another major interest in a main residence since the disposal.

18. Sub-paragraph 3(7) provides that a chargeable transaction becomes a replacement of the purchaser's only or main residence if:

    - the purchaser intends the purchased dwelling to be their only or main residence, and

- the purchaser, their spouse or their civil partner dispose of a major interest in a previous main residence in the three years after the purchase.

19. A previous main residence in paragraphs 3(6) and (7) is one that had been the purchaser's only or main residence at some point during the period of three years before the purchase transaction.

20. Paragraph 4 sets out the test for when a chargeable transaction is a higher rate transaction for a purchaser of a major interest who is not an individual, such as a company. Such a chargeable transaction is a higher rate transaction if Conditions A and B in sub-paragraphs 3(2) and 3(3) are met.

21. Paragraphs 5 to 7 deal with cases where a chargeable transaction involves two or more dwellings.

22. Paragraph 5 sets out the first set of circumstances in which a chargeable transaction by an individual involving more than one dwelling is a higher rate transaction.

23. Sub-paragraph 5(1) sets out that a chargeable transaction by an individual involving more than one dwelling is a higher rate transaction where at least two of the purchased dwellings meet Conditions A and B.

24. Sub-paragraph 5(2) sets out Condition A. Condition A is that the chargeable consideration for the chargeable transaction that is attributable to the dwelling is equal to or more than £40,000.

25. Sub-paragraph 5(3) sets out Condition B. Condition B is met unless the interest purchased is a freehold or superior leasehold that is reversionary on a lease with more than 21 years left to run at the date of the transaction.

26. Paragraph 6 sets out the second set of circumstances in which a chargeable transaction by an individual involving more than one dwelling is a higher rate transaction.

27. Sub-paragraph 6(1) sets out that a chargeable transaction by an individual involving more than one dwelling is a higher rates transaction if:

    - only one of the dwellings meets Condition A and B in paragraph 5,
    - that dwelling (that meets Conditions A and B) is not a replacement of the individuals only or main residence, and
    - the purchaser owns a major interest in another dwelling at the end of the day of purchase which is worth more than £40,000 and is not subject to a lease with more than 21 years remaining.

28. Sub-paragraph 6(2) provides that a purchase of a dwelling is a replacement of a main residence for the purposes of paragraph 6 in the same circumstances as for the purposes of paragraph 3.

29. Paragraph 7 sets out the test for when a chargeable transaction involving more than dwelling is a higher rates transaction for a purchaser who is not an individual, such as a company. Such a chargeable transaction is a higher rate transaction if Conditions A and B in paragraph 5 are met in respect of at least one of the dwellings.

Schedule 4ZA: Part 3: Supplementary Provisions

30. Part 3 provides a number of supplementary rules that explain how the tests in Part 2 should be applied and also provides for changes to procedural rules in respect of a disposal of a previous main residence.

31. Paragraph 8 deals with the case where a transaction is a higher rates transaction on the effective date of the transaction and subsequently ceases to be a higher rates transaction. This is where a sale of a previous main residence happens within three years of the chargeable transaction as described in sub-paragraph 3(7).

32. Sub-paragraph 8(2) provides that a disposal that causes an earlier purchase to cease to be a higher rates transaction cannot also make a later purchase into a replacement of a main residence under sub-paragraph 3(6).

33. Sub-paragraph 8(3) provides an extension to the normal SDLT time limits for amending a return to reflect a chargeable transaction ceasing to be a higher rate transaction. The normal time limit for amendment is 12 months following the filing date. The time limit in the case where paragraph 8 applies is the later of the normal time limit and 3 months after the disposal of the previous main residence.

34. Sub-paragraph 8(4) disapplies the normal requirement to provide HMRC with certain documentation with an amendment to a land transaction return where the amendment is made in respect of a chargeable transaction ceasing to be a higher rates transaction.

35. Paragraph 9 makes provision for how spouses and civil partners are to be treated for the purposes of the schedule.

36. Sub-paragraph 9(1) defines the purchasers to whom paragraph 9 applies. Paragraph 9 applies to purchasers who are married or in a civil partnership who are living together at the time of the purchase.

37. Sub-paragraph 9(2) provides that, for the purposes of determining whether a transaction is a higher rates transaction, the spouse or civil partner of a purchaser is to be treated as if they were purchasing jointly with the purchaser.

38. Sub-paragraph 9(3) provides that the Income Tax definition of spouses and civil partners living together applies. This definition treats as living together any married couple of civil partner who are neither legally separated nor are, in fact, separated in circumstances in which the separation is likely to be permanent.

39. Paragraphs 10 to 13 make provision for settlements and bare trusts.

40. Paragraph 10 prescribes how a purchaser who is a trustee of a settlement with certain kinds of beneficiary should apply the tests in paragraphs 3 to 7.

41. Sub-paragraph 10(1) applies sub-paragraph 10(3) where a purchaser is a trustee and where the dwelling purchased is held in favour of a beneficiary who is entitled to occupy the dwelling or is entitled to the income from the dwelling.

42. Sub-paragraph 10(2) applies sub-paragraph 10(3) where a purchaser is a trustee of a bare trust (meaning a trust where a beneficiary is absolutely entitled against the beneficiary) and the purchased interest in the dwelling is a lease. This provision is needed because the general SDLT position is that a trustee of a bare trust in respect of the grant of a lease is treated as

having been granted that lease absolutely by sub-paragraph 3(3) of schedule 16 to Finance Act 2003. Similar provision is not required for bare trustees who purchase freehold interests because sub-paragraph 3(1) of schedule 16 to Finance Act 2003 treats those interests as acquired by the beneficiary.

43. Sub-paragraph 10(3) provides that in relation to the settlements in sub-paragraph 10(1) and the bare trusts described in sub-paragraph 10(2) the beneficiary of the settlement is treated as being the purchaser for the purposes of determining whether the tests in paragraphs 3 to 7 are met.

44. Sub paragraph 10(4) confirms that unless sub-paragraph 10(3) applies the trustee is to be treated as purchaser.

45. Paragraph 11 prescribes how ownership of a dwelling by a trustee affects the tests in paragraphs 3 to 7.

46. Sub-paragraph 11(1) applies sub-paragraph 11(3) where a trustee owns a dwelling and that dwelling is held in favour of a beneficiary who is entitled to occupy the dwelling or is entitled to the income from the dwelling.

47. Sub-paragraph 11(2) applies sub-paragraph 11(3) where a trustee of a bare trust owns a lease over a dwelling.

48. Sub-paragraph 11(3) provides that in relation to the settlements in sub-paragraph 11(1) and the bare trusts in sub-paragraph 11(2) the beneficiary is treated as being the owner for the purposes of determining whether the tests in paragraphs 3 to 7 are met. The beneficiary will also be treated as having disposed of such an interest if the trustee has disposed of it.

49. Paragraph 12 provides for the treatment of interests treated as held by children under the age of 18.

50. Sub-paragraph 12(1) identifies the situations in which sub-paragraph 12(2) applies. These situations are where a child under the age of 18 is treated as purchasing, disposing or owning a dwelling by either paragraphs 10 or 11 or by paragraph 3 of schedule to 16 Finance Act 2003.

51. Sub-paragraphs 12(2) to (4) treat any such interest purchased, disposed or owned as if it were purchased, disposed or owned by the child's parents and any spouse or civil partner living together with one of the child's parents. The Income Tax definition of living together applies.

52. Sub-paragraph 12(5) defines a child as being an individual under the age of 18.

53. Paragraph 13 provides for individual trustees who purchase property on trust for beneficiaries who are not the sort of beneficiary described in paragraph 10. The treatment of such trusts, particular discretionary trusts is the same as for company purchasers under paragraphs 4 and 7.

54. Sub-paragraph 13(1) explains that paragraph 13 applies to individual trustees purchasing a major interest in one or more dwellings. The trustees affected are those of settlements with no beneficiary entitled to occupy the dwelling for life and no beneficiary entitled to the income from the property.

55. Sub-paragraph 13(2) modifies the tests in paragraphs 4 and 7 for these trustees, removing the requirement that the purchaser is a company. Paragraph 4 will then be met if the trustee is purchasing a major interest in a single dwelling that meets Conditions A and B in paragraph

3. Paragraph 7 will be met if the trustee is purchasing a major interest in more than one dwelling and at least one of the dwellings meets Conditions A and B.

56. Paragraph 14 provides for special treatment for partners purchasing dwellings when they are a joint owner of a dwelling held for the purposes of a partnership.

57. Sub-paragraph 14(1) applies sub-paragraph (2) if the purchaser is a partner in a partnership and the purchase is not a purchase for the purposes of the partnership.

58. Sub-paragraph 14(2) says that the tests in paragraphs 3 and 6 should be applied ignoring any interest in a dwelling held by the purchaser in partnership if the dwelling is held for the purposes of a trade carried on by the partnership.

59. Sub-paragraph 14(3) makes it clear that sub-paragraph 14(2) is a limited modification to the normal SDLT rule that a partner is a joint purchaser of an interest in property purchased by a partnership.

60. Paragraph 15 provides for special treatment for individual purchasers of dwellings who have inherited a jointly-held interest in a dwelling in the three years before the purchase.

61. Sub-paragraph 15(1) sets out when paragraph 15 applies. Paragraph 15 applies where a person becomes jointly entitled to a 50% or smaller share of an interest in the property as a result of inheritance.

62. Sub-paragraph 15(2) provides that the ownership of the inherited property is to be ignored when applying the tests in paragraphs 3(4)(a) and 6(1)(e) if it was inherited during a period of three years before the purchase.

63. Sub-paragraph 15(3) prevents the interest from being ignored if at some time after it was inherited, the person's share of the interest in the property has exceeded 50%.

64. Sub-paragraph 15(4) explains what it means for an interest to exceed a 50% share in the whole interest. Spouses' and civil partners' interests are aggregated for the purposes of this test.

65. Sub-paragraph 15(5) explains what inheritance means in respect of land in England, Wales and Northern Ireland.

66. Paragraph 16 applies certain adaptations to ensure that the provisions in the schedule work similarly for foreign interests in land as they do for land in England, Wales and Northern Ireland.

67. Sub-paragraph 16(1) provides that ownership or disposal of a foreign dwelling counts towards the tests (the relevant provisions are listed at sub-paragraph (3)) for:

- whether an individual owns another major interest in a dwelling, and
- whether an individual has disposed of a major interest in a dwelling,

68. Sub-paragraph 16(2) provides that references to major interests, joint entitlement, land transaction, effective date and inheritance should be adapted to suit the law governing the interest in the land.

69. Sub-paragraph 16(4) applies the same treatment as paragraph 12 in respect of a child who owns property outside of England, Wales or Northern Ireland (in a jurisdiction where a minor is permitted to be the owner of land).

70. Paragraph 17 explains what is meant by a dwelling for the Schedule. These rules are the same as those used for multiple dwellings relief in paragraph 7 of schedule 6B to Finance Act 2003.

Subsections (4) to (9)

71. Subsection (4) provides that where a claim to multiple dwellings relief is made, the higher rates apply in calculating that claim.

72. Subsection (5) provides for the amendments to take effect for chargeable transactions with an effective date on or after 1 April 2016.

73. Subsection (6) provides that the amendments do not have effect if the contract for the purchase of land was entered into before 26 November 2015 and either substantially completed before 1 April 2016 or not excluded by subsection (7).

74. Subsection (7) prescribes situations in which a transaction in pursuance of a contract agreed before 26 November 2015 would still be a higher rate transaction. These situations are

- where the contract has been varied or assigned to a different person than the person who entered into it on or after 26 November 2015,
- where completion of the transaction follows the exercise of an option or similar right after that date, or
- where the land subject to the contract has been assigned or subject to a sub-sale to another person after that date.

75. Subsections (8) and (9) make modifications to the tests for replacement of a main residence test in sub-paragraph 3(6) of schedule 4ZA. The effect of these subsections is to disapply the three year window during which a previous main residence had to be sold before the purchase of a new main residence. This applies for any individual who purchases a new main residence before 26 November 2018.

Background note

76. The higher rates of SDLT for additional dwellings and dwellings purchased by companies was introduced by the Government's to support home ownership.

77. The changes were first announced at the Autumn Statement and Spending Review in 25 November 2015. A consultation was published on 28 December 2015 and concluded on 1 February 2016. This legislation has not previously been published in draft.

78. A document setting out a summary of the responses received has been published alongside this clause on 16 March 2016. This document sets out where the Government has made changes to the design of the rules set out in the consultation. In particular:

- the replacement of a main residence test now uses three-year time limits, rather than the 18 months in the consultation, and
- there will not be the proposed exemption for large scale investors,

79. Stamp duty land tax applies to purchasers of land in England, Wales and Northern Ireland.

There are two main charging regimes, one for transactions in residential property and another for non-residential and mixed transactions.

80. Stamp duty land tax does not apply to moveable assets such as caravans, mobile homes and houseboats.

81. Stamp duty land tax is generally charged on the consideration given for a transaction.

82. This clause introduces a new system of rates applying to the consideration for residential transactions only. These higher rates are set out in the clause. The rates are 3% higher than the equivalent normal residential rates for each of the bands.

83. The higher rates apply to purchases of dwellings. The higher rates apply where an individual owns another major interest in a dwelling at the end of the day of purchase. The higher rates also apply to company purchasers.

84. The higher rates do not apply to:

- purchases with consideration of less than £40,000,
- leasehold interests originally granted for a term of less than seven years, or
- freehold or leasehold interests that are reversionary on leases with more than 21 years remaining at the date of purchase.

Clause 118: SDLT higher rate: land purchased for commercial use

Summary

1. This clause extends the relief available from the 15% higher rate of Stamp Duty Land Tax (SDLT) in circumstances where, in the course of running a trade or property rental business, an interest in a property is acquired either for use as business premises, or for conversion or demolition for use for one or more relievable purpose.

Details of the clause

2. Subsection (1) amends Schedule 4A to Finance Act 2003 (SDLT: higher rate for certain transactions).

3. Subsection (2)(a) amends paragraph 5 of Schedule 4A Finance Act 2003 inserting new paragraphs 5(1)(aa) and (ab) and amending existing paragraph 5(1)(b) so that the relievable purposes listed, now include:

   - use of the higher threshold interest as a business premises for the purposes of a qualifying property rental business or a relievable trade; for example conversion (both physical and change of use) into offices;
   - development or redevelopment of the higher threshold interest/land (i.e. demolition and redevelopment) for the purposes a relievable trade or qualifying property rental business, which includes exploitation of the redeveloped land for a relievable purpose in paragraph 5 of Schedule 4A.

4. Subsection (2)(b) makes a consequential amendment to paragraph 5(2) of Schedule 4A of Finance Act 2003.

5. Subsection 2(c) amends paragraph 5(3) and defines "relievable trade" as a trade run on a commercial basis and with a view to profit.

6. Subsections (3) and (4) make consequential amendments to paragraph 5G(3)(c) and 6D(3)(b) of Schedule 4A Finance Act 2003 which set out the circumstances under which relief allowed under paragraph 5(1) of Schedule 4A Finance Act 2003 is withdrawn.

7. Subsection (5) provides that these changes have effect for any land transaction where the effective date is on or after 1 April 2016.

Background note

8. Schedule 4A of Finance Act 2003 provides for the 15 per cent higher rate charge to SDLT.

This charge applies to the acquisition of a 'higher threshold interest' by a 'non-natural person' – that is, a company, a partnership with a corporate member, or a collective investment scheme. A 'higher threshold interest' is defined as an interest in a single dwelling (together with appurtenant rights) to which chargeable consideration of more than £500,000 is attributable. There are a number of reliefs available aimed at genuine business acquisitions which can reduce the charge to the standard rate of stamp duty land tax. Relief is withdrawn if, at any time in the period of 3 years from the effective date of transaction, the property is held for any purpose other than those for which the relief under a particular provision was allowed.

9. This clause introduces new reliefs which will apply where a purchaser is carrying on a relievable trade or qualifying property rental business and acquires a property (a higher threshold interest) to either convert into use as business premises, or to demolish and redevelop the land, which includes when the redeveloped land is then used for another relievable purpose. For example,

- a building is demolished and replaced with building for use as a head office from which the trade or property rental business is run;
- a building is demolished to make way for a commercial unit, for example a factory, or for a car park;
- a building is demolished to make way for a mixed-use development consisting of non-residential and residential property but the whole of which is used for relievable purposes. For example, construction of a supermarket which has residential flats above which are then either sold, or are rented out as part of a qualifying property rental business.

10. The term "use" includes both physical conversion and a change of use from residential to non-residential.

11. Relief cannot be claimed if it is intended that a non-qualifying individual will be permitted to occupy the dwelling on the land. For the purposes of 15% SDLT, a non-qualifying individual is, for example, an individual who is a joint purchaser, or an individual who is connected to the purchaser.

Relief is withdrawn if at any time within the period of 3 years from the date of transaction, the property (where still held by the purchaser) is no longer held for one or more of the relievable purposes listed within paragraph 5 of Schedule 4A of Finance Act 2003, or where a non-qualifying individual is permitted to occupy any dwelling on the land.

Clause 119: SDLT higher rate: acquisition under regulated home reversion plan

Summary

1. This clause introduces a new relief from the 15% higher rate of stamp duty land tax (SDLT) where a purchaser acquires the whole or part of a dwelling exclusively for the purposes of entering into an equity release scheme, specifically a home reversion plan.

Details of the clause

2. Subsection (1) amends Schedule 4A to Finance Act 2003.
3. Subsection (2) inserts new paragraph 5CA into Schedule 4A of Finance Act 2003.
4. New paragraphs 5CA(1) and (2) provide that relief from the higher rate of SDLT is available where the purchaser is an authorised plan provider, and acquires an interest in a dwelling as plan provider for the purposes of entering into a regulated home reversion plan.
5. New paragraph 5CA(3) defines the terms:
    - "authorised plan provider" means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom the activity specified in article 63B(1) of the Regulated Activities order, that is entering into a regulated Home Reversion Plan.
    - "the Regulated Activities Order" means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544).
    - "regulated home reversion plan" means an arrangement regulated by Chapter 15A of Part 2 of the Regulated Activities Order.
6. New paragraph 5CA(4) provides that references to entering into a regulated home reversion plan "as plan provider" are to be taken to mean those in the Regulated Activities Order S.I. 2001/544.
7. Subsection (3) inserts new paragraph 5IA into Schedule 4A of Finance Act 2003
8. New paragraph 5IA(1) and (2) provides that relief claimed under paragraph 5CA above is withdrawn if, at any time in the period of 3 years of the effective date of the transaction, the purchaser holds the interest otherwise than for the purposes of a regulated home reversion plan.
9. New paragraph 5IA(3) provides that relief will continue to be available if, after the purchaser ceases to hold the interest in the dwelling for the purposes of a regulated home reversion plan, the purchaser sells the interest without undue delay (except so far as the delay is justified by

commercial considerations or cannot be avoided), and that no non-qualifying individual is permitted to occupy the dwelling.

10. New paragraph 5IA(4) defines "the dwelling" as the dwelling to which relief is available under paragraph 5CA above , and a "non-qualifying individual" in accordance with paragraph 5A of Schedule 4A, Finance Act 2003.

11. Subsection (4) provides that these changes come into effect for any land transaction where the effective date is on or after 1 April 2016.

Background note

12. The 15% higher rate of SDLT applies to the acquisition of a 'higher threshold interest' by a company, a partnership with at least one company member, or a collective investment scheme. A higher threshold interest is defined as an interest in a single-dwelling (together with appurtenant rights) to which the chargeable consideration is more than £500,000. There are a number of reliefs available aimed at genuine business acquisitions which can reduce the charge to the standard rate of SDLT. Relief is withdrawn if, within the period of 3 years from the effective date of transaction, the interest is held for any purpose other than those for which the relief was given.

13. Under certain equity release schemes (specifically, home reversion plans) an individual sells to the equity release scheme company, all or part of their property in exchange for an annuity or lump sum, and a lifetime tenancy. The individual can live in the property until death, or on entering into long term care, at which point the property is sold. In such an arrangement, the interest in the property acquired by the equity release scheme company will be liable to the 15% higher rate of SDLT. Currently no relief from the higher rate exists for such an arrangement.

14. This clause introduces new legislation to provide relief from the higher rate of SDLT for entities which acquire an interest in a dwelling as a result of entering into a regulated home reversion plan (as described in the 'Regulated Activities Order 2001' (SI 2001/544)), and where that entity is authorised under the Financial Services and Markets Act 2000 to enter into such plans.

15. Where the last individual living in the property either dies or goes into long term care, the property must be sold without undue delay (or any delay must be justified by commercial considerations or cannot be avoided) otherwise relief will be withdrawn. Similarly, relief is withdrawn if a "non-qualifying individual" is permitted to occupy the property. A non-qualifying individual is a person who has an interest in the property, or a person connected to the person who has an interest in the property.

Clause introduces a similar relief from the annual tax on enveloped dwellings.

Clause 120: SDLT higher rate: properties occupied by certain employees etc

Summary

1. This clause introduces new reliefs from the 15% higher rate of stamp duty land tax (SDLT) where a property is purchased for the purposes of providing living accommodation either to an employee of a qualifying property rental business, or to a caretaker who is permitted to occupy one of the dwellings in a building owned by a tenants' management company.

Details of the clause

2. Subsection (1) amends Schedule 4A to Finance Act 2003.

3. Subsection (2) amends paragraph 5D of Schedule 4A of Finance Act 2003 (dwellings for occupation by certain employees) so that relief from the higher rate of stamp duty land tax (SDLT) is not only available where a property is acquired for the purposes of providing living accommodation to an employee of a trade, but also where it is acquired for the purposes of providing living accommodation to an employee of a property rental business.

4. Subsection (3) amends the heading before paragraph 5D to take account of the change in subsection (2) above.

5. Subsection (4) inserts new paragraph 5EA into Schedule 4A of Finance Act 2003 to provide relief in relation to the acquisition by a tenants' management company, of a flat for occupation by caretaker.

6. New paragraph 5EA(1) provides that relief is available from the higher rate of SDLT in relation to the acquisition of a higher threshold interest in or over a flat where two conditions are met. These are:

   - the flat is one of at least 3 flats contained in the same premises; and
   - it is acquired by the tenants' management company for the purpose of making it available for use as caretaker accommodation.

7. New paragraph 5EA(2) provides that a tenants' management company makes a flat available for use as caretaker accommodation if it makes it available to an individual for use as living accommodation in connection with that individual's employment as caretaker of the premises.

8. New paragraph 5EA(3) provides that a company is a 'tenants' management company' where:

   - the tenants of at least two of the other flats in the premises are members of the management company,

- the management company owns, or intends to acquire, the freehold of the premises; and
- the management company does not carry on a relievable business, that is a trade or property rental business.

9. New paragraph 5EA(4) defines 'premises' as the whole or part of the building which contains the flat.
10. Subsection (5) inserts new paragraph 5JA into schedule 4A of Finance Act 2003.
11. New paragraph 5JA(1) and (2) provide that relief claimed under new paragraph 5EA above will be withdrawn if, at any time in the period of 3 years of the effective date of transaction, the flat is held for any purpose other than to provide caretaker living accommodation.
12. New paragraph 5JA(3) provides that a tenant's management company makes a flat available for use 'as caretaker accommodation ' if it makes it available to an individual for use as living accommodation in connection with that individual's employment as caretaker of the premises.
13. Subsections (6) to (9) make consequential amendments to paragraphs 5E, 5J, 6G and 9 as a consequence of new paragraphs 5EA and 5JA.
14. Subsection (10) provides that these changes have effect in relation to any land transaction on or after 1 April 2016.

Background note

15. Schedule 4A Finance Act 2003 provides for the 15 per cent higher rate charge to SDLT. This charge applies to the acquisition of a 'higher threshold interest' by a 'non-natural person' – that is, a company, a partnership with a corporate member, or a collective investment scheme. A 'higher threshold interest' is defined as an interest in a single dwelling (together with appurtenant rights) to which chargeable consideration of more than £500,000 is attributable. There are a number of reliefs available aimed at genuine business acquisitions which can reduce the charge to the standard rate of SDLT. Relief is withdrawn if, at any time within a period of 3 years from the date of transaction, the property is held for any purpose other than those for which relief was given.
16. This clause makes amendments to Schedule 4A FA 2003 (SDLT: higher rate for certain transactions) to align the available reliefs and withdrawal provisions under the SDLT legislation with similar new reliefs being introduced by clause for the annual tax on enveloped dwellings.
17. A new relief from the higher rate of SDLT will be available where a property is purchased for the purposes of providing living accommodation to an employee of a qualifying property rental business, that is, one run on a commercial basis and with a view to profit.
18. In addition, relief will also be available from the higher rate where a tenants' management company purchases a flat for a caretaker to live in who will be employed to manage and maintain the building (e.g. a block of flats).

Clause 121: SDLT: minor amendments of section 55 of Finance Act 2003

Summary

1. This clause introduces further minor changes to the way stamp duty land tax is calculated in relation to non-residential property transactions and transactions involving a mixture of residential and non-residential properties.

Details of the clause

2. This clause makes further consequential changes to section 55 (5) of Finance Act 2003 as a result of the changes made to the general rules for calculating the amount of SDLT on non-residential and mixed use transactions.

Clause 122 and Schedule 16: SDLT: property authorised investment funds and co-ownership authorised contractual schemes

Summary

1. This clause and Schedule introduce a relief from Stamp Duty Land Tax (SDLT) for the 'seeding' (initial transfer) of properties into Property Authorised Investment Funds (PAIFs) and Co-ownership Authorised Contractual Schemes (CoACSs). The measure also introduces changes to the SDLT treatment of CoACSs. These amendments come into effect for transactions from the date of Royal Assent to Finance Bill 2016.

Details of the clause and Schedule

Part 1

2. Paragraph 1 of the Schedule inserts new section 102A in Finance Act 2003 (FA 2003) "Co-ownership authorised contractual schemes" which sets out changes to the treatment of CoACSs for SDLT purposes.

3. Section 102A(1) provides that the treatment set out in section 102A applies for the purposes of Part 4 of FA 2003 which deals with SDLT.

4. Section 102A(2) provides that SDLT applies to a CoACS as if:

   a. it were a company, and

   b. the rights of the unit holders were shares in the company.

5. Section 102A(3) defines an umbrella CoACS for the purposes of Part 4 FA 2003.

6. Section 102A(4) defines a sub-scheme for the purposes of Part 4 FA 2003.

7. Section 102A(5) provides for each sub-scheme of an umbrella CoACS to be treated as a separate CoACS for the purposes of Part 4. An umbrella CoACS is not treated as such.

8. Section 102A(6) clarifies the references to chargeable interests and documents of the scheme in relation to a sub-scheme of an umbrella CoACS.

9. Section 102A(7) explains that a non-UK collective investment scheme will be treated as a CoACS for SDLT purposes if it:

   a. is constituted by a contract under the law of an EEA State other than the UK,

   b. has a manager incorporated under the law of an EEA State, and

c. is equivalent to a CoACS under the law of the EEA State,

provided that, without these provisions, no SDLT would arise to the scheme.

10. Section 102A(8) defines the terms 'co-ownership authorised contractual scheme' and 'co-ownership scheme' for Part 4 FA 2003. A co-ownership authorised contractual scheme is a co-ownership scheme authorised under section 261D of the Financial Services and Markets Act 2000 (FSMA 2000). Co-ownership scheme has the meaning given in section 235A FSMA 2000.

11. Section 102A(9) provides a power to make regulations to exclude specified schemes from this SDLT treatment.

12. Section 102A(10) sets out that a co-ownership authorised contractual scheme is not treated as a company for the purposes of Schedule 7 (group relief reconstruction relief or acquisition relief).

13. Section 102A(11) provides that, for land transactions where a CoACS is treated as the purchaser for SDLT purposes, references to the purchaser in sections 76, 80, 81, 81A, 85, 90 and 108(2) and Schedule 10 are to be read as references to the operator of the scheme so that the operator will have the same responsibilities and rights under those provisions as the purchaser/taxpayer.

14. Section 102A(12) defines the terms 'collective investment scheme', 'operator' and 'participant' and the references to 'FSMA 2000' for Part 4.

Part 2

15. Part 2 of the Schedule amends FA 2003.

16. Paragraph 3 inserts new section 65A into FA 2003.

17. Section 65A(1) and (2) introduce new Schedule 7A to FA 2003 to provide relief from SDLT for seeding of property authorised investment funds (PAIF seeding relief) and co-ownership authorised contractual schemes (CoACS seeding relief).

18. Section 65A(3) requires that the seeding relief must be claimed in a land transaction return or an amendment of a return, and that the claim must be accompanied by a notice to HMRC that seeding relief is being claimed.

19. Section 65A(4) and (5) set out the requirement that the purchaser confirm in the notice its status as a PAIF or CoACS or equivalent EEA fund.

20. Section 65A(6) enables HMRC to set out the form of the notice and the information required.

21. Paragraph 4 inserts new Schedule 7A "PAIF Seeding Relief and CoACS Seeding Relief" into FA 2003.

Schedule 7A Finance Act 2003

22. Paragraphs 1(1) to (5) set out the conditions for PAIF seeding relief. Each of conditions A to D must be met:

A. The purchaser must be a property AIF (as defined by paragraph 2).

B. The main subject matter of the seeding transaction must consist of a major interest in land.

C. The only consideration for the transaction must be the issue of units in the PAIF to the vendor.

D. The effective date of the transaction must be a day within the seeding period as defined in paragraph 3.

23. Paragraph 1(6) explains that relief will be subject to paragraph 4 (restrictions on availability of PAIF seeding relief) and paragraphs 5 to 8 (withdrawal of PAIF seeding relief).

24. Paragraph 2 defines property AIF for the purposes of Schedule 7A. Paragraphs 2(2) to (4) define property AIF (PAIF) as an open-ended investment company within the meaning of Part 4 of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964) and import the treatment of sub-funds of umbrella companies within those Regulations. Each sub-fund of an umbrella company is regarded as an open ended investment company and the umbrella company is not so regarded. References to chargeable interests are to interests forming part of a sub-fund.

25. Paragraph 2(5) explains that PAIFs include EEA equivalents of a PAIF for the purposes of seeding relief and defines such equivalents.

26. Paragraph 2(6) defines 'collective investment scheme' for the purposes of subparagraph (5).

27. Paragraph 3(1) to (4) define the seeding period within which transactions must take place in order to be eligible for relief. The seeding period begins with the first property seeding date (as defined at paragraph 3(4)) and ends either 18 months later or, if earlier, at the date of the first external investment into the PAIF as defined at paragraph 3(5).

28. Paragraph 3(2) and (3) provide that the PAIF may, by notice to HMRC, elect to end the seeding period at an earlier date to be specified in the election. The PAIF may notify HMRC of this election either in a claim for seeding relief or separately.

29. Paragraph 3(5) defines "external investment" for the definition of seeding period. An external investment is a transfer of non-property assets to the PAIF (e.g. cash or REITs) by a person who has not previously seeded the PAIF with property, an "external investor".

30. Paragraph 4 sets out restrictions on the availability of seeding relief (where Conditions A to D have already been met).

31. Paragraph 4(2) explains that, in order to be eligible for seeding relief, a PAIF must have arrangements in place at the date of the seeding transaction for the vendor to notify the PAIF of any subsequent disposals of units which may give rise to a liability to SDLT. This requirement is so that the PAIF is able to make the necessary returns to HMRC. The vendor must be required to notify the PAIF of:

- the beneficial owner of any units received in consideration of the transaction, and
- any subsequent disposal by that beneficial owner of any units in the PAIF which could be a 'relevant disposal' for the purposes of paragraph 7. If the beneficial owner is a company, this includes any subsequent disposal by any group company.

32. Paragraph 4(3) explains that relief is not available if arrangements are in place at the effective date of the transaction for the disposal of units which would give rise to subsequent withdrawal of seeding relief under paragraph 7.

33. Paragraph 4(4) explains that relief is not available if a seeding transaction is not for bona fide commercial reasons, or forms part of arrangements to avoid tax.

34. Paragraph 5(1) explains that the seeding relief given will be withdrawn if a fund ceases to be a PAIF either during the seeding period or within 3 years of the end of the seeding period (the 'control period'), or under arrangements entered into during those periods.

35. Paragraph 5(2) explains that tax will only be withdrawn under paragraph 5(1) if some or all of the chargeable interest in respect of which the relief was given is still held by the purchaser, or the purchaser holds an interest derived from that chargeable interest.

36. Paragraph 5(3) sets out that the amount of SDLT chargeable on the withdrawal of relief under paragraph 5(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.

37. Paragraph 5(4) explains that 'appropriate proportion' in the context of paragraph 5(1), and (3) takes account of the interest held by the purchaser at the time the purchaser ceases to be a PAIF.

38. Paragraph 6(1) explains that the seeding relief given will be withdrawn if immediately before the end of the seeding period a fund fails to meet the portfolio test.

39. Paragraph 6(2) sets out that the amount of SDLT chargeable on the withdrawal of relief under paragraph 6(1) is the SDLT which would have been chargeable in the absence of seeding relief.

40. Paragraph 6(3) and (4) provides for withdrawal of relief where the fund meets the portfolio test at the end of the seeding period but fails to meet the test within the 3-year control period (or later, under arrangements entered into during those periods). In this case the seeding relief will be partially or wholly withdrawn, but only if, at the time the portfolio test is failed, some or all of the chargeable interest in respect of which the relief was given (or an interest derived from it) is still held by the PAIF.

41. Paragraph 6(5) sets out that the amount of SDLT chargeable on withdrawal of the relief under paragraph 6(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.

42. Paragraph 6(6) explains that "appropriate proportion" for the purposes of sub-paragraphs (3) and (5) takes account of the interest held at the time the portfolio test is not met.

43. Paragraph 6(7) defines the "portfolio test" as a requirement to meet either (a) "the non-residential portfolio test" or (b) "the residential portfolio test".

44. Paragraph 6(8) sets out that to meet the non-residential portfolio test:

    a. the PAIF must hold at least 10 seeded properties,

    b. the total chargeable consideration for the seeded properties must be at least £100 million, and

    c. no more than 10% of that chargeable consideration must relate to residential property.

45. Paragraph 6(9) sets out that to meet the residential portfolio test:

    a. the chargeable consideration for the seeded properties must be at least £100 million, and

    b. the PAIF must hold at least 100 seeded properties which are residential properties.

46. Paragraph 6(10) defines "seeded interest" and "total chargeable consideration" for the purposes of paragraph 6(8) and (9).

47. Paragraph 6(11) provides that property is defined as "residential" for the purposes of paragraph 6(8) and (9) without applying section 116(7) Finance Act 2003. That section would normally treat a transaction in six or more dwellings as a non-residential transaction.

48. Paragraph 7 provides for seeding relief to be withdrawn and SDLT charged where there is a 'relevant disposal' by a vendor 'V' of PAIF unit(s) which relate to a 'relevant seeding transaction'. Units received by V in consideration of a seeding transaction are deemed to be the last to be disposed of, so that seeding relief is only withdrawn to the extent that the disposal reduces the value of V's holding of units below the chargeable consideration for V's seeding transactions, in which case the disposal is a relevant disposal. The SDLT chargeable is a proportion of the total SDLT which would have been chargeable in the absence of seeding relief, representing the extent to which the disposal reduces the value of V's holding of units below the total consideration for V's seeding transactions.

49. Paragraph 7(1) and (2) set out that paragraph 7 applies to withdraw seeding relief and charge SDLT where there is a 'relevant disposal' of PAIF units before, or under arrangements made before, the end of the 3-year control period and there is a related 'relevant seeding transaction'.

50. Paragraph 7(3) defines a "relevant disposal" as a disposal where A exceeds B.

51. Paragraph 7(4) defines A and B. A is one of two values.

   - If, immediately before the disposal of units, the value of the total investment of the seed investor (V) in the PAIF is equal to or greater than the total chargeable consideration received (in PAIF units) for property V seeded into the PAIF before that date, then A is the total of that chargeable consideration.
   - If the value of that total investment is less than that total chargeable consideration, then A is the value of V's total investment in the PAIF immediately before disposal.

52. B is the value of V's remaining investment in the PAIF immediately after the disposal of units.

53. Paragraph 7(5) sets out the formula for calculating the amount of SDLT which will be due in respect of a relevant disposal under paragraph 7(1). This is calculated as:

$$\frac{C}{CCRST} \times SDLT$$

where:

- C is the difference between A and B.
- CCRST is the total chargeable consideration (in the form of seeded units) received by V up until the date of the disposal.
- SDLT is the SDLT which would have been chargeable at the effective date of the relevant transaction in the absence of seeding relief, ignoring any earlier withdrawal of relief.

54. Paragraph 7(6) and (7) define terms used within paragraph 7. Together they define "the value of V's investment" (for the purposes of the calculation at paragraph 7(4)) as the market value of all PAIF units held by V to be determined by reference to the most recently published buying price of the units.

55. Paragraph 7(6) also defines 'group company' and 'relevant seeding transaction'. A 'relevant seeding transaction' is defined as a land transaction entered into, before the disposal of units, between a seed investor 'V' and a PAIF, for which seeding relief has been given (whether or not it is subsequently withdrawn to any extent). This paragraph provides for the withdrawal of relief under paragraph 7 to be calculated at group level. This rule applies if a seed investor 'V' is a company within a group as defined for the purposes of SDLT group relief. In this case the relevant seeding transactions of all members of the group at the date of the disposal of units are taken into account when calculating the value of V's investment for the purposes of paragraph 7(4) to (6).

56. Paragraphs 8(1) and (2) provide that seeding relief is withdrawn and SDLT is charged where the relief had been given in respect of a dwelling which a "non-qualifying individual" is then permitted to occupy. Paragraph 8(1) defines such a dwelling as "the disqualifying dwelling".

57. Paragraph 8(3) explains that relief will only be withdrawn under paragraph 8 if the "disqualifying dwelling" or an interest derived from it is still held by the PAIF.

58. Paragraph 8(4) explains that relief will be withdrawn where a non-qualifying individual is permitted to occupy a disqualifying dwelling after the end of the 3-year control period and the PAIF fails to meet the genuine diversity of ownership condition set out in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964).

59. Paragraph 8(5) sets out the amount of SDLT chargeable where relief is withdrawn under paragraph 8. The amount chargeable is the SDLT which would have been chargeable in the absence of seeding relief in respect of the disqualifying dwelling, or an appropriate proportion of it.

60. Paragraph 8(6) provides that the "appropriate proportion" for the purposes of sub-paragraphs (2) and (5) takes account of the extent to which the transaction in question concerned property other than the disqualifying dwelling.

61. Paragraph 9(1) to (7) defines "non-qualifying individual" and explains the terms used in the context of this definition. An individual is a non-qualifying individual if they are a major participant in the PAIF or connected to such an individual, are connected with the PAIF, are a relevant settlor in respect of the transaction, or have a connection to any such person by way of being a spouse, civil partner or relative.

62. Paragraph 10(1) to (5) set out the conditions for CoACS seeding relief. Each of conditions A to D must be met:

A. The purchaser must be a CoACS (as defined by Section 102A(8) FA 2003).

B. The main subject matter of the seeding transaction must consist of a major interest in land.

C. The only consideration for the transaction must be the issue of units in the CoACS to the vendor.

D. The effective date of the transaction must be a day within the seeding period as defined in paragraph 11.

63. Paragraph 10(6) explains that relief will be subject to paragraph 12 (restrictions on availability of CoACS seeding relief) and paragraphs 13 to 18 (withdrawal of CoACS seeding relief).

64. Paragraph 11 (1) to (4)) define the seeding period within which transactions must take place in order to be eligible for relief. The seeding period begins with the first property seeding date (as defined at paragraph 11(4)) and ends either 18 months later or, if earlier, at the date of the first external investment into the CoACS as defined at paragraph 11(5).

65. Paragraphs 11(2) and (3) provide that the CoACS may, by notice to HMRC, elect to end the seeding period at an earlier date to be specified in the election. The CoACS may notify HMRC of this election either in a claim for seeding relief or separately.

66. Paragraph 11(5) defines "external investment" for the definition of seeding period. An external investment is a transfer of non-property assets to the CoACS (e.g. cash or REITs) by a person who has not previously seeded the CoACS with property, an 'external investor'.

67. Paragraph 12 sets out restrictions on the availability of seeding relief (where Conditions A to D have already been met).

68. Paragraph 12(2) explains that relief is not available unless the arrangements constituting the CoACS at the date of the seeding transaction require the vendor to notify the operator of the scheme of any subsequent disposals of units which may give rise to a liability to SDLT. This requirement is so that the operator is able to make the necessary returns to HMRC. The vendor must be required to notify the operator of:

- the beneficial owner of any units received in consideration of the transaction, and
- any subsequent disposal by that beneficial owner of any units in the CoACS which could be a 'relevant disposal' for the purposes of paragraph 7. If the beneficial owner is a company, this includes any subsequent disposal by any group company.

69. Paragraph 12(3) explains that relief is not available if arrangements are in place at the effective date of the transaction for the disposal of units which would give rise to subsequent withdrawal of seeding relief under paragraph 17.

70. Paragraph 12(4) explains that relief is not available if a seeding transaction is not for bona fide commercial reasons, or forms part of arrangements to avoid tax.

71. Paragraph 13(1) explains that the seeding relief given will be clawed back if a fund ceases to be a CoACS either during the seeding period or within 3 years of the end of the seeding period ("the control period"), or under arrangements made during those periods.

72. Paragraph 13 (2) explains that relief will only be withdrawn under paragraph 13(1) if some or all of the chargeable interest in respect of which the relief was given is still held by the purchaser, or the purchaser holds an interest derived from that chargeable interest.

73. Paragraph 13(3) sets out that the amount of SDLT chargeable on withdrawal of relief under paragraph 13(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.

74. Paragraph 13 (4) explains that "appropriate proportion" in the context of paragraph 13(1) and (3) takes account of the interest held by the purchaser at the time the purchaser ceases to be a CoACS.

75. Paragraph 14(1) sets out that seeding relief will be withdrawn if the genuine diversity of

ownership ('GDO') condition is not met either immediately before the end of the seeding period or within the 3 year control period (or later under arrangements entered into during those periods).

76. Paragraph 14(2) explains that relief will only be withdrawn under paragraph 14(1) if at that time the CoACS still holds a chargeable interest in relation to a seeding transaction, or an interest derived from it.

77. Paragraph 14(3) and (4) set out that the amount of SDLT chargeable on withdrawal of relief under paragraph 14(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an 'appropriate proportion' of it as defined in paragraph 14(4).

78. Paragraph 14 (5) and (6) provides that the operator of a CoACS may apply to HMRC for formal clearance that the scheme meets the GDO condition. HMRC is required to give its decision within 28 days of receipt of the required information. Any clearance given is conditional upon that information remaining materially unchanged and the scheme continuing to operate in accordance with it.

79. Paragraph 15 (1) to (7) set out the conditions for GDO for CoACS, relating to:

- the information contained in documents produced by the scheme which are made available to investors and HMRC,
- limits or deterrents imposed on investors or participation in the scheme,
- the marketing of the units in the scheme,

and explains terms used in the GDO condition.

80. Paragraph 15(8) provides that a CoACS meets the GDO conditions if there is a feeder fund in relation to the CoACS that meets those conditions.

81. Paragraph 15(9) defines "connected persons" for the purposes of the paragraph.

82. Paragraph 16(1) explains that the seeding relief given will be withdrawn if at the end of the seeding period a scheme fails to meet the portfolio test.

83. Paragraph 16(2) sets out that the amount of SDLT chargeable on withdrawal of relief under paragraph 16(1) is the SDLT which would have been chargeable in the absence of seeding relief.

84. Paragraph 16(3) and (4) provides for withdrawal of relief where the fund meets the portfolio test at the end of the seeding period but fails to meet the test within the 3-year control period (or later, under arrangements entered into during those periods)In this case, the seeding relief will be partially or wholly withdrawn, but only if, at the time the portfolio test is failed, some or all of the chargeable interest in respect of which the relief was given (or an interest derived from it) is still held by the CoACS.

85. Paragraph 16(5) sets out that the amount of SDLT chargeable on withdrawal of relief under paragraph 16(1) is the SDLT which would have been chargeable in the absence of seeding relief, or an appropriate proportion of it.

86. Paragraph 16(6) explains that "appropriate proportion" for the purposes of paragraph 16(3), and (5) takes account of the interest held at the time the portfolio test is not met.

87. Paragraph 16(7) defines the portfolio test as a requirement to meet either (a) 'the non-residential

portfolio test' or (b) 'the residential portfolio test'

88. Paragraph 16(8) sets out that to meet the non-residential portfolio test:

    a. the CoACS must hold at least 10 seeded properties,

    b. the total chargeable consideration for the seeded properties must be at least £100 million, and

    c. no more than 10% of that chargeable consideration must relate to residential property.

89. Paragraph 16(9) sets out that to meet the residential portfolio test:

    a. the chargeable consideration for the seeded properties must be at least £100 million, and

    b. the CoACS must hold at least 100 seeded properties which are residential properties.

90. Paragraph 16(10) defines "seeded interest" and "chargeable consideration" for the purposes of paragraph 16(8) and (9).

91. Paragraph 16(11) provides that property is defined as 'residential' for the purposes of paragraph 6(8) and (9) without applying section 116(7) Finance Act 2003. That section would normally treat a transaction in six or more dwellings as a non-residential transaction.

92. Paragraph 17 provides for seeding relief to be withdrawn and SDLT charged where there is a 'relevant disposal' by a vendor 'V' of CoACS unit(s) which relate to a 'relevant seeding transaction'. Units received by V in consideration of a seeding transaction are deemed to be the last to be disposed of, so that seeding relief is only withdrawn to the extent that the disposal reduces the value of V's holding of units below the chargeable consideration for V's seeding transactions, in which case the disposal is a relevant disposal. The SDLT chargeable is a proportion of the total SDLT which would have been chargeable in the absence of seeding relief, representing the extent to which the disposal reduces the value of V's holding of units below the total consideration for V's seeding transactions.

93. Paragraph 17(1) and (2) set out that paragraph 17 applies to withdraw seeding relief and charge SDLT where there is a 'relevant disposal' of CoACS units before, or under arrangements made before, the end of the 3-year control period and there is a related 'relevant seeding transaction'.

94. Paragraph 17 (3) defines a 'relevant disposal' as a disposal where A exceeds B.

95. Paragraph 17(4) defines A and B. A is one of two values.

- If, immediately before the disposal of units, the value of the total investment of the seed investor (V) in the CoACS is equal to or greater than the total chargeable consideration received (in CoACS units) for property V seeded into the CoACS before that date, then A is the total of that chargeable consideration.
- If the value of that total investment is less than that total chargeable consideration, then A is the value of V's total investment in the CoACS immediately before disposal.

B is the value of V's remaining investment in the CoACS immediately after the disposal of units.

96. Paragraph 17(5) sets out the formula for calculating the amount of SDLT which will be due in respect of a relevant disposal under paragraph 17(1).

This is calculated as:

$$\frac{C}{CCRST} \times SDLT$$

where:

- C is the difference between A and B.
- CCRST is the total chargeable consideration (in the form of seeded units) received by V up until the date of the disposal.
- SDLT is the SDLT which would have been chargeable at the effective date of the relevant transaction in the absence of seeding relief, ignoring any earlier withdrawal of relief.

97. Paragraph 17(6) and (7) define terms used within paragraph 17. Together they define 'the value of V's investment' (for the purposes of the calculation at paragraph 17(5)) as the market value of all CoACS units held by V to be determined by reference to the most recently published buying price of the units.

98. Paragraph 17(6) also defines 'group company' and 'relevant seeding transaction'. A 'relevant seeding transaction' is defined as a land transaction entered into, before the disposal of units, between a seed investor 'V' and a CoACS, for which seeding relief has been given (whether or not it is subsequently withdrawn to any extent). This paragraph provides for the withdrawal of relief under paragraph 7 to be calculated at group level. This rule applies if a seed investor 'V' is a company within a group as defined for the purposes of SDLT group relief. In this case the relevant seeding transactions of all members of the group at the date of the disposal of units are taken into account when calculating the value of V's investment for the purposes of paragraph 7(3) to (5).

99. Paragraphs 18(1) and (2) provide that seeding relief is withdrawn and SDLT is charged where the relief had been given in respect of a dwelling which a "non-qualifying individual" is then permitted to occupy. Paragraph 18(1) defines such a dwelling as 'the disqualifying dwelling'.

100. Paragraph 18(3) explains that tax will be withdrawn under paragraph 18 if the "disqualifying dwelling" or an interest derived from it is still held by the CoACS.

101. Paragraph 18(4) explains that relief will be withdrawn where a non-qualifying individual is permitted to occupy a disqualifying dwelling after the end of the 3-year control period and the purchaser fails to meet the GDO condition set out in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964).

102. Paragraph 18(5) sets out the amount of SDLT chargeable where relief is withdrawn under paragraph 18. The amount chargeable is the SDLT which would have been chargeable in the absence of seeding relief in respect of the disqualifying dwelling, or an appropriate proportion of it.

103. Paragraph 18(6) provides that the "appropriate proportion" for the purposes of sub-paragraphs (2) and (5) takes account of the extent to which the transaction in question concerned property other than the disqualifying dwelling.

104. Schedule 7A Paragraph 19(1) to (7) defines "non-qualifying individual" and explains the terms used in the context of this definition. An individual is a non-qualifying individual if

they are a major participant in the scheme or connected to such an individual, are connected with the operator or depositary of the scheme, are a relevant settlor in respect of the transaction, or have a connection to any such person by way of being a spouse, civil partner or relative.

105. Part 3 of Schedule 7A contains explanation of the interpretation of terms used in Schedule 7A.

106. Schedule 7A paragraph 20 contains definitions of a "feeder fund" of a PAIF and a CoACS and units in the PAIF and CoACS.

107. Schedule 7A paragraph 21 contains explanations of other terms used in Schedule 7A.

Part 3

108. Part 3 makes consequential amendments to FA 2003. Paragraph 5 introduces the amendments.

109. Paragraph 6 inserts a reference to Schedule 7A into subsection 75C(4).

110. Paragraph 7 amends section 81 FA 2003 to make provision in respect of a further return required where relief is withdrawn for a PAIF or CoACS.

111. Paragraph 8 inserts references to Schedule 7A into section 86 FA 2003 to provide for payment of tax on a withdrawal of PAIFs seeding relief or CoACS seeding relief.

112. Paragraph 9 inserts references to Schedule 7A into section 87 FA 2003 to provide for interest payable in a withdrawal of PAIFs seeding relief or CoACS seeding relief.

113. Paragraph 10 amends the definition of market value at s118 in respect of the specific definition for the purposes of paragraphs 7 and 17 of Schedule 7A.

114. Paragraph 11 amends section 122 FA 2003 to insert certain defined expressions used in section 102A and Schedule 7A.

115. Paragraph 12 amends paragraph 2(6) of Schedule 4A to FA 2003 to insert a reference to Schedule 7A.

116. Paragraph 13 amends paragraph 2(4)(b) of amends Schedule 6B to FA 2003 to insert a reference to Schedule 7A.

117. Paragraph 14 amends Schedule 17A to FA 2003 so that it applies where a grant of a lease benefits from seeding relief under Schedule 7A and where such relief is subsequently withdrawn.

Part 4

118. Part 4 makes commencement and transitional provisions.

119. Paragraph 14(1) provides that the amendments made by Parts 2 and 3 of this Schedule have effect in relation to any land transaction with an effective date on or after the date on which the Act is passed.

120. Paragraph 14(2) provides that the amendments do not have effect for transactions effected under a contract entered into and substantially performed before the date on which this Act

is passed or transactions effected under a contract entered into before the date on which this Act is passed and not excluded by sub-paragraph (3).

121. Paragraph 14(3) outlines the circumstances in which a transaction effected under a contract entered into before the date on which the Act is passed is excluded. Those circumstances are:

- where there has been a variation of the contract or assignment of rights under the contract on or after that date,
- where completion of the transaction follows the exercise of an option or similar right on or after that date, or
- where the land subject to the contact has been assigned or subject to a sub-sale to another person on or after that date.

122. Paragraph 14(4) explains that in paragraph 14, the terms "purchaser" and "substantially performed" have the same meaning as in sections 43(4) and 44(5) respectively of FA 2003.

Background note

123. SDLT was introduced in Part 4 of FA 2003 for transactions in land from 1 December 2003. The tax applies to land transactions which are defined as any acquisition of a chargeable interest. A chargeable interest is any interest in land in England, Wales or Northern Ireland. The transfer of property into a PAIF, including 'seeding' it with a start-up property portfolio, is currently subject to SDLT as the PAIF acquires an interest in land.

124. Properties held in existing PAIFs or certain types of collective investment schemes can be transferred into a new PAIF without a charge to SDLT. However any properties transferred into a PAIF that are not held in such a scheme or fund will be subject to SDLT.

125. CoACSs are collective investment schemes which are presently "transparent" for SDLT purposes; unit holders are the beneficial owners of the scheme assets. When units in a CoACS are acquired or transferred, this gives rise to a change in ownership of the underlying property and consequently a charge to SDLT on unit holders.

126. The legislation introduced by this measure aims to remove barriers to the use of CoACSs by treating these funds as companies for SDLT purposes so that SDLT does not apply to transfers of CoACS units. The legislation also introduces a new seeding relief for PAIFs and CoACSs to enable the initial transfer of a "seed" property portfolio into these funds without a charge to SDLT.

127. The legislation includes anti-avoidance measures to limit the application of the relief to authorised funds with a broad base of investors and a sizeable portfolio of seeded properties. This aims to minimise SDLT avoidance via the "enveloping" of properties within such funds.

Clause 123: ATED: regulated home reversion plans

Summary

1. This clause introduces a new relief from annual tax on enveloped dwellings (ATED) to apply where an interest is held in UK residential property exclusively for the purposes of entering into an equity release scheme, specifically a regulated home reversion plan.

Details of the clause

2. Subsection (1) amends Part 3 of Finance Act 2013.

3. Subsection (2) inserts a new section 144A into Finance Act 2013, "Regulated home reversion plans".

4. New section 144A(1) provides that relief is available for any day in a chargeable period where an authorised plan provider holds an interest in a single dwelling as a result of entering into a regulated home reversion plan and where the occupation condition is met.

5. New section 144A(2) provides that where no qualifying termination event has occurred, the occupation condition is that the person who originally entered into the home reversion plan is entitled to occupy the dwelling.

6. New section 144A(3) provides that where a qualifying termination event has occurred, the occupation condition is that steps must be taken to sell the single dwelling interest without delay, that any delay in selling that interest could not be avoided or is justified by commercial considerations, and that no non-qualifying individual can occupy the dwelling, or any part of the dwelling.

7. New section 144A(4) defines the terms -

- "authorised plan provider" means a person authorised under the Financial Services and Markets Act 2000 to carry on in the United Kingdom, the regulated activity specified in article 63B(1) of the Regulated Activities Order, that is a regulated home reversion plan.
- "qualifying termination event" means an event as specified in article 63B of the Regulated Activities Order, that is that the person entitled to occupy the dwelling in section 144A(2), becomes a resident of a care home, dies, or a period of at least 20 years has passed since the home reversion plan was entered into.
- "the Regulated Activities Order" means the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544).
- "regulated home reversion plan" means an arrangement regulated by Chapter

15A of Part 2 of the Regulated Activities Order.

8. New section 144A(5) provides that references to entering into a regulated home reversion plan "as plan provider" are to be taken to mean those set out in the Regulated Activities Order S.I. 2001/544.

9. New section 144A(6) provides that a home reversion plan which was entered into before 6 April 2007 (the date home reversion plans were regulated by S.I. 2001/544), will be treated as a regulated home reversion plan where:

- P is an authorised plan provider on any day in respect of which relief is being claimed, and
- the home reversion plan is of a type that would have been so regulated had those regulations been in force at the time.

10. New section 144A(7) provides that a "non-qualifying individual" is as defined in section 136 of Finance Act 2013.

11. Subsections (3) to (5) make consequential amendments to sections 116(6), 117(5), 132(3) of Finance Act 2013, inserting appropriate references to the new relief for home reversion plans.

12. Subsection (6) inserts into section 159A of Finance Act 2013 (relief declaration returns), relief code 5A in respect of regulated home reversion plans.

13. Subsection (7) provides that these changes have effect for chargeable periods beginning on or after 1 April 2016.

Background note

14. ATED is due where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued at more than £1m (more than £500,000 with effect from. 1 April 2016)). The amount of tax charged is calculated using a banding system based on the value of the property. There are a number of reliefs available which must be claimed by filing an annual return. Reliefs can reduce the annual charge to nil in part or in whole.

15. Under certain equity release schemes (specifically, home reversion plans) an individual sells to the equity release scheme company, all or part of their property in exchange for an annuity or lump sum, and a lifetime tenancy. The individual can live in the property until death, or on entering into long term care, at which point the property is sold. In such an arrangement the interest in the property held by the equity release scheme company will come within the charge to ATED if the value exceeds the entry threshold. Currently no relief exists for such an arrangement.

16. This measure introduces new legislation to provide relief for entities which hold an interest in a UK residential property as a result of entering into a regulated home reversion plan (as described in the 'Regulated Activities Order 2001' (SI 2001/544)), and where that entity is authorised under the Financial Services and Markets Act 2000 to enter into such plans.

17. Home reversion plans only became regulated activities with effect from 6 April 2007. The

legislation also provides that where the entity holds an interest in a property as a result of entering into a home reversion plan prior to that date, relief may still be available.

18. Where the last individual living in the property either dies or goes into long term care, the property must be sold without undue delay (or any delay must be justified by commercial considerations, or could not be avoided). If during that period a "non-qualifying individual" occupies the property, relief cannot be claimed. A non-qualifying individual is a person who has an interest in the property, or a person connected to the person who has an interest in the property.

19. Clause introduces similar relief in relation to the 15% higher rate of stamp duty land tax.

Clause 124: ATED: properties occupied by certain employees etc

Summary

1. This clause introduces new relief from ATED where a property (a single-dwelling interest) is occupied either by an employee of a qualifying property rental business or where a tenants' management company permits one of the flats in the building to be occupied by a person employed to act as caretaker of the premises.

Details of the clause

2. Subsection (1) amends Part 3 of Finance Act 2013.

3. Subsections (2) to (5) amend section 145 of Finance Act 2013 so that relief is not only available in respect of a property held for use by employees of a qualifying trade, but also for employees of a qualifying property rental business.

4. Subsection (6) amends section 146 of Finance Act 2013 and includes within the definition of a "qualifying employee" and "qualifying partner" an employee/partner of a qualifying property rental business.

5. Subsection (7) inserts a new section 147A into Finance Act 2013 to provide relief where a tenants' management company permits one of the flats in the building to be occupied by a person employed to act as caretaker of the premises

6. New section 147A(1) provides that relief is available for any day in a chargeable period where a single-dwelling interest is a flat and the conditions in section 147A(2) are met.

7. New section 147A(2) sets out the conditions that must apply, which are :

   - the management company holds the single-dwelling interest (i.e. the flat) for the purposes of making it available as caretaker accommodation;
   - the premises containing the flat also consist of two or more other flats;
   - the tenants of at least two of the other flats in the premises are members of the management company;
   - the management company owns the freehold of the premises;
   - the management company is not carrying on a trade or property rental business.

8. New section 147A(3) provides that for the purposes of section 147A(2), the flat is made available "as a caretaker accommodation" if it is made available to an individual for use as living accommodation in connection with that individual's employment as caretaker of the

premises.

9. New section 147A(4) defines 'premises ' as meaning the whole or part of the building which contains the flat.

10. Subsections (8) to (10) make consequential amendments to sections 116(6), 117(5) and 132(3) of Finance Act 2013 inserting appropriate references to the new reliefs for employees of a qualifying property rental business and caretaker flats owned by a tenants' management company.

11. Subsection (11) amends section 159A of Finance Act 2013 (relief declaration returns) so that relief code 6 also applies to new section 147A - caretaker flat owned by a tenants' management company.

12. The amendments made by this section have effect for chargeable periods beginning on or after 1 April 2016.

Background note

13. ATED is due where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued at more than £1m (more than £500,000 with effect from 1 April 2016). The amount of tax charged is calculated using a banding system based on the value of the property. There are a number of reliefs available which must be claimed in an annual return. Reliefs can reduce the annual charge to nil in part or in whole.

14. Currently relief is available where a property is occupied by an employee or partner of a qualifying trade, but no relief is available where a property is occupied by an employee of a qualifying property rental business. This clause introduces new legislation so that relief will also be available for certain employees or partners of a qualifying property rental business. A qualifying property rental business is one run on a commercial basis and with a view to profit.

15. In addition, this clause introduces a new relief where a tenant owned management company provides living accommodation to a caretaker employed to manage and maintain the building (e.g. a block of flats).

16. Clause 124 introduces similar reliefs in relation to the 15% higher rate of Stamp Duty Land Tax.

Clause 125: Alternative property finance: land in Scotland

Summary

1. This clause makes a consequential change to the ATED legislation in relation to alternative property finance arrangements (Islamic finance) entered into between a financial institution and another person, whereby that institution purchases a property in Scotland on behalf of another person and leases it back to them. It is needed as a result of the introduction of the Scotland Act.

Details of the clause

2. Subsection (1) amends Part 3 of Finance Act 2013.

3. Subsections (2) to (6) make consequential amendments to section 157 of Finance Act 2013 so that it applies only to alternative property finance arrangements in respect of land in England, Wales or Northern Ireland.

4. Subsection (7) inserts new section 157A into Finance Act 2013 to apply ATED to alternative property finance arrangements in respect of land in Scotland.

5. New section 157A(1) to (3) set out the 2 conditions that must be met for new section 157A to apply.

    - Condition A is that there is an arrangement whereby a financial institution purchases a major interest in land in Scotland ("the first transaction"), grants to the other person ("the lessee") a leasehold interest out of that major interest ("the second transaction"), and enters into an agreement under which the lessee has a right to acquire from the institution the major interest purchased by them under the first transaction.

    - Condition B is that the major interest in land in Scotland purchased by the institution, consists of one or more dwellings, or part of a dwelling.

6. New section 157A(4) provides that where the lessee is a company, the interest held by the financial institution is treated as if it were held by the company, and that the interest granted out of the major interest is treated as if it had not occurred. The result is that the alternative property finance arrangement is ignored and the company is treated as owning the interest in the dwelling outright for the purposes of this part, i.e. the ATED charge arises on the company (i.e. the lessee) and not on the financial institution.

7. New section 157A(5) provides that an alternative finance arrangement is in operation where the lessee holds the interest granted to it under the second transaction, and the financial

institution holds the interest purchased under the first transaction.

8. New section 157A(6) provides that these rules also apply where the lessee is a partnership with a company member.

9. New section 156A(7) and (8) provides that these rules also apply where the lessee is a collective investment scheme.

10. New section 157A(9) defines "financial institution" as having the same meaning as that in section 71A of Finance Act 2003.

11. New section 157A(10) defines a "major interest in land" as ownership of land, or a tenant's right over or interest in land subject to a lease.

12. New section 157A(11) provides that where a lessee is an individual holding the interest for the purposes of a collective investment scheme and that lessee dies, references in new section 157(7) and (8) should be taken to mean the lessee's personal representative.

13. Subparagraph (8) provides that these changes have effect for chargeable periods on or after 1 April 2016.

Background note

14. The Annual Tax on Enveloped Dwellings (ATED) is an annual charge payable by companies, partnerships with a company member, and collective investment vehicles which own UK residential property valued at more than £1m (or more than £500,000 with effect from 1 April 2016).

15. Alternative property finance arrangements are used for property purchases to satisfy the requirements of Shari' law, which prohibits transactions which involve interest or unethical investments. For property transactions, these arrangements involve a financial institution purchasing the major interest in land and leasing it back to the individual (the lessee). The individual then has the right to acquire, at any time, the land from the institution.

16. There are special rules in relation to ATED so that where the lessee is a company, partnership with a company member or a collective investment scheme, ATED looks through the financial institution so that the charge instead falls on the lessee.

17. However, in relation to property in Scotland, the ATED legislation relies on the definition in section 72 of Finance Act 2003 (Stamp Duty Land Tax) which was repealed by the Scotland Act 2012. This change inserts consequential mirroring rules to make it clear that ATED continues to apply to alternative property finance arrangements in respect of property in Scotland.

Clause 126: Stamp duty on certain transfers to depositaries or providers of clearance services

Summary

1. This clause provides that securities transferred to a depositary receipt issuer or clearance service (or their respective nominees) as a result of the exercise of an option will be charged the 1.5% higher rate of stamp duty based on either the amount or value of the consideration or, if higher, the value of the securities. The clause will have effect from 23 March 2016 and will apply to options which are entered into on or after 25 November 2015 and exercised on or after 23 March 2016. A related change is made in respect of stamp duty reserve tax (SDRT) by clause (SDRT: transfers to depositaries or providers of clearance services).

Details of the clause

2. Subsection (1) provides that part 3 of the Finance Act (FA) 1986 (stamp duty) is amended.

3. Subsection (2)(a) inserts new sections 67(2)(a), 67(2)(b)(i) and 67 (2)(b)(ii) which provide that where the new section 67(2A) applies, stamp duty shall be charged on the amount or value of the consideration paid or, if higher, the value of the securities.

4. Subsection (2)(b) provides that section 67(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a depositary receipt issuer or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.

5. Subsection (2)(c) amends the wording of section 67(3) of FA 1986 so that it refers to cases which are not transfers on sale. This is for drafting clarity rather than effecting a substantive change.

6. Subsection (3) makes a consequential amendment to section 69(4) of FA 1986 to ensure that the description of value provided in section 69(4) applies to section 67(2)(b)(ii).

7. Subsection (4)(a) inserts new sections 70(2)(a), 70(2)(b)(i) and 70(2)(b)(ii) of FA 1986 which provide that where the new section 70(2A) applies, stamp duty shall be charged on the amount or value of the consideration or, if higher, the value of the securities.

8. Subsection (4)(b) provides that section 70(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a clearance service or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.

9. Subsection 4(c) amends the wording of section 70(3) of FA 1986 so that it refers to cases which are not transfers on sale. This is for drafting clarity rather than effecting a substantive change.

10. Subsection (5) makes a consequential amendment to section 72(2) of FA 1986 to ensure that

the description of value provided in section 72(2) of FA 1986 applies to section 70(2)(b)(ii).

11. Subsection (6) sets out the commencement provision. The changes to the legislation apply where an option is exercised on or after 23 March 2016, but only where the option was entered into on or after 25 November 2015.

Background note

12. Where shares in UK companies are transferred the transaction is subject to stamp tax. This is either stamp duty on paper documents or instruments or SDRT on electronic transfers. The rate is 0.5% in both cases. However, where shares are transferred to a clearance system or depositary receipt issuer (or their respective nominees), a higher rate of 1.5% is charged to reflect the fact that the shares can be transferred free of stamp tax whilst they are in the clearance system or are covered by the depositary receipt.

13. A depositary receipt is in effect a substitute for the share itself and is issued by a person whose business includes the issuing of receipts against the deposit of the actual shares concerned. A clearance service is a system for holding securities and which allows members of that clearance service to trade and settle by book entry those securities within that system.

14. The 1.5% charge can apply when shares are transferred to a clearance service or depositary receipt issuer as a result of the exercise of an option. However, HM revenue and Customs (HMRC) has become aware of option arrangements where the agreed price for the shares (the 'strike price') is significantly lower than their market value. The seller receives a large part of their consideration in the form of a high premium for the option.

15. As a result, these arrangements reduce the stamp duty payable on the transaction. This legislation addresses these arrangements by applying the higher of the consideration or market value where the transfer results from exercise of an option and the shares are transferred to a clearance service or depositary receipt issuer (or their respective nominees).

Clause 127: SDRT: transfers to depositaries or providers of clearance services

Summary

1. This clause provides that securities transferred to a depositary receipt issuer or clearance service (or their respective nominees) as a result of the exercise of an option will be charged the 1.5% higher rate of stamp duty reserve tax (SDRT) based on either the amount or value of the consideration or, if higher, the value of the securities. The clause will have effect from 23 March 2016 and will apply to options which are entered into on or after 25 November 2015 and exercised on or after 23 March 2016. A related change is made in respect of stamp duty by clause (Stamp duty: transfers to depositaries or providers of clearance services).

Details of the clause

2. Subsection (1) provides that part 4 of the Finance Act (FA) 1986 (stamp duty reserve tax) is amended.

3. Subsection (2)(a) inserts new sections 93(4)(b)(i) and 93(4)(b)(ii) which provide that where new section 93(4A) applies, SDRT shall be charged on the amount or value of the consideration paid or, if higher, the value of the securities.

4. Subsection (2)(b) provides that section 93(4A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a depositary receipt issuer or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.

5. Subsection (3) makes a consequential amendment to section 94(4) of FA 1986 to ensure that the description of value provided in section 94(4) applies to section 93(4)(b)(ii).

6. Subsection (4)(a) inserts new sections 96(2)(b)(i) and 96(2)(b)(ii) which provide that where the new section 96(2A) applies, SDRT shall be charged on the amount or value of the consideration paid or, if higher, the value of the securities.

7. Subsection (4)(b) provides that section 96(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a clearance service or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.

8. Subsection (4)(c) makes a consequential amendment to section 96(10) FA 1986 to ensure that the description of value provided in section 96(10) applies to section 96(2)(b)(ii).

9. Subsection (5) sets out the commencement provision. The changes to the legislation apply where an option is exercised on or after 23 March 2016, but only where the option was entered into on or after 25 November 2015.

Background note

10. Where shares in UK companies are transferred the transaction is subject to stamp tax. This is either stamp duty on paper documents or instruments or SDRT on electronic transfers. The rate is 0.5% in both cases. However, where shares are transferred to a clearance service or depositary receipt issuer (or their respective nominees), a higher rate of 1.5% is charged to reflect the fact that the shares can be transferred free of stamp tax whilst they are in the clearance system or are covered by the depositary receipt.

11. A depositary receipt is in effect a substitute for the share itself and is issued by a person whose business includes the issuing of receipts against the deposit of the actual shares concerned. A clearance service is a system for holding securities and which allows members of that clearance service to trade and settle by book entry those securities within that system.

12. The 1.5% charge can apply when shares are transferred to a clearance service or depositary receipt issuer as a result of the exercise of an option. However, HM Revenue and Customs (HMRC) has become aware of option arrangements where the agreed price for the shares (the 'strike price') is significantly lower than their market value. The seller receives a large part of their consideration in the form of a high premium for the option.

13. As a result, these arrangements reduce the SDRT payable on the transaction. This legislation addresses these arrangements by applying the higher of the consideration or market value where the transfer results from exercise of an option and the shares are transferred into a clearance service or to a depositary receipt issuer (or their respective nominees).

Clause 128: Petroleum revenue tax: rate reduction

Summary

1. This clause amends the Oil Taxation Act (OTA) 1975 to reduce the rate of petroleum revenue tax from 35% to 0% for chargeable periods ending after 31 December 2015.

Details of the clause

2. Subsections (1) and (4) amend OTA 1975 to reduce the rate of petroleum revenue tax from 35% to 0% for chargeable periods ending after 31 December 2015.
3. Subsection (2) provides a consequential amendment to the cap on interest carried on a repayment of petroleum revenue tax, to remove the amended relevant percentage no longer required for periods ending after 31 December 2015.
4. Subsection 3 amends Finance Act 1982 Schedule 19 Paragraph 2 to insert a provision to prevent instalment payments being due for the period ending 30 June 2016.

Background note

5. Petroleum revenue tax was introduced by OTA 1975 and is essentially a tax on the profits from oil and gas production from the UK and UK Continental Shelf.
6. This clause reduces the rate of PRT payable by oil and gas companies operating in the UK and on the UK Continental Shelf from 35% to 0%. It removes the cap on interest carried on a repayment of petroleum revenue tax for the chargeable periods ending after 31 December 2015 as it is no longer applicable. It also removes the requirement for instalment provisions to be made for the chargeable period ending 30 June 2016.
7. This reduction will help provide the right conditions for business investment to maximize the economic recovery of the UK's oil and gas resources.

Clause 129 Insurance premium tax: standard rate

Summary

1. This clause increases the standard rate of insurance premium tax (IPT) from 9.5% to 10% with effect from 1 October 2016.

Details of the clause

2. Subsection 2 applies the new rate to insurance premiums received on or after 1 October 2016.

3. Subsection 3 provides an exception to subsection 2. Where an insurer uses the special accounting scheme and receives premiums in respect of an insurance contract entered into before 1 October 2016, the new rate will only apply to those premiums received on or after 1 February 2017.

4. Subsection 4 provides an exception to subsection 3 to protect receipts. Premiums that would otherwise fall within subsection 3 but are paid in respect of new risks not already covered in the insurance contract as it stood prior to 1 October 2016 will be subject to the new rate of tax from that date.

5. Subsection 5 designates dates for the purposes of operating the anti-avoidance provisions, already contained in IPT legislation. These prevent the forestalling of the rate rise by advancing the timing of premium receipts.

Background note

6. IPT, either at the standard rate or higher rate, is accounted for on general insurance premiums. Most premiums are subject to the standard rate, the higher rate of 20% is applicable to certain insurance when it is sold alongside specified goods, such as motor vehicles and domestic appliances. It also applies to all travel insurance. Some insurance is exempted from IPT: including, reinsurance; long term insurance (e.g. life & pensions); insurance covering risks situated outside the UK; and insurance associated with international transportation and trade. This clause increases the standard rate and ensures that existing anti-forestalling provisions and the exception provided for in subsection 3 operate effectively in relation to the rate rise. The aim of this rate rise is to help fund flood defenses and resilience.

7. The special accounting scheme is the tax accounting method used by most insures that allows the tax to be accounted for on the premium due date the insurer writes into their records. If insurers do not apply to use the special accounting scheme they would need to use the cash accounting method under which the tax point is the date the premium is paid to the insurer or is paid to a broker or intermediary on their behalf.

Clause 130: Landfill tax: rates from 1 April 2017

Summary

1. This clause amends Finance Act (FA) 1996 to increase the standard and lower rates of Landfill Tax in line with inflation based on Retail Prices Index (RPI), rounded to the nearest 5 pence, for disposals of relevant waste made (or treated as made) at authorised landfill sites on or after 1 April 2017. This will increase the standard rate to £86.10 per tonne and the lower rate to £2.70 per tonne from this date.

Details of the clause

2. Subsections (2) and (3) amend "£84.40"to read "£86.10" in sections 42(1)(a) and 42(2) of FA 1996. Subsection (3) amends "£2.65" to read "£2.70" in section 42(2) of FA 1996.

3. Subsection (4) provides the commencement date.

Background note

4. Landfill Tax was introduced on 1 October 1996 to increase the cost of disposing of waste by landfill and thereby encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste. There is a lower rate of tax, which applies to less polluting qualifying wastes covered by two Treasury Orders, and a standard rate which applies to all other taxable waste disposed of at authorised landfill sites.

5. The June 2010 Budget confirmed that the standard rate of Landfill Tax would rise by £8 per tonne on 1 April each year up to and including 2014. It also announced a floor under the standard rate so that the rate will not fall below £80 per tonne from 1 April 2014 to at least 2020. Budget 2014 clarified that this floor should be interpreted in real terms and announced that the lower rate would, in future, also increase each year in line with inflation (based on the RPI), rounded to the nearest 5 pence. It also announced the intention to provide further long-term certainty.

6. In line with these announcements, Budgets 2014 and 2015 announced that, on 1 April 2015 and 1 April 2016, the standard rate would increase to £82.60 and £84.40 per tonne respectively, and the lower rate would increase to £2.60 and £2.65 per tonne respectively – these changes were made by Finance Acts 2014 and 2015 respectively. Budget 2016 announced that the Landfill Tax rates for 2017 to 18 and 2018 to 2019 will also increase in line with RPI, rounded to the nearest 5 pence. A separate clause in this Bill increases the rates from 1 April 2018.

7. Finance Bill 2015 introduced the Loss on Ignition (LOI) testing regime from 1 April 2015. This provides for laboratory testing of samples of waste 'fines' to help operators determine Landfill Tax liability (fines are the residual waste produced following treatment of waste at waste transfer stations, before the waste is sent to a landfill site). The test measures the amount of

water lost when the waste is burned - only qualifying fines with an LOI of 10% or lower are considered eligible for the lower rate, though there is a 12 month transitional period from 1 April 2015 where the threshold is 15%. This transitional period will come to an end on 31 March 2016.

8. As a result of devolution, Landfill Tax has not applied in Scotland since 1 April 2015. The 2017 to 2018 changes will therefore apply to waste disposed of at landfill sites in England, Wales and Northern Ireland only. It is expected that Landfill Tax will be devolved to Wales from 1 April 2018 but this is subject to confirmation by the UK and Welsh governments and an Order being laid before Parliament. If devolution to Wales goes ahead by this date, the 2018 to 2019 rate changes will apply in England and Northern Ireland only.

Clause 131: Landfill Tax: rates from 1 April 2018

Summary

1. This clause amends Finance Act (FA) 1996 to increase the standard and lower rates of Landfill Tax in line with inflation based on Retail Prices Index (RPI), rounded to the nearest 5 pence, for disposals of relevant waste made (or treated as made) at authorised landfill sites on or after 1 April 2018. This will increase the standard rate to £88.95 per tonne and the lower rate to £2.80 per tonne from this date.

Details of the clause

2. Subsections (2) and (3) amend “£86.10” to read “£88.95” in sections 42(1)(a) and 42(2) of FA 1996. Subsection (3) amends "£2.70" to read "£2.80" in section 42(2) of FA 1996.

3. Subsection (4) provides the commencement date.

Background note

4. Landfill Tax was introduced on 1 October 1996 to increase the cost of disposing of waste by landfill and thereby encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste. There is a lower rate of tax, which applies to less polluting qualifying wastes covered by two Treasury Orders, and a standard rate which applies to all other taxable waste disposed of at authorised landfill sites.

5. The June 2010 Budget confirmed that the standard rate of Landfill Tax would rise by £8 per tonne on 1 April each year up to and including 2014. It also announced a floor under the standard rate so that the rate will not fall below £80 per tonne from 1 April 2014 to at least 2020. Budget 2014 clarified that this floor should be interpreted in real terms and announced that the lower rate would, in future, also increase each year in line with inflation (based on the RPI), rounded to the nearest 5 pence. It also announced the intention to provide further long-term certainty.

6. In line with these announcements, Budgets 2014 and 2015 announced that, on 1 April 2015 and 1 April 2016, the standard rate would increase to £82.60 and £84.40 per tonne respectively, and the lower rate would increase to £2.60 and £2.65 per tonne respectively – these changes were made by Finance Acts 2014 and 2015 respectively. Budget 2016 announced that the Landfill Tax rates for 2017 to 2018 and 2018 to 2019 will also increase in line with RPI, rounded to the nearest 5 pence. A separate clause in this Bill increases the rates from 1 April 2017.

7. Finance Bill 2015 introduced the Loss on Ignition (LOI) testing regime from 1 April 2015. This provides for laboratory testing of samples of waste ‘fines’ to help operators determine Landfill Tax liability (fines are the residual waste produced following treatment of waste at waste

transfer stations, before the waste is sent to a landfill site). The test measures the amount of water lost when the waste is burned - only qualifying fines with an LOI of 10% or lower are considered eligible for the lower rate, though there is a 12 month transitional period from 1 April 2015 where the threshold is 15%. This transitional period will come to an end on 31 March 2016.

8. As a result of devolution, Landfill Tax has not applied in Scotland since 1 April 2015. The 2017 to 2018 changes will therefore apply to waste disposed of at landfill sites in England, Wales and Northern Ireland only. It is expected that Landfill Tax will be devolved to Wales from 1 April 2018 but this is subject to confirmation by the UK and Welsh governments and an Order being laid before Parliament. If devolution to Wales goes ahead by this date, the 2018 to 2019 rate changes will apply in England and Northern Ireland only.

Clause 132: CCL: abolition of exemption for electricity from renewable sources

Summary

1. This clause removes the climate change levy ('CCL') exemption for renewable source electricity generated before 1 August 2015 where this is supplied on or after 1 April 2018.

Details of the clause

2. Subsection (1) amends paragraph 19 of Schedule 6 to Finance Act 2000 to insert new sub-paragraph (e) to provide that the exemption relates only to eligible electricity actually supplied before 1 April 2018.

3. Subsection (2) provides for consequential repeals needed as a result of the amendments made by subsection (1).

4. Subsection (3) makes provision for the repeals made by subsection (2) to come into force on the day appointed by HM Treasury in a statutory instrument.

Background note

5. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business, service and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels), and is aimed at promoting energy efficiency in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

6. Electricity generated from renewable sources was exempted from CCL at the tax's introduction when supplied under a renewable source contract agreed between an energy supplier and their non-domestic customer. The original purpose of removing tax from these supplies was to mitigate the additional cost of renewable source electricity and in so doing increase demand from non-domestic consumers.

7. Energy policy has moved on, with far greater incentives available, targeted at renewable generation as opposed to supply. As the quantity of renewable source electricity available has increased, the CCL exemption has ceased to provide value for money for taxpayers. Finance (No 2) Act 2015 therefore removed the exemption for renewable source electricity if the electricity was generated on or after 1 August 2015.

8. To enable suppliers to retain the benefit of renewable source electricity already acquired before the date of the change, the Summer Budget announced that there would be a transitional period during which time electricity suppliers could continue to exempt supplies of eligible electricity where this was generated from renewable sources before 1 August 2015. During the summer and autumn the government consulted on how long suppliers should be given to use up accumulated renewable source electricity. This measure legislates for an end date of the transitional period of 31 March 2018.

Clause 133: CCL: main rates from 1 April 2017

Summary

1. This clause increases the main rates of Climate Change Levy (CCL) in line with inflation (based on the Retail Prices Index), with effect from 1 April 2017.

Details of the clause

2. Clause replaces the table of rates in paragraph 42(1) of Schedule 6 to Finance Act 2000 and provides that 1 April 2017 is the date on which the changes come into effect.

Background note

3. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use of energy in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

4. Since the main rates of CCL were increased in 2007 they have kept pace with inflation so that the levy maintains its environmental effect. On each occasion that the main rates have increased the changes have been legislated for in the previous year's Finance Bill.

Clause 134: CCL: main rates from 1 April 2018

Summary

1. This clause increases the main rates of Climate Change Levy (CCL) in line with inflation (based on the Retail Prices Index), with effect from 1 April 2018.

Details of the clause

2. Clause 134 replaces the table of rates in paragraph 42(1) of Schedule 6 to Finance Act 2000 and provides that 1 April 2018 is the date on which the changes come into effect.

Background note

3. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use of energy in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

4. Since the main rates of CCL were increased in 2007 they have kept pace with inflation so that the levy maintains its environmental effect. On each occasion that the main rates have increased the changes have been legislated for in the previous year's Finance Bill.

5. The rates with effect from 1 April 2018 are being legislated for two years in advance. This is because the government consulted last year on its Business Energy Efficiency Review and Budget 2016 announced a number of changes to energy taxation from 2019 to 2020 (including changes to CCL main rates from that year which are included in this Finance Bill). To provide certainty, the government wishes to legislate for changes arising from the consultation as soon as practicable and it is logical to legislate for earlier years at the same time.

Clause 135: CCL: main rates from 1 April 2019

Summary

1. This clause increases the main rates of Climate Change Levy (CCL) with effect from 1 April 2019.

Details of the clause

2. Clause 135 replaces the table of rates in paragraph 42(1) of Schedule 6 to Finance Act 2000 and provides that 1 April 2019 is the date on which the changes come into effect.

Background note

3. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use of energy in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

4. The context of the changes in this clause is that of wider reform to energy taxation, announced at Budget 2016, following a review of the business energy efficiency tax landscape announced at Summer Budget 2015. A consultation paper was issued in September 2015 seeking evidence and setting out policy proposals to simplify and improve the effectiveness of the tax landscape in supporting the government's objectives around simplicity, productivity, security of energy supplies and decarbonisation. This review considered the interactions between business energy policies and regulations, including the CCL, the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme, Climate Change Agreements (CCA), taxes on other fuels (e.g. heating oils), mandatory greenhouse gas reporting, the Energy Saving Opportunity Scheme, Enhanced Capital Allowances and the Electricity Demand Reduction pilot.

5. As a result of this consultation, Budget 2016 announced the closure of the CRC scheme with effect from the end of the 2018 to 2019 compliance year following business concerns that the scheme is overly complex and administratively burdensome. It also announced increases to the CCL main rates from 2019 to 2020 to recoup revenue lost from the abolition of the CRC and strengthen the energy efficiency incentives amongst CCL-paying businesses. In addition, Budget 2016 announced that the CCL discount available to CCA participants will be increased to compensate for the CCL rate increases from 2019 to 2020.

6. The difference in CCL rates between electricity and gas is currently outdated at an electricity to gas ratio of 2.9:1 and this is amended by this clause to reflect the fuel mix used in electricity generation, adjusting the electricity to gas ratio to 2.5:1, from 1 April 2019. CCL rates for

liquefied petroleum gas and other taxable fuels are also being increased in proportion to the rate for gas. This will provide a financial incentive for businesses to reduce gas use, saving carbon in the non-traded sector and delivering on national climate change targets. The government also intends to further rebalance rates to an electricity to gas ratio of 1:1 by 2025 to deliver greater carbon savings.

7. A consultation response document to the review of business energy efficiency was published on 16 March 2016.

Clause 136: CCL: reduced rates from 1 April 2019

Summary

1. This clause amends the reduced rate percentages that apply to the Climate Change Levy (CCL) main rates payable by participants in the Climate Change Agreement (CCA) scheme, from 1 April 2019.

Details of the clause

2. Clause 136 amends the reduced rate percentages that apply to eligible supplies of electricity and eligible supplies of other taxable commodities provided for in paragraphs 42(1)(ba) and 42(1)(c) respectively of Schedule 6 to the Finance Act 2000. It provides that 1 April 2019 is the date on which the changes come into effect.

Background note

3. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use of energy in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases. Businesses that participate in the CCA scheme run by the Department of Energy and Climate Change pay reduced rates, expressed as a percentage of the full main rates of CCL on the taxable commodities they buy.

4. The context of the change in this clause is that of wider reform to energy taxation, announced at Budget 2016, following the review of the business energy efficiency tax landscape announced at Summer Budget 2015. A consultation paper was issued in September 2015 seeking evidence and setting out policy proposals to simplify and improve the effectiveness of the tax landscape in supporting the government's objectives around simplicity, productivity, security of energy supplies and decarbonisation. This review considered the interactions between business energy policies and regulations, including the CCL, the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme, CCAs, taxes on other fuels (e.g. heating oils), mandatory greenhouse gas reporting, the Energy Saving Opportunity Scheme, Enhanced Capital Allowances and the Electricity Demand Reduction pilot.

5. As a result of this consultation, Budget 2016 announced the closure of the CRC scheme with effect from the end of the 2018 to 2019 compliance year following business concerns that the scheme is overly complex and administratively burdensome. It also announced increases to the CCL main rates from 2019 to 2020 to recoup revenue lost from the abolition of CRC and strengthen the incentive for energy efficiency savings amongst CCL-paying businesses. In addition, Budget 2016 announced that the CCL discount available to energy intensive businesses in the CCA scheme will be increased to compensate for the CCL rate increases from 2019 to 2020. This means that such businesses will be subject to an increase to their CCL liability broadly in line with what it would have been had the usual RPI increase taken effect in that year.

6. A consultation response document was published on 16 March 2016.

Clause 137: APD: rates of duty from 1 April 2016

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. Reduced rates to Band B destinations will rise by £2 (from £71 to £73), standard rates by £4 (from £142 to £146) and the higher rates by £12 (from £426 to £438). These changes to the rates of APD will come into effect in relation to the carriage of passengers beginning on or after 1 April 2016.

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 2016.

Background note

4. In response to the airline industry's request for the Government to give sufficient advance notice of changes in APD rates, it was announced at the March Budget 2015 that APD rates for the tax year 2016-17 would increase in line with inflation (based on the retail price index (RPI)).

5. 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.

Clause 138: VED: rates for light passenger vehicles and motorcycles etc

Summary

1. This clause provides for changes to certain rates of Vehicle Excise Duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2016.

Details of the clause

2. Subsection (2) amends paragraph 1(2) of Schedule 1 to VERA to change the rate of vehicles first registered before March 2001 with an engine capacity exceeding 1,549cc to increase the duty rate by £5.

3. Subsection (3) amends paragraph 1B of Schedule 1 to VERA to change some of the graduated rates of duty which apply generally to light passenger vehicles first registered on or after 1 March 2001. Table 1 provides the rates payable on a first vehicle licence for a vehicle and table 2 provides the rates on all other licences for a vehicle registered on or after 1 March 2001. Table 2 operates so that vehicles emitting in excess of 225 grams of carbon dioxide per kilometre that were registered in the United Kingdom or overseas before 23 March 2006 pay a lower rate than those registered from 23 March 2006 onwards.

4. Subsection (4) amends paragraph 1J of Schedule 1 to VERA to change rates for some light goods vehicles first registered on or after March 2001 to increase the duty rate by £5 to £230.

5. Subsection (5) amends paragraph 2(1) of Schedule 1 to VERA to changes rates for motorcycles weighing no more than 450 kilograms unladen. The rate of duty increases by £1 to £39 for motorbicycles with an engine size of over 150 but not more than 400cc; by £1 to £60 for motorbicycles with an engine size of over 400cc but not more than 600cc; by £1 to £82 for motorbicycles with an engine size of over 600cc, motortricycles with an engine size over 150cc and trade licences for motorcycles.

Background note

6. This rate of Vehicle Excise Duty (VED) chargeable on vehicles is dependent on various factors including the vehicle type, engine size, date of first registration and exhaust pipe emission data. Generally, cars and vans registered prior to 1 March 2001, and all motorcycles, are taxed by reference to the engine size. The rate applying to cars registered on or after 1 March 2001 is generally determined by the vehicle's carbon dioxide emissions. A reduced rate of VED applies when a vehicle uses certain alternative fuels or meets other conditions set out in VERA.

Clause 139: VED: extension of old vehicles exemption from 1 April 2017

Summary

1. This clause extends the exemption from Vehicle Excise Duty (VED) for classic cars from 1 April 2017. This clause amends Paragraph 1A of Schedule 2 of VERA 1994.

2. Subsection (2) provides for the extension of the 40 year rolling exemption for classic vehicles to ensure that the exemption is placed on a permanent basis, so that from 1 April each year vehicles constructed more than 40 years before the 1 January of that year will automatically be exempt from paying VED.

3. Subsection (3) provides a transitional period so that a nil licences does not need to be in force if there is a vehicle licence already in force. When that existing vehicle licence expires, a nil licence will need to be in force for the vehicle.

4. Subsection (4) provides that the amendments made by the clause come into force on 1 April 2017.

Background note

5. The VED exemption is intended to support classic vehicles and the classic car industry, which the government considers are an important part of the country's historical and cultural heritage.

Clause 140: Gaming Duty: Rates

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 2016.

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 2016.

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% on the first £2,370,500 of GGY, then 20% for the next £1,634,000 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 2015. In this case the RPI was calculated at 0.98%.

Clause 141: Fuel duties: aqua methanol etc

Summary

1. This clause introduces Schedule 17 which contains provision for charging excise duty on aqua methanol. This introduces a new rate of excise duty for aqua methanol from 1 October 2016. Part 2 of the Schedule contains miscellaneous amendments.

Details of the clause and Schedule

2. Paragraph 1 provides that the Hydrocarbon Oil Duties Act 1979 (HODA 1979) is amended in accordance with the Schedule.

3. Paragraph 2 inserts new section 2AC to provide a definition for aqua methanol.

4. Paragraph 3 amends section 2A (power to amend definitions) to provide that the definition of aqua methanol can be amended by Treasury Order.

5. Paragraph 4 inserts new sections 6AG and 6AH.

6. New Section 6AG (1) provides that a duty of excise shall be charged when aqua methanol is allocated for chargeable use.

7. New Section 6AG (2) provides for the meaning of chargeable use. Chargeable use means used as fuel for any engine, motor or other machinery or as an additive or extender in such fuel.

8. New Section 6AG (3) provides for the rate of duty for aqua methanol where it is used as a fuel for any engine, motor or any other machinery. It also provides a power for the Treasury to prescribe by order a rate of duty where it is used as an additive or extender.

9. New Section 6AG(4) provides that the fuel duty rate when aqua methanol is allocated for use as an additive or extender should be the same rate as the substance in which it is an additive or extender.

10. New Section 6AG (5) provides that the power for the Treasury to make an order under section 6AG prescribing the rate of duty when aqua methanol is used as an additive or extender is exercisable by statutory instrument, subject to the negative resolution procedure.

11. New Section 6AG(6) provides that an order can make different provision for the different cases and prescribe the rates of duty by reference to rates of duty In HODA 1979

12. New Section 6AH provides a power for the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") to provide in regulations that specified references in HODA 1979 to hydrocarbon oil and the duty on hydrocarbon oil apply to aqua methanol.

13. Paragraph 5 amends section 6A (fuel substitutes) so that aqua methanol does not fall within

the scope of that section.

14. Paragraph 6 inserts new sections 20AAC and 20AAD.

15. New Section 20AAC prohibits the mixing of aqua methanol on which duty has been charged at the rate specified in section 6AG (3) (a) with biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil and provides for offences if a person intentionally uses aqua methanol in contravention of the prohibition or supplies aqua methanol intending that it will be so used. It also provides that any such mixture shall be liable to forfeiture.

16. New Section 20AAD provides that the general rate of duty for heavy oil (specified in section 6(1A)(c)) shall be charged on a mixture produced by mixing aqua methanol on which duty has been charged at the rate specified in section 6AG(3)(a) with biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil. It further provides that the person liable to pay the duty is the person producing the mixture and allows the Commissioners to make an assessment. It also provides that any such liability shall be reduced by an amount that has been paid on an ingredient of the mixture and that the Commissioners may exempt a person from liability under this section if the liability was incurred accidentally.

17. Paragraph 7 amends paragraph 3 of Schedule 41 to Finance Act 2008 (penalties for putting product to use that attracts higher duty).

18. Paragraph 8 amends section 22 (and its heading) prohibition on use of petrol substitutes on which duty has not been paid.

19. Paragraphs 9-11 provides for minor and consequential amendments to sections 23C (warehousing) and section 27 (interpretation) of HODA1979 and section 16 of the Finance Act 1994 (appeals to a tribunal).

20. Paragraph 12-13 contains miscellaneous amendments to section 20AAA of HODA 1979 (mixing of rebated oil) and section 16 of the Finance Act (appeals to a tribunal).

21. Paragraph 14 contains commencement provisions.

Background note

22. At Autumn Statement 2013, the Government announced that the duty differential between the lower rate for alternative road fuel gases and the main rate for petrol/diesel will be maintained until 2024, with a review of the impact of these incentives at Budget 2018.

23. Certain alternative fuels such as compressed natural gas, liquid natural gas and biomethane currently benefit from a lower rate of fuel duty than that applied to petrol and diesel, in recognition of their environmental benefits.

24. The government announced at Budget 2014 that it will apply a reduced rate of fuel duty to aqua methanol. The rate is set at 7.90 pence per litre from 1 October 2016. Therefore, aqua methanol will be added to the list of cleaner fuels that will benefit from the reduced rate.

Clause 142: Tobacco products duty: rates

Summary

1. This clause provides for changes in the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco) to have effect from 6pm on 16 March 2016.

Details of the clause

2. Subsection (1) substitutes a new table of rates of duty into Schedule 1 to the Tobacco Products Duty Act 1979. The duty rates on tobacco products are changed as follows:

   - cigarettes – the ad valorem element remains unchanged at 16.5%; the specific duty is increased from £189.49 to £196.42 per 1000 cigarettes;
   - cigars – increased from £236.37 to £245.01 per kilogram;
   - hand rolling tobacco – increased from £185.74 to £198.10 per kilogram;
   - other smoking tobacco and chewing tobacco – increased from £103.91 to £107.71 per kilogram.

3. Subsection (2) provides for a new table of duty rates to have effect from 6pm on 16 March 2016.

Background note

4. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between the richest and poorest in the UK. The government is committed to maintaining high tobacco duty rates to support health objectives and the public finances. Research has consistently shown that the price of tobacco products negatively affects demand.

5. This clause increases the excise duty on all tobacco products by 2% above the rate of inflation (Retail Price Index). This is in accordance with the March 2014 announcement of increases of 2% above retail price inflation each year until the end of this Parliament. The clause also includes an additional 3% rise for hand-rolling tobacco, to 5% above inflation this year. The additional increase narrows the gap between the duty on HRT and that on cigarettes, reducing the incentive for consumers to substitute to relatively lower priced products.The duty increase, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 21p, a pack of 5 small cigars by 7p, a 30 gram pack of hand-rolling tobacco by 44p; and a 25 gram pack of pipe tobacco by 11p.

Clause 143: Alcoholic liquor duties: rates

Summary

1. This clause provides for an increase in line with inflation (based on RPI) in the rates of excise duty charged on wine and made-wine of a strength at or below 22% alcohol by volume (abv), and sparkling cider and perry exceeding 5.5% abv but less than 8.5% abv. These changes will have effect on and after 21 March 2016.

Details of the clause

2. Subsection (2) substitutes a new rate of excise duty for sparkling cider of a strength exceeding 5.5% in section 62(1A) (a) of ALDA. The previous rate of £264.61 is replaced by £268.99.

3. Subsection (3) substitutes new rates of duty in Part 1 of the table in Schedule 1 to ALDA as follows:

4. For wine or made-wine of a strength not exceeding 4% the previous rate of £84.21 is replaced by £85.60.

5. For wine or made-wine of a strength exceeding 4% but not exceeding 5.5% the previous rate of £115.80 is replaced by £117.72.

6. For wine or made-wine of a strength exceeding 5.5% but not exceeding 15% and not being sparkling the previous rate of £273.31 is replaced by £277.84.

7. For sparkling wine or sparkling made-wine of a strength exceeding 5.5% but less than 8.5% the previous rate of £264.61 is replaced by £268.99.

8. For sparkling wine or sparkling made-wine of a strength of at least 8.5% but not exceeding 15% the previous rate of £350.07 is replaced by £355.87.

9. For wine or made-wine of a strength exceeding 15% but not exceeding 22% the previous rate of £364.37 is replaced by £370.41.

10. Subsection 4 provides that the amendments made by this section come into force on 21 March 2016.

Background note

11. Budget 2016 announced an increase in line with inflation (based on RPI) in the rates of excise duty on the following alcoholic drinks:

- Wine and made-wine at or below 22% abv; and
- Sparkling cider and perry exceeding 5.5% abv but less than 8.5% abv.

12. These changes will take effect from 21 March 2016.

13. The rates of duty on beer, spirits, wine and made-wine exceeding 22%, still cider and perry, and sparkling cider and perry not exceeding 5.5% will be frozen in 2016-17; this does not require legislation.

Clause 144: General anti-abuse rule: provisional counteractions

Summary

1. This clause introduces changes to the General Anti-Abuse Rule (GAAR) procedure. The GAAR procedure will be amended to enable a provisional counteraction under the GAAR. This will enable HMRC to counteract under the GAAR within assessing time limits, whilst preserving the safeguards for the taxpayer provided by Schedule 43 to the Finance Act (FA) 2103 or the new procedure for users of equivalent arrangements. This procedural change will apply from Royal Assent, without reference to when the tax arrangements in question where entered into.

Details of the clause

2. Subsection (1) inserts new clause 209A to 209F into FA 2013.

3. New section 209A explains that a provisional counteraction which is not appealed or cancelled is treated as a valid counteraction for the purposes of section 209 of FA2013. A provisional counteraction may only be made in accordance with the time limits stated at section 209(6) (b) to FA13.

4. New section 209A (2) states the information which must be included in a provisional counteraction notice. New subsection 209A (2) (c) explains that a provisional counteraction notice may be made whether the tax advantage is to be counteracted under Schedule 43 to FA13, new Schedule 43A to FA13 or new Schedule 43B to FA13.

5. New section 209A (4) explains that adjustments to give effect to a provisional counteraction may be made in the same way as a GAAR counteraction.

6. New section 209B (2) explains that action must be taken by HMRC under new section 209B (4) within a 12 month period where the taxpayer appeals the adjustments made as a result of the provisional counteraction. This section also explains that the adjustments will be treated as cancelled where HMRC does not take any of the actions specified under new section 209B (4) within the time period referred to above.

7. New section 209B (4)(b) explains that if HMRC withdraws the provisional counteraction adjustments, the adjustments can be maintained on the basis that another tax provision applies, where these have been made within the relevant time limits. New section 209B (6) explains that HMRC may only take action under new section 209B (4) (b) where it has the authority to do so.

8. New section 209B(4) (c) explains that where a designated HMRC officer gives the taxpayer a notice of proposed GAAR counteraction under Paragraph 3 of Schedule 43 FA13 the adjustments specified in the notice may be the same or lesser amounts than the provisional

counteraction adjustments.

9. New section 209B (4)(d) explains that where a designated HMRC officer gives the taxpayer a notice of binding under new Schedule 43A to FA13, the adjustments specified in the notice may be the same or lesser amounts than the provisional counteraction adjustments.

10. New section 209B (4)(e) explains that where a designated HMRC officer gives the taxpayer a notice under new Schedule 43B to FA13, the adjustments specified in the notice may be the same or lesser amounts than the provisional counteraction adjustments.

11. New section 209B(5) explains that where lesser adjustments are specified in the notice of proposed GAAR counteraction, the notice of binding or the notice under Schedule 43B, the provisional counteraction adjustments are to be treated as amended in the same way.

12. New section 209B (7) provides the definition of "lesser adjustments".

13. New section 209C (2) explains how adjustments are to be treated where a designated officer has issued a notice of proposed GAAR counteraction following a provisional counteraction, and the designated officer decides not to counteract the tax advantage under the GAAR. If HMRC withdraws the provisional GAAR adjustments, the adjustments can be maintained on the basis that another tax provision applies.

14. New section 209C (3) explains that HMRC may only take action under new section 209C (2) where it has the authority to do so.

15. New section 209C (4) explains how adjustments are to be treated where a taxpayer is given a notice under paragraph 12 of schedule 43 FA 2013 following the GAAR Advisory Panel opinion in circumstances where a provisional counteraction was made, and the designated officer decides not to counteract the tax advantage under the GAAR. If HMRC withdraws the provisional GAAR adjustments, the adjustments can be maintained on the basis that another tax provision applies.

16. New section 209C (5) explains that HMRC may only tax action under new section 209C (4) where it has the authority to do so.

17. New section 209C (6) explains how the tax advantage is to counteracted where a provisional counteraction is made and a notice of final decision following the GAAR Advisory Panel later confirms that a tax advantage is to be counteracted.

18. New section 209D(2) explains how adjustments are to be treated where a designated officer has issued a notice of binding following a provisional counteraction, and the designated officer decides not to counteract the tax advantage under the GAAR. If HMRC withdraws the provisional GAAR adjustments, the adjustments can be maintained on the basis that another tax provision applies.

19. New section 209D (3) explains that HMRC may only take action under new section 209D (2) where it has the authority to do so.

20. New section 209D (4) explains how the tax advantage is to be counteracted where a provisional counteraction is made and a notice under Paragraph 5(2) or 6(2) to new Schedule 43A confirms that a tax advantage is to be counteracted.

21. New Section 209E provides the corresponding provisions where the notice under Schedule 43B is given to the taxpayer.

22. New section 209F explains how a taxpayer may appeal a provisional counteraction.

23. New section 209F (2) explains that where a taxpayer appeals against adjustments made to give effect to a provisional counteraction, no action is to be taken in respect of the appeal until the action outlined at new section 209B (4) (b) or 209C (2) is taken, or a notice of counteraction under GAAR is given under paragraph 12 schedule 43 FA 13 (or paragraph 3 new Schedule 43A or a notice under Schedule 43B) is made by the designated HMRC officer. This section does not prevent the postponement of tax under section 55 of Taxes Management Act 1970.

24. New section 209F (3) and (4) set out the conditions for appealing adjustments made to give effect to a provisional counteraction.

25. Subsection (2) makes consequential amendments to Part 5 of FA13 to take account of provisional counteraction.

26. Subsection (3) explains when the provisional counteraction will take effect. The provisional counteraction will only apply to arrangements that would otherwise come within the GAAR as a result of section 215 FA13.

Background note

27. The procedural changes in new Section 209A of FA 2013 enable HMRC to provisionally counteract under GAAR whilst maintaining the procedural safeguards in Schedule 43 and new Schedules 43A and 43B for taxpayers.

Clause 145: General anti-abuse rule: binding of other tax arrangements to lead arrangements

Summary

1. This clause introduces changes to the General Anti-Abuse Rule (GAAR) procedure. The GAAR procedure will be amended so that a GAAR Advisory Panel opinion will enable counteraction of the equivalent arrangements by other users. These procedural changes will apply from Royal Assent, without reference to when the tax arrangements in question where entered into.

Details of the clause and schedules

2. Subsection (1) provides for amendments to Part 5 of Finance Act (FA).2013.

3. Subsection (2) inserts new Schedule 43A to FA 2013, Binding of arrangements to lead arrangements.

4. <u>Paragraph 1</u> sets out when "equivalent arrangements" may be bound to lead arrangements and explains that HM Revenue and Customs (HMRC) must issue a notice of binding in doing so. HMRC may issue a notice of binding regardless of whether or not the "lead arrangements" have already been referred to the GAAR Advisory Panel. Subparagraph 7 sets out what the notice of binding must contain.

5. <u>Paragraph 2</u> explains that where a taxpayer who receives a notice of binding takes "relevant corrective action" before the "closed period" under new section 209(9) of FA 2013 begins, they will be treated as not having received a notice of binding. This gives effect to the intention that a taxpayer should be able to take corrective action prior to the referral to the GAAR Advisory Panel in order to avoid a GAAR Penalty.

6. <u>Paragraph 3</u> explains that where a notice of binding has been issued to a taxpayer, and the GAAR Advisory Panel has given HMRC an opinion notice in respect of the "lead arrangements" to which the taxpayer has been bound, HMRC must communicate the GAAR Advisory Panel's opinion to the taxpayer on a "bound arrangements opinion notice". Sub-paragraph (3) provides that where HMRC issues a notice of binding to a taxpayer where the GAAR Advisory Panel has already provided a stated opinion in respect of the "equivalent arrangements", they must at the same time give the taxpayer a "bound arrangements opinion notice".

7. <u>Paragraph 4</u> explains that a taxpayer who has received a notice of binding may make representations to HMRC during the 30-day period after they have been given the "bound arrangements opinion notice" and explains the grounds on which representations may be made. Sub-paragraph 2 explains what information must be provided in a "bound arrangements opinion notice".

8. <u>Paragraph 5</u> provides that HMRC may counteract a tax advantage of a taxpayer who has received a notice of binding prior to the referral of the matter to the GAAR Advisory Panel,

and HMRC then counteracts the lead arrangements under Paragraph 12 of Schedule 43 to FA 2013.

9. Paragraph 6 provides that HMRC may counteract a tax advantage of a taxpayer who has received a notice of binding to a taxpayer where the GAAR Advisory Panel have already provided a stated opinion in respect of the equivalent arrangements.

10. Paragraph 8 defines "equivalent arrangements".

11. Paragraph 9 explains that any notice under Schedule 43A made by the HMRC designated officer may be made on the basis that a tax advantage does arise or may have arisen.

12. Paragraph 10 provides that the Treasury may by regulation amend this Schedule. The Treasury may also make certain consequential amendments resulting from an amendment to this Schedule.

13. Subsection (3) inserts new Schedule 43B, Procedural requirements: generic referral of tax arrangements.

14. Paragraph 1 sets out when "equivalent arrangements" may be subject to a generic referral to the GAAR Advisory Panel and explains that HMRC must issue a written notice in doing so. Whether arrangements are equivalent to one another is interpreted in accordance with Schedule 43A to FA2013. Sub-paragraph (3) explains that HMRC may not issue a notice under this Schedule unless a referral to the GAAR Advisory Panel under Schedule 43A has first been attempted, but been prevented as a result of the lead arrangements taking "relevant corrective action" . Sub-paragraph 4 sets out what the notice must contain.

15. Paragraph 2 explains that where a notice under Paragraph 1 is issued, the taxpayer may volunteer for that taxpayer's arrangements to act as "lead arrangements" so that the "equivalent arrangements" in question may be referred to the GAAR Advisory Panel under Schedule 43A instead of Schedule 43B. Where more than one taxpayer with "equivalent arrangements" volunteers to act as "lead arrangements" under this paragraph, HMRC will select one or more appropriate set of "lead arrangements".

16. Paragraph 3 explains that where a taxpayer who receives a notice under Paragraph 1 takes "relevant corrective action" before the "closed period" under new section 209(9) of FA 2013 begins, they will be treated as not having received a notice under Paragraph 1. This gives effect to the intention that a taxpayer should be able to take corrective action prior to the referral to the GAAR Advisory Panel in order to avoid a GAAR Penalty.

17. Paragraph 4 explains that where none of the taxpayers who receive a notice under Paragraph 1 volunteer to act as "lead arrangements" under Paragraph 2, HMRC will make a generic referral of the matter to the GAAR Advisory Panel.

18. Paragraph 5 sets out what information HMRC must provide to the GAAR Advisory Panel in making a "generic referral".

19. Paragraph 6 provides that HMRC must notify taxpayers subject to the "generic referral", and provide them with a copy of the statement given to the GAAR Advisory Panel under Paragraph 5.

20. Paragraph 7 provides that the GAAR Advisory Panel must consider and provide an opinion notice in respect of a "generic referral" made to them under Paragraph 4. Sub-paragraph 5 sets

out the information that must be considered by the sub-panel of the GAAR Advisory Panel in considering a "generic referral".

21. Paragraph 8 explains that a taxpayer who has received a notice under Paragraph 1 may make representations to HMRC during the 30-day period following HMRC's notification of the GAAR opinion notice(s) under Paragraph 7.

22. Paragraph 9 provides that HMRC may counteract a tax advantage of a taxpayer who has received an opinion notice under Paragraph 7.

23. Paragraph 10 explains that any notice under Schedule 43B made by the HMRC designated officer may be made on the basis that a tax advantage does arise or may have arisen.

24. Paragraph 11 provides that the Treasury may by regulation amend this Schedule. The Treasury may also make certain consequential amendments resulting from an amendment to this Schedule.

25. Subsections (4) and (5) apply section 209(6) (a) and 211 (2) (b) FA13 respectively to include a reference to the new Schedule 43A and new Schedule 43B to FA 2013.

26. Subsections (6) to (8) amend section 214 of FA 2013 to include references to new Schedule 43A.

27. Subsections (9) provides the definition of "equivalent arrangements" for the purposes of Schedule 43B.

28. Subsections (11) to (13) amend section 219 of FA 2014 to include references to the new Schedule 43A and new Schedule 43B in the accelerated payments legislation.

29. Subsections (14) explains when new Schedule 43A and new Schedule 43B will take effect. These schedules will only apply to arrangements that would otherwise come within the GAAR as a result of section 215 Finance Act 2013.

Background note

30. The procedural changes to the GAAR in Schedule 43A and Schedule 43B to FA 2013 have been introduced to ensure that the GAAR procedure works efficiently in respect of marketed tax avoidance schemes.

Clause 146 and Schedule: General Anti-Abuse Rule: Penalty

Summary

1. This clause introduces a new penalty for all cases successfully counteracted under the General Anti-Abuse Rule (GAAR). A penalty of 60% of the counteracted tax will be charged whenever a taxpayer submits to Her Majesty's Revenue and Customs (HMRC) a return, claim, or other document on the basis that a tax advantage arises from the tax arrangements where all or part of that tax advantage is later counteracted under the GAAR. The new penalty will apply to tax arrangements entered into on or after Royal Assent.

Details of the clause

2. Subsection (1) provides for amendments to Part 5 of FA2013.

3. Subsection (2) inserts new section 212A into Finance Act 2013 (FA 2013).

4. New subsection 212A(1) provides that a person will be liable to a penalty when they have given HMRC a "tax document" and this document is submitted on the basis of a tax advantage that arises from tax arrangements but where all or part of the tax advantage is counteracted by the GAAR. This includes scenarios where the wrong "tax document" is given to HMRC, or the tax arrangements in question are only partially included on the "tax document".

5. New subsection 212A (2) explains that the GAAR penalty will be charged at 60% of the "value of the counteracted advantage".

6. New subsection 212A (3) introduces new Schedule 43C to FA13.

7. New subsection 212A (4) defines "tax document".

8. Subsection (3) inserts new Schedule 43C into FA13.

9. Paragraph 2 defines the "value of the counteracted advantage" for the purposes of calculating the amount of the GAAR penalty.

10. Paragraph 3 explains how the "value of the counteracted advantage" is to be calculated where the tax advantage counteracted under the GAAR results in or from a loss.

11. Paragraph 4 provides a special rule for quantifying a counteracted tax advantage which comprises the deferral of tax.

12. Paragraph 5 sets out how a GAAR penalty is to be assessed. The GAAR penalty can be assessed once the tax advantage has been counteracted, and any necessary adjustments will be made to the amount of the penalty following any appeal against the counteraction (see also New Paragraph 9.)

13. Paragraph 6 explains that a GAAR penalty assessment will be revised where the "value of the counteracted advantage" has been over- or underestimated.

14. Paragraph 7 sets out how a GAAR penalty is to be revised where a consequential adjustment under section 210(7) of FA 2013 is made.

15. Paragraph 8 deals with situations where more than one penalty may arise in respect of the same amount and one of those penalties is a GAAR penalty.

16. Paragraph 9 provides that a person may appeal against HMRC's decision to issue a GAAR penalty. The person does not have to pay the penalty in order to make an appeal.

17. Paragraph 10 provides that HMRC may at its discretion reduce or cancel the GAAR penalty.

18. Paragraph 11 explains how certain terms are to be interpreted throughout Schedule 43C.

19. Subsection (4) amends section 209 of FA13 by inserting new subsections (8) to (10).

20. New subsections 209 (8) to (10) provide that the taxpayer cannot amend a tax document or make other adjustments to their tax affairs to take account of any adjustments required under section 209 FA13 in respect of arrangements after those arrangements (or lead arrangements to which the taxpayer's arrangements are to be bound under new Schedule 43A to FA13) are to be referred to the independent GAAR Advisory Panel until the date upon which HMRC decides whether to counteract the tax advantages arising to the taxpayer as a result of the use of the arrangements under GAAR. This gives effect to the intention that a taxpayer should only be able to make such amendments or adjustments to avoid a GAAR penalty prior to the time at which the arrangements are to be referred to the GAAR Advisory Panel. Where the notice of binding is issued to a taxpayer after the issue of a GAAR Advisory Panel opinion notice, sections 209(9) (a) and 209(9)(b)(ii) work together so as to give the taxpayer 30 days from the date of the notice of binding to correct their tax affairs in order to avoid liability to a GAAR penalty.

21. Subsection (8) inserts new paragraph 4A to Finance Act 2013.

22. New paragraph 4A explains that where the taxpayer takes "relevant corrective action" before the relevant "closed period" (whether under new subsection 209(8) or (9)) begins, the matter will not be referred to the independent GAAR Advisory Panel. This gives effect to the intention that a taxpayer should be able to take corrective action prior to the referral to the GAAR Advisory Panel in order to avoid a GAAR Penalty.

23. Subsection 9) inserts new paragraph 4B to Finance Act 2013. This explains that a taxpayer will be referred to the GAAR Advisory Panel if they do not take "relevant corrective action" before the beginning of the "closed period".

24. Subsection (10) to (14) make consequential amendments to other enactments to take account of the GAAR penalty.

25. Subsection (15) explains when the new penalty will take effect.

Background note

26. The GAAR penalty has been introduced to increase the deterrent effect of the GAAR, discouraging the minority of persistent tax avoiders who remain undeterred from engaging in abusive tax avoidance. This penalty will ensure that there is an effective disincentive to entering into abusive tax avoidance, and that those who do engage in abusive tax avoidance

are subject to an appropriate downside.

Clause 147 and Schedule 18: Serial tax avoidance

Summary

1. This clause introduces a new regime of warnings and escalating sanctions for those who persistently engage in tax avoidance schemes which HM Revenue and Customs (HMRC) defeats. Following the first defeat of a tax avoidance scheme, HMRC will place the taxpayer on warning that the use of any avoidance schemes in the following 5 years which HMRC defeats, will result in a penalty being issued, based on the amount of the understated tax.

2. If the taxpayer uses any further schemes while under warning which HMRC defeats, the rate of penalty will be increased to a maximum of 60% of the understated tax. If HMRC defeat three tax avoidance schemes while the taxpayer is on warning, the taxpayer's details can be published. If three avoidance schemes which exploit reliefs are used while under warning and HMRC defeat them, the taxpayer will be denied further benefit of reliefs until the warning period expires. The regime comes into effect on 6 April 2017.

Details of the Clause and Schedule

Clause 147: Serial Tax Avoidance

3. Clause 147 introduces Schedule 18.

The Schedule to Clause 147: Serial Tax Avoidance - Part 2 Entry into the Regime and Basic Concepts

4. Paragraph 2 explains that HMRC must issue a written warning notice to a person within 90 days of a relevant defeat relating to arrangements the taxpayer has used and sets out what the notice must contain. For these purposes, a scheme is used when a person submits a return or claim, or fails to comply with an obligation, on the basis that the arrangements deliver a tax advantage.

5. Paragraph 5 defines 'tax advantage' for value added tax (VAT) by applying the definition in paragraph 2 of Schedule 11A to VATA 1994.

6. Paragraph 7 defines 'tax advantage' for all taxes apart from VAT as including relief or repayment of tax, or increases in those; the receipt of a tax credit; avoidance or reduction of an assessment; deferral of tax; or the avoidance of a tax obligation.

7. Paragraph 8 defines 'DOTAS arrangements' for the purposes of the Schedule. This comprises arrangements which have been notified to HMRC under relevant enactments and those which should have been so notified but were not.

8. Paragraph 8(3) provides that the definition of 'DOTAS arrangements' for these purposes includes arrangements which need not be notified to HMRC, either because they were properly notified as proposed arrangements or because they are substantially the same as arrangements already notified to HMRC.

9. Paragraph 9 defines 'disclosable VAT arrangements' as arrangements notified to HMRC under the relevant enactment or which should have been so notified but were not.

10. Paragraph 10 defines a person as failing to comply with a DOTAS or VADR requirement to notify only if a Tribunal makes a decision accordingly or if the person admits in writing that he failed to comply with the requirement.

11. Paragraph 11 defines the conditions for a 'relevant defeat'.

12. Paragraph 12 defines Condition A as applying when a taxpayer has been issued with a counteraction notice under the General Anti-Abuse Rule (GAAR) and the tax advantage has been successfully counteracted.

13. Paragraph 13 defines Condition B as applying when a taxpayer has been issued with a Follower Notice and either has taken the necessary corrective action or HMRC have taken action to recover the understated tax.

14. Paragraph 14 defines Condition C as applying when HMRC have counteracted arrangements used by a taxpayer which are notified or required to be notified to HMRC under the Disclosure of Tax Avoidance Schemes (DOTAS) regime and which purport to give a tax advantage or to avoid the requirement to comply with a tax obligation.

15. Paragraph 14(5) defines 'counteracted' and excludes from this 'taxpayer emendations'.

16. Paragraph 14(8) defines taxpayer emendations as occurring when a taxpayer's tax is corrected following a full disclosure by him in respect of an inaccuracy or failure at a time he has no reason to suppose HMRC have begun or are about to begin investigations into his tax affairs, or when HMRC amend the taxpayer's affairs following such a disclosure by him.

17. Paragraph 15 defines Condition D which replicates for VAT the provisions of paragraph 14.

18. Paragraph 16 defines Condition E as applying when a person who receives supplies of goods or services has been party to VAT arrangements which purport to deliver him a tax advantage and HMRC have successfully counteracted that advantage by taking action against the person making the supplies.

The Schedule to Clause : Serial Tax Avoidance - Part 3 Annual Information Notices and Naming

19. Paragraph 17 provides that a person who has been given a warning notice must send HMRC a written notice for each reporting period. The written notice must state whether or not the person has used any arrangements to gain a tax advantage or used arrangements disclosable under DOTAS or VADR to avoid a tax obligation.

20. Paragraph 17(7) allows HMRC to require a person to provide a supplementary information notice when a person fails to submit a return that was due during the reporting period.

21. Paragraph 17(9) allows HMRC to extend the warning period if a person fails to provide an information notice by the required date or gives HMRC a notice which is defective.

22. Paragraph 18 provides that HMRC may publish the details of serial tax avoiders if they are given three warning notices in respect of schemes used while in a warning period and which are defeated.

The Schedule to Clause 147: Serial Tax Avoidance - Part 4 Restriction of Reliefs

23. Paragraph 19 provides that HMRC must issue a 'restriction of relief' notice to a person if he has used three sets of arrangements during a period of warning which relate to the 'misuse of reliefs' and which are defeated through the application of a 'particular avoidance-related rule' or which relate to a loss relief.

24. Paragraph 19(5) defines how a warning notice relates to the misuse of reliefs.

25. Paragraph 20 provides that a person who has received a relief restriction notice may not make any claim for a relief for the period of restriction. Certain reliefs relating to charities, international double taxation agreements and registered pension schemes are excluded from this restriction.

26. Paragraph 21(1) defines the restricted period as three years from when the relief restriction notice is given.

27. Paragraphs 21(2), 21(3) and21(4) provide that if during a restricted period another scheme which misuses reliefs is used and defeated, the restricted period is extended to a point 3 years from the date of that defeat.

28. Paragraph 21(5) provides that if following the end of a restricted period but during the same warning period, a further scheme which misuses reliefs is used and defeated, a new restriction period begins and a restriction notice is issued.

29. Paragraph 22 provides that a relevant defeat is disregarded for a restriction of relief notice if the person satisfies HMRC or a Tribunal that he has a reasonable excuse for the defeat.

30. Paragraph 24 provides that a person may appeal against a relief restriction notice or restricted period extension notice.

31. Paragraph 25 defines an 'avoidance related rule' relief for the purposes of this Schedule.

The Schedule to Clause 147: Serial Tax Avoidance-Part 5 Penalty

32. Paragraph 30 provides that a person who uses arrangements during a period of warning that are ultimately defeated will incur a penalty. That penalty will be 20% of the amount of tax understated or overclaimed for the first defeat of a scheme used during a warning period, 40% for the second such defeat and 60% for any subsequent defeats.

33. Paragraph 31 explains the treatment for where a person incurs simultaneous defeats of different sets of arrangements used in the same warning period. The defeat which results in the greatest amount of tax understated or overclaimed will be penalised at the lowest penalty rate available, with the defeat resulting in the second largest amount of tax understated or overclaimed being penalised at the second lowest penalty rate available and so on.

34. Paragraph 32 defines the value of the counteracted advantage for direct taxes.

35. Paragraph 33 provides that 10% of any part of a loss not used to reduce the amount of tax due and payable shall be included in the value of the denied advantage.

36. Paragraph 33(5) provides that where a group of companies has an aggregate loss for Corporation Tax, group relief is not disregarded when calculating the denied advantage.

37. Paragraph 34 provides a special rule for quantifying a tax advantage which comprises the deferral of tax.

38. Paragraph 35 defines counteracted advantage for direct taxes.

39. Paragraph 36 defines the value of counteracted advantage for VAT.

40. Paragraph 37 replicates paragraph 34 for VAT.

41. Paragraph 38 sets out how a penalty under this Chapter is to be assessed.

42. Paragraph 40 deals with situations where more than one penalty may arise in respect of the same amount and one of those penalties is a penalty under this Chapter.

43. Paragraph 41 provides that a person may appeal against HMRC's decision to issue a penalty. The person does not have to pay the penalty in order to make an appeal.

44. Paragraph 42 provides that a person is not liable to a penalty if he has a reasonable excuse for the failure to account for the correct tax.

45. Paragraphs 42(2), 42(3) and 42(4) provide that if a person has a reasonable excuse for a failure, the relevant defeat is disregarded when calculating the penalty rate for the next defeat.

The Schedule to Clause 147: Serial Tax Avoidance-Part 6 Corporate Groups

46. Paragraph 45(1) provides that when a VAT group registration changes its representative member, the group continues to be treated as if it were the same 'person' for the purposes of the Schedule

47. Paragraphs 46(1) and 46(2) require HMRC to issue a warning notice to each member of a corporate group when any one member of the group incurs a relevant defeat.

48. Paragraph 46(3) provides that a warning notice issued to a company before it becomes a member of a corporate group is treated as issued to each group member.

49. Paragraph 46(4) provides that when a company is treated as having been issued with a warning notice because another member of the corporate group had previously been issued with a notice, no account is taken of this notice in relation to a relief restriction notice.

50. Paragraph 46(5) replicates paragraph 46(4) in respect of penalties.

The Schedule to Clause 147: Serial Tax Avoidance - Part 7 Supplemental

51. Paragraph 48 defines when defeated arrangements are regarded as being used for the purposes of the serial tax avoidance regime.

52. Paragraph 56 details the commencement of the regime.

53. Paragraph 57 provides that any arrangements a person enters into before the Act is passed but

which are defeated on or after 6 April 2017 will qualify as defeated arrangements for the Special Regime, unless the person makes a full disclosure of the arrangements to HMRC before 6 April 2017, or notifies HMRC before that date of their intention to do so. Arrangements entered into between the day the Act is passed and 6 April 2017 and defeated before that date will qualify as defeated arrangements for the Special Regime.

54. Paragraph 58 provides that defeated arrangements entered into before the Act is passed will be disregarded for the purposes of penalties, naming and restricting reliefs.

Background Note

55. This regime has been introduced to change the behavior of those who persistently engage in tax avoidance schemes, often using more than one scheme on a return or using schemes on a number of successive returns. These tax avoiders do not see a significant risk resulting from their behaviour. The new regime allows HMRC to place users of defeated tax avoidance schemes on warning and provides that they will face targeted sanctions if they persist in their behavior. These sanctions will escalate in their impact for taxpayers who fail to amend their behaviour. This will discourage such avoiders from continuing to engage in tax avoidance and to dissuade others from becoming serial tax avoiders. Elements of the draft will continue to be developed as part of the consultation on the draft legislation.

Clause 148: Promoters of tax avoidance schemes

Summary

1. This clause makes changes to the Promoters of Tax Avoidance Schemes (POTAS) legislation in Part 5 of the Finance Act 2014 (FA2014). In particular it introduces a new threshold condition, which, if met, identifies a person who is a promoter of tax avoidance schemes as a promoter to whom a conduct notice may be given under Part 5.

2. These changes will be introduced by Finance Bill 2016 and will take effect from Royal Assent to the Bill to ensure that promoters who display the behaviour of promoting a series of tax avoidance schemes which do not work are brought within POTAS.

Details of the Clause

3. Subsection2) introduces new sections 237A - 237D into FA2014. New section 237A provides that if an authorised officer becomes aware that a promoter meets any of the conditions in new subsections (6) to (8) they must consider whether to issue a conduct notice. The condition in new subsection (6) is met if there have been three relevant defeats (new Schedule 34A to FA2014) of a promoter's promoted arrangements in the preceding three years. The condition in new subsection (7) is met where a promoter has been given a defeat notice in respect of one defeat in the preceding three years (new section 241A of FA2014) and there have been two further defeats while that notice had effect. The condition in new subsection (8) applies when a promoter has been given a defeat notice in respect of two defeats in the preceding three years and there is a further defeat while that notice had effect. New subsection (3) provides that an authorised officer is not required to determine whether to give a conduct notice under new section 237A if at the same time the officer has a duty to decide whether a conduct notice must be given under section 237. However, in such a case, the authorised officer must take into account the meeting of a threshold condition by virtue of new section 237A(6) to (8) when determining under section 237(7) whether or not a conduct notice must be given. The authorised officer must make that determination before the 90th day following the expiry of the defeat notice which is in effect (237A(9)).

4. New section 237B applies in certain circumstances where a promoter fails to comply with one or more terms of a conduct notice issued under section 237A(1), and that notice was provisional (new section 237C) at the time it ceased to have effect. Under 237B an authorised officer is required to issue a conduct notice if there are Case 1 or Case 2 defeats (as defined in new Schedule 34A) after that time, which had they occurred before the conduct notice ceased to have effect, would have resulted in the notice ceasing to be provisional. This requirement is subject to section 237B(3) if the authorised officer, having regard to the likely impact of the promoter's activities on the collection of tax, determines that a conduct notice is inappropriate.

5. New section 237C provides that a conduct notice is to be treated as provisional if it is given under new section 237A but relies on at least one of the relevant defeats being a Case 3 relevant defeat as defined in paragraph 9 of new Schedule 34A. This is a defeat where HMRC

is aware that at least 75 % but fewer than 100 % of the users of the tested arrangements have been defeated and there is no judicial ruling upholding the purported tax advantage. A provisional conduct notice ceases to be provisional once at least three full relevant defeats have occurred in relation to a promoter. One or more of these three full relevant defeats may occur when one or more of the Case 3 relevant defeats on which the provisional notice relies becomes a full relevant defeat either because of a final judicial ruling counteracting all of part of the tax advantage or because HMRC is satisfied that all users of the arrangements have been defeated. Paragraph 6 of new Schedule 34A does not prevent a full relevant defeat from occurring in respect of arrangements, in relation to which a relevant defeat has occurred by virtue of Case 3 in paragraph 9 of that Schedule. Schedule 34A is inserted into FA14 by Clause 1(5). A conduct notice remains provisional until an authorised officer gives notice to the promoter that the conditions for it ceasing to be provisional have been met.

6. New section 237D provides that a conduct notice which is provisional because it relies on a Case 3 relevant defeat ceases to have effect if a court or tribunal upholds an asserted tax advantage in any use of the arrangements which have been taken into account in determining the Case 3 relevant defeat. The section does not apply unless the relevant judicial ruling is final in accordance with subsection (6).

7. Subsection (3) introduces new sections 241A and 241B into FA 2014. Section 241A provides that an authorised officer may issue a defeat notice to a promoter if the officer becomes aware of either one or two relevant defeats occurring in relation to that promoter in the previous three years. Subsection (5) provides that where a defeat notice is overturned by virtue of new section 241B, an authorised officer may issue a new defeat notice in respect of a relevant defeat which occurred while the overturned defeat notice had effect, including when the defeat occurred more than 3 years before the notice is given.

8. New section 241B determines the effect on defeat notices when a relevant defeat covered by the notice is overturned. Subsections (1) to (4) provide that: a single defeat notice ceases to have effect from the date on which the relevant defeat in question is overturned; and a double defeat notice is treated for all purposes as if it were a single defeat notice if one of the defeats to which it relates is overturned. If both relevant defeats to which a double defeat notice relates are overturned on the same day, the notice ceases to have effect from that day. Subsection (5) provides that a relevant defeat is overturned if it is reliant on a Case 3 relevant defeat (see paragraph 9 of new Schedule 34A to FA2014) and there is a final ruling of a court or tribunal upholding the asserted tax advantage in relation to any use of the tested arrangements. Subsections (6) and (7) require HMRC to notify the promoter that there has been a change to a defeat notice or that it has ceased to have effect, as appropriate.

9. Subsection (4) amends section 242 FA2014 to insert new subsections (6) and (7). New subsection (6) provides that an authorised officer cannot apply for a monitoring notice while a conduct notice remains provisional in accordance with section 237C. However, new subsection (7) provides that where the terms of a conduct notice that is provisional have been breached at a time when it has effect that breach can be taken into account for the purposes of applying for a monitoring notice when that conduct notice later ceases to be provisional.

10. Subsection (5) inserts a new Schedule 34A into FA2014.

11. Paragraph 2 of Schedule 34A defines "related arrangements" for the purposes of the Schedule as arrangements which are substantially the same. To the extent that arrangements would not otherwise be treated as being substantially the same, subsections (3) to (6) describe specific

circumstances in which the arrangements are always to be so treated. These are arrangements:

a. to which the same reference number has been allocated under the Disclosure of Tax Avoidance Schemes (DOTAS) regime in Part 7 of the Finance Act 2004, or under the VAT Disclosure Regime in Schedule 11A to the VAT Act 1994;

b. which are treated as equivalent arrangements for the purposes of the General Anti-Abuse Rule in the Finance Act 2013 by virtue of Schedule 43A to that Act;

c. in respect of which follower notices have been given by reference to the same judicial ruling (under Part 4 FA 2014).

12. Paragraph 3 of Schedule 34A defines the term "promoted arrangements" as relevant arrangements in relation to which a person is a promoter, including for this threshold condition only, arrangements, one of the main benefits of which, is the obtaining of a VAT advantage.

13. Paragraphs 4 and 5 of Schedule 34A define "relevant defeat" of promoted arrangements. Paragraph 4 defines relevant defeat where arrangements are not related to any other arrangements of the promoter. Paragraph 5 defines relevant defeat where arrangements are related and provides that if the conditions in paragraph 7, 8 or 9 apply, a relevant defeat occurs in relation to the user of the arrangements and all of the related arrangements.

14. Paragraph 6 of Schedule 34A provides that for the purposes of sections 237A and 237B, multiple relevant defeats of related arrangements cannot count as more than a single relevant defeat.

15. Paragraph 7 of Schedule 34A defines a relevant defeat within Case 1. It applies where the asserted tax advantage has been counteracted under any of Conditions A to E in paragraphs 11 to 15 of Schedule 34A, and that counteraction has been upheld by a judicial ruling which is final.

16. Paragraph 8 of Schedule 34A defines a relevant defeat within Case 2. It applies where the asserted tax advantage has been counteracted under Condition F in paragraph 16 of Schedule 34A and that counteraction has been upheld by a judicial ruling which is final.

17. Paragraph 9 of Schedule 34A defines a relevant defeat within Case 3. It applies where at least 75 percent but less than 100 per cent of any related arrangements have been defeated and there is no final judicial ruling upholding the asserted tax advantage in relation to the arrangements or any of the related arrangements.

18. Paragraph 10 of Schedule 34A defines "defeat" for the purposes of Part 5 of FA2014. This occurs if any of the Conditions A to F, in paragraphs 11-16, are met:

- Condition A in paragraph 11 is that the arrangements have been counteracted by the general anti-abuse rule in Part 5 of FA2013 and that counteraction is final;
- Condition B in paragraph 12 is that a follower notice has been given under Chapter 2 of Part 4 of FA2014 and that counteraction is final;
- Condition C in paragraph 13 is that the arrangements are DOTAS arrangements (defined in paragraph 19) which have been counteracted and that counteraction

is final;

- Conditions D and E in paragraphs 14 and 15 are that the arrangements are disclosable VAT arrangements (defined in paragraph 20), which have been counteracted and that counteraction is final;
- Condition F in paragraph 16 is that the obtaining of the tax advantage relies on an anti-avoidance rule (defined in paragraph 18) not applying and a judicial ruling, which is final, holds that the relevant anti-avoidance rule applies.

19. Paragraph 18 of Schedule 34A defines "avoidance-related rule" for the purpose of the Schedule. This encompasses rules more commonly referred to as Targeted Anti-Avoidance Rules (TAAR) and purpose tests

20. Paragraph 19 of Schedule 34A defines "DOTAS arrangements" for the purposes of the Schedule.

21. Paragraph 20 of Schedule 34A defines "Disclosable VAT arrangements" for the purposes of the Schedule.

22. Paragraph 21 of Schedule 34A defines what is meant by failing to comply with any provision mentioned in paragraph 19(1)(a) or 20(b).

23. Paragraphs 17, 22 and 23 provide other supplementary information about: adjustments that are made to counteract a tax advantage; when counteraction is "final"; and what is treated as a return in relation to inheritance tax, stamp duty reserve tax, VAT and other taxes.

24. Paragraph 24 provides a power for the Treasury to make regulations amending Schedule 34A subject to affirmative resolution procedures in the House of Commons.

25. Subsections (6), (8) and (9) make minor consequential amendments to sections 241, 282, and 283 FA2014.

26. Subsection (7) provides that the provisions introduced by this clause apply to VAT, apart from the provisions in section 237A(5) or section 237B(2) (tax impact test).

27. Subsections (10)-(12) provide for exclusions of relevant defeats under the provisions in sections 237A and 241A of FA2014 for a defined period under certain circumstances.

Background note

28. POTAS was introduced in 2014 to change the behaviour of a small and persistent minority of promoters of tax avoidance schemes who display certain behaviours. It was extended to promoters of schemes avoiding National Insurance contributions in 2015.

29. Where any one of a number of threshold conditions is met, HMRC must consider whether to give the promoter a conduct notice lasting for up to two years. A conduct notice imposes conditions on how that promoter must behave. If the promoter breaches the conditions of the conduct notice, HMRC may apply to the Tribunal for approval to give the promoter a monitoring notice. Monitored promoters are subject to additional information requirements and penalties for non-compliance with those requirements

30. This new threshold condition identifies promoters who promote a series of avoidance schemes that do not work.

31. This change is part of the government's strategic response to tax avoidance to deter the development and use of avoidance schemes through influencing the behaviour of promoters, their intermediaries and clients.

Clause 149 and Schedule 19: Large businesses: tax strategies and sanctions for persistently unco-operative behaviour

Summary

1. This clause introduces a legislative requirement for all qualifying groups, companies, partnerships and permanent establishments to publish a tax strategy, in relation to UK taxation, on the internet. Non-publication or incomplete content may lead to a penalty.

2. This clause also introduces a special measures regime to tackle the small number of large businesses who engage in aggressive tax planning, or refuse to engage with HM Revenue and Customs (HMRC) in an open and collaborative manner

Details of the clause

3. This clause introduces the Schedule and provides for its commencement.

Schedule 19

Part 1: Interpretation

4. Paragraphs 1-15 provide definitions for the terms used in this Schedule, including "relevant body", "foreign relevant body", "UK company", "UK permanent establishment", "qualifying company", "group", "UK group", "foreign group", "MNE group", "OECD", "head", "qualifying group", "group turnover", "group balance sheet total", "UK sub-group", "UK partnership", "qualifying partnership", "representative partner", "financial year", "turnover", "balance sheet total", and "UK taxation".

5. Paragraph 5(4) sets out the qualification criteria for UK companies. Paragraph 10(1)(b) sets out the qualification criteria for MNE groups. Paragraph 10(2) sets out the qualification criteria for groups that are not MNE groups. Paragraph 12(3) sets out the qualification criteria for UK partnerships.

Part 2: Publication of Tax Strategies

6. Paragraph 16(1) sets out that this Paragraph applies to a UK group which is a qualifying group in any financial year. Paragraph 16(2) sets out that the head of a UK group is responsible for the preparation and publication of the UK group's tax strategy. The definition for the head of a group is set out in Paragraph 9.

7. Paragraphs 16(3) and 16(4) set out when and where the UK group tax strategy must be published.

8. Paragraph 16(4)(a) sets out that any company within the UK group may publish the group tax strategy on behalf of the group.

9. Paragraph 16(5) sets out that the UK group's tax strategy must be freely available until the tax strategy for the next financial year is published. If there is no duty to publish in the next financial year, it must remain freely available for one year from the date of publication. This responsibility is incumbent on the head of the group.

10. Paragraph 16(6)(a) sets out when a UK group tax strategy is considered as published.

11. Paragraph 16(6)(b) sets out that a UK group's identity will not be altered for the purposes of this legislation during the current financial year due to it acquiring or losing a subsidiary.

12. Paragraph 16(6)(c) sets out that if a UK group becomes a UK sub-group of a foreign group in the current financial year it will still be treated as if it were a UK group in that financial year.

13. Paragraph 16(7) sets out the definition for "financial year" for Paragraphs 16 and 17.

14. Paragraph 17(1), 17(3) and 17(4) provide an outline of the required content of a UK group tax strategy. Paragraph 17(2) provides areas a group tax strategy may cover. Paragraph 17(5) sets out that a UK permanent establishment of a foreign member of the group will be treated as if it were a member of the group in its own right.

15. Paragraph 18 provides an outline of the circumstances in which the head of a UK group may be liable to a penalty for non-compliance with the duties set out in Paragraph 16.

16. Paragraphs 18(4) and 18(5) provide for a further penalty if the UK group fails to publish the group tax strategy within six months of the deadline for publication and thereafter for further penalties for each month of further delay.

17. Paragraph 19(1) sets out that this Paragraph applies to a UK sub-group of a foreign group which is a qualifying group in any financial year. Paragraph 19(2) sets out that the head of a UK sub-group is responsible for the preparation and publication of the sub-group's tax strategy.

18. Paragraphs 19(3) and 19(4) set out when and where the UK sub-group tax strategy must be published.

19. Paragraph 19(4)(a) sets out that any UK company that is a member of the foreign group may publish the UK sub-group tax strategy on behalf of the sub-group.

20. Paragraph 19(5) sets out that the UK sub-group's tax strategy must be freely available until the tax strategy for the next financial year is published. If there is no duty to publish in the next financial year, it must remain freely available for one year from the date of publication. This responsibility is incumbent on the head of the sub-group.

21. Paragraph 19(6)(a) sets out when a UK sub-group tax strategy is considered as published.

22. Paragraph 19(6)(b) sets out that UK sub-group identity will not be altered for the purposes of this legislation during the current financial year due to it acquiring or losing a subsidiary.

23. Paragraph 19(6)(c) sets out that if a UK sub-group becomes the UK sub-group of another foreign group in the current financial year it will still be treated as a UK sub-group of the original foreign group in that financial year.

24. Paragraph 19(7) sets out the definition of "financial year" for this Paragraph.

25. Paragraph 20 provides an outline of the required and optional content of a UK sub-group tax

strategy by reference to Paragraph 17. Paragraph 20(3) sets out that a UK permanent establishment of a foreign member of the UK sub-group will be as if it were a member of the UK sub-group in its own right.

26. Paragraph 21 provides an outline of the circumstances in which the head of a UK sub-group may be liable to a penalty for non-compliance with the duties set out in Paragraph 19.

27. Paragraphs 21(4) and 21(5) provide for a further penalty if the UK sub-group fails to publish the UK sub-group tax strategy within six months of the deadline for publication and thereafter for further penalties for each month of further delay.

28. Paragraph 22(1) sets out that this Paragraph applies to a UK company which is a qualifying company in any financial year.

29. Paragraph 22(2) sets out that the company is responsible for the preparation and publication of the company's tax strategy. Paragraph 22(3) sets out that this duty remains if the company becomes a member of a UK group or a UK sub-group in the current financial year.

30. Paragraphs 22(4) and 22(5) set out when and where the company tax strategy must be published.

31. Paragraph 22(6) sets out that the company's tax strategy must be freely available until the tax strategy for the next financial year is published. If there is no duty to publish in the next financial year, it must remain freely available for one year from the date of publication. This responsibility is incumbent on the company.

32. Paragraph 22(7) sets out when a company tax strategy is considered as published.

33. Paragraph 22(8) sets out that a UK permanent establishment which is to be treated as a UK company and a qualifying company as per Paragraph 5(6) is to be treated as a qualifying company in Paragraphs 23 and 24.

34. Paragraphs 23(1), 23(3) and 23(4) provide an outline of the required content of a company's tax strategy. Paragraph 23(2) provides areas a company tax strategy may cover.

35. Paragraph 24 provides an outline of the circumstances in which a company may be liable to a penalty for non-compliance with the duties set out in Paragraph 22.

36. Paragraphs 24(4) and 24(5) provide for a further penalty if the company fails to publish the company tax strategy within six months of the deadline for publication and thereafter for further penalties for each month of further delay.

37. Paragraph 25(1) sets out that Paragraph 22, 23, and 24 apply to a UK partnership which is a qualifying partnership in any financial year. These Paragraphs apply to qualifying partnerships as they apply to qualifying companies. Paragraph 25(2) provides criteria for the application of these Paragraphs.

38. Paragraph 26(1) sets out that Paragraphs 27 to 33 apply to any person liable to a penalty under this Part, and provides some definitions. It also provides definitions for failure, liability to a penalty, and penalty. Paragraph 26(2) provides a definition of "tribunal" for Paragraphs 27 to 33.

39. Paragraph 27 sets out that failure to comply with time limited duties set out in this Part does not give rise to liability to a penalty if it is done within a further time limit set by an officer of

HMRC, if one is set by an officer of HMRC.

40. Paragraph 28(1) sets out that a person will not be liable to a penalty if that person satisfies HMRC or the tribunal that there was a reasonable excuse for the failure. Paragraph 28(2) sets out excuses which will not be considered as reasonable.

41. Paragraph 29 deals with the assessment of penalties and in what circumstances they may not be made.

42. Paragraph 30 sets out that a person may appeal a decision made by HMRC that a penalty is payable by that person. It also sets out how an appeal must be given and what it must contain.

43. Paragraph 31 sets out when a penalty must be paid, and how it may be enforced.

44. Paragraph 32 provides for the Treasury to change the amount of penalties if it appears that the value of money has changed.

45. Paragraph 33 sets out the sections of the Taxes Management Act 1970 that apply to this Part.

46. Paragraph 34 defines the meaning of "tax strategy" in this Part.

Part 3: Sanctions for Persistently Unco-operative Large Businesses

47. Paragraph 35 sets out which UK groups fall within this Part.

48. Paragraph 36 sets out the criteria for a group having engaged in persistent unco-operative behaviour by reference to member(s) of the group having satisfied either or both of the behaviour and arrangements conditions set out in Paragraphs 37 and 38. Paragraphs 36(3) and 36(4) set out the meaning of "persistently" in this Part.

49. Paragraph 37(1) sets out the behaviour condition, which is concerned with behaviour which has delayed or hindered HMRC in the exercise of its functions in relation to the group as regards UK taxation.

50. Paragraph 37(2) gives a non-exhaustive list of factors which may indicate that the behaviour condition is satisfied, relating to the use of information powers, inaccuracies and omissions in documents submitted to HMRC and reliance on speculative interpretations of legislation.

51. Paragraph 37(3) provides the definition of "speculative" as it relates to this Part.

52. Paragraph 38 sets out the arrangements condition, which is concerned with being party to tax avoidance schemes, as defined in Paragraph 38(2).

53. Paragraph 39 sets out the definition of a "significant tax issue" for this Part in terms of there being a disagreement between the group or a member of the group and HMRC, the value of which is or is likely to be £2million or more (as per Paragraph 39(1)(c)). Paragraph 39(3) makes provision for the Treasury to substitute, by regulations, a higher amount for the amount at the time specified in Paragraph 39(1)(c).

54. Paragraph 40 makes provision in relation to changes in the composition of a group for this Part.

55. Paragraph 41 sets out the circumstances in which a "warning notice" may be given to the head

of a qualifying UK group by HMRC, and what it must contain. Paragraph 41(3) sets out the ways in which a warning notice may be withdrawn by HMRC or expire.

56. Paragraph 42 sets out the circumstances in which a "special measures notice" may be given to the head of a UK qualifying group by HMRC, and what it must contain. Paragraph 42(4) provides for HMRC to take account of the representations of the UK qualifying group in deciding whether to do so.

57. Paragraph 43 sets out the ways in which a special measures notice may be withdrawn by HMRC or expire.

58. Paragraph 44 sets out in what circumstances a "confirmation notice" may be given to the head of a UK qualifying group by HMRC. Paragraph 44(6) provides for HMRC to take account of the representations of the UK qualifying group in deciding whether to do so.

59. Paragraph 45 sets out the additional circumstances in which a special measures notice may be given to the head of a UK qualifying group by HMRC within a 9 month period after the withdrawal of a warning notice. Paragraph 45(2) provides for HMRC to take account of the representations of the UK qualifying group in deciding whether to do so.

60. Paragraph 46 sets out the circumstances in which notices are treated as being given where group composition changes during the special measures process.

61. Paragraph 47 provides for an inaccuracy in a document given to HMRC while the person was a member of a group subject to special measures notice to be treated as being due to a failure to take reasonable care for the purposes of Schedule 24 of the Finance Act 2007 (penalties for errors), if the inaccuracy relates to a tax avoidance scheme or is attributable to a speculative interpretation of the law relating to UK taxation.

62. Paragraph 48 makes an amendment to Schedule 24 of the Finance Act 2007.

63. Paragraph 49 sets out the circumstances in which HMRC may publish information about a UK qualifying group, what information HMRC may publish about the group, what HMRC must do before it publishes this information, and what HMRC must do when the group ceases to be subject to a confirmed special measures notice.

64. Paragraph 50 sets out the circumstances in which UK sub-groups fall within this Part and how the Part is applied to such sub-groups.

65. Paragraph 51 sets out in what circumstances a qualifying company falls within this Part and how the Part is applied to a qualifying company or MNE company.

66. Paragraph 52 sets out in what circumstances a qualifying partnership falls within this Part and how the Part is applied to a qualifying partnership.

67. Paragraph 53 provides a definition of "designated HMRC officer" for this Part.

Part 4: Supplementary Provisions

68. Paragraph 54 sets out that the power to make regulations under Section 122(6)(c) of Finance Act 2015 includes the power to amend Paragraph 7.

69. Paragraph 55 sets out that Regulations under this Schedule will be made by statutory instrument and are subject to annulment following a resolution of the House of Commons.

Background note

70. HMRC is committed to dealing with all customers fairly and efficiently while making sure that the correct tax is paid to the Exchequer. HMRC's Large Business Directorate manages the largest 2,000 or so businesses using a risk based approach. This is due to their size and complexity, the tax at stake, and the consequent risk they present to the Exchequer.

71. These measure seek to encourage tax transparency and compliance across all large businesses and to provide a tool with which to tackle the small number of large businesses with an ongoing history of aggressive tax planning and/or who refuse to engage with HMRC.

72. To achieve this, this clause introduces a requirement for qualifying large businesses to publish their tax strategy in relation to UK taxation as well as a special measures regime for the aforementioned large businesses.

Clause 150: Civil Penalties for enablers of offshore tax evasion

Summary

1. This clause introduces new civil penalties for deliberate enablers of offshore tax evasion or other non-compliance, these are a new financial penalty, and a new power to publish information about the enabler. The penalties will be applicable in relation to income tax, capital gains tax and inheritance tax.

Details of the clause and Schedule

2. Subsection (1) introduces the Schedule that makes provision for civil penalties for enablers of offshore tax evasion or non-compliance.

3. Subsections (2) and (3) provide that the Schedule comes into force on a day appointed by the Treasury in regulations. The regulations may appoint different days for different purposes and make such supplemental, incidental and transitional provisions as the Treasury consider appropriate.

Details of the Schedule

Part 1: Liability for penalty

4. Part 1 sets out the circumstances where a financial penalty is payable.

5. Paragraph 1 sets out that a penalty is payable by a person (P) who has enabled another person (Q) to carry out offshore tax evasion or non-compliance, and that conditions A and B need to be met for a penalty to be payable.

6. Paragraph 1(2)(a) sets out what is meant by Q carrying out "offshore tax evasion or non-compliance". This is either where they have committed a relevant offence in relation to income tax, capital gains tax or inheritance tax, or have been liable to a relevant penalty charged in relation to those taxes.

7. Paragraph 1(2)(b) sets out the actions required by P, for P to have enabled Q to carry out offshore tax evasion or non-compliance. These are encouraging, assisting or otherwise facilitating a person to carry out offshore tax evasion or non-compliance.

8. Paragraph 1(3) lists the relevant offences.

9. Paragraph 1(4) lists the relevant penalties.

10. Paragraph 1(5) sets out condition A, which is that P knew, when P's actions were carried out that their actions enabled or were likely to enable offshore tax evasion or non-compliance.

11. Paragraph 1(6) sets out the second condition, B, which has to be met (as well as condition A) if an enabler is to be liable to a penalty. This condition can be met in three possible ways. One is where Q has been convicted of a relevant offence and that conviction is final. Another is where Q is liable to a relevant penalty, and their penalty has been assessed and notified and the penalty is final. Finally, condition B can be met where Q is liable to a relevant penalty and a contract has been made between the Commissioners for Her Majesty's Revenue and Customs and Q, under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover the penalty.

12. Paragraph 1(7) sets out what the term "convicted of the offence", in paragraph 1(6)(a) means.

13. Paragraph 1(8) sets out when a penalty becomes final.

14. Paragraph 1(9) sets out that for the purpose of assessing condition B, it is immaterial whether the relevant penalty or the relevant offence in question, relates to solely offshore tax evasion or non-compliance, or to both offshore tax evasion or non-compliance and also other tax evasion or non-compliance.

15. Paragraph 1(10) sets out what the term "other tax evasion or non-compliance" means.

16. Paragraph 1(11) makes clear that the usual laws of evidence are not affected by condition B.

17. Paragraph 1(12) makes clear that the term "conduct" includes a failure to do something.

18. Paragraph 2(2) sets out the meaning of "involving offshore activity" for the purpose of interpreting whether the criminal offences and civil penalties listed at paragraphs 1(5) and (6) are relevant to showing that Q committed offshore tax evasion or non-compliance. Conduct involves an offshore activity if it involves an offshore matter, an offshore transfer, or a relevant offshore asset move. Paragraph 2(3) to (8) sets out further detail on this definition.

19. Paragraph 2(3) sets out what is meant by conduct involving an offshore matter, for the purpose of paragraph 2(2)(a).

20. Paragraph 2(4) sets out the circumstances where inheritance tax is to be treated as an offshore matter for the purposes of paragraphs 2(2)(a) and 2(3)(b).

21. Paragraph 2(5) sets out what is meant by conduct involving an offshore transfer, for the purpose of paragraph 2(2)(b).

22. Paragraph 2(6) defines what is meant by conduct involving a relevant offshore asset move for the purpose of paragraph 2(2)(c).

23. Paragraph 2(7) applies a number of provisions from Schedule 21 FA 2015 (penalties in connection with offshore asset moves) for the purposes of the definition of conduct involving a relevant offshore asset move at paragraph 2(6).

24. Paragraph 2(8) applies the definition of "specified territory" in Schedule 21 FA 2015 (penalties in connection with offshore asset moves) for the purposes of the definition of conduct involving a relevant offshore asset move at paragraph 2(6).

25. Paragraph 3(1) sets out the amount of the penalty where P has enabled tax evasion or non-compliance which falls within a relevant offence or a relevant penalty (except for penalty under Schedule 21 FA 2015). This is to be the greater of 100% of the potential loss revenue (as set out in paragraphs 4 and 5), or £3,000.

26. Paragraph 3(2) sets out the amount of the penalty where P has enabled behavior which makes Q liable to a penalty under Schedule 21 FA 2015. This is to be the greater of 50% of the potential lost revenue in respect of the original tax non-compliance, or £3,000.

27. Paragraph 3(3) sets out the definition of the term "the original tax non-compliance". It also sets out the definition of the term "the potential lost revenue" in relation to each relevant penalty.

28. Paragraphs 4 to 5 set out what is meant by "potential lost revenue".

29. Paragraph 4(1) sets out what the potential lost revenue is where P is liable for a penalty for enabling Q to commit a relevant offence (as set out in paragraph 1(4)). That is, the potential lost revenue is the same amount as it would be for the corresponding relevant civil penalty (as determined in accordance with the relevant sub-paragraph of paragraph 5).

30. Paragraphs 4(2) and (3) set out what the "corresponding relevant civil penalty" is for each relevant offence.

31. Paragraphs 4(4) sets out that in determining any amount of potential lost revenue where P has enabled the commission of a relevant offence, the fact that Q has been prosecuted for the offending conduct is to be disregarded.

32. Paragraph 5 sets out what the potential lost revenue is for each relevant penalty (as set out in paragraph 1(5)), for the purpose of calculating the potential lost revenue where: (a) P has enabled Q to engage in conduct incurring a relevant penalty; or, (b) where P has enabled Q to conduct a relevant offence, and the potential lost revenue is to be calculated in accordance with the corresponding relevant civil penalty (for example where Q committed an offence under section 106B and the potential lost revenue is to be calculated in accordance with the way it would be calculated for a enabling conduct incurring a penalty under Schedule 41 FA 2008).

33. Paragraph 6 is a just and reasonable apportionment provision. It sets out that where the potential lost revenue in relation to a relevant offence or relevant relates to both offshore tax evasion or non-compliance and other evasion or non-compliance, only such share as is just and reasonable is taken into account in setting the potential lost revenue in relation to the offence or penalty for the purposes of calculating the enabler's penalty.

34. Paragraph 7(1) sets out that reductions to the penalty payable by P must be made according to the quality of disclosure or assistance provided to HMRC by P. Where disclosures made by the enabler assist HMRC in an investigation, leading to a person being charged with a relevant offence or found liable to a relevant penalty, the penalty on P must be reduced accordingly.

35. Paragraph 7(2) sets out the minimum levels to which the penalty may be reduced. That is the higher of 10% of the potential lost revenue or £1,000 for unprompted disclosure or assistance and 30% or £3,000 for prompted disclosure or assistance.

36. Paragraphs 8(1) to (5) outlines what constitutes disclosure for the purposes of paragraph 5. This includes telling, giving reasonable help and allowing access to records.

37. Paragraph 8(3) sets out how P would assist HMRC in relation to an investigation leading to a person being charged with a relevant offence or found liable to a relevant penalty for offshore evasion or non-compliance. This consists of assisting or encouraging the person to disclose all relevant facts, allowing access to records and any other conduct which HMRC considers

assisted them.

38. Paragraphs 8(4) and (5) sets out what is meant by unprompted and prompted disclosure or assistance by P, and that the quality of disclosure or assistance includes timing, nature and extent.

39. Paragraphs 9(1) to (3) sets out that HMRC may reduce the penalty under paragraph 1 because of special circumstances, and clarifies what does not fall within the term "special circumstances".

40. Paragraphs 10(1) to (7) sets out the procedures for assessing the penalty. An assessment of the penalty is to be treated, procedurally, in the same way as an assessment to tax (except where expressly provided otherwise) and may be enforced as it were such an assessment.

41. Paragraph 11 sets out that an assessment may not be made more than 2 years after the fulfilment of the conditions set out in paragraph 1(1) first came to the attention of HMRC.

42. Paragraph 11 sets out what may be appealed against in respect of a penalty under paragraph 1.

43. Paragraphs 13(1) and (2) provides that an appeal against a penalty imposed on P is subject to the same appeal rights and procedure, as an appeal against an assessment to tax. However, this does not require the appellant to pay a penalty before an appeal is determined, nor does it apply in respect of any matters expressly provided for by the Schedule.

44. Paragraphs 14(1) to (5) sets out the treatment of an appeal when it is notified to the tribunal. 4

45. Paragraph 15 sets out that a person is not liable to a penalty under paragraph 1 in respect of conduct for which they have already been convicted of an offence, or have been assessed to a penalty under any other provision.

46. Paragraph 16 sets out the provisions in Taxes Management Act 1970 (TMA 1970) that apply for the purposes of this Part.

47. Paragraph 17 provides that reference to an assessment to tax in the Schedule, in relation to inheritance tax, are to a determination.

Part 2: Application of Schedule 36 to FA 2008: Information powers

48. Part 2 applies Schedule 36 of the Finance Act ('FA') 2008 for the purpose of this Schedule and sets out modifications of Schedule 36 for that purpose.

49. Paragraph 18(1) sets out that Schedule 36 FA 2008 applies for the purpose of checking a person's liability to a penalty under paragraph 1 of this Schedule, subject to the modifications set out in paragraphs 19 to 21.

50. Paragraph 18(2) sets out what the term "relevant person" means.

51. Paragraph 19 sets out a number of general modifications that apply to Schedule 36 for the purpose of this Schedule.

52. Paragraph 20 sets out that certain provisions in Schedule 36 do not apply for the purpose of checking a person's liability to a penalty under paragraph 1.

53. Paragraph 21 sets out that in paragraph 10A of Schedule 36 reference in sub-paragraph (1) to "the position of a suspected class of persons as regards a relevant tax" is to the position of a person as regards a liability for a penalty under paragraph 1 of this Schedule.

Part 3: Penalties for enablers of offshore evasion

54. Part 3 sets out the circumstances in which HMRC may publish information about enablers of offshore tax evasion or non-compliance, who are found to liable for a penalty under paragraph 1.

55. Paragraph 22(1)(a) sets out the first condition to be met in order for information to be published about an enabler of offshore tax evasion or non-compliance. That is where one or more penalties under paragraph 1 is found to have been incurred by that person and, as a result, the penalty (or penalties) has been assessed, or is the subject of a contract settlement.

56. Paragraph 22(1)(b) sets out the second condition to be met in order for information to be published about an enabler of offshore tax evasion or non-compliance. That is that the potential lost revenue involved exceeds £25,000.

57. Paragraph 22(2) establishes that where a person has been found to have incurred 5 or more penalties in the past 5 years, in relation to enabling offshore evasion under paragraph 1, then HMRC may publish information about that person.

58. Paragraph 22(3) sets out the information that may be published.

59. Paragraph 22(4) sets out that HMRC may publish information in any manner HMRC considers appropriate.

60. Paragraph 22(5) provides that HMRC must inform the person before publishing any information about them, and must give them an opportunity to make representations.

61. Paragraphs 22(6) and (7) set out the time limits for publication.

62. Paragraph 22(8) sets out that no information may be published if the penalty is reduced by the maximum amounts allowed under paragraph 5, or is reduced to nil or stayed under the special circumstances provision at paragraph 7.

63. Paragraph 22(9) establishes when a penalty becomes final for the purposes of this Schedule.

64. Paragraph 22(10) sets out what the term "settlement contract" means.

65. Paragraph 23 provides that the Treasury may, by regulations, vary the amount of potential lost revenue set out in paragraph 16(1)(b). Such regulations must be made by statutory instrument and are subject to annulment in the House of Commons.

Background note

66. Following consultation, the clause has been introduced to support the Government's wider offshore tax evasion strategy. The clause will establish new civil penalties for enablers of offshore tax evasion. These penalties consist of a new financial penalty, and a new naming power.

67. The penalties will only apply in relation to income tax, capital gains tax and inheritance tax.

The sanctions will come into force on a day appointed by the Treasury in regulations. The regulations may appoint different days for different purposes and make such supplemental, incidental and transitional provisions as the Treasury consider appropriate.

68. Where the enabler makes an unprompted disclosure of the fact that they enabled offshore tax evasion or non-compliance and assists HMRC, reductions in penalties will apply, and the enabler will not be named. The clause is intended to encourage enablers to come forward to HMRC, and make a maximum disclosure of information. It is not intended to penalise unknowing and undeliberate enablers.

Clause 151 and Schedule 21: Penalties in connection with offshore matters and offshore transfers

Summary

1. This clause and Schedule increases minimum penalties for inaccuracies, failure to notify a charge to tax or failure to deliver a return, where the penalty relates to an offshore matter or transfer. For the increased penalties to apply, the behaviour that led to the penalty must have been deliberate or deliberate and concealed.

Details of the clause and Schedule

Section 1: Part 1:

2. Paragraph (1) amends Schedule 24 Finance Act 2007, Schedule 41 Finance Act 2008 and Schedule 55 Finance Act 2009, to as provided for by Schedule .

3. Paragraph (2) and (3) provides that the Schedule comes into force on a day appointed by regulations, and that different days may be appointed in respect of different provisions for specified purposes.

Schedule 21: Para 2-5: Amendments to Schedule 24 to the Finance Act 2007

4. Paragraph 1 provides that Schedule 24 to Finance Act 2001 is amended as set out in the following paragraphs.

5. Paragraph 2(1), (2) and (3) amends the penalties for errors in a taxpayer's document rules in Schedule 24 Finance Act 2007, so that paragraph 9 (reductions for disclosure) applies to only inaccuracies that involve domestic matters (that is, those that do not involve an offshore matter).

6. Paragraph 2(4) amends the provisions for reducing penalties for deliberate offshore inaccuracy under Schedule 24 Finance Act 2007, requiring the taxpayer to provide HMRC with "additional information", in addition to that which is already requirement to make a full disclosure of the inaccuracy. Sub-paragraphs (1C) and (1D) requires the Treasury to set out what is meant by "additional information" by statutory instrument.

7. Paragraph (5) applies the current rules in paragraph 4A(4) to (5) Schedule 24 Finance 2007 to determine whether the inaccuracy involves an offshore matter, an offshore transfer or domestic matter.

8. Paragraph 3 amends paragraph 10(2) of Schedule 24 Finance Act 2007 so that the table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation

9. Paragraph 4 inserts paragraph 10A(1) into Schedule 24 Finance Act 2007 which provides maximum and minimum penalty rates for inaccuracies involving an offshore matter or offshore transfer. For inaccuracies involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased from the minimum penalty rates applicable before the amendments come into effect.

Schedule 21: Para 5-8: Amendments to Schedule 41 to the Finance Act 2008

10. Paragraph 5 provides that Schedule 41 to Finance Act 2008 (penalties: failure to notify etc.) is to be amended.

11. Paragraph 6(1) to (4) amends the penalties for failure to notify rules in Schedule 41 Finance Act 2008, so that failures involving an offshore transfer, or an offshore matter with deliberate behaviour, require the taxpayer to provide "additional information" to HMRC in order to receive the maximum penalty reduction. The requirements for penalty reduction in other cases (such as cases involving domestic matters) remain unchanged.

12. Paragraph 12(2C) to (2E) of Schedule 41 to Finance Act 2008 provide for the Treasury to set out what is meant by "additional information" in a statutory instrument.

13. Paragraph 6(5) applies the current rules in paragraph 6A(4) to (5) Schedule 41 Finance 2008 for the purposes of paragraph 12 of that Schedule to determine whether the inaccuracy involves an offshore matter, an offshore transfer or domestic matter.

14. Paragraph 7 amends paragraph 13 of Schedule 41 Finance Act 2008 so that the substituted table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation.

15. Paragraph 8 inserts a new paragraph 13A into Schedule 41 Finance Act 2008 which provides maximum and minimum penalty rates for failures involving an offshore matter or offshore transfer. For failures involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased.

Schedule 21: Para 9-12: Amendments to Schedule 55 to the Finance Act 2009

16. Paragraph 9 provides that Schedule 55 to Finance Act 2009 (penalties for failure to make returns etc.) is to be amended.

17. Paragraph 10(1) to (4) amends the failure to make a return rules in Schedule 55 Finance Act 2009, so that failures involving an offshore transfer, or an offshore matter with deliberate behaviour, require the taxpayer to provide "additional information" to HMRC in order to receive the maximum penalty reduction. The requirements for penalty reduction in other cases (such as cases involving domestic matters) remain unchanged.

18. Paragraph 10(5) inserts paragraphs 14(2A) to 2(E) into Schedule 55 Finance Act 2009, which make provision for the Treasury to set out what is meant by "additional information" in a statutory instrument.

19. Paragraph 10(6) provides that the current rules in paragraph 6A(4) to (5) Schedule 55 Finance

2009 apply for the purposes of paragraph 14 of that Schedule to determine whether the failure is an offshore matter, offshore transfer or domestic matter.

20. Paragraph 11 amends paragraph 13 so that the substituted table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation.

21. Paragraph 12 inserts paragraph 15A into Schedule 55 Finance 2009 which provides maximum and minimum penalty rates for failures involving an offshore matter or offshore transfer. For failures involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased.

Background note

22. Following consultation, which ran from July 2015 to October 2015, this clause has been introduced to support the Government's wider strategy to tackle offshore tax evasion. In order to achieve the objectives set out in this strategy, there needs to be a strong deterrent against offshore non-compliance, including robust civil sanctions.

23. The clause will increase minimum penalties for cases of deliberate offshore inaccuracies in a return, failure to notify a liability to tax and failure to deliver a return. The clause will also require taxpayers to disclosure additional details of the offshore inaccuracy or failure in order to receive maximum penalty reductions.

24. The sanctions will apply to a liability to income tax, capital gains tax or inheritance tax that arises offshore, or income or gains that arise In the UK, but are transferred offshore and not declared to HMRC.

25. Discussed in the consultation document and during consultation meetings was an additional penalty charged on the value of the underlying asset used in the offshore inaccuracy or failure. The Government will be holding further, informal consultation on the draft clauses of this asset-based penalty, which will be published in early 2016.

Clause 152: Offshore tax errors etc: publishing details of deliberate tax defaulters

Summary

1. This clause makes changes to the naming provisions in section 94 Finance Act 2009, so that where there is an inaccuracy in a taxpayer's document, or failure to notify which relates to offshore matters or offshore transfers, only full, unprompted disclosures will be outside the scope of the provisions. Section 94 is also amended to allow the naming of certain people who have benefited from the inaccuracy or failure.

Details of the clause

2. Subsection (2) inserts subsections (4A) and (4B) into section 94 Finance Act 2009 to provide HMRC with the power to publish the details of an individual who controls a body corporate or a partnership. This applies where that body corporate or partnership has been charged a penalty for a deliberate failure to notify HMRC of a tax charge or deliberate inaccuracy in a return, and the individual would have obtained a tax advantage from the inaccuracy or failure had it not been corrected. The failure or inaccuracy must involve an offshore matter or transfer.

3. Subsection (2) also inserts subsection (4C) and (4D) into section 94 to provide HMRC with the power to publish the details of one or more trustees of a settlement where the trustee has incurred a penalty for a deliberate failure to notify HMRC of a tax charge or deliberate inaccuracy in a return, and the trustee as an individual would have obtained a tax advantage from the inaccuracy or failure had it not been corrected. The failure or inaccuracy must involve an offshore matter or transfer.

4. Subsection (4) inserts subsection (6A) into section 94. Section 94(6A) provides that before publishing any information about an individual who falls under subsection (4B) and (4D) HMRC must inform that the individual that they are considering doing so. The individual must also be given a reasonable opportunity to make representations to HMRC on whether their details should be published. A consequential amendment is made to subsection (6) of Section 94 by subsection (3).

5. Subsection (5) amends section 94(1) to provide that no information will be published in instances of inaccuracies or failures relating to an offshore matter or transfer if the full penalty reduction is given for disclosure, and the taxpayer was unprompted in disclosing the failure or inaccuracy to HMRC.

6. Subsection (7) provides that the amendments made by this section come into force on a day appointed by regulations made by the Treasury.

Background note

7. Following consultation, which ran from July 2015 to October 2015, this clause has been introduced to support the Government's wider strategy to tackle offshore tax evasion. In order to achieve the objectives set out in this strategy, there needs to be a strong deterrent against offshore non-compliance, including robust civil sanctions.

8. The clause will strengthen naming provisions to enable HMRC to name those that hide behind entities, such as companies and trusts, when committing offshore tax evasion, and restrict protection from naming for those offshore evaders who do not come forward to HMRC unprompted.

9. The sanctions will apply to a liability to income tax, capital gains tax or inheritance tax that arises offshore, or income or gains that arise in the UK, but are transferred offshore and not declared to HMRC.

Clause 153 and Schedule 22: Asset-based penalties for offshore inaccuracies and failures

Summary

1. This clause introduces a new asset-based penalty for offshore tax evasion. It is levied as an additional penalty for serious cases of offshore tax evasion, and is based on the value of the asset underlying to the tax evasion.

Details of clause and Schedule

2. Subparagraph (1) introduces the asset-based penalty, which may be charged on taxpayers who have been charged a penalty for deliberate offshore inaccuracies and failures.

3. Subparagraph (2) provides that the Treasury may make Regulations setting out when the asset-based penalty may come into force. These Regulations may allow the Treasury to commence all, or a specified part of the schedule, commence different provisions on different dates, and make supplemental, incidental or transitional provisions.

Schedule 22: Part 1: Liability for Penalty

4. Paragraphs 1 and 2 provide that an asset-based penalty will be payable by a person where one or more standard offshore tax penalties have been imposed on that person in relation to a tax year and the potential lost revenue threshold has been met in relation to that tax year. A standard offshore tax penalty is a penalty imposed under paragraph 1 of Schedule 24 to FA 2007, paragraph 1 of Schedule 41 to FA 2008 or paragraph 6 of Schedule 55 to FA 2009 (together referred to in this note as the "relevant Finance Acts") in respect of a person's deliberate action or failure involving an offshore matter or an offshore transfer, where the tax at stake is inheritance tax, capital gains tax or asset-based income tax (together referred to in this note as the "relevant tax"). If a relevant Finance Acts penalty involving an offshore matter or offshore transfer also involves a domestic matter or tax other than relevant tax, those elements are disregarded for the purposes of the asset-based penalty.

5. Paragraph 3 explains the tax year to which a standard offshore tax penalty relates. Where the tax at stake is income tax or capital gains tax, it is the tax year to which the inaccuracy or failure penalized by the relevant Finance Acts relates. For inheritance tax, it is the year beginning on 6 April and ending on the following 5 April in which the liability to the tax at stake first arose.

6. Paragraph 4 provides that the potential lost revenue threshold is reached where the offshore potential lost revenue in relation to a tax year exceeds £25,000. This amount may be changed by Regulations made by the Treasury.

7. Paragraph 5 subparagraphs (1) to (7) sets out how offshore potential lost revenue ("offshore PLR") is calculated.

8. Subparagraph (1) sets out that the offshore PLR in relation to a tax year will be calculated with reference to a tax year. Offshore PLR will be the total of the potential lost revenue and liability to tax by reference to which all the standard offshore tax penalties imposed on the person under the relevant Finance Acts that are assessed in the tax year in question.

9. Subparagraphs (2) and (3) ensure that where potential lost revenue or liability to tax used to calculate a penalty under the relevant Finance Acts relates to both a standard offshore tax penalty and another type of penalty, only the potential lost revenue or tax liability relating to a standard offshore tax penalty is taken into account for calculating offshore PLR. A penalty that involves a standard offshore tax penalty and another penalty is referred to as a "combined penalty".

10. Subparagraph (4) provides a rule for calculating offshore PLR where the calculation of the potential lost revenue or liability to tax in relation to a combined penalty depends on the order in which income and gains are treated as having been taxed. The rule requires Income and gains relating to domestic matters to be corrected before those relating to offshore matters and offshore transfers. Where taxes other than a relevant tax are involved, the income and gains relating to those other taxes are taken to be treated as having been taxed before those relating to the relevant tax.

11. Subparagraph (5) provides a further rule for calculating offshore PLR in relation to a combined penalty where it cannot be determined whether an income or gain relates to a domestic matter an offshore matter or transfer, or where it cannot be determined whether an income or gain relates to relevant tax or other taxes. In such cases offshore PLR must be calculated on a just and reasonable basis.

12. Subparagraphs (6) and (7) require that where two or more taxes are at stake in relation to a standard offshore tax penalty or a combined penalty, the potential lost revenue or liability to tax relevant for determining offshore PLR is calculated by correcting for income and gains relating to asset-based income tax before those relating to capital gains tax.

13. Paragraph 6 ensures that only one asset-based penalty is payable in relation to any given asset where HMRC is investigating more than one tax year ("investigation period"). The penalty is calculated using the highest offshore PLR for a tax year within the investigation period. The paragraph sets out when an investigation period begins and ends. It is possible for a further asset-based penalty to be imposed in relation to the same asset in respect of later investigation period.

14. Paragraph 7 sets out the standard amount of the asset-based penalty will be the lower of 10% of the value of the relevant asset (which is identified and valued in accordance with Part 3 of the Schedule) or ten times of the amount of the offshore PLR relevant to the penalty.

15. Paragraph 8 requires the standard amount of the asset-based penalty to be reduced where the person liable to the penalty does all of the following: discloses the inaccuracy or failure giving rise to the relevant standard offshore penalty, provides HMRC with a reasonable valuation of the asset and provides HMRC with further information or access to records required for valuation purposes. The amount of the reduction depends upon the degree of cooperation provided. The Treasury must make Regulations setting out the minimum penalty level

allowed (which may differ depending upon whether disclosure was prompted or unprompted). Disclosure will only be unprompted if the relevant standard offshore tax penalty was also reduced for unprompted disclosure.

16. Paragraph 9 provides that HMRC may agree a compromise or stay in relation to an asset-based penalty or otherwise reduce its standard amount in "special circumstances" (but not including ability to pay or that the potential lost revenue is balanced by a potential over-payment by another taxpayer).

Part 3: Identification and valuation of assets

17. Paragraph 10 provides that the rules for identifying the asset relevant to the asset-based penalty (and its valuation) depend upon whether the principal tax at stake in relation to the standard offshore tax penalty in question is capital gains tax, inheritance tax or asset-based income tax. Where more than one type of tax is at stake, the rules relating to the tax giving rise to the highest offshore PLR value are used.

18. Paragraph 11 sets out the asset identification and valuation rules where the principal tax at stake is capital gains tax. The asset is identified by reference to the disposal (or deemed disposal) giving rise to the capital gains tax charge in question. The value of the asset is taken as the consideration for the disposal used in the computation of the gain (or in the case of a part disposal, the full market value of the asset immediately before that part disposal took place).

19. Paragraph 12 sets out the asset identification and valuation rules where the principal tax at stake is inheritance tax. The asset is identified by reference to the property giving rise to the transfer of value for inheritance tax purposes and its value for those purposes is used for the asset-based penalty.

20. Paragraph 13 sets out the asset identification and valuation rules where the principal tax at stake is asset-based income tax. The asset is identified by reference to specified income tax provisions set out in the Table in subparagraph (2). “Asset-based income tax” is defined at paragraph 2(7) as tax that is charged under any of the provisions in that Table. Where a disposal of the asset triggered the income tax charge concerned (or where the asset was disposed of in the tax year to which the standard offshore tax penalty relates), the market value of the asset on the date of disposal is used. If the disposal in question was only a part disposal, the full market value of the asset immediately before the part disposal is used. If there has been no disposal (or part disposal) that can be used for calculating the amount of the asset-based penalty, the market value of the asset on the last day of tax year to which the standard offshore tax penalty relates is used. If it appears to HMRC that the above rules do not provide a fair and reasonable value for the purposes of the asset-based penalty, they can use one which does.

21. Paragraph 14 sets out the rules for valuing jointly held assets. Generally the value of the asset is to be taken to be the value of the person's share of the asset. Where the person is married, in a civil partnership or lives with another person, then the person's share of the asset will be taken as half, unless it appears to HMRC that this is not the case.

Part 4: Procedure

22. Paragraph 15 requires that where a person is liable for an asset penalty HMRC must assess the penalty, notify the person, set out the tax year to which the penalty relates and the

investigation period it falls within. Payment must be made within 30 days of the notification. The assessment must be made within the same time limits as apply to the assessment of the standard offshore tax penalty relevant to the asset-based penalty (or the latest of them where more than one standard offshore tax penalty is involved). The asset-based penalty assessment is treated in the same way as a tax assessment (except where expressly provided otherwise in the Schedule) and may be combined with a tax assessment and enforced as if it were a tax assessment.

23. Paragraph 16 sets out that the person may appeal against the decision that an asset-based penalty is due, and appeal against the amount of penalty due.

24. Paragraph 17 provides that the appeal against the asset-based penalty is to be treated the same as an appeal against an assessment to tax (except for any requirement that the penalty is paid before an appeal is determined).

25. Paragraph 18 provides that on appeal the tribunal may affirm HMRC's decision, cancel it or substitute for HMRC's decision another decision that HMRC could have made.

Part 5: General

26. Paragraph 19 sets out the meaning of terms and references used in the schedule.

27. Paragraph 20 sets out consequential amendments for the asset-based penalty. The asset based penalty is added to the list of penalties in section 103ZA of the Taxes Management Act 1970 so that sections 100 to 103 do not apply to it. Section 107A of that Act is amended so that the provisions in that section relating to Trustees do apply to the asset-based penalty. The relevant Finance Acts are also amended to ensure that an asset-based penalty is not taken into account so as to reduce the amount of a penalty imposed under those provisions.

28. Paragraph 21 provides that the asset-based penalty will not be reduced in accordance with section 97A of Taxes Management Act 1970.

Background note

29. This clause has been introduced to support the government's wider offshore tax evasion strategy. The clause will introduce a new penalty for serious cases of offshore tax evasion, which bases the penalty charged on the value of the asset used in the evasion. This new penalty will deter, and penalise, serious cases of offshore tax evasion.

30. The penalty will only apply for the purposes of income tax, capital gains tax and inheritance tax. It will only apply if a penalty for an inaccuracy in a document, failure to notify or failure to submit a return has been levied in respect of an offshore matter or transfer, the behavior that led to the penalty was deliberate, or deliberate and concealed, and the tax or liability underpaid or understated is over a threshold amount.

Clause 154: Offences relating to offshore income, assets and activities

Summary

1. This clause introduces a new criminal offence which does not require the need to prove intent for failing to declare taxable offshore income and gains, through an amendment to the Taxes Management Act 1970 (TMA). The offences will apply for the purposes of income tax and capital gains tax, where a person has failed to properly declare offshore income or gains in accordance with sections 7 and 8 TMA leading to a loss of tax over a threshold amount which will be defined in regulations and will be on a per tax year basis. The provisions will come into force following a commencement order.

Details of the clause

2. Subsection 1 amends TMA to insert new sections to that Act, sections 106B-H.
3. New section 106B subsection (1) establishes a new criminal offence if a person fails, before the end of the notification period, to notify HM Revenue and Customs (HMRC) as required by section 7 TMA of the person's chargeability to income tax or capital gains tax exceeding a certain amount ("threshold amount") and the tax in question is chargeable by reference to offshore income, assets or activities.
4. New subsection (2) of section106B provides a defence to the new subsection (1) offence if the person accused proves they had a reasonable excuse for failing to notify as required under section 7 TMA.
5. New subsection (3) of section106B defines the "notification period" as having the same meaning as in section 7(1C) TMA.
6. New section 106C subsection (1) establishes a new criminal offence if a person fails, before the end of the withdrawal period, to deliver a tax return when required by a notice under section 8 TMA and an accurate return would have shown income or capital gains tax chargeable by reference to offshore income, assets or activities, and that amount of tax exceeds the threshold amount.
7. New subsection (2) of section106C provides a defence to the new subsection (1) offence if the person proves they had a reasonable excuse for failing to deliver the tax return as required under section 8 TMA.
8. New subsection (3) of section 106C defines the "withdrawal period" as having the same meaning as in section 8B(6) TMA.
9. New section 106D subsection (1) establishes a new criminal offence if a person, who is required by a notice under section 8 TMA to do so, delivers a tax return which, at the end of the amendment period, understates income tax or capital gains tax chargeable by reference to offshore income, assets or activities for the period covered by the return which exceeds the

threshold amount.

10. New subsection (2) of section106D provides a defence to the new subsection (1) offence if the person proves they took reasonable care to ensure that the return was correct.

11. New subsection (3) of section106D defines the "amendment period" as having the same meaning as in section 9ZA TMA.

12. New section 106E subsection (1) provides that the offences do not apply to persons who are responsible for giving notice or making a return to HMRC by virtue of being a trustee of a settlement or an executor/administrator of a deceased person.

13. New subsections (2) and (3) of section106E provide the Treasury with a power to make regulations specifying other circumstances when a person will not be guilty of the new offences. By virtue of the new section 106H (see below), the regulations may make different provisions for different cases and make other consequential and transitional provisions.

14. New section 106F subsection (1) provides that where a period of time is extended by HMRC, the tribunal or an office under subsection (2) of section 118 TMA, this extended period is to apply to the periods of time relevant to the offences in new sections 106B, 106C and 106D TMA.

15. New subsections (2) and (3) of section106F provide the Treasury with a power to specify in regulations the threshold amount for the purposes of the new offences (where the amount of tax specified in the offence is equal to or less that the threshold amount the new offences will not apply). The threshold must not be less than £25,000. The regulations may also set out how to calculate whether the threshold has been exceeded for the purposes of the offences. These regulations may also make different provisions and other consequential and transitional provisions by virtue of new section 106H.

16. New subsections (4) and (5) of section106F define the terms "offshore income, assets or activities" and "assets".

17. New section 106G subsection (1) and (2) provides the penalties for conviction. Subsection (1)(a) and (2) allow for an unlimited fine in England and Wales and/or a custodial sentence of up to 6 months for offences committed before section 281(5) of the Criminal Justice Act 2003 comes into force, and 51 weeks thereafter. Subsection 1(b) allows for a fine not exceeding level 5 on the standard scale in Scotland or Northern Ireland and/or a custodial sentence of no more than 6 months.

18. New section 106H makes provisions about regulations under sections 106E and 106F. The regulations may make different provisions for different cases and may include incidental, supplemental, consequential and transitional provision and savings. The regulations may also provide that any reference they make to a document or any provision of a document must be construed as a reference to the document or provision as amended from time to time. The regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of the House of Commons.

19. Subsections (2) and (3) of the clause provides the Treasury with a power to appoint a day for the offences to come into force by regulations. The regulations may appoint different days for different parts of the offence and may include incidental, supplemental, consequential and transitional provision and savings.

20. Sub-section (4) of the clause provides that the offences will first apply to notifications or returns in respect of the tax year in which the offence is introduced.

Background note

21. Following consultation, this clause has been introduced to support the Government's wider offshore tax evasion strategy. The clause will introduce new criminal offences for offshore tax evasion which does not require the prosecution to demonstrate the taxpayer intentionally sought to evade tax. The new offences will be an additional tool to enable HMRC to tackle offshore tax evasion and deter would be evaders.

22. The offences will apply only for the purposes of income tax and capital gains tax and will only apply if the tax underpaid or understated is more than a threshold amount. The offence cannot apply if the taxpayer can satisfy the court that they have a reasonable excuse or took reasonable care to comply with UK tax obligations.

Clause 155 and Schedule 23: Simple assessments

Summary

1. This clause and Schedule provide a new power to allow HM Revenue and Customs (HMRC) to make an assessment of an individual's Income Tax or Capital Gains Tax liability without them first being required to complete a self-assessment return where HMRC has sufficient information about that individual (whether it is received from the individual or a third party) to make the assessment. The legislation will have effect in relation to the 2016-17 tax year and subsequent years.

Part 1: Amendment to Taxes Management Act 1970

2. Paragraph 2 of the Schedule amends section 7 of TMA 1970 removing the requirement by an individual to notify HMRC of income that is subject to a simple assessment. The requirement to notify HMRC of chargeability to income tax or capital gains tax for the year of assessment of any income or gain that is not included in the simple assessment remains.

3. Paragraph 3 inserts new sections 28H, 28I and 28J into TMA 1970.

4. New Section 28H provides for the introduction of simple assessment for individuals. The subsections set out who will qualify for a simple assessment and the basis on which that assessment is calculated which includes taking account of any relief or allowance that is applicable. It sets out that the simple assessment notice must include details of the information used when making the assessment and the amount due. It also provides that HMRC can issue more than one simple assessment in a tax year.

5. New Section 28I provides for the introduction of simple assessment for trustees. It takes effect in the same way as Section 28H and also allows for the simple assessment to be sent to any one or more of the trustees and defines the "relevant trustee".

6. New Section 28J permits HMRC to withdraw a simple assessment by giving notice to the person to which it relates. Once withdrawn the notice no longer has any effect.

7. Paragraph 4 amends section 31 of TMA 1970 to provide that a person who receives a simple assessment must exercise the right to query the simple assessment under section 31AA (inserted by paragraph 6 of the Schedule) before that person can appeal to the First Tier Tribunal under section 31 of TMA 1970.

8. Paragraph 5 amends section 31A of TMA 1970 to clarify that the date for appealing a simple assessment under section 31 of TMA 1970 runs from the date the final response to a query under section 31AA(11) of TMA 1970 is given.

9. Paragraph 6 inserts new Section 31AA that allows an individual to query a simple assessment if the individual thinks that a simple assessment is wrong.

10. The purpose of S31AA is to allow a person a period of time to query the amount due before making a formal appeal under section 31 TMA. The person must contact HMRC within 60

days of the date of the simple assessment, unless HMRC allows a longer period. Where HMRC considers that it requires more time to consider the matters raised by the person section 31AA(6) allows HMRC to postpone the assessment in whole or part and, if postponed in part, HMRC must notify the individual of the amount that remains payable. Such notice must be given in writing (subsection (7))

11. New Section 31AA(8) provides that whilst a simple assessment is postponed there is no obligation to pay any amount that has been postponed.

12. New Section 31AA(9) provides that once HMRC has considered the individual's query it must confirm, amend or withdraw the simple assessment.

13. New Section 31AA(10) provides HMRC must notify the person of their final response and such notification must be given in writing.

14. New Section 31AA(12) provides that the right to query a simple assessment under section 31AA does not apply to a simple assessment issued as part of the final response.

15. Paragraph 7 of the Schedule makes consequential amendments to section 59B TMA to make it clear that it does not apply to simple assessments.

16. Paragraph 8 inserts new Section 59BA into TMA which sets out how any amount due under a simple assessment is calculated and sets the due and payable date for such amount.

Other amendments

17. Paragraph 9 of the Schedule contains a consequential amendment to Schedule 56 to Finance Act 2009 inserting new item 1A into the table in paragraph 1. This amendment extends the penalty for failure to make payments on time to simple assessments. The amendment to Schedule 56 Finance Act 2009 will come into force on such day as the Treasury may appoint by regulations made by statutory instrument.

Background note

18. Modernising the tax system will be one of the biggest ever changes to the way people manage and pay their taxes. Key to this will be HMRC making smarter use of the data that it holds so that we do more of the work that customers currently have to do for themselves making it as easy as possible for individuals to pay the right tax at the right time.

19. These provisions will enable HMRC to issue an assessment (a simple assessment) to individuals with straightforward tax affairs where HMRC already hold all the information needed to calculate their tax position without the need for them to complete a return.

20. Those individuals whose tax affairs are not straightforward or where HMRC does not have all the necessary information to calculate their tax liability will still be required to complete a tax return.

21. In the simple assessment HMRC will be required to set out clearly how much tax is due and the information used when calculating the amount due. This will enable the individual to check whether the information used in the calculation is correct, including whether there are any omissions. If the individual wants to query the amount in the simple assessment they will be required to notify HMRC of their belief that the assessment is or may be incorrect and the

reasons for that belief and after considering the simple assessment, and any information that the individual may provide, HMRC will confirm, amend or withdraw the simple assessment.

22. The introduction of a S31AA will allow a person a period of time (60 days or longer if allowed by HMRC) to query the amount due before making a formal appeal under section 31. A person who receives a simple assessment must exercise the right to query the simple assessment under section 31AA before that person can appeal to the First Tier Tribunal under section 31 of TMA 1970. The aim is that the majority of queries will be agreed at the query stage and the individual will not need to make a formal appeal.

23. Interest and late payment penalties will also apply to simple assessment and mirror the current interest and late payment penalty provisions for self assessment. The necessary legislation will be made by way of future statutory instrument on which we will consult.

Clause 156: Time limit for self assessment tax returns

Summary

1. This clause clarifies the time allowed for making a self-assessment when HMRC has served a notice to file a return.

Details of the clause

2. Subsection 1 introduces amendments to the Taxes Management Act (TMA) 1970.

3. Subsection 2 introduces a clarification in section 34 TMA 1970 that 'assessment' does not include 'self-assessment'. Section 34 therefore relates to the assessments made by HM Revenue & Customs (HMRC).

4. Subsection 3 introduces a new clause 34A after section 34 TMA 1970.

5. Section 34A sets out the ordinary time limits for self-assessment. That is the calculation of tax due put forward by the taxpayer for a specified tax year.

6. Subsection (1) of section 34A sets out that the normal time limit for self-assessments contained in a return under section 8 or 8A TMA is 4 years after the end of the tax year it relates to.

7. An example would be that the last date you could submit a self-assessment for the tax year 2020/21 would be 4 years after 5 April 2021. That would be 5 April 2025.

8. A taxpayer must make the self-assessment and deliver it to HMRC by that date.

9. Subsection (2) of section 34A sets out two specific instances where the time limits may be longer than 4 years.

10. Subsection (2)(a) of section 34A sets out that when HMRC issues a taxpayer with a notice to file within the 4 year period the taxpayer will always have 3 months to make and deliver their self-assessment.

11. Subsection (2)(b) of section 34A sets out that time limits in relation to self-assessments made in response to determinations by HMRC will not be affected.

12. Subsection 3 of section 34A is a general provision to allow for circumstances when the Taxes Acts allow for a longer period of time to submit a self-assessment, that longer time limit is to apply.

13. Subsection 4 of section 34A states that for self-assessments for the year 2012 to 2013 and before, customers will have until 5 April 2017 to make and deliver them to HMRC. These are self-assessments where a notice to file has been issued to the customer, that no determination has been made and have not been submitted and processed before (amendments to returns).

14. This section will come into force from Royal Assent.

Background note

15. This measure seeks to make clear the amount of time a customer has to submit a self-assessment. This seeks to create clear boundaries for customers so that they have certainty over their tax affairs and to ensure that the tax system applies fairly to all.

Clause 157: HMRC power to withdraw notice to file a tax return

Summary

1. This clause introduces amendments to Section 8B TMA 1970 to allow HM Revenue and Customs (HMRC) to withdraw a notice to file and makes a consequential amendment to Schedule 55 to the Finance Act 2009. The amendments made in this section have effect in relation to any notice under Section 8 or 8A TMA 1970 given in relation to the 2014-15 tax year or any subsequent year.

Details of clause

2. Subsections (2) to (5) amend Section 8B of Taxes Management Act 1970 to allow HMRC to withdraw the notice to file a return.

3. Subsection (6) makes a consequential amendment to paragraph 17A of Schedule 55 to the Finance Act 2009 so that where a notice to file is withdrawn HMRC may cancel any penalty for failure to make a return.

4. *Subsection (7) provides that these amendments have effect in relation to the 2014-15 tax year or any subsequent year.*

Background Note

5. Modernising the tax system will be one of the biggest ever changes to the way people manage and pay their taxes. Key to this will be HMRC making smarter use of the data that it holds so that we do more of the work that customers currently have to do for themselves making it as easy as possible for individuals to pay the right tax at the right time.

6. There are occasions when HMRC has issued a notice to file to an individual but realise that this is no longer necessary. Whilst an individual can currently ask that a notice to file can be withdrawn, these provisions allow HMRC to withdraw a notice to file.

Clause 158: Rate of interest applicable to judgement debts etc: Scotland.

Summary

1. This clause provides that in Scotland where HM Revenue and Customs (HMRC) is party to a tax-related judgment debt (court proceedings in a taxation matter), the rates of interest are those referred to in tax legislation. This ensures that interest payable by or to HMRC, whether or not a debt follows from court action, is that prescribed in tax legislation. This clause also sets the rates of interest on tax-related judgment debts owed by or to HMRC to appropriate levels given prevailing interest rates and harmonises the rates UK-wide.

2. The new rates of interest will apply to new and existing judgment debts in Scotland from the date of Royal Assent of Finance Act 2016. Any interest already accrued under an existing judgment debt will be unaffected.

Details of the clause

3. Subsection (1) sets out that the provision relates only to sums payable by or to HMRC under a decree or extract of the court, and in respect of interest only.

4. Subsections (2) and (3) provide that the late payment rate of interest in accordance with section 103(1) Finance Act 2009 applies to tax-related judgment debts where HMRC is the creditor, and a new special repayment rate of interest applies to tax-related judgment debts where HMRC is the debtor. Subsection (2) sets out that where the rate of interest in relation to the tax-related judgment debt is stated in the decree or extract, the rate stated in relation to the debt may not exceed the late repayment rate where HMRC is the creditor, or the special repayment rate where HMRC is the debtor .

5. Subsection (4) provides that the new rates of interest apply from Royal Assent of Finance Act 2016 on existing as well as new judgments and whether or not judgment interest has already accrued prior to this date. However, interest that has already accrued up to and including the day before Royal Assent is not affected by this section.

Background note

6. The government introduced section 52 Finance (No2) Act 2015 for England and Wales, which requires that where HMRC is party to a tax-related judgment debt, the rates of interest are those contained in tax legislation. This ensures that interest payable by or to HMRC, whether or not a debt follows from court action, is that prescribed in tax legislation. It is appropriate for interest rates on judgment debts relating to taxation matters to be determined in tax legislation rather than the Judgments Act, County Courts Act, or Scottish or Northern Irish equivalents, which are the responsibility of government departments other than HMRC. This measure is to extend the same principle to Scotland.

7. This change in rates applies to cases both where HMRC receives judgment interest where it has won a case, and where it pays judgment interest where it has lost a case.
8. The government is making this change to ensure a consistent UK-wide position that where HMRC is party to a tax-related debt, the rates of interest are those contained in tax legislation. The change also ensures that the rates of interest on such debts are set at an appropriate level.

Clause 159: Rate of interest applicable to judgement debts etc: Northern Ireland.

Summary

1. This clause provides that in Northern Ireland, where HM Revenue and Customs (HMRC) is party to a tax-related judgment debt (court proceedings in a taxation matter) the rates of interest are those referred to in tax legislation. This ensures that interest payable by or to HMRC, whether or not a debt follows from court action, is that prescribed in tax legislation. The clause also set the rates of interest on tax-related judgment debts owed by or to HMRC to appropriate levels given prevailing interest rates and harmonises the rates UK-wide.

2. The new rates of interest will apply to new and existing judgment debts in Northern Ireland from the date of Royal Assent of Finance Act 2016. Any interest already accrued under an existing judgment debt will be unaffected.

Details of the clause

3. Subsection (1) sets out that the provision relates only to sums payable by or to HMRC under a judgment or order of the court, and in respect of interest only.

4. Subsections (2) and (3) provide that the late payment rate of interest in accordance with section 103(1) Finance Act 2009 applies to tax-related judgment debts where HMRC is the creditor, and a new special repayment rate of interest applies to tax-related judgment debts where HMRC is the debtor. Subsection (2) sets out that where the rate of interest in relation to the tax-related judgment debt is stated in the judgment or order, the rate stated in relation to the debt may not exceed the late repayment rate where HMRC is the creditor, or the special repayment rate where HMRC is the debtor.

5. Subsection (4) provides that the new rates of interest apply from Royal Assent of Finance Act 2016 on existing as well as new judgments and whether or not judgment interest has already accrued prior to this date. However, interest that has already accrued up to and including the day before Royal Assent is not affected by this section.

Background note

6. The government introduced section 52 Finance (No2) Act 2015 for England and Wales, which requires that where HMRC is party to a tax-related judgment debt, the rates of interest are those contained in tax legislation. This ensures that interest payable by or to HMRC, whether or not a debt follows from court action, is that prescribed in tax legislation. It is appropriate for interest rates on judgment debts relating to taxation matters to be determined in tax legislation rather than the Judgments Act, County Courts Act, or Scottish or Northern Irish equivalents, which are the responsibility of government departments other than HMRC. This measure is to extend the same principle to Northern Ireland.

7. This change in rates applies to cases both where HMRC receives judgment interest where it has won a case, and where it pays judgment interest where it has lost a case.

8. The government is making this change to ensure a consistent UK-wide position that where HMRC is party to a tax-related debt, the rates of interest are those contained in tax legislation. The change also ensures that the rates of interest on such debts are set at an appropriate level.

Clause 160: Rate of interest applicable to judgement debts etc: England and Wales.

Summary

1. This clause removes the exclusion of National Insurance contributions from the definition of taxation matter in section 52 Finance (No2) Act 2015 in order that the definition of taxation matter is harmonised UK-wide.

2. Section 52 Finance (No2) Act 2015 will apply to new and existing judgment debts comprising National Insurance contributions in England and Wales from the date of Royal Assent of Finance Act 2016. Any interest already accrued under an existing judgment debt comprising National Insurance contributions will be unaffected.

Details of the clause

3. The clause removes the exclusion of National Insurance contributions from the definition of taxation matter in the England and Wales tax-related judgment debt interest provision contained in section 52 Finance (No2) Act 2015. This ensures a consistent definition of taxation matter UK-wide.

Background note

4. The government introduced section 52 Finance (No2) Act 2015 for England and Wales, which requires that where HMRC is party to a tax-related judgment debt, the rates of interest are those contained in tax legislation. This ensures that interest payable by or to HMRC, whether or not a debt follows from court action, is that prescribed in tax legislation. It is appropriate for interest rates on judgment debts relating to taxation matters to be determined in tax legislation rather than the Judgments Act, County Courts Act. This measure is to extend the same principle to include National Insurance contributions debts within the provision by including National Insurance contributions in the definition of taxation matter.

5. This change applies to cases both where HMRC receives judgment interest where it has won a case, and where it pays judgment interest where it has lost a case.

6. The government is making this change to ensure a consistent UK-wide position that where HMRC is party to a tax-related debt, and that debt includes National Insurance contributions, the rates of interest are those contained in tax legislation.

Clause 161: Gift Aid: power to impose penalties on charities and intermediaries

Summary

1. This clause amends primary legislation introduced at Finance Bill 2014. This amendment gives HMRC the power to impose penalties if an intermediary or a charity fails to comply with requirements set out in regulations. An appointed day order will be completed to commence the primary legislation when regulations have been finalised.

Details of the clause

2. Subsection (1) modifies section 428 ITA 2007 by inserting new subsection (5). This sets out when a penalty may be imposed, the maximum amount that can be imposed per failure to comply with requirements and confers a right of appeal against the imposition of a penalty.

3. Subsection (2) provides that the clause will take affect from the day appointed by regulations.

Background note

4. At Finance Bill 2015 primary legislation was introduced to define intermediaries and explain their relationship with charities. The aim is to make it simpler for donors to Gift Aid their donations made through digital channels such as text message donations and online donations. This supports the government's objective of maximising Gift Aid on eligible donations.

5. This measure will give HMRC the powers to impose penalties if intermediaries fail to comply with requirements set out in regulations.

6. These regulations will be discussed in a technical consultation early next year and will be laid later in 2016.

Clause 162: Proceedings under customs and excise Acts: prosecuting authority

Summary

1. This clause makes minor amendments to Part 11 of the Customs and Excise Management Act (CEMA) 1979.
2. It will amend section 146A(7)(b) and (c) to remove reference to the Commissioners from the definition of prosecuting authority for Scotland and Northern Ireland. As well as this it will insert the Director of Public Prosecutions for Northern Ireland as the relevant prosecuting authority for Northern Ireland. The effect of the amendments will be to clarify that the time limit for commencing summary proceedings under the customs and excise Acts only starts to run from the date on which the procurator fiscal (for Scotland) or the Director of Public Prosecutions for Northern Ireland, has knowledge of sufficient evidence to justify the proceedings, rather than the Commissioners.
3. The term prosecuting authority will also be used in s150, in place of the current reference to the Commissioners, to clarify that it is a matter for the procurator fiscal or the Director of Public Prosecutions for Northern Ireland, as appropriate, to decide whether to charge persons jointly or severally with an offence under the customs and excise Acts.

Details of the clause

4. Subsection 1 specifies the part of CEMA 1979 to which the subsequent amendments apply.
5. Subsection 2 sets out the amendments to the definition of prosecuting authority in section 146A(7).
6. Subsection 2(a) substitutes the word "prosecution" with "prosecuting" in the opening words of section 146A(7).
7. Subsection 2(b) removes the words "the Commissioners or" from Section 146A(7)(b).
8. Subsection 2(c) replaces the words "the Commissioners" with "the Director of Public Prosecutions for Northern Ireland" in Section 146A(7)(c).
9. Subsection 3 substitutes the words from "the Director" to "Northern Ireland" with "prosecuting authority (within the meaning of section 146A)" in Section 150(1).
10. Subsection 4 omits paragraph 25 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 as a consequence of subsection 3.

Background note

11. Section 146A(3) CEMA states that proceedings for summary offences under the customs and excise Acts must be commenced within six months from the date on which sufficient evidence

came to the knowledge of the prosecuting authority.

12. At present the prosecuting authority for Scotland is defined in section 146A(7)(b) as "the Commissioners or the procurator fiscal" and, in s146A(7)(c) for Northern Ireland, as "the Commissioners", being the Commissioners for HMRC. Section 146A(7)(a), as presently drafted, defines the prosecuting authority for England and Wales as the Director of Public Prosecutions, with no reference to the Commissioners.

13. However, while offences under the customs and excise Acts are investigated by HMRC, decisions about whether to institute proceedings are made, in Northern Ireland, by the Director of Public Prosecutions for Northern Ireland and in Scotland, by the procurator fiscal.

14. The proposed amendments will ensure that the time limit for summary offences does not start to run before the date at which the procurator fiscal or the Director of Public Prosecutions for Northern Ireland (the independent authorities responsible for determining whether a prosecution should be commenced) has knowledge of sufficient evidence to warrant the proceedings. This removes any possibility that the time limit could be triggered at a date before the matter has been referred to the relevant prosecuting authority. It will also align the definition of prosecuting authority for Scotland and Northern Ireland with the present drafting of prosecuting authority for England and Wales.

15. For consistency, the amended definition of prosecuting authority in section 146A(7) will be extended to section 150, to replace the current reference to the Commissioners, so that it is for the procurator fiscal or the Director of Public Prosecutions for Northern Ireland to decide whether to proceed against persons jointly or severally for offences under the customs and excise Acts.

Clause 163: Detention and seizure under CEMA 1979: Notice requirement etc.

Summary

1. This clause makes amendments to Schedules 2A and 3 of the Customs and Excise Management Act 1979 ('CEMA').

2. It augments current legislation relating to the detention or seizure of goods liable to forfeiture. The legislation will amend paragraph 3(2) of Schedule 2A and paragraph 1(2) of Schedule 3 to provide exemptions from the duty to serve a notice on the person who has, or appears to have, possession or control over any thing being detained or seized or on the driver of any type of vehicle on or from which the goods are detained or seized.

3. As a consequence of changes made to paragraph 3(2) of Schedule 2A it is necessary to make consequential amendments to paragraph 4(2) of that Schedule. The clause also makes certain other minor drafting amendments to ensure consistency.

Details of the clause

4. Subsection 1 introduces the amendments to CEMA.

Schedule 2A

5. Subsection 2 specifies the parts of Schedule 2A to which the subsequent amendments apply.

6. Subsection 3(a) inserts new sub-paragraph (ba) to include a person who has or appears to have possession or control of the thing being detained.

7. Subsection 3(b) inserts the words "or from" after the word "on" in sub-paragraph 3(2)(c)

8. Subsection 3(c) inserts new sub-paragraph (d) to sub-paragraph 3(2) to include the driver of the vehicle in the case where any thing is detained on or from any type of vehicle.

9. Subsection 4 substitutes sub-paragraphs (a) and (b) of sub-paragraph 4(2) with new sub-paragraphs (a) to (f) listing those persons within the meaning of sub-paragraph 4(2). This is to ensure consistency with paragraph 3(2).

Schedule 3

10. Subsection 5(a) inserts new sub-paragraph (ba) after sub-paragraph 1(2)(b) to include a person who has or appears to have possession or control of the thing being seized.

11. Subsection 5(b) replaces the word "in" for "on or from" in sub-paragraph 1(2)(c).

12. Subsection 5(c) inserts new sub-paragraph (d) after sub-paragraph 1(2)(c) to include the driver of the vehicle in the case where any thing is seized on or from any type of vehicle.

Background note

13. The clause has been introduced in order to provide operational assistance to HMRC and Border Force officers who are placed in some difficulty where it is unclear who the owner of the goods is. The measure permits officers to treat the driver, or a person in a comparable situation, as if he or she were a representative of the owner.

14. HMRC has a duty to take robust action to deal with those who smuggle illicit goods of any description into the UK or seek to bring in goods on which duty has not been paid. The detention and seizure of goods is, in particular, a valuable tool in the fight against duty evasion.

Clause 164: Data- gathering powers: providers of payment or intermediary services

Summary

1. This clause extends Schedule 23 to 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. The changes bring into the list of data-holders providers of electronic stored-value payment services, who perform a similar function to merchant acquirers, by operating "digital wallets" (These are where a monetary value is stored, from a bank account or payment card electronically for use to transfer payments to a retailer or trader); and business intermediaries, who facilitate transactions between supplier and their customer or clients. This will future proof legislation to include emerging new data sources of a similar type. The changes will have effect from Royal Assent to the Finance Bill 2016.

Details of the clause

3. Subsection1 amends Part 2 of Schedule 23 to FA 2011 to insert a new paragraph 13B for providers of electronic stored-value payment services which would cover stored-value denominated in anything that has a value expressible in money terms, and a new paragraph 13C for business intermediaries (excluding services which solely enable payments to be made) as a new category of relevant data-holder.

4. Subsection2 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

5. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

6. Since Schedule 23 FA 2011, these new powers were introduced, new payment methods and innovations have arisen through developments in the digital world. Electronic stored-value payment services and business intermediaries were not explicitly specified as data-holders in Schedule 23 FA2011 as originally enacted and do not fall within any other existing categories of data-holder specified in the schedule.

7. 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. HMRC will not be obtaining data about the individual consumer. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power.

8. Treasury secondary legislation is needed to specify the data that HMRC may require electronic payment service providers and business intermediaries to provide. These draft regulations were published on 9 December 2015 and the Government intends to introduce them to Parliament by the end of the summer 2016.

Clause 165: Data-gathering powers: daily penalties for extended default

Summary

1. This clause amends Schedule 23 to Finance Act (FA) 2011 which covers HM Revenue & Customs (HMRC) data-gathering powers. 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. Schedule 23 contains provisions by which increased daily penalties can be approved and assessed if a data-holder does not comply with a data information notice request. They make clear that it is for the tribunal to decide a new maximum increased daily penalty amount and the date from which it may be applied. HMRC then assess and notify any such penalties that data-holders incur. HMRC considered that, as drafted, the provisions were not sufficiently clear and may have led to confusion for data-holders and obstacles to the administration of these penalties.

Details of the clause

3. Subsection 1 amends Part 4 of Schedule 23 FA 2011.

4. Subsection 2 amends paragraph 38 of Schedule 23 FA2011. The effect of this change will be for the tribunal to decide whether an increased daily penalty is allowed, determine the new maximum amount of such a penalty and the date from which it can be applied. The process for assessing the increased penalty remains with HMRC, but will now be under paragraph 31 of Schedule 23 FA2011. The new maximum amount allowed by the tribunal replaces the £60 amount in that paragraph.

5. Subsection 3 corrects the administrative provisions in paragraph 39 of Schedule 23 of FA2011 about notification of the penalty. The changes provide a framework for assessing the penalty and enable use of the existing daily penalty framework under paragraph 35 of Schedule 23 FA 2011.

6. Subsection 4 makes a consequential correction to paragraph 40 of Schedule 23 FA2011 by omitting the reference to paragraph 39 of Schedule 23 FA2011.

7. Subsection 5 provides that there is no right of appeal against the amount of the new maximum daily penalty determined by the tribunal. But taxpayers may appeal against a new maximum daily penalty assessment on the basis that the conditions for applying a daily penalty have not been met.

Background note

8. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. Schedule

23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. These data are used for risk analysis, to enable HMRC to target its compliance work more accurately.

9. The data help HMRC identify traders that are receiving income but are not registered for tax, as well as those who are registered but under-declare their income to HMRC.

10. The clause amends Schedule 23 FA 2011 to clarify the administration of the increased daily penalty. There are two other measures in this Bill which add two new categories of data-holders (electronic payment providers and business intermediaries) to Schedule 23 FA2011.

Clause 166: Extension of provisions about set-off to Scotland.

Summary

1. This clause extends the provisions of sections 130 and 131 of the Finance Act (FA) 2008 to Scotland.

Details of the clause

2. Subsection (1) provides that the provisions of section 130 and section 131 of FA 2008, which currently extend to England, Wales and Northern Ireland, will extend also to Scotland.
3. Subsection (3) amends Section 130, which currently extends to England, Wales and Northern Ireland and provides the basis for HM Revenue & Customs (HMRC) to set-off sums payable to a person by HMRC ('a credit') against amounts owed to HMRC by the same person ('a debit'), to extend its application to Scotland.
4. Subsection (4) amends Section 131, which currently provides that set-off will not apply under section 130 where an insolvency procedure has been applied to set a post-insolvency credit against a pre insolvency debit, to extend those provisions to Scotland and to include certain insolvency procedures that are applied in Scotland.

Background note

5. FA 2008 introduced a legislative basis for set-off in England, Wales and Northern Ireland. At this time the Scottish Common Law provisions were deemed sufficient for the purposes of set off. However, for the avoidance of any doubt and consistency of approach, this clause is introduced to provide the same legislative basis for set off across the UK.
6. Section 131 provides that set-off will not be applied where the person is subject to an insolvency procedure to set a post-insolvency credit against a pre-insolvency debit and this clause extends the same provisions to Scotland. This will mean that the set off provisions will not apply anywhere in the UK when the person concerned is subject to such an insolvency procedure.

Clause 167: Raw Tobacco Approval Scheme

Summary

1. This clause amends the Tobacco Products Duty Act (TPDA) 1979 to introduce new provisions prohibiting any person from carrying out any activity involving raw tobacco, unless the person holds an approval given by HM Revenue & Customs (HMRC). The scheme is due to have effect from 1 January 2017.

Details of the clause

2. Subsection (1) inserts new sections after section 8J TPDA 1979.

Section 8K: Raw tobacco: definitions

3. This section contains the definitions of raw tobacco and controlled activities for the purpose of sections 8L to 8U.

Section 8L: Raw tobacco: requirement for approval

4. New subsection (1) states that no controlled activity may be carried out by a person otherwise than in accordance with an approval given by the Commissioners.

5. New subsection (2) specifies that approval will only be given if the applicant is a fit and proper person and the activity is not to be carried on for the purpose of or with a view to the fraudulent evasion of tobacco duty.

6. New subsection (3) provides that an approval may be time-limited and subject to conditions or restrictions.

7. New subsection (4) gives the Commissioners power to revoke or vary an approval on the basis of a reasonable cause.

Section 8M: Regulations about approval etc.

8. This section provides for a power, to be exercised by or under regulations, to regulate applications for and the contents of approvals.

Section 8N: Exemptions from requirement for approval

9. New subsection (1) allows for the Commissioners by regulations to provide an exemption from the requirement for an approval under section 8L. An exemption may be made subject to compliance with conditions specified by or under regulations. .

10. New subsection (2) states that an exempt person may need to comply with specific requirements or restrictions.

11. New subsection (3) states that the Commissioners may by regulations provide for a maximum

quantity of raw tobacco that can be involved in a controlled activity carried out by an exempt person and that there may be a requirement for an exempt person to keep records.

Section 8O: Raw tobacco: penalties

12. New subsection (1) states that a person who contravenes the approval requirement will be liable to a penalty that is equal to the amount of duty that would be charged on the 'relevant amount' of smoking tobacco.

13. New subsection (2) provides that a penalty for a person who contravenes a requirement or restriction imposed by or under regulation under section 8N will be either £250 or an amount equal to the duty on smoking tobacco.

14. New subsection (3) provides that the 'relevant amount' of smoking tobacco is an amount equal to the quantity by weight of the raw tobacco which is the subject of the contravention.

15. New subsection (4) specifies that a reference to smoking tobacco is a reference to smoking tobacco as mentioned within section 1(1)(d) TPDA 1979.

Section 8P: Penalties under section 8O: special reduction

16. New subsection (1) states that under special circumstances the Commissioners may reduce a penalty under section 8O.

17. New subsection (2) provides that the ability to pay the penalty does not qualify as a special circumstance.

18. New subsection (3) provides that reducing a penalty includes staying it, or agreeing to a compromise in relation to proceedings.

Section 8Q: Penalties under section 8O: assessment of penalty

19. New subsection (1) states that the Commissioners may assess a penalty to a person who is liable. If they do so, they must notify that person.

20. New subsection (2) specifies that a penalty notice must state the contravention that is being penalised.

21. New subsection (3) provides that a penalty must be paid before the end of the period of 30 days beginning with the day that the notification of the penalty is issued

22. New subsection (4) specifies that an assessment is to be treated as the amount of duty due from the person who is liable.

23. New subsection (5) specifies that an assessment may not be made later than one year after evidence of facts, which in the opinion of the Commissioners is sufficient to indicate the contravention, comes to their knowledge.

24. New subsection (6) states that for the purposes of assessing a penalty, two or more contraventions may be treated as one contravention.

Section 8R: Penalties under section 8O: reasonable excuse

25. New subsection (1) states that a person is not liable to a penalty if the person satisfies the Commissioners that there is a reasonable excuse for the contravention and the contravention is not deliberate

26. New subsection (2) details that a reasonable excuse does not include a situation in which the person relies on another person, and that other person did not take reasonable care to avoid the contravention. It also provides that where the reasonable excuse has ceased, it is treated as extant provided that the person remedied the contravention without unreasonable delay.

Section 8S: Penalties under section 8O: double jeopardy

27. This section states a person is not liable to a penalty if they have been convicted of an offence in relation to the same contravention.

Section 8T: Forfeiture of raw tobacco

28. This section states that where there is a contravention of either section 8L or a requirement or restriction imposed by or under regulations under section 8N then the raw tobacco will be liable to forfeiture.

Section 8U: Raw tobacco: application of Customs and Excise Management Act 1979

29. This section provides that the provisions of the Customs and Excise Management Act 1979 may, where provided for by way of regulations, apply to persons who carry on a controlled activity as they apply in relation to revenue traders; and also apply to raw tobacco as they apply in relation to tobacco products.

30. Subsection (2) provides for an amendment to section 9 TPDA 1979 such that a statutory instrument made under sections 8M, 8N or 8U is subject to annulment in pursuance of resolution of the House of Commons.

31. Subsection (3) provides an amendment to be made to section 13A(2) FA 1994 to include any decision made by HMRC as to the liability or the amount of a penalty under section 8O TPDA 1979.

32. Subsection (4) amends section Schedule 5 of FA 1994 to include the refusal of an approval request, the imposition of conditions to an approval or the variation or revocation of an approval to be subject to review and appeal.

33. Subsection (5) allows these amendments to come into force on a day that the Commissioners appoint by way of regulations.

34. Subsection (6) provides for regulations to come into affect on different days for different purposes.

Background note

35. This clause has been introduced to prohibit activities involving raw tobacco by an

unapproved person, to assist in the prevention of the illegal manufacture of tobacco products.

36. Raw tobacco which is not yet in a smokeable form is not subject to excise duty or any possession controls. This is presenting an increasing risk of evasion of tobacco products duty through raw tobacco being freely and legally imported and either processed into smoking products in unregistered premises or sold in small quantities to consumers for home processing

37. At March Budget 2015, following consultation, the Government announced its intention to introduce an approval scheme to tighten controls on the use of raw tobacco in order to reduce the risk of evasion of tobacco products duty. The approval scheme was considered to be the least restrictive way to target the fraudulent evasion of tobacco duty through the importation of raw tobacco. HMRC intends to accept applications for approval from October 2016, and the scheme is due to take effect from 1 January 2017.

Clause 168 and Schedule 24: Powers to obtain information about certain tax advantages

Summary

1. This clause and Schedule introduces new powers to enable HM Revenue and Customs (HMRC) to collect information on certain state aids. Together with clauses and these new powers will allow HMRC to monitor and evaluate state aid tax reliefs and other tax advantages, and share certain information through a legal gateway for the purpose of complying with EU obligations.

Details of the clause and Schedule

Clause 168: Powers to obtain information about certain tax advantages

2. Clause 168 provides HMRC with new powers to collect information for the purpose of complying with EU obligations in relation to state aids granted through tax advantages.
3. Subsection (1) determines the scope of the new powers and sets out the circumstances when they will be exercised by HMRC. In particular the scope of the powers is restricted to complying with relevant EU obligations which are defined in clause (1).
4. Subsection (2) prescribes that any claim in respect of the state aids listed in Part 1 of Schedule [js1055] must include the information required by HMRC for the purpose of complying with the relevant EU obligations. Subsection (2) provides for HMRC to determine the form in which the information is to be provided.
5. Subsection (3) describes the type of information that will be required.
6. Subsection (4) allows the determination to be varied or revoked depending on the circumstances of the claim.
7. Subsection (5) describes the circumstances when subsection (6) applies in respect of tax advantages listed in Part 2 of Schedule .
8. Subsection (6) recognises that the person receiving the tax advantage and the beneficiary of the aid can be different persons, and that a tax advantage can be granted other than by way of a claim. It is not therefore always appropriate to request the information from the claimant or at the time of the claim. Subsection (6) provides HMRC with the power to request relevant information from the relevant person in respect of the tax advantages listed in Part 2 of Schedule .
9. Subsection (7) provides that the relevant person must comply with the requirement within the period specified.

10. Subsection (8) defines "relevant person" by reference to the third column in Part 2 of Schedule .

11. Subsection (9) lists the type of information that will be required from the relevant person.

12. Subsection (10) restricts the powers to claims made on or after 1 July 2016.

13. Subsection (11) makes clear that a notice under subsection (6) can include a request for information relating to matters before or after this Act is passed.

Schedule 24

14. Schedule provides a list of the tax advantages to which these powers relate. Part 1 provides a list of the tax advantages where information will be provided as part of the claim. Part 2 provides a list of the tax advantages where the Commissioners will exercise their power to require information from the relevant person.

Background note

15. State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU). It includes certain tax reliefs and other advantages. The UK and EU support strong state aid rules to ensure aid is well targeted to address market failures and avoid negative effects on competition.

16. In 2012 the European Commission set out a programme to modernise state aids, including reporting. One of the key ambitions is to streamline processes and reduce the number of aids that require detailed examination by the European Commission before they can be implemented. To offset reduced examination this reform requires that the aids be monitored and evaluated, and introduces more transparency after implementation. Details of the state aids received by beneficiaries will be published through the European Commission's database.

17. This clause and Schedule, together with clauses and , will enable HMRC to monitor and evaluate the state aid tax reliefs and tax advantages it administers. Certain information collected by HMRC will be published through the European Commission's database in accordance with the relevant EU obligations, some of which commence on 1 July 2016.

18. Information will only be published for those beneficiaries who are in receipt of aid above €500,000. The person receiving the tax advantage and the beneficiary of the aid may be different persons. The specific amount of the tax advantage will not be published. Information will be published in ranges.

Clause 169: Power to publish state aid information

Summary

1. This clause introduces new powers to enable HM Revenue and Customs (HMRC) to publish and disclose information on certain state aids. Together with clauses , and Schedule , these new powers will allow HMRC to monitor and evaluate state aid tax reliefs and other tax advantages, and share certain information through a legal gateway for the purpose of complying with EU obligations.

Details of the clause

2. Clause 169 introduces a new power to allow HMRC to publish and disclose information about the state aids received by beneficiaries in accordance with the relevant EU obligations.

3. Subsection (1) limits HMRC's power to publish state aid information to compliance with the relevant EU obligations, as defined in clause 169.

4. Subsection (2) allows disclosure of state aid information to another person to secure publication.

5. Subsection (3) defines "state aid information".

6. Subsection (4) ensures that the power to publish information under the relevant EU obligations includes information that may exist before enactment of this clause.

Background note

7. State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU). It includes certain tax reliefs and other advantages. The UK and EU support strong state aid rules to ensure aid is well targeted to address market failures and avoid negative effects on competition.

8. In 2012 the European Commission set out a programme to modernise state aids, including reporting. One of the key ambitions is to streamline processes and reduce the number of aids that require detailed examination by the European Commission before they can be implemented. To offset reduced examination this reform requires that the aids be monitored and evaluated, and introduces more transparency after implementation. Details of the state aids received by beneficiaries will be published through the European Commission's database.

9. This clause, together with clauses , and Schedule , will enable HMRC to monitor and evaluate the state aid tax reliefs and tax advantages it administers. Certain information collected by HMRC will be published through the European Commission's database in accordance with the relevant EU obligations, some of which commence on 1 July 2016.

10. Information will only be published for those beneficiaries who are in receipt of aid above €500,000. The person receiving the tax advantage and the beneficiary of the aid may be

different persons. The specific amount of the tax advantage will not be published. Information will be published in ranges.

Clause 170: Information powers: supplementary

Summary

1. This clause defines certain terms used in clauses 168 and 169 and provides a power for the Treasury to amend Schedule . Together, clauses , and Schedule introduce new powers to enable HM Revenue and Customs (HMRC) to collect, disclose and publish information on certain state aids. These new powers will allow HMRC to monitor and evaluate state aid tax reliefs and other tax advantages, and share certain information through a legal gateway for the purpose of complying with EU obligations.

Details of the clause

2. Clause 170 provides for supplementary provisions to be introduced.
3. Subsection (1) defines "the Commissioners" and "relevant EU obligations".
4. Subsection (2) defines "the General Block Exemption Regulation".
5. Subsections (3) to (5) provides a power for the Treasury to amend the list of tax advantages in Schedule under the negative procedure.
6. Subsection (6) makes clear that the powers in clauses 168 and 169 are in addition to any additional powers held by HMRC.

Background note

7. State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU). It includes certain tax reliefs and other advantages. The UK and EU support strong state aid rules to ensure aid is well targeted to address market failures and avoid negative effects on competition.
8. In 2012 the European Commission set out a programme to modernise state aids, including reporting. One of the key ambitions is to streamline processes and reduce the number of aids that require detailed examination by the European Commission before they can be implemented. To offset reduced examination this reform requires that the aids be monitored and evaluated, and introduces more transparency after implementation. Details of the state aids received by beneficiaries will be published through the European Commission's database.
9. This clause, together with clauses , and Schedule , will enable HMRC to monitor and evaluate the state aid tax reliefs and tax advantages it administers. Certain information collected by HMRC will be published through the European Commission's database in accordance with the relevant EU obligations, some of which commence on 1 July 2016.

10. Information will only be published for those beneficiaries who are in receipt of aid above €500,000. The person receiving the tax advantage and the beneficiary of the aid may be different persons. The specific amount of the tax advantage will not be published. Information will be published in ranges.

Clause 171: Qualifying transformer vehicles

Summary

1. This clause provides first a power by regulations to define a qualifying transformer company (QTC) and secondly by regulations to determine the tax treatment of QTCs, investors in QTCs and transactions involving QTCs.

Details of the clause

2. Subsection (1) provides that HM Treasury may by regulations define which transformer vehicles are QTCs.
3. Subsection (2) provides for HM Treasury to make regulations determining the tax treatment of QTCs, investors in QTCs and any transactions involving QTCs.
4. Subsection (3) provides that regulations under subsection (2) may disapply, apply or modify the application of legislation to QTCs, investors in QTCs and transactions involved QTCs.
5. Subsection (4)(a) provides that regulations under subsection (2) may determine the way in which profits and other amounts are calculated.
6. Subsection (4)(b) provides that such regulations may determine the way in which an exemption or relief applies in relation to transformer vehicles, investors and transactions.
7. Subsection 4(c) provides that such regulations may include provision to cater for arrangements that have an avoidance purpose.
8. Subsection 4(d) provides that such regulations may determine collection and compliance procedures in relation to QTCs. For example, this may mean applying withholding tax to certain payments made by QTCs.
9. Subsection 4(e) provides that such regulations may determine the information that a QTC must provide to investors.
10. Subsection 4(f) provides that such regulations may specify certain information to be required from QTCs and investors in QTCs and may also deal with other administrative matters.
11. Subsection (5)(a) allows regulations under this clause to provide for Her Majesty's Revenue and Customs to exercise its discretion.
12. Subsection 5(b) allows regulations under this clause to refer to documents issued by third parties (such as Financial Conduct Authority or Prudential Regulation Authority guidance, for example).
13. Subsection (6) further sets out the scope of regulations made under this clause.
14. Subsection (7) provides that regulations under this clause must be made by statutory instrument.
15. Subsections (8) and (9) provide that a statutory instrument made under subsection (1) is

subject to the negative procedure in the House of Commons with the exception of the first set of regulations which must be subject to the affirmative procedure in the House of Commons.

16. Subsection (10) provides that a statutory instrument made under subsection (2) is subject to the affirmative procedure in the House of Commons.

17. Subsection (11) provides definitions for the purpose of this clause.

Background note

18. The clause sets out powers which would enable the creation of a bespoke taxation regime for insurance-linked securities (ILS) business in the UK. ILS are an alternative form of risk mitigation for the insurance and reinsurance industry. Regulations made under this clause may determine the treatment of special purpose vehicles issuing ILS (QTCs) and investors in those vehicles. These new tax rules catering for the particular needs of ILS business will, alongside development of a tailored corporate structure and regulatory regime, maintain and develop the UK's position as a global centre for insurance and reinsurance business.

Clause 172 and Schedule 25: Office of Tax Simplification

Summary

1. This clause and Schedule provides for the permanent establishment of the Office of Tax Simplification (OTS) in statute and makes certain provisions for the governance and operation of the OTS.

Details of the clause and Schedule

2. Subsection (1) establishes the OTS in statute.

3. Subsection (2) introduces Schedule which sets out various provisions for the governance and operation of the OTS.

Schedule 25: Office of Tax Simplification

4. Paragraph 1 makes provision about the membership of the OTS. The OTS will not have more than 8 members. These members must include the chair and a tax director and representatives of the Treasury and HM Revenue and Customs. The chair nominates any additional members. All members are appointed by the Chancellor, however, the Chancellor needs to be satisfied that the tax director has the necessary qualifications and experience for the post (which will, given the nature of the OTS's functions, include tax qualifications and experience). The Chancellor is required to consult the chair prior to the appointment of the tax director.

5. Paragraph 2 contains further provision about membership of the OTS. The terms of the appointment of OTS members are subject to the provisions of sub-paragraph (2). No appointment can be for longer than 5 years, but when members leave the OTS, they can be re-appointed.

6. Paragraph 3 makes provision about the appointment of initial members of the OTS, specifically the chair and tax director. Where the current chair and tax director of the non-statutory OTS are appointed chair and tax director respectively of the statutory OTS, the durations of their appointment begins with the date of their appointment to that non-statutory body. The Chancellor does not need to consult the chair about the appointment of the tax director if that person is the current tax director of the non-statutory OTS.

7. Paragraph 4 specifies that OTS members can leave at any time during their period of appointment by writing to the Chancellor to resign from their post.

8. Paragraph 5 permits the Chancellor to terminate the appointment of an OTS member by giving the member written notice. In the case of the chair, tax director or OTS members nominated by the chair, paragraphs 5(2) and (3) set out the conditions under which the Chancellor can terminate these appointments.

9. Paragraph 6 inserts provision for the Treasury to decide on the remuneration and allowances that it may pay to each member of the OTS.

10. Paragraph 7 makes provision for the Treasury to provide the OTS with any staff, offices and other services and facilities that the Treasury may decide is necessary for the proper performance of the OTS' work.

11. Paragraphs 8, 9 and 10 insert provisions that permit the OTS to establish its own internal governance and controls, as well as operating procedures and process that it may decide is necessary for the proper performance of its work. A vacancy in the membership of the OTS or a defect in the appointment of a member will not affect the validity of the work of the OTS.

12. Paragraph 11 permits the Treasury to provide the OTS with a budget that it considers appropriate for funding the work of the OTS, subject to any conditions that it may determine.

13. Paragraphs 12, 13, 14 and 15 insert provisions to bring the OTS within the scope of the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975, Freedom of Information Act 2000 and the public sector equality duty established by section 149 of the Equality Act 2010.

Background note

14. The OTS was established as a temporary, non-statutory office of the Treasury in July 2010 to provide independent advice to the government on simplifying the UK tax system.

15. At the Summer Budget on 8 July 2015, the Chancellor announced the government's intention to introduce legislation in 2016 to put the OTS on a permanent, statutory footing with an expanded role and capacity.

Clause 173: Functions of the OTS: general

Summary

1. This clause sets out the functions of the Office of Tax Simplification (OTS) to advise on simplifying the tax system.

Details of the clause

2. Subsection (1) sets out that the function of the OTS is to advise the Chancellor on simplifying the tax system, either at the Chancellor's request or of its own accord.
3. Subsection (2) provides that the tax system means those taxes (including the legislation for administering those taxes) for which HM Revenue and Customs are responsible for, including duties and national insurance contributions.
4. Subsection (3) ensures that any references in clause and to simplification of the tax system includes improving the efficiency of the administration of relevant taxes.

Background note

5. The OTS was established as a temporary, non-statutory office of the Treasury in July 2010 to provide independent advice to the government on simplifying the UK tax system.
6. At the Summer Budget on 8 July 2015, the Chancellor announced the government's intention to introduce legislation in 2016 to put the OTS on a permanent, statutory footing with an expanded role and capacity.

Clause 174: Functions of the OTS: reviews and reports

Summary

1. This clause provides for the Chancellor to instruct the Office of Tax Simplification (OTS) to carry out a review, reporting by the OTS on the results of its review, and the publication of the OTS report and government response.

Details of the clause

2. Subsection (1) specifies that the Chancellor can instruct the OTS to carry out a review to provide advice on simplifying any aspect of the tax system.

3. Subsections (2) and (3) require the OTS to report to the Chancellor on the results of its review and make any recommendations it considers appropriate.

4. Subsections (4) and (5) require the Chancellor to publish the OTS report, provide a copy of it to Parliament, and publish a Government response.

Background note

5. The OTS was established as a temporary, non-statutory office of the Treasury in July 2010 to provide independent advice to the government on simplifying the UK tax system.

6. At the Summer Budget on 8 July 2015, the Chancellor announced the government's intention to introduce legislation in 2016 to put the OTS on a permanent, statutory footing with an expanded role and capacity.

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Clause 175: Annual report

Summary

1. This clause provides for the Office of Tax Simplification (OTS) to report to the Chancellor annually about its work, and the publication of the report.

Details of the clause

2. Subsections (1), (2), (3) and (4) require the OTS to provide the Chancellor with, and publish, an annual report about its work as soon as reasonably possible after the end of every financial year, and that the Chancellor has to provide a copy of this report to Parliament.
3. Subsection (5) specifies that a financial year for the purposes of the OTS annual report begins with the day that this section comes takes effect and ends on the following 31 March. Successive financial years then begin on 1 April ending 12 months later on the following 31 March.

Background note

4. The OTS was established as a temporary, non-statutory office of the Treasury in July 2010 to provide independent advice to the government on simplifying the UK tax system.
5. At the Summer Budget on 8 July 2015, the Chancellor announced the government's intention to introduce legislation in 2016 to put the OTS on a permanent, statutory footing with an expanded role and capacity.

Clause 176: Review of the OTS

Summary

1. This clause provides for the Treasury to review the effectiveness of the work of the Office of Tax Simplification (OTS), specifies the review period and requires the Treasury to publish the review report.

Details of the clause

2. Subsection (1) provides for the Treasury to review the effectiveness of the work of the OTS. These reviews must be conducted before the end of a specified review period.
3. Subsection (2) specifies this review period. The first review must be conducted before the end of a 5 year period beginning with the day that this section takes effect. The following reviews must be conducted before the end of a 5 year period beginning with the day on which the previous review was completed.
4. Subsection (3) requires the Treasury to publish a report of each such review.

Background note

5. The OTS was established as a temporary, non-statutory office of the Treasury in July 2010 to provide independent advice to the Government on simplifying the UK tax system.
6. At the Summer Budget on 8 July 2015, the Chancellor announced the Government's intention to introduce legislation in 2016 to put the OTS on a permanent, statutory footing with an expanded role and capacity.

Clause 177: Commencement

Summary

1. This clause provides for the legislation establishing the Office of Tax Simplification (OTS) to take effect from a Treasury appointed day.

Details of the clause

2. Clause provides for this legislation establishing the OTS (clauses to and Schedule) to take effect from an appointed day set out by the Treasury in regulations.

Background note

3. The OTS was established as a temporary, non-statutory office of the Treasury in July 2010 to provide independent advice to the government on simplifying the UK tax system.

4. At the Summer Budget on 8 July 2015, the Chancellor announced the government's intention to introduce legislation in 2016 to put the OTS on a permanent, statutory footing with an expanded role and capacity.

Clause 178: 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 179: Short title

1. This clause provides for the bill to be known as the "Finance Act 2016" upon Royal Assent.

Territorial extent and application in the United Kingdom

1. In the view of HM Government, Finance Bill 2016 has a differential extent and application in the United Kingdom as shown in the table below. The majority of clauses apply to the whole of the United Kingdom.

2. Clauses where there is a differential extent and application appertain to Stamp Duty Land Tax (SDLT), Landfill Tax, rates of interest for judgement debts, proceedings under Customs and Excise Acts and extension of provision about set-off.

3. SDLT applies in England and Northern Ireland and currently in Wales but does not apply in Scotland, which has its own tax on land transactions under the competence of the Scottish Parliament. Section 80I of the Scotland Act 1998 confers on the Scottish Parliament the power to make provision for a tax on land transactions.

4. Landfill Tax applies in England and Northern Ireland and currently in Wales; Scotland has its own tax under the competence of the Scottish Parliament. Section 80K of the Scotland Act 1998 confers on the Scottish Parliament the power to make provision for a tax on disposals to landfill.

5. Clauses appertaining to the rate of judgement debt interest applicable in England and Wales, Scotland and Northern Ireland apply only in those parts of the United Kingdom.

6. Clause 125 relating to the application of the Annual Tax on Enveloped Dwellings (ATED) to Scotland, applies to Scotland only.

7. Clause 162 – 'Proceedings under Customs and Excise Acts: prosecuting authority' – extends to the UK but applies only in relation to Scotland and Northern Ireland.

8. Clause 166 relates to the extension of provision about set-off to Scotland and applies in Scotland only.

Provision	Extends to E&W and applies to **England**	Extends to E&W and applies to **Wales**	Extends and applies to **Scotland**	Extends and applies to **Northern Ireland**	Would corresponding provision be within the competence of the **National Assembly for Wales**?	Would corresponding provision be within the competence of the **Scottish Parliament**?	Would corresponding provision be within the competence of the **Northern Ireland Assembly**?	Legislative Consent Motion needed?
Clauses 1 to 115	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 116 to 122 and Sch 16	Yes	Yes	No	Yes	N/A	Yes	N/A	No
Clauses 123 to 124	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 125	No	No	Yes	No	No	N/A	No	No
Clauses 126 to 129	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 130 and 131	Yes	Yes	No	Yes	N/A	Yes	N/A	No
Clause 132 to 157	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 158	No	No	Yes	No	No	N/A	No	No
Clause 159	No	No	No	Yes	No	No	N/A	No
Clause 160	Yes	Yes	No	No	N/A	No	No	No
Clause 161	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 162	No	No	Yes	Yes	N/A	N/A	N/A	No
Clauses 163 to 165	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 166	No	No	Yes	No	No	N/A	No	No
Clauses 167 to 179	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedules (except Schedule 16)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Minor or consequential effects

1. None identified.