Finance Bill 2012 - draft clauses and explanatory notes

This document contains draft clauses and explanatory notes to be included in Finance Bill 2012. Where available, accompanying draft secondary legislation is provided alongside the relevant clause.

If you have any questions or queries, contact details can be found at the end of the relevant explanatory note following the draft legislation.

Consultation on the draft clauses closes on 10 February 2012.

Additional documentation is published separately on the HM Revenue & Customs and HM Treasury websites.

06 December 2011

Personal tax

Income tax rates and thresholds (including personal allowance)

1 Charge and main rates for 2012-13

(1) Income tax is charged for the tax year 2012-13.

(2) For that tax year—
  (a) the basic rate is 20%,
  (b) the higher rate is 40%, and
  (c) the additional rate is 50%.

2 Basic rate limit for 2012-13

(1) For the tax year 2012-13 the amount specified in section 10(5) of ITA 2007 (basic rate limit) is replaced with "£34,370".

(2) Accordingly section 21 of that Act (indexation of limits), so far as relating to the basic rate limit, does not apply for that tax year.

3 Personal allowance for 2012-13 for those aged under 65

(1) For the tax year 2012-13 the amount specified in section 35(1) of ITA 2007 (personal allowance for those aged under 65) is replaced with "£8,105".

(2) Accordingly section 57 of that Act (indexation of allowances), so far as relating to the amount specified in section 35(1) of that Act, does not apply for that tax year.

EXPLANATORY NOTE

CHARGE AND MAIN RATES FOR 2012-13

SUMMARY

1. This clause imposes the income tax charge for 2012-13 and sets the basic rate of income tax at 20 per cent, the higher rate at 40 per cent and the additional rate at 50 per cent.

DETAILS OF THE CLAUSE

2. Subsection 1 imposes the income tax charge for 2012-13.

3. Subsection 2(a) sets the basic rate of income tax at 20 per cent.

4. Subsection 2(b) sets the higher rate of income tax at 40 per cent.

5. Subsection 2(c) sets the additional rate of income tax at 50 per cent.

BACKGROUND NOTE

6. Income tax is imposed annually by Parliament. The main rates of income tax are also set each year, even where the rates set are the same as for the previous year. The table below sets out the main rates and rate limits for 2012-13, and for reference includes the amounts for 2011-12:

	2011-12	2012-13
Basic rate	£0 - £35,000 at 20 per cent	£0 - £34,370 at 20 per cent
Higher rate	£35,001 - £150,000 at 40 per cent	£34,371 - £150,000 at 40 per cent
Additional rate	Over £150,000 at 50 per cent	Over £150,000 at 50 per cent

7. If you have any questions about this change, or comments on the legislation, please contact Paul Thomas on 020 7147 2479 (email: paul.thomas@hmrc.gsi.gov.uk) or Barbara Jones on 020 7147 2491 (email: Barbara.e.jones@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

BASIC RATE LIMIT FOR 2012-13

SUMMARY

1. This clause sets the amount of the basic rate limit for income tax at £34,370 for 2012-13.

DETAILS OF THE CLAUSE

2. Subsection (1) replaces the existing amount of the basic rate limit in section 10(5) of the Income Tax Act 2007 (£35,000) with £34,370 for 2012-13.

3. Subsection (2) disapplies the indexation provisions for the basic rate limit for 2012-13.

BACKGROUND NOTE

4. An individual's taxable income is charged to tax at the basic rate of tax up to the basic rate limit.

5. The basic rate limit is subject to indexation (an annual increase based upon the percentage increase to the retail prices index). Parliament can over-ride indexed amounts by a provision in the Finance Bill.

6. The table below sets out the amount of the basic rate limit for 2011-12, the indexed amount for 2012-13 and the amount specified by this clause for 2012-13:

2011-12	2012-13 indexed	2012-13 by this clause
£35,000	£37,000	£34,370

7. The effect of this clause is to over-ride the indexed amount for the basic rate limit. This clause is part of a package of measures, together with a further clause in this Bill, that sets the personal allowance for those aged under 65 in an amount above indexation.

8. If you have any questions about this change, or comments on the legislation, please contact Paul Thomas on 020 7147 2479 (email paul.thomas@hmrc.gsi.gov.uk) or Barbara Jones on 020 7147 2491 (email Barbara.e.jones@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PERSONAL ALLOWANCE FOR 2012-13 FOR THOSE AGED UNDER 65

SUMMARY

1. This clause sets the amount of the personal allowance for those aged under 65 at £8,105 for 2012-13.

DETAILS OF THE CLAUSE

2. Subsection 1 replaces the existing amount of the personal allowance for those aged under 65 in section 35(1) of the Income Tax Act 2007 (£7,475) with £8,105 for 2012-13.

3. Subsection 2 disapplies the indexation provisions for the personal allowance for those aged under 65 for 2012-13.

BACKGROUND NOTE

4. An individual is entitled to a personal allowance for income tax. The amount depends upon the individual's age and income.

5. Income tax personal allowances are subject to indexation (an annual increase based upon the percentage increase to the retail prices index). Parliament can over-ride indexed amounts by a provision in the Finance Bill.

6. The table below sets out the amount of the personal allowance for those aged under 65 for 2011-12, the indexed amount for 2012-13 and the amount specified by this clause for 2012-13:

2011-12	2012-13 indexed	2012-13 by this clause
£7,475	£7,895	£8,105

7. The effect of this clause is to over-ride the indexed amount for the personal allowance for those aged under 65. This clause is part of a package of measures together, with a further clause in this Bill, that sets the basic rate limit in an amount below indexation.

8. If you have any questions about this change, or comments on the legislation, please contact Paul Thomas on 020 7147 2479 (email: paul.thomas@hmrc.gsi.gov.uk) or Barbara Jones on 020 7147 2491 (email: Barbara.e.jones@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2011 No.

INCOME TAX

The Income Tax (Indexation) Order 2011

Made - - - - ***

The Treasury make the following Order in exercise of the powers conferred by sections 21(5) and 57(6) of the Income Tax Act 2007(**a**):

Citation and interpretation

1.—(1) This Order may be cited as the Income Tax (Indexation) Order 2011.

(2) In this Order, unless otherwise stated, references to sections are references to sections in the Income Tax Act 2007.

Indexation of the rate limits for the tax year 2012-13

2. For the tax year 2012-13—

(a) the amount specified in section 10(5) (basic rate limit)(**b**) is replaced with "£37,000";

(b) the amount specified in section 12(3) (starting rate limit for savings)(**c**) is replaced with "£2,710".

Indexation of allowances for the tax year 2012-13

3. For the tax year 2012-13—

(a) the amount specified in section 35(1) (personal allowance for those aged under 65)(**d**) is replaced with "£7,895";

(b) the amount specified in section 36(1) (personal allowance for those aged 65 to 74)(**e**) is replaced with "£10,500";

(c) the amount specified in section 37(1) (personal allowance for those aged 75 and over)(**f**) is replaced with "£10,660";

(d) the amount specified in section 38(1) (blind person's allowance)(**a**) is replaced with "£2,100";

(**a**) 2007 c. 3; section 21 was amended by paragraph 11 of Schedule 1 to the Finance Act 2008 (c. 9) ("FA 2008"). Section 57 was amended by section 4(3) of the Finance Act 2009 (c. 10) ("FA 2009").

(**b**) Section 10(5) was substituted by section 4(1) of FA 2008. The amount specified in section 10(5) was last substituted by section 2(1) of the Finance Act 2011 (c. 11) ("FA 2011").

(**c**) Section 12 was substituted by paragraph 5 of Schedule 1 to FA 2008. The amount specified in section 12(3) was last substituted by article 3 of S.I. 2010/2879.

(**d**) Section 35 was amended by section 4(1) of FA 2009. The amount specified in section 35(1) was last substituted by section 3(1) of FA 2011.

(**e**) Section 36 was amended by section 4(2) of FA 2009. The amount specified in section 36(1) was last substituted by article 4(b) of S.I. 2010/2879.

(**f**) Section 37 was amended by section 4(2) of FA 2009. The amount specified in section 37(1) was last substituted by article 4(c) of S.I. 2010/2879.

(e) the amount specified in section 43 (tax reductions for married couples and civil partners: the minimum amount)(**b**) is replaced with “£2,960”;

(f) in section 45 (marriages before 5 December 2005: married couple’s allowance)—

(i) the amount specified in subsection (3)(a)(**c**) is replaced with “£7,705”;

(ii) the amount specified in subsection (3)(b)(**d**) is replaced with “£7,595”;

(g) in section 46 (marriages and civil partnerships on or after 5 December 2005: married couple’s allowance)—

(i) the amount specified in subsection (3)(a)(**e**) is replaced with “£7,705”;

(ii) the amount specified in subsection (3)(b)(**f**) is replaced with “£7,595”;

(h) the amount specified in each of sections 36(2), 37(2), 45(4), 46(4) (adjusted net income limit)(**g**) is replaced with “£25,400”.

Name
Name
Date — Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

For the tax year 2012-13 this Order replaces certain amounts specified in the Income Tax Act 2007 with new, increased amounts. In accordance with the method provided by sections 21 and 57, the increases are calculated by reference to the increase in the retail prices index. Where the retail prices index for the September before the start of the tax year is higher than it was for the previous September an order must be made replacing those amounts. The retail prices index has increased and this Order sets out the new rate limits and allowances for the tax year 2012-13.

Increases made pursuant to section 21(5) are to the basic rate limit and the starting rate limit for savings. Increases made pursuant to section 57(6) are to personal allowances, married couple’s allowance, blind person’s allowance, the income limit for certain of the personal allowances and the married couple’s allowance (“the adjusted net income limit”) and the minimum amount of the married couple’s allowance (“the minimum amount”).

The basic rate limit and the personal allowance for those aged under 65 were last amended by the Finance Act 2011 (c. 11). The other amounts were last increased by the Income Tax (Indexation) Order 2010 (S.I. 2010/2879).

In line with government commitments, a Tax Information and Impact Note has not been prepared for this instrument as it gives effect to previously announced policy and relates to a predetermined indexation formula.

(**a**) The amount specified in section 38(1) was last substituted by article 4(d) of S.I. 2010/2879.
(**b**) The amount specified in section 43 was last substituted by article 4(e) of S.I. 2010/2879.
(**c**) The amount specified in section 45(3)(a) was last substituted by article 4(f)(i) of S.I. 2010/2879.
(**d**) The amount specified in section 45(3)(b) was last substituted by article 4(f)(ii) of S.I. 2010/2879.
(**e**) The amount specified in section 46(3)(a) was last substituted by article 4(g)(i) of S.I. 2010/2879.
(**f**) The amount specified in section 46(3)(b) was last substituted by article 4(g)(ii) of S.I. 2010/2879.
(**g**) Section 36(2) was amended by section 4(2) of FA 2009. Section 37(2) was amended by section 4(2) of FA 2009. The amount specified in each of the provisions in this sub-paragraph was substituted by article 4(h) of S.I. 2010/2879.

Seed Enterprise Investment Scheme (SEIS)

1 Seed enterprise investment scheme

Schedule 1 contains provision about the seed enterprise investment scheme.

SCHEDULE 1

Section 1

SEED ENTERPRISE INVESTMENT SCHEME

PART 1

THE SCHEME

1 In ITA 2007, after Part 5 (enterprise investment scheme) insert—

“PART 5A

SEED ENTERPRISE INVESTMENT SCHEME

CHAPTER 1

INTRODUCTION

SEIS relief

257A Meaning of “SEIS relief” and commencement

(1) This Part provides for SEIS income tax relief (“SEIS relief”), that is, entitlement to tax reductions in respect of amounts subscribed by individuals for shares in companies carrying on new businesses.

(2) In this Part “SEIS” stands for the seed enterprise investment scheme.

(3) This Part has effect only in relation to shares issued—
(a) on or after 6 April 2012, but
(b) before 6 April 2017.

(4) The Treasury may by order substitute a later date for the date for the time being specified in subsection (3)(b).

257AA Eligibility for SEIS relief

An individual (“the investor”) is eligible for SEIS relief in respect of an amount subscribed by the investor on the investor’s own behalf for an issue of shares in a company (“the issuing company”) if—
(a) the shares (“the relevant shares”) are issued to the investor,
(b) the investor is a qualifying investor in relation to the relevant shares (see Chapter 2),
(c) the general requirements (including requirements as to the purpose of the issue of shares and the use of money raised) are met in respect of the relevant shares (see Chapter 3), and
(d) the issuing company is a qualifying company in relation to the relevant shares (see Chapter 4).

257AB Form and amount of SEIS relief

(1) If an individual—
  (a) is eligible for SEIS relief in respect of any amount subscribed for shares, and
  (b) makes a claim in respect of all or some of the shares included in the issue,

the individual is entitled to a tax reduction for the tax year in which the shares were issued ("the current tax year").

This is subject to the provisions of this Part.

(2) The amount of the tax reduction to which the individual is entitled is the amount equal to tax at the SEIS rate for the current year on—
  (a) the amount or, as the case may be, the sum of the amounts subscribed for shares issued in that year in respect of which the individual is eligible for and claims SEIS relief, or
  (b) if less, £100,000.

(3) In this Part "the SEIS rate" means 50%.

(4) The tax reduction is given effect at Step 6 of the calculation in section 23.

(5) If in the case of any issue of shares—
  (a) which are issued in the current year, and
  (b) in respect of the amount subscribed for which the individual is eligible for SEIS relief,

the individual so claims, subsections (1) and (2) apply as if, in respect of such part of that issue as may be specified in the claim, the shares had been issued in the preceding tax year, and the individual's liability to tax for both tax years is determined accordingly.

Miscellaneous

257AC Meaning of "period A" and "period B"

(1) This section applies for the purposes of this Part in relation to any shares issued by a company.

(2) "Period A" means the period—
  (a) beginning with the incorporation of the company, and
  (b) ending immediately before the termination date relating to the shares.

(3) "Period B" means the period—
  (a) beginning with the issue of the shares, and
  (b) ending immediately before the termination date relating to the shares.

(4) In this section "the termination date", in relation to the shares, means the third anniversary of the date on which the shares are issued.

257AD Overview of other Chapters of Part

In this Part—

(a) Chapter 5 provides for the attribution of SEIS relief to shares and the making of claims for such relief,

(b) Chapter 6 provides for SEIS relief to be withdrawn or reduced in the circumstances mentioned in that Chapter,

(c) Chapter 7 makes provision with respect to the procedure for the withdrawal or reduction of SEIS relief, and

(d) Chapter 8 contains supplementary and general provisions.

257AE CGT reliefs relating to SEIS

Section 150E of TCGA 1992 makes provision about gains or losses on the disposal of shares to which SEIS relief is attributable.

CHAPTER 2

THE INVESTOR

Introduction

257B Overview of Chapter

The investor is a qualifying investor in relation to the relevant shares if the requirements of this Chapter are met as to—

(a) no employee investors (see section 257BA),

(b) no substantial interest in the issuing company (see section 257BB),

(c) no related investment arrangements (see section 257BC),

(d) no linked loans (see section 257BD), and

(e) no tax avoidance (see section 257BE).

The requirements

257BA The no employee investors requirement

(1) Neither the investor nor an associate of the investor may, at any time during period A, be an employee of the issuing company.

(2) For this purpose a person is not to be treated as an employee of the issuing company at any time when the person is a director of that company.

257BB The no substantial interest in the issuing company requirement

The investor must not have a substantial interest in the issuing company at any time during period A.

257BC The no related investment arrangements requirement

The investor ("P") must not subscribe for the relevant shares as part of an arrangement which provides for another person to subscribe for shares in another company in which P, or any other individual who is party to the arrangement, has a substantial interest.

257BD The no linked loan requirement

(1) No linked loan is to be made by any person, at any time in period A, to the investor or an associate of the investor.

(2) In this section "linked loan" means any loan which—
(a) would not have been made, or
(b) would not have been made on the same terms,
if the investor had not subscribed for the relevant shares, or had not been proposing to do so.

(3) References in this section to the making by any person of a loan to the investor or an associate of the investor include a reference—
(a) to the giving by that person of any credit to the investor or any associate of the investor, and
(b) to the assignment to that person of a debt due from the investor or any associate of the investor.

257BE The no tax avoidance requirement

The relevant shares must be subscribed for by the investor for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Meaning of substantial interest in a company

257BF Persons with a substantial interest in a company

(1) An individual has a substantial interest in a company if the individual directly or indirectly possesses or is entitled to acquire more than 30% of—
(a) the ordinary share capital of the company or any subsidiary of the company,
(b) the issued share capital of the company or any such subsidiary, or
(c) the voting power in the company or any such subsidiary.

(2) An individual has a substantial interest in a company if the individual directly or indirectly possesses or is entitled to acquire such rights as would—
(a) in the event of the winding up of the company or any subsidiary of the company, or
(b) in any other circumstances,
entitle the individual to receive more than 30% of the assets of the company or subsidiary ("the company in question") which would then be available for distribution to equity holders of the company in question.

(3) For the purposes of subsection (2)—
(a) the persons who are equity holders of the company in question, and
(b) the percentage of the assets of the company in question to which the individual would be entitled,
are determined in accordance with Chapter 6 of Part 5 of CTA 2010.

(4) In making that determination—
(a) references in section 166 of that Act to company A are to be read as references to an equity holder, and

(b) references in that section to a winding up are to be read as including a reference to any other circumstances in which assets of the company in question are available for distribution to its equity holders.

(5) An individual does not have a substantial interest in a company merely because one or more shares in the company are held by the individual or by an associate of the individual, at a time when the company—

(a) has not issued any shares other than subscriber shares, and

(b) has not begun to carry on, or make preparations for carrying on, any trade or business.

(6) An individual has a substantial interest in a company if the individual has control of the company or any subsidiary of that company.

(7) In this section "subsidiary", in relation to a company, means a company which at any time in period A is a 51% subsidiary of the company, whether or not it is such a subsidiary while the individual concerned has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.

CHAPTER 3

GENERAL REQUIREMENTS

Introduction

257C Overview of Chapter

The general requirements are met in respect of the relevant shares if the requirements of this Chapter are met as to—

(a) the shares (see section 257CA),

(b) the purpose of the issue (see section 257CB),

(c) the spending of the money raised (see section 257CC),

(d) no pre-arranged exits (see section 257CD),

(e) no tax avoidance (see section 257CE), and

(f) no disqualifying arrangements (see section 257CF).

The requirements

257CA The shares requirement

(1) The relevant shares must meet—

(a) the requirements of subsection (2), and

(b) unless they are bonus shares, the requirements of subsection (4).

(2) Shares meet the requirements of this subsection if they are ordinary shares which do not, at any time during period B, carry—

(a) any present or future preferential right to dividends that is within subsection (3),

(b) any present or future preferential right to a company's assets on its winding up, or
(c) any present or future right to be redeemed.

(3) A preferential right to dividends carried by a share in a company is within this subsection if—
(a) the amount of any dividends payable pursuant to the right, or the date or dates on which they are payable, depend to any extent on a decision of the company, the holder of the share or any other person, or
(b) the amount of any dividends that become payable at any time pursuant to the right includes any amount that became payable at any earlier time pursuant to the right but has not been paid.

(4) Shares meet the requirements of this subsection if they—
(a) are subscribed for wholly in cash,
(b) are fully paid up at the time they are issued, and
(c) are held by the investor throughout period B.

(5) For the purposes of subsection (4)(c), any part of period B which falls after the investor's death or during which the investor is incapacitated by infirmity or other cause is to be ignored.

257CB The purpose of the issue requirement

(1) The relevant shares (other than any of them which are bonus shares) must be issued in order to raise money for the purposes of a qualifying business activity carried on, or to be carried on, by the issuing company.

(2) For the meaning of "qualifying business activity" see section 257HD.

257CC The spending of the money raised requirement

(1) The requirement of this section is that before the end of period B all of the money raised by the issue of the relevant shares (other than any of them which are bonus shares) is spent by the issuing company for the purposes of the qualifying business activity for which it was raised.

(2) This requirement does not fail to be met merely because an amount of money which is not significant is spent for another purpose.

257CD The no pre-arranged exits requirement

(1) The issuing arrangements for the relevant shares must not include—
(a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the issuing company,
(b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the issuing company or a person connected with that company,
(c) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the issuing company or of a person connected with that company, or

(d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in the issuing company against what would otherwise be the risks attached to making the investment.

(2) The arrangements referred to in subsection (1)(b) and (c) do not include any arrangements applicable only on the winding up of a company except in a case where—

(a) the issuing arrangements include arrangements for the company to be wound up, or

(b) the arrangements are applicable to the winding up of the company otherwise than for genuine commercial reasons.

(3) The arrangements referred to in subsection (1)(d) do not include any arrangements which are confined to the provision for the issuing company of any such protection against risks arising in the course of carrying on its business as might reasonably be expected to be provided in normal commercial circumstances.

(4) In this section "the issuing arrangements" means—

(a) the arrangements under which the shares are issued to the individual,

(b) any arrangements made, before the shares were issued, in relation to or in connection with the issue, and

(c) if before the shares were issued information on pre-arranged exits was made available to any prospective subscribers for shares in the issuing company, any arrangements made during period B.

(5) For the purposes of subsection (4)(c) "information on pre-arranged exits" means any information indicating the possibility of making, during period B, arrangements of the kind described in paragraph (a), (b), (c) or (d) of subsection (1).

257CE The no tax avoidance requirement

The relevant shares must be issued for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

257CF The no disqualifying arrangements requirement

(1) The relevant shares must not be issued in consequence of, or otherwise in connection with, disqualifying arrangements.

(2) Arrangements are "disqualifying arrangements" if—

(a) the main purpose, or one of the main purposes, of any person ("P") in being a party to them is to secure—

(i) that the issuing company carries on a business which consists of or includes the relevant qualifying business activity, and

(ii) that one or more persons (whether or not including P) may obtain relevant tax relief in respect of shares issued by the issuing company which raise money for the purposes of that activity or that such shares may

comprise part of the qualifying holdings of a VCT, and

(b) one or both of conditions A and B are met.

(3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant shares being spent as required by section 257CC, an amount representing the whole or the majority of the amount raised is paid to or for the benefit of a party to the arrangements or a person connected with such a party.

(4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the component activities of the relevant qualifying business activity would have been carried on as part of another business (whether by P or any other person).

(5) For the purposes of this section it is immaterial whether the issuing company is a party to the arrangements.

(6) In this section—

"component activities" means—

(a) if the relevant qualifying business activity is activity A (see section 257HD(2)), the carrying on of a new qualifying trade, or preparing to carry on such a trade, which constitutes that activity, and

(b) if the relevant qualifying business activity is activity B (see section 257HD(4)), the carrying on of research and development which constitutes that activity;

"qualifying holdings", in relation to the issuing company, is to be construed in accordance with section 286 (VCTs: qualifying holdings);

"relevant qualifying business activity" means the activity for the purposes of which the issue of the relevant shares raised money;

"relevant tax relief", in respect of shares, means one or more of the following—

(a) SEIS relief in respect of the shares;

(b) EIS relief in respect of the shares;

(c) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;

(d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme) in respect of the shares;

(e) relief under Schedule 5B to that Act (enterprise investment scheme: reinvestment) in consequence of which deferral relief is attributable to the shares (see paragraph 19(2) of that Schedule).

CHAPTER 4

THE ISSUING COMPANY

Introduction

257D Overview of Chapter

The issuing company is a qualifying company in relation to the relevant shares if the requirements of this Chapter are met as to—

(a) the timing of incorporation (see section 257DA),
(b) the purpose of existence (see section 257DB),
(c) the issuing company to carry on the qualifying business activity (see section 257DD),
(d) UK permanent establishment (see section 257DE),
(e) financial health (see section 257DF),
(f) unquoted status (see section 257DG),
(g) control and independence (see 257DH),
(h) no partnerships (see section 257DI),
(i) gross assets (see section 257DJ),
(j) number of employees (see section 257DK),
(k) no previous other risk capital scheme investments (see section 257DL), and
(l) the maximum amount raised through the SEIS (see section 257DM)

The requirements

257DA The timing of incorporation requirement

The issuing company must have been incorporated within the period of two years ending with the day on which the relevant shares are issued.

257DB The purpose of existence requirement

(1) The issuing company must meet the purpose of existence requirement throughout period B.

(2) The purpose of existence requirement is that the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more new qualifying trades (see section 257HC).

(3) Where period B begins after the incorporation of the company, the requirement of subsection (2) must have been complied with since its incorporation; but for the purposes of that subsection any interval between the incorporation of the company and the time when it commenced business is to be ignored.

(4) In this section “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question.

257DC Ceasing to meet purpose of existence requirement: administration etc

(1) A company is not regarded as ceasing to meet the purpose of existence requirement merely because of anything done in consequence of the company being in administration or receivership.
This is subject to subsections (2) and (3).

(2) Subsection (1) applies only if—
(a) the entry into administration or receivership, and
(b) everything done as a result of the company being in administration or receivership,
is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) A company ceases to meet the purpose of existence requirement if before the end of period B—
(a) a resolution is passed, or an order is made, for the winding up of the company (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or
(b) the company is dissolved without winding up.
This is subject to subsection (4).

(4) Subsection (3) does not apply if the winding up or dissolution is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

257DD The issuing company to carry on the qualifying business activity

(1) The requirement of this section is met in relation to the issuing company if, at no time in period B, is any of the following—
(a) the relevant new qualifying trade,
(b) relevant preparation work (if any), and
(c) relevant research and development (if any),
carried on by a person other than the issuing company.

(2) The requirement of this section is not regarded as failing to be met in relation to the issuing company if, merely because of any act or event within subsection (3), the relevant new qualifying trade—
(a) ceases to be carried on in period B by the issuing company, and
(b) is subsequently carried on in that period by a person who is not at any time in period A connected with the issuing company.

(3) The following are acts and events within this subsection—
(a) anything done as a consequence of the issuing company being in administration or receivership, and
(b) the issuing company being wound up, or dissolved without being wound up.

(4) Subsection (2) applies only if—

(a) the entry into administration or receivership, and everything done as a consequence of the company concerned being in administration or receivership, or
(b) the winding up or dissolution,

is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose of or one of the main purposes of which is the avoidance of tax.

(5) In this section—

"relevant preparation work" means preparations within section 257HD(2)(b) which are the subject of the qualifying business activity mentioned in section 257CB;

"the relevant new qualifying trade" means the new qualifying trade which is the subject of that qualifying business activity;

"relevant research and development" means—

(a) research and development within section 257HD(4) which is the subject of that qualifying business activity, and
(b) any other preparations for the carrying on of the new qualifying trade which is the subject of that activity.

257DE The UK permanent establishment requirement

(1) The issuing company must meet the UK permanent establishment requirement throughout period B.

(2) The UK permanent establishment requirement is that the issuing company has a permanent establishment in the United Kingdom.

257DF The financial health requirement

(1) The issuing company must meet the financial health requirement at the beginning of period B.

(2) The financial health requirement is that the issuing company is not in difficulty.

(3) The issuing company is "in difficulty" if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02).

257DG The unquoted status requirement

(1) At the beginning of period B—

(a) the issuing company must be an unquoted company, and
(b) there must be no arrangements in existence for the issuing company to cease to be an unquoted company.

(2) In this section "unquoted company" means a company none of whose shares, stocks, debentures or other securities are marketed to the general public.

(3) For the purposes of subsection (2), shares, stock, debentures or other securities are marketed to the general public if they are—

(a) listed on a recognised stock exchange,

(b) listed on a designated exchange in a country outside the United Kingdom, or
(c) dealt in outside the United Kingdom by such means as may be designated.

(4) In subsection (3)(b) or (c) "designated" means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of that provision.

(5) An order made for the purposes of subsection (3)(b) may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.

(6) The arrangements referred to in subsection (1)(b) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company are at any subsequent time—
(a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005(1)(b), or
(b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (3)(b) or (c),
if the order was made after the beginning of period B.

257DH The control and independence requirement

(1) The control element of the requirement is that—
(a) the issuing company must not at any time in period A control (whether on its own or together with any person connected with it) any company, and
(b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).

(2) The independence element of the requirement is that—
(a) the issuing company must not at any time in period A be under the control of any other company (whether on its own or together with any person connected with it), and
(b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).

257DIThe no partnerships requirement

(1) The issuing company must not, at any time during period A, be a member of a partnership.

(2) "Partnership" includes—
(a) a limited liability partnership, and
(b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,
and "member", in relation to a partnership, is to be read accordingly.

257DJ The gross assets requirement

(1) The total of—

(a) the value of the issuing company's assets, and

(b) the appropriate proportion of the value of the assets of each entity related to that company (if any),

must not exceed £200,000 immediately before the relevant shares are issued.

(2) In subsection (1)—

(a) an entity is related to the issuing company if the entity and company are partner enterprises by reason of the entity holding 25% or more of the capital or voting rights of the issuing company, and

(b) "the appropriate proportion", in relation to a related entity, means whichever is the greater of—

(i) the proportion of capital of the issuing company held by that entity, and

(ii) the proportion of voting rights in the issuing company held by that entity.

(3) In this section "partner enterprises" has the meaning given by Annex 1 to the Commission Regulation (EC) No 800/2008 (General block exemption Regulation).

257DK The number of employees requirement

(1) The total of—

(a) the full-time equivalent employee number for the issuing company, and

(b) the appropriate proportion of the full-time equivalent employee number for each entity related to that company (if any),

must be less than 25 when the relevant shares are issued.

(2) Subsections (2) and (3) of section 257DJ apply for the purposes of subsection (1) of this section.

(3) The full-time equivalent employee number for a company is calculated as follows—

Step 1

Find the number of full-time employees of the company.

Step 2

Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

The result is the full-time equivalent employee number.

(4) In this section references to an employee—

(a) include a director, but

(b) do not include—

(i) an employee on maternity or paternity leave, or

(ii) a student on vocational training.

257DL No previous other risk capital scheme investments

(1) The requirement of this section is that no EIS investment or VCT investment is or has been made in the issuing company on or before the day on which the relevant shares are issued.

(2) An "EIS investment" is made in the company if the company—
 (a) issues shares (money having been subscribed for them), and
 (b) (at any time) provides a compliance statement under section 205 in respect of the shares;

and the EIS investment is regarded as made when the shares are issued.

(3) A "VCT investment" is made in the company if an investment (of any kind) in the company is made by a VCT.

257DM The maximum amount raised through SEIS

(1) The total amount of SEIS investments made in the issuing company must not exceed £150,000.

(2) An "SEIS investment" is made in a company if—
 (a) the company issues shares (money having been subscribed for them), and
 (b) (at any time) the company provides a compliance statement under section 257ED in respect of the shares;

and the SEIS investment is made when the shares are issued.

(3) Subsection (4) applies where—
 (a) an issue of shares is made by the issuing company, or two or more such issues are made on the same day,
 (b) ignoring the issue or issues mentioned in paragraph (a), the total amount of the SEIS investments previously made in the issuing company is less than £150,000 and
 (c) the sum of that total amount and the total amount subscribed for the shares in the issue or issues mentioned in paragraph (a) exceeds £150,000.

(4) In the case of the issue or each of the issues mentioned in subsection (3)(a)—
 (a) the appropriate proportion of the shares in the issue and the remainder are to be treated as two separate issues for the purposes of this Part, and
 (b) the requirement in subsection (1) is met in respect of the issue comprised of the appropriate proportion of the shares in the issue, but not in respect of the issue comprised of the remaining shares.

(5) "The appropriate proportion" of the shares is—

$$\frac{A - B}{C}$$

Where—

"A" is £150,000,

"B" is the total amount of the SEIS investments previously made in the issuing company (as mentioned in subsection (3)(b)), and

"C" is the total amount subscribed for the issue or issues mentioned in subsection (3)(a).

CHAPTER 5

ATTRIBUTION AND CLAIMS FOR SEIS RELIEF

Attribution

257E Attribution of SEIS relief to shares

(1) References in this Part, in relation to any individual, to the SEIS relief attributable to any shares or issue of shares are to be read as references to any reduction made in the individual's liability to income tax that is attributed to those shares or that issue in accordance with this section.

This is subject to the provisions of Chapters 6 and 7 providing for the withdrawal or reduction of SEIS relief.

(2) If an individual's liability to income tax is reduced in any tax year, then—

(a) if the reduction is obtained because of one issue of shares, the amount of the tax reduction is attributed to that issue, and

(b) if the reduction is obtained because of two or more issues of shares, the amount of the reduction—

(i) is apportioned between those issues in the same proportions as the amounts claimed by the individual in respect of each issue, and

(ii) is attributed to those issues accordingly.

(3) If under this section an amount of any reduction of income tax is attributed to an issue of shares ("the original issue"), a proportionate part of that amount is attributed to each share in respect of which the claim is made.

(4) If corresponding bonus shares are issued to the individual in respect of any shares ("the original shares") to which SEIS relief is attributed—

(a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and the bonus shares, and

(b) after the issue of the bonus shares, this Part applies as if the original issue had included those shares.

(5) In subsection (4) "corresponding bonus shares" means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.

(6) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this

section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

(7) If, at a time when SEIS relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under Chapters 6 and 7—

(a) if it falls to be withdrawn, the relief attributable to each of the shares in question is reduced to nil, and

(b) if it falls to be reduced by any amount, the relief attributable to each of the shares in question is reduced by a proportionate part of that amount.

Claims: general

257EA Time for making claims for SEIS relief

(1) A claim for SEIS relief in respect of shares issued by a company in any tax year—

(a) may not be made until at least 70% of the money raised by the issue has been spent by the issuing company for the purposes of the qualifying business activity for which it was raised, and

(b) may not be made later than the fifth anniversary of the normal self-assessment filing date for the tax year.

(2) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

257EB Entitlement to claim

(1) The investor is entitled to make a claim for SEIS relief in respect of the amount subscribed by the investor for the relevant shares if the investor has received from the issuing company a compliance certificate in respect of those shares.

(2) For the purposes of PAYE regulations no regard is to be had to SEIS relief unless a claim for it has been duly made.

(3) No application may be made under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that the investor is eligible for SEIS relief unless a claim for the relief has been duly made by the investor.

Claims: supporting documents

257EC Compliance certificates

(1) A “compliance certificate” is a certificate which—

(a) is issued by the issuing company in respect of the relevant shares,

(b) states that, except so far as they fall to be met by or in relation to the investor, the requirements for SEIS relief are for the time being met in relation to those shares, and

(c) is in such form as the Commissioners for Her Majesty's Revenue and Customs may direct.

(2) The issuing company must not issue a compliance certificate until it has spent at least 70% of the money raised by the issue of shares which includes the relevant shares for the purposes of the qualifying business activity for which it was raised

(3) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide an officer of Revenue and Customs with a compliance statement in respect of the issue of shares which includes the relevant shares.

(4) The issuing company must not issue a compliance certificate without the authority of an officer of Revenue and Customs.

(5) If the issuing company, or a person connected with the issuing company, has given notice to an officer of Revenue and Customs under section 257GF, a compliance certificate must not be issued unless the authority is given or renewed after the receipt of the notice.

(6) If an officer of Revenue and Customs—

(a) has been requested to give or renew an authority to issue a compliance certificate, and

(b) has decided whether or not to do so,

the officer must give notice of the officer's decision to the issuing company.

257ED Compliance statements

(1) A "compliance statement" is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be met by or in relation to the individuals to whom shares included in that issue have been issued, the requirements for SEIS relief (see section 257AA)—

(a) are for the time being met in relation to the shares to which the statement relates, and

(b) have been so met at all times since the shares were issued.

(2) In determining for the purposes of subsection (1) whether the requirements for SEIS relief are met at any time in relation to the issue of shares, references in this Part to the relevant shares are read as references to the shares included in the issue.

(3) A compliance statement must be in such form as the Commissioners for Her Majesty's Revenue and Customs direct and must contain—

(a) such additional information as the Commissioners reasonably require, including in particular information relating to the persons who have requested the issue of compliance certificates,

(b) a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and

(c) such other declarations as the Commissioners may reasonably require.

257EE Appeal against refusal to authorise compliance certificate

For the purposes of the provisions of TMA 1970 relating to appeals, the refusal of an officer of Revenue and Customs to authorise the issue of a compliance certificate is taken to be a decision disallowing a claim by the issuing company.

257EF Penalties for fraudulent certificate or statement etc

The issuing company is liable to a penalty not exceeding £3,000 if—

(a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or

(b) it issues a compliance certificate in contravention of section 257EC(2), (4) or (5).

257EG Power to amend sections 257EC and 257ED by Treasury order

(1) The Treasury may by order make such amendments of sections 257EC and 257ED as they consider appropriate.

(2) An order under this section may include incidental, supplemental, consequential and transitional provision and savings.

CHAPTER 6

WITHDRAWAL OR REDUCTION OF SEIS RELIEF

Introduction

257F Overview of Chapter

This Chapter provides for SEIS relief to be withdrawn or reduced under—

(a) section 257FA (disposal of shares),

(b) section 257FC (call options),

(c) section 257FD (put options),

(d) section 257FE (value received by the investor),

(e) section 257FP (acquisition of a trading asset),

(f) section 257FQ (relief subsequently found not to have been due).

257FA Disposal of shares

(1) This section applies if—

(a) the investor disposes of any of the relevant shares,

(b) the disposal takes place before period B ends, and

(c) SEIS relief is attributable to the shares.

(2) If the disposal is not made by way of a bargain made at arm's length, the SEIS relief attributable to the shares must be withdrawn.

(3) If the disposal is made by way of a bargain made at arm's length, the SEIS relief attributable to the shares must—

(a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and

(b) in any other case, be withdrawn.

The formula is—

$$R \times SEISR$$

where—

R is the amount or value of the consideration received by the investor for the shares, and

SEISR is the SEIS rate.

(4) This section does not apply to a disposal of shares to which an amount of SEIS relief is attributable if—

(a) the disposal was made by an individual ("A") to another individual ("B"), and

(b) A and B were married to, or were civil partners of, each other and living together at the time of the disposal.

(5) Section 257HA contains rules for determining which shares of any class are treated as disposed of for the purposes of this section if the investor disposes of some but not all the shares of that class which are held by the investor.

257FB Cases where maximum SEIS relief not obtained

(1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—

(a) the amount of the reduction ("A"), is less than

(b) the amount ("B") which is equal to tax at the SEIS rate on the amount on which the investor claims SEIS relief in respect of the shares,

section 257FA(3) has effect in relation to a disposal of any of the shares as if the amount or value referred to as "R" were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

(2) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, subsection (1) has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

(3) If the amount of SEIS relief attributable to any of the relevant shares has been reduced before the SEIS relief was obtained, the amount referred to in subsection (1) as A is to be treated for the purposes of

that subsection as the amount that it would have been without that reduction.

(4) Subsection (3) does not apply to a reduction of SEIS relief by virtue of section 257E(4) (attribution of SEIS relief if there is a corresponding issue of bonus shares).

257FC Call options

(1) This section applies if the investor grants an option which, if exercised, would bind the investor to sell any of the relevant shares.

(2) The grant of the option is treated for the purposes of section 257FA as a disposal of the shares to which the option relates.

(3) Nothing in this section prejudices section 257CD (no pre-arranged exits).

257FD Put options

(1) This section applies if, at any time in period A, a person grants the investor an option which, if exercised, would bind the grantor to purchase any of the relevant shares.

(2) Any SEIS relief attributable to the shares to which the option relates must be withdrawn.

(3) For the purposes of subsection (2) the shares to which an option relates are those which, if—
   (a) the option were exercised immediately after the grant, and
   (b) any shares in the issuing company acquired by the investor after the grant were disposed of immediately after being acquired,

would be treated for the purposes of section 257FA as disposed of in pursuance of the option.

Value received by investor

257FE Value received by the investor

(1) This section applies if the investor receives any value from the issuing company at any time in period A relating to the relevant shares.

(2) Any SEIS relief attributable to the shares must—
   (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
   (b) in any other case, be withdrawn.

The formula is—

$$R \times SEISR$$

where—

R is the amount of the value received by the investor, and

SEISR is the SEIS rate.

(3) This section is subject to the following sections—

(a) section 257FF (value received: receipts of insignificant value),

(b) section 257FJ (value received where there is more than one issue of shares),

(c) section 257FK (value received where part of share issue treated as made in previous tax year),

(d) section 257FL (cases where maximum SEIS relief not obtained),

(e) section 257FM (receipts of value by and from connected persons etc), and

(f) section 257FN (receipt of replacement value).

Sections 257FJ to 257FL are to be applied in the order in which they appear in this Part.

(4) Value received is to be ignored, for the purposes of this section, to the extent to which SEIS relief attributable to the shares has already been withdrawn or reduced on its account.

(5) For the purposes of this section and sections 257FF to 257FO, an individual who acquires any relevant shares on such a transfer as is mentioned in section 257H (spouses or civil partners) is treated as the investor.

257FF Value received: receipts of insignificant value

(1) Section 257FE(2) does not apply if the receipt of value is a receipt of insignificant value.

This is subject to subsection (2).

(2) If—

(a) value is received ("the relevant receipt") by the investor from the issuing company at any time in period A relating to the relevant shares,

(b) the investor has received from the issuing company one or more receipts of insignificant value at a time or times—

(i) during that period, but

(ii) not later than the time of the relevant receipt, and

(c) the total value of the receipts within paragraphs (a) and (b) is not an amount of insignificant value,

the investor is treated for the purposes of this Chapter as if the relevant receipt had been a receipt of an amount of value equal to that total amount.

(3) A receipt does not fall within subsection (2)(b) if it has previously formed part of a total amount falling within subsection (2)(c).

257FG Meaning of "receipts of insignificant value"

(1) This section applies for the purposes of section 257FF.

(2) "A receipt of insignificant value" means a receipt of an amount of insignificant value, that is, an amount of value which—

(a) is not more than £1,000, or

(b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the relevant shares.

This is subject to subsection (3).

(3) If at any time in the period—

(a) beginning 12 months before the issue of the relevant shares, and

(b) ending at the end of the issue date,

repayment arrangements are in existence, no amount of value received by the investor is treated as a receipt of insignificant value.

(4) For this purpose "repayment arrangements" means arrangements which provide for the investor to receive, or to be entitled to receive, any value from the issuing company at any time in period A relating to the relevant shares.

(5) For the purposes of this section—

(a) the references in this section to the investor include a reference to any person who at any time in period A relating to the relevant shares is an associate of the investor (whether or not that person is such an associate at the material time), and

(b) the reference in subsection (4) to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

257FH When value is received

(1) This section applies for the purposes of sections 257FE (value received by the investor) and 257FJ (value received where there is more than one issue).

(2) The investor receives value from the issuing company at any time when the issuing company—

(a) repays, redeems or repurchases any of its share capital or securities which belong to the investor or makes any payment to the investor for giving up the investor's right to any of the issuing company's share capital or any security on its cancellation or extinguishment,

(b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares in respect of which SEIS relief is claimed, any debt owed to the investor other than a debt which was incurred by the company—

(i) on or after the date of issue of those shares, and

(ii) otherwise than in consideration of the extinguishment of a debt incurred before that date,

(c) makes to the investor any payment for giving up on its extinguishment the investor's right to any debt, other than a debt in respect of a payment of the kind mentioned in subsection (3)(a) or (f) or an ordinary trade debt,

(d) releases or waives any liability of the investor to the issuing company or discharges or undertakes to discharge any liability of the investor to a third person,

(e) makes a loan or advance to the investor which has not been repaid in full before the issue of the shares in respect of which SEIS relief is claimed,

(f) provides a benefit or facility for the investor,

(g) transfers an asset to the investor for no consideration or for consideration less than its market value or acquires an asset from the investor for consideration greater than its market value, or

(h) makes to the investor any other payment except—

(i) an excluded payment, or

(ii) a payment in discharge of an ordinary trade debt.

(3) "Excluded payment" means—

(a) any payment or reimbursement of travelling or other expenses, exclusively and necessarily incurred by the investor or an associate of the investor in the performance of the investor's or associate's duties as a director,

(b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or any person connected with that company,

(c) any dividend or other distribution which does not exceed a normal return on the investment,

(d) any payment for the supply of goods which does not exceed their market value,

(e) any payment of rent for any property occupied by the issuing company or a person connected with that company which does not exceed a reasonable and commercial rent for the property, and

(f) any necessary and reasonable remuneration which meets the conditions in subsection (4).

(4) The conditions are that the remuneration—

(a) is paid for services rendered to the issuing company or a person connected with that company in the course of a trade or profession (not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and

(b) is taken into account in calculating for tax purposes the profits of that trade or profession.

(5) For the purposes of subsection (2)(d) the issuing company is to be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.

(6) For the purposes of subsection (2)(e) the following is to be treated as if it were a loan made by the issuing company to the investor—

(a) the amount of any debt (other than an ordinary trade debt) incurred by the investor to the issuing company, and

(b) the amount of any debt due from the investor to a third party which has been assigned to the issuing company.

(7) The investor also receives value from the issuing company if—

(a) in respect of ordinary shares held by the investor any payment or asset is received in a winding up or in connection with a dissolution of the company, and

(b) the winding up or dissolution falls within section 257DC(4) (no tax avoidance).

(8) The investor also receives value from the issuing company if a person within subsection (9)—

(a) purchases any of its share capital or securities which belong to the investor, or

(b) makes any payment to the investor for giving up any right in relation to any of the company‘s share capital or securities.

(9) Those persons are—

(a) any person who has a substantial interest in the company within the meaning of section 257BB;

(b) any employee of the issuing company;

(c) any director of the issuing company.

(10) If because of the investor’s disposal of shares in a company any SEIS relief attributable to those shares is withdrawn or reduced under section 257FA, the investor is not to be treated as receiving value from the company in respect of the disposal.

(11) The investor is not to be treated as receiving value from the issuing company merely because of the payment to the investor, or any associate of the investor, of any remuneration for services rendered to that company as a director if the remuneration is reasonable remuneration.

(12) For the purposes of subsection (11)—

(a) the reference in that subsection to payment of remuneration includes a reference to provision of any benefit or facility, and

(b) in the case of an individual who is both a director and an employee of a company, the reference in that subsection to services rendered to that company as a director includes a reference to services rendered to that company as an employee.

(13) In this section—

(a) “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—

(i) is for not more than 6 months, and

(ii) is not longer than that normally given to customers of the person carrying on the trade or business, and

(b) any reference to a payment to an individual includes a payment made to the individual indirectly or to the individual’s order or for the individual’s benefit.

257FI The amount of value received

In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of sections 257FE and 257FJ is given by the corresponding entry in column 2 of the table.

Provision	*The amount of value received*
Section 257FH(2)(a), (b) or (c)	The amount received by the investor or, if greater, the market value of the shares, securities or debt
Section 257FH(2)(d)	The amount of the liability
Section 257FH(2)(e)	The amount of the loan or advance, less the amount of any repayment made before the issue of the relevant shares
Section 257FH(2)(f)	The cost to the issuing company of providing the benefit or facility, less any consideration given for it by the investor
Section 257FH(2)(g)	The difference between the market value of the asset and the consideration (if any) given for it
Section 257FH(2)(h)	The amount of the payment
Section 257FH(7)	The amount of the payment or the market value of the asset
Section 257FH(8)	The amount received by the investor or, if greater, the market value of the shares or securities

257FJ Value received where there is more than one issue

(1) This section applies if—

(a) two or more issues of shares in the issuing company have been made to the investor which include shares in respect of which the investor obtains SEIS relief, and

(b) value is received by the investor at any time in the applicable periods for two or more of those issues.

(2) Section 257FE(2) has effect in relation to the shares included in each of the issues referred to in subsection (1)(b) as if the amount of value referred to as "R" were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the amount on which the investor obtains SEIS relief in respect of the shares included in the issue in question, and

B is the sum of that amount and the corresponding amount or amounts in respect of the other issue or issues.

(3) For the purposes of subsection (1) "the applicable period" for an issue of shares is period A in relation to those shares.

257FK Value received where part of issue treated as made in previous tax year

(1) This section applies if—
   (a) section 257FE(2) applies to an issue of shares, and
   (b) section 257AB(1) and (2) (form and amount of SEIS relief) applies in the case of that issue as if part of the issue had been issued in a previous tax year.

(2) This subsection explains how the calculation under section 257FE(2) is to be made.

Step 1

Apportion the amount referred to as "R" between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—

$$\frac{A}{B}$$

where—

A is the amount on which the investor obtains SEIS relief in respect of the shares treated as issued in the tax year in question, and

B is the sum of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.

Step 2

In relation to each of the amounts ("R1" and "R2") so apportioned to the two tax years, calculate the amounts ("X1" and "X2") that would be given by the formula if there were separate issues of shares in those tax years.

In calculating amounts X1 and X2, apply section 257FL if appropriate but do not apply section 257FJ.

Step 3

Add amounts X1 and X2 together.

The result is the required amount.

257FL Cases where maximum SEIS relief not obtained

(1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
   (a) the amount of the reduction ("A"), is less than
   (b) the amount ("B") which is equal to income tax at the SEIS rate on the amount on which the investor claims SEIS relief in respect of the shares,

section 257FE(2) has effect in relation to any value received as if the amount referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

(2) If the amount of SEIS relief attributable to any of the relevant shares has been reduced before the SEIS relief was obtained, the amount referred to in subsection (1) as “A” is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.

(3) Subsection (2) does not apply to a reduction of SEIS relief by virtue of section 257E(4) (attribution of SEIS relief where there is a corresponding issue of bonus shares).

257FM Receipts of value by and from connected persons etc

In sections 257FE, 257FF and 257FH to 257FJ—

(a) any reference to a payment or transfer to the investor includes a reference to a payment or transfer made to the investor indirectly or to the investor’s order or for the investor’s benefit,

(b) any reference to the investor includes a reference to an associate of the investor, and

(c) any reference to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

257FN Receipt of replacement value

(1) If—

(a) any SEIS relief attributable to the relevant shares would, in the absence of this section, be reduced or withdrawn under section 257FE because of a receipt of value within section 257FH(2), (7) or (8) (“the original value”),

(b) the original supplier receives value (“the replacement value”) from the original recipient and the receipt is a qualifying receipt, and

(c) the amount of the replacement value is at least the amount of the original value,

section 257FE does not, because of the receipt of value, have effect to reduce or withdraw the SEIS relief.

This is subject to section 257FO (1) and (2).

(2) For the purposes of this section—

“the original recipient” means the person who receives the original value;

“the original supplier” means the person from whom that value was received.

(3) If the amount of the original value is, by virtue of section 257FJ, treated as reduced for the purposes of section 257FE(2) as it applies in relation to the relevant shares in question, the reference in subsection (1)(c) to the amount of the original value is to be read as a reference to the amount of that value ignoring the reduction.

(4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) if it arises—

(a) because of the original recipient doing one or more of the following—

(i) making a payment to the original supplier, other than a payment within paragraph (c) or a payment to which subsection (5) applies,

(ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset,

(iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset,

(b) if the receipt of the original value was within section 257FH(2)(d), because of an event the effect of which is to reverse the event which constituted the receipt of the original value, or

(c) if the receipt of the original value was within section 257FH(8), because of the original recipient repurchasing the share capital or securities in question, or (as the case may be) re-acquiring the right in question, for a consideration the amount or value of which is at least the amount of the original value.

(5) This subsection applies to—

(a) any payment for any goods, services or facilities, provided (whether in the course of trade or otherwise) by—

(i) the original supplier, or

(ii) any other person who, at any time in period A relating to the relevant shares, is an associate of, or is connected with, that supplier (whether or not the other person is such an associate, or is so connected, at the material time),

which is reasonable in relation to the market value of those goods, services or facilities,

(b) any payment of any interest which represents no more than a reasonable commercial return on any money lent to—

(i) the original recipient, or

(ii) any person who, at any time in period A relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),

(c) any payment for the acquisition of an asset which does not exceed its market value,

(d) any payment, as rent for any property occupied by—

(i) the original recipient, or

(ii) any person who, at any time in period A relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),

of an amount not exceeding a reasonable and commercial rent for the property,

(e) any payment in discharge of an ordinary trade debt, and

(f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii).

(6) For the purposes of this section, the amount of the replacement value is—

(a) in a case within paragraph (a) of subsection (4), the sum of—

(i) the amount of any payment within sub-paragraph (i) of that paragraph, and

(ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,

(b) in a case within subsection (4)(b), the same as the amount of the original value, and

(c) in a case within subsection (4)(c), the amount or value of the consideration received by the original supplier.

Section 257FI applies for the purpose of determining the original value.

(7) In this section—

(a) any reference to a payment to a person (however expressed) includes a reference to a payment made to the person indirectly or to the person's order or for the person's benefit, and

(b) "ordinary trade debt" has the meaning given by section 257FH(13).

257FO Section 257FN: supplementary

(1) The receipt of the replacement value by the original supplier is ignored for the purposes of section 257FN(1) to the extent to which it has previously been set (under that section) against a receipt of value to prevent any reduction or withdrawal of SEIS relief under section 257FE.

(2) The receipt of the replacement value by the original supplier ("the event") is ignored for the purposes of section 257FN if—

(a) the event occurs before period A relating to the relevant shares,

(b) if the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or

(c) if an appeal has been brought by the investor against an assessment to withdraw or reduce any SEIS relief attributable to the relevant shares because of the receipt of the original value, the event occurs more than 60 days after the day on

which the amount of relief which falls to be withdrawn has been finally determined.

But nothing in section 257FN or this section requires the replacement value to be received after the original value.

(3) This subsection applies if—

(a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of section 257FN(1),

(b) in consequence of the receipt, any receipts of value are ignored for the purposes of section 257FE as that section applies in relation to the shares in question or any other shares subscribed for by the investor, and

(c) the event which gives rise to the receipt is (or includes) a subscription for shares by—

(i) the investor, or

(ii) any person who at any time in period A relating to the relevant shares is an associate of the investor (whether or not the person is such an associate at the material time).

(4) If subsection (3) applies, the person who subscribes for the shares is not to be eligible for any SEIS relief in relation to those shares or any other shares in the same issue.

(5) In this section "the original recipient", "the original supplier" and "replacement value" have the same meaning as in section 257FN.

Miscellaneous

257FP Acquisition of trading assets

(1) Any SEIS relief attributable to any shares in a company held by an individual is withdrawn if—

(a) at any time in period A, the company acquires the whole, or the greater part, of the assets used for the purposes of a trade previously carried on otherwise than by the company, and

(b) the individual is a person, or one of a group of persons, to whom subsection (2) or (3) applies.

(2) This subsection applies to any person or group of persons—

(a) to whom an interest amounting in total to more than a half share in the trade (as previously carried on) belonged at any time in period A, and

(b) who is a person or group of persons to whom such an interest in the trade carried on by the company belongs or has, at any such time, belonged.

(3) This subsection applies to any person or group of persons who—

(a) control or, at any time in period A, have controlled the company, and

(b) is a person or group of persons who, at any such time, controlled another company which previously carried on the trade.

(4) For the purposes of subsection (2)—

(a) for the purposes of determining the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in that trade—
(i) apply section 941(6) of CTA 2010, and
(ii) an interest in a trade belonging to a company may be treated in accordance with any of the options set out in section 942 of that Act, and
(b) any interest, rights or powers of a person who is an associate of another person are treated as those of that other person.

(5) In this section "trade" includes any business or profession, and references to a trade previously carried on include references to part of such a trade.

257FQ Relief subsequently found not to have been due

(1) Any SEIS relief obtained by the investor which is subsequently found not to have been due must be withdrawn.

(2) SEIS relief obtained by the investor in respect of the relevant shares may not be withdrawn on the ground—
(a) that the requirements of sections 257CB and 257CC (the purpose of the issue and use of money raised requirements) are not met in respect of the shares, or
(b) that the issuing company is not a qualifying company in relation to the shares (see Chapter 4),
unless the requirements of subsection (3) are met.

(3) The requirements of this subsection are met if either—
(a) the issuing company has given notice under section 257GF (information to be provided by issuing company etc) in relation to the relevant issue of shares, or
(b) an officer of Revenue and Customs has given notice to that company stating the officer's opinion that, because of the ground in question, the whole or any part of the SEIS relief obtained by any individual in respect of shares included in the relevant issue of shares was not due.

(4) In this section "the relevant issue of shares" means the issue of shares in the issuing company which includes the relevant shares.

CHAPTER 7

WITHDRAWAL OR REDUCTION OF SEIS RELIEF

Assessments and appeals

257G Assessments for the withdrawal or reduction of SEIS relief

If any SEIS relief which has been obtained falls to be withdrawn or reduced under Chapter 6, it must be withdrawn or reduced by the making of an assessment to income tax for the tax year for which the relief was obtained.

257GA Appeals against section 257FQ(3)(b) notices

For the purposes of the provisions of the TMA 1970 relating to appeals, the giving of notice by an officer of Revenue and Customs under section 257FQ(3)(b) is taken to be a decision disallowing a claim by the issuing company.

257GB Time limits for assessments

(1) An officer of Revenue and Customs may—
   (a) make an assessment for withdrawing or reducing the SEIS relief attributable to any of the relevant shares, or
   (b) give a notice under section 257FQ(3),

at any time not more than 6 years after the end of the relevant tax year.

(2) In subsection (1) "the relevant tax year" means—
   (a) the tax year in which the period B ends, or
   (b) the tax year in which the event which causes the SEIS relief to be withdrawn or reduced occurs,

whichever is the later.

(3) Subsection (1) is without prejudice to section 36(1A) of TMA 1970 (loss of tax brought about deliberately etc).

257GC Cases where assessments not to be made

(1) No assessment for withdrawing or reducing SEIS relief in respect of shares issued to an individual may be made because of an event occurring after the individual's death.

(2) Subsection (3) applies if an individual has, by a disposal or disposals to which section 257FA(3) applies, disposed of all shares which—
   (a) have been issued to the individual by the issuing company, and
   (b) are shares—
      (i) to which SEIS relief is attributable, or
      (ii) in relation to which period A has not come to an end.

(3) No assessment for withdrawing or reducing SEIS relief in respect of those shares may be made because of any subsequent event unless the event occurs at a time when the individual—
   (a) has a substantial interest in the company within the meaning of section 257BB,
   (b) is an employee of the issuing company, or
   (c) is a director of the issuing company.

Interest

257GD Date from which interest is chargeable

(1) In its application to an assessment made by virtue of section 257G in the case of relief withdrawn or reduced by virtue of a provision listed in subsection (2), section 86 of TMA 1970 (interest on overdue income tax) has effect as if the relevant date were 31 January next following the tax year in which the assessment is made.

(2) The provisions are—
- (a) section 257BB (no substantial interest in the issuing company),
- (b) section 257BD (no linked loan requirement),
- (c) sections 257DA to 257DM (Chapter 4 requirements),
- (d) section 257FA (disposal of shares),
- (e) section 257FD (put options),
- (f) section 257FE (receipt of value by the investor),
- (g) section 257FP (acquisition of a trading asset).

Information

257GE Information to be provided by the investor

(1) This section applies if the investor has obtained SEIS relief in respect of the relevant shares, and an event occurs as a result of which—
- (a) the investor is not a qualifying investor in relation to the shares,
- (b) the SEIS relief falls to be withdrawn or reduced by virtue of section 257BD (no linked loans requirement),
- (c) the SEIS relief falls to be withdrawn or reduced under—
  - (i) section 257FA (disposal of shares),
  - (ii) section 257FC (call options), or
  - (iii) section 257FD (put options), or
- (d) the SEIS relief falls to be withdrawn or reduced under section 257FE (receipt of value by the investor), or would fall to be so withdrawn or reduced but for section 257FN (receipt of replacement value).

(2) The investor must within 60 days of coming to know of the event give a notice to an officer of Revenue and Customs containing particulars of the event.

(3) If the investor—
- (a) is required under this section to give notice of a receipt of value which is within section 257FE, or would be within that section but for section 257FN, and
- (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,

the notice must include particulars of that receipt of replacement value (or expected receipt).

(4) In subsection (3) "qualifying receipt" and "replacement value" are to be read in accordance with section 257FN.

257GF Information to be provided by the issuing company etc

(1) This section applies if the issuing company has provided an officer of Revenue and Customs with a compliance statement in respect of an issue of shares and an event occurs as a result of which—
- (a) the requirement of section 257CC (spending of the money raised) is not met in respect of any of the shares included in the issue, or would not be met if SEIS relief had been obtained in respect of the shares in question,

(b) any provision of Chapter 4 has effect to prevent the issuing company being a qualifying company in relation to any of the shares included in the issue, or would have such an effect if SEIS relief had been obtained in respect of the shares in question, or

(c) either of the provisions of Chapter 6 mentioned in subsection (2) has effect to cause any SEIS relief attributable to any of the shares included in the issue to be withdrawn or reduced, or—

(i) would have such an effect if SEIS relief had been obtained in respect of the shares in question, or

(ii) in the case of section 257FE, would have such an effect but for section 257FN (receipt of replacement value).

(2) The provision are—

(a) section 257FE (value received by the investor), and

(b) section 257FP (acquisition of a trading asset).

(3) If this section applies—

(a) the issuing company, and

(b) any person connected with the issuing company who has knowledge of the matters mentioned in subsection (1),

must give a notice to an officer of Revenue and Customs containing particulars of the event.

(4) Any notice required to be given by the issuing company under subsection (3)(a) must be given—

(a) within 60 days of the event, or

(b) if the event is a receipt of value within section 257FH(2) from a person connected with the company (see section 257FM), within 60 days of the company coming to know of the event.

(5) Any notice required to be given by a person under subsection (3)(b) must be given within 60 days of the person coming to know of the event.

(6) If a person—

(a) is required under this section to give notice of a receipt of value which is within section 257FE, or would be within that section but for section 257FN, and

(b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,

the notice must include particulars of that receipt of replacement value (or expected receipt).

(7) In subsection (6) "qualifying receipt" and "replacement value" are to be read in accordance with section 257FN.

257GG Power to require information where section 257GE or 257GF applies or could have applied

(1) This section applies if an officer of Revenue and Customs has reason to believe that a person—

(a) has not given a notice which the person is required to give under section 257GE or 257GF in respect of any event, or

(b) has given or received value within the meaning of section 257FH(2) or (8) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice.

(2) The officer may by notice require the person concerned to supply the officer, within such time as the officer may specify in the notice, with such information relating to the event as the officer may reasonably require for the purposes of this Part.

(3) The period specified in a notice under subsection (2) must be at least 60 days.

(4) In subsection (1)(b), the reference to an amount of insignificant value is construed in accordance with section 257FG(2).

257GH Power to require information in other cases

(1) Subsection (2) applies if SEIS relief is claimed in respect of shares in a company, and an officer of Revenue and Customs has reason to believe that it may not be due because of any such arrangements or scheme as is mentioned in—

(a) section 257BE or 257DC(2) or (4) (no tax avoidance),
(b) section 257BC (no related investment arrangements),
(c) section 257CD(1) (no pre-arranged exits),
(d) section 257CF (no disqualifying arrangements),
(e) section 257DD(4) (winding up, administration etc), or
(f) section 257DH(1) or (2) (conditions ceasing to be met).

(2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed, and
(b) such other information as the officer may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.

(3) The period specified in a notice under subsection (2) must be at least 60 days.

(4) For the purposes of subsection (2), in a case falling within a provision listed in column 1 of the following table, the person concerned is given by the corresponding entry in column 2 of the table.

Provision	*The person concerned*
Subsection (1)(a)	The claimant, the company and any person controlling the company
Subsection (1)(b)	The claimant
Subsection (1)(c)	The claimant, the company and any person connected with the company

Provision	*The person concerned*
Subsection (1)(d)	The claimant, the company, any person controlling the company and any person whom an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question
Subsection (1)(e)	The claimant, the company, any other company in question and any person controlling the company or any other company in question
Subsection (1)(f)	The company and any person controlling the company

References in this subsection to the claimant include references to any person to whom the claimant appears to have made such a transfer as is mentioned in section 257H (spouses or civil partners) of any of the shares in question.

(5) If SEIS relief has been obtained in respect of shares in a company—

(a) any person who receives from the company any payment or asset which may constitute value received (by the person or another) for the purposes of section 257FE, and

(b) any person on whose behalf such a payment or asset is received,

must, if so required by an officer of Revenue and Customs, state whether the payment or asset so received is received on behalf of any other person and, if so, the name and address of that other person.

(6) If SEIS relief has been claimed in respect of shares in a company—

(a) any person who holds or has held shares in the company, and

(b) any person on whose behalf any such shares are or were held,

must, if so required by an officer of Revenue and Customs, state whether the shares so held are or were held on behalf of any other person and, if so, the name and address of that other person.

257GI Obligations of secrecy

No obligation of secrecy imposed by statute or otherwise prevents an officer of Revenue and Customs from disclosing to a company that SEIS relief has been obtained or claimed in respect of a particular number or proportion of its shares.

CHAPTER 8

SUPPLEMENTARY AND GENERAL

Disposals of shares

257H Transfers between spouses or civil partners

(1) This section applies if—

(a) shares to which an amount of SEIS relief is attributable were issued to an individual (“A”),

(b) A transferred the shares to another individual (“B”) during their lives,

(c) A was married to, or was the civil partner of, B at the time of the transfer, and

(d) section 257FA (disposal of shares) does not apply to the transfer.

(2) This Part has effect, in relation to any subsequent disposal or other event, as if—

(a) B were the individual who had subscribed for the shares,

(b) the amount that B had subscribed for the shares were the amount that A had subscribed for them,

(c) B’s liability to income tax had been reduced in respect of the shares for the same tax year as that for which A’s was so reduced,

(d) the amount by which B’s liability to income tax had been reduced in respect of the shares were the same as that by which A’s liability to income tax had been so reduced, and

(e) that amount of SEIS relief had continued to be attributable to the shares despite the transfer.

(3) If the amount of SEIS relief attributable to the shares had been reduced before the relief was obtained by A—

(a) this Part has effect, in relation to any subsequent disposal or other event, as if the amount of SEIS relief attributable to the shares transferred to B had been correspondingly reduced before the relief was obtained by B, and

(b) sections 257FB(3) and 257FL(2) apply in relation to B as they would have applied in relation to A.

(4) If, because of any such disposal or other event, an assessment for reducing or withdrawing SEIS relief is to be made, the assessment is to be made on B.

257HA Identification of shares on a disposal

(1) The rules in subsections (2) and (3) are for determining which shares of any class are treated as disposed of for the purposes of—

(a) section 257FA (disposal of shares), or

(b) section 257H (spouses or civil partners),

if the investor disposes of some but not all of the shares of that class which the investor holds in a company.

(2) Shares acquired on an earlier day are treated as disposed of before shares acquired on a later day.

(3) Shares acquired on the same day are treated as disposed of in the following order—

(a) first any to which no SEIS relief, EIS relief or deferral relief is attributable,

(b) next any to which SEIS relief is attributable;

(c) next any to which deferral relief or EIS relief (or both) is attributable.

(4) Any shares to which SEIS relief is attributable and which were transferred to an individual as mentioned in section 257H are treated for the purposes of subsections (2) and (3) as acquired by the individual on the day on which they were issued.

(5) In a case to which section 127 of TCGA 1992 applies (including the case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.

(6) In this section—

"deferral relief" has the same meaning as in Schedule 5B to TCGA 1992;

"new holding" and "original shares" have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

Nominees etc

257HB Nominees and bare trustees

(1) Shares subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by the individual.

(2) If shares have been issued to a bare trust for two or more beneficiaries, this Part has effect (with the necessary modifications) as if—

(a) each beneficiary had subscribed as an individual for all of those shares, and

(b) the amount subscribed by each beneficiary was equal to the total amount subscribed on the issue of those shares divided by the number of beneficiaries.

(3) In subsection (2) "shares" means shares which meet the requirements of section 257CA(2).

Interpretation

257HC Meaning of "new qualifying trade"

(1) For the purposes of this Part "new qualifying trade", in relation to the issuing company, means a qualifying trade which, at the time the company begins to carry it on, is a genuine new venture.

(2) Without prejudice to the generality of subsection (1), a trade ("the relevant trade") carried on by the issuing company is not a genuine new venture if subsection (3) or (6) applies.

(3) This subsection applies if—

(a) the issuing company has, at any time during the period of 6 months ending with the time when it begins to carry on the relevant trade, carried on another trade consisting of the activities of which the relevant trade consists (or most of them), or

(b) the issuing company carries on the trade as a result of a transfer.

(4) The issuing company carries on a trade as a result of a transfer if it begins to carry on the trade on another person ceasing to carry on the activities of which it consists (or most of them) in consequence of arrangements involving the issuing company and the other person.

(5) This subsection applies if—
(a) the company is a party to arrangements under which it may (at any time during period B) carry on, as part of the trade, activities carried on by any other person, and
(b) the trade would have been prevented by subsection (3)(b) from being a genuine new venture had—
(i) the issuing company begun to carry on the activities when beginning to carry on the trade, and
(ii) the other person at that time ceased to carry them on.

(6) In this section "qualifying trade" has the same meaning as in Part 5 (see sections 189 and 192 to 200).

257HD Meaning of "qualifying business activity"

(1) In this Part "qualifying business activity", in relation to the issuing company, means—
(a) activity A, or
(b) activity B.
This is subject to subsection (3).

(2) Activity A is—
(a) the carrying on of a new qualifying trade which, on the date the relevant shares are issued, the company is carrying on, or
(b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a new qualifying trade—
(i) which, on that date, is intended to be carried on by the company, and
(ii) which is begun to be carried on by the company.

(3) But activity A is not a qualifying business activity if, and to the extent that, it consists of an acquisition of shares or stock in a company.

(4) Activity B is the carrying on of research and development—
(a) which, on the date the relevant shares are issued, the company is carrying on, or which the company begins to carry on immediately afterwards, and
(b) from which, on that date, it is intended—
(i) that a new qualifying trade which the company will carry on will be derived, or
(ii) that a new qualifying trade which the company is carrying on, or will carry on, will benefit.

257HE Meaning of "disposal of shares"

(1) In this Part references to a disposal of shares include a reference to a disposal of an interest or right in or over shares.

(2) An individual is to be treated, for the purposes of this Part, as disposing of any shares which the individual is treated by virtue of section 136 of TCGA 1992 as exchanging for other shares.

257HF Meaning of "issue of shares"

(1) In this Part—
  (a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and issued on the same day, and
  (b) references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual in one capacity on the same day

(2) Subsection (1)(b) has effect subject to sections 257E(6), 257EA(2), 257FB(2) and 257FK(1).

257HG Minor definitions

(1) In this Part—
"arrangements" includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);
"associate" has the same meaning as in Part 5 (see section 253);
"bonus shares" means shares which are issued otherwise than for payment (whether in cash or otherwise);
"director" is read in accordance with section 452 of CTA 2010;
"EIS relief" means relief under Part 5;
"ordinary shares" means shares forming part of a company's ordinary share capital;
"period A" and "period B" have the meaning given by section 257AC;
"permanent establishment" has the same meaning as in Part 5 (see section 191A);
"qualifying business activity" has the meaning given by section 257HD.

(2) Section 252 (meaning of a company being "in administration" or "in receivership") applies for the purposes of this Part.

(3) Section 995 (control) does not apply for the purposes of the following provisions—
  (a) section 257DH(1)(a),
  (b) section 257FP, and
  (c) section 257GH(4);

and in those provisions "control" is to be read in accordance with sections 450 and 451 of CTA 2010.

(4) In this Part—
  (a) references in any provision to the reduction of any SEIS relief attributable to any shares include a reference—
    (i) to the reduction of the relief to nil, and

(ii) if no relief has yet been obtained, to the reduction of the amount which apart from that provision would be the SEIS relief, and

(b) references to the withdrawal of SEIS relief in respect of any shares are—

(i) to the withdrawal of the SEIS relief attributable to those shares, or

(ii) if not relief has yet been obtained, to ceasing to be eligible for SEIS relief in respect of those shares.

(5) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if dealt in on a recognised stock exchange.

(6) For the purposes of this Part the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.

(7) In this Part—

(a) references to SEIS relief obtained by an individual in respect of any shares include a reference to SEIS relief obtained by the individual in respect of those shares at any time after the individual has disposed of them, and

(b) references to the withdrawal or reduction of SEIS relief obtains by an individual in respect of any shares include a reference to the withdrawal or reduction of SEIS relief obtained by the individual in respect of those shares at any time.

(8) In the case of requirements that cannot be met until a future date, references in this Part to requirements being met for the time being are to nothing having occurred to prevent their being met."

PART 2

CONSEQUENTIAL AMENDMENTS

ITA 2007

2 In section 2 of ITA 2007 (overview of Act), after subsection (5) insert—

"(5A) Part 5A is about relief under the seed enterprise investment scheme."

3 In section 26 of that Act (tax reductions), in subsection (1)(a), after the entry for Chapter 1 of Part 5, insert—

"Chapter 1 of Part 5A (SEIS relief),".

4 In section 27 of that Act (order of deducting tax reduction: individual), in subsection (5), after the entry for "Chapter 2 of Part 6 (VCT relief)" insert—

"Chapter 1 of Part 5A (SEIS relief),".

5 In section 172 of that Act (overview of Chapter 3), after paragraph (aa) insert—

"(ab) the spending of money raised by SEIS investments (see section 173B),".

6 In section 173A of that Act (enterprise investment scheme: maximum amount raised annually through risk capital schemes requirement), in subsection (3)(b)—

(a) after sub-paragraph (i) (and the "or" at the end of it) insert—

"(ia) a compliance statement under section 257ED (seed enterprise investment scheme).", and

(b) omit sub-paragraph (ii).

7 After that section insert—

"173B The spending of money raised by SEIS investment requirement

(1) The requirement of this section is that, if an SEIS investment has been made in the issuing company, at least 75% of the money raised by the investment has been spent as mentioned in section 257CC (seed enterprise investment scheme: spending of the money raised requirement) before the relevant shares are issued.

(2) An "SEIS investment" is made in a company if the company issues shares (money having been subscribed for them), and (at any time) the company provides a compliance statement under section 257ED (seed enterprise investment scheme)."

8 In section 239 of that Act (date from which interest is chargeable), in subsection (2) for "sections 181 to 188" substitute "sections 180A to 188".

9 (1) Section 246 (identification of shares on a disposal) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a) for "neither EIS relief nor deferral relief" substitute "no EIS relief, deferral relief or SEIS relief",

(b) after that paragraph insert—

"(aa) next any to which SEIS relief is attributable,".

(3) In subsection (7), at the end, insert—

"SEIS relief" means relief under Part 5A (seed enterprise investment scheme)."

10 In section 286 of that Act (qualifying holdings: introduction), in subsection (3), after paragraph (ea) insert—

"(eb) the spending of money raised by SEIS investment (see section 292B),".

11 In section 292A of that Act (venture capital trusts: maximum amount raised annually through risk capital schemes requirement), in subsection (3)(b)—

(a) after sub-paragraph (i) (and the "or" at the end of it) insert—

"(ia) a compliance statement under section 257ED (seed enterprise investment scheme).", and

(b) omit sub-paragraph (ii).

12 After that section insert—

"292B The spending of money raised by SEIS investment requirement

(1) The requirement of this section is that, if an SEIS investment has been made in the relevant company, at least 75% of the money raised by the investment has been spent as mentioned in section 257CC (seed

enterprise investment scheme: the spending of the money raised requirement) before the issue of the relevant holding.

(2) An "SEIS investment" is made in a company if the company issues shares (money having been subscribed for them), and (at any time) the company provides a compliance statement under section 257ED (seed enterprise investment scheme)."

TCGA 1992

13 (1) Section 150A of TCGA 1992 (enterprise investment scheme) is amended as follows.

(2) For "relief", in each place it occurs, substitute "EIS relief".

(3) In subsection (6)—

(a) leave out the "and" at the end of paragraph (b) and after that paragraph insert—

"(ba) shares to which SEIS relief is attributable; and", and

(b) after "paragraph (a), (b)," insert "(ba),".

(4) In subsection (10) for "the relief" substitute "EIS relief".

(5) In subsection (10A), at the appropriate place, insert—

""EIS relief" means relief under Part 7 of the Taxes Act or Part 5 of ITA 2007;".

14 (1) Section 150B of that Act (enterprise investment scheme: reduction of relief) is amended as follows.

(2) For "relief", in each place it occurs, substitute "EIS relief".

(3) After subsection (5) insert—

"(5A) In this section "EIS relief" means relief under Part 7 of the Taxes Act or Part 5 of ITA 2007."

15 Before section 151 of that Act insert—

"150E Seed enterprise investment scheme

(1) For the purpose of determining the gain or loss on any disposal of shares by an individual where—

(a) an amount of SEIS relief is attributable to the shares, and

(b) apart from this subsection there would be a loss,

the consideration given by the individual for the shares is to be treated as reduced by the amount of the relief.

(2) Where—

(a) shares are disposed of by an individual after the end of the period referred to in section 257AC(2) of ITA 2007,

(b) an amount of SEIS relief is attributable to the shares, and

(c) (apart from this subsection) there would be a gain,

the gain is not a chargeable gain.

(3) Despite section 16(2), subsection (2) does not apply to a disposal on which a loss accrues.

(4) Subsection (5) applies where—
  (a) an individual's liability to income tax has been reduced (or treated by virtue of section 257H of ITA 2007 (spouses and civil partners) as reduced) for any tax year under section 257AB of that Act in respect of an issue of shares,
  (b) the amount of the reduction ("R") is less than the amount ("T") which is equal to tax at the basic rate for that year on the amount subscribed for the issue, and
  (c) R is not within paragraph (b) solely by virtue of section 29(2) and (3) of ITA 2007.

(5) If there is a disposal of the shares on which there is a gain, subsection (2) applies only to so much of the gain as is found by multiplying it by the fraction—

$$\frac{R}{T}$$

(6) Any question as to—
  (a) which of any shares that—
    (i) are acquired by an individual at different times, and
    (ii) are shares to which SEIS relief is attributable,
  a disposal relates to, or
  (b) whether a disposal relates to shares to which SEIS relief is attributable,

are to be determined as for the purposes of section 257HA of ITA 2007.

Chapter 1 of this Part has effect subject to this subsection.

(7) Sections 104, 105 and 106A do not apply to shares to which SEIS relief is attributable.

(8) Where—
  (a) an individual holds shares ("the existing holding") which form part of the ordinary share capital of a company,
  (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
  (c) immediately following the reorganisation, SEIS relief is attributable to the existing holding or the allotted shares,

sections 127 to 130 do not apply in relation to the existing holding.

(9) Sections 135 and 136 do not apply in respect of shares to which SEIS relief is attributable.

(10) Subsection (9) does not have effect to disapply section 135 or 136 where—
  (a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future right to be redeemed,

(b) the new shares are issued after the end of the relevant period, and

(c) the condition in subsection (11) is satisfied.

(11) The condition is that at some time before the issue of the new shares—

(a) the company issuing them issued eligible shares, and

(b) a certificate in relation to those eligible shares was issued by the company for the purposes of section 257EB(1) of ITA 2007 and in accordance with sections 257EC and 257ED of that Act.

(12) All such adjustments of capital gains tax are to be made, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the SEIS relief being given or withdrawn.

(13) For the purposes of this section—

"eligible shares" means shares that meet the requirements of section 257CA(2);

"ordinary shares", in relation to a company, means shares forming part of its ordinary share capital (within the meaning of section 989 of ITA 2007);

"new holding" is to be construed in accordance with sections 126, 127, 135 and 136;

"relevant period" means the period found by applying section 257AC(2) of ITA 2007 by reference to the company issuing the shares referred to in subsection (9) and by reference to those shares;

"SEIS relief" means relief under Part 5A of ITA 2007 (seed enterprise investment scheme);

and that Part applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable.

150F Seed enterprise investment scheme: reduction of relief

(1) This section has effect where—

(a) section 150E(2) applies on a disposal of shares, and

(b) before the disposal, value is received in circumstances where SEIS relief attributable to the shares is reduced by an amount under section 257FE(2)(a) of ITA 2007.

(2) If section 150E(2) applies on the disposal but section 150E(5) does not, section 150E(2) applies only to so much of the gain as remains after deducting so much of it as is found by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

"A" is the amount by which the SEIS relief attributable to the shares is reduced as mentioned in subsection (1), and

"B" is the amount of the relief attributable to the shares.

(3) If section 150E(2) and (5) apply on the disposal, section 150E(2) applies only to so much of the gain as is found by—

(a) taking the part of the gain found under section 150E(5), and

(b) deducting from that part so much of it as is found by multiplying it by the fraction mentioned in subsection (2) above.

(4) Where the SEIS relief attributable to the shares is reduced as mentioned in subsection (1) by more than one amount, "A" in subsection (2) is to be taken to be equal to the aggregate of the amounts.

(5) The amount which is "B" in subsection (2) is to be found without regard to any reduction mentioned in subsection (1).

(6) For the purposes of this section, Part 5A of ITA 2007 (seed enterprise investment scheme) applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable."

TMA 1970

16 In section 98 of TMA 1970 (special returns, etc)—

(a) in the first column of the Table, after the entry for "sections 242 and 243(1) and (2) of ITA 2007" insert—

"sections 257GG and 257GH(1) and (2) of ITA 2007;", and

(b) in the second column of that Table, after the entry for "sections 240 and 241 of ITA 2007" insert—

"sections 257GE and 257GF of ITA 2007;".

PART 3

COMMENCEMENT

17 (1) Subject to sub-paragraph (2), the amendments made by this Schedule have effect in relation to shares issued on or after 6 April 2012.

(2) The amendments made by paragraphs 10 to 12 have effect for the purpose of determining whether shares or securities issued on or after 6 April 2012 are to be regarded as comprised in a company's qualifying holdings.

EXPLANATORY NOTE

SEED ENTERPRISE INVESTMENT SCHEME

SUMMARY

1. This clause and Schedule set out the new Seed Enterprise Investment Scheme (SEIS), which is designed to incentivise investment in small, early stage companies.

DETAILS OF THE SCHEDULE

Part 1 of the Schedule

2. Paragraph 1 of the Schedule introduces a new Part 5A to Income Tax Act 2007 (ITA), containing the rules for the new scheme.

Chapter 1 of New Part 5A of ITA

3. New section 257A defines SEIS income tax relief and provides that it will apply to shares issued on or after 6 April 2012 and before 6 April 2017. The new scheme is therefore of fixed length, but can be extended by a Treasury order.

4. New section 257AA provides that an investor is eligible for relief in respect of shares issued to him or her where particular requirements are met. There are requirements which apply to the investor, general requirements, and requirements that apply to the issuing company. These requirements are in Chapters 2 – 4 of new Part 5A.

5. New section 257AB provides that the relief is a reduction of income tax calculated as 50 percent of the amount the investor subscribes for shares, subject to an overall limit on the amount of relief that can be received in any one year.

6. New section 257AB(5) allows an investment or part of an investment made in one year to be treated as though made in the previous year (but not in the first year that the new scheme operates), subject to the overall limit for a year.

7. New section 257AC defines two periods of time with respect to which many of the SEIS conditions operate. Period A runs from the company’s incorporation to the third anniversary of the share issue (defined at new section 257AC(4) as the “termination date”). Period B runs from the issue of the shares to the termination date.

8. New section 257AD is an overview of Chapters 5 – 8 of new Part 5A, which deal with the making of claims, withdrawal of relief, and supplementary matters.

9. New section 257AE mentions new Section 150E of TCGA 1992, which provides a capital gains disposal relief for shares which qualify for SEIS relief.

Chapter 2

10. New section 257B is an overview of Chapter 2 which contains the conditions which apply to the SEIS investor.

11. New section 257BA provides that neither SEIS investors nor their associates may be employees of the company in period A (unless also a director).

12. New section 257BB provides that SEIS investors must not have a "substantial interest" in the company, defined at new section 257BF as having more than a 30 per cent stake in the company through ordinary or issued share capital, voting power or rights on winding up, or as having control of the company.

13. New section 257BC provides that SEIS investors must not subscribe for the shares as part of a wider arrangement which includes somebody else subscribing for shares in a company in which the investor – or anyone else party to the arrangement – has a substantial interest.

14. New section 257BD provides that there must be no loans to the investor or their associates which are linked to their subscription for shares.

15. New section 257BE requires the subscription for shares to be for genuine commercial reasons, and not as part of a tax avoidance arrangement.

16. New Section 257 BF defines when a person has a "substantial interest" in a company.

Chapter 3

17. New section 257C is an overview of Chapter 3 which contains the general requirements under SEIS.

18. New section 257CA sets out the sorts of shares for which investors can subscribe under the scheme, allowing for shares carrying certain preferential rights to dividends. Shares are still excluded if: they carry preferential rights to assets on winding up; any right to be redeemed; if the amount and timing of the dividends depend on a

decision of the company or any other person; or if they are cumulative. This new definition is the same as that introduced for VCTs in Finance (No 3) Act 2010 and which is also being introduced for EIS.

19. New section 257CA(4) provides that shares must be subscribed for wholly in cash, fully paid up at the time they are issued and must be held by the investor throughout period B.

20. New section 257CB requires that the shares be issued to raise money for a qualifying business activity (defined at new section 257HD).

21. New section 257CC requires that the money raised from the share issue must be spent by the end of period B.

22. New section 257CD prevents "pre-arranged exits", which are any arrangements in place (at the time the shares are issued) for the disposal of shares or securities in the company or its assets, or for its activities to cease, or for the investment to be protected from normal commercial risks.

23. New section 257CE requires the issue of shares to be for genuine commercial reasons, and not as part of a tax avoidance arrangement.

24. New section 257CF is the "no disqualifying arrangements" requirement. Arrangements are "disqualifying" if they are entered into with the purpose of ensuring that any of the venture capital scheme tax reliefs are available in respect of the relevant company's business, and either: all or most of the monies raised under the scheme are paid to or for the benefit of a party to the arrangements; or in the absence of the arrangements, it would be reasonable to expect that the business would be carried on as part of another business. This is the same requirement that is being introduced for the EIS and VCT schemes.

Chapter 4

25. New section 257D is an overview of Chapter 4 which contains the conditions that apply to the company.

26. New section 257DA provides that the company must not have been incorporated more than two years before the shares are issued.

27. New section 257DB is the "purpose of existence" condition, requiring that the company's main purpose throughout period B (and since incorporation) must be to carry on a new qualifying trade or trades.

28. New section 257DC provides that the purpose of existence test is not breached due to anything that happens because of the company being

in administration or receivership, or being dissolved or wound up, provided that this is done for genuine commercial reasons and not as part of a tax avoidance arrangement.

29. New section 257DD provides that the issuing company itself must, throughout period B, carry on the new qualifying trade and any preparation work or R&D leading to it.

30. New section 257DD(3) provides that this requirement is not breached due to the new qualifying trade being taken over by an unconnected person because of the company being in administration or receivership, or being dissolved or wound up, provided that this is done for genuine commercial reasons and not as part of a tax avoidance arrangement.

31. New section 257DE requires the company to have a permanent establishment in the United Kingdom throughout period B.

32. New section 257DF requires the company not to be "in difficulty" at the beginning of period B. This means it must not be a "firm in difficulty" under European Commission guidelines.

33. New section 257DG requires the company to be "unquoted" at the beginning of period B and provides that there must be no arrangements at that time for it to cease to be unquoted.

34. A company is "unquoted" if its securities are not marketed to the general public – defined in new section 257DG(3) as being listed on a recognised stock exchange, listed on a designated exchange outside the UK, or dealt with, outside the UK, by any such means as may be designated.

35. New sections 257DG(4) and (5) provide for the Commissioners of HMRC to make the designations referred to in new section 257DG(3).

36. New section 257DH contains the control and independence requirement:

- The control part of the requirement is that the company may not, in period B, control any other company – either alone or with any connected person – and nor must there be any arrangements for it to do so (whether in period B or outside it). It may not, therefore, have any subsidiaries in period B.
- The independence part of the requirement is that the company may not, in period B, be under the control of any other company – either alone or with any connected person – and nor must there be any arrangements for this to happen (whether in period B or outside it). It may not, therefore, be a subsidiary in period B.

37. New section 257DI requires that the company must not be a member of either a partnership or a limited liability partnership (or any foreign equivalent) at any time in period A.

38. New section 257DJ is the gross assets requirement. Immediately before the shares are issued, the total value of the company's assets and of the appropriate proportion of any partner entity's assets, must not exceed £200,000.

39. New section 257DJ(2) defines "partner entity" according to Commission Regulation (EC) No 800/2008 (General block exemption regulations). An entity is a partner of the company if it holds more than 25 per cent of the capital and voting rights in the company. The appropriate proportion of assets to be added to the issuing company's assets is then the other entity's proportionate holding of capital or voting rights, whichever is the greater.

40. New section 257DK is the number of employees requirement. At the time the shares are issued, the company's full time equivalent number of employees must be less than 25. Again, the appropriate proportion of any partner entity's number of employees must be added to those of the issuing company.

41. New section 257DL provides that the company must not have previously raised money under either the EIS or VCT schemes.

42. New section 257DM provides that a company may raise no more than £150,000 in total under SEIS.

43. Where a share issue takes the total amount raised above £150,000, the investment in the share issue is apportioned so that relief is given on no more than £150,000 of shares in the company.

Chapter 5

44. New section 257E contains rules setting out how relief given to an individual is to be attributed to shares for which the individual has subscribed.

45. New section 257EA provides that SEIS relief cannot be claimed until 70 per cent of the money raised by the issue has been spent, nor can it be claimed more than five years after the SA filing deadline for the year in which the shares are issued.

46. New section 257EB provides that the investor can only claim relief if he or she has a compliance certificate from the company for the shares.

47. New section 257EC defines a compliance certificate. This is a certificate issued by the company stating that the shares meet the

requirements for SEIS relief (excluding those requirements that are dependent on the investor).

48. Subsection (2) provides that a certificate cannot be issued until 70 per cent of the money raised by the issue has been spent.

49. Subsection (3) provides that a certificate cannot be issued until the company has supplied a compliance statement to HMRC and subsection (4) that it must have authority from HMRC to issue a certificate.

50. New section 257ED defines a compliance statement. This is a statement that the requirements for SEIS are being or have been met (excluding those requirements that are dependent on the investor).

51. New section 257EE provides for an appeal against a decision by HMRC not to authorise a compliance certificate.

52. New section 257EF prescribes a maximum penalty of up to £3,000 where a company negligently or fraudulently issues a certificate or statement or issues one in breach of the conditions in new section 257EC.

53. New section 257EF allows the Treasury, by order, to amend new sections 257EC and 257ED. This is intended to allow changes in the administrative processes without the need for primary legislation.

Chapter 6

54. New section 257F is an overview of Chapter 6 which contains provisions dealing with the withdrawal of relief given for SEIS shares ("relevant shares"). Many of the provisions in Chapter 6 are counterparts to conditions contained in the preceding chapters, setting out what happens when those conditions are breached.

55. New section 257FA withdraws relief where, before the end of period B, the investor disposes of shares for which SEIS relief has been given. In particular, it contains computational rules setting out how much relief is to be withdrawn. New section 257FB supplements those rules

56. New sections 257FC and 257FD withdraw relief where the investor holds a call or put option in relation to the relevant shares.

57. New section 257FE withdraws relief where during period A the investor receives any value from the company relating to the relevant shares.

58. New section 257FF provides that relief is not withdrawn where the value received is insignificant (defined in new section 257FG)..

59. New section 257FH defines a number of different circumstances in which value is received. These cover various ways in which the company might make payments to the investor. A number of circumstances are excluded – for example where the investor is a director of the company and is reimbursed expenses incurred in performance of his or her duties.

60. New section 257FI defines the amount of value received in the various cases described by new section 257FH.

61. New sections 257FJ – 257FO contain supplementary provisions concerning the receipt of value in particular circumstances.

62. New section 257FP withdraws relief where, during period A, the company takes over assets previously used by another person in their trade, and the investor either had or has more than a half share in the trade, or controls or has controlled the issuing company and controls or has controlled the company which previously carried on the trade.

63. New section 257FQ withdraws relief given where, at some later date, it is found not to have been due.

Chapter 7

64. New section 257G provides for relief to be withdrawn or reduced by making an assessment.

65. New section 257GB sets a time limit for any such assessment, which must be made within 6 years of the end of whichever is the later of the tax year in which period B ends, or the tax year in which the event causing the withdrawal or reduction occurs.

66. New section 257GC sets out cases where no such assessment may be made.

67. New section 257GD provides that when an assessment is made under new section 257G to withdraw relief as prescribed by particular provisions of Chapters 2, 4 and 5, interest is to be charged from 31 January following the tax year in which the assessment is made.

68. New section 257GE requires the investor to notify HM Revenue and Customs if he or she ceases to be a qualifying investor, or if relief should be withdrawn for one of a number of specified reasons and new section 257 DF places a similar requirement on the company.

69. New section 257GG gives HM Revenue and Customs power to require information where either new section 257GE or new section 257GF applies or could have applied.

70. New section 257GH gives HM Revenue and Customs a power to require information in other cases, specifying from whom information may be required in various different circumstances.

71. New section 257GI allows HM Revenue and Customs to disclose to a company that SEIS relief has been obtained in respect of its shares.

Chapter 8

72. New section 257H allows for transfers of shares between spouses or civil partners not to be treated as a disposal. The SEIS relief remains attributable to the shares until a disposal or other relevant event by the spouse or civil partner to whom they were transferred.

73. New section 257HA sets out rules determining which shares are treated as having been disposed of under either new section 257FA or 257H.

74. New section 257HB contains provisions applying to nominees and bare trustees.

75. New section 257HC defines a "new qualifying trade".

76. The main requirement of the section is in new section 257HC(1) which states that the trade must be a genuine new venture.

77. New section 257HC(2) provides that two particular circumstances do not constitute such a genuine new venture.

78. New section 257HC(3) covers the first case. This is where either the issuing company itself has carried on the same activities that constitute the trade within the previous six months, or where the trade has been transferred to the company.

79. New section 257HC(4) defines a transfer as taking place where the issuing company takes over the trade from another person who has carried it on as a result of arrangements involving the two parties.

80. New section 257HC(5) covers the second case. This is where the issuing company is a party to arrangements to take on a trade,

81. New section 257HD defines "qualifying business activity" as either carrying on, or preparing to carry on, a new qualifying trade, or carrying on R&D from which a new qualifying trade will be developed (or which will benefit a new qualifying trade).

82. New sections 257HE and 257HF define the terms "disposal of shares" and "issue of shares".

83. New section 257HG contains a number of definitions of terms used elsewhere in part 5A.

Part 2 of the Schedule

84. Part 2 makes consequential amendments to ITA (and in particular to the existing EIS and VCT rules in that Act) and to the Taxation of Chargeable Gains Act 1992 (TCGA)

85. Paragraph 2 of the schedule amends the overview of ITA, adding a reference to the new Part 5A.

86. Paragraphs 3 and 4 amend sections 26 and 27, which form part of the computational rules for income tax liability, to add SEIS relief.

87. Paragraphs 5 and 7 amend the EIS rules to add a new requirement, that before a company can issue shares qualifying under EIS it must have spent at least 75 per cent of any money raised under SEIS, and paragraphs 10 and 12 make similar amendments to the VCT rules.

88. Paragraph 6 amends the EIS rule limiting the annual amount a company may raise under the venture capital schemes so that it takes account of any money raised under SEIS. Paragraph 11 makes similar changes to the limit in the VCT rules.

89. Paragraphs 8 and 9 make consequential amendments.

90. Paragraphs 13 to 15 introduce a capital gains tax disposal relief for SEIS shares at sections 150E and 150F of the Taxation of Chargeable Gains Act 1992 that mirrors that available for enterprise investment scheme shares at sections 150A and 150B of that Act, and make consequential amendments.

91. Paragraph 16 makes amendments to section 98 of TMA 1970, which are consequential on the information powers in new sections 257GE – 257GH.

BACKGROUND NOTE

92. The Chancellor announced at Budget 2011 that the Government would bring forward proposals for support for investment in small, early stage companies, in addition to that provided by the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs).

93. A consultation document, "Tax-advantaged venture capital schemes: a consultation" was published on the Treasury website on 6 July 2011 setting out proposals and seeking views on a number of design issues.

94. Views expressed in response to the consultation have been taken into account in developing the new SEIS relief. The Government's response to the consultation was published on 6 December 2011 and is available on the HMT website.

95. If you have any questions about this change, or comments on the legislation, please contact Kathryn Robertson on 020 7147 2589 (email: kathryn.robertson@hmrc.gsi.gov.uk) or Des Ryan on 020 7147 0818 (email: des.ryan@hmrc.gsi.gov.uk).

Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs): better focus

1 Enterprise investment scheme

Schedule 1 contains provision about the enterprise investment scheme (including provision about deferral relief under Schedule 5B to TCGA 1992).

SCHEDULE 1

Section 1

ENTERPRISE INVESTMENT SCHEME

PART 1

ENTERPRISE INVESTMENT SCHEME

Introduction

1 Part 5 of ITA 2007 (enterprise investment scheme) is amended as follows.

Increase in amount of relief

2 (1) In section 158 (form and amount of EIS relief), in subsection (2)(b) for "£500,000" substitute "£1 million".

(2) Accordingly, section 31 of FA 2008 is repealed.

Loan capital

3 In section 170 (person interested in capital etc of company)—

(a) in subsection (1)(b), omit "loan capital and", and

(b) omit subsections (8) and (10).

Overview of Chapter 3

4 In section 172 (overview of Chapter 3), omit the "and" at the end of paragraph (e) and after paragraph (f) insert ", and

(g) no disqualifying arrangements (see section 178A)."

Relaxation of the shares requirement

5 (1) Section 173 (the shares requirement) is amended as follows.

(2) In subsection (2), for paragraph (a) (but not the "or" after it) substitute—

"(a) any present or future preferential right to dividends that is within subsection (2A),

(aa) any present or future preferential right to a company's assets on its winding up,"

(3) After that subsection insert—

"(2A) A preferential right to dividends carried by a share in a company is within this subsection if—

(a) the amount of any dividends payable pursuant to the right, or the date or dates on which they are payable, depend to any extent on a decision of the company, the holder of the share or any other person, or

(b) the amount of any dividends that become payable at any time pursuant to the right includes any amount that became payable at any earlier time pursuant to the right, but has not been paid."

Increase in the maximum amount permitted to be raised annually

6 In section 173A (the maximum amount raised annually through risk capital schemes requirement), in subsection (1) for "£2 million" substitute "£10 million".

No disqualifying arrangements requirement

7 After section 178 insert—

"178A The no disqualifying arrangements requirement

(1) The relevant shares must not be issued in consequence of, or otherwise in connection with, disqualifying arrangements.

(2) Arrangements are "disqualifying arrangements" if—

(a) the main purpose, or one of the main purposes, of any person ("P") in being a party to them is to secure—

(i) that the issuing company, or a qualifying 90% subsidiary of that company, carries on a business which consists of or includes the relevant qualifying business activity, and

(ii) that one or more persons (whether or not including P) may obtain relevant tax relief in respect of shares issued by the issuing company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a VCT, and

(b) one or both of conditions A and B are met.

(3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant shares being employed as required by section 175, an amount representing the whole or the majority of the amount raised is paid to or for the benefit of a party to the arrangements or a person connected with such a party.

(4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the component activities of the relevant qualifying business activity would have been carried on as part of another business (whether by P or any other person).

(5) For the purposes of this section it is immaterial whether the issuing company is a party to the arrangements.

(6) In this section—

"component activities" means—

(a) if the relevant qualifying business activity is activity A (see section 179(2)), the carrying on of a qualifying trade, or preparing to carry on such a trade, which constitutes that activity, and

(b) if the relevant qualifying business activity is activity B (see section 179(4)), the carrying on of research and development which constitutes that activity;

"qualifying holdings", in relation to the issuing company, is to be construed in accordance with section 286 (VCTs: qualifying holdings);

"relevant qualifying business activity" means the activity for the purposes of which the issue of the relevant shares raised money;

"relevant tax relief", in respect of shares, means one or more of the following—

(a) EIS relief in respect of the shares;

(b) SEIS relief under Part 5A in respect of the shares;

(c) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;

(d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme) in respect of the shares;

(e) relief under Schedule 5B to that Act (enterprise investment scheme: reinvestment) in consequence of which deferral relief is attributable to the shares (see paragraph 19(2) of that Schedule)."

Qualifying business activity

8 (1) Section 179 (meaning of "qualifying business activity") is amended as follows.

(2) In subsection (1), for "subsections (3) and (5)" substitute "subsection (2A)".

(3) After subsection (2) insert—

"(2A) But activity A is not a qualifying business activity if, and to the extent that—

(a) it consists of an acquisition of shares or stock in a company, and

(b) the acquisition is not an acquisition of shares or stock by subscription—

(i) immediately before which the company is not a qualifying 90% subsidiary of the issuing company or carrying on, or preparing to carry on, a qualifying trade, and

(ii) immediately after which the company is a qualifying 90% subsidiary of the issuing company."

(4) In subsection (6)(a), after "subsection (2)(b)" insert "(but not subsection (2A)(b)(i))".

Increase in the gross assets limits

9 In section 186 (the gross assets requirement)—

(a) in subsections (1)(a) and (2)(a), for "£7 million" substitute "£15 million", and

(b) in subsections (1)(b) and (2)(b), for "£8 million" substitute "£16 million".

Relaxation of restriction on number of employees

10 In section 186A (the number of employees requirement), in subsections (1) and (2), for "50" substitute "250".

Subsidised generation or export of electricity

11 (1) Section 192 (meaning of "excluded activities") is amended as follows.

(2) In subsection (1), omit "and" at the end of paragraph (k) and after that paragraph insert—

"(ka) the subsidised generation or export of electricity, and".

(3) In subsection (2), omit the "and" at the end of paragraph (e) and after paragraph (f) insert ", and

(g) section 198A (subsidised generation or export of electricity)."

12 After section 198 insert—

"198A Excluded activities: subsidised generation or export of electricity

(1) This section supplements section 192(1)(ka).

(2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).

(3) The generation of electricity is "subsidised" if a person receives a FIT subsidy in respect of the electricity generated.

(4) The export of electricity is "subsidised" if a person receives a FIT subsidy in respect of the electricity exported.

(5) But the generation or export of electricity is not to be taken to fall within section 192(1)(ka) if Condition A, B or C is met.

(6) Condition A is that the generation or export is carried on by—

(a) a community interest company,
(b) a co-operative society,
(c) a community benefit society, or
(d) a NI industrial and provident society.

(7) Condition B is that the plant used for the generation of the electricity relies wholly or mainly on anaerobic digestion.

(8) Condition C is that the electricity is hydroelectric power.

(9) For the purposes of this section—

"anaerobic digestion" means the bacterial fermentation of organic material in the absence of free oxygen (excluding anaerobic digestion of sewage or material in a landfill);

"community benefit society" means—

(a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a community benefit society, or

(b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(3) of that Act;

"co-operative society" means—

(a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a co-operative society, or

(b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(2) of that Act;

"FIT subsidy" means—

(a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to encourage small-scale low-carbon generation of electricity, or

(b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;

"NI industrial and provident society" means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

"small-scale low-carbon generation" has the meaning given by section 41(4) of the Energy Act 2008."

13 In section 199 (excluded activities: provision of services or facilities for another business), in subsection (1)(a), for "(k)" substitute "(ka)".

Powers to amend

14 In section 200 (power to amend by Treasury order), the existing provision becomes subsection (1) and after that subsection insert—

"(2) An order under this section may—

(a) make different provision for different cases or purposes, or

(b) include such transitional provision as the Treasury consider appropriate."

Information

15 In section 243 (power to require information in other cases)—

(a) in subsection (1), omit the "or" at the end of paragraph (d) and after that paragraph insert—

"(da) section 178A (no disqualifying arrangements), or", and

(b) in subsection (4), at the appropriate place in the table, insert—

"Subsection (1)(da)	The claimant, the company, any person controlling the company and any person whom an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question"

Interpretation

16 In section 257 (minor definitions etc), in subsection (1), for the definition of "arrangements" substitute—

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

Commencement and transitional provision

17 (1) The amendments made by paragraphs 2 to 10 and 15 have effect in relation to shares issued on or after 6 April 2012.

(2) For the purposes of paragraphs 4, 7 and 15 it does not matter whether the disqualifying arrangements were entered into before or on or after 6 April 2012.

18 (1) Subject to sub-paragraph (2), the amendments made by paragraphs 11 to 13 have effect in relation to shares issued on or after 23 March 2011.

(2) Those amendments do not have effect in relation to shares issued before 6 April 2012 if the issuing company, or a qualifying 90% subsidiary of that company, first began to carry on activities of the kind mentioned in section 192(1)(ka) of ITA 2007 before that day.

(3) Until such time as section 1 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into force, section 198A(6) of ITA 2007 (inserted by paragraph 12 of this Schedule) has effect as if for paragraphs (b) and (c) there were substituted—

"(b) a society registered under the Industrial and Provident Societies Act 1965,".

19 (1) The amendment made by paragraph 16 is to be treated as having come into force on 6 April 2012.

PART 2

ENTERPRISE INVESTMENT SCHEME: REINVESTMENT RELIEF

Introduction

20 Schedule 5B to the TCGA 1992 (enterprise investment scheme: re-investment) is amended as follows.

Maximum annual investment

21 In paragraph 1 (application of Schedule), in sub-paragraph (2)(da), for "£2 million" substitute "£10 million".

No disqualifying arrangements

22 After paragraph 11 insert—

"Disqualifying arrangements

11A (1) Where an individual subscribes for eligible shares ("the shares") in a company ("the company"), the shares are to be treated as not being eligible shares for the purposes of this Schedule if the shares are issued in consequence of, or otherwise in connection with, disqualifying arrangements.

(2) Arrangements are "disqualifying arrangements" if—

(a) the main purpose, or one of the main purposes, of any person ("P") in being a party to them is to secure—

(i) that the company, or a qualifying 90% subsidiary of the company, carries on a business which consists of or includes the relevant qualifying business activity, and

(ii) that one or more persons (whether or not including P) may obtain relevant tax relief in respect of shares issued by the company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a venture capital trust, and

(b) one or both of conditions A and B are met.

(3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the shares being employed as required by paragraph 1(2)(g), an amount representing the whole or the majority of the amount raised is paid to or for the benefit of a party to the arrangements or a person connected with such a party.

(4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the component activities of the relevant qualifying business activity would have been carried on as part of another business (whether by P or by any other person).

(5) For the purposes of this paragraph, it is immaterial whether the company is a party to the arrangements.

(6) In this paragraph—

"component activities" means—

(a) if the relevant qualifying business activity is activity A (see section 179(2) of ITA 2007), the carrying on of a qualifying trade, or preparing to carry on such a trade, which constitutes that activity, and

(b) if the relevant qualifying business activity is activity B (see section 179(4) of that Act), the carrying on of research and development which constitutes that activity;

"qualifying holdings", in relation to the issuing company, is to be construed in accordance with section 286 of ITA 2007 (VCTs: qualifying holdings);

"qualifying 90% subsidiary" has the meaning given by section 190 of ITA 2007;

"relevant qualifying business activity" means the activity for the purposes of which the issue of the shares raised money;

"relevant tax relief", in respect of shares, means one or more of the following—

(a) relief under this Schedule in consequence of which deferral relief is attributable to the shares;

(b) relief under section 150A or 150E (enterprise investment scheme or seed enterprise investment scheme) in respect of the shares;

(c) relief under Chapter 6 of Part 4 of ITA 2007 (losses on disposal of shares) in respect of the shares;

(d) EIS relief (within the meaning of Part 5 of that Act) in respect of the shares;

(e) SEIS relief (within the meaning of Part 5A of that Act) in respect of the shares."

Information

23 In paragraph 16 (information)—

(a) in sub-paragraph (6), for "or 11(1)" substitute ", 11(1) or 11A",

(b) in sub-paragraph (7), omit the "and" at the end of paragraph (b) and after that paragraph insert—

"(ba) in relation to paragraph 11A, the claimant, the company, any person controlling the company and any person whom an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question; and", and

(c) in that sub-paragraph, for "and (b)" substitute ", (b) and (ba)".

Meaning of "arrangements"

24 In paragraph 19 (interpretation), in sub-paragraph (1) for the definition of "arrangements" substitute—

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

Commencement

25 (1) The amendments made by paragraphs 21 to 23 have effect in relation to shares issued on or after 6 April 2012.

(2) For the purposes of paragraphs 22 and 23 it does not matter whether the disqualifying arrangements were entered into before or on or after that date.

26 The amendment made by paragraph 24 is treated as having come into force on 6 April 2012.

EXPLANATORY NOTE

ENTERPRISE INVESTMENT SCHEME

SUMMARY

1. This clause and Schedule make a range of changes to the Enterprise Investment Scheme (EIS). This increases the annual amount an investor may invest under the EIS, and provides for two simplifications to the EIS rules. The acquisition of shares will become a non-qualifying activity, as will trades which consist substantially in the receipt of feed-in tariffs (with certain exceptions). A “no disqualifying arrangements” test is introduced. The Schedule also raises the thresholds for eligible companies under the scheme. The increases in these thresholds are subject to State aid approval.

DETAILS OF SCHEDULE

Part 1

2. Paragraph 1 introduces the changes to be made to Part 5 of the Income Tax Act 2007, dealing with EIS income tax relief.

3. Paragraph 2 of the Schedule increases from £500,000 to £1million the annual amount that an investor may invest under the EIS.

4. Paragraph 3 amends the EIS “connected person” rules so that any loan capital that the investor has in the company is not taken into account when computing whether they are excluded from EIS income tax relief through having a 30 per cent interest in the company.

5. Paragraph 5 widens the definition, for EIS, of the sorts of shares for which investors can subscribe under the scheme to include shares carrying certain preferential rights to dividends. Shares are still excluded if: a) they carry preferential right to assets on winding up; or b) if the amount and timing of the dividends depend on a decision of the company or any other person; or c) if the rights to dividends are cumulative (that is, the right to receive a dividend rolls forward to future periods if the company has insufficient profits to pay the dividend) The new definition is the same as that introduced, for VCTs, in Finance (No 3) Act 2010.

6. Paragraph 6 increases, for EIS, the annual amount of investment that a company may raise under the VC schemes from £2million to £10million. The increase is subject to State aid approval.

7. Paragraph 7 introduces a “no disqualifying arrangements” requirement. Arrangements are “disqualifying” if they are entered into with the purpose of ensuring that any of the venture capital

schemes tax reliefs are available in respect of the relevant company's business, and either: all or most of the monies raised under the scheme are paid to or for the benefit of a party to the arrangements; or in the absence of the arrangements, it would be reasonable to expect that the business would be carried on as part of another business.

8. Paragraph 8 amends the definition of "qualifying business activity" at section 179 Income Tax Act 2007, to exclude the acquisition of shares other than_shares by subscription in a new 90 per cent qualifying subsidiary.

9. Paragraph 9 increases the gross assets limit for EIS from £7million before the EIS investment and £8million afterwards to £15million and £16million respectively. The increases are subject to State aid approval.

10. Paragraph 10 increases the limit on the number of employees that a qualifying company may have from fewer than 50 to fewer than 250. The increase is subject to State aid approval.

11. Paragraphs 11 and 12 exclude as qualifying trades, any which consist substantially in the generation or export of electricity in respect of which the company receives a feed-in tariff under a UK government scheme or a similar overseas scheme. This applies generally where the relevant shares are acquired on or after 6 April 2012. For shares issued on or after 23 March 2011 and before 6 April 2012, a holding will still qualify providing the subsidised generation or export begins before 6 April 2012. Trades where the electricity is generated by anaerobic digestion or hydroelectric power are not excluded by the legislation. Irrespective of the means by which electricity is produced, trades carried on by community interest companies, co-operative societies, community benefit societies or Northern Irish industrial and provident societies are not affected by the legislation.

12. Paragraph 15 amends the information powers at section 243 of the Income Tax Act 2007, to allow HMRC to seek information in relation to the "disqualifying arrangements" requirement from relevant parties.

13. Paragraph 16 amends the existing definition of "arrangements" to make it clear that "arrangements" includes a single transaction or a series of transactions.

Part 2: Enterprise Investment Scheme: Reinvestment Relief

14. Paragraph 20 introduces the changes to be made to Schedule 5B to the Taxation of Chargeable Gains Act 1992, dealing with EIS deferral relief.

15. Paragraph 21 increases, for reinvestment relief under Schedule 5B TCGA 1992, the annual amount of investment that a company may raise under the VC schemes from £2million to £10million. The increase is subject to State aid approval.

16. Paragraph 22 introduces a “no disqualifying arrangements” requirement. Arrangements are “disqualifying” if they are entered into with the purpose of ensuring that any of the venture capital schemes tax reliefs are available in respect of the relevant company’s business, and either: all or most of the monies raised under the scheme are paid to or for the benefit of a party to the arrangements; or in the absence of the arrangements, it would be reasonable to expect that the business would be carried on as part of another business.

17. Paragraph 23 amends the information powers at Paragraph 11 of Schedule 5B, to allow HMRC to seek information in relation to the “disqualifying arrangements” requirement from relevant parties.

18. Paragraph 24 amends the existing definition of “arrangements” to make it clear that “arrangements” includes a single transaction or a series of transactions.

BACKGROUND NOTE

19. The Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs) encourage investment into small, higher risk trading companies by offering tax incentives to investors in qualifying companies.

20. Following consideration of responses to a consultation document "Financing a Private Sector Recovery", published on 26 July 2010 and to a further consultation, “The path to strong, sustainable and balanced growth" (the “Growth Review”), published on 29 November 2010, the Chancellor announced in his Budget on 23 March 2011 that subject to State aid approval, limits on the size of companies which can benefit under the schemes would be increased.

21. A further consultation document, "Tax-advantaged venture capital schemes: a consultation" was published on the Treasury website on 6 July 2011 seeking views on ways in which the EIS and VCTs might be improved.

22. If you have any questions about this change, or comments on the draft legislation, please contact Kathryn Robertson on 020 7147 2589 (email KathrynRobertson@hmrc.gsi.gov.uk) or Des Ryan on 020 7147 0818 (email Des.Ryan@hmrc.gsi.gov.uk).

1 Venture capital trusts

Schedule 1 contains provision about venture capital trusts.

SCHEDULE 1

Section 1

VENTURE CAPITAL SCHEMES

Introduction

1 Part 6 of ITA 2007 (venture capital trusts) is amended in accordance with paragraphs 2 to 13.

Qualifying holdings: introduction

2 In section 286 (qualifying holdings: introduction), in subsection (3), omit the "and" at the end of paragraph (k) and after paragraph (l) insert ", and

(m) no disqualifying arrangements (see section 299A)."

Relaxation of maximum qualifying investment requirement

3 (1) Section 287 (maximum qualifying investment requirement) is amended as follows.

(2) In subsection (1), after "that" insert ", if the condition in subsection (1A) is met,".

(3) After that subsection insert—

"(1A) The condition is that—

(a) at the time of the issue of the relevant holding the relevant company or any of its qualifying subsidiaries was a member of a partnership or a party to a joint venture,

(b) the trade which meets the requirement of section 291 was at that time being carried on, or to be carried on, by those partners in partnership or by the parties to the joint venture, and

(c) the other partners or parties to the joint venture include at least one other company."

(4) In subsection (2)—

(a) for "Subject to subsection (7), the" substitute "The", and

(b) after "exceeds" insert "the relevant fraction of".

(5) After that subsection insert—

"(2A) The relevant fraction is—

$$\frac{1}{N}$$

where "N" is the number of companies (including the relevant company) which, at the time when the relevant holding was issued

were members of the partnership or, as the case may be, parties to the joint venture."

(6) Omit subsections (6) and (7).

Qualifying activity

4 (1) Section 291 (the carrying on of a qualifying activity requirement) is amended as follows.

(2) In subsection (2), at the end, insert—

"This is subject to subsection (3A)."

(3) In subsection (3), after "subsections" insert "(3A),".

(4) After that subsection insert—

"(3A) An activity is not a qualifying activity by virtue of subsection (2) or (3) if, and to the extent that—

(a) it consists of an acquisition of shares in a company, and

(b) the acquisition is not an acquisition of shares by subscription—

(i) immediately before which the company is not a qualifying 90% subsidiary of the relevant company or carrying on, or preparing to carry on, a qualifying trade, and

(ii) immediately after which the company is a qualifying 90% subsidiary."

(5) In subsection (6), after "subsection (4)(a)" insert "(but not subsection (3A)(b))".

Increase in the maximum amount permitted to be raised annually

5 In section 292A (the maximum amount raised annually through risk capital schemes requirement), in subsection (1) for "£2 million" substitute "£10 million".

Increase in the gross assets limits

6 In section 297 (the gross assets requirement)—

(a) in subsections (1)(a) and (2)(a), for "£7 million" substitute "£15 million", and

(b) in subsections (1)(b) and (2)(b), for "£8 million" substitute "£16 million".

Relaxation of restriction on number of employees

7 In section 297A (the number of employees requirement), in subsections (1) and (2), for "50" substitute "250".

No disqualifying arrangements requirement

8 After section 299 insert—

"299A The no disqualifying arrangements requirement

(1) The relevant holding must not have been issued in consequence of, or otherwise in connection with, disqualifying arrangements.

(2) Arrangements are "disqualifying arrangements" if—

(a) the main purpose, or one of the main purposes, of any person ("P") in being a party to them is to secure—

(i) that the relevant company, or a qualifying 90% subsidiary of that company, carries on a business which consists of or includes the relevant qualifying activity, and

(ii) that shares or securities issued by the relevant company may be comprised in any company's qualifying holdings or that one or more persons may obtain relevant tax relief in respect of such shares which raise money for the purposes of that activity, and

(b) one or both of conditions A and B are met.

(3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant holding being employed as required by section 293(1)(b), an amount representing the whole or the majority of the amount raised is paid to or for the benefit of a party to the arrangements or a person connected with such a party,

(4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the component activities of the relevant qualifying activity would have been carried on as part of another business (whether by P or any other person)

(5) For the purposes of this section it is immaterial whether the relevant company is a party to the arrangements.

(6) In this section—

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

"component activities" means—

(a) if the relevant qualifying activity is within section 291(2), the carrying on of a qualifying trade which constitutes that activity, and

(b) if the relevant qualifying activity is within section 291(3), the preparations to carry on a qualifying trade which constitute that activity;

"relevant qualifying activity" means the relevant qualifying activity by reference to which the requirement in section 293(1)(b) (money raised to be employed within two years for relevant qualifying activity) is met in relation to the relevant holding;

"relevant tax relief", in respect of shares, means one or more of the following—

(a) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;

(b) EIS relief (within the meaning of Part 5) in respect of the shares;
(c) SEIS relief (within the meaning of Part 5A) in respect of the shares;
(d) relief under Schedule 5B to TCGA 1992 in consequence of which deferral relief is attributable to the shares;
(e) relief under section 150A or 150E of that Act (enterprise investment scheme and seed enterprise investment scheme) in respect of the shares."

Subsidised generation or export of electricity

9 (1) Section 303 (meaning of "excluded activities") is amended as follows.

(2) In subsection (1), omit "and" at the end of paragraph (k) and after that paragraph insert—

"(ka) the subsidised generation or export of electricity, and".

(3) In subsection (2), omit the "and" at the end of paragraph (e) and after paragraph (f) insert ", and

(g) section 309A (subsidised generation or export of electricity)."

10 After section 309 insert—

"309A Excluded activities: subsidised generation or export of electricity

(1) This section supplements section 303(1)(ka).

(2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).

(3) The generation of electricity is "subsidised" if a person receives a FIT subsidy in respect of the electricity generated.

(4) The export of electricity is "subsidised" if a person receives a FIT subsidy in respect of the electricity exported.

(5) But the generation or export of electricity is not to be taken to fall within section 303(1)(ka) if Condition A, B or C is met.

(6) Condition A is that the generation or export is carried on by—

(a) a community interest company,
(b) a co-operative society,
(c) a community benefit society, or
(d) a NI industrial and provident society.

(7) Condition B is that the plant used to generate the electricity relies wholly or mainly on anaerobic digestion.

(8) Condition C is that the electricity is hydroelectric power.

(9) For the purposes of this section—

"anaerobic digestion" means the bacterial fermentation of organic material in the absence of free oxygen (excluding anaerobic digestion of sewage or material in a landfill);

"community benefit society" means—

(a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a community benefit society, or

(b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(3) of that Act;

"co-operative society" means—

(a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a co-operative society, or

(b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(2) of that Act;

"FIT subsidy" means—

(a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to encourage small-scale low-carbon generation of electricity, or

(b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;

"NI industrial and provident society" means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

"small-scale low-carbon generation" has the meaning given by section 41(4) of the Energy Act 2008."

11 In section 310 (excluded activities: provision of services or facilities for another business), in subsection (1)(a), for "(k)" substitute "(ka)".

Powers to amend

12 In section 311 (power to amend Chapter by Treasury order), the existing provision becomes subsection (1) and after that subsection insert—

"(2) An order under this section may—

(a) make different provision for different cases or purposes, or

(b) include such transitional provision as the Treasury consider appropriate."

Information

13 After section 312 insert—

"312A Power to require information relating to disqualifying arrangements

(1) Subsection (2) applies if an officer of Revenue and Customs has reason to believe that the relevant company has issued the relevant holding to the investing company in consequence of or, or otherwise in connection with, disqualifying arrangements (within the meaning of section 299A(2)).

(2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—
(a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, such arrangements exist or have existed, and
(b) such other information as the officer may reasonably require for the purposes of section 299A and as that person has or can reasonably obtain.

(3) The period specified in a notice under subsection (2) must be at least 60 days.

(4) A "person concerned" means—
(a) the relevant company,
(b) the investing company,
(c) any person connected with either of those companies, and
(d) any person whom the officer has reason to believe is or was a party to the arrangements in question."

Consequential amendment

14 In section 98 of TMA 1970 (special returns, etc), in the first column of the Table, before the entry for "regulations under Chapter 5 of Part 6 of ITA 2007" insert—
"section 312A of ITA 2007;".

Commencement and transitional provision

15 (1) The amendments made by paragraphs 2, 3, 5 to 8 and 13 have effect for the purpose of determining whether shares or securities issued on or after 6 April 2012 are to be regarded as comprised in a company's qualifying holdings.

(2) For the purposes of paragraphs 2, 8 and 13 it does not matter whether the disqualifying arrangements were entered into before or on or after 6 April 2012.

16 (1) Paragraph 4 is to be treated as having come into force on 6 April 2012.

(2) The amendments made by that paragraph do not have effect in relation to an investment made by a VCT of protected money.

(3) "Protected money" means—
(a) money raised by the issue before 6 April 2012 of shares in or securities of the VCT, and
(b) money derived from the investment of such money.

17 (1) Subject to sub-paragraph (2), the amendments made by paragraphs 9 to 11 have effect in relation to a relevant holding issued on or after 23 March 2011.

(2) Those amendments do not have effect in relation to any relevant holding issued before 6 April 2012 if the relevant company, or a qualifying 90% subsidiary of that company, first began to carry on activities of the kind mentioned in section 303(1)(ka) of ITA 2007 before that day.

(3) Until such time as section 1 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into force, section 309A(6) of

ITA 2007 (as inserted by paragraph 10 of this Schedule) has effect as if for paragraphs (b) and (c) there were substituted—

“(b) a society registered under the Industrial and Provident Societies Act 1965,”.

EXPLANATORY NOTE

VENTURE CAPITAL TRUST SCHEME

SUMMARY

1. This clause and Schedule which makes a range of changes to the Venture Capital Trust scheme (VCT). The acquisition of shares will become a non-qualifying activity, as will trades which consist substantially in the receipt of feed-in tariffs (with certain exceptions). A "no disqualifying arrangements" test is introduced. The Schedule also raises the thresholds for eligible companies under the scheme. The increases in these thresholds are subject to State aid approval.

DETAILS OF SCHEDULE

2. Paragraph 3 removes the restriction that prevents a VCT investing more than £1million per annum in any single company. The restriction continues to apply where the company is a member of a partnership or joint venture that carries on the qualifying trade.

3. Paragraph 4 amends the definition of "qualifying business activity" at section 179 Income Tax Act 2007, to exclude the acquisition of shares other than shares by subscription in a new 90 per cent qualifying subsidiary. This applies in respect of monies raised by the VCT on or after 6 April 2012.

4. Paragraph 5 increases, for VCTs, the annual amount of investment that a company may raise under the VC schemes from £2million to £10million. The increase is subject to State aid approval.

5. Paragraph 6 increases the gross assets limit for EIS from £7million before the EIS investment and £8million afterwards to £15million and £16million respectively. The increases are subject to State aid approval.

6. Paragraph 7 increases the limit on the number of employees that a qualifying company may have from fewer than 50 to fewer than 250. The increase is subject to State aid approval.

7. Paragraph 8 introduces a "no disqualifying arrangements" requirement. Arrangements are "disqualifying" if they are entered into with the purpose of ensuring that any of_the venture capital schemes tax reliefs are available in respect of the relevant company's business, and either: all or most of the monies raised under the scheme are paid to or for the benefit of a party to the arrangements; or in the absence of the arrangements, it would be reasonable to expect that the business would be carried on as part of another business. The

legislation includes a definition of "arrangements" which applies for the purpose of this test.

8. Paragraphs 9 and 10 exclude as qualifying trades any which consist substantially in the generation or export of electricity in respect of which the company receives a feed-in tariff under a UK government scheme or a similar overseas scheme. This applies generally where the VCT acquires the relevant holding on or after 6 April 2012. For holdings acquired on or after 23 March 2011 and before 6 April 2012, a holding will still qualify providing the subsidised generation or export begins before 6 April 2012. Trades where the electricity is generated by anaerobic digestion or hydroelectric power are not excluded by the legislation. Irrespective of the means by which electricity is produced, trades carried on by community interest companies, co-operative societies, community benefit societies or Northern Irish industrial and provident societies, are not affected by the legislation.

9. Paragraph 13 introduces an information power to allow HM Revenue and Customs to seek information from those it believes are parties to "disqualifying arrangements".

10. Paragraph 14 adds the new information power to the list already at section 98 of the Taxes Management Act 1970. Section 98 allows HM Revenue and Customs to seek a penalty for failure to comply with an information notice, or for fraudulently or negligently providing incorrect information in response to an information notice.

BACKGROUND NOTE

11. The Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs) encourage investment into small, higher risk trading companies by offering tax incentives to investors in qualifying companies.

12. Following consideration of responses to a consultation document "Financing a Private Sector Recovery", published on 26 July 2010 and to a further consultation, "The path to strong, sustainable and balanced growth" (the "Growth Review"), published on 29 November 2010, the Chancellor announced in his Budget on 23 March 2011 that subject to State aid approval, limits on the size of companies which can benefit under the schemes would be increased.

13. A further consultation document, "Tax-advantaged venture capital schemes: a consultation" was published on the Treasury website on 6 July 2011 seeking views on ways in which the EIS and VCTs might be improved.

14. If you have any questions about his change, or comments on the draft legislation, please contact Kathryn Robertson on 020 7147 2589

(email Kathryn.Robertson@hmrc.gsi.gov.uk or Des Ryan on 020 7147 0818 (email Des.Ryan@hmrc.gsi.gov.uk).

Non-Domiciled taxation

1 Foreign income and gains

Schedule 1 contains provision about the taxation of foreign income and gains.

SCHEDULE 1

Section 1

FOREIGN INCOME AND GAINS

PART 1

INCREASED REMITTANCE BASIS CHARGE

Increased charge

1 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.

2 (1) Section 809C (claim for remittance basis by long-term UK resident: nomination of foreign income and gains to which section 809H(2) is to apply) is amended as follows.

(2) In subsection (1), for paragraph (b) substitute—

"(b) meets the 12-year residence test or the 7-year residence test for that year."

(3) After that subsection insert—

"(1A) An individual meets the 12-year residence test for a tax year if the individual has been UK resident in at least 12 of the 14 tax years immediately preceding that year.

(1B) An individual meets the 7-year residence test for a tax year if the individual—

(a) does not meet the 12-year residence test for that year, but

(b) has been UK resident in at least 7 of the 9 tax years immediately preceding that year."

(4) In subsection (4), for "£30,000" substitute "—

(a) for an individual who meets the 12-year residence test for that year, £50,000;

(b) for an individual who meets the 7-year residence test for that year, £30,000."

3 (1) Section 809H (claim for remittance basis by long-term UK resident: charge) is amended as follows.

(2) In subsection (1), for paragraph (c) substitute—

"(c) the individual meets the 12-year residence test or the 7-year residence test for the relevant tax year."

(3) After that subsection insert—

"(1A) See section 809C(1A) and (1B) for when an individual meets the 12-year residence test or the 7-year residence test for a tax year."

(4) In subsection (4), for "£30,000", in each place it occurs, substitute "the applicable amount".

(5) After subsection (5A) insert—

"(5B) "The applicable amount" is—

(a) if the individual meets the 12-year residence test for the relevant tax year, £50,000;

(b) if the individual meets the 7-year residence test for the relevant tax year, £30,000."

4 For section 809V substitute—

"809VMoney paid to the Commissioners

"(1) Subsection (2) applies to income or chargeable gains of an individual if—

(a) the income or gains would (but for subsection (2)) be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom,

(b) the money is brought to the United Kingdom by way of one or more direct payments to the Commissioners, and

(c) the payments are made in relation to a tax year to which section 809H applies as regards the individual.

(2) The income or chargeable gains are to be treated as not remitted to the United Kingdom to the extent that the payments do not exceed the applicable amount (as defined in section 809H).

(3) Subsection (2) does not apply to payments if or to the extent that they are repaid by the Commissioners."

Application of increased charge

5 The amendments made by this Part of this Schedule have effect for the tax year 2012-13 and subsequent tax years.

PART 2

REMITTANCE FOR INVESTMENT PURPOSES

Exemption for investments

6 After section 809V insert—

"809VA Money or other property used to make investments

(1) Subsection (2) applies if—

(a) a relevant event occurs,

(b) but for subsection (2), income or chargeable gains of an individual would be regarded as remitted to the United Kingdom by virtue of that event, and

(c) the individual makes a claim for relief under this section.

(2) The income or gains are to be treated as not remitted to the United Kingdom.

(3) A "relevant event" occurs if money or other property—

(a) is used by a relevant person to make a qualifying investment, or

(b) is brought to or received in the United Kingdom in order to be used by a relevant person to make a qualifying investment.

(4) Subsection (2) does not apply by virtue of subsection (3)(a) if the property—

(a) is exempt property under section 809X, and

(b) is treated under section 809Y as having been remitted to the United Kingdom because of being used to make the investment.

(5) Subsection (2) does not apply by virtue of subsection (3)(b) unless the investment is made within the period of 45 days beginning with the day on which the money or other property is brought to or received in the United Kingdom.

(6) Subsection (2) does not apply if the relevant event occurs, or the investment is made, as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(7) A claim for relief under this section must be made on or before the first anniversary of the 31 January following the tax year in which the income or gains would, but for subsection (2), be regarded as remitted to the United Kingdom by virtue of the relevant event.

(8) "Relevant person" has the meaning given in section 809M.

809VB Qualifying investments

(1) For the purposes of section 809VA, a person makes an investment if—

(a) shares in a company are issued to the person, or

(b) the person makes a loan (secured or unsecured) to a company.

(2) The company is referred to as "the target company".

(3) The shares or the person's rights under the loan (or both) forming the subject of the investment are referred to as "the holding".

(4) The investment counts as a "qualifying investment" if conditions A and B are met when the investment is made.

(5) Conditions A and B are defined in sections 809VC and 809VD.

(6) A reference in this section to "shares" includes any securities.

(7) If a loan agreement authorises a company to draw down amounts of a loan over a period of time, the loan is treated as made when the first amount is drawn down.

809VC Condition A

(1) Condition A is that the target company is—

(a) an eligible trading company, or

(b) an eligible stakeholder company.

(2) A company is an "eligible trading company" if—

(a) it is a private limited company,
(b) it carries on one or more commercial trades or is preparing to do so within the next 2 years, and
(c) carrying on commercial trades is all or substantially all of what it does (or of what it is reasonably expected to do once it begins trading).

(3) A company is an "eligible stakeholder company" if—
(a) it is a private limited company,
(b) it exists wholly for the purpose of making investments in eligible trading companies (ignoring any minor or incidential purposes), and
(c) it holds one or more such investments or is preparing to do so within the next 2 years.

(4) A company is a "private limited company" if—
(a) it is a body corporate whose liability is limited,
(b) it is not a limited liability partnership, and
(c) none of its shares are listed on a recognised stock exchange.

(5) "Trade" also includes—
(a) anything that is treated for corporation tax purposes as if it were a trade, and
(b) a business carried on for generating income from land (as defined in section 207 of CTA 2009).

(6) A trade is a "commercial trade" if it is conducted on a commercial basis and with a view to the realisation of profits.

(7) The carrying on of activities of research and development from which it is intended that a commercial trade will be derived, or will benefit, is to be treated as the carrying on of a commercial trade.

(8) But preparing to carry on activities within subsection (7) is not to be treated as the carrying on of a commercial trade.

(9) A company preparing to carry on commercial trades "begins trading" when it begins to carry on one or more such trades.

(10) References in this section to making investments are to be read in accordance with section 809VB(1).

809VD Condition B

(1) Condition B is that no relevant person has (directly or indirectly) obtained or become entitled to obtain any related benefit, and no relevant person expects to obtain any such benefit.

(2) A "benefit"—
(a) includes the provision of anything that would not be provided to the relevant person in the ordinary course of business, or would be provided but on less favourable terms, but
(b) does not include the provision of anything provided to the relevant person in the ordinary course of business and on arm's length terms.

(3) A benefit is "related" if—
(a) it is directly or indirectly attributable to the making of the investment (whether it is obtained before or after the investment is made), or
(b) it is reasonable to assume that the benefit would not be available in the absence of the investment.

(4) For the purposes of subsection (2)—
(a) a reference to the provision of anything is to the provision of anything in money or money's worth, including property, capital, goods or services of any kind, and
(b) "provision" includes any arrangement that allows a person to enjoy or benefit from the thing in question (whether temporarily or permanently).

809VE Income or gains treated as remitted following certain events

(1) Subsection (2) applies if—
(a) income or chargeable gains are treated under section 809VA as not remitted to the United Kingdom as a result of a qualifying investment,
(b) a potentially chargeable event occurs after the investment is made, and
(c) the appropriate mitigation steps are not taken within the grace period.

(2) The affected income or gains are to be treated as having been remitted to the United Kingdom immediately after the end of the grace period.

(3) "The affected income or gains" means such portion of the income or gains mentioned in subsection (1)(a) as reflects the portion of the investment affected by the potentially chargeable event.

(4) That portion (which may in some cases be all of the income or gains) is to be determined on a just and reasonable basis.

(5) Section 809VJ makes further provision for the purposes of this section.

809VF Meaning of "potentially chargeable event"

(1) For the purposes of section 809VE, a "potentially chargeable event" occurs if—
(a) the target company ceases to be an eligible trading company or an eligible stakeholder company,
(b) the relevant person who made the investment ("P") ceases to be a relevant person,
(c) P disposes of all or part of the holding,
(d) the extraction of value rule is breached, or
(e) the 2-year start-up rule is breached.

(2) The extraction of value rule is breached if—
(a) value (in money or money's worth) is received by or for the benefit of P or another relevant person,
(b) the value is received—

(i) from an involved company, or
(ii) from anyone else but in circumstances that are directly or indirectly attributable to the investment or to any other investment made by a relevant person in an involved company, and

(c) the value is not received by virtue of a disposal of all or part of the holding.

(3) But the extraction of value rule is not breached merely because a relevant person receives value that—
(a) is treated for income tax or corporation tax purposes as the receipt of income or would be so treated if that person were liable to such tax, and
(b) is paid or provided to the person in the ordinary course of business and on arm's length terms.

(4) Each of the following is an "involved company"—
(a) the target company,
(b) if the target company is an eligible stakeholder company, any eligible trading company in which it has made or intends to make an investment, and
(c) any company that is connected with a company within paragraph (a) or (b).

(5) In a case where the target company is an eligible trading company, the 2-year start-up rule is breached if—
(a) the company had not begun trading when the investment was made,
(b) 2 years have passed since the investment was made, and
(c) the company has not begun trading in that time.

(6) In a case where the target company is an eligible stakeholder company, the 2-year start-up rule is breached if—
(a) 2 years have passed since the investment was made, and
(b) in that time—
(i) the company has held no investments in any eligible trading company, or
(ii) no eligible trading company in which it has held investments has carried on any commercial trade.

(7) If consideration for a disposal of all or part of the holding is to be paid in instalments, the disposal is to be treated for the purposes of this section as if it were separate disposals, one for each instalment (and each giving rise to a separate potentially chargeable event).

(8) An event listed in subsection (1) does not count as a potentially chargeable event if it is due to an insolvency step taken for genuine commercial reasons (but this does not prevent the receipt of any value as a result of the insolvency step from counting as a potentially chargeable event).

(9) For the purposes of subsection (8), an insolvency step is taken if—
(a) the target company enters into administration or receivership or is wound up or dissolved,

(b) an eligible trading company in which the target company has made an investment enters into administration or receivership or is wound up or dissolved, or

(c) a similar step is taken in relation to a company mentioned in paragraph (a) or (b) under the law of a country or territory outside the United Kingdom.

809VG The grace period

(1) The grace period is the period of 45 days beginning—

(a) in a case where all or part of the holding is disposed of, with the day on which the proceeds are paid to a relevant person,

(b) in a case where the extraction of value rule is breached, with the day on which the value is received, and

(c) in any other case, with the day on which a relevant person became aware or ought reasonably to have become aware of the potentially chargeable event.

(2) An officer of Revenue and Customs may agree to extend the grace period in a particular case in exceptional circumstances.

809VH The appropriate mitigation steps

(1) If the potentially chargeable event is a disposal of all or part of the holding, the appropriate mitigation steps are regarded as taken if the proceeds have been taken offshore or re-invested.

(2) For any other potentially chargeable event, the appropriate mitigation steps are regarded as taken if—

(a) P has disposed of the entire holding (or so much of it as P retains when the event occurs), and

(b) the proceeds have been taken offshore or re-invested (or a combination of the two).

(3) But if the proceeds exceed X, subsections (1) and (2)(b) apply only to so much of the proceeds as is equal to X.

(4) "X" is—

(a) the amount (determined under section 809P) of the income or gains that would, but for section 809VA, have been remitted to the United Kingdom by virtue of the relevant event, less

(b) the sum of the amounts (if any) that have been treated as remitted under section 809VE(2) or been taken offshore or re-invested on a previous occasion involving the same qualifying investment.

(5) Proceeds are "taken offshore" if they are taken outside the United Kingdom (in the form in which they are received) such that, on leaving the United Kingdom, they cease to be available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person.

(6) Where proceeds are taken offshore within the grace period, nothing prevents anything subsequently done in relation to them from counting as a remittance of the affected income or gains to the United Kingdom at the time when the thing is subsequently done.

(7) Proceeds are “re-invested” if a relevant person uses them to make another qualifying investment (whether in the same or a different company).

(8) Where proceeds are re-invested within the grace period, section 809VE applies to the re-investment as it applies to the original investment.

809VI The proceeds

(1) In section 809VH, “the proceeds” means the consideration for the disposal less any agency fees reasonably incurred by P.

(2) The following rules apply in determining the consideration for a disposal.

(3) If the consideration is provided in the form of anything other than money, the amount of the consideration is the market value of the thing at the time of the disposal.

(4) If the disposal is made other than by way of a bargain made at arm’s length, the disposal is deemed to be made for a consideration equal to the market value of the holding (or the part of the holding being disposed of) at the time of the disposal.

(5) Without limiting the generality of subsection (4), a disposal made to another relevant person or to a person connected with a relevant person is treated in all cases as made other than by way of a bargain at arm’s length.

(6) “Agency fees” means fees and other incidental costs of the disposal that are charged to P by any person by or through whom the disposal is effected, but excluding any such fees or costs that—
   (a) are charged to P by a relevant person, or
   (b) are to be passed on to or otherwise applied for the benefit of a relevant person.

(7) “Market value” has the same meaning as in TCGA 1992 (see in particular sections 272 and 273 of that Act).

809VJ Order of disposals etc

(1) Subsection (2) applies if income or chargeable gains of an individual are treated under section 809VA as not remitted to the United Kingdom as a result of—
   (a) more than one qualifying investment made in the same target company, or
   (b) qualifying investments made in an eligible trading company and in an eligible stakeholder company that makes (or intends to make) investments in the same eligible trading company.

(2) In the application of section 809VE, disposals of all or part of the holdings are assumed to affect the investments in the order in which the investments were made (that is to say, on a first in, first out basis).

(3) It does not matter whether the investments were made by the same relevant person or different ones.

809VK Mixed funds

(1) This section applies if—
(a) but for section 809VA, income or gains would have been remitted to the United Kingdom by virtue of a relevant event, and
(b) section 809Q would have applied in determining the amount that would have been so remitted.

(2) Each of the following steps is to be treated for the purposes of section 809R(4) as if it were an offshore transfer—
(a) the relevant event,
(b) a disposal of all or part of the holding,
(c) the taking offshore of any of the proceeds, and
(d) the re-investment of any of the proceeds.

(3) Section 809Q applies in determining under section 809P the amount of the affected income or gains treated under section 809VE(2) as remitted to the United Kingdom."

Application of exemption

7 The amendments made by this Part of this Schedule have effect where the relevant event (as defined in section 809VA of ITA 2007) occurs on or after 6 April 2012.

PART 3

SALES OF EXEMPT PROPERTY

Relief from deemed remittance rule

8 In section 809Y of ITA 2007 (property that ceases to be exempt property treated as remitted), in subsection (1), after "is" insert ", subject to section 809YA,".

9 After that section insert—

"809YA Exception to section 809Y: proceeds taken offshore or invested

(1) Section 809Y(1) does not apply to property if—
(a) it ceases to be exempt property because the whole of it is sold whilst it is in the United Kingdom, and
(b) conditions A to E are met.

(2) Condition A is that the sale is to a person other than a relevant person.

(3) Condition B is that the sale is by way of a bargain made at arm's length.

(4) Condition C is that, once the property is sold, no relevant person—
(a) has any interest in the property,
(b) is able or entitled to benefit from the property by virtue of any interest, right or arrangement, or

(c) has any right (whether conditional or unconditional) to acquire any interest mentioned in paragraph (a) or ability or entitlement mentioned in paragraph (b).

(5) Condition D is that the whole of the sale proceeds are paid to the seller (whether in one go or in instalments) within the period of 95 days beginning with the day on which the property is sold.

(6) Condition E is that the whole of the sale proceeds are taken offshore or used to make a qualifying investment (or both) within the period of 45 days beginning with—

(a) the day on which the proceeds are paid to the seller, or

(b) if the proceeds are paid in instalments, the day on which the last of the instalments is paid to the seller.

(7) An officer of Revenue and Customs may agree to extend the period specified in Condition E in exceptional circumstances if the individual whose income or gains would otherwise be treated under section 809Y as remitted to the United Kingdom requests such an extension.

(8) This section does not apply if the sale is made as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(9) In this section, "relevant person" has the meaning given in section 809M.

809YB Sale proceeds

(1) This section applies for the purposes of section 809YA.

(2) "The sale proceeds" means the consideration for the sale less any agency fees that are deducted before the consideration is paid to the seller.

(3) "Agency fees" means fees and other incidental costs of the sale that are charged to the seller by any person by or through whom the sale is effected, but excluding any such fees or costs that—

(a) are charged to the seller by a relevant person, or

(b) are to be passed on to or otherwise applied for the benefit of a relevant person.

(4) The sale proceeds are "taken offshore" if they are taken outside the United Kingdom (in the form in which they were paid to the seller) such that, on leaving the United Kingdom, they cease to be available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person.

(5) The sale proceeds are "used to make a qualifying investment" if they are used by the seller to make a qualifying investment within the meaning of section 809VB.

(6) References in section 809YA to the payment of sale proceeds to a seller include payment to anyone else on the seller's behalf or at the seller's direction.

809YC Effect of disapplying section 809Y

(1) This section has effect if section 809Y(1) does not apply to property by virtue of section 809YA.

(2) The property is to continue to be treated after the sale as not remitted to the United Kingdom even though it has ceased to be exempt property.

(3) But nothing in subsection (2) prevents anything done in relation to any part of the sale proceeds after the part is taken offshore (or used to make a qualifying investment) from counting as a remittance of underlying income or gains to the United Kingdom at the time when the thing is done.

(4) "Underlying income or gains" means the part (or all) of the individual's foreign income and gains—

(a) of which the property consists or from which the property derives, and

(b) accordingly, from which the sale proceeds derive.

(5) Where Condition E was met by using the sale proceeds to make a qualifying investment, sections 809VA to 809VK apply to the investment as if it had been made within the period specified in section 809VA(5).

(6) Each of the following steps is to be treated for the purposes of section 809R(4) as if it were an offshore transfer—

(a) the sale of the property, and

(b) the taking offshore of any sale proceeds."

Application of relief

10 The amendments made by this Part of this Schedule have effect in relation to exempt property that is sold on or after 6 April 2012.

PART 4

NOMINATED INCOME

Disapplication of ordering rules

11 (1) Section 809I of ITA 2007 (remittance basis charge: income and gains treated as remitted) is amended as follows.

(2) In subsection (1)—

(a) omit "and" at the end of paragraph (a), and

(b) at the end of paragraph (b) insert ", and

(c) the £10 test is met for that year."

(3) In subsection (3), after "earlier tax year" insert "(each such year for which the individual has made a nomination under that section being referred to as a "nomination year")".

(4) After subsection (4) insert—

"(5) The £10 test is met for the tax year mentioned in subsection (1)(a) ("year X") if, taking each nomination year separately, the cumulative total as respects at least one nomination year exceeds £10.

(6) In relation to a nomination year—

(a) "the cumulative total" means the sum, for all the tax years in aggregate up to and including year X, of the amounts of relevant income and gains remitted to the United Kingdom in those tax years from that nomination year, and

(b) "relevant income and gains" means the income and chargeable gains nominated by the individual under section 809C for that nomination year."

Application of this Part

12 The amendments made by this Part of this Schedule have effect for determining whether section 809I of ITA 2007 applies for the tax year 2012-13 or any subsequent tax year.

EXPLANATORY NOTE

FOREIGN INCOME AND GAINS

SUMMARY

1. Clause 1 and Schedule 1 introduce changes to the remittance basis of taxation.

DETAILS OF THE SCHEDULE

Increased remittance basis charge

2. Part 1 of the Schedule introduces an increased remittance basis charge of £50,000 payable by individuals who claim the remittance basis of taxation and who have been resident in the UK in at least 12 of the 14 tax years preceding the tax year in which they make that claim.

3. Paragraph 2 of the Schedule amends section 809C of the Income Tax Act 2007 (ITA) and introduces the 12-year residence rule and the 7-year residence rule. An individual will meet the 12-year rule in any tax year in which they have been resident in the UK in at least 12 of the 14 tax years preceding that year and will meet the 7-year rule in any tax year in which they have been resident in the UK in at least 7 of the 9 tax years preceding that year. It also amends subsection 809C(4) to provide for two annual charges of £50,000 and £30,000.

4. Paragraph 3 of the Schedule amends section 809H ITA and provides that an individual will be liable to pay the £50,000 annual charge in a tax year in which they meet the 12-year test, and liable to pay the £30,000 annual charge in a tax year in which they meet the 7-year test. It also substitutes the term 'the applicable amount' for '£30,000' each time it occurs in that section.

5. Paragraph 4 of the Schedule substitutes a new section 809V in ITA. It provides that, in cases where an individual uses their foreign income and gains to pay the £50,000 or the £30,000 annual charge, those income and gains will not be treated as having been remitted to the UK. It also provides that this rule will not apply where the income and gains are repaid by the Commissioners of HMRC.

6. Paragraph 5 of the Schedule provides for the amendments made by paragraphs 1 to 4 to have effect from the start of the 2012-13 tax year.

Remittance for Investment Purposes

7. Part 2 of the Schedule introduces a new tax relief for foreign income and gains which are brought to the UK for the purposes of making a qualifying investment.

8. Paragraph 6 of the Schedule introduces new sections 809VA to 809VK ITA.

9. New subsection 809VA(1) sets out the qualifying conditions for the relief. These are that a relevant event occurs which would otherwise be treated as a remittance of an individual's income and gains and that the individual makes a claim for the relief under this section.

10. New subsection 809VA(2) provides that, where the conditions set out in subsection 809VA(1) are met, the income and gains of the individual are treated as not remitted to the UK and therefore not liable to tax in the UK.

11. New subsection 809VA(3) defines a 'relevant event' for the purposes of subsection 809VA(1) as an event in which income and gains, or other property deriving from such income and gains, are either used by relevant person to make a qualifying investment or are brought to or received in the UK for the purpose of making such an investment.

12. New subsection 809VA(4) provides that the tax relief provided by subsection 809VA(2) does not apply where a relevant person makes a qualifying investment with property which is exempt property under section 809X and where that property is treated as having been remitted under section 809Y as a result of being used to make that investment.

13. New subsection 809VA(5) provides that, in order to qualify for the relief in cases where property is brought to or received in the UK for the purpose of making a qualifying investment, that investment must be made within a period of 45 days from the day on which that property is brought to or received in the UK.

14. New subsection 809VA(6) is an anti-avoidance provision which disallows the relief provided in subsection 809VA(2) in situations where a relevant event occurs, or an investment is made, as part of or as a result of any scheme or arrangement whose main purpose, or one of the main purposes, is tax avoidance.

15. New subsection 809VA(7) provides that an individual is required to make a claim for the relief within the time limits for the self assessment system. Such a claim needs to be made no later than 31 January of the tax year following the tax year in which the income and gains stipulated in subsection 809VA(1) would otherwise be treated as a remittance.

16. New subsection 809VA(8) provides that the term 'relevant person' has the same definition in this section as it does in section 809M ITA.

17. New subsection 809VB defines a qualifying investment for the purposes of subsection 809VA(3).

18. New subsection 809VB(1) provides that an investment is made for the purpose of section 809VA where shares in a company are issued to a person or where a person makes a loan to a company.

19. New subsection 809VB(2) provides that a company for the purposes of this Part is referred to as 'the target company'.

20. New subsection 809VB(3) provides that a person's shares in or rights under a loan to a company, or a mixture of both, are referred to as 'the holding' for the purposes of this Part.

21. New subsection 809VB(4) provides that conditions A and B must be met at the time when the investment is made for that investment to be treated as a qualifying investment.

22. New subsection 809VB(5) provides that conditions A and B are defined in sections 809VC and 809VD.

23. New subsection 809VB(6) provides that any reference to shares in this section includes securities.

24. New subsection 809VB(7) provides that, where a company is authorised to draw down amounts of a loan under a loan agreement, the loan is treated as having been made when the company draws down the first such amount.

25. New section 809VC sets out condition A for the purposes of section 809VB.

26. New subsection 809VC(1) provides that condition A is met where the target company is either an eligible trading company or an eligible stakeholder company.

27. New subsection 809VC(2) defines an eligible trading company as a private limited company which carries on one or more commercial trades or is preparing to do so within 2 years of the date on which the investment is made and that such trades constitute all or substantially all of its total activities. Where a company has not commenced trading at the time of the investments, such trades should reasonably be expected to constitute all or substantially all of its total activities once it does commence trading.

28. New subsection 809VC(3) defines an eligible stakeholder company as a private limited company which exists wholly for the purpose of making investments in eligible trading companies (disregarding any incidental purposes) and which holds one or more such investments or is preparing to do so within 2 years of a qualifying investment being made.

29. New subsection 809VC(4) defines a private limited company for the purposes of subsections 809VC(2) and (3) as a limited liability body corporate other than a limited liability partnership, none of whose shares are listed on a recognised stock exchange.

30. New subsection 809VC(5) provides that, for the purposes of this section, a trade includes anything treated as a trade for the purposes of corporation tax and a business generating income from land as defined in section 207 of the Corporation Tax Act 2009.

31. New subsection 809VC(6) defines a commercial trade as one conducted on a commercial basis with a view to generating profits.

32. New subsection 809VC(7) provides that research and development activities carried on with the intention of deriving a commercial trade will be treated as carrying on a commercial trade for the purposes of this Part.

33. New subsection 809VC(8) provides that preparing to carry out research and development activities will not be treated as carrying on a commercial trade for the purposes of this Part.

34. New subsection 809VC(9) defines the term 'begins trading' for the purposes of subsection 809VC(2) as beginning to carry on one or more commercial trades.

35. New subsection 809VC(10) provides that references to making an investment in this section have the same meaning as in subsection 809VB(1).

36. New section 809VD sets out condition B for the purposes of section 809VB.

37. New subsection 809VD(1) provides that condition B is met where no relevant person has obtained, become entitled to obtain any related benefit or expects to obtain such a benefit, whether directly or indirectly.

38. New subsection 809VD(2) defines a benefit as including anything which would not be provided to the relevant person, or would be provided but on less favourable terms, in the normal course of business but excluding anything provided to the relevant person in the normal course of business and on arm's length terms.

39. New subsection 809VD(3) defines a 'related benefit' as one which is directly or indirectly attributable to making the investment, either before or after that investment is made, or one which it is reasonable to assume would not be available if the investment had not been made.

40. New subsection 809VD(4) provides that references to 'the provision of anything' in subsection 809VD(2) mean the provision of anything in

money or money's worth and includes any arrangement which provides any enjoyment or benefit to a person, whether on a temporary or permanent basis.

41. New section 809VE sets out the circumstances in which income and gains are treated as remitted to the UK.

42. New subsection 809VE(1) provides that subsection 809VE(2) applies where

- income and gains are treated as not remitted to the UK as a result of section 809VA;
- a potentially chargeable event occurs; and
- the appropriate mitigation steps are not taken within the grace period.

43. New subsection 809VE(2) provides that the affected income and gains are treated as being remitted to the UK immediately after the end of the grace period.

44. New subsection 809VE(3) defines 'affected income and gains' for the purpose of subsection 809VE(2) as such portion of the income and gains as reflects the portion of the investment affected by the potentially chargeable event.

45. New subsection 809VE(4) provides that the proportion of income and gains referred to in subsection 809VE(3) should be determined on a fair and reasonable basis. It also provides that this proportion may be all of the income and gains which are subject to subsection 809VA.

46. New subsection 809VE(5) provides that further rules set out in section 809VJ apply for the purposes of this section.

47. New section 809VF defines a 'potentially chargeable event' for the purposes of subsection 809VE(1).

48. New subsection 809VF(1) provides that a potentially chargeable event occurs where:

- a target company ceases to be an eligible trading company or an eligible stakeholder company;
- the relevant person who made the qualifying investment ceases to be a relevant person or disposes of all or part of their holding;
- the extraction of value rule is breached or
- the 2-year start-up rule is breached.

49. New subsection 809VF(2) provides that the extraction of value rule is breached where value is received by or for the benefit of any relevant person from an involved company or from anyone else in circumstances directly or indirectly attributable to any investment made by a relevant person in an involved company and where that value is not related to a disposal of all or part of the holding.

50. New subsection 809VF(3) provides that the extraction of value rule is not breached where a relevant person receives value in circumstances in which that value is subject to income tax or corporation tax, or would be so subject if the relevant person were liable to income tax or corporation tax, and provided on arm's length terms in the normal course of business.

51. New subsection 809VF(4) defines 'an involved company' for the purposes of subsection 809VF(2) as any target company, any eligible trading company in which an eligible stakeholder company has made or intends to make an investment, and any company connected with such a company. Section 993 ITA sets out the circumstances in which a company is connected with another company.

52. New subsection 809VF(5) defines the 2-year start-up rule which applies where the target company is an eligible trading company. In such cases, the rule is breached where 2 years have passed since investment was made and the company has not commenced trading in that time.

53. New subsection 809VF(6) defines the 2-year start-up rule which applies where the target company is an eligible stakeholder company. In such cases, the rule is breached where 2 years have passed since the investment was made and in that time the company has not held any investments in any eligible trading companies or no eligible trading company in which the company has invested has carried on any commercial trade.

54. New subsection 809VF(7) provides that, where the consideration for any disposal is paid in instalments, each instalment is to be treated as a separate disposal, each of which gives rise to a separate potentially chargeable event.

55. New subsection 809VF(8) provides that any event referred to in subsection 809VF(1) is not treated as a potentially chargeable event if it occurs as a result of an insolvency step taken for commercial reasons. It also provides that this rule does not prevent the receipt of value arising from an insolvency step from being treated as a potentially chargeable event.

56. New subsection 809VF(9) defines an insolvency step for the purposes of subsection 809VF(8). An insolvency step occurs where a target company or an eligible trading company enters into administration or receivership, or is wound up or dissolved, or where a similar step occurs under the laws of a country or territory outside the UK.

57. New section 809VG defines the grace period for the purposes of section 809VE.

58. New subsection 809VG(1) provides that, where all or part of the holding is disposed of, the grace period is 45 days beginning on the day a relevant person receives the proceeds of the disposal. Where the extraction of value rule is breached, it provides that the grace period is 45 days beginning on the day the value is received. In all other cases, it provides that the grace period is 45 days beginning on the day on which a relevant person became aware, or ought reasonably to have become aware, of the potentially chargeable event.

59. New subsection 809VG(2) provides that an officer of HMRC can agree to extend the grace period in exceptional circumstances.

60. New section 809VH defines an appropriate mitigation step for the purposes of subsection 809VE(1)(c).

61. New subsection 809VH(1) provides that, where the potentially chargeable event is a disposal of all or part of the holding, the appropriate mitigation steps are treated as having been taken when the proceeds arising from the disposal are either taken offshore or reinvested.

62. New subsection 809VH(2) provides that, for all other potentially chargeable events, the appropriate mitigation steps are treated as having been taken where a relevant person has disposed of the entire holding and taken the proceeds offshore, or reinvested them. It also provides that, where a relevant person has previously disposed of part of the holding, the appropriate mitigation steps will be treated as having been taken when the entire remainder of the holding is disposed of and the proceeds have been taken offshore or reinvested.

63. New subsection 809VH(3) provides that, in cases where the sale proceeds exceed amount X, subsections (1) and (2)(b) only apply to an amount of the sale proceeds which are equal to X.

64. New subsection 809VH(4) defines the amount 'X' for the purposes of subsection 809VH(3) as the difference between the income and gains which would have been treated as remitted to the UK in the absence of section 809VA and any amounts from the same investment which had previously been treated as remitted under subsection 809VE(2) or taken offshore or reinvested.

65. New subsection 809VH(5) defines when proceeds are treated as 'taken offshore' for the purposes of this section as being when they taken out of the UK in the same form as they were received such that no relevant person is able to use or enjoy those proceeds in the UK.

66. New subsection 809VH(6) provides that where proceeds have been taken offshore within the grace period, nothing will prevent the affected

income and gains being treated as remitted to the UK on a subsequent occasion.

67. New subsection 809VH(7) defines when proceeds are treated as 'reinvested' for the purposes of this section as when they are used by a relevant person to make another qualifying investment under section 809VA.

68. New subsection 809VH(8) provides that section 809VE will apply to any proceeds which are reinvested during the grace period in the same way as it applies to the original investment.

69. New section 809VI defines 'proceeds' for the purposes of this Part.

70. New subsection 809VI(1) defines 'proceeds' for the purposes of section 809VH as the consideration for the disposal less any agency fees which are reasonably incurred by the relevant person who made the qualifying investment.

71. New subsection 809VI(2) provides for the rules in subsections 809(3) to (7) to apply when determining the consideration for the disposal.

72. New subsection 809VI(3) provides that, where the consideration is provided in a form other than money, that consideration will be the market value of whatever has been provided at the time of the disposal.

73. New subsection 809VI(4) provides that, where a disposal is not made on arm's length terms, the consideration for that disposal will be treated as the market value of the holding at the time the disposal was made. It also provides that, where only a part of the holding is disposed of, and that part disposal is not made on arm's length terms, the consideration will be treated as the market value of that part of the holding at the time it was disposed of.

74. New subsection 809VI(5) provides that, notwithstanding subsection 809VI(4), a disposal made to another relevant person or to a person connected with a relevant person is always treated as having been made on other than arm's length terms and therefore that the consideration for the disposal will be treated as the market value of the holding at the time the disposal was made.

75. New subsection 809VI(6) defines 'agency fees' for the purposes of subsection 809VI(1) as any fees and other incidental costs of a disposal charged to a relevant person who has made a qualifying investment where they are charged by or through any person who effected the disposal. It also provides that 'agency fees' excludes any costs either charged by a relevant person or in any way applied for the benefit of a relevant person.

76. New subsection 809VI(7) provides that 'market value' in this section has the same meaning as it does in the Taxation of Chargeable Gains Act 1992.

77. New section 809VJ provides rules which apply where there are multiple acquisitions and disposals and determine the order in which such disposals are treated as being made.

78. New subsection 809VJ(1) provides that subsection 809VJ(2) applies where income and gains of an individual are treated as not remitted to the UK under section 809VA in cases where:

    - more than one qualifying investment is made in the same target company; or
    - a qualifying investment is made in an eligible trading company and in an eligible stakeholder company which makes or intends to make investments in a single eligible trading company.

79. New subsection 809VJ(2) provides that, where section 809VE applies to tax the disposal as a remittance, disposals of all or part of a holding are treated in the order in which the investments were originally (first in, first out).

80. New subsection 809VJ(3) provides that the rule in subsection 809VJ(2) applies whether or not the investments are made by the same relevant person.

81. New section 809VK provides for the application of the mixed fund rules in sections 809Q and 809R for the purposes of this Part.

82. New subsection 809VK(1) provides that section 809VK applies if income and gains would be treated as remitted to the UK in the absence of section 809VA and if the amount remitted in such cases would be determined by applying the mixed fund rules.

83. New section 809VE(2) provides that the following events are treated as an offshore transfer in line with section 809R(4):

    - a relevant event;
    - the disposal of a holding, whether in whole or in part;
    - taking the proceeds of a disposal offshore; and
    - the reinvestment of the proceeds from a disposal.

84. New section 809VE(3) provides that section 809Q applies to determine the amount of income and gains which are treated as remitted to the UK under subsection 809VE(2).

85. Paragraph 7 of the Schedule provides for sections 809VA to 809VK to apply to where a relevant event occurs on or after 6 April 2012.

Sales of Exempt Property

86. Part 3 of the Schedule introduces a tax exemption for sales of exempt property.

87. Paragraph 8 amends subsection 809Y(1). Paragraph 809Y provides that property which ceases to be exempt property is treated as remitted to the UK and sets out when such property will cease to be exempt property. Paragraph 8 provides that section 809Y is subject to new section 809YA.

88. Paragraph 9 introduces new subsections 809YA to 809YC ITA.

89. New subsection 809YA provides that, where exempt property is sold in the UK in situations in which conditions A to E are met, it will not be treated as a taxable remittance under section 809Y(1).

90. New subsections 809YA(2) to 809YA(6) set out conditions A to E for the purposes of subsection 809YA:

- Condition A is that the property is sold to a person who is not a relevant person;
- Condition B is that the sale is made on arm's length terms;
- Condition C is that no relevant person has any interest in or entitlement to benefit from the property after the sale has been completed, nor any right to acquire such an interest or entitlement;
- Condition D is that the entire proceeds of the sale are paid to the seller of the property within 95 days of the sale having taken place, including cases where the proceeds are paid in a series of separate instalments; and
- Condition E is that the entire sale proceeds are either taken offshore or used to make a qualifying investment within 45 days of the day on which the vendor is paid those proceeds, or, where the proceeds are paid in instalments, within 45 days of the day on which the vendor is paid the final instalment.

91. New subsection 809YA(7) provides that an officer of HM Revenue and Customs can extend the 45-day limit stipulated in Condition E in exceptional circumstances and when requested to do so by an individual whose income and gains would otherwise be treated as a taxable remittance.

92. New subsection 809YA(8) provides that the exemption for sales of exempt property does not apply in cases where such sales are made as

part or as a result of a scheme whose main purpose or one of the main purposes of which is tax avoidance.

93. New subsection 809YA(9) provides that the term 'relevant person' in this section has the same meaning as that given in section 809M.

94. New section 809YB defines a number of terms used in section 809YA.

95. New subsection 809YB(2) defines 'sale proceeds' as the consideration for a sale less any agency fees which are deducted before being aid to the seller of the exempt property.

96. New subsection 809YB(3) defines 'agency fees' for the purposes of subsection 809YB(1) as any incidental costs of a sale charged to a seller of exempt property where they are charged by or through any person who effected the sale, but excluding any such costs which are either charged by a relevant person or applied for the benefit of a relevant person.

97. New subsection 809YB(4) provides that, for the purposes of Condition E, sale proceeds are 'taken offshore' where they are taken out of the UK in the same form in which they were paid to the seller such that they are no longer available for the use, enjoyment or benefit of any relevant person.

98. New subsection 809YB(5) provides that, for the purposes of Condition E, sale proceeds are 'used to make a qualifying investment' where they are used by a seller to make a qualifying investment as defined in section 809VB (as inserted by Part 2 of the Schedule).

99. New subsection 809YB(6) provides that any references in section 809YA to the payment of sale proceeds to the seller includes payments to any other person made on behalf of or at the discretion of the seller.

100. New section 809YC describes the effect of disapplying the rule in section 809Y(1) which would apply when property ceases to be exempt property in the absence of section 809YA.

101. New subsection 809YC(2) provides that the property will not be treated as having been remitted to the UK even though it is no longer exempt property as a result of being sold in the UK.

102. New subsection 809YC(3) provides that, notwithstanding subsection (2), nothing will prevent the underlying income and gains from being treated as remitted to the UK where anything is done with any part of the sale proceeds after they have been taken offshore or used to make a qualifying investment.

103. New subsection 809YC(4) defines 'underlying income and gains' for the purposes of subsection 809YA(3) as any part or all of the individual's income and gains which were used to purchase the exempt

property and therefore the income and gains from which the sale proceeds are derived.

104. New subsection 809YC(5) provides that where the proceeds of a sale of exempt property are used to make a qualifying investment in circumstances which meet Condition E, sections 809VA to 809VK as introduced by Part 2 of the Schedule apply to that investment in the same way as they would had the investment been made within the 45-day time period specified in section 809VA(5).

105. New subsection 809YC(6) provides that, for the purposes of this exemption, both a sale of exempt property and the taking of the proceeds offshore will be treated as an offshore transfer for purposes of section 809R(4).

106. Paragraph 10 of the Schedule provides that the exemption provided by paragraph 9 is available for all sales of exempt property sold on or after 6 April 2012.

Nominated Income

107. Part 4 of the Schedule amends the rules which determine the tax treatment of nominated income and gains remitted to the UK.

108. Paragraph 11 disapplies section 809I where the £10 test is not met.

109. Subparagraph 11(2) introduces the £10 test in subsection 809(1).

110. Subparagraph 11(3) defines a 'nomination year' for the purposes of section 809I as any year in which an individual has nominated income and gains under section 809C ITA.

111. Subparagraph 11(4) amends subsections 809I(5) and 809I(6) to introduce the £10 test. An individual will breach the £10 test in a tax year where they have remitted any of their nominated income and gains in that year and the amount of nominated income and gains from any one tax year which are remitted in that year exceeds £10. Provided an individual never nominates more than £10 of their foreign income or gains from a particular tax year, they will never breach the £10 test.

112. Paragraph 12 provides that the amendments to section 809I apply for the tax year 2012-13 or any subsequent tax year.

BACKGROUND NOTE

113. The remittance basis is an alternative basis of taxation which applies to foreign income and capital gains. It is available to UK residents who are either not ordinarily resident and/or not domiciled within the UK. Individuals who elect to be taxed on the remittance basis are liable to UK tax on all their income and capital gains which arise in the UK, but

only liable to UK tax on their foreign income and capital gains to the extent that they are remitted to the UK.

114. The remittance basis rules were revised in Finance Act 2008. The main revisions were the introduction of a annual Remittance Basis Charge of £30,000 for individuals who had been resident in the UK for at least seven out of the preceding nine years and who wished to claim the remittance basis and a series of provisions to address a number of loopholes and anomalies in the previous remittance basis regime.

115. Further minor changes to the remittance basis were introduced in Finance Act 2009.

116. At Budget 2011, the Government announced a package of measure to reform the remittance basis with the aim of ensuring that non-domiciled individuals pay a fair tax contribution and encouraging them to invest in business. A number of technical simplifications to some aspects of the current rules to reduce undue administrative burdens were also announced.

117. On 17 June 2011, the Government published a consultation document, ‘Reform of the taxation of non-domiciled individuals: a consultation’ which sought views on the detailed design of the changes announced in the Budget. Consultation ended on 9 September 2011.

118. The main features of the proposed reforms were:

- the introduction of a higher annual charge of £50,000 payable by individuals who claim the remittance basis and who have been resident in the UK for at least 12 of the 14 years prior to the year of claim;

- a new relief to encourage investment by allowing remittance basis taxpayers to remit their foreign income and gains to the UK tax-free where they are used for the purpose of making a commercial investment in a company; and

- a number of technical changes to simplify some aspects of the current remittance basis rules.

119. The Government published its response to the representations made during the consultation on 6 December.

Increased Remittance Basis Charge

120. Under section 809H ITA, individuals who have been resident in at least seven of the nine preceding tax years are required to pay an annual charge of £30,000 to access the remittance basis.

121. Part 1 of the Schedule introduces an increased annual charge of £50,000 payable by individuals who have been resident in the UK in at least 12

of the preceding 14 tax years. Those individuals who have been resident in the UK in at least seven of the nine preceding tax years and who claim the remittance basis will still be required to pay the annual charge of £30,000.

Remittance for Investment Purposes

122. Under the current remittance basis rules, individuals are liable to tax on the foreign income or capital gains which they remit to the UK, irrespective of the purpose for which those income and gains are used. This can discourage such individuals from making commercial investments in the UK. Part 2 of the Schedule seeks to remove this disincentive by providing a new tax relief which allows remittance basis taxpayers to bring their overseas income and gains to the UK without becoming liable to tax, provided they are brought to the UK for the purpose of making a qualifying investment.

123. To qualify for this exemption, the investment must be made in an eligible trading company or in an eligible stakeholder company.

124. To prevent abuse, there are a number of conditions to prevent an investor from using the exemption as a means of enjoying their overseas income and gains in the UK tax free.

Sales of Exempt Property

125. There are certain exceptions to the remittance basis rules in sections 809X to 809Z6 ITA whereby an individual can bring property purchased out of unremitted foreign income and gains to the UK without being taxed on the remittance. These exceptions are where the property is:

- a work of art, collectors' item or antique brought to the UK for the purposes of public display at an approved establishment;
- an item of clothing, footwear, jewellery or watch for personal use;
- brought to the UK for the purposes of repair or restoration;
- imported into the UK temporarily for a period of no more than 275 days; or
- worth less than £1,000.

126. Such property is defined as 'exempt property' in section 809X ITA. However, under section 809Y ITA, these exceptions are not available where the property is sold or otherwise converted into money whilst it is in the UK. This can be a disincentive to remittance basis taxpayers who wish to sell such property in the UK. The changes introduced by Part 3 of the Schedule seek to remove this disincentive by allowing exempt

property to be sold in the UK without a tax liability arising when it is remitted.

127. The exemption for sales of exempt property is subject to the requirement that the sale proceeds are either taken out of the UK or used to make a qualifying investment within 45 days of the sale proceeds being paid to the seller.

Nominated Income

128. Under section 809H ITA, individuals who have been resident in at least seven of the nine preceding tax years are required to pay an annual charge of £30,000 to access the remittance basis. Part 1 of the Schedule introduces a further annual charge of £50,000 for individuals who have been resident in the UK in at least 12 of the preceding 14 tax years.

129. Under section 809C, individuals who claim the remittance basis are required to nominate some of their foreign income or gains each year in which they are liable to pay the annual remittance basis charge. This nominated amount forms the basis for calculating the charge.

130. Where such individuals remit the foreign income and gains which they have nominated under section 809C before any other unremitted foreign income and gains, the order in which income and gains are remitted is determined by sections 809I and 809J.

131. The amendments made by Part 4 of the Schedule allow such individuals to remit up to £10 each year of their income or gains which they have nominated without having to ensure they do not subsequently remit any part of that nominated amount into the UK.

132. An illustration of how the new rules work is set out below.

133. In year 1, an individual nominates £5 income and gains from that year which they remit to the UK. As the total amount of nominated income and gains remitted is less that £10, they do not meet the £10 test and section 809I does not apply.

134. In year 2, the individual nominates £20 from year 1, of which they remit £7. The amounts of nominated income and gains from year 1 exceeds £10, so section 809I will apply.

135. If you have any questions about this change, or comments on the draft legislation, please contact:

offshorepersonal.taxteam@hmrc.gsi.gov.uk

Foreign currency bank accounts

1 Foreign currency bank accounts

(1) TCGA 1992 is amended as follows.

(2) In section 13 (attribution of gains to members of non-resident companies), in subsection (5), omit paragraph (c).

(3) In section 251 (debts: general provisions), after subsection (5) insert—

"(5A) References in this section to the disposal of a debt include the disposal of an interest in a debt (and, in the case of an interest in a debt, the reference in subsection (3) to the amount of the debt is to the amount of the person's interest in the debt)."

(4) For section 252 substitute—

"252 Foreign currency bank accounts

(1) Section 251(1) does not apply in relation to a gain accruing to a person on a disposal of a foreign currency debt (or an interest in such a debt) unless that person is—
  (a) an individual,
  (b) the trustees of a settlement, or
  (c) the personal representatives of a deceased person.

(2) A "foreign currency debt" is a debt—
  (a) owed by a bank in a currency other than sterling, and
  (b) represented by a sum standing to the credit of an account-holder in an account in that bank."

(5) Omit section 252A and Schedule 8A (foreign currency bank accounts).

(6) The amendments made by this section have effect in relation to disposals occurring on or after 6 April 2012.

EXPLANATORY NOTE

FOREIGN CURRENCY BANK ACCOUNTS

SUMMARY

1. This clause exempts individuals, trustees of settled property, and personal representatives of deceased persons from capital gains tax on gains made on withdrawals of money from bank accounts denominated in a foreign currency. The clause takes effect from 6 April 2012.

DETAILS OF THE CLAUSE

2. Subsection (4) of the clause makes the main change. It replaces the existing section 252 of the Taxation of Chargeable Gains Act 1992 (TCGA) with a new provision.

New section 252 TCGA

3. Section 252(1) restricts the scope of section 251 TCGA. Section 251 exempts gains on certain debts, including credit balances on bank accounts, from tax on chargeable gains. Where the debt is a "foreign currency debt", section 252(1) limits this exemption to gains accruing to individuals, trustees of settled property and personal representatives of deceased persons.

4. Section 252(2) defines "foreign currency debt" as a credit balance on a bank account in a currency other than sterling.

5. Subsections (2), (3) and (5) of the clause make other changes to the TCGA as a consequence of the main change in subsection (4).

6. Subsection (2) removes a redundant rule concerning the attribution of gains to members of non-resident companies in section 13(5)(c) that referred to the original version of section 252 TCGA.

7. Subsection (3) inserts a new section 251(5A) TCGA to make clear that relevant references in section 251 to debt include references to an interest in debts that a person holds, for example, as a joint owner of the account. It aligns section 251 with new section 252.

8. Subsection (5) repeals the rules in section 252A and Schedule 8A TCGA for calculating chargeable gains and allowable losses where individuals withdraw money from foreign currency bank accounts. The new section 252 prevents chargeable gains or allowable losses

from arising to individuals on any such withdrawals, rendering these rules redundant.

9. Subsection (6) provides for the changes to the TCGA to apply from 6 April 2012.

BACKGROUND NOTE

10. Under the TCGA, for capital gains tax purposes, gains and losses can arise on foreign currency bank accounts because the calculation must be made in sterling. If the exchange rate between sterling and the foreign currency in question changes between the time when the money was put into the account and the time when it is taken out, a gain or loss will arise.

11. At Budget 2011 the Government announced that it would reform the taxation of non-domiciled individuals, including measures to simplify aspects of the current remittance basis rules to remove undue administrative burdens. "Reform of the taxation of non-domiciled individuals: a consultation", issued on 17 June 2011, included a proposal to remove gains and losses on individuals' foreign currency bank accounts from the scope of capital gains tax (CGT).

12. This clause implements the simplification, and extends the exemption from CGT to trustees and personal representatives.

13. The original section 252 TCGA limits the exemption from CGT for foreign currency bank accounts to cases where individuals withdraw money that they have put into their account for personal expenditure abroad. The new section 252 replaces this with a broader exemption.

14. If you have any questions about this change, or comments on the legislation, please contact Colin Weston on 020 7147 0127 (email: capitalgains.taxteam@hmrc.gsi.gov.uk).

Indexation of the inheritance tax nil rate band

1 Inheritance tax: indexation of rate bands

(1) Section 8 of IHTA 1984 (indexation of rate bands) is amended as follows.

(2) In subsection (1), for “retail prices index for the month of September in 1993 or any later year” substitute “consumer prices index for the month of September in any year”.

(3) In subsection (2), for “retail prices index” substitute “consumer prices index”.

(4) For subsection (3) substitute—

“(3) In this section, “consumer prices index” means the all items consumer prices index published by the Statistics Board.”

(5) The amendments made by this section have effect for the purposes of chargeable transfers made on or after 6 April 2015.

EXPLANATORY NOTE

INHERITANCE TAX: INDEXATION OF RATE BANDS

SUMMARY

1. This clause provides that the inheritance tax nil rate band (NRB) will rise in line with the Consumer Prices Index (CPI) instead of the Retail Prices Index (RPI) from 2015-16. Automatic indexation of the NRB using the CPI will remain subject to override if Parliament determines a different amount should apply.

DETAILS OF THE CLAUSE

2. Subsection (2) amends section 8(1) of the Inheritance Tax Act (IHTA) 1984 so that the increase in the CPI from one September to the next is used to calculate the increase in the NRB for the following year.

3. Subsection (3) amends section 8(2) IHTA 1984 replacing references to "retail prices index" with "consumer prices index".

4. Subsection (4) replaces the definition of "retail prices index" in section 8(3) IHTA 1984 with a definition of "consumer prices index".

5. Subsection (5) provides that automatic indexation of the NRB in line with the CPI takes effect from the calculation of the NRB for 2015-16. This will apply for chargeable transfers made on or after 6 April 2015 and will also be applied, where appropriate, under paragraph 1A of Schedule 2 to IHTA 1984 for potentially exempt transfers made before that date which fail on or after 6 April 2015.

BACKGROUND NOTE

6. Currently, where the RPI for the month of September is higher than it was for the previous September, then, unless Parliament otherwise determines, the limit of the NRB increases from the 6 April of the following year by the same percentage as the percentage increase in the RPI.

7. Section 155(1)(b) and (4) of Finance Act 2006 provided for the limit of the NRB to be set at £325,000 for the tax year 2009-10.

8. Section 8 of Finance Act 2010 provided that indexation does not have effect by virtue of any difference between the RPI for the month of September in 2010, 2011, 2012 or 2013 and the previous September, thereby freezing the NRB up to and including 2014-15.

9. If you have any questions about this change, or comments on the legislation, please contact Craig Griffith on 020 7147 3395 (email: craig.griffith@hmrc.gsi.gov.uk).

Indexation of the capital gains tax (CGT) annual exempt amount

1 Annual exempt amount

(1) TCGA 1992 is amended as follows.

(2) In section 3 (annual exempt amount), for the figure specified in subsection (2) substitute "£10,600".

(3) In that section—

(a) in each of subsections (3), (3A), (3B) and (4), for "RPI" substitute "CPI", and

(b) in subsection (3A), for "retail prices index" substitute "consumer prices index".

(4) In section 288 (interpretation), after subsection (2) insert—

"(2A) In this Act "consumer prices index" means the all items consumer prices index published by the Statistics Board."

(5) The amendment made by subsection (2) has effect for the tax year 2012-13 and subsequent tax years.

(6) Section 3(3) of TCGA 1992 (indexation) does not apply in relation to the tax year 2012-13.

(7) The amendments made by subsections (3) and (4) have effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

ANNUAL EXEMPT AMOUNT

SUMMARY

1. This clause sets the capital gains tax annual exempt amount (AEA) at its current level of £10,600 for 2012-13 and requires that it rises in line with the Consumer Prices Index (CPI) instead of the Retail Prices Index (RPI) from 2013-14 onwards. Automatic indexation of the AEA using the CPI remains subject to override if Parliament determines a different amount should apply.

DETAILS OF THE CLAUSE

2. Subsection (2) provides the AEA to be used in section 3(2) of the Taxation of Chargeable Gains Act (TCGA) 1992.

3. Subsection (3) replaces references to "RPI" and "retail prices index" in section 3 with "CPI" and "consumer prices index".

4. Subsection (4) inserts a definition of "consumer prices index" in section 288 of the TCGA 1992.

5. Subsection (5) states that the figure inserted by subsection (2) of this clause is the AEA for tax year 2012-13 and the base figure to be indexed in future tax years.

6. Subsection (6) disapplies automatic indexation for tax year 2012-13 in order that the AEA for that year is instead the figure inserted by subsection (2).

7. Subsection (7) provides that subsections (3) & (4) have effect for the tax year 2013-14 onwards.

BACKGROUND NOTE

8. Currently, where the RPI for the month of September is higher than the figure for the previous September, the level of the AEA for the following tax year increases in line with the percentage increase in the RPI, unless Parliament sets a different level.

9. At the Autumn Statement 2011, the Chancellor announced that the AEA for the tax year 2012-13 will be frozen at its current level of £10,600 and the planned switch from RPI to CPI, announced at Budget 2011, will take place from 2013/14.

10. If you have any questions about this change, or comments on the legislation, please contact Craig Griffith on 020 7147 3395 (email capitalgains.taxteam@hmrc.gsi.gov.uk).

Single Payment Scheme (SPS) and capital gains tax roll-over relief

1 Roll-over relief

(1) In section 155 of TCGA 1992 (roll-over relief: relevant classes of assets), in the entry for Class 7A, for "Council Regulation (EC) No. 1782/2003" substitute "Council Regulation (EC) No 73/2009".

(2) In section 86 of FA 1993, for subsection (2) (power to add to classes specified in section 155 of TCGA 1992) substitute—

"(2) The Treasury may by order made by statutory instrument amend section 155 of the Taxation of Chargeable Gains Act 1992 (roll-over relief: relevant classes of assets) so as to add to or amend the classes of assets specified in that section.

(2A) But an order under subsection (2) may not restrict the assets which fall within a class listed in that section (whether by virtue of subsection (2) or otherwise).

(2B) An order under subsection (2) may make such consequential amendments of section 156ZB of, or Schedule 7AB to, the Taxation of Chargeable Gains Act 1992 as appear to the Treasury to be appropriate."

(3) Accordingly, section 43(3) of FA 2002 is repealed.

(4) The amendment made by subsection (1) has effect where the disposal of the old assets (or an interest in them) or the acquisition of the new assets (or an interest in them) is on or after 1 January 2009.

EXPLANATORY NOTE

ROLL-OVER RELIEF

SUMMARY

1. This clause preserves the availability of capital gains roll-over relief in relation to farmers' payment entitlements under the European Union (EU) Single Payment Scheme following changes to the Scheme in 2009.

2. The clause also allows for future changes to the relevant classes of assets in roll-over relief to be made by secondary legislation.

DETAILS OF THE CLAUSE

3. Subsection (1) amends class of assets 7A (payment entitlements under the single payment scheme) in section 155 of the Taxation of Chargeable Gains Act 1992 ('TCGA 1992') to reflect a change in the EU Regulations governing the scheme.

4. Subsection (2) replaces section 86(2) of Finance Act 1993 and inserts subsections 2A and 2B. The new subsection (2) allows the Treasury to amend section 155 of TCGA 1992 by statutory instrument so as to add classes of assets or amend existing classes. New subsection (2A) prevents any order being made under the power in subsection (2) which limits classes of assets qualifying for roll-over relief. New subsection (2B) allows for reasonable consequential amendments to be made to section 156ZB (interaction with corporation tax roll-over relief in cases of realisation and reinvestment) of, or Schedule 7AB (roll-over of degrouping charge on business assets) to, TCGA 1992 in line with those changes made through new subsection (2).

5. Subsection (3) repeals an earlier amendment to section 86(2) of Finance Act 1993, which is superseded by subsection (2) above.

6. Subsection (4) applies the change in subsection (1) retrospectively to the time of the change in the EU Regulations in 2009 providing for a continuous availability of capital gains tax roll-over relief for single payment scheme payment entitlements.

BACKGROUND NOTE

7. Roll-over relief (as the reliefs at sections 152-159 of TCGA 1992 are commonly referred to) permits the deferral of some or all of a chargeable gain on the disposal of a qualifying business asset where

the consideration received for that business asset is wholly or partly applied in acquiring replacement qualifying business assets.

8. Qualifying business assets are listed in section 155 TCGA 1992. Class 7A refers to the single payment scheme and, more specifically, the EU Regulation under which payments were previously made (Regulation (EC) 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers).

9. Regulation (EC) 1782/2003 was withdrawn from 1 January 2009 and replaced by Regulation (EC) 73/2009. This meant that without an amendment to class 7A, as listed in section 155 of TCGA 1992, payments made through the single payment scheme would no longer qualify for roll-over relief.

10. Subsection 86(2) of Finance Act 1993 provides a power for new classes of assets to be added to the list of those qualifying for roll-over relief by Treasury Order; an amendment to an existing asset requires primary legislation through the Finance Bill.

11. If you have any questions about this change, or comments on the legislation, please contact Craig Griffith on 020 7147 3395 (email: capitalgains.taxteam@hmrc.gsi.gov.uk).

Single Payment Scheme (SPS) and capital gains tax roll-over relief

International military headquarters, EU forces, etc

1 International military headquarters, EU forces, etc

Schedule 1 contains provision about the tax treatment of international military headquarters, EU forces, etc.

SCHEDULE 1

Section 1

INTERNATIONAL MILITARY HEADQUARTERS, EU FORCES, ETC

FA 1960

1 (1) Section 74A of FA 1960 (visiting forces and allied headquarters: stamp duty land tax exemptions) is amended as follows.

(2) In subsection (4)—

(a) for "allied", in the first place, substitute "international military", and

(b) omit paragraph (c).

(3) In subsection (5)—

(a) omit paragraph (a),

(b) in paragraph (b), after "Council" insert "made for giving effect to an international agreement", and

(c) in paragraph (c), after "detachment of" insert "a".

(4) Accordingly, in the heading for that section for "**allied**" substitute "**international military".**

IHTA 1984

2 In section 6 of IHTA 1984 (excluded property), in subsection (4), after "section 155(1)" insert "or (5A)".

3 (1) Section 155 of that Act (visiting forces and allied headquarters: residence, etc) is amended as follows.

(2) In subsection (4) for "allied" substitute "international military".

(3) After subsection (5) insert—

"(5A) Section 6(4) also applies to—

(a) the emoluments paid by the Government of any designated country to a person belonging to the EU civilian staff, not being a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, and

(b) any tangible movable property the presence of which in the United Kingdom is due solely to the presence in the United Kingdom of such a person serving as part of that staff.

(5B) A period during which any such person belonging to the EU civilian staff as is referred to in subsection (5A) is in the United Kingdom by reason solely of that person belonging to that staff is not to be treated for the purposes of this Act as a period of residence in the United Kingdom or as creating a change of that person's residence or domicile."

(4) In subsection (6), at the end insert—

""the EU civilian staff" means—

(a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and

(b) civilian personnel (other than locally hired personnel)—

(i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or

(ii) otherwise made available to the EU by a member State for the purposes of activities of the kind referred to in paragraph (a)."

ITEPA 2003

4 (1) Section 303 of ITEPA 2003 (visiting forces and staff of designated allied headquarters: relief from income tax) is amended as follows.

(2) In subsection (2)(a) for "allied" substitute "international military".

(3) After subsection (4) insert—

"(4A) No liability to income tax arises in respect of earnings if—

(a) they are paid by the government of a designated country to a person belonging to the EU civilian staff, and

(b) that person is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen."

(4) In subsection (6)—

(a) omit the "and" before the definition of "designated", and

(b) after that definition insert ", and

"the EU civilian staff" means—

(a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and

(b) civilian personnel (other than locally hired personnel)—

(i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or

(ii) otherwise made available to the EU by a member State for the purposes of

activities of the kind referred to in paragraph (a).”

(5) Accordingly, in the heading for that section for “**and staff of designated allied headquarters**” substitute “**etc**”.

ITA 2007

5 (1) Section 833 of ITA 2007 (visiting forces and staff of designated allied headquarters: residence, etc) is amended as follows.

(2) In subsection (2), in paragraph (a) for “allied” substitute “international military”.

(3) After that subsection insert—

“(2A) This section also applies to an individual within subsection (3) or (3A).”

(4) In subsection (3) for “This section also applies to an individual who—” substitute “An individual is within this subsection if the individual—”.

(5) After that subsection insert—

“(3A) An individual is within this subsection if the individual—

(a) belongs to the EU civilian staff,

(b) is in the United Kingdom, but only because of serving as part of that staff, and

(c) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.”

(6) In subsection (7)—

(a) omit the “and” before the definition of “designated”, and

(b) after that definition insert “, and

“the EU civilian staff” means—

(a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and

(b) civilian personnel (other than locally hired personnel)—

(i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or

(ii) otherwise made available to the EU by a member State for the purposes of activities of the kind referred to in paragraph (a).”

(7) Accordingly, in the heading for that section for “**and staff of designated allied headquarters**” substitute “**etc**”.

EXPLANATORY NOTE

INTERNATIONAL MILITARY HEADQUARTERS, EU FORCES ETC.

SUMMARY

1. This clause and Schedule provide the tax treatment required by the EU Status of Forces Agreement for visiting EU military and civilian staff, in order to enable the UK to ratify the agreement. This treatment is in line with the tax treatment already given to visiting North Atlantic Treaty Organisation (NATO) forces and their civilian staff. The Schedule amends the provisions of the four taxes acts that apply to visiting forces and allied headquarters.

DETAILS OF THE SCHEDULE

2. Paragraph 1 amends section 74A of the Finance Act (FA) 1960 so that the section applies an exemption from Stamp Duty Land Tax (SDLT) not just to land transactions in respect of a NATO headquarters, but also to land transactions in respect of any international military headquarters designated under an Order in Council. It also deletes the redundant subparagraph 4(c).

3. Paragraphs 2 and 3 amend sections 6 and 155 of the Inheritance Tax Act 1984 so that an exemption from inheritance tax applies not only to NATO military and civilian personnel stationed in the UK or attached to a NATO headquarters in the UK, but also to EU military and civilian staff attached to an international military headquarters designated under an Order in Council.

4. Paragraph 3(3) inserts into section 155:

   - new subsection 5A which provides that the official earnings of EU civilian staff, who are not British citizens, paid by a government of a Member State, and any movable property they have in the UK solely because they are part of the EU civilian staff, are excluded property and thus not chargeable to inheritance tax in the event of their death.

   - new subsection 5B which provides that EU civilian staff are not regarded for the purposes of the Inheritance Tax Act as becoming resident in the UK if their presence in the UK is solely because of being part of the EU civilian staff.

5. Paragraph 3(4) inserts new paragraphs (a) and (b) into subsection 6 of section 155 to define what is meant by EU civilian staff, this covers

both staff working with EU forces in the UK and those attached to international military headquarters situated in the UK.

6. Paragraph 4 amends section 303 of the Income Tax (Earnings and Pensions) Act 2003 so that the section also applies to EU military and civilian staff, as well as to military and civilian personnel working for NATO countries.

7. Paragraph 4(3) inserts new subsection 4A into section 303 which provides that the earnings of EU civilian staff paid by a government of a Member State are exempt from income tax. This exemption does not apply to British citizens and certain other classes of British nationals.

8. Paragraph 4(4) defines what is meant by EU civilian staff and covers both staff working with EU forces in the UK and those attached to international military headquarters.

9. Paragraph 5 amends section 833 of the Income Tax Act 2007 (ITA) so that the section applies to EU military and civilian staff, as well as to military and civilian staff working for NATO countries.

10. Paragraph 5(2) expands the type of headquarters covered from just NATO ones to any international military headquarters designated by Order in Council.

11. Paragraph 5(5) inserts new subsection 3A into section 303 ITA which brings EU civilian staff who are not British citizens, or certain other classes of British nationals, within the provision.

12. Paragraph 5(6) defines what is meant by EU civilian staff, and covers both staff working with EU forces in the UK and those attached to international military headquarters.

BACKGROUND NOTE

13. In 2003 the European Council decided, in pursuit of the Common Foreign and Security Policy, to give the EU the capabilities required to take and implement decisions on the full range of conflict prevention and crisis management tasks defined in the Treaty on European Union (TEU).

14. In order to facilitate the movement of forces between Member States of the European Union in the context of the TEU, an Agreement was drawn up regarding the status of military and civilian staff. This is the EU Status of Forces Agreement. The Agreement was presented to Parliament in March 2009.

15. Although most of the Agreement is not to do with tax, it does provide for tax privileges to be granted to EU military and civilian staff of one Member State, who are present in another Member State to carry out tasks relating to common security and defence policy in accordance with the EU Status of Forces Agreement.

16. The UK cannot ratify the Agreement until all the domestic legislation is in place to give effect to its provisions.

17. Existing tax legislation provides that members of visiting forces and staff of designated NATO allied headquarters, who are present in the UK solely because of their official duties, are exempt from tax on their official remuneration and do not become tax resident in the UK if they are stationed here. There are also provisions providing exemptions from Capital Gains Tax, Inheritance Tax and Stamp Duty Land Tax.

18. This section and schedule expand the existing legislation so that it will also apply to members of visiting EU forces and to the civilian staff which may accompany them, as well as to EU military and civilian staff working at designated international military headquarters in the United Kingdom.

19. If you have any questions about this change, or comments on the legislation, please contact Geoff Barnard on 020 7147 2734 (email: geoff.barnard@hmrc.gsi.gov.uk).

Ministry of Defence: Continuity of Education Allowance (CEA)

1 Employment income exemptions: armed forces

(1) Chapter 8 of Part 4 of ITEPA 2003 (exemptions: special kinds of employees) is amended as follows.

(2) In section 297A (exemption for Operational Allowance), in subsection (2), for "by the Secretary of State" substitute "under a Royal Warrant made under section 333 of the Armed Forces Act 2006".

(3) In section 297B (exemption for Council Tax Relief), in subsection (2), for "by the Secretary of State" substitute "under a Royal Warrant made under section 333 of the Armed Forces Act 2006".

(4) After that section insert—

"297C Armed forces: Continuity of Education Allowance

(1) No liability to income tax arises in respect of payments of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown during their employment under the Crown or after their deaths.

(2) The Continuity of Education Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006."

(5) The amendments made by this section have effect in relation to payments made on or after 6 April 2012.

EXPLANATORY NOTE

EMPLOYMENT INCOME EXEMPTIONS: ARMED FORCES

SUMMARY

1. This clause will exempt from income tax, payments of the Continuity of Education Allowance (CEA) by the Ministry of Defence (MoD) to or in respect of serving and deceased members of the Armed Forces.

2. The clause also makes consequential amendments to the existing exemptions for payments of the Operational Allowance and Council Tax Relief to members of the Armed Forces to align the specifications of the legal authority under which these payments are made.

DETAILS OF THE CLAUSE

3. Subsection (1) introduces amendments to Chapter 8 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (exemptions: special kinds of employees)

4. Subsection (2) amends section 297A of ITEPA (exemption for Operational Allowance) so that; "by the Secretary of State" is replaced with "under a Royal Warrant made under Section 333 of the Armed Forces Act 2006".

5. Subsection (3) amends section 297B of ITEPA (exemption for Council Tax Relief) so that; "by the Secretary of State" is replaced with "under a Royal Warrant made under Section 333 of the Armed Forces Act 2006".

6. Subsection (4) inserts new section 297C into ITEPA.

7. New section 297C(1) makes provision for payments of the CEA to or in respect of serving or deceased members of the Armed Forces to be exempt from income tax. New section 297C(2) specifies the legal authority under which payments of the CEA are made.

8. Subsection (5) provides that the amendments made by the clause have effect in relation to payments made on or after 6 April 2012.

BACKGROUND NOTE

9. The CEA is paid to service personnel to provide a continuity of education for their children that would not otherwise be possible if they accompanied their parents on frequent assignments both at home and overseas.

10. The CEA is currently liable to tax but the tax is paid by the Ministry of Defence on behalf of CEA where paid to recipients based in the UK.

11. This new exemption aims to support the principles of the Armed Forces Covenant and in particular the principle that service personnel and their families should not be put at any disadvantage from entering into military life. It seeks to mitigate the financial impact of providing a secure and continuing education acknowledging the particular circumstances in which these men and women serve and the particular difficulties they face.

12. If you have any questions about this change, or comments on the legislation, please contact Neil Chattell on 020 71473860 (email: neil.chattell@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2012 No. XXXX

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. X) Regulations 2012

Made - - - -	*****
Laid before Parliament	*****
Coming into force - -	*6th April 2012*

The Treasury make these Regulations in exercise of the powers conferred by section 3(2) and (3) of the Social Security Contributions and Benefits Act 1992(**a**) and section 3(2) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**) and now exercisable by them.

The Secretary of State and the Department for Social Development(**c**) concur in the making of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. X) Regulations 2012 and come into force on 6th April 2012.

Amendment of the Social Security (Contributions) Regulations 2001

2. The Social Security (Contributions) Regulations 2001(**d**) are amended as follows.

3. In Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances to be disregarded in the calculation of employed earners' earnings)—

(a) for paragraph 12A (HM Forces' Operational Allowance) substitute—

"**HM Forces' Operational Allowance**

12A.—(1) A payment of the Operational Allowance to members of the armed forces of the Crown.

(**a**) 1992 c. 4. Section 3 has been amended: the relevant amendment is that made by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(**b**) 1992 c. 7 ("the 1992 Northern Ireland Act"). Section 3 has been amended: the relevant amendment is that made by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671).

(**c**) The functions of the Department of Health and Social Services for Northern Ireland under the 1992 Northern Ireland Act were transferred to the Department for Social Development by article 8(b) of, and Part 2 of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No. 481).

(**d**) S.I. 2001/1004, amended by S.I. 2006/2924 and 2008/607; there are other amending instruments but none is relevant.

(2) The Operational Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006(**a**).";

(b) for paragraph 12B (HM Forces' Council Tax Relief) substitute—

"**HM Forces' Council Tax Relief**

12B.—(1) A payment of Council Tax Relief to members of the armed forces of the Crown.

(2) Council Tax Relief is a payment designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006."; and

(c) after that paragraph insert—

"**HM Forces' Continuity of Education Allowance**

12C.—(1) A payment of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown.

(2) The Continuity of Education Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006.".

Name
Name
Date — Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs
Signed by authority of the Secretary of State for Work and Pensions

Name
Minister of State
Date — Department for Work and Pensions

The Department for Social Development concurs
Sealed with the Official Seal of the Department for Social Development on

Name
Date — A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the 2001 Regulations").

Regulation 3 substitutes paragraphs 12A and 12B of Part 8 of Schedule 3 to the 2001 Regulations. It removes the reference to the Operational Allowance and Council Tax Relief being made and designated by the Secretary of State for Defence and instead refers to them being designated under a Royal Warrant made under the Armed Forces Act 2006 (c. 52) ("the 2006 Act").

Regulation 3 also adds a new paragraph 12C to Part 8 of Schedule 3 to the 2001 Regulations. The new paragraph 12C provides that payments of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown are to be disregarded in the calculation of

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(**a**) 2006 c.52, continued in force by S.I. 2007/2123, 2008/1780, 2009/1752, 2010/2475 and section 1 of the Armed Forces Act 2011 c. 18.

earnings for National Insurance purposes. The Continuity of Education Allowance is an allowance that is designated as such under a Royal Warrant made under the 2006 Act.

A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside the autumn statement and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. X) REGULATIONS 2012

2012 No. [xxx]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (the Principal Regulations) to introduce a disregard in the calculation of an employed earner's liability to Class 1 National Insurance contributions (NICs) for payments of the Continuity of Education Allowance (CEA) from the Ministry of Defence (MoD) to or in respect of members of the armed forces. It also updates the references to how payments of the Operational Allowance and Council Tax Relief are designated for the purposes of the disregard from NICs.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Regulation 3 inserts a new paragraph 12C in Part 8 of Schedule 3 to the Principal Regulations to provide a disregard from liability to pay Class 1 NICs for payments of the CEA from the MoD to or in respect of members of the armed forces.

4.2 Regulation 3 also amends paragraphs 12A and 12B of Part 8 of Schedule 3 to the Principal Regulations to include a reference to section 333 of the Armed Forces Act 2006 under which payments of the Operational Allowance and Council Tax Relief are now made.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The CEA is paid to service personnel to provide a continuity of education for their children that would not otherwise be possible if they accompanied their parents on frequent assignments both at home and overseas. Under the current legislation the CEA is subject to income tax and NICs.

7.2 These Regulations introduce a disregard for NICs for the payment of the CEA to or in respect of members of the armed forces. This policy aims to support the principles of the Armed Forces Covenant and in particular the principle that service personnel and their families should not be put at any disadvantage from entering into military life. It seeks to mitigate the financial impact of providing a secure and continuing education acknowledging the particular circumstances in which these men and women serve and the particular difficulties they face.

7.3 The primary legislation introducing a new tax exemption for the same payment will be introduced in the Finance Bill 2012.

7.4 These Regulations also update the disregards for payments of the Operational Allowance and Council Tax Relief to include a reference to section 333 of the Armed Forces Act 2006 under which payments are now made.

- ***Consolidation***

7.5 There are currently no plans to consolidate the Principal Regulations.

8. Consultation outcome

8.1 The MoD has been consulted on the proposals but there has been no public or wider consultation.

8.2 In accordance with the Government's Tax Consultation Framework (http://www.hmrc.gov.uk/consultations/tax-consultation-framework.pdf), HMRC has published this instrument in draft.

9. Guidance

9.1 These Regulations do not impose any new obligation.

9.2 The relevant HMRC guidance in the "CWG 2 Employer Further Guide to PAYE and NICs" and on HMRC's website will be amended to reflect these Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside the autumn statement and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

13. Contact

Raj Nayyar at HMRC, Tel: 0207 147 2521 or e-mail: raj.nayyar@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Security Enhanced Cars

1 Cars: security features not to be regarded as accessories

(1) ITEPA 2003 is amended as follows.

(2) In section 125 (meaning of “accessory” and related terms) after subsection (3) insert—

“(3A) Subsection (2) needs to be read with section 125A (security features not to be regarded as accessories).”

(3) After that section insert—

“125A Security features not to be regarded as accessories

(1) This section applies where a car made available to an employee has a relevant security feature.

(2) The relevant security feature is not an accessory for the purposes of this Chapter if it is provided in order to meet a threat to the employee’s personal physical security which arises wholly or mainly because of the nature of the employee’s employment.

(3) In this section “relevant security feature” means—

(a) armour designed to protect the car’s occupants from explosions or gunfire,

(b) bullet-resistant glass,

(c) any modification to the car’s fuel tank designed to protect the tank’s contents from explosions or gunfire (including by making the tank self-sealing), and

(d) any modification made to the car in consequence of anything which is a relevant security feature by virtue of paragraph (a), (b) or (c).

(4) The Treasury may by regulations amend the definition of “relevant security feature” in subsection (3).”

(4) In Part 2 of Schedule 1 (index of defined expressions), in the entry for “accessory”, in the second column for “section 125(2)” substitute “sections 125(2) and 125A(2)”.

(5) The amendments made by this section have effect for the tax year 2011-12 and subsequent tax years.

EXPLANATORY NOTE

CARS: SECURITY FEATURES NOT TO BE REGARDED AS ACCESSORIES

SUMMARY

1. This clause ensures that individuals who are provided with security enhanced cars made available for their private use, and who can demonstrate that the nature of their employment creates a threat to their personal security, are not unfairly impacted by the abolition of the £80,000 cap on the cash equivalent of the benefit on company cars made available for private use. It will take effect from 6 April 2011.

DETAILS OF THE CLAUSE

2. Paragraph 2 introduces new section 125(3A) into the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). This provides that section 125(2) ITEPA (which deals with exclusions from treatment as accessories) must be read with new section 125A ITEPA.

3. Paragraph 3 introduces new section 125A. New section 125A(1) provides that the section applies to company cars with a relevant security feature. New section 125A(2) provides that the relevant security feature is not an accessory if it is provided as a result of a threat to the individual's personal security arising from the nature of their employment. New section 125A(3) sets out the types of relevant security features and includes any modification made to the car as a result of the enhancements (in order to make it roadworthy). Finally, new section 125A(4) provides an order making power to introduce further relevant security features should these be required in future.

4. Paragraph 4 deals with a consequential amendment to Part 2 of Schedule 1 to ITEPA (index of defined expressions).

BACKGROUND NOTE

5. The cash equivalent of the taxable benefit of a company car made available for private use is calculated on the basis of (list price + cost of accessories) x (the appropriate percentage (normally based on CO_2 engine emissions)).

6. Because of the nature of their employment, a number of individuals in both the public and private sectors are provided with company cars

that have been modified to accept security enhancements such as bullet proofed glass and armour plating. These are currently regarded as accessories for tax purposes and the value of the enhancements falls within the computation of the cash equivalent of the benefit. This may significantly add to the level of taxable benefit resulting in a disproportionate tax liability for some individuals.

7. Prior to 6 April 2011, there was an £80,000 limit on the list price and accessories calculation for the cash equivalent of the taxable benefit. This covered most security enhanced cars.

8. If you have any questions about this change, or comments on the legislation, please contact Su Mclean-Tooke on 020 7147 2665 (email susan.mclean-tooke@hmrc.gsi.gov.uk).

Champions League Final 2013: tax relief

1 Champions league final

(1) No liability to income tax arises in respect of any income from the 2013 Champions League final that arises to a person who is—

(a) an employee or contractor of an overseas team that competes in the final, and

(b) non-UK resident at the time of the final.

(2) The reference in subsection (1) to income from the 2013 Champions League final is to income related to duties or services performed by the person in the United Kingdom in connection with the final.

(3) The exemption under subsection (1) does not apply to—

(a) income that arises as a result of a contract entered into after the final, or of any amendment, after the final, of a contract entered into before the end of the final, or

(b) income that is the subject of tax avoidance arrangements.

(4) Income is the subject of tax avoidance arrangements if—

(a) arrangements have been made which, but for subsection (3)(b), would result in a person obtaining an exemption under subsection (1) for the income, and

(b) those arrangements, or other arrangements of which they form part, have as their main purpose, or one of their main purposes, the obtaining of that exemption.

(5) Section 966 of ITA 2007 (deduction of sums representing income tax) does not apply to any payment or transfer which gives rise to income benefiting from the exemption under subsection (1).

(6) In this section—

"the 2013 Champions League final" means the final of the UEFA Champions League 2012/2013 competition held in England in 2013;

"contractor", in relation to an overseas team, means an individual who is not an employee of the team but who performs services for the team—

(a) under the terms of a contract with the team, or

(b) under the terms of a contract, or that individual's employment, with a company which is a member of the same group of companies as the team (within the meaning given by section 152 of CTA 2010);

"employee" and "employment" are to be read in accordance with section 4 of ITEPA 2003;

"income" means employment income or profits of a trade, profession or vocation (including profits treated as arising as a result of section 13 or 14 of ITTOIA 2005);

"overseas team" means a football club which is not a member of the Football Association, the Scottish Football Association, the Football Association of Wales or the Irish Football Association.

EXPLANATORY NOTE

CHAMPIONS LEAGUE FINAL 2013

SUMMARY

1. This clause provides for an exemption from income tax for the non-resident players and officials of visiting teams who compete in the 2013 Champions League final, which is to be held in the UK.

DETAILS OF THE CLAUSE

2. Paragraph (1) provides that no liability to income tax arises in respect of any income from the 2013 Champions League final. The exemption will apply to individuals who are employees or contractors of an overseas team who are not resident in the UK.

3. Paragraph (2) defines income from the 2013 Champions League final as meaning income which is related to duties or services performed by the person in the United Kingdom in connection with the final.

4. Paragraph (3) provides that the income to be exempt must relate to contracts that are in place before the final takes place. Income that is subject to tax avoidance arrangements is not exempt.

5. Paragraph (4) defines what is meant by tax avoidance arrangements.

6. Paragraph (5) provides that withholding obligations under section 966 of the Income Tax Act 2007 do not apply to any payment or transfer that gives rise to income benefitting from the exemption.

7. Paragraph (6) provides definitions of “the 2013 Champions League final”, a “contractor”, an “employee” and “employment”, “income” and “overseas team”.

BACKGROUND NOTE

8. There will be an exemption from UK income tax for the non-resident players and officials of visiting football teams playing in the 2013 Champions League final, to be held in the UK. A similar exemption was provided for the 2011 Champions League final which was also held in the UK.

9. The employment income, self-employment income and any endorsement income of the players and the teams' officials relating to the Champions League final in the UK will not be liable to UK income tax where the team is an overseas team and those players and officials are not resident in the UK. This exemption only applies where the income is in relation to the match and where the individual works for, or is contracted to, the team or its subsidiaries.

10. If you have any questions about this change, or comments on the legislation, please contact John Pay on 020 7147 0369 (email john.pay@hmrc.gsi.gov.uk).

Qualifying Time Deposits

1 Qualifying time deposits

(1) In section 866 of ITA 2007 (qualifying time deposits), in subsection (1), after "deposit" insert "made before 6 April 2012".

(2) The amendment made by this section is treated as having come into force on 6 April 2012.

EXPLANATORY NOTE

QUALIFYING TIME DEPOSITS

SUMMARY

1. This clause concerns the deduction of income tax from interest or similar amounts payable by building societies, banks and other deposit-takers on investments that are qualifying time deposits. It removes the exclusion of these investments from arrangements under which financial institutions deduct sums representing income tax at the basic rate from interest they pay to account holders.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 866(1) of the Income Tax Act 2007 (ITA 2007). Section 866(1) provides that an investment which is a qualifying time deposit is not a 'relevant investment' for the purposes of Chapter 2, Part 15 of ITA 2007 (concerning deduction of sums representing income tax by deposit-takers and building societies from payments of interest on relevant investments). Interest payments in respect of qualifying time deposits are therefore excluded from the tax-deduction requirements set out at Chapter 2, Part 15 of ITA 2007.

3. Subsection (1) restricts this exclusion, so it applies only to interest payments in respect of qualifying time deposits made before 6 April 2012. A qualifying time deposit made on or after 6 April 2012 will by virtue of the amendment made by subsection (1) be a 'relevant investment' for the purposes of Chapter 2, Part 15 of ITA 2007. Building societies, banks and other deposit-takers will therefore be required to deduct sums representing income tax at the basic rate from interest payments they make on these investments.

4. Subsection (2) provides that this clause will be treated as having come into force on 6 April 2012.

BACKGROUND NOTE

5. Income tax is usually due on interest that building societies, banks and other deposit-takers pay to savers and investors. There are, however, circumstances in which income tax will not be due, for example where a saving or investment product is tax-advantaged (such as an Individual Savings Account).

6. Building societies, banks and other deposit-takers usually deduct sums representing income tax from interest payable on most of their

savings or investment products. These sums are deducted at the basic rate of income tax and paid to HM Revenue & Customs under the Tax Deduction Scheme for Interest.

7. However, any interest payable on investments that are qualifying time deposits is excluded from these tax-deduction arrangements. This interest is paid gross to investors, and each investor is required to make separate arrangements to account for any tax due to HM Revenue & Customs.

8. The effect of this clause is to remove this exclusion for qualifying time deposits made on or after 6 April 2012. Building societies, banks and other deposit-takers will be required to deduct sums representing income tax at the basic rate from interest they pay on these qualifying time deposits. However, where an investor is not liable to pay tax on interest, for example because their total taxable income is less than their tax-free personal allowance, they can register with their account provider to receive interest payments gross.

9. If you have any questions about this change, or comments on the legislation, please contact Simon Turner on 0151 472 6154 (email: simon.turner@hmrc.gsi.gov.uk).

Employer asset backed pensions

1 Employer asset-backed pension contributions

Schedule 1 contains provision about contributions paid by employers under registered pension schemes.

SCHEDULES

SCHEDULE 1

Section 1

EMPLOYER ASSET-BACKED PENSION CONTRIBUTIONS

PART 1

MAIN PROVISION

1 In Chapter 4 of Part 4 of FA 2004 (registered pension schemes: tax reliefs and exemptions) after section 196A insert—

"196B Employer asset-backed contributions: denial of relief (1)

(1) An employer ("E") is not to be given relief in respect of a contribution ("E's contribution") paid by E under a registered pension scheme if conditions A, B and C are met.

(2) Condition A is that—

(a) under an arrangement ("the asset-backed arrangement")—

(i) a person ("the borrower") receives money or another asset ("the advance") from another person ("the lender"),

(ii) the borrower, or a person connected with the borrower, makes a disposal of an asset ("the security") to or for the benefit of the lender or a person connected with the lender, and

(iii) the lender, or a person connected with the lender, is entitled to payments in respect of the security,

(b) the borrower is E or a person connected with E, and

(c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),

and the case is not one in relation to which either condition A in section 196C or condition A in section 196D is met.

(3) For the purposes of subsection (2)(a)(iii) it does not matter if an entitlement of the lender, or a person connected with the lender, is subject to any condition.

(4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

(5) Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned in subsection (2)(a)(iii) has been, or is to be, determined (wholly or partly) on the basis that, in essence, the whole or a part of the advance represents a loan which is (wholly or partly) to be repaid by way of one or more of those payments.

(6) For the purposes of subsection (5) it does not matter that—
  (a) the repayment of the loan might be subject to any condition, or
  (b) that the accounts of any person do not record a financial liability in respect of the whole or a part of the advance or that the whole or a part of the advance is not otherwise treated as representing a loan for the purposes of the accounts of any person,

but, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.

(7) For the purposes of this section—
  (a) the borrower and the lender are not connected with one another if that would otherwise be the case,
  (b) if the borrower is not E, references to a person connected with the borrower include a person connected with E who would not otherwise be connected with the borrower, and
  (c) "loan" includes any advance of money.

196C Employer asset-backed contributions: denial of relief (2)

(1) An employer ("E") is not to be given relief in respect of a contribution ("E's contribution") paid by E under a registered pension scheme if conditions A and B are met.

(2) Condition A is that—
  (a) under an arrangement ("the asset-backed arrangement") a person ("the transferor") makes a disposal of an asset ("the security") to a partnership,
  (b) the transferor is E or a person connected with E,
  (c) the transferor, or a person connected with the transferor, is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  (d) under the asset-backed arrangement the partnership receives money or another asset ("the advance") from a person ("the lender") other than the transferor,
  (e) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),
  (f) there is a relevant change in relation to the partnership (see section 196E), and
  (g) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.

(3) If the transferor is not E, for the purposes of this section references to a person connected with the transferor include a person connected with E who would not otherwise be connected with the transferor.

(4) For the purposes of subsection (2)(g) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.

(5) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

196D Employer asset-backed contributions: denial of relief (3)

(1) An employer ("E") is not to be given relief in respect of a contribution ("E's contribution") paid by E under a registered pension scheme if conditions A and B are met.

(2) Condition A is that—

(a) a partnership holds an asset ("the security") at any time before an arrangement ("the asset-backed arrangement") is made,

(b) under the asset-backed arrangement the partnership receives money or another asset ("the advance") from another person ("the lender"),

(c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),

(d) there is a relevant change in relation to the partnership (see section 196E), and

(e) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.

(3) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.

(4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

196E What is a "relevant change in relation to the partnership" etc?

(1) For the purposes of sections 196C and 196D there is a relevant change in relation to the partnership if condition X or Y is met.

(2) Condition X is that, in connection with the asset-backed arrangement, the lender or a person connected with the lender becomes a member of the partnership at any time.

(3) Condition Y is that—

(a) in connection with the asset-backed arrangement, there is at any time a change in a member's share in the partnership's profits, and

(b) the member is the lender or a person connected with the lender or a person who in connection with the asset-backed arrangement becomes at any time connected with the lender.

(4) For the purposes of subsections (2) and (3) an event occurs in connection with the asset-backed arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.

(5) For the purposes of sections 196C and 196D references to the person involved in the relevant change are—

(a) if it is condition X that is met, to the lender or the person connected with the lender (as the case may be), and

(b) if it is condition Y that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

196F Employer asset-backed contributions: anti-avoidance

(1) This section applies if—

(a) an employer ("E") pays a contribution ("E's contribution") under a registered pension scheme,

(b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,

(c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met,

(d) at any time ("the relevant time") E, or a person connected with E, enters into an arrangement ("the avoidance arrangement"), and

(e) the main purpose, or one of the main purposes, of E or the person connected with E in entering into the avoidance arrangement is to secure that the total amount of the relevant payments will be less than the amount of E's contribution.

(2) If the relevant time is the same as the time at which the advance is received or earlier, section 196B, 196C or 196D (as the case may be) applies in relation to E's contribution as if condition B in that section were met.

(3) Otherwise, the amount of the relevant financial liability as at the relevant time is treated as follows—

(a) if E is within the charge to corporation tax at the relevant time, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the relevant time falls, or

(b) otherwise, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant time falls.

(4) The amount treated as profit or income by subsection (3)(a) or (b) is not to exceed the total amount of relief given in respect of E's contribution.

(5) For the purposes of this section—

(a) "the advance" and "the asset-backed arrangement" have the same meaning as in section 196B, 196C or 196D (as the case may be),

(b) "the relevant financial liability" means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,

(c) "the relevant payments" means the payments which reduce that liability as so mentioned, and

(d) the amount of the relevant financial liability as at the relevant time is to be determined in accordance with generally accepted accounting practice.

196G Employer asset-backed contributions: reduction of financial liability under structured finance arrangement

(1) This section applies if—

(a) an employer ("E") pays a contribution ("E's contribution") under a registered pension scheme,

(b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,

(c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and

(d) there occurs an event ("the relevant event")—

(i) which is not the making of a relevant payment, but

(ii) by virtue of which, in accordance with generally accepted accounting practice, the amount of the relevant financial liability is reduced to nil or in part.

(2) If the relevant financial liability is reduced to nil, Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (as the case may be) is no longer to apply in relation to the asset-backed arrangement from when the relevant event occurs.

(3) In any case, the amount of the reduction of the relevant financial liability mentioned in subsection (1)(d) is treated as follows—

(a) if E is within the charge to corporation tax when the relevant event occurs, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the relevant event occurs, or

(b) otherwise, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant event occurs.

(4) The amount treated as profit or income by subsection (3)(a) or (b) is not to exceed the total amount of relief given in respect of E's contribution.

(5) For the purposes of this section—

(a) "the advance" and "the asset-backed arrangement" have the same meaning as in section 196B, 196C or 196D (as the case may be),

(b) "the relevant financial liability" means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,

(c) "relevant payment" means a payment which reduces that liability as so mentioned, and

(d) the amount of the relevant financial liability before its reduction by virtue of the relevant event and the amount of

the reduction are to be determined in accordance with generally accepted accounting practice.

196H Employer asset-backed contributions: "advances" under structured finance arrangements

(1) This section applies if—

(a) an employer pays a contribution under a registered pension scheme,

(b) condition A in section 196B, 196C or 196D is met,

(c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and

(d) the advance gives rise to a loan within the meaning of Chapter 3 (see section 162).

(2) Section 180(4) does not prevent the advance from being a scheme administration employer payment (if it would otherwise do so).

(3) For the purposes of this section "the advance" and "the asset-backed arrangement" have the same meaning as in section 196B, 196C or 196D (as the case may be).

196I Employer asset-backed contributions: supplementary

(1) This section applies for the purposes of sections 196B to 196H.

(2) References to relief being given in respect of a contribution paid by an employer under a registered pension scheme are references to relief being given by way of—

(a) the contribution being deducted in computing the amount of the employer's profits for the purposes of Part 2 of ITTOIA 2005 or Part 3 of CTA 2009 (trading income),

(b) the contribution being treated as an expense of management of the employer for the purposes of Chapter 2 of Part 16 of CTA 2009 (expenses of management: companies with investment business), or

(c) the contribution being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.

(3) Whether a person is connected with another person is determined in accordance with section 1122 of CTA 2010.

(4) "Structured finance arrangement" means an arrangement which is a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (structured finance arrangements).

(5) Sections 774 to 776 of CTA 2010 apply as they apply for the purposes of Chapter 2 of Part 16 of that Act."

2 In section 280(1) of FA 2004 (abbreviations)—

(a) omit the "and" after the definition of "ITA 2007", and

(b) after the definition of "CTA 2009" insert ", and

"CTA 2010" means the Corporation Tax Act 2010".

3 (1) The amendment made by paragraph 1 above has effect in accordance with sub-paragraphs (2) to (4); and the amendment made by paragraph 2 above has effect accordingly.

(2) Sections 196B to 196I of FA 2004 have effect in relation to contributions paid by employers on or after 29 November 2011.

(3) Section 196G of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 where the event mentioned in section 196G(1)(d) occurs on or after that date (and, for the purpose of applying section 196G in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).

(4) Section 196H of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 (and, for the purpose of applying section 196H in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).

PART 2

TRANSITIONAL PROVISION

Application and interpretation

4 (1) This Part of this Schedule applies if—

(a) before 29 November 2011, an employer ("E") pays a contribution ("E's contribution") under a registered pension scheme ("the relevant scheme"),

(b) at any time, relief is given in respect of E's contribution,

(c) if the reference in paragraph 3(2) above to 29 November 2011 were instead a reference to the date on which E's contribution is paid, E would have no entitlement to relief in respect of E's contribution by virtue of section 196B, 196C or 196D of FA 2004, and

(d) the asset-backed arrangement is not completed before 29 November 2011.

(2) For the purposes of sub-paragraph (1)(c) section 196F of FA 2004 is to be ignored.

5 For the purposes of this Part of this Schedule—

(a) terms used in section 196B, 196C or 196D of FA 2004 (as the case may be) have the same meaning as in that section, and

(b) as necessary, assume that section 196B, 196C or 196D of FA 2004 (as the case may be) has effect in relation to E's contribution.

6 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) Sub-paragraph (3) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.

(3) The asset-backed arrangement is "completed" when neither the lender nor any person connected with the lender is any longer entitled under the asset-backed arrangement (conditionally or unconditionally) to payments in respect of the security.

(4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.

(5) The asset-backed arrangement is "completed" when the share in the partnership's profits of the person involved in the relevant change is no longer to be determined under the asset-backed arrangement (conditionally or unconditionally) by reference (wholly or partly) to payments in respect of the security.

7 In this Part of this Schedule "the completion day" means—
- (a) the day on which the asset-backed arrangement is to be completed as determined as at the beginning of 29 November 2011, or
- (b) if earlier, the day on which the asset-backed arrangement is actually completed.

Certain tax consequences not to have effect

8 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004, and
- (b) the asset-backed arrangement would have the relevant effect (ignoring this paragraph).

(2) The asset-backed arrangement is not to have the relevant effect.

(3) The relevant effect is that—
- (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to tax is not so charged,
- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
- (c) the borrower or a person connected with the borrower becomes entitled to deduct an amount—
  - (i) in calculating income for tax purposes, or
  - (ii) from total income or total profits (as the case may be).

(4) But if the borrower is a partnership the relevant effect is that—
- (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,
- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
- (c) a member of the partnership becomes entitled to deduct an amount—
  - (i) in calculating income for tax purposes, or
  - (ii) from total income or total profits (as the case may be).

(5) In sub-paragraphs (3) and (4) "amount" means an amount which arises on or after 29 November 2011 but on or before the completion day.

9 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C of FA 2004, and
- (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).

(2) In such a case—

(a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to the transferor, or any person connected with the transferor, as if the relevant change in relation to the partnership had not occurred, and

(b) accordingly, the asset-backed arrangement is not to have the relevant effect.

(3) The relevant effect is that—

(a) an amount of income on which the transferor, or the person connected with the transferor, would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the transferor, or the person connected with the transferor, is not so brought into account, or

(c) the transferor, or the person connected with the transferor, becomes entitled to deduct an amount—

(i) in calculating income for tax purposes, or

(ii) from total income or total profits (as the case may be).

(4) In sub-paragraph (3) "amount" means an amount which arises on or after 29 November 2011 but on or before the completion day.

(5) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196C(2)(g) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.

10 (1) This paragraph applies if—

(a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196D of FA 2004, and

(b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).

(2) The relevant effect is that—

(a) an amount of income on which a relevant member would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member is not so brought into account, or

(c) a relevant member becomes entitled to deduct an amount—

(i) in calculating income for tax purposes, or

(ii) from total income or total profits (as the case may be).

(3) A relevant member is a person who—

(a) was a member of the partnership immediately before the relevant change in relation to it occurred, and

(b) is not the lender.

(4) In sub-paragraph (2) "amount" means an amount which arises on or after 29 November 2011 but on or before the completion day.

(5) If this paragraph applies—

(a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and

(b) accordingly, the asset-backed arrangement is not to have the relevant effect.

(6) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196D(2)(e) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.

What happens when the completion day falls?

11 (1) Paragraph 12 or 13 (as the case may be) applies at the end of the completion day.

(2) For the purposes of paragraphs 12 and 13—

(a) amount A is the total amount of relief given in respect of E's contribution,

(b) amount B is the total of the following amounts—

(i) any amounts of income which are charged to tax by virtue of paragraph 8, 9 or 10 above (as the case may be),

(ii) any amounts brought into account in calculating income for tax purposes by virtue of paragraph 8, 9 or 10 above (as the case may be) (so far as not reflected in sub-paragraph (i)), and

(iii) any amounts stopped from being the subject of an income deduction by virtue of paragraph 8, 9 or 10 above (as the case may be) (so far as not reflected in sub-paragraph (i) or (ii)), and

(c) amount C is the amount of the payment mentioned in sub-paragraph (5) or (7) (as the case may be) so far as the payment—

(i) is made under the asset-backed arrangement on the completion day,

(ii) is not reflected in amount B,

(iii) is not the subject of an income deduction, and

(iv) is not a contribution paid by E under the relevant scheme but nevertheless becomes (directly or indirectly) part of the sums held for the purposes of the relevant scheme.

(3) In sub-paragraph (2) "income deduction" means a deduction to which any person is entitled—

(a) in calculating income for tax purposes, or

(b) from total income or total profits.

(4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.

(5) The payment referred to in sub-paragraph (2)(c) is the payment (if any) which the borrower, or a person connected with the borrower, makes to the lender, or a person connected with the lender, in order to acquire—

(a) the security, or

(b) any asset substituted for the security under the asset-backed arrangement.

(6) Sub-paragraph (7) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.

(7) The payment referred to in sub-paragraph (2)(c) is the payment (if any) which E, or a person connected with E, makes to the lender, or a person connected with the lender, in order to reverse the relevant change in relation to the partnership.

12 (1) This paragraph applies if amount A exceeds the sum of amounts B and C.

(2) The amount of the excess is treated as follows—

(a) if E is within the charge to corporation tax on the completion day, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the completion day falls, or

(b) otherwise, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the completion day falls.

13 If the sum of amounts B and C exceeds amount A—

(a) E is to be treated as having paid a contribution under the relevant scheme in respect of any individual of an amount equal to the excess,

(b) the contribution is to be treated as having been paid on the completion day, and

(c) E is to be given relief as provided for by section 196 of FA 2004 accordingly.

EXPLANATORY NOTE

EMPLOYER ASSET-BACKED PENSION CONTRIBUTIONS

SUMMARY

1. This clause and Schedule amend Part 4 of Finance Act (FA) 2004 as it relates to employer pensions tax relief by inserting a number of new sections into FA 2004 as well as providing transitional provisions in order to ensure that the amount on which relief is given in respect of a contribution paid by any employer accurately reflects, but does not exceed, the payments received by the registered pension scheme. These changes have effect from 29 November 2011.

2. Specifically, the Schedule will apply to asset-backed contribution (ABC) arrangements used by some employers to fund their registered pension schemes.

3. An ABC arrangement involves the offset of an employer's legal obligation to pay a pension contribution against the registered pension scheme's legal obligation to purchase an asset from the employer directly or indirectly, using the contribution (there are also ABC arrangements that involve an upfront monetary contribution).

4. These types of arrangement enable an employer, or a person connected with the employer (hereafter referred to as "the employer etc"), to provide for payments over a period of time (or an income stream) to the pension scheme. A more complex ABC arrangement typically involves a special purpose vehicle (for example, a partnership of which the employer is a member (an employer-related partnership)), in which case the employer provides the pension scheme with the income stream indirectly through the vehicle. The income stream is derived from assets of the employer or a connected party including an employer-related partnership.

DETAILS OF THE SCHEDULE

5. Part 1 inserts new sections 196B to 196I after section 196A FA 2004.

6. Part 2 (paragraphs 4-13) introduces transitional provisions for pre-commencement ABC arrangements where the contribution was paid before 29 November 2011 and the structured finance arrangement (SFA) rules[1] do not apply. For pre-commencement arrangements that are SFAs, the tax treatment does not change on 29 November 2011 and the only "transitional" provision is new section 196G (see below).

[1] The SFA rules are set out in Part 16 of Corporation Tax Act 2010 (for corporation tax purposes) and Part 13 of Income Tax Act 2007 (for income tax purposes).

Part 1 – sections 196B to 196I and paragraphs 2-3

7. The new provisions in Part 1 follow the design of the structured finance legislation which applies where a person enters into a "structured finance agreement" A structured finance arrangement (SFA) is an arrangement where in accordance with generally accepted accounting practice, a person (the borrower) records in the borrower's accounts a financial liability in respect of a sum (the advance) paid by "the lender", and the advance will be repaid by an income stream.

8. In the case of ABC arrangements, the obligations of the employer and the registered pension scheme as described above give rise to a situation similar to a SFA, where the employer etc or an employer-related partnership or other relevant person is "the borrower", receives money or another asset (the advance) from the pension scheme (the lender). The advance is wholly or partly funded out of the employer's contribution and the lender is entitled to a series of payments in respect of the borrower's asset (the security).

9. The main provisions (new sections 196B to 196D) will deny pensions tax relief (upfront relief) to the employer on the contribution paid using the ABC arrangement if the SFA rules do not apply. Instead deductions against the profits or income of the employer will be given in respect of each payment that the employer makes to the pension scheme (the lender) directly or indirectly under the income stream ("pay as you go" relief). Amounts of an income stream, which were previously taxable in the hands of the employer, are likely to cease to be taxable upon the transfer of the income stream to the lender or a connected person (the lender etc).

10. There are also revenue protection provisions (new sections 196F and 196G) - an anti-avoidance provision to prevent any employer from securing tax relief that exceeds the value made to the pension scheme and a separate provision to recover relief given to an ABC arrangement that falls within the SFA rules when the financial liability is later reduced by an event other than the making of payments.

11. A series of new provisions – new sections 196E, 196H and 196I – provide for supplementary provisions and application. Paragraph 2 makes a consequential change and paragraph 3 makes provision for commencement of the new provisions.

The simple case – new section 196B

12. New section 196B deals with the simple case where the employer etc is the borrower and the lender is a person who acts for, or is otherwise connected with the registered pension scheme. It stipulates in sub-section 1 the conditions under which relief under section 196 FA 2004 (upfront relief) will **not** be given to the employer (the

borrower) in respect of a contribution paid under the ABC arrangement.

13. New sections 196B(2), (4) and (5) set out these conditions as follows:

- Condition A is that -
  - the borrower (employer etc) receives the advance which is wholly or partly paid or provided by the lender etc out of the contribution in respect of the arrangement;
  - the borrower or a person connected with the borrower (borrower etc) disposes of an asset (the security) to or for the benefit of the lender etc; and
  - the lender etc is entitled to payments in respect of the security.
- Condition B is that the arrangement is **not** a SFA as defined in new section 196I(4); and
- Condition C is that it is reasonable to suppose, that the amount of one or more of the payments mentioned above is determined (wholly or partly) on the basis that, in essence, some part of the advance represents a loan (including any advance of money in accordance with new section 196B(7)(c)) which is to be repaid by the payment(s).

14. New section 196B(2) also makes it clear that those arrangements that fall within new section 196C(2) and 196D(2) do not fall within new section 196B(2).

15. New section 196B(3) states that condition A is met even if an entitlement of the lender etc is subject to any condition.

16. New section 196B(6) makes it clear that condition C is met even if repayments of the loan might be subject to any condition, or that the accounts of any person do not record a financial liability in respect of the advance or is not otherwise treated as representing a loan for the purposes of the accounts of any person. However, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.

17. New section 196B(7)(a) ensures that references to a person connected with the borrower or lender do not include the lender or borrower respectively. This means that new section 196B cannot be triggered accidentally just because the borrower and lender are connected. New section 196B(7)(b) ensures that if the borrower is not the employer, the reference to a person connected to the borrower includes a person connected with the employer who would not otherwise be connected with the borrower.

The complex case – new sections 196C and 196D

18. New sections 196C and 196D deal with complex types of ABC arrangement involving a partnership receiving the advance, and changes in profit sharing arrangements in relation to the lender etc.

19. New section 196C will apply where, as part of the ABC arrangement which is used to make the contribution, the employer etc (the transferor) transfers an asset to a partnership and is a member of that partnership immediately after the transfer (whether or not a member immediately before the transfer), and the lender (the pension scheme) becomes a member of the partnership at any time as set out in new section 196E. In that circumstance, new section 196C(1) provides that the employer will **not** receive upfront tax relief under section 196 FA 2004 in respect of the contribution paid to the registered pension scheme when conditions A and B are met.

20. New sections 196C(2) and (5) set out these conditions as follows:

- Condition A is that -
  - the transferor is the employer etc;
  - the transferor or a person connected with the transferor (transferor etc) disposes of the security to a partnership and is a member of the partnership immediately after the disposal
  - the partnership receives the advance, which is wholly or partly paid or provided out of the employer's contribution, from a person (the lender) other than the transferor;
  - there is a relevant change in relation to the partnership as set out in new section 196E; and
  - the share in the partnership's profits of the person involved in the relevant change is determined by reference to payments in respect of the security.
- Condition B is that the arrangement is **not** a SFA as defined in new section 196I(4).

21. New section 196C(3) ensures that where the transferor is not the employer, the reference to a person connected to the transferor includes a person connected with the employer who would not otherwise be connected with the transferor.

22. New section 196C(4) provides that condition A is met even if the determination of the share of partnership's profits is subject to any condition.

23. New section 196D will apply where the ABC arrangement which the employer uses to make the contribution to the pension scheme also involves a partnership receiving the advance but the security is held by a pre-existing partnership. As part of the ABC arrangement, the partnership receives an advance that is funded in some way by the employer's contribution. In that circumstance, new section 196D(1) provides that the employer will **not** receive upfront tax relief under

section 196 FA 2004 in respect of the contribution paid to the registered pension scheme under the ABC arrangement when conditions A and B are met.

24. New sections 196D(2) and (4) set out these conditions as follows:

- Condition A is that -
  - a partnership holds the security at any time before the ABC arrangement is made;
  - the partnership receives the advance which is wholly or partly paid or provided by the lender out of the employer's contribution in respect of the arrangement;
  - there is a relevant change in relation to the partnership as set out in new section 196E; and
  - the share in the partnership's profits of the person involved in the relevant change is determined by reference to payments in respect of the security.
- Condition B is that the arrangement is **not** a SFA as defined in new section 196I(4).

25. New section 196D(3) provides that condition A is met even if the determination of the share of partnership's profits is subject to any condition.

26. New section 196E provides that a relevant change in relation to the partnership occurs (which in turn enables the conditions in new sections 196C and 196D to be met) if one of the conditions - condition X or condition Y - is met. New sections 196E(2) and (3) set out these conditions as follows:

- Condition X is that the lender etc joins the partnership in connection with the ABC arrangement at any time; or

- Condition Y is that there is a change in the lender etc's share of the partnership's profits in connection with the asset-backed arrangement.

27. References used in this new section and in new sections 196C and 196D are explained in new sections 196E(4) and (5).

Anti-avoidance – new section 196F

28. New section 196F is an anti-avoidance provision to deny upfront relief or recover any relief already given when the employer etc sets up an arrangement (the avoidance arrangement) mainly for the purpose of securing tax relief that will exceed the amount the employer should receive relative to the total amount of payments the employer will make to the pension scheme under the ABC arrangement. This provision will only apply to ABC arrangements where the contribution is paid on or after 29 November 2011.

29. New section 196F(1) provides that this new provision applies where upfront relief for the ABC arrangement is not denied under new sections 196B, 196C, or 196D because the arrangement is a SFA and the employer etc enters into the avoidance arrangement.

30. New section 196F(2) provides that where the avoidance arrangement is entered into at or before the time when the advance referred to in new sections 196B, 196C or 196D is received, upfront relief is denied on the contribution paid under the ABC arrangement by deeming that Condition B in one of those sections is met.

31. New section 196F(3) provides that where the avoidance arrangement is entered into after the advance is received, then the amount of the relevant financial liability at the time the avoidance arrangement is entered into is treated as profit or income that is charged to the employer for the period in which that time falls.

32. New section 196F(4) sets out that the amount treated as profit or income is not to exceed the total amount of relief given to the employer in respect of the ABC arrangement. The terms used in this new section are defined in new section 196F(5).

Relief recovery due to accounting changes – new section 196G

33. New section 196G is a new provision to recover upfront relief given to an ABC arrangement (including a pre-commencement arrangement) that falls within the SFA rules when the financial liability is later reduced by an event other than the making of payments. This provision applies to this type of ABC arrangement where the contribution is paid before and after 29 November 2011 but in the case of pre-commencement arrangements, it only applies where the event occurs on or after that date.

34. New section 196G(1) provides that the section applies where the ABC arrangement is a SFA, and an event, other than the making of payments to the pension scheme, occurs which results in the advance (or part of it) no longer being recorded as a financial liability in the employer's (or partnership's) accounts.

35. If the financial liability is reduced to nil, the ABC arrangement will cease to be a SFA under new section 196G(2).

36. New section 196G(3) provides that the amount of the reduction in the relevant financial liability immediately before this event will be treated as profit or income chargeable on the employer in the period in which the event occurs.

37. New section 196G(4) provides that the amount treated as profit or income under new sub-section 3 cannot exceed the total amount of relief already given to the employer in respect of the arrangement.

The terms used in new section 196G are defined under new section 196G(5).

Treatment of advances that fall within the SFA rules – new section 196H

38. New section 196H provides that any advance under an ABC arrangement which is a SFA and gives rise to a loan within the meaning of Chapter 3 of FA 2004 is not prevented from meeting the definition of a scheme administration employer payment in S180 FA 2004 regardless of whether the advance also meets the definition of a loan for the purposes of FA 2004. This means that no unauthorised payment charge will arise under section 208 FA 2004 purely by virtue of the fact that the advance gives rise to a loan which is not capable of meeting the conditions of section 179 FA 2004.

Supplementary provisions and application – new section 196I and paragraphs 2

39. New section 196I provides a number of definitions and other supplementary provisions for new sections 196B to 196H.

40. New section 196I(2) explains the references to relief being given in respect of a contribution paid by an employer under a registered pension scheme.

41. New section 196I(3) refers to the meaning of connected persons in section 1122 Corporation Tax Act (CTA) 2010.

42. New section 196I(4) explains the references to a SFA are to the definition of a type 1, type 2 or type 3 arrangement under Part 13 of the Income Tax Act (ITA) 2007 (for income tax purposes) or Part 16 of CTA 2010 (for corporation tax purposes).

43. New section 196I(5) provides that sections 774 (accounts), 775 (arrangements) and 776 (assets) of CTA 2010 apply to new sections 196B to 196H in the same way as they do for the purposes of Part 16 of CTA 2010.

44. Paragraph 2 make a consequential amendment to section 280(1) FA 2004 (abbreviations) by inserting a reference to CTA 2010.

Commencement and application of new sections 196B to 196I – paragraph 3

45. Paragraphs 3(1) and (2) provide that the amendments made by new sections 196B to 196I shall have effect for contributions paid by employers on or after 29 November 2011.

46. Paragraph 3(3) provides that new section 196G also has effect for contributions paid before 29 November 2011 where the relevant event as described in new section 196G(1)(d) occurs on or after 29

November 2011. Where this paragraph applies, new sections 196B to 196D also have effect for the purpose of applying new section 196G.

47. Paragraph 3(4) provides that new section 196H also has effect for contributions paid before 29 November 2011 and assumes that new sections 196B to 196D have effect in relation to these contributions for the purposes of applying new section 196H.

Part 2 - Transitional rules (paragraphs 4 to 13)

48. Part 2 contains transitional provisions which apply the "relevant effects" of the SFA rules to any pre-commencement ABC arrangement that does not fall within the SFA rules. These rules apply to income amounts or payments made on or after 29 November 2011. There are also rules for introducing a mechanism to make a tax adjustment at the end of any of these arrangements which ensures the employer receives tax relief in respect of the total amount of payments made to the pension scheme under the ABC arrangement.

49. The only "transitional" provision that will apply to pre-existing ABC arrangements which are SFAs is new section 196G. This section recovers any excess of relief given where the relevant event occurs on or after 29 November. Further detail can be found in the last part of this explanatory note concerning new section 196G and is not repeated in this part of the note.

Detail of transitional rules

Paragraphs 4 to 7 – application and interpretation

50. Paragraphs 4-7 provide for application and interpretation of the terms used in Part 2.

51. Paragraph 4 provides that transitional provisions will apply where an ABC arrangement with the contribution paid before 29 November 2011 would **not** have received relief under new sections 196B to 196D had the contributions been paid on or after 29 November 2011 and the arrangement is not 'completed' as determined under paragraph 6 before that date.

52. Paragraph 5 provides that for the purposes of Part 2, the terms used in new sections 196B to 196D have the same meaning as in those new sections and where necessary it is assumed that those new sections have effect in relation to the employer's contribution.

53. Paragraph 6 provides that an ABC arrangement that would be denied upfront relief under section 196B, 196C or 196D had the contribution been paid on or after 29 November 2011 is completed if :

- where the arrangement is a simple case, the lender etc is no longer entitled to payments in respect of the security; or

- where the arrangement is a complex case, the share in the partnership's profits of the person involved in the relevant change is no longer to be determined by reference to payments in respect of the security.

54. Paragraph 7 provides that 'the completion day' is the day on which the ABC arrangement is to be completed as determined as at the beginning of 29 November 2011 or the actual day if earlier. This prevents the employer seeking to extend the duration of the arrangement to avoid the transitional provisions set out in paragraphs 11 to 13.

Paragraphs 8 to 10 – certain tax consequences not to have effect

55. Paragraphs 8-10 deem the relevant ABC arrangements not to have "the relevant effect" as set out in paragraphs 8(3), 9(3) and 10(2). This means that on or after 29 November 2011, no deduction will be given to any income payments that the borrower (the employer or a connected party or other relevant person) makes to the lender etc under the ABC arrangement and any income amounts that have been transferred to the lender etc will be bought back into tax charge on the employer etc or other relevant person.

56. Paragraph 8(1) provides that paragraph 8 applies to ABC arrangements where, had the employer's contribution been paid on or after 29 November 2011, new section 196B would have applied so that the arrangement would have the "relevant effect". The "relevant effect" defined in paragraph 8(3) is that the borrower etc (the employer etc) would receive relief for payments to the lender etc (the pension scheme) made under the arrangement either by way of an income deduction or by an income amount which would otherwise have been charged to tax not being so charged.

57. Paragraph 8(2) deems the arrangement **not** to have the "relevant effect" which is set out in paragraph 8(3). This means that either no relief will be given for any income payments the borrower etc (the employer etc) makes to the lender etc (the pension scheme) under the ABC arrangement or any income amounts that would have been charged to tax if not for the ABC arrangement will be brought back into tax as a charge on the employer etc.

58. Paragraph 8(4) defines the relevant effect if the borrower is a partnership.

59. Paragraph 8(5) provides that "amount" in sub-paragraphs 3 and 4 means an amount that arises on or after 29 November 2011 but on or before the completion day as set out in paragraph 7. This means that before the completion day, this paragraph prevents relief for income payments made on or after 29 November 2011 or brings back income amounts into charge from that date.

60. Paragraph 9(1) provides that paragraph 9 applies to ABC arrangements where, had the employer's contribution been paid on or after 29 November 2011, new section 196C would have applied so that the ABC arrangement would have the "relevant effect". The "relevant effect", defined in paragraph 9(3), is that the transferor etc (the employer etc) would receive relief either by way of an income deduction or by an amount which would otherwise have been charged to tax not being so charged.

61. Paragraph 9(2) deems the arrangement **not** to have the "relevant effect". This means that either no relief will be given for any income payment made by the partnership to the lender etc (the pension scheme) under the arrangement or any amount that would have been charged to tax if not for the ABC arrangement will be brought back into tax as a charge on the transferor etc (the employer etc).

62. Paragraph 9(4) provides that for the purposes of sub-paragraph 3, "amount" means an amount that arises on or after 29 November 2011 but on or before the completion day as set out in paragraph 7. This means that before the completion day, this paragraph prevents relief for income payments made on or after 29 November 2011 or brings back income amounts into charge from that date.

63. Paragraph 9(5) provides that in determining whether the ABC arrangement would have the relevant effect, it is to be assumed that the amounts of income equal to the payments mentioned in new section 196C(2)(g) were payable to the partnership before the relevant change occurred.

64. Paragraphs 10(1) provides that paragraph 10 applies to ABC arrangements where had the employer's contribution been paid on or after 29 November 2011, new section 196D would have applied so that the ABC arrangement would have the "relevant effect". The "relevant effect", defined in paragraph 10(2), is that the "relevant member" would receive relief by way of an income deduction or by an income amount which would otherwise have been charged to tax not being so charged.

65. Paragraph 10(3) provides that a "relevant member" is a person who was a member of the partnership immediately before the relevant change in the partnership occurred and the person is not the lender.

66. Paragraph 10(4) provides that for the purposes of paragraph sub-paragraph 2, "amount" means an amount that arises on or after 29 November 2011 but on or before the completion day as set out in paragraph 7. This means that before the completion day, this paragraph prevents relief for income payments made on or after 29 November 2011 or brings back income amounts into charge from that date.

67. Paragraph 10(5) deems the arrangement **not** to have the "relevant effect" as set out in paragraph 10(2). This means no relief will be given for any income payments made from the partnership to the lender (the pension scheme) or any income amounts that would have been charged to tax if not for the ABC arrangement will be brought back into tax as a charge on the relevant member (the employer etc or other relevant person).

68. Paragraph 10(6) provides that in determining whether the ABC arrangement would have the relevant effect, it is to be assumed that the amounts of income equal to the payments mentioned in new section 196D(2)(e) were payable to the partnership before the relevant change occurred.

Paragraphs 11 to 13 – what happens when the completion day falls?

69. Paragraphs 11-13 provides for a tax adjustment on the employer when the ABC arrangement ends to ensure that the total amount on which relief is given to the employer will accurately reflect, but will not exceed the total amount of payments actually given to the pension scheme under the arrangement.

70. This adjustment mechanism will take into account not just all the payments actually made to the pension scheme but also all the relief in the form of deductions against taxable profits or income given to the employer before and after 29 November 2011. Any deductions and payments given before 29 November 2011 will be cancelled out in the overall adjustment so the amounts set out in paragraphs 11 to 13 do not include these sums. The adjustment can result in either a charge on the employer or further tax relief.

71. The following example that uses the facts as set out in Example 3 in the consultation document, *Employer Asset-backed Pension Contributions*[2] published on 24 May 2011 on both the HMRC and HM Treasury websites, and illustrates how the adjustment mechanism as set out in paragraphs 11-13 works.

Example

The ABC arrangement does not fall within the SFA rules.
Pension scheme deficit = £400m
Contribution paid under the ABC arrangement = £400m
Yearly payment = £22.5m (of which £2.5m could be a finance charge if the arrangement were a SFA) payable for 20 years.
Two payments were made before 29 November 2011.
Assume that the employer company is profitable throughout the entire course of the ABC arrangement.

[2] http://www.hmrc.gov.uk/budget-updates/march2011/index.htm#24may

Using amounts A, B and C as defined in paragraph 11(2),

Amount A (relief for E's contribution) = £400m
Amount B (total amount of denied ongoing payments under paragraph 8, 9 or 10) = £405m (including the last payment at year 20)
Amount C = 0 (as the last payment falls within the meaning of "income deduction" and so paragraph 11(2)(c)(ii) is not met)

Assume there is an amount D (not included in this Schedule) = pre-commencement relief = pre-commencement payments = £22.5m x 2 years = £45m

Amount A – (Amount B + Amount C) = £5m on which additional relief arises under paragraph 13 of the new legislation.

So the total relief to the employer = Amount A (£400m) + Amount D (£45m) + the adjustment relief (£5m) = £450m

Total payments received by the pension scheme = Amount D + Amount B = £45m + £405m = £450m which equals to the total relief.

This means that the employer relief accurately reflects the payments actually received by the pension scheme.

72. Paragraph 11(1) provides that either paragraph 12 or 13 will apply at the end of the completion day of the arrangement as defined in paragraph 7.

73. Paragraph 11(2) defines amount A, amount B and amount C for any tax adjustment as set out in paragraphs 12 and 13:

- amount A is the total amount of relief given in respect of the employer's contribution paid under the ABC arrangement;

- amount B is the total of any amounts in respect of which the employer has been denied relief under paragraphs 8, 9 or 10. These are the payments for which a deduction has been denied or the amounts brought back to charge on the employer etc or other relevant person; and

- amount C is the amount of the payment made under the ABC arrangement before the completion day which is not reflected in amount B, is not the subject of an income deduction and is not a contribution paid by the employer to the pension scheme but becomes part of the sums held by the pension scheme.

74. Paragraph 11(3) defines "income deduction" for the purposes of sub-paragraph 2.

75. Paragraphs 11(4) and (5) provide that where, had the employer's contribution been paid on or after 29 November 2011, new section

196B would have applied, amount C is the payment (if any) which the borrower etc makes to the lender etc in order to acquire the security or an asset in place of the security under the ABC arrangement.

76. Paragraphs 11(6) and (7) provide that where, had the employer's contribution been paid before 29 November 2011, new sections 196C or 196D would have applied, amount C is the payment (if any) which the employer etc makes to the lender etc in order to reverse the relevant change in relation to the partnership.

77. Paragraph 12 provides that if at the end of the completion day, the amount of tax relief given to the employer in respect of the contribution paid under an ABC arrangement is greater than the total amount of payments made to the pension scheme, then the excess tax relief in the form of the difference between the two amounts will be recovered from the employer.

78. Paragraphs 12(1) and (2) provide that where amount A is greater than the sum of amount B and amount C, the excess will be either treated as a profit or income arising on the employer in the period of accounts[3] in which the completion day falls.

79. Paragraph 13 provides that that if at the end of the completion day, the amount of tax relief given to the employer in respect of the contribution paid under the ABC arrangement is less than the total amount of payments made to the scheme, then the employer will be entitled to additional relief. Where the sum of amount B and amount C exceeds amount A, the excess is treated as an employer contribution paid on the completion day to which the employer is to be given to relief in accordance with section 196 FA 2004.

BACKGROUND NOTE

80. This Schedule limits the amounts on which tax relief will be given to an employer in respect of a contribution paid under an asset-backed arrangement so that the relief accurately reflects, but does not exceed, the total amount of payments made to the registered pension scheme.

81. It does not apply to any straightforward monetary sum that a sponsoring employer gives to the registered pension scheme as a pension contribution or any employer's transfer of an asset to the pension scheme which is unconditional or outright so that the pension scheme gains complete ownership of the asset on an irrevocable basis. In these cases, relief will continue to be given to the employer in respect of the contribution paid under section 196 in Finance Act 2004 provided that the requirements of that section are met.

[3] The relevant period of accounts is either (a) the relevant accounting period if the employer etc is a company or (b) the relevant tax year if the employer etc is an unincorporated business.

82. At Budget 2011, the Government announced that it would consult on changing tax rules to prevent unintended and excessive relief arising from employer asset-backed pension contributions, while preserving as much flexibility as possible for employers and their pension schemes to use these contributions, as well as ensuring that the compliance process is deliverable for Government without creating undue burdens on HM Revenue & Customs or customers.

83. A consultation document, 'Employer Asset-backed Pension Contributions' was published on 24 May 2011 and the consultation closed on 16 August 2011. The document invited views on two broad options: (a) providing upfront relief to the employer only for giving a monetary contribution or a cash-convertible asset to the pension scheme, and (b) providing either upfront relief or "pay as you go" relief depending on whether the asset-backed arrangement would fall within the structured finance legislation. The main purpose of the consultation was to establish which option would better meet the Government's objectives (see paragraph 82) while also ensuring that pensions tax relief would remain fair and sustainable in the long term.

84. Following the consultation, legislation has been published, which is designed on the basis of the second option above and informed by responses to and information received during the consultation. In order to prevent certain activity or behaviour in relation to these types of arrangement which brings a significant risk to the Exchequer, legislation has effect from 29 November 2011, which is the date of the publication of the legislation and this explanatory note.

85. Further detail is included in the autumn statement, the written ministerial statement, the summary of responses document and the Tax Information and Impact Note, which have all been published on 29 November 2011.

86. If you have any questions about this change, please contact Windy Kwok on 020 7147 2835 (email: Windy.Kwok@hmrc.gsi.gov.uk) or Richard Rogers on 020 7147 2625 (email: Richard.Rogers@hmrc.gsi.gov.uk). Enquiries can also be sent to: pensions.policy@hmrc.gsi.gov.uk

Charities and Philanthropy

Gifts of Pre-eminent Objects

1 Gifts to the nation

Schedule 1 contains provision for a person's tax liability to be reduced in return for giving pre-eminent property to the nation.

SCHEDULE 1

Section 1

GIFTS TO THE NATION

PART 1

INTRODUCTION

Qualifying gifts

1 (1) For the purposes of this Schedule, a person makes a "qualifying gift" if the person makes a gift in the circumstances described in sub-paragraph (2).

(2) The circumstances are—

(a) the person offers to give pre-eminent property to be held for the benefit of the public or the nation,

(b) the person is legally and beneficially entitled to the property and the property is not owned jointly (or in common) with others,

(c) the offer is made in accordance with a scheme set up by the Secretary of State for the purposes of this Schedule,

(d) the offer is registered in accordance with the scheme,

(e) the offer, or a part of the offer, is accepted in accordance with the scheme, and

(f) the gift is made pursuant to the offer, or the part of the offer, accepted.

(3) In this Schedule—

(a) "the agreed terms" means the terms on which acceptance is agreed, as recorded in the manner prescribed by the scheme, and

(b) "the offer registration date" means the date when the offer was registered in accordance with the scheme.

PART 2

INCOME TAX AND CAPITAL GAINS TAX

Taxes affected

2 (1) This Part applies to an individual's liability to income tax and capital gains tax.

(2) It does not apply to any liability arising as a trustee or personal representative.

(3) Subject to sub-paragraph (2), a reference in this Part to an individual's "tax liability" is to the individual's liability to income tax and capital gains tax.

The basic rule

3 (1) If an individual (“N”) makes a qualifying gift, a portion of N’s tax liability for each relevant tax year is to be treated as satisfied, as if N had paid that portion when it became due (or on the offer registration date, if the portion became due before that date).

(2) A “relevant tax year” is a tax year identified in the agreed terms as a tax year to which this paragraph is to apply.

(3) Up to 5 tax years may be identified in the agreed terms, but each one must be either—

(a) the tax year in which the offer registration date falls, or

(b) one of the 4 tax years following that tax year.

The portion treated as satisfied

4 (1) The portion of N’s tax liability for a relevant tax year that is to be treated as satisfied is an amount equal to the smaller of—

(a) the tax reduction figure allocated to that tax year, and

(b) the amount of N’s tax liability for that tax year less any portion of that amount that is treated as satisfied in consequence of any qualifying gift made by N on a previous occasion.

(2) The amount determined under sub-paragraph (1) may be nil.

(3) The tax reduction figure allocated to a tax year is such part of the total tax reduction figure as is expressed in the agreed terms to be allocated to that tax year.

(4) The figures allocated to the relevant tax years must in total add up to no more than the total tax reduction figure.

(5) “The total tax reduction figure” is 30% of the value set out in the agreed terms as the agreed value of the property forming the subject of the qualifying gift.

(6) The Treasury may by order substitute a different percentage for the percentage specified for the time being in sub-paragraph (5).

Order in which benefit is applied

5 (1) If the tax reduction figure allocated to a relevant tax year is less than the amount determined under paragraph 4(1)(b) for that tax year, the benefit of paragraph 3(1) is to be applied to N’s tax liability in the order specified in the agreed terms.

(2) If no order is specified, the order is—

(a) first, to N’s liability to income tax for that year, and

(b) then, to N’s liability to capital gains tax for that year.

Effect of basic rule on interest and penalties

6 (1) This paragraph explains the effect of paragraph 3(1) as regards late payment interest and late payment penalties.

(2) The effect is that liability to pay amounts specified in sub-paragraph (3) ceases when the qualifying gift is made, as if the liability had never arisen.

(3) The amounts are—

(a) any late payment interest that accrued on the relevant portion during the negotiation period, and

(b) any late payment penalty to which N became liable in the negotiation period for failing to pay the relevant portion (together with any interest on such a penalty).

(4) "The relevant portion" is the portion of N's tax liability for a relevant tax year that is treated under paragraph 3(1) as satisfied.

(5) In determining for the purposes of sub-paragraph (2) whether or to what extent—

(a) late payment interest accruing on an amount of (or on account of) N's tax liability for the relevant tax year is attributable to the relevant portion, or

(b) a late payment penalty incurred for failing to pay an amount of (or on account of) N's tax liability for the relevant tax year is attributable to the relevant portion,

any attribution or apportionment is to be done in the way that maximises the relief obtained by N by virtue of this paragraph.

(6) "The negotiation period" is the period—

(a) beginning with the offer registration date, and

(b) ending with the day on which the qualifying gift is made.

(7) Nothing in this paragraph affects any late payment interest that accrued, or any late payment penalty to which N became liable, before the offer registration date.

Changes to N's tax liability

7 (1) If the amount of N's tax liability for a relevant tax year is revised at any time, the portion of that liability that is treated under paragraph 3 as satisfied is to be re-calculated.

(2) But nothing in this paragraph permits any revision of the agreed terms.

Gifts set aside etc

8 If a qualifying gift is set aside or declared void after it is made—

(a) the portion of N's tax liability for each relevant tax year treated as satisfied ceases to be treated as satisfied,

(b) the effect described in paragraph 6 is negated, and

(c) N is required to pay the portion due for each relevant tax year, together with any late payment interest and late payment penalties in respect of it, by the later of—

(i) the end of the period of 30 days beginning with the day on which the gift was set aside or declared void, and

(ii) the day by which N would have been required to pay those amounts but for this Schedule.

PART 3

CORPORATION TAX

Taxes affected

9 (1) This Part applies to a company's liability to corporation tax.

(2) A reference in this Part to a company's "tax liability" is to the company's liability to corporation tax.

The basic rule

10 (1) If a company ("C") makes a qualifying gift, a portion of C's tax liability for the relevant accounting period is to be treated as satisfied, as if C had paid that portion when it became due (or on the offer registration date, if the portion became due before that date).

(2) "The relevant accounting period" is the accounting period of C's in which the offer registration date falls.

The portion treated as satisfied

11 (1) The portion of C's tax liability for the relevant accounting period that is to be treated as satisfied is an amount equal to the smaller of—
(a) the tax reduction figure, and
(b) the amount of C's tax liability for that period less any portion of that amount that is treated as satisfied in consequence of any qualifying gift made by C on a previous occasion.

(2) The amount determined under sub-paragraph (1) may be nil.

(3) The tax reduction figure is—
(a) 20% of the value set out in the agreed terms as the agreed value of the property forming the subject of the qualifying gift, or
(b) such lower figure as may be specified in the agreed terms as the tax reduction figure.

(4) The Treasury may by order substitute a different percentage for the percentage specified for the time being in sub-paragraph (3)(a).

Effect of basic rule on interest and penalties

12 (1) This paragraph explains the effect of paragraph 10 as regards late payment interest and late payment penalties.

(2) The effect is that liability to pay amounts specified in sub-paragraph (3) ceases when the qualifying gift is made, as if the liability had never arisen.

(3) The amounts are—
(a) any late payment interest that accrued on the relevant portion during the negotiation period, and
(b) any late payment penalty to which C became liable in the negotiation period for failing to pay the relevant portion (together with any interest on such a penalty).

(4) "The relevant portion" is the portion of C's tax liability for the relevant accounting period that is treated under paragraph 10 as satisfied.

(5) In determining for the purposes of sub-paragraph (2) whether or to what extent—
(a) late payment interest accruing on an amount of (or on account of) C's tax liability for the relevant accounting period is attributable to the relevant portion, or
(b) a late payment penalty incurred for failing to pay an amount of (or on account of) C's tax liability for the relevant accounting period is attributable to the relevant portion,
any attribution or apportionment is to be done in the way that maximises the relief obtained by C by virtue of this paragraph.

(6) "The negotiation period" is the period—
(a) beginning with the offer registration date, and
(b) ending with the day on which the qualifying gift is made.

(7) Nothing in this paragraph affects any late payment interest that accrued, or any late payment penalty to which C became liable, before the offer registration date.

Changes to C's tax liability

13 (1) If the amount of C's tax liability for the relevant accounting period is revised at any time, the portion of that liability that is treated under paragraph 10 as satisfied is to be re-calculated.

(2) But nothing in this paragraph permits any revision of the agreed terms.

Gifts set aside etc

14 If a qualifying gift is set aside or declared void after it is made—
(a) the portion of C's tax liability for the relevant accounting period treated as satisfied ceases to be treated as satisfied,
(b) the effect described in paragraph 12 is negated, and
(c) C is required to pay the portion due, together with any late payment interest and late payment penalties in respect of it, by the later of—
(i) the end of the period of 30 days beginning with the day on which the gift was set aside or declared void, and
(ii) the day by which C would have been required to pay those amounts but for this Schedule.

PART 4

GENERAL PROVISION

Orders

15 (1) An order under this Schedule is to be made by statutory instrument.

(2) It may include transitional and saving provisions.

(3) A statutory instrument containing an order under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

Pre-eminent property

16 (1) In this Schedule, "pre-eminent property" means—
(a) any picture, print, book, manuscript, work of art, scientific object or other thing that the relevant Minister is satisfied is pre-eminent for its national, scientific, historic or artistic interest, or
(b) any collection or group of pictures, prints, books, manuscripts, works of art, scientific objects or other things if the relevant Minister is satisfied that the collection or group, taken as a whole, is pre-eminent for its national, scientific, historic or artistic interest.

(2) "National interest" includes interest within any part of the United Kingdom.

(3) In determining whether an object or collection or group of objects is pre-eminent, regard is to be had to any significant association of the object, collection or group with a particular place.

The relevant Minister

17 (1) For the purposes of paragraph 16, "the relevant Minister" is—
(a) for items with a purely Scottish interest, the Scottish Ministers,
(b) for items with some Scottish interest, the Secretary of State and the Scottish Ministers concurrently,
(c) for items with a purely Northern Irish interest, the Northern Ireland Department of Culture, Arts and Leisure,
(d) for items with some Northern Irish interest, the Secretary of State and the Northern Ireland Department of Culture, Arts and Leisure concurrently,
(e) for items with a purely Welsh interest, the Welsh Ministers,
(f) for items with some Welsh interest, the Secretary of State and the Welsh Ministers concurrently, and
(g) for any other items, the Secretary of State.

(2) An item has a purely Scottish interest if—
(a) it is located in Scotland, and
(b) the offer contains—
(i) no wish about where the item is to be displayed, or
(ii) a wish that it is to be displayed in Scotland.

(3) An item has some Scottish interest if it does not have a purely Scottish interest but—
(a) it is located in Scotland, or
(b) the offer contains a wish that it is to be displayed in Scotland.

(4) References to items with a purely Northern Irish or purely Welsh interest or to items with some Northern Irish or some Welsh interest are to be read in accordance with sub-paragraphs (2) and (3), but replacing references to Scotland with references to Northern Ireland or, as the case may be, Wales.

(5) "Item" means an object or collection or group of objects.

General interpretation

18 In this Schedule—

"company" has the meaning given in section 992 of ITA 2007;
"corporation tax" includes any amount assessable or chargeable as if it were corporation tax;
"late payment interest" means interest under section 101 of FA 2009, or under or by virtue of Part 9 of TMA 1970, on amounts payable to HMRC;
"late payment penalty" means a penalty under Schedule 56 to FA 2009.

19 Nothing in this Schedule is to give rise to any right or expectation that an offer made as mentioned in paragraph 1 will be accepted.

Related amendments

20 IHTA 1984 is amended as follows.

21 In section 25 (gifts for national purposes etc), after subsection (2) insert—

"(3) A transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to property that is being transferred in the circumstances described in paragraph 1 of Schedule 1 to the Finance Act 2012 (gifts to the nation)."

22 In section 26A (potentially exempt transfer of property subsequently held for national purposes etc), in paragraph (b), after "below" insert "or in the circumstances described in paragraph 1 of Schedule 1 to the Finance Act 2012 (gifts to the nation)".

23 (1) Section 32 (conditionally exempt transfers: chargeable events) is amended as follows.

(2) In subsection (3), for "subsections (4) and (5)" substitute "subsections (4), (4A) and (5)".

(3) After subsection (4) insert—

"(4A) A death or disposal is not a chargeable event with respect to any property if—
(a) in the case of a disposal, the disposal is a Schedule 1 disposal, or
(b) in the case of death—
(i) a person who became beneficially entitled to the property on the death makes a Schedule 1 disposal of the property within 3 years of the death, or
(ii) the death occurs after a disposal within paragraph (a).

(4B) A reference in subsection (4A) to a "Schedule 1 disposal" is to a disposal made in the circumstances described in Schedule 1 to the Finance Act 2012 (gifts to the nation)."

24 (1) Section 32A (associated properties) is amended as follows.

(2) After subsection (5) insert—

"(5A) The death of a person beneficially entitled to property, or the disposal of property, is not a chargeable event if—
(a) in the case of a death, a person who became beneficially entitled to the property on the death makes a Schedule 1 disposal of the property within 3 years of the death, or

(b) in the case of a disposal of property, the disposal is a Schedule 1 disposal.

(5B) A reference in subsection (5A) to a "Schedule 1 disposal" is to a disposal made in the circumstances described in paragraph 1 of Schedule 1 to the Finance Act 2012 (gifts to the nation)."

(3) In subsection (7)—

(a) omit "relevant disposal (that is, a", and

(b) omit the closing bracket after "applies".

(4) After subsection (7) insert—

"(7A) Where, after a disposal mentioned in subsection (5A)(b) made in circumstances where that subsection applies, a person beneficially entitled to the property dies, the death is not a chargeable event with respect to the property concerned."

25 In section 33 (amount of charge under section 32), in subsection (6)—

(a) for "section 32(4)" substitute "section 32(4) or (4A)", and

(b) for "section 32A(5)", in both places it appears, substitute "section 32A(5) or (5A)".

26 In section 34 (reinstatement of transferor's cumulative total), in subsection (4)—

(a) for "section 32(4)" substitute "section 32(4) or (4A)", and

(b) for "section 32A(5)", in both places it appears, substitute "section 32A(5) or (5A)".

27 In section 258 of TCGA 1992 (works of art etc), before subsection (2) insert—

"(1A) A gain is not a chargeable gain if it accrues on a disposal made in the circumstances described in paragraph 1 of Schedule 1 to the Finance Act 2012 (gifts to the nation)."

28 (1) Chapter A1 of Part 14 of ITA 2007 (income tax: remittance basis) is amended as follows.

(2) In section 809Y (property that ceases to be exempt property treated as remitted), in subsection (1), after "section 809YA" insert "or 809YD".

(3) After section 809YC insert—

"809YD Exception to section 809Y: gifts to the nation

(1) Section 809Y(1) does not apply to property if—

(a) it ceases to be exempt property in the second case mentioned in that section, and

(b) by no later than the time when it ceases to be exempt property, it has been disposed of in the circumstances described in paragraph 1 of Schedule 1 to FA 2012 (gifts to the nation).

(2) Where section 809Y(1) does not apply to property by virtue of this section, the property is to continue to be treated as not remitted to the United Kingdom even though it no longer meets any of the relevant rules."

Commencement

29 The amendments made by this Schedule have effect in relation to tax years and accounting periods beginning on or after such day as the Treasury may by order appoint.

EXPLANATORY NOTE

GIFTS TO THE NATION

SUMMARY

1. This clause and schedule provide for a reduction in income tax, capital gains tax and/or corporation tax where individual and corporate donors make gifts of pre-eminent objects to the nation in accordance with a scheme set up by the Secretary of State.

DETAILS OF THE CLAUSE

2. The Schedule comprises four parts. Part 1 of the Schedule outlines the circumstances when the tax reduction will apply to a gift of pre-eminent property. Parts 2 and 3 of the Schedule set out the details of how the tax reduction will apply to individual and corporate donors respectively. Part 4 of the Schedule makes general provisions in connection with the tax reduction.

3. Paragraph 1 of the Schedule outlines the circumstances when a gift of pre-eminent property for the benefit of the public or the nation will be a qualifying gift for the purposes of the tax reduction. In particular, a gift that qualifies for the tax reduction must be registered and accepted under the scheme set up by the Secretary of State.

4. Paragraph 2 of the Schedule specifies that the provisions in Part 2 of the Schedule apply to the income tax and capital gains tax liabilities of individual donors. The donor must be acting in their own personal capacity, so the tax reduction does not extend to individuals who are acting as trustees or personal representatives.

5. Paragraph 3 of the Schedule sets out how the tax reduction is to be applied. If an individual makes a qualifying gift then part of that individual's tax liability for a relevant tax year is treated as having been paid, leading to a reduction in the amount of tax the individual still has to pay for that period. An individual may, subject to agreement in accordance with the scheme, apply the tax reduction against their income tax and/or capital gains tax liabilities in the tax year in which the offer was registered or any of the succeeding four tax years.

6. Paragraph 4 of the Schedule sets out how an individual may allocate the tax reduction across more than one relevant tax year. The "total tax reduction" is first computed under paragraph 4(5). The total tax reduction for an individual is 30% of the value of the qualifying gift. The individual may then agree, pursuant to the scheme, that the total

tax reduction amount is to be allocated across the five relevant tax years in whatever amounts they wish, including nil amounts for any year. Where an individual has on a previous occasion made a gift of another pre-eminent object under the scheme, any amount of tax reduction already allocated to a particular tax year in respect of that earlier gift of pre-eminent property is applied in priority to any tax reduction allocated to the same tax year in respect of the later gift. The individual is not required to use the whole of the tax reduction available, for example where the value of the gift is very high and/or the individual knows that their tax liabilities will not be sufficiently large so as to be able to use the full amount of the tax reduction.

7. Paragraph 4(6) of the Schedule provides that HM Treasury may, by order, amend the rate of the tax reduction, as set out in paragraph 4(5).

8. Paragraph 5 of the Schedule enables the individual to specify how the tax reduction is to be split between their income tax and capital gains tax liabilities. If the individual does not express any preference, the tax reduction will be applied first to the individual's income tax liability and thereafter to any capital gains tax liability.

9. Paragraph 6 of the Schedule makes clear that where an offer of a gift is accepted under the scheme, resulting in an amount of the tax liability being treated as having been satisfied as provided for in paragraphs 3 and 4, then no late payment interest or late payment penalties will be payable on that amount from the date of registration. Paragraph 6(5) specifies that where there are multiple due dates for a tax year, the deemed payment should be allocated to due amounts in a manner that minimises any late payment interest and penalties due. Paragraph 6(7) makes it clear that late payment interest and late payment penalties that accrue before the registration date are not affected by anything in these provisions.

10. Paragraph 7 of the Schedule provides that, where the donor's tax liability for a year subsequently changes, the portion of that tax liability for a relevant tax year (to which the tax reduction has applied) is to be recalculated. In many cases, the effect of this provision is limited. Paragraph 7(2) makes plain that the schedule of set off of the tax reduction (as contained in the agreed terms) cannot be revised once agreed, even if the donor's circumstances subsequently change.

> **Example**, a donor (Alan) had originally allocated a tax reduction figure of £100,000 to Year 3. A's tax liability for Year 3 was initially found to be £75,000, in which case Alan would have £25,000 of tax reduction figure which could be not be utilised. However, if Alan's tax liability were subsequently revised and found instead to be £150,000, Alan could then

apply the initially unused balance of £25,000 of the tax reduction figure to set against a part of the additional £75,000 liability which had become due after the revision of Alan's tax liability occurred. The unused tax reduction would be available to set against tax liabilities only; penalties or interest due as a result of an enquiry into the person's tax affairs for that year would be payable in full.

11. Paragraph 8 of the Schedule makes provision for the tax reduction to be withdrawn where the qualifying gift is set aside or declared void, for example by order of a Court. Where the tax reduction has already been used, an amount representing the tax reduction (together with any late payment penalties and interest) due up to and including the date of payment, is payable within 30 days of the date the gift was set aside or declared void. Where the tax reduction has not yet taken effect, the normal due dates for the payment of the tax will apply.

12. Paragraph 9 of the Schedule specifies that the provisions in Part 3 of the Schedule apply to the corporation tax liabilities of company donors.

13. Paragraph 10 of the Schedule provides that the tax reduction is to be applied to the accounting period in which the offer is registered. The date on which the corporation tax is treated as being satisfied is the date on which the tax liability became due (or, if the liability was due before the offer of gift was registered, the date on which the offer was registered).

14. Paragraph 11 of the Schedule specifies that the amount of the tax reduction for a gift under the scheme by a company is 20% of the value of the property forming the gift. The company may choose to accept a lower percentage if it wishes, for example where the value of the gift is very high or the company's tax liability for that particular accounting period will not be sufficient to use the full amount of the tax deduction.

15. Paragraph 11(4) of the Schedule provides that HM Treasury may, by order, amend the rate of the tax reduction in paragraph 11(3)(a).

16. Paragraph 12 of the Schedule makes clear that where an offer of a gift is accepted under the scheme, resulting in an amount of the tax liability being treated as having been satisfied as provided for in paragraphs 10 and 11, then no interest or late payment penalties will be payable on that amount from the date of registration. Paragraph 12(5) specifies that where there are multiple due dates for an accounting period, the deemed payment should be allocated to due amounts in a manner that minimises any late payment interest and penalties due. Paragraph 12(7) makes it clear that late payment

interest and penalties that accrue before the registration date are not affected by anything in these provisions.

17. Paragraph 13 of the Schedule allows the tax liability for the relevant accounting period to be recalculated where the company's corporation tax liability for the accounting period subsequently changes. The effect of this provision is limited.

> **Example**, B Ltd had a tax reduction due of £100,000. B Ltd's corporation tax liability for the relevant accounting period was only £75,000 and so B Ltd was not able to utilised £25,000 of its tax reduction. B Ltd's corporation tax liabilities for the year were subsequently revised to £95,000. B Ltd could therefore use £20,000 of the unused balance of £25,000 to set against the additional £20,000 liability. The unused tax reduction would be available to set against tax liabilities only; penalties or interest due as a result of an enquiry into the company's tax affairs for that accounting period would be payable in full.

18. Paragraph 14 of the Schedule makes provision for the tax reduction to be withdrawn where the qualifying gift is set aside or declared void, for example by order of a Court. Where the tax reduction has already been used, an amount representing the tax reduction (together with any late payment penalties and interest) due up to and including the date of payment, is payable within 30 days of the date the gift was set aside or declared void. Where the tax reduction has not yet taken effect, the normal due dates for the payment of the tax will apply.

19. Part 4 of the Schedule makes a number of general provisions.

20. Paragraph 15 provides that an order amending the percentage of a tax reduction is to be made by statutory instrument using the negative procedure.

21. Paragraph 16 of the Schedule defines the property that may be gifted under the terms of the scheme. The definition is intended to the mirror the definition which applies for the Acceptance in Lieu scheme under section 230 of the Inheritance Act 1984, with the exception of land and buildings. In practice objects or collections of objects may be pre-eminent if they have an especially close association with our history and national life; or are of especial artistic or art-historical interest; or are of especial importance for the study of some particular form of art, learning or history; or have an especially close association with a particular historic setting. The decision as to whether an object is pre-eminent rests with the "relevant Minister".

22. Paragraph 17 of the Schedule defines the term "relevant Minister". The relevant Minister is the Secretary of State for Culture, Media and

Sport unless the item, defined as an object or collection of objects, has an interest with one of Scotland, Northern Ireland or Wales. Two levels of interest are defined:

- An item has purely Scottish, Northern Irish or Welsh interest where it is already located in that country and the donor has not expressed a preference for the item to be displayed in a different country of the UK. In such a case the relevant Minister is the Minister of that country.

- An item may have some Scottish, Northern Irish or Welsh interest if it is located in that country or the owner would prefer the item to be displayed in that country. In such a case the relevant Minister is the Minister of that home country and the Secretary of State for Culture Media and Sport concurrently.

23. Paragraph 18 of the Schedule defines a number of terms used in the Schedule.

24. Paragraph 19 of the Schedule makes plain that there is no obligation for an offer of a gift under the scheme to be accepted, even if it meets all of the qualifying circumstances pursuant to the scheme.

25. Paragraphs 21 provides for exemption from inheritance tax of a gift of property under the scheme.

26. Paragraph 22 of the Schedule amends the inheritance tax rules where the donor of the object under the scheme had received it in a potentially exempt transfer (PET). It ensures that there is no chargeable transfer if the person from whom the donor received the object dies within 7 years of the PET.

27. Paragraphs 23 and 24 of the Schedule exempt a gift of a conditionally exempt object from inheritance tax recapture charges. Paragraph 23(3) inserts new subsections (4A) and (4B) into section 32 of the Inheritance Tax Act 1984 (IHTA).

28. New subsections (4A)(a) and (4B) of section 32 IHTA ensures that, where a donor gives a conditionally exempt object under the scheme, the gift will not be a chargeable event which would otherwise result in the inheritance tax held over on the object to become payable.

29. New subsections (4A)(b) and (4B) of section 32 IHTA apply where a person inherits a conditionally exempt object on the death of its previous owner. That person may give that object to the nation under the scheme within 3 years of the previous owner's death without triggering the inheritance tax recapture charge that would otherwise have become due on the death of the previous owner and without any

need to renew its conditional exemption. It also confirms that that person's later death would not itself occasion such a recapture charge.

30. Paragraph 24(2) of the Schedule similarly inserts new subsections (5A) and (5B) into section 32A IHTA in relation to gifts to the nation under the scheme of objects conditionally exempt from inheritance tax because of their historical association with an outstanding building.

31. Paragraph 24(4) of the Schedule inserts new subsection (7A) into section 32A IHTA. This provision confirms that the later death of the person who made the gift under the scheme would not itself occasion such a recapture charge.

32. Paragraphs 25 and 26 of the Schedule make consequential amendments to sections 33 and 34 IHTA.

33. Paragraph 27 of the Schedule inserts new subsection (1A) into section 258 of the Taxation of Chargeable Gains Act 1992 (TCGA). New subsection (1A) exempts the donor of an object under this scheme from capital gains tax or corporation tax on a chargeable gain, which would normally arise on the disposal of a chargeable asset.

34. Paragraph 28 of the Schedule applies to non-domiciled and/or not ordinarily UK resident donors who use the remittance basis of tax. Normally, a tax charge is triggered when property derived from untaxed foreign income or gains is brought to the UK, subject to a number of limited exemptions. Paragraph 28(3) inserts new section 809YD into the Income Tax Act 2007 which ensures that, where such property has been brought into the UK and has been accepted under the scheme, there will be no charge to income tax or capital gains tax on the remittance of that property.

35. Paragraph 29 of the Schedule provides for the scheme to commence on an appointed day by order of the Treasury. The first tax period to which the scheme may apply is the tax year beginning on 6 April 2012.

BACKGROUND NOTE

36. The details of how the application and acceptance process in connection with the scheme will operate are set out in detailed [draft] guidance issued by the Department for Culture, Media and Sport. [*Consultees should refer to the website of the Department for Culture, Media and Sport*]

37. The basic rules for an individual in deciding how to allocate a tax reduction across the relevant tax years are that:

- the amounts set against each of the five relevant tax years must always add up to no more than the total tax reduction figure;
- such amount must be specified and agreed in advance in respect of each relevant tax year. For example, it will not be possible to specify, that say £100,000 to be set against year 1 in the above example, with £400,000 to be distributed across years 2 to 5 in some way to be specified at a later time; and
- under paragraph 7(2), once the schedule of tax reductions has been accepted within the terms of a qualifying gift, the schedule cannot be varied, even where it is subsequently found that the individual does not have enough tax liability in a relevant tax year to utilise the tax reduction specified for that year. In such a case the unutilised amount of tax reduction will be lost.

38. The following table gives examples of how an individual might choose to apply a total tax reduction of £500,000 across five relevant tax years.

Example

Year 1	Year 2	Year 3	Year 4	Year 5	Total
500,000	-	-	-	-	500,000
-	-	-	-	500,000	500,000
-	100,000	-	300,000	100,000	500,000
200,000	50,000	50,000	50,000	50,000	400,000

39. Paragraph 6 ensures that where an offer of a gift is accepted under the scheme, resulting in an amount of the tax liability being treated as having been satisfied (as set out in the scheme) then no late payment interest or late payment penalties will be payable on that amount from the date of registration. It is being explored whether, and to what extent, provisions should be made to defer payments of tax, interest and late payment penalties during the negotiation period in respect of tax becoming payable on or after the registration of an offer, where the offer has been made in good faith. However, if a qualifying gift was not made for any reason (say, for example, because the offer was rejected in accordance with the scheme or because the offer was withdrawn by the donor), then the donor would be required to pay to HMRC both the tax due and any late payment interest due up to and including the date of payment. It is currently envisaged that if the tax and interest remains unpaid within 30 days the donor will be subject to late payment penalties.

40. Paragraphs 23 to 26 of the Schedule provide for exemption from inheritance tax where an object that is conditionally exempt from inheritance tax is given under the scheme. It is intended to make similar provisions for objects that are conditionally exempt from

estate duty. However gifts of such objects will not be eligible for the tax reduction set out in Parts 1 and 2 of the Schedule.

41. If you have any questions about this change, or comments on the legislation, please contact Jo Shelling on 020 7147 2401 (email: joanne.shelling@hmrc.gsi.gov.uk).

Inheritance Tax: Reduced rate for estates leaving 10 per cent or more to charity

1 Inheritance tax: gifts to charities etc

Schedule 1 contains provision for a lower rate of inheritance tax to be charged on transfers made on death that include sufficient gifts to charities or registered clubs.

SCHEDULE 1

Section 1

INHERITANCE TAX: GIFTS TO CHARITIES ETC

Reduced rate of inheritance tax

1 After Schedule 1 to IHTA 1984 insert—

“SCHEDULE 1A

GIFTS TO CHARITIES ETC: TAX CHARGED AT LOWER RATE

Application of this Schedule

1 (1) This Schedule applies if—
(a) a chargeable transfer is made (under section 4) on the death of a person (“D”), and
(b) all or part of the value transferred by the chargeable transfer is chargeable to tax at a rate other than nil per cent.

(2) The part of the value transferred that is chargeable to tax at a rate other than nil per cent is referred to in this Schedule as “TP”.

The relief

2 (1) If the charitable giving condition is met—
(a) the tax charged on the part of TP that qualifies for the lower rate of tax is to be charged at the lower rate of tax, and
(b) the tax charged on any remaining part of TP is to be charged at the rate at which it would (but for this Schedule) have been charged on the whole of TP in accordance with section 7.

(2) For the purposes of this paragraph, the charitable giving condition is met if, for one or more components of the estate (taking each component separately), the donated amount is at least 10% of the baseline amount.

(3) Paragraph 3 defines the components of the estate.

(4) Paragraphs 4 and 5 explain how to calculate the donated amount and the baseline amount for each component.

(5) The part of TP that “qualifies for the lower rate of tax” is the part attributable to all the property in each of the components for which the donated amount is at least 10% of the baseline amount.

(6) The lower rate of tax is 36%.

The components of the estate

3 (1) For the purposes of paragraph 2, the components of the estate are—
(a) the survivorship component,
(b) the settled property component, and
(c) the general component.

(2) The survivorship component is made up of all the property comprised in the estate that, immediately before D's death, was joint (or common) property liable to pass on D's death—
(a) by survivorship (in England and Wales or Northern Ireland),
(b) under a special destination (in Scotland), or
(c) by or under anything corresponding to survivorship or a special destination under the law of a country or territory outside the United Kingdom.

(3) The settled property component is made up of all the settled property comprised in the estate in which an interest in possession subsists to which D was beneficially entitled immediately before death.

(4) The general component is made up of all the property comprised in the estate other than—
(a) property in the survivorship component,
(b) property in the settled property component, and
(c) property that is treated under section 102(3) of the Finance Act 1986 (gifts with reservation) as property to which D was beneficially entitled immediately before death.

The donated amount

4 The donated amount, for a component of the estate, is so much of the value transferred by the relevant transfer as (in total) is attributable to property that—
(a) forms part of that component, and
(b) is property in relation to which section 23(1) applies.

The baseline amount

5 The baseline amount, for a component of the estate, is the amount calculated in accordance with the following steps—

Step 1
Determine the part of the value transferred by the chargeable transfer that is attributable to property in that component.

Step 2
Deduct from the amount determined under Step 1 the appropriate proportion of the available nil-rate band.

"The appropriate proportion" is a proportion equal to the proportion that the amount determined under Step 1 bears to the value transferred by the chargeable transfer as a whole.

"The available nil-rate band" is the amount (if any) by which—
(a) the nil-rate band maximum (increased, where applicable, in accordance with section 8A), exceeds
(b) the sum of the values transferred by previous chargeable transfers made by D in the period of 7 years ending with the date of the relevant transfer.

Step 3
Add to the amount determined under Step 2 an amount equal to so much of the value transferred by the relevant transfer as (in total) is attributable to property that—
(a) forms part of that component, and
(b) is property in relation to which section 23(1) applies.

The result is the baseline amount for that component.

Rules for determining whether charitable giving condition is met

6 (1) For the purpose of calculating the donated amount and the baseline amount, any amount to be arrived at in accordance with section 38(3) or (5) is to be arrived at assuming the rate of tax is the lower rate of tax (see paragraph 2(6)).

(2) Section 39A does not apply in calculating the donated amount (but it does apply in calculating the baseline amount).

(3) Subject to sub-paragraphs (1) and (2), the provisions of this Act apply for the purpose of calculating the donated amount and the baseline amount as for the purpose of calculating the tax to be charged on the value transferred by the chargeable transfer.

Election to merge components

7 (1) An election may be made under this paragraph if, for a component of the estate, the donated amount is at least 10% of the baseline amount.

(2) That component is referred to as "the qualifying component".

(3) The effect of the election is that the qualifying component and one or both of the other components of the estate (as specified in the election) are to be treated for the purposes of this Schedule as if they were a single component.

(4) Accordingly, if the donated amount for that deemed single component is at least 10% of the baseline amount for it, the property in that component is to be included in the part of TP that qualifies for the lower rate of tax.

(5) The election must be made by all those who are appropriate persons with respect to each of the components to be treated as a single component.

(6) "Appropriate persons" means—

(a) with respect to the survivorship component, all those to whom the property in that component passes on D's death (or, if they have subsequently died, their personal representatives),

(b) with respect to the settled property component, the trustees of all the settled property in that component, and

(c) with respect to the general component, all the personal representatives of D or, if there are none, all those who are liable for the tax attributable to the property in that component.

Opting out

8 (1) If an election is made under this paragraph in relation to a component of the estate, this Schedule is to apply as if the donated amount for that component were less than 10% of the baseline amount for it (whether or not it actually is).

(2) The election must be made by all those who are appropriate persons (as defined in paragraph 7(6)) with respect to the component.

Elections: procedure

9 (1) An election under this Schedule must be made by notice in writing to HMRC within two years after D's death.

(2) An election under this Schedule may be withdrawn by notice in writing to HMRC given—

(a) by all those who would be entitled to make such an election, and

(b) no later than the end of the period of two years and one month after D's death.

(3) An officer of Revenue and Customs may agree in a particular case to extend the time limit in sub-paragraph (1) or (2)(b) by such period as the officer may allow.

General interpretation

10 In this Schedule, in relation to D—

"the chargeable transfer" means the chargeable transfer mentioned in paragraph 1(1);

"the estate" means D's estate immediately before death;

"the relevant transfer" means the transfer of value that D is treated (under section 4) as having made immediately before death."

Consequential amendments

2 IHTA 1984 is amended as follows in consequence of paragraph 1.

3 In section 7 (rates), in subsection (1), after "(4) and (5) below" insert "and to Schedule 1A".

4 In section 33 (amount of charge under section 32), after subsection (2) insert—

"(2ZA) In determining for the purposes of subsection (1)(b)(ii) the rate or rates that would have applied in accordance with subsection (1) of section 7, the effect of Schedule 1A (if it would have applied) is to be disregarded."

5 In section 78 (conditionally exempt occasion), in subsection (3), for "33(3)" substitute "33(2ZA)".

6 In section 128 (rate of charge: woodlands)—

(a) the existing provisions become subsection (1) of that section, and

(b) after that subsection insert—

"(2) In determining for the purposes of subsection (1) the rate or rates at which tax would have been charged on the amount determined under section 127, the effect of Schedule 1A (if it would have applied) is to be disregarded."

7 After section 141 insert—

"141A Apportionment of relief under section 141

(1) This section applies if any part of the value transferred by the later transfer qualifies for the lower rate of tax in accordance with Schedule 1A.

(2) The amount of the reduction made under section 141(1) is to be apportioned in accordance with this section.

(3) For each qualifying component, the tax chargeable on so much of the value transferred by the later transfer as is attributable to property in that component ("the relevant part of the tax") is to be reduced by the appropriate proportion of the amount calculated in accordance with section 141(3).

(4) "The appropriate proportion" is a proportion equal to the proportion that—

(a) the relevant part of the tax, bears to

(b) the tax chargeable on the value transferred by the later transfer as a whole.

(5) If components are treated under Schedule 1A as a single component, subsection (3) applies to the single component (and not to each of those components individually).

(6) If, after making the reductions required by subsection (3), there remains any part of the tax chargeable on the value transferred by the later transfer that has not been reduced, the remaining part of the tax is to be reduced by so much of the amount calculated in accordance

with section 141(3) as has not been used up for the purposes of making the reductions required by subsection (3).

(7) In this section—

"component" means a component of the estate, as defined in paragraph 3 of Schedule 1A;

"the later transfer" has the meaning given in section 141(1);

"qualifying component" means a component for which the donated amount is at least 10% of the baseline amount, as determined in accordance with Schedule 1A."

8 In Schedule 4 (maintenance funds for historic buildings etc), in paragraph 14, after sub-paragraph (2) insert—

"(2A) In determining for the purposes of sub-paragraph (2) the effective rate or rates at which tax would have been charged on the amount in accordance with section 7(1), the effect of Schedule 1A (if it would have applied) is to be disregarded."

Instruments of variation to be notified to charities etc

9 In section 142 of IHTA 1984 (alteration of dispositions taking effect on death), after subsection (3) insert—

"(3A) Subsection (1) does not apply to a variation by virtue of which any property comprised in the estate immediately before the person's death becomes property in relation to which section 23(1) applies unless it is shown that the appropriate person has been notified of the existence of the instrument of variation.

(3B) For the purposes of subsection (3A) "the appropriate person" is—

(a) the charity or registered club to which the property is given, or

(b) if the property is to be held on trust for charitable purposes or for the purposes of registered clubs, the trustees in question."

Commencement

10 (1) The Schedule inserted by paragraph 1 has effect in cases where D's death occurs on or after 6 April 2012 (and the amendments made by paragraphs 3 to 8 are to be read accordingly).

(2) The amendment made by paragraph 9 has effect in cases where the person's death occurs on or after 6 April 2012.

EXPLANATORY NOTE

INHERITANCE TAX: GIFTS TO CHARITIES ETC

SUMMARY

1. This clause and schedule provides for a lower rate of inheritance tax (IHT) of 36 per cent to be charged on a deceased person's estate where 10 per cent or more of the estate has been left to a charity or a registered community amateur sports club.

2. The change will take effect for deaths on or after 6 April 2012.

DETAILS OF THE SCHEDULE

3. Paragraph 1 of Schedule inserts a new Schedule 1A to Inheritance Tax Act 1984 (IHTA).

Details of the new Schedule 1A to IHTA

4. New paragraph 1 provides that the Schedule applies on the death of an individual where the net value of their estate (after deducting liabilities, reliefs and exemptions) exceeds the available nil-rate band. The excess value of the estate above the nil-rate band is subject to IHT at 40 per cent and is referred to in the Schedule as "TP". New Schedule 1A does not apply if the net value of the estate is below the available nil-rate band.

5. New paragraph 2 describes the relief.

   - New paragraph 2(1)(a) provides that a part of TP will qualify for the lower rate of IHT if it meets the charitable giving condition.

   - New paragraph 2(1)(b) provides that any remaining part of TP that does not qualify for the lower rate is to be taxed at 40 per cent.

   - New paragraph 2(2) provides that to meet the charitable giving condition, at least 10 per cent of the 'baseline amount' must be given to charity.

   - New paragraph 2(3) and (4) say where provision is made for the 'components', 'donated amount' and 'baseline amount' respectively.

   - New paragraph 2(5) provides that the part of TP that qualifies for the lower rate is all of the property in each of the 'components'

of the estate where the amount donated to charity is at least 10 per cent of the baseline amount for those components (the '10 per cent test').

- New paragraph 2(6) provides that the lower rate of tax is 36 per cent.

6. New paragraph 3 divides the estate into three parts or 'components' for the purposes of the new Schedule 1A: survivorship, settled property and general. New paragraphs 3(2) to (4) define the property that is included in each of the components.

- The survivorship component is made up of property which passes automatically to a surviving joint owner.

- The settled property component consists of assets in certain trusts in which the deceased had a life interest or right to income immediately before their death.

- The general component includes all other property that makes up a person's estate, including the free estate, which is not part of the survivorship or settled property components. This does not include gifts where the deceased continued to benefit from the property given away. Such property cannot qualify for the reduced rate.

7. New paragraph 4 provides that the 'donated amount' for a particular component or part of the estate is the total value of gifts to charities or registered community amateur sports clubs that are paid from that component and which qualify for exemption as gifts to charities or registered clubs under section 23(1) of IHTA.

8. New paragraph 5 provides for the calculation of the 'baseline amount' and sets out three steps to the calculation. The first is to arrive at the value transferred by the chargeable transfer, which is the gross value of assets in the component after deducting liabilities, reliefs and exemptions. The second step is to deduct the proportion of the available nil-rate band that is attributable to the component. The available nil-rate band is the amount left after allowing for any increase that arises from the transfer of unused nil-rate band under section 8A of IHTA and taking into account any chargeable transfers made during the seven years before death. The third step is to add back the value of gifts paid from that component which qualify for exemption as gifts to charities or registered clubs under section 23(1) of IHTA.

9. New paragraph 6 provides that the normal rules for establishing the taxable amount of the estate will apply in determining whether the 10 per cent test has been met with two specific exceptions.

- New paragraph 6(1) provides that for the purposes of calculating the donated amount and the baseline amount, any calculations under section 38(3) or (5) IHTA (grossing up) will be made using the lower rate.
- New paragraph 6(2) provides that, for the purposes of calculating the donated amount (but not the baseline amount) any reduction in the donated amount that would normally arise through the interaction of exemptions and relief under section 39A IHTA is to be ignored.

10. New paragraph 7 provides for an election to merge two (or more) components of an estate where the donated amount from one (or more) component(s) is at least 10 per cent of the baseline amount for that component(s). If the combined components pass the 10 per cent test, new paragraph 7(3) provides that they are to be treated as a single component which will qualify for the lower rate. The election has to be made by all the “appropriate persons” specified in new paragraph 7(6), who may vary depending on the type of components being merged.

11. New paragraph 8 provides for an election to opt out of the lower rate for one or more components of the estate so that they are treated in effect as if the charitable donation had failed the 10 per cent test. The election has to be made by all the same appropriate persons as specified in new paragraph 7(6).

12. New paragraph 9 provides the procedure for making an election under Schedule 1A. An election must be made in writing within 2 years of the death and may be withdrawn in writing (by all those entitled to make the election) no later than 2 years and 1 month after the death. New paragraph 9(3) provides that both these time limits may be extended at the discretion of an Officer of Revenue and Customs.

13. New paragraph 10 provides interpretation of specific terms used in Schedule 1A.

Consequential amendments

14. Paragraph 2 of the Schedule provides for consequential amendment to IHTA as a result of new Schedule 1A.

15. Paragraph 3 amends the cross reference in section 7 of IHTA (which specifies the rates of tax charged) to take into account the new Schedule 1A.

16. Paragraph 4 inserts a new subsection (2ZA) in section 33 of IHTA to provide that new Schedule 1A is disregarded when considering the

rate of tax to be applied to a charge under section 32 or 32A (where conditional exemption no longer applies). The effect of the amendment is that the lower rate of IHT would not apply to any deferred tax even if the 10 per cent test was satisfied originally.

17. Paragraph 5 correspondingly amends subsection (3) of section 78 of IHTA (conditionally exempt occasions involving settled property) by inserting a cross reference to the new subsection (2ZA) and subsection (2A) in section 33. The effect of the amendment is to ensure that new Schedule 1A is disregarded and the appropriate rate of tax is charged when the charge arises under section 78.

18. Paragraph 6 inserts a new subsection (2) in section 128 of IHTA which similarly provides that new Schedule 1A is disregarded when considering the rate of charge under section 128 (where woodlands relief no longer applies). The effect of the amendment is that the lower rate of tax would not apply to the deferred tax, even if the 10 per cent test was satisfied originally.

19. Paragraph 7 inserts a new section 141A of IHTA which specifies how the relief under section 141 of IHTA (relief for successive charges) should be applied where the later transfer, or part of it, qualifies for the lower rate of IHT.

- Paragraph 7(1) provides that new section 141A applies where the later transfer, or part of it, qualifies for the lower rate.

- Paragraph 7(2) provides that the relief is to be apportioned between the components of the estate as set out in new section 141A.

- Paragraph 7(3) provides that where a component of the estate qualifies for the lower rate, the relief due under section 141(3) that is attributable to that component is to be calculated by reference to paragraph 7(4).

- Paragraph 7(4) provides that the relief due to the estate as a whole must be divided between the components by reference to tax that is payable by each component (rather than by reference to the capital value of the components as would otherwise be the case).

- Paragraph 7(5) provides for merged components to be treated as one component for the purposes of this calculation.

- Paragraph 7(6) provides that any relief not applied against components that qualify for the lower rate is to be applied against components that do not qualify for the lower rate.

- Paragraph 7(7) provides interpretation.

20. Paragraph 8 inserts a new sub-paragraph (2A) in paragraph 14 of Schedule 4 of IHTA. The new sub-paragraph provides that, when the settlor is dead, new Schedule 1A is disregarded in calculating the "second rate" of tax to be applied to a charge under paragraph 8 of Schedule 4. (A paragraph 8 charge arises where the favourable IHT treatment of property, under a maintenance fund direction under paragraph 1 of Schedule 4, ceases to apply). The effect of the amendment is that the lower rate of IHT would not apply to any tax now chargeable even if the 10 per cent test was satisfied originally.

21. Paragraph 9 inserts new subsections 142(3A) and (3B) into IHTA (alteration of dispositions taking effect on death). The effect of the amendment is that where property is redirected to a charity or registered club by means of an Instrument of Variation (IoV) the variation is not to be treated as being made by the deceased unless the persons executing the IoV show that the 'appropriate person' (charity, registered club or, if the property is held on trust, trustees) has been notified of the IoV. This applies whether or not the redirection is sufficient to qualify for the reduced rate.

22. Paragraph 10 applies the new provisions in Schedule 1A and the consequential amendments to IHTA to deaths on or after 6 April 2012.

BACKGROUND NOTE

23. On death, inheritance tax (IHT) is charged on estates whose net taxable value (after deducting various reliefs and exemptions) is more than the IHT threshold, or nil-rate band. IHT is currently charged at a single rate of 40 per cent on the net taxable value of the estate above the available nil-rate band.

24. The value of an estate for IHT purposes can include not only the assets that the deceased owned immediately before death and is free to dispose of by will (the free estate), but also other assets and property such as interests in jointly owned assets which pass automatically by survivorship on death, interests in certain trusts, and assets given away but from which the deceased continued to benefit. The various categories of assets are combined to form an aggregate estate that is subject to IHT.

25. As an incentive to encourage charitable giving and support philanthropy, where 10 per cent or more of the deceased's net estate (after deducting exemptions, reliefs and the available nil-rate band) has been left to charity, the taxable estate will be charged at a lower

rate of IHT of 36 per cent. The change will apply for deaths on or after 6 April 2012.

26. The total amount left to charity will be compared to the 10 per cent threshold or ‘baseline’ amount to see if the estate qualifies for the lower IHT rate. For the purposes of this ‘10 per cent test’ the baseline will be the value of the estate charged to IHT after deducting all available reliefs, exemptions and nil-rate band but excluding the charitable legacy itself. If the estate qualifies, the lower rate will apply automatically but the personal representatives or other persons will be able to elect for the lower rate not to apply.

27. For estates which include additional assets to those that the deceased owned before death, the estate will be divided into up to three parts or ‘components’. The 10 per cent test will be applied to each component separately and the lower rate will apply to those components that pass the test unless an election is made to opt out.

28. Where a charitable legacy from one or more components of the estate exceeds the 10 per cent minimum it will be possible, by election, to combine components and apply the 10 per cent test to the aggregate. Where the aggregate components meet the test, the lower rate will apply to the merged components. This will enable the benefit from charitable legacies of more than 10 per cent to be spread to other parts of the estate.

29. If you have any questions about this change, or comments on the legislation, please contact Danka Wigley on 020 7147 3674 (email: danka.wigley@hmrc.gsi.gov.uk).

In-year repayments of tax to charities

1 Charities: claims for relief

(1) In section 42 of TMA 1970 (procedure for making claims etc), in subsection (3ZA), for the words after “tax” substitute “by virtue of—

(a) section 521(4) of ITA 2007 (gifts entitling donor to gift aid relief: charitable trusts),

(b) section 532 of that Act (exemption for savings and investment income),

(c) section 533 of that Act (exemption for public revenue dividends),

(d) section 536 of that Act (exemption for certain miscellaneous income), or

(e) section 537 of that Act (exemption for income from estates in administration).”

(2) In section 538A of ITA 2007 (claims in relation to gift aid relief)—

(a) in subsection (1) for the words after “tax” substitute “by virtue of—

(a) section 521(4) (gifts entitling donor to gift aid relief: charitable trusts),

(b) section 532 (exemption for savings and investment income),

(c) section 533 (exemption for public revenue dividends),

(d) section 536 (exemption for certain miscellaneous income), or

(e) section 537 (exemption for income from estates in administration).”, and

(b) in the heading, after “**relief**” insert “**etc**”.

(3) In Schedule 18 to FA 1998 (company tax returns, assessments and related matters)—

(a) in paragraph 9 (claims that cannot be made without a return), in sub-paragraph (2A), omit the “or” at the end of paragraph (a) and after paragraph (b) insert—

“(c) section 486 of that Act (exemption for investment income and non-trading profits from loan relationships),

(d) section 487 of that Act (exemption for public revenue dividends),

(e) section 488 of that Act (exemption for certain miscellaneous income), or

(f) section 489 of that Act (exemption for income from estates in administration).”, and

(b) in paragraph 57 (claims or elections affecting a single accounting period), in sub-paragraph (1A), omit the “or” at the end of paragraph (a) and after paragraph (b) insert—

“(c) section 486 of that Act (exemption for investment income and non-trading profits from loan relationships),

(d) section 487 of that Act (exemption for public revenue dividends),

(e) section 488 of that Act (exemption for certain miscellaneous income), or

(f) section 489 of that Act (exemption for income from estates in administration).”

(4) After section 491 of CTA 2010 insert—

“Claims

491A Claims in relation to certain reliefs

(1) Subsections (2) to (5) of section 477A (claims in relation to gift aid) apply to claims for amounts to be exempt from tax by virtue of a provision listed in subsection (2) as they apply to claims to which that section applies.

(2) The provisions are—

(a) section 486 (exemption for investment income and non-trading profits from loan relationships),

(b) section 487 (exemption for public revenue dividends),

(c) section 488 (exemption for certain miscellaneous income), or

(d) section 489 (exemption for income from estates in administration).”

(5) The amendments made by subsections (1) and (3) have effect in relation to claims whenever made.

EXPLANATORY NOTE

CHARITIES: CLAIMS FOR RELIEF

SUMMARY

1. This clause enables claims to be made to HM Revenue & Customs (HMRC) outside a tax return for repayments of tax to charitable companies and certain charitable trusts in respect of certain sources of income.

DETAILS OF THE CLAUSE

2. This clause amends the rules for charitable trusts and charitable companies to make claims for the repayment of tax and aligns the rules with those that already apply to Gift Aid. Currently:

- charitable trusts that have been issued with a notice to file a tax return can claim a repayment of income tax (other than in respect of Gift Aid relief) only on the tax return (section 42(2) of the Taxes Management Act 1970 (TMA)); and

- charitable companies that are subject to corporation tax, can claim a repayment of income tax (other than in respect of Gift Aid relief) only after the delivery of a company tax return for the period to which the claim relates (paragraphs 9(1) and (2) of Schedule 18 to the Finance Act (FA) 1998).

3. Subsection (1) disapplies (in respect of certain sources of income) the requirement in section 42(2) of the TMA that, where HMRC has already issued a notice to charitable trustees to make a tax return for the year, and the trustees are to make a claim, that claim must be included in a tax return. The sources of income in respect of which this requirement does not apply are added to the list in section 42(3ZA) TMA which includes gifts entitling a donor to Gift Aid relief.

4. Subsection (2) amends section 538A of the Income Tax Act 2007 (ITA). Section 538A of the ITA enables charitable trusts to make a claim for repayment of income tax withheld on income from the sources listed in section 538A, in what is known as a "free-standing claim". A free-standing claim may be made during the tax year in which the income is received. The provision also enables the Commissioners of HMRC to make regulations to limit the number of free-standing claims that may be made within a tax year and the minimum amount that may be claimed in a free-standing claim.

5. Subsection (3) disapplies the requirement in Schedule 18 to Finance Act 1998 for a charitable company to make a claim for repayment of income tax in a company tax return. The sources of income in respect of which this requirement does not apply are added to the lists in paragraph 9(2A) and paragraph 57(1A) of Schedule 18, which already include gifts qualifying for Gift Aid relief.

6. Subsection (4) introduces new section 491A of the Corporation Tax Act (CTA) 2010.

7. New section 491A applies certain provisions within section 477A CTA 2010 (claims in relation to Gift Aid) to the sources of income listed in new section 491A(2). The effect of this provision is to enable charitable companies to make a claim for repayment of income tax withheld on income from the sources listed, in what is known as a "free standing claim". A free standing claim may be made during the tax year in which the income is received. The provision also enables the Commissioners of HMRC to make regulations limiting the number of free-standing claims that may be made within a tax year and the minimum amount that may be claimed in a free-standing claim.

BACKGROUND NOTE

8. HMRC has allowed charitable trusts and charitable companies to submit tax repayment claims in advance of filing a tax return ("in-year claims") under their powers of collection and management, although in law some trusts and all companies are allowed to make a claim only in a tax return. The same rules applied in relation to repayments of tax under Gift Aid but these were put on a statutory footing by paragraphs 4 to 7 of Schedule 8 to FA 2010.

9. This clause aligns the treatment of claims to repayments of tax in respect of a number of sources of income with the treatment of repayment claims in respect of Gift Aid relief.

10. If you have any questions about this change, or comments on the legislation, please contact Ellie Mayor on 020 7147 2822 or 020 7147 2778 (email charitypolicy.taxteam@hmrc.gsi.gov.uk).

Self Assessment (SA) Donate

1 Gift aid: giving through self-assessment return

(1) Section 429 of ITA 2007 (gift aid: giving through self-assessment return) is repealed.

(2) The following repeals are made in consequence of subsection (1)—

(a) in section 426 of ITA 2007 (election by donor: gift treated as made in previous tax year), omit subsection (8),

(b) in section 538 of that Act (requirement to make claim), omit subsection (3),

(c) in section 133 of FA 2008 (set-off etc where right to be paid a sum has been transferred), in subsection (8)(a), omit the words from "except" to the end,

(d) in sections 472 of CTA 2010 (gifts qualifying for gift aid relief: corporation tax liability and exemption), omit subsection (5), and

(e) in section 475 of that Act (gifts qualifying for gift aid relief: income tax treated as paid and exemption), omit subsection (7).

(3) Accordingly, the following provisions are also omitted—

(a) section 130(9) of FA 2008, and

(b) paragraph 3(4) of Schedule 8 to FA 2010.

(4) The repeals made by this section are treated as having come into force on 6 April 2012.

EXPLANATORY NOTE

GIFT AID: GIVING THROUGH SELF-ASSESSMENT RETURN

SUMMARY

1. This clause repeals, with effect from 6 April 2012, the "SA Donate" scheme which enables an individual, who makes a self-assessment return, to direct HM Revenue and Customs (HMRC) to make any repayment of tax due for the tax year to a charity.

DETAILS OF THE CLAUSE

2. Subsection (1) repeals section 429 of the Income Tax Act (ITA) 2007 which gives effect to the SA Donate scheme.

3. Subsections (2) and (3) make consequential amendments to remove references to section 429 of ITA 2007 from the Taxes Acts.

BACKGROUND NOTE

4. Section 429 ITA 2007 provides for a scheme known as "SA Donate". It enables an individual who makes a self-assessment return to direct HMRC to make any repayment of tax due for a tax year to a specified charity instead of to the individual. In addition to the repayment, provided the individual has paid sufficient income tax or capital gains tax on the amount of the repayment donated to the charity, HMRC also pays the charity the basic rate of tax relating to the repayment in accordance with the gift aid rules at Chapter 2 of Part 8 of ITA 2007.

5. SA Donate has not been well used and is disproportionately expensive for HMRC to administer. It is being withdrawn with effect from 6 April 2012 in order to concentrate HMRC resource on the introduction of an online filing system for charities. Taxpayers who receive repayments of tax from HMRC will still be able to give the money to their chosen charity under gift aid by making a direct gift to the charity.

6. If you have any questions about this change, or comments on the legislation, please contact Cathy Wilson on 020 7147 2778 (email: cathy.wilson@hmrc.gsi.gov.uk).

Corporate tax

Reduction in the main corporation tax rate

1 Charge and main rate for financial year 2013

(1) Corporation tax is charged for the financial year 2013.

(2) For that year the rate of corporation tax is—
   (a) 24% on profits of companies other than ring fence profits, and
   (b) 30% on ring fence profits of companies.

(3) In subsection (2) "ring fence profits" has the same meaning as in Part 8 of CTA 2010 (see section 276 of that Act).

2 Small profits rate and fractions for financial year 2012

(1) For the financial year 2012 the small profits rate is—
   (a) 20% on profits of companies other than ring fence profits, and
   (b) 19% on ring fence profits of companies.

(2) For the purposes of Part 3 of CTA 2010, for that year—
   (a) the standard fraction is 1/80th, and
   (b) the ring fence fraction is 11/400ths.

(3) In subsection (1) "ring fence profits" has the same meaning as in Part 8 of that Act (see section 276 of that Act).

EXPLANATORY NOTE

CORPORATION TAX: CHARGE AND MAIN RATE FOR FINANCIAL YEAR 2013

SUMMARY

1. This clause charges corporation tax (CT) for the financial year beginning 1 April 2013 and sets the main rate of CT at 30 per cent on oil and gas ring fence profits and 24 per cent on non-ring fence profits.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) set the charge and the main rate of CT for the financial year 2013.

BACKGROUND NOTE

3. The main rate of CT is paid by companies with profits of more than £1,500,000 (the upper profits limit).

4. Where two or more companies are associated with one another, the profits limit is reduced. This is done by dividing the limit by the number of associated companies.

5. Profits from oil extraction and oil rights in the UK and the UK Continental Shelf ("ring fence profits") will continue to be subject to a separate main rate of CT applicable to those ring fenced profits. Profits from activities which are not ring fenced will continue to be charged at the main rate of CT applicable to all other profits.

6. If you have any questions about this change, or comments on the legislation, please contact Simon Moulden on 020 7147 2629 (email: simon.moulden@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

CORPORATION TAX: SMALL PROFITS RATE AND FRACTIONS FOR FINANCIAL YEAR 2012

SUMMARY

1. This clause sets the small profits rate of corporation tax (CT) for the financial year beginning 1 April 2012 at 20 per cent for all profits apart from "ring fence profits" of North Sea oil companies, where the rate is set at 19 per cent. Additionally, it sets the fraction used in calculating marginal relief from the main rate at 1/80 for all profits apart from "ring fence profits", where the fraction is set at 11/400.

DETAILS OF THE CLAUSE

2. Subsection (1) sets the small profits rate of CT for the financial year 2010.

3. Subsection (2) sets the marginal relief standard and ring fence fractions.

BACKGROUND NOTE

4. Companies with profits up to £300,000 pay CT at the small profits rate.

5. Companies with profits between £300,000 and £1,500,000 (the lower and upper limits) benefit from marginal relief from the main rate.

6. Marginal relief has the effect of gradually increasing the rate of tax for a company as its profits move from the lower to the upper profits limit.

7. The example below illustrates the effect of marginal relief for a company with taxable non-ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 25 per cent	£125,000
minus 1/80 of £1,000,000*	£12,500
Tax payable:	£112,500

* £1,000,000 is the difference between the upper limit and the profit.

8. The example below illustrates the effect of marginal relief for a company with taxable ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 30 per cent	£150,000
minus 11/400 of £1,000,000*	£27,500
Tax payable:	£122,500

* £1,000,000 is the difference between the upper limit and the profit.

9. Where two or more companies are associated with one another, the profits limits are divided by the number of associated companies.

10. If you have any questions about this change, or comments on the legislation, please contact Simon Moulden on 020 7147 2629 (email: simon.moulden@hmrc.gsi.gov.uk).

Controlled foreign companies (CFCs) reform

1 Controlled foreign companies

Schedule 1 makes provision for and in connection with a charge on UK resident companies which have certain interests in non-UK resident companies controlled by UK resident persons.

SCHEDULES

SCHEDULE 1

Section 1

CONTROLLED FOREIGN COMPANIES

PART 1

MAIN PROVISION

1 After Part 9 of TIOPA 2010 insert—

“PART 9A

CONTROLLED FOREIGN COMPANIES

CHAPTER 1

INTRODUCTION

Overview

371AA Overview of Part

(1) A charge (“the CFC charge”) is charged, in accordance with this Part, on UK resident companies which have certain interests in CFCs.

(2) A “CFC” is a non-UK resident company which is controlled by a UK resident person or persons (see sections 371AB to 371AE).

(3) Chapter 2 sets out the basic details of the CFC charge and is supplemented by Chapters 3 to 17.

(4) Chapter 18 explains the concepts of “assumed taxable total profits”, “assumed total profits” and “the corporation tax assumptions” which are referred to in this Part.

(5) Chapter 19 contains rules for determining the territory in which a CFC is resident for the purposes of this Part.

(6) Chapter 20 contains provision about the management of the CFC charge, including the collection of sums charged.

(7) Chapter 21 contains supplementary provision, including definitions of terms used in this Part.

(8) Nothing in this Part affects—

(a) the liability to corporation tax of a non-UK resident company in accordance with section 5(2) and (3) of CTA 2009 (non-UK resident companies within the charge to corporation tax), or

(b) the determination of such a company's chargeable profits for corporation tax purposes in accordance with Chapter 4 of Part 2 of that Act.

(9) This Part is part of the Corporation Tax Acts.

"Control"

371AB How to determine if a company is "controlled" by another person

(1) This section sets out how to determine for the purposes of this Part if a company is "controlled" by another person or persons.
It is supplemented by sections 371AC to 371AE.

(2) A person ("P") "controls" a company ("C") if—
(a) by means of the holding of shares or the possession of voting power in or in relation to C or any other company, or
(b) by virtue of any powers conferred by the articles of association or other document regulating C or any other company,

P has the power to secure that the affairs of C are conducted in accordance with P's wishes.

(3) A person ("P") "controls" a company ("C") if P has rights which would—
(a) if the whole of C's share capital were disposed of, entitle P to receive (directly or indirectly and whether at the time of the disposal or later) over 50% of the proceeds of the disposal,
(b) if the whole of C's income were distributed, entitle P to receive (directly or indirectly and whether at the time of the distribution or later) over 50% of the distributed amount, or
(c) in the event of the winding-up of C or in any other circumstances, entitle P to receive (directly or indirectly and whether at the time of the winding-up or other circumstances or later) over 50% of C's assets which would then be available for distribution.

(4) In subsection (3)—
(a) the reference to rights which P has does not include rights which P has as a relevant bank,
(b) in paragraph (a) the reference to C's share capital is to C's share capital excluding any share capital held by relevant banks,
(c) in determining for the purposes of paragraph (b) the percentage of the distributed amount which P would be entitled to receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of the distributed amount at the time of the distribution, and
(d) in determining for the purposes of paragraph (c) the percentage of C's assets which P would be entitled to receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of C's assets at the time of the winding-up or other circumstances.

(5) "Relevant bank" means a person ("RB") who—

(a) carries on banking business which is regulated in the territory in which RB is resident, and

(b) is acting, in the ordinary course of that business, in relation to money lent to C by RB in the ordinary course of that business.

(6) In subsections (3) and (4) references to P being entitled to receive any proceeds, amount or assets include references to P being entitled to secure that the proceeds, amount or assets will be applied (directly or indirectly) for P's benefit.

(7) If two or more persons, taken together, meet the requirement of subsection (2) or (3) for controlling a company, those persons are taken to control the company.

(8) A person ("P") "controls" a company ("C") if P is C's parent undertaking.

(9) "Parent undertaking" is to be read in accordance with Financial Reporting Standard 2 (whether or not P actually prepares, or is required to prepare, consolidated financial statements in accordance with that Standard).

(10) "Financial Reporting Standard 2" means Financial Reporting Standard 2 issued in July 1992 by the Accounting Standards Board, as from time to time modified, amended or revised.

371AC The 40% rule

(1) This section applies to a non-UK resident company ("C") if—

(a) in accordance with section 371AB(7), two persons ("the controllers") control C, and

(b) one of the controllers is UK resident and the other is non-UK resident.

(2) If conditions X and Y are met, C is to be taken to be a CFC (if C would not otherwise be).

(3) Condition X is that the UK resident controller has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

(4) Condition Y is that the non-UK resident controller has interests, rights and powers representing—

(a) at least 40%, but

(b) not more than 55%,

of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

371AD Rights and powers: supplementary provision

(1) Subsection (2) applies for the purpose of—

(a) determining, in accordance with section 371AB, if a person, or two or more persons, control a company, or

(b) determining if condition X or Y in section 371AC is met in relation to two persons who control a company.

(2) There is to be attributed to each person all the rights and powers mentioned in subsection (3) (so far as they would not otherwise be attributed to the person).

(3) The rights and powers referred to in subsection (2) are—
(a) rights and powers which the person ("P") is entitled to acquire at a future date or which P will, at a future date, become entitled to acquire,
(b) rights and powers of other persons so far as they fall within subsection (4),
(c) if P is UK resident, rights and powers of any UK resident person who is connected with P, and
(d) if P is UK resident, rights and powers which would, in accordance with subsection (2), be attributed to a UK resident person ("Q") who is connected with P if Q were P (including rights and powers which would be attributed to Q by virtue of this paragraph).

(4) Rights and powers fall within this subsection so far as they—
(a) are required, or may be required, to be exercised in one or more of the following ways—
(i) on behalf of P,
(ii) under the direction of P, or
(iii) for the benefit of P, and
(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(5) In subsections (3)(b) to (d) and (4) references to a person's rights and powers include references to any rights or powers which the person—
(a) is entitled to acquire at a future date, or
(b) will, at a future date, become entitled to acquire.

(6) In determining for the purposes of this section whether one person is connected with another, section 1122(4) of CTA 2010 (as applied by section 371UB(2)(b)) is to be ignored.

(7) In this section and sections 371AB and 371AC references to—
(a) rights and powers of a person, or
(b) rights and powers which a person is or will become entitled to acquire,

include references to rights and powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

371AE Anti-avoidance

(1) This section applies to a non-UK resident company ("C") which is not a CFC if it is reasonable to suppose that, apart from an arrangement falling within subsection (4), C would be a CFC.

(2) C is to be taken to be a CFC.

(3) The person or persons who it is reasonable to suppose would control C apart from the arrangement—
 (a) are to be taken to control C, and
 (b) are to have attributed to them all interests, rights and powers which it is reasonable to suppose would be attributed to them apart from the arrangement.

(4) An arrangement falls within this subsection if the main purpose, or one of the main purposes, of the arrangement is to secure that C is not a CFC.

CHAPTER 2

THE CFC CHARGE

371BA Charging the CFC charge

(1) The CFC charge is charged in relation to every accounting period of a CFC (see section 371BB), except—
 (a) where an exemption set out in Chapter 3, 4, 5 or 6 applies for an accounting period (subject to section 371BC), or
 (b) as provided for at step 1, 2 or 5 in subsection (2).

(2) Take the following steps to determine how the CFC charge is charged in relation to a CFC's accounting period.

Step 1

In accordance with Chapter 7 (as supplemented by Chapters 8 to 13), determine the CFC's chargeable profits for the accounting period.

If they are nil, the CFC charge is not charged and no further steps are to be taken.

Step 2

In accordance with Chapter 14, determine the persons ("the relevant persons") who have relevant interests in the CFC at any time during the accounting period.

If none of the relevant persons falls within subsection (3), the CFC charge is not charged and no further steps are to be taken.

Step 3

In accordance with Chapter 15, determine the CFC's creditable tax for the accounting period.

Step 4

In accordance with Chapter 16, apportion the CFC's chargeable profits and creditable tax among the relevant persons.

Step 5

Take each relevant person falling within subsection (3) and determine if subsection (4) applies to the company.

If subsection (4) applies to the company then the company is a "chargeable company".

If there are no chargeable companies, the CFC charge is not charged and step 6 is not to be taken.

Step 6

The CFC charge is charged on each chargeable company as follows.

A sum equal to—

(a) corporation tax at the appropriate rate on P% of the CFC's chargeable profits, less

(b) Q% of the CFC's creditable tax,

is charged on the chargeable company as if it were an amount of corporation tax charged on the company for the relevant corporation tax accounting period.

This is subject to Chapter 17.

(3) A relevant person falls within this subsection if the person is a company which is UK resident at a time during the accounting period when it has a relevant interest in the CFC.

(4) This subsection applies to a company ("C") if the total of the following percentages is at least 25%—

(a) the percentage of the CFC's chargeable profits apportioned to C, and

(b) the percentages (if any) of those profits which are apportioned to relevant persons who, at any time during the accounting period, are connected or associated with C.

(5) For the purpose of taking step 6 in subsection (2) in relation to a chargeable company—

"the appropriate rate" means—

(a) the rate of corporation tax applicable to the chargeable company's profits of the relevant corporation tax accounting period on which corporation tax is chargeable (see section 4(1) and (2) of CTA 2010), or

(b) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period,

"P%" means the percentage of the CFC's chargeable profits apportioned to the chargeable company,

"Q%" means the percentage of the CFC's creditable tax apportioned to the chargeable company, and

"the relevant corporation tax accounting period" means—

(a) the chargeable company's accounting period for corporation tax purposes which ends at the same time as the CFC's accounting period, or

(b) if the chargeable company has no accounting period for corporation tax purposes which ends at that time, its accounting period for those purposes during which the CFC's accounting period ends.

371BB What is a CFC's "accounting period"?

(1) This section applies for the purposes of this Part.

(2) An accounting period of a CFC begins—

(a) when the CFC becomes a CFC, or

(b) immediately after the end of the previous accounting period of the CFC, if the CFC is still a CFC.

(3) An accounting period of a CFC comes to an end on the occurrence of any of the following—
   (a) the CFC ceasing to be a CFC,
   (b) the CFC becoming, or ceasing to be, liable to tax in a territory by reason of domicile, residence or place of management,
   (c) the CFC ceasing to have any source of income at all, or
   (d) a company which has a relevant interest in the CFC (see Chapter 14) ceasing to have that interest or ceasing to be within the charge to corporation tax.

(4) Without affecting subsections (2) and (3), sections 10(1)(a) to (d), (i) and (j) and (5), 11(1) and (2) and 12 of CTA 2009 (corporation tax accounting periods) apply as they apply for corporation tax purposes.

(5) Subsection (6) applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC's accounting period is uncertain.

(6) An officer of Revenue and Customs may by notice specify as an accounting period of the CFC such period not exceeding 12 months as the officer considers appropriate.

(7) Subsection (8) applies if after the giving of a notice under subsection (6)—
   (a) further facts come to the knowledge of an officer of Revenue and Customs, and
   (b) as a result of that, it appears to an officer of Revenue and Customs that any accounting period specified in the notice is not the true accounting period.

(8) An officer of Revenue and Customs must by notice amend the notice under subsection (6) so as to specify what appears to the officer to be the true accounting period.

(9) A notice under subsection (6) or (8) must be given to each company which the officer of Revenue and Customs considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the CFC's accounting period in question.

371BC Exemptions not to apply in case of solo consolidation etc

(1) If subsection (2) or (3) applies in relation to a CFC, none of the exemptions set out in Chapters 3 to 6 can apply for the CFC's accounting period in question.

(2) This subsection applies if, at any time during a CFC's accounting period—
   (a) the CFC is a subsidiary undertaking which is the subject of a solo consolidation waiver under section BIPRU 2.1 of the FSA Handbook, and
   (b) the CFC's parent undertaking in relation to that waiver is a UK resident company.

(3) This subsection applies if, at any time during a CFC's accounting period—

(a) the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC,

(b) any fall in the value of those shares would be (wholly or mainly) ignored for the purpose of determining if the UK resident bank meets the requirements of the FSA Handbook in relation to the bank's capital, and

(c) the main purpose, or one of the main purposes, of the UK resident bank in holding the shares is to obtain a tax advantage for itself or any company connected with it.

(4) In this section—

"bank" means a person carrying on banking business, and

"the FSA Handbook" means the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time).

CHAPTER 3

THE LOW PROFITS EXEMPTION

Introduction

371CA Introduction to Chapter

This Chapter sets out an exemption called "the low profits exemption" for the purposes of section 371BA(1)(a).

Applying the low profits exemption by reference to accounting profits

371CB The basic rule

(1) The low profits exemption applies for a CFC's accounting period if subsection (2) or (3) applies.

(2) This subsection applies if the CFC's accounting profits for the accounting period (see section 371CC) are not more than £50,000.

(3) This subsection applies if—

(a) the CFC's accounting profits for the accounting period are not more than £500,000, and

(b) the amount of those profits representing non-trading income is not more than £50,000.

(4) If the accounting period is less than 12 months, the amounts specified in subsections (2) and (3)(a) and (b) are to be reduced proportionately.

371CC What are "accounting profits"? (1)

(1) A CFC's accounting profits for an accounting period are its pre-tax profits for the period.

(2) If financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax profits are to be determined by reference to the amounts disclosed in those statements (subject to subsections (3) and (4)).

(3) Subsection (4) applies if—
(a) the CFC's financial statements for the accounting period (or any aspect of them) are not prepared in accordance with an acceptable accounting practice, or
(b) no financial statements are prepared at all for the CFC for the accounting period within 12 months after the end of that period.

(4) The CFC's pre-tax profits are to be determined by reference to the amounts which would have been disclosed had financial statements for the accounting period been prepared for the CFC in accordance with—
(a) the acceptable accounting practice in accordance with which financial statements for the CFC are normally prepared, or
(b) if paragraph (a) cannot be applied, international accounting standards.

(5) Each of the following is an "acceptable accounting practice"—
(a) international accounting standards,
(b) UK generally accepted accounting practice, and
(c) accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.

(6) In this section references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.

(7) If the CFC's accounting profits (or any amounts included in them) are determined in a currency other than sterling, they are to be translated into their sterling equivalent using the average rate of exchange for the accounting period calculated from daily spot rates.

(8) This section needs to be read with section 371CD.

371CD What are "accounting profits"? (2)

(1) This section applies for the purpose of determining a CFC's accounting profits for an accounting period.

(2) The following are to be ignored in determining the profits—
(a) any dividend or other distribution which is not brought into account in determining the CFC's assumed total profits for the accounting period on the basis that it would be exempt for the purposes of Part 9A of CTA 2009 (company distributions), and
(b) any capital gains or losses.

(3) The profits are to include—
(a) any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary, and
(b) the CFC's share of any income which accrues during the accounting period to a partnership of which the CFC is a partner, as determined by apportioning that income between the partners on a just and reasonable basis.

(4) If there is more than one settlor or beneficiary in relation to a settlement covered by subsection (3)(a), the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

(5) In subsection (3)(b) "partnership" includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership; and "partner" is to be read accordingly.

(6) Part 4 (transfer pricing) applies in relation to the determination of the profits as it applies in relation to the determination of the CFC's assumed taxable total profits for the accounting period.

(7) But subsection (6) is to be ignored if the difference made in the amount of the profits as a result of its application would not be more than £50,000.

371CE Anti-avoidance

(1) The low profits exemption does not apply for an accounting period ("the relevant accounting period") of a CFC ("the relevant CFC") by virtue of section 371CB if condition A, B, C or D is met.

(2) Condition A is that—
  (a) an arrangement is entered into at any time,
  (b) in consequence of the arrangement, the low profits exemption would (apart from this section) apply by virtue of section 371CB for the relevant accounting period, and
  (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies—
    (i) for the relevant accounting period, or
    (ii) for that period and one or more other accounting periods of the relevant CFC.

(3) Condition B is that—
  (a) an arrangement is entered into at any time,
  (b) in consequence of the arrangement, profits are shifted to the relevant CFC from another company,
  (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies for one or more accounting periods of one or more CFCs, and
  (d) the relevant accounting period falls wholly or partly within that accounting period or those accounting periods.

(4) For the purposes of subsection (3)(b) profits are shifted to the relevant CFC from another company if it is reasonable to suppose that apart from the arrangement, and any similar arrangement, the whole or part of the income reflected in the relevant CFC's accounting profits for the relevant accounting period would have been reflected in the other company's profits for any period.

(5) In subsection (4) the reference to the other company's profits for any period are to—

(a) if the company is a CFC, the CFC's accounting profits for any accounting period, or

(b) otherwise, what the company's accounting profits for any period would have been had it been a CFC and the period been an accounting period.

(6) Condition C is that, in determining the relevant CFC's assumed taxable total profits for the relevant accounting period, Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

(7) Condition D is that, at any time during the relevant accounting period, the relevant CFC's business is, wholly or mainly, the provision of UK intermediary services.

(8) For the purposes of subsection (7) the relevant CFC provides "UK intermediary services" if—

(a) a UK resident individual ("the service provider") personally performs, or is under an obligation personally to perform, services in the United Kingdom for a person ("the client"), and

(b) the services are provided not under a contract directly between the service provider and the client but under an arrangement involving the relevant CFC.

Applying the low profits exemption by reference to assumed taxable total profits

371CF The basic rule

(1) The low profits exemption applies for a CFC's accounting period if subsection (2) or (3) applies.

(2) This subsection applies if the CFC's assumed taxable total profits for the accounting period are not more than £50,000.

(3) This subsection applies if—

(a) the CFC's assumed taxable total profits for the accounting period are not more than £500,000, and

(b) the amount of those profits representing non-trading income is not more than £50,000.

(4) If the accounting period is less than 12 months, the amounts specified in subsections (2) and (3)(a) and (b) are to be reduced proportionately.

371CG Anti-avoidance

(1) The low profits exemption does not apply for an accounting period ("the relevant accounting period") of a CFC ("the relevant CFC") by virtue of section 371CF if condition A, B or C is met.

(2) Condition A is that—

(a) an arrangement is entered into at any time,

(b) in consequence of the arrangement, the low profits exemption would (apart from this section) apply by virtue of section 371CF for the relevant accounting period, and

(c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies—
(i) for the relevant accounting period, or
(ii) for that period and one or more other accounting periods of the relevant CFC.

(3) Condition B is that—
(a) an arrangement is entered into at any time,
(b) in consequence of the arrangement, profits are shifted to the relevant CFC from another company,
(c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies for one or more accounting periods of one or more CFCs, and
(d) the relevant accounting period falls wholly or partly within that accounting period or those accounting periods.

(4) For the purposes of subsection (3)(b) profits are shifted to the relevant CFC from another company if it is reasonable to suppose that apart from the arrangement, and any similar arrangement, the whole or part of the income reflected in the relevant CFC's assumed taxable total profits for the relevant accounting period would have been reflected in the other company's profits for any period.

(5) In subsection (4) the reference to the other company's profits for any period are to—
(a) if the company is a CFC, the CFC's assumed taxable total profits for any accounting period, or
(b) otherwise, what the company's assumed taxable total profits for any period would have been had it been a CFC and the period been an accounting period.

(6) Condition C is that, at any time during the relevant accounting period, the relevant CFC's business is, wholly or mainly, the provision of UK intermediary services.

(7) For the purposes of subsection (6) the relevant CFC provides "UK intermediary services" if—
(a) a UK resident individual ("the service provider") personally performs, or is under an obligation personally to perform, services in the United Kingdom for a person ("the client"), and
(b) the services are provided not under a contract directly between the service provider and the client but under an arrangement involving the relevant CFC.

CHAPTER 4

THE LOW PROFIT MARGIN EXEMPTION

371DA Introduction to Chapter

This Chapter sets out an exemption called "the low profit margin exemption" for the purposes of section 371BA(1)(a).

371DB The basic rule

(1) The low profit margin exemption applies for a CFC's accounting period if the CFC's accounting profits for the period are no more than 10% of the CFC's relevant operating expenditure.

(2) In this section references to the CFC's accounting profits for the accounting period are to be read in accordance with sections 371CC and 371CD; but, for this purpose—
(a) section 371CD(3) to (7) is to be ignored, and
(b) the profits are to be determined before any deduction for interest.

(3) The CFC's "relevant operating expenditure" is its operating expenditure brought into account in determining its accounting profits for the accounting period, excluding—
(a) the cost of goods purchased for resale other than goods imported by the CFC into the territory in which it is resident for the accounting period, and
(b) any expenditure which gives rise, directly or indirectly, to income of a person related to the CFC.

CHAPTER 5

THE EXCLUDED TERRITORIES EXEMPTION

371EA Introduction to Chapter

This Chapter sets out an exemption called "the excluded territories exemption" for the purposes of section 371BA(1)(a).

371EB The basic rule

(1) The excluded territories exemption applies for a CFC's accounting period if—
(a) the CFC is resident (see section 371EC) in an excluded territory for the accounting period,
(b) the total of the following amounts is not more than the threshold amount for the accounting period (see section 371ED)—
(i) the CFC's category A income (if any) for the accounting period (see sections 371EE and 371EF),
(ii) the CFC's category B income (if any) for the accounting period (see sections 371EG to 371EI),
(iii) the CFC's category C income (if any) for the accounting period (see section 371EJ), and
(iv) the CFC's category D income (if any) for the accounting period (see section 371EK),
(c) the IP condition is met (see section 371EL), and
(d) the CFC is not, at any time during the accounting period, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.

(2) In this Chapter "excluded territory" means a territory specified as such in regulations made by the HMRC Commissioners.

(3) The HMRC Commissioners may also by regulations—

(a) specify further conditions which must be met, in all cases or only in specified cases, in order for the excluded territories exemption to apply for a CFC's accounting period, or

(b) provide that, in specified cases, the excluded territories exemption is not to apply for a CFC's accounting period even though the conditions set out in subsection (1)(a) to (d) are met,

and, for either of these purposes, the regulations may modify the application of any provision of this Chapter.

(4) If an amount is included in more than one of the categories of income mentioned in subsection (1)(b)(i) to (iv), the amount is to be counted only once in determining if the threshold amount is exceeded.

371EC How to determine the territory in which a CFC is resident

(1) For the purposes of this Chapter the territory in which a CFC is resident for an accounting period is to be determined in accordance with this section; and in this Chapter "the CFC's territory" means that territory as so determined.

(2) The CFC is taken to be resident in the territory determined in accordance with section 371SA.

(3) But section 371SA(1)(b) is to be applied only if, throughout the accounting period, the CFC or persons with interests in the CFC are liable under the law of the territory in question to tax on the CFC's income.

(4) If, as a result of subsection (3), no territory of residence can be determined, the excluded territories exemption cannot apply for the accounting period.

371ED What is "the threshold amount"?

(1) The threshold amount for a CFC's accounting period is—

(a) 10% of the CFC's accounting profits for the accounting period, or

(b) if more, £50,000.

(2) If the accounting period is less than 12 months, the amount specified in subsection (1)(b) is to be reduced proportionately.

(3) In this Chapter references to a CFC's accounting profits for an accounting period are to be read in accordance with sections 371CC and 371CD, but ignoring section 371CD(6) and (7).

371EE Category A income: the basic rule

(1) A CFC's category A income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or reserves) of any relevant income to which subsection (3), (4) or (5) applies.
This is subject to section 371EF.

(2) "Relevant income" means any income—

(a) which is brought into account in determining the CFC's accounting profits for the accounting period, and

(b) which—

(i) arises in the CFC's territory, or

(ii) arises from the operations of a permanent establishment which the CFC has in a territory outside the CFC's territory.

(3) This subsection applies to any relevant income (apart from any dividend or other distribution of a company) so far as it is exempt from tax in the CFC's territory.

(4) This subsection applies to any relevant income so far as the tax which falls to be paid in respect of the relevant income in the CFC's territory is at a reduced rate by virtue of a provision having effect under the law of that territory the purpose of which is (wholly or mainly) to encourage (directly or indirectly) investment in that territory.

(5) This subsection applies to any relevant income if—

(a) any tax falls to be paid in respect of the relevant income in the CFC's territory,

(b) under the law of that territory, the CFC, any person who has an interest in the CFC or any person connected with the CFC is entitled to any repayment of tax or any payment in respect of a credit for tax, and

(c) that repayment or payment—

(i) is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a), but

(ii) is not a form of relief in respect of losses incurred by the CFC.

371EF Category A income: permanent establishments in excluded territories

(1) This section applies if—

(a) a CFC's category A income for an accounting period would include (apart from this section) the gross amount of any relevant income which arises from the operations of a permanent establishment ("PE") which the CFC has in a territory outside the CFC's territory, and

(b) the territory in which PE is established is an excluded territory.

(2) The gross amount of that relevant income is to be included in the CFC's category A income only so far as it would also have been included had the references in section 371EE(3) to (5) to the CFC's territory instead been references to the territory in which PE is established.

371EG Category B income: the basic rule

Take the following steps to determine if a CFC has any category B income for an accounting period and, if it does, the amount of the category B income.

Step 1

Determine if the CFC has any relevant non-local income for the accounting period (subject to section 371EH).

If it does not, the CFC has no category B income and no further steps are to be taken.

Step 2

Determine the amount of tax which is paid in respect of the relevant non-local income in the CFC's territory.

Step 3

Make the relevant deductions from the relevant non-local income (but do not reduce it below nil).

The result is the net relevant non-local income.

Step 4

Determine the amount of the relevant corresponding UK tax.

If the amount of tax determined at step 2 is less than 75% of the relevant corresponding UK tax, the CFC's category B income is the net relevant non-local income.

If it is 75% or more, the CFC has no category B income.

371EH Category B income: permanent establishments in excluded territories

(1) This section applies if—

(a) a CFC's relevant non-local income determined at step 1 in section 371EG would include (apart from this section) any income ("the PE income") received by a permanent establishment ("PE") which the CFC has in a territory outside the CFC's territory, and

(b) the territory in which PE is established is an excluded territory.

(2) The PE income is to be included in the relevant non-local income only if the tax which is paid in respect of the PE income in the territory in which PE is established is less than 75% of the relevant corresponding UK tax.

371EI Category B income: definitions

(1) This section applies for the purposes of sections 371EG and 371EH.

(2) "Relevant non-local income" means the gross amount (that is, the amount before deduction of expenses or reserves) of any non-trading income—

(a) which is brought into account in determining the CFC's accounting profits for the accounting period, and

(b) which is received (directly or indirectly) from—

(i) a person resident outside the CFC's territory, or

(ii) a permanent establishment which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory.

(3) "Relevant deduction", in relation to any relevant non-local income, means a deduction to be made from the income in determining the CFC's assumed total profits for the accounting period.

(4) "The relevant corresponding UK tax" means the amount of corporation tax which, applying the corporation tax assumptions, would be charged in respect of the CFC's assumed taxable total profits for the accounting period.

(5) In determining that amount of corporation tax—

(a) ignore any relief from corporation tax attributable to, as the case may be—

(i) the tax determined at step 2 in section 371EG, or

(ii) the tax mentioned in section 371EH(2),

which would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income, and

(b) deduct from what would otherwise be that amount of corporation tax—

(i) any amount of relevant income tax which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's assumed taxable total profits by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and

(ii) any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's assumed taxable total profits.

(6) In subsection (5)(b)—

(a) in sub-paragraph (i) "relevant income tax" means income tax which the CFC bears by deduction on a payment so far as the payment is included in the CFC's assumed taxable total profits, and

(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

(7) For the purposes of subsections (4) to (6) the CFC's assumed taxable total profits for the accounting period are to be determined on the basis—

(a) that the CFC's assumed total profits for the accounting period are limited to only so much of those profits as represent, as the case may be—

(i) the net relevant non-local income determined at step 3 in section 371EG, or

(ii) the PE income mentioned in section 371EH less any relevant deductions from that income, and

(b) that amounts are to be relieved against the CFC's assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to paragraph (a).

371EJ Category C income

A CFC's category C income for an accounting period is the total of the following amounts—

(a) amounts included in the CFC's accounting profits for the period which fall within section 371CD(3)(a) (whether or not those amounts would have been included in those profits apart from section 371CD(3)(a)), and

(b) amounts included in those profits by virtue only of section 371CD(3)(b)).

371EK Category D income

(1) A CFC's category D income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or reserves) of any income which—

(a) is brought into account in determining the CFC's accounting profits for the accounting period, and

(b) is to be included in the CFC's category D income in accordance with subsection (3) or (4).

(2) Subsection (3) applies if—

(a) income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,

(b) in the CFC's territory, the income is reduced by an amount ("the relevant amount") for tax purposes on the basis that the income is more than what it would have been had the company connected with the CFC not been connected with the CFC, and

(c) there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.

(3) The relevant amount is to be included in the CFC's category D income.

(4) Income is to be included in the CFC's category D income so far as the tax which falls to be paid in respect of the income in the CFC's territory is at a reduced rate by virtue of a ruling or other decision or an arrangement made in relation to the CFC by a governmental authority in that territory.

371EL The IP condition

(1) This section applies for the purposes of section 371EB(1)(c).

(2) The IP condition is met unless—

(a) the CFC's assumed total profits for the accounting period include amounts arising from intellectual property held by the CFC ("the exploited IP"),

(b) all or parts of the exploited IP were—

(i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or

(ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,

(c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and

(d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.

(3) The significance condition is met if—

(a) the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or

(b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they would otherwise have been.

(4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—

(a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or

(b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.

(5) "The relevant period" means the period covering the accounting period and the 6 years before the accounting period.

CHAPTER 6

THE TAX EXEMPTION

371FA Introduction to Chapter

This Chapter sets out an exemption called "the tax exemption" for the purposes of section 371BA(1)(a).

371FB The basic rule

(1) Take the following steps to determine if the tax exemption applies for a CFC's accounting period.

Step 1

Applying section 371SB, determine the territory ("the CFC's territory") in which the CFC is resident for the accounting period.

If no territory of residence can be determined by applying section 371SB, the tax exemption cannot apply and no further steps are to be taken.

Step 2

Determine the amount of tax ("the local tax amount") which is paid in the CFC's territory in respect of the CFC's profits arising in the accounting period (applying section 371FC so far as relevant).

If the local tax amount is determined under designer rate tax provisions (see section 371FD), the tax exemption cannot apply and step 3 is not to be taken.

Step 3

In accordance with section 371FE, determine the amount of the corresponding UK tax for the accounting period.

The tax exemption applies if the local tax amount is at least 75% of the corresponding UK tax.

(2) In this Chapter references to the CFC's profits arising in the accounting period are to its profits ignoring any capital gains or losses.

371FC Reductions to "the local tax amount"

(1) This section applies for the purposes of step 2 in section 371FB(1).

(2) The local tax amount is to be reduced to what it would have been—

(a) had any income, or any income and expenditure (where the income exceeds the expenditure), to which subsection (3) applies not been brought into account in determining the CFC's profits arising in the accounting period in respect of which tax is paid in the CFC's territory, and

(b) had any expenditure to which subsection (4) applies been brought into account in determining those profits.

(3) This subsection applies to any income, or any income and expenditure, of the CFC—

(a) which is brought into account in determining the CFC's profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but

(b) which does not fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.

(4) This subsection applies to any expenditure of the CFC—

(a) which is not brought into account in determining the CFC's profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but

(b) which does fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.

(5) Subsection (6) applies if—

(a) in the CFC's territory any tax falls to be paid by the CFC in respect of the CFC's profits arising in the accounting period,

(b) under the law of that territory, any repayment of tax, or any payment in respect of a credit for tax, is made to a person other than the CFC, and

(c) that repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).

(6) The local tax amount is to be reduced (or further reduced after any reduction under subsection (2)) by the amount of that repayment or payment.

371FD What are "designer rate tax provisions"?

(1) For the purposes of step 2 in section 371FB(1) "designer rate tax provisions" means provisions—

(a) which appear to the HMRC Commissioners to be designed to enable companies to exercise significant control over the amount of tax which they pay, and

(b) which are specified in regulations made by the HMRC Commissioners.

(2) Regulations under subsection (1) may make different provision for different cases or with respect to different territories.

371FE How to determine "the corresponding UK tax"

(1) For the purposes of step 3 in section 371FB(1) "the corresponding UK tax" is the amount of corporation tax which, applying the corporation tax assumptions, would be charged in respect of the CFC's assumed taxable total profits for the accounting period.

(2) In determining that amount of corporation tax—

(a) ignore any relief from corporation tax attributable to the local tax amount which would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income, and

(b) deduct from what would otherwise be that amount of corporation tax—

(i) any amount which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's assumed taxable total profits by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and

(ii) any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's assumed taxable total profits.

(3) In subsection (2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

CHAPTER 7

CHARGEABLE PROFITS OF A CFC: MAIN PROVISION

371GA Determining a CFC's chargeable profits

(1) This Chapter applies for the purpose of determining a CFC's chargeable profits for an accounting period for the purposes of step 1 in section 371BA(2).

(2) The CFC's chargeable profits are its assumed taxable total profits for the accounting period determined on the basis—

(a) that the CFC's assumed total profits for the accounting period are limited to only so much of those profits as fall within Chapters 8 to 12, as adjusted under Chapter 13 (so far as applicable), and

(b) that amounts are to be relieved against the assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to paragraph (a).

(3) Subsection (2) is subject to section 371RB(7) and (8).

CHAPTER 8

CHARGEABLE PROFITS OF A CFC: PROFITS ATTRIBUTABLE TO UK SPFS

371HA The basic rule

(1) Take the following steps to determine the CFC's profits falling within this Chapter ("the Chapter 8 profits") for the purposes of section 371GA(2)(a).

Steps 1 to 3 below are to be taken in accordance with the principles set out in the OECD Report.

Step 1

Identify the assets which the CFC has or has had, and the risks which the CFC bears or has borne, and from which amounts included in the CFC's assumed total profits for the accounting period have arisen.

Step 2

Determine the extent to which the SPFs which are relevant to the economic ownership of the assets identified at step 1, or to the assumption and management of the risks so identified, are UK SPFs.

If none of the SPFs is a UK SPF to any extent, then no profits fall within this Chapter and no further steps are to be taken.

Step 3

Assume that the UK SPFs determined at step 2 are carried out by a permanent establishment which the CFC has in the United Kingdom and, accordingly, determine the extent to which the assets and risks identified at step 1 would be attributed to the permanent establishment.

Step 4

Re-determine the CFC's assumed total profits on the basis that the CFC—

(a) does not hold, or has not held, the assets identified at step 1, and

(b) does not bear, or has not borne, the risks so identified,

so far as they would be attributed to the permanent establishment mentioned at step 3.

"The provisional Chapter 8 profits" are the CFC's assumed total profits so far as they exceed those profits as re-determined at this step.

Step 5

Exclude from the provisional Chapter 8 profits any amounts which are required to be excluded by section 371HB, 371HC, 371HD or 371HE.

The result is the Chapter 8 profits.

(2) For the purposes of this Chapter—

(a) "the OECD Report" means the Report on the Attribution of Profits to Permanent Establishments of the Organisation for Economic Co-operation and Development ("OECD") dated 22 July 2010,

(b) terms used have the same meaning as they have in the OECD Report,

(c) "SPF" means a significant people function or a key entrepreneurial risk-taking function, and

(d) an SPF is a "UK SPF" so far as the SPF is carried out in the United Kingdom—

(i) by a part of the CFC, except where the SPF is carried out as part of a trade by a permanent establishment which the CFC has in the United Kingdom, or

(ii) by a company connected with the CFC.

(3) The Treasury may by regulations amend this Chapter as they consider appropriate to take account of any relevant document published by OECD from time to time.

(4) "Relevant document" means—

(a) a document which replaces, updates or supplements the report mentioned in subsection (2)(a), or

(b) a document which replaces, updates or supplements a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

371HB Exclusion: split between UK SPFs and non-UK SPFs

(1) Subsection (2) applies if—

(a) an asset or risk is identified at step 1 in section 371HA(1),

(b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are partly UK SPFs as determined at step 2 in section 371HA(1), and

(c) as a result of that determination, an amount is included in the provisional Chapter 8 profits.

(2) The amount is to be excluded from the provisional Chapter 8 profits if it is no more than the further amount which would have been added to those profits had step 4 in section 371HA(1) been taken on the basis that the CFC—

(a) does not hold, or has not held, the asset to any extent at all, or

(b) does not bear, or has not borne, the risk to any extent at all.

(3) Subsection (4) applies if—

(a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, identified at step 1 in section 371HA(1), and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.

(4) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

371HC Exclusion: substantial non-tax value

(1) Subsection (2) applies if—
(a) an asset or risk is identified at step 1 in section 371HA(1),
(b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 2 in section 371HA(1), and
(c) as a result of that determination, an amount is included in the provisional Chapter 8 profits.

(2) The amount is to be excluded from the provisional Chapter 8 profits if—
(a) the net economic value to the CFC group which results from the holding of the asset, or the bearing of the risk, exceeds what that value would have been had the asset been held, or the risk been borne, solely by UK resident companies connected with the CFC, and
(b) the relevant non-tax value is a substantial proportion of the excess value mentioned in paragraph (a).

(3) "Net economic value" does not include any value which derives (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of any territory outside the United Kingdom.

(4) "The CFC group" means the CFC taken together with the companies with which it is connected from time to time.

(5) "The relevant non-tax value" is the excess value mentioned in subsection (2)(a) so far as it does not derive (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of the United Kingdom.

(6) Subsection (7) applies if—
(a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, identified at step 1 in section 371HA(1), and
(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.

(7) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

371HD Exclusion: arrangements which independent companies would have entered into

(1) Subsection (2) applies if—
(a) an asset or risk is identified at step 1 in section 371HA(1),

(b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 2 in section 371HA(1),

(c) as a result of that determination, an amount is included in the provisional Chapter 8 profits, and

(d) the UK SPFs are carried out by companies connected with the CFC under arrangements made between the CFC and those companies.

(2) The amount is to be excluded from the provisional Chapter 8 profits if it is reasonable to suppose that, were the SPFs which are UK SPFs not to be carried out by companies connected with the CFC, the CFC would enter into arrangements identical to the arrangements mentioned in subsection (1)(d) with companies not connected with the CFC.

(3) Subsection (4) applies if—

(a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, identified at step 1 in section 371HA(1), and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.

(4) In subsection (1) references to an asset or risk are to be read as references to those assets or risks taken together.

371HE Exclusion: trading income (the basic rule)

(1) All amounts representing trading income are to be excluded from the provisional Chapter 8 profits if the following conditions are met—

(a) the business premises condition (see section 371HF),

(b) the income condition (see section 371HG),

(c) the management expenditure condition (see section 371HH),

(d) the IP condition (see section 371HI), and

(e) the export of goods condition (see section 371HJ).

(2) Amounts representing trading income are also to be excluded from the provisional Chapter 8 profits in accordance with section 371HH(8) (so far as applicable).

(3) This section is subject to section 371HK (anti-avoidance).

371HF Exclusion: trading income (business premises condition)

(1) This section applies for the purposes of section 371HE(1)(a).

(2) The business premises condition is met if, throughout the accounting period, the CFC has in the territory in which it is resident for the accounting period premises—

(a) which are, or are intended to be, occupied and used with a reasonable degree of permanence, and

(b) from which the CFC's operations in that territory are wholly or mainly carried on.

(3) "Premises" means—

(a) an office, shop, factory or other building or part of a building,

(b) a mine, an oil or gas well, a quarry or other place of extraction of natural resources, or

(c) a building site or the site of a construction or installation project, but only if the building work or project has a duration of at least 12 months.

371HG Exclusion: trading income (income condition)

(1) This section applies for the purposes of section 371HE(1)(b).

(2) The income condition is met if no more than 20% of the CFC's relevant trading income derives (directly or indirectly) from—

(a) UK resident persons, or

(b) permanent establishments which non-UK resident companies have in the United Kingdom.

(3) For the purposes of subsection (2) the CFC's "relevant trading income" is its trading income for the accounting period, excluding any income arising from the sale in the United Kingdom of goods produced by the CFC in the territory in which it is resident for the accounting period.

(4) Subsection (5) applies instead of subsection (2) if, at any time during the accounting period, a substantial part of the CFC's business is banking business in relation to which the CFC is regulated in the territory in which it is resident for the accounting period.

(5) The income condition is met if no more than 10% of the CFC's relevant trading income derives (directly or indirectly) from—

(a) UK resident persons, or

(b) permanent establishments which non-UK resident companies have in the United Kingdom.

(6) For the purposes of subsection (5) the CFC's "relevant trading income" is its trading income for the accounting period, excluding interest received from UK resident companies which are connected or associated with the CFC.

(7) Neither subsection (2)(a) nor subsection (5)(a) covers income deriving (directly or indirectly) from a UK resident company if—

(a) the company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and

(b) an expense corresponding to the income is brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

371HH Exclusion: trading income (management expenditure condition)

(1) This section applies for the purposes of section 371HE(1)(c).

(2) The management expenditure condition is met if the UK related management expenditure is not more than 20% of the total related management expenditure.

(3) "The total related management expenditure" is the total of—

(a) the expenditure incurred during the accounting period by the CFC in the employment of the CFC's own staff, or the engagement of other persons related to the CFC, who carry out relevant management functions, and

(b) the expenditure incurred during the accounting period (so far as not reflected in paragraph (a)) by persons related to the CFC in the employment of their own staff who carry out relevant management functions.

(4) "The UK related management expenditure" is the total related management expenditure so far as it is incurred in relation to staff, or to persons related to the CFC, who carry out relevant management functions in the United Kingdom.

(5) A person carries out a "relevant management function" if the person manages any assets or risks identified at step 1 in section 371HA(1).

(6) This covers (for example) a person who formulates plans or makes decisions in relation to—

(a) the creation, control, development or exploitation of such assets, or

(b) the assumption or control of such risks.

(7) Subsection (8) applies if—

(a) the conditions mentioned in section 371HE(1)(a), (b), (d) and (e) are met but the management expenditure condition is not met,

(b) the 50% condition is met in relation to an asset or risk identified at step 1 in section 371HA(1) to which any part of the total related management expenditure relates, and

(c) an amount representing trading income arising from the asset or risk is included in the provisional Chapter 8 profits.

(8) The amount representing trading income is to be excluded from the provisional Chapter 8 profits.

(9) The 50% condition is met in relation to an asset or risk if the UK related management expenditure which relates to the asset or risk is no more than 50% of the total related management expenditure which relates to the asset or risk.

(10) Subsection (11) applies if—

(a) any part of the total related management expenditure relates to a number of assets or a number of risks, and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the amount of the total related management expenditure which relates to each of those assets or risks separately.

(11) Subsections (7) to (9) apply in relation to those assets or risks taken together and references to an asset or risk are to be read accordingly.

371HI Exclusion: trading income (IP condition)

(1) This section applies for the purposes of section 371HE(1)(d).

(2) The IP condition is met unless—
(a) the CFC's assumed total profits for the accounting period include amounts arising from intellectual property held by the CFC ("the exploited IP"),
(b) all or parts of the exploited IP were—
(i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or
(ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
(c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
(d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.

(3) The significance condition is met if—
(a) the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or
(b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they would otherwise have been.

(4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—
(a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or
(b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.

(5) "The relevant period" means the period covering the accounting period and the 6 years before the accounting period.

371HJ Exclusion: trading income (export of goods condition)

(1) This section applies for the purposes of section 371HE(1)(e).

(2) The export of goods condition is met if no more than 20% of the CFC's trading income for the accounting period arises from goods exported from the United Kingdom, excluding goods exported from the United Kingdom to the territory in which the CFC is resident for the accounting period.

371HK Exclusion: trading income (anti-avoidance)

(1) This section applies if—

(a) a condition mentioned in section 371HE(1) is met, or

(b) the 50% condition mentioned in section 371HH is met in relation to an asset or risk (or a number of assets or risks taken together),

but it is reasonable to suppose that that would not be the case apart from an arrangement falling within subsection (3).

(2) The condition is to be taken not to be met or (as the case may be) not to be met in relation to the asset or risk (or the assets or risks taken together).

(3) An arrangement falls within this subsection if—

(a) the arrangement involves the CFC group organising (or reorganising) any part of its business in a particular way, and

(b) the main purpose, or one of the main purposes, of that organising (or reorganising) is to secure that—

(i) one or more of the conditions mentioned in section 371HE(1) are met, or

(ii) the 50% condition mentioned in section 371HH is met in relation to one or more assets or risks.

(4) "The CFC group" means the CFC taken together with the companies with which it is connected from time to time.

CHAPTER 9

CHARGEABLE PROFITS OF A CFC: NON-TRADING FINANCE PROFITS

371IA The basic rule

For the purposes of section 371GA(2)(a) the CFC's profits falling within this Chapter are its non-trading finance profits for the accounting period so far as they fall within any of sections 371IB to 371ID.

371IB UK SPFs

Non-trading finance profits fall within this section so far as amounts representing those profits would have fallen within Chapter 8 but for their exclusion from the provisional Chapter 8 profits at step 5 in section 371HA(1).

371IC Capital investment from the UK

(1) Non-trading finance profits fall within this section so far as they arise from the investment or other use of relevant UK funds.

(2) "Relevant UK funds" means funds deriving (directly or indirectly) from—

(a) an acquisition of shares in the CFC, or any other type of capital contribution to the CFC, made (directly or indirectly) by a UK connected company,

(b) any amounts included in the CFC's chargeable profits for any earlier accounting period,

(c) any amounts which, by virtue of section 174 (transfer pricing: claims by disadvantaged person), are left out of account in determining the CFC's assumed total profits for the accounting period or any earlier accounting period, or

(d) any payment received by the CFC (directly or indirectly) from a UK connected company not covered by paragraphs (a) to (c), other than a payment for the provision of goods or services.

(3) "UK connected company" means a UK resident company connected with the CFC.

371ID UK loans

(1) Non-trading finance profits fall within this section so far as they arise from a loan in relation to which the following condition is met.

(2) The condition is that—

(a) the loan is made by the CFC (directly or indirectly)—

(i) to a UK resident company connected with the CFC, or

(ii) to a non-UK resident company connected with the CFC for the purposes of a permanent establishment which the non-UK resident company has in the United Kingdom, and

(b) it is reasonable to suppose that the main reason, or one of the main reasons, why the CFC made the loan, as opposed to providing the funds by way of a dividend or other distribution, is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

(3) "Loan" includes anything giving rise to a loan relationship and includes part of a loan.

CHAPTER 10

CHARGEABLE PROFITS OF A CFC: TRADING FINANCE PROFITS

371JA The basic rule

(1) Take the following steps to determine the CFC's profits falling within this Chapter ("the Chapter 10 profits") for the purposes of section 371GA(2)(a).

This is subject to sections 371JB and 371JC.

Step 1

Determine if the CFC's assumed total profits for the accounting period include any trading income ("the step 1 trading income") which is trading income by virtue of section 297 (including as applied by section 481) or section 573 or 931W of CTA 2009 (which give precedence to Part 3 of that Act (trading income) over Parts 5 to 7 and 9A (loan relationships etc)).

If they do not, then no profits fall within this Chapter and no further steps are to be taken.

Step 2

Determine if, at any time during the accounting period, the CFC's free capital exceeds what it is reasonable to suppose it would be were the CFC not controlled by any person.

If there is excess free capital, "the step 2 amount" is—

(a) the excess free capital, or

(b) if less, the CFC's free capital so far as it is attributable to UK connected capital contributions.

Step 3

This step applies only if the CFC carries on insurance business at any time during the accounting period; if it does not, go straight to step 4.

Determine if, at any time during the accounting period when the CFC is carrying on insurance business, the CFC's free assets exceeds what it is reasonable to suppose it would be were the CFC not controlled by any person.

If there is excess free assets, "the step 3 amount" is—

(a) the excess free assets, or

(b) if less, the CFC's free assets so far as it is attributable to UK connected capital contributions.

Step 4

If no excesses are determined at steps 2 and 3, no profits fall within this Chapter.

Otherwise, the Chapter 10 profits are the step 1 trading income so far as it is reasonable to suppose that the income arises from the investment or other use of the step 2 amount or the step 3 amount (or both).

(2) For the purposes of step 2 in subsection (1) the CFC's "free capital" is the funding it has for its business so far as the funding does not give rise to debits to be brought into account under Part 5 of CTA 2009 (loan relationships) in respect of the CFC's loan relationships in determining the CFC's assumed total profits for the accounting period.

(3) For the purposes of step 3 in subsection (1) the CFC's "free assets" is the amount by which—

(a) the value of its assets, exceeds

(b) the total of its loan capital and technical provisions.

(4) The "value" of an asset is the amount which it is reasonable to suppose the CFC would obtain for the transfer of all the CFC's rights in respect of the asset from a person not connected with the CFC.

(5) "Technical provision" means—

(a) provision for unearned premiums,

(b) long term business provision,

(c) claims outstanding,

(d) provision for bonuses and rebates,

(e) provision for unexpired risks,

(f) technical provisions for linked liabilities, and

(g) deposits received from reinsurers,

but for the purposes of paragraphs (a) to (f) the amount to be brought into account is only the amount by which the gross amount exceeds the reinsurance amount.

(6) For the purposes of steps 2 and 3 in subsection (1) "UK connected capital contributions" means the acquisition of shares in the CFC, or any other types of capital contributions to the CFC, made (directly or indirectly) by UK resident companies connected with the CFC.

371JB Exclusion: banking business

The HMRC Commissioners may by regulations provide that, if specified conditions are met, this Chapter is not to apply in relation to the step 1 trading income so far as it arises from banking business, or banking business of a specified description, carried on by the CFC.

371JC Exclusion: insurance business

(1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, this Chapter is not to apply in relation to the step 1 trading income so far as it arises from insurance business, or insurance business of a specified description, carried on by the CFC.

(2) In subsection (1) "insurance business" does not include insurance business so far as consisting of the effecting or carrying out of contracts of insurance covered by section 371KA(3), including the investment of premiums received from such contracts.

CHAPTER 11

CHARGEABLE PROFITS OF A CFC: CAPTIVE INSURANCE BUSINESS

371KA The basic rule

(1) This Chapter applies for the purposes of section 371GA(2)(a) if, at any time during the accounting period, the main part of the CFC's business is insurance business.

(2) The CFC's profits falling within this Chapter are any amounts included in its assumed total profits for the accounting period so far as they—

(a) arise from the CFC's insurance business,
(b) fall within subsection (3), and
(c) fall within subsection (7) where applicable.

(3) An amount falls within this subsection if it derives (directly or indirectly) from a contract of insurance entered into with—

(a) a UK resident company connected with the CFC,
(b) a non-UK resident company connected with the CFC acting through a permanent establishment which the non-UK resident company has in the United Kingdom, or
(c) a UK resident person in relation to the provision of goods or services to or by that person (excluding services provided as part of insurance business).

(4) Subsection (3)(a) does not cover a premium paid under a contract of insurance if—

(a) the UK resident company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and

(b) the premium is wholly brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

(5) Subsection (3)(a) and (b) covers a contract of reinsurance only so far as the original contract of insurance would fall within subsection (3)(a) and (b) (ignoring any other contracts of reinsurance which may lie between the original contract of insurance and the contract of reinsurance in question).

(6) Subsection (7) applies in relation to an amount if—

(a) the CFC is resident in an EEA state for the accounting period, and

(b) the amount does not arise from the operations of a permanent establishment which the CFC has in a territory which is not an EEA state.

(7) An amount falls within this subsection so far as it derives (directly or indirectly) from a contract of insurance if—

(a) the insured has no significant UK non-tax reason for entering into the contract of insurance, or

(b) if the contract of insurance is a contract of reinsurance, the original insured has no significant UK non-tax reason for entering into the original contract of insurance.

(8) "UK non-tax reason" means a reason other than one relating to a liability, or potential liability, of any person to tax or duty imposed under the law of the United Kingdom.

CHAPTER 12

CHARGEABLE PROFITS OF A CFC: SOLO CONSOLIDATION

371LA The basic rule

(1) This Chapter applies for the purposes of section 371GA(2)(a) if—

(a) section 371BC(2) or (3) applies in relation to the accounting period, and

(b) the CFC's assumed total profits for the accounting period exceed the CFC's relevant profits amount for the period.

(2) The profits falling within this Chapter is the excess mentioned in subsection (1)(b).

(3) The CFC's "relevant profits amount" for the accounting period is what the relevant profits amount would be for the purposes of Chapter 3A of Part 2 of CTA 2009 (see section 18A(6) of that Act) in relation to the CFC were that amount to be determined as if—

(a) the CFC were a permanent establishment in a territory outside the United Kingdom of the UK resident company mentioned in section 371BC(2)(b) or the UK resident bank mentioned in section 371BC(3), and

(b) the CFC's accounting period were a relevant accounting period of that UK resident company or UK resident bank for the purposes of that Chapter.

CHAPTER 13

CHARGEABLE PROFITS OF A CFC: AMOUNTS TO BE LEFT OUT

371MA Application of Chapter

This Chapter sets out amounts which are to be left out of the CFC's assumed total profits so far as falling within Chapters 8 to 12 ("the Chapters 8 to 12 profits") for the purposes of section 371GA(2)(a).

371MB Profits from property business

(1) This section applies if—

(a) profits are included in the CFC's assumed total profits for the accounting period on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income), and

(b) any of those profits are, or an amount representing any of those profits is, included in the Chapters 8 to 12 profits.

(2) The profits are, or the amount is, to be left out.

371MC Incidental non-trading finance profits: the 5% rule

(1) This section applies if the total of the non-trading finance profits included or represented in the Chapters 8 to 12 profits is no more than 5% of the total of all profits falling within subsection (3) or (4) before deduction of interest or any tax or duty imposed under the law of any territory.

(2) All non-trading finance profits and amounts representing such profits are to be left out.

(3) The profits falling within this subsection are profits included in the CFC's assumed total profits for the accounting period on the basis that they would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income) so far as they are not themselves included or represented in the Chapters 8 to 12 profits.

(4) The profits falling within this subsection are profits included in the CFC's assumed total profits for the accounting period on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income).

371MD Incidental non-trading finance profits: investment of funds held for purposes of trade or property business

(1) Non-trading finance profits, or amounts representing such profits, included in the Chapters 8 to 12 profits are to be left out so far as they arise from the investment of funds held by the CFC for the purposes of a trade—

(a) which is carried on by the CFC, and

(b) no trading income from which is included or represented in the Chapters 8 to 12 profits.

(2) Non-trading finance profits, or amounts representing such profits, included in the Chapters 8 to 12 profits are to be left out so far as they arise from the investment of funds held by the CFC for the purposes of a UK property business or overseas property business carried on by the CFC.

(3) Neither subsection (1) nor subsection (2) applies in relation to funds—

(a) held only or mainly because of a temporary or permanent prohibition on the CFC paying dividends or making other distributions imposed under the law of the territory in which the CFC is incorporated or formed,

(b) held with a view to paying dividends or making other distributions more than 12 months after the end of the accounting period,

(c) held with a view to acquiring shares in any company or making any other type of capital contribution to a company,

(d) held with a view to acquiring, developing or otherwise investing in land more than 12 months after the end of the accounting period,

(e) held only or mainly for contingencies, or

(f) held only or mainly for the purpose of reducing or eliminating a liability of any person to tax or duty imposed under the law of any territory.

371ME Incidental non-trading finance profits: holding companies

(1) Non-trading finance profits, or amounts representing such profits, included in the Chapters 8 to 12 profits are to be left out if—

(a) throughout the accounting period, a substantial part of the CFC's business is the holding of shares or securities in companies which are its 51% subsidiaries, and

(b) the group non-trading finance profits are no more than 5% of the CFC's exempt distribution income.

(2) "The group non-trading finance profits" means the total of—

(a) the CFC's non-trading finance profits for the accounting period, and

(b) if at any time during the accounting period one or more of the CFC's 51% subsidiaries are also CFCs ("CFC subsidiaries"), the total of the CFC subsidiaries' relevant non-trading finance profits.

(3) If a CFC subsidiary has an accounting period ("the relevant period") which is the same as the CFC's accounting period or otherwise falls wholly within the CFC's accounting period, its "relevant non-trading finance profits" are its non-trading finance profits for the relevant period so far as they are left out of its Chapters 8 to 12 profits for the relevant period under this section.

(4) If a CFC subsidiary has an accounting period ("the relevant period") which otherwise overlaps with the CFC's accounting period, its "relevant non-trading finance profits" are a just and reasonable proportion its non-trading finance profits for the relevant period so

far as they are left out of its Chapters 8 to 12 profits for the relevant period under this section.

(5) The CFC's "exempt distribution income" means the total of the dividends and other distributions which are not brought into account in determining the CFC's assumed total profits for the accounting period on the basis that they would be exempt for the purposes of Part 9A of CTA 2009 (company distributions).

CHAPTER 14

RELEVANT INTERESTS IN A CFC

Introduction

371NA Application of Chapter

This Chapter applies for the purpose of determining the persons who have "relevant interests" in a CFC for the purposes of step 2 in section 371BA(2).

371NB Provision about interpretation

(1) This section applies for the purposes of this Chapter.

(2) A person's interest in a company is an "indirect" interest so far as the person has the interest by virtue of having an interest in another company; and references to a "direct" interest in a company are to be read accordingly.

(3) An interest held by a bare trustee or nominee is treated as held by the person or persons for whom the bare trustee or nominee holds the interest.

(4) "Bare trustee" means a person acting as trustee for—
   (a) a person absolutely entitled as against the trustee,
   (b) two or more persons who are so entitled,
   (c) a person who would be so entitled but for being a minor or otherwise lacking legal capacity, or
   (d) two or more persons who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.

(5) Subsection (6) applies in a case not covered by subsection (3) if—
   (a) an interest is held in a fiduciary or representative capacity, and
   (b) there are one or more identifiable beneficiaries.

(6) The interest is taken to be held by that beneficiary or, as the case may be, apportioned between those beneficiaries on a just and reasonable basis.

What is a "relevant interest" in a CFC?

371NC "Relevant interests" of UK resident companies

(1) A UK resident company's interest in a CFC is a "relevant interest", except so far as subsection (2) applies to it.

(2) This subsection applies to the interest so far as it is an indirect interest which the UK resident company has by virtue of having an interest in another UK resident company.

371ND “Relevant interests” of persons related to UK resident companies

(1) This section applies if, by virtue of section 371NC, a UK resident company (“UKRC”) has a relevant interest in a CFC.

(2) A related person’s interest in the CFC is a “relevant interest”, except so far as subsection (4) or (5) applies to it.

(3) “Related person” means a person, other than a UK resident company, who is connected or associated with UKRC.

(4) This subsection applies to the related person’s interest so far as it is an indirect interest which the related person has by virtue of having an interest in a UK resident company or another related person.

(5) This subsection applies to the interest so far as it is the same as UKRC’s relevant interest in the CFC by virtue of UKRC having an interest in the related person.

371NE Other “relevant interests”

(1) This section applies if a person (“P”) has a direct interest in a CFC which is not a relevant interest by virtue of section 371NC or 371ND.

(2) P’s direct interest is a “relevant interest”, except so far as subsection (3) applies to it.

(3) This subsection applies to P’s direct interest so far as it is the same as another person’s relevant interest in the CFC by virtue of the other person having an interest in P.

(4) In subsection (3) the reference to another person’s relevant interest is to another person’s relevant interest by virtue of section 371NC or 371ND.

CHAPTER 15

CREDITABLE TAX OF A CFC

371OA What is “creditable tax”?

(1) For the purposes of step 3 in section 371BA(2) a CFC’s creditable tax for an accounting period is the total of—

(a) the amount of any relief from corporation tax attributable to any foreign tax which, applying the corporation tax assumptions, would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income included or represented in the CFC’s chargeable profits for the accounting period,

(b) any amount of relevant income tax which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC’s chargeable profits for the accounting period by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and

(c) any amount of income tax or corporation tax actually charged in respect of any income included or represented in the CFC's chargeable profits for the accounting period.

(2) In subsection (1)(a) "foreign tax" means—
(a) the local tax amount, or
(b) any tax under the law of a territory outside the United Kingdom other than the territory in which the CFC is resident for the accounting period.

(3) In subsection (1)(b) "relevant income tax" means income tax which the CFC bears by deduction on a payment so far as the payment is included or represented in the CFC's chargeable profits.

(4) In subsection (1)(b) and (c) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

CHAPTER 16

APPORTIONMENT OF A CFC'S CHARGEABLE PROFITS AND CREDITABLE TAX

Introduction

371PA Application of Chapter

This Chapter applies for the purpose of apportioning a CFC's chargeable profits and creditable tax for an accounting period among the relevant persons as required by step 4 in section 371BA(2).

371PB Provision about interpretation

(1) This section applies for the purposes of this Chapter.

(2) Section 371NB applies as it applies for the purposes of Chapter 14.

(3) "Ordinary shares", in relation to any company, means shares of a single class, however described, which is the only class of share issued by the company.

(4) For the purposes of subsection (3)—
(a) "share" includes a fraction of a share, and
(b) shares issued by a company which are paid up to different amounts are not to be taken to be of a single class.

(5) A person ("P") holds ordinary shares in the CFC "indirectly" if P directly holds ordinary shares in a company which is share-linked to the CFC.

(6) A company is "share-linked" to the CFC if it has an interest in the CFC only by virtue of it holding directly—
(a) ordinary shares in the CFC, or
(b) ordinary shares in another company which is share-linked to the CFC (whether by virtue of paragraph (a) or this paragraph),

and "share-linked company" means a company which is share-linked to the CFC.

How are the apportionments to be made?

371PC The basic rules

(1) If conditions X to Z are met, the CFC's chargeable profits and creditable tax are to be apportioned among the relevant persons in accordance with section 371PD.

(2) If not, the percentage of the chargeable profits and the percentage of the creditable tax to be apportioned to each relevant persons is to be determined on a just and reasonable basis.

(3) Condition X is that the relevant persons all have their relevant interests by virtue only of their holding, directly or indirectly, ordinary shares in the CFC.

(4) Condition Y is that each relevant person meets the requirement that the person is either—
  (a) UK resident throughout the accounting period, or
  (b) non-UK resident throughout the accounting period.

(5) Condition Z is that no company which has an intermediate interest in the CFC at any time in the accounting period has that interest otherwise than by virtue of holding, directly or indirectly, ordinary shares in the CFC.

(6) A company ("C") has an "intermediate interest" in the CFC if—
  (a) C has an interest in the CFC, and
  (b) one or more of the relevant persons have relevant interests in the CFC by virtue of having an interest in C.

371PD Apportionments to be made in proportion to shareholding

(1) If conditions X to Z in section 371PC are met, apply subsections (2) and (3) to each relevant person.

(2) Determine the percentage ("P%") of the issued ordinary shares in the CFC represented by the relevant person's relevant interest.

(3) P% of the CFC's chargeable profits and P% of the CFC's creditable tax is then apportioned to the relevant person.

(4) This section is supplemented by sections 371PE and 371PF.

371PE Indirect shareholdings

(1) This section applies to the relevant interest of a relevant person ("R") so far as R has that interest by virtue of holding, indirectly, ordinary shares in the CFC ("the relevant shares").

(2) The percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it) is given by the following formula—

$$P \times S$$

where—

P is the product of the appropriate fractions of R and each of the share-linked companies through which R indirectly holds the relevant shares, other than the share-linked company which directly holds the relevant shares, and

S is the percentage of issued ordinary shares in the CFC which the relevant shares represent.

(3) "The appropriate fraction", in relation to any person who directly holds ordinary shares in a share-linked company, means that fraction of the issued ordinary shares in the share-linked company which the holding represents.

(4) If R has different indirect holdings of shares in the CFC (as in the case where different shares are held through different share-linked companies)—

(a) apply subsection (2) separately in relation to each holding (reading references to the relevant shares accordingly), and

(b) then add the separate results together to give the total percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it).

371PF Variable shareholdings

(1) This section applies if the percentage of the issued ordinary shares in the CFC represented by a relevant person's relevant interest varies during the accounting period.

(2) That percentage is taken to be the percentage equal to the sum of the relevant percentages for each holding period.

(3) "Holding period" means a part of the accounting period during which the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest remains the same.

(4) "Relevant percentage", in relation to a holding period, means the percentage given by the following formula—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest during the holding period,

H is the number of days in the holding period, and

A is the number of days in the accounting period.

CHAPTER 17

LOAN RELATIONSHIPS WITH CONNECTED COMPANIES

371QA Introduction to Chapter

(1) This Chapter provides for the adjustment in certain cases of a CFC's chargeable profits and creditable tax for an accounting period for the purpose of determining the sum charged on a chargeable company at step 6 in section 371BA(2) in relation to the accounting period.

(2) This Chapter does not affect P% or Q% as defined in section 371BA(5) in relation to the chargeable company.

(3) Terms used in this Chapter have the same meaning as they have in Part 5 of CTA 2009 (loan relationships), except where otherwise indicated.

(4) In this Chapter references to a loan relationship include a part of a loan relationship.

371QB The basic rule

(1) This section applies if—

(a) the CFC's assumed total profits for the accounting period include qualifying loan relationship profits (see section 371QC),

(b) the business premises condition set out in section 371HF is met, and

(c) the chargeable company makes a claim to an officer of Revenue and Customs for this section to apply.

(2) The sum charged on the chargeable company (but no other chargeable company) is to be determined on the following basis—

(a) the CFC's chargeable profits are to be re-determined as if section 371GA had effect with the modification set out in subsection (3), and

(b) the CFC's creditable tax is to be re-determined by reference to the re-determined chargeable profits.

(3) The modification referred to in subsection (2)(a) is that for paragraph (a) of subsection (2) of section 371GA there is substituted—

"(a) that the CFC's assumed total profits for the accounting period are limited to—

(i) 25% of the CFC's qualifying loan relationship profits, and

(ii) so much of the assumed total profits which are not qualifying loan relationship profits as fall within Chapters 8 to 12, as adjusted under Chapter 13 (so far as applicable), and".

(4) In the paragraph (a) set out in subsection (3) references to the CFC's "qualifying loan relationship profits" are to be read in accordance with section 371QC.

371QC What are "qualifying loan relationship profits"?

Take the following steps to determine the CFC's qualifying loan relationship profits.

Step 1

Determine the credits from the CFC's qualifying loan relationships (see section 371QD) which are brought into account in determining the CFC's non-trading finance profits for the accounting period.

The result is "the step 1 credits".

Step 2

Leave out from the step 1 credits any credits so far as arising from the investment of funds held by the CFC as mentioned in section 371MD(1) or (2) (subject to section 371MD(3)).

The result is "the step 2 credits".

Step 3

Determine the credits (so far as not reflected in the step 1 credits) and debits which are brought into account in determining the CFC's non-trading finance profits for the accounting period under Part 5 of CTA 2009 (including by virtue of section 574 of that Act) so far as they—

(a) are from any derivative contract or similar arrangement entered into by the CFC as a hedge of risk in connection with any of the CFC's qualifying loan relationships, and

(b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 2 credits and if the debits exceed the credits subtract the deficit from the step 2 credits.

The result is "the step 3 credits".

Step 4

Determine the debits from the CFC's loan relationships (so far as not reflected in the step 3 credits) which are brought into account in determining the CFC's non-trading finance profits for the accounting period (ignoring section 574 of CTA 2009).

Subtract a just and reasonable proportion of them from the step 3 credits to give the CFC's qualifying loan relationship profits.

371QD What is a "qualifying loan relationship"?

(1) "Qualifying loan relationship" means a loan relationship of the CFC—

(a) in relation to which the creditor is the CFC,

(b) in relation to which the ultimate debtor is a company connected with the CFC, and

(c) which is not prevented from being a qualifying loan relationship by any of subsections (4) to (9).

(2) "The ultimate debtor", in relation to a loan relationship of the CFC, means the debtor in relation to the loan relationship, unless subsection (3) applies.

(3) If—

(a) the loan in question is made and used solely for the purpose of funding (directly or indirectly) a loan to a person ("P") other than the debtor or the CFC,

(b) the loan to P is not made and used solely for the purpose of funding (directly or indirectly) a loan to any other person, and

(c) the loan to P gives rise to a loan relationship in relation to which P is the debtor,

the "ultimate debtor" is P.

(4) If the ultimate debtor in relation to a loan relationship of the CFC is a non-UK resident company, the loan relationship cannot be a qualifying loan relationship so long as some or all of the company's debits—

(a) are being brought into account for the purposes of Chapter 4 of Part 2 of CTA 2009 (UK permanent establishments of non-

UK resident companies) in determining the company's profits which are attributable to a permanent establishment which the company has in the United Kingdom, or

(b) are being brought into account for the purposes of Part 3 of ITTOIA 2005 (property income) in determining the company's profits of a UK property business.

(5) If the ultimate debtor in relation to a loan relationship of the CFC is a UK resident company, the loan relationship can be a qualifying loan relationship only so long as—

(a) an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) is in effect in relation to the company, and

(b) all the company's debits are being brought into account for the purpose of determining exemption adjustments in relation to the company under that section.

(6) A loan relationship of the CFC cannot be a qualifying loan relationship so long as some or all of the debits of the company which is the ultimate debtor—

(a) are being brought into account under section 297 of CTA 2009 (trading loan relationships) for corporation tax purposes, or

(b) would be brought into account under that section for those purposes were the company a UK resident company within the charge to corporation tax.

(7) If the ultimate debtor in relation to a loan relationship of the CFC is itself a CFC, the loan relationship cannot be a qualifying loan relationship so long as—

(a) some or all of the company's debits are relevant to the application of Chapter 3 or Chapters 8 to 12, and

(b) as a result of that, the CFC charge is not being charged in relation to the company's accounting periods or any sums charged are less than what they would otherwise have been.

(8) In subsections (4) to (7) references to the debits of the company which is the ultimate debtor in relation to a loan relationship of the CFC are references to its debits from, as the case may be—

(a) that loan relationship, or

(b) the loan relationship mentioned in subsection (3)(c).

(9) A loan relationship cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor in relation to the loan relationship to provide (directly or indirectly) funding for a loan to another person.

(10) The HMRC Commissioners may by regulations amend this section so as to amend the definition of "qualifying loan relationship".

CHAPTER 18

ASSUMED TAXABLE TOTAL PROFITS, ASSUMED TOTAL PROFITS AND THE CORPORATION TAX ASSUMPTIONS

Overview

371RA Overview of Chapter

This Chapter explains the concepts of "assumed taxable total profits" and "assumed total profits" (see section 371RB) and "the corporation tax assumptions" (see section 371RC) which are referred to in this Part.

"Assumed taxable total profits" and "assumed total profits"

371RB What are "assumed taxable total profits" and "assumed total profits"?

(1) For the purposes of this Part a CFC's "assumed taxable total profits" for an accounting period are what, applying the corporation tax assumptions, would be the CFC's taxable total profits of the accounting period for corporation tax purposes.

(2) "Taxable total profits" has the meaning given by section 4(2) of CTA 2010 (calculation of taxable total profits).

(3) But, for this purpose, in section 4(3) of CTA 2010—
  (a) step 1 is to be applied subject to subsections (4) to (6) below, and
  (b) step 2 is to be ignored.

(4) Any income which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary is to be added to the income determined at step 1.

(5) If there is more than one settlor or beneficiary in relation to the settlement, the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

(6) If by virtue of subsection (4) any income ("the settlement income") is added to the income determined at step 1, any dividend or other distribution which derives from the settlement income is to be excluded from the income determined at step 1.

(7) Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in—
  (a) the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and
  (b) the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.

(8) If the CFC charge is charged in relation to the beneficiary's accounting period, the income is not to be included in the settlor's chargeable profits.

(9) For the purposes of this Part a CFC's "assumed total profits" for an accounting period are its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.

"The corporation tax assumptions"

371RC What are "the corporation tax assumptions"?

(1) In this Part "the corporation tax assumptions" means the assumptions set out in sections 371RD to 371RM.

(2) The corporation tax assumptions are to be applied in determining the following for an accounting period ("the relevant accounting period") of a CFC—

(a) the CFC's assumed taxable total profits in accordance with section 371RB(1),

(b) the relevant corresponding UK tax in accordance with section 371EI(4) to (7),

(c) the corresponding UK tax in accordance with section 371FE, and

(d) the CFC's creditable tax in accordance with Chapter 15.

371RD UK residence etc

(1) Assume—

(a) that the CFC is UK resident throughout the relevant accounting period,

(b) if the relevant accounting period is not the CFC's first accounting period, that the CFC has been UK resident from the beginning of the CFC's first accounting period, and

(c) except where the CFC ceases to be a CFC at the end of the relevant accounting period, that the CFC will continue to be UK resident until it ceases to be a CFC,

and that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods (as determined in accordance with section 371BB) are accounting periods for corporation tax purposes, accordingly.

(2) Subsection (1)—

(a) does not require it to be assumed that there is any change in the place or places at which the CFC carries on its activities, and

(b) requires (in particular) that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (exemption for profits from securities free of tax to residents abroad).

(3) If the CFC is (actually) UK resident immediately before the beginning of its first accounting period, assume that its UK residence from the beginning of that accounting period (as assumed in accordance with subsection (1)) is not continuous with its (actual) UK residence before the beginning of that accounting period.

(4) Except where the relevant accounting period is the CFC's first accounting period, assume that a determination of the CFC's assumed taxable total profits has been made for all previous accounting periods back to (and including) the CFC's first accounting period.

(5) Subsection (4) applies (in particular) for the purpose of applying any relief which is relevant to two or more accounting periods.

(6) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

371RE Close company

Assume that the CFC is not a close company.

371RF Claims and elections

(1) In relation to any relief under the Corporation Tax Acts which is dependent upon the making of a claim or election, assume the CFC—
  (a) to have made that claim or election which would give the maximum amount of relief, and
  (b) to have made that claim or election within any applicable time limit.

(2) Subsection (1) does not cover a claim or election under—
  (a) section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
  (b) section 1275 of CTA 2009 (relief for unremittable income), or
  (c) section 9A of CTA 2010 (designated currency of a UK resident investment company).

371RG Disapplication of assumption in section 371RF(1)

(1) This section applies if a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed—
  (a) not to have made for the relevant accounting period a specified claim or election otherwise covered by section 371RF(1),
  (b) to have made for the relevant accounting period a specified claim or election (other than one under section 18A of CTA 2009 or section 9A of CTA 2010), being different from one assumed by section 371RF(1) but being one which (subject to compliance with any applicable time limit) could have been made by a company within the charge to corporation tax, or
  (c) to have disclaimed or required the postponement, in whole or in part, of a specified allowance for the relevant accounting period if (subject to compliance with any applicable time limit) a company within the charge to corporation tax could have disclaimed the allowance or required such a postponement (as the case may be).

(2) In determining for the purposes of section 371GA(2) the CFC's assumed total profits and the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010—
  (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  (b) the assumption set out in section 371RF(1) is to be disapplied to the extent necessary as a consequence.

(3) In determining the CFC's creditable tax—
  (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  (b) the assumption set out in section 371RF(1) is to be disapplied to the extent necessary as a consequence.

(4) A notice under subsection (1)—
(a) may be given only by a company or companies determined under subsection (5) or (6), and
(b) must be given—
(i) within 20 months after the end of the relevant accounting period, or
(ii) within such longer period as an officer of Revenue and Customs may allow.

(5) A company may give a notice if—
(a) the company would be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period, and
(b) the percentage of the CFC's chargeable profits which would be apportioned to the company would represent more than half of X%.

(6) Two or more companies may together give a notice if—
(a) the companies would all be chargeable companies were the CFC charge to be charged in relation to the relevant accounting period, and
(b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, would represent more than half of X%.

(7) In subsections (5) and (6) "X%" means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies were the CFC charge to be charged in relation to the accounting period.

371RH Elections under section 9A of CTA 2010

(1) This section applies if—
(a) during the relevant accounting period or any earlier accounting period of the CFC, a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made an election under section 9A of CTA 2010 (designated currency of a UK resident investment company) in the form specified in the notice, and
(b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make an election under that section in the form specified in the notice (see, in particular, section 9A(2)).

(2) Assume—
(a) that an election under section 9A of CTA 2010 has been made by the CFC in the form specified in the notice at the time in question, and
(b) that, accordingly, sections 9A and 9B of that Act apply to determine the effect (if any) of that election.

(3) A notice under subsection (1) may be given only by a company or companies determined under subsection (4) or (5).

(4) A company may give a notice if—

(a) the company would be likely to be a chargeable company in relation to the applicable accounting period were the CFC charge to be charged in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company would represent more than half of X%.

(5) Two or more companies may together give a notice if—

(a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were the CFC charge to be charged in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, would represent more than half of X%.

(6) In subsections (4) and (5) (and this subsection)—

"the applicable accounting period" means the accounting period of the CFC during which the notice under subsection (1) is given, and

"X%" means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies were the CFC charge to be charged in relation to the applicable accounting period.

371RI Group relief etc

(1) Assume that the CFC is neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.

(2) Subsection (3) applies if—

(a) under Part 5 of CTA 2010 (group relief) the CFC actually surrenders any relief which is allowed to another company by way of group relief, but

(b) applying the corporation tax assumptions apart from subsection (3), the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period.

(3) Assume that the relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period.

371RJ Capital allowances

(1) This section applies if, before the CFC's first accounting period, the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade.

(2) For the purposes of Part 2 of CAA 2001 (plant and machinery allowances) assume that the plant or machinery—

(a) was provided for purposes wholly other than those of the trade, and

(b) was not brought into use for the purposes of the trade until the beginning of the CFC's first accounting period,

and that section 13 of CAA 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies accordingly.

(3) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

(4) This section is to be read as if it were contained in Part 2 of CAA 2001.

371RK Unremittable overseas income

(1) For the purposes of Part 18 of CTA 2009 (unremittable overseas income) assume that in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.

(2) "The relevant territories" means—
  (a) the United Kingdom,
  (b) the territory in which the CFC is taken to be resident for the relevant accounting period as determined under Chapter 19, and
  (c) any other territory in which the CFC is in fact resident at any time during the relevant accounting period.

371RL Tax advantages

(1) This section applies if there is an arrangement or other conduct a purpose of which is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 by obtaining by any means what would, applying the corporation tax assumptions apart from this section, be a tax advantage within section 1139(2)(a) to (d) of that Act.

(2) So far as they would not otherwise do so, the Corporation Tax Acts are to be assumed to apply in relation to the arrangement or other conduct in the same way as they would apply were the purpose of obtaining a tax advantage within section 1139(2)(da) of CTA 2010 the purpose of obtaining an actual tax advantage within section 1139(2)(a) to (d) of that Act by the means in question.

371RM Double taxation relief: counteraction notices

(1) This section applies if it is reasonable to suppose that, applying the corporation tax assumptions apart from this section, each of conditions A to D of section 82 (double taxation relief: conditions to be met for giving of counteraction notice) would or might be met in relation to the CFC in relation to the relevant accounting period.

(2) Assume that such adjustments are to be made as are necessary for counteracting what, applying the corporation tax assumptions apart from this section, would be the effects of the scheme or arrangement in question in the relevant accounting period that would be referable to the purpose referred to in condition B of section 82.

CHAPTER 19

RESIDENCE OF CFCS

371SA The basic rule

(1) For the purposes of this Part a CFC is taken to be resident for an accounting period ("the relevant accounting period") in—
  (a) the territory determined by applying section 371SB, or
  (b) if no territory can be determined by applying that section—
    (i) if subsection (2) applies, the territory in which the CFC is taken to be resident under the double taxation arrangements in question, or
    (ii) otherwise, the territory in which the CFC is incorporated or formed.

(2) This subsection applies if the CFC is incorporated or formed in the United Kingdom but is taken to be non-UK resident by virtue of section 18 of CTA 2009 (companies treated as non-UK resident under double taxation arrangements).

(3) This section is subject to section 371EC and step 1 in section 371FB(1).

371SB How to determine the territory in which the CFC is resident

(1) The CFC is taken to be resident in the territory under the law of which, throughout the relevant accounting period, the CFC is liable to tax by reason of domicile, residence or place of management.

(2) If there are two or more territories (each of which is called an "eligible territory") falling within subsection (1), the CFC is taken to be resident in only one of the eligible territories.

(3) To determine that territory, go through the following subsections.
If two or more subsections apply, the earlier or earliest subsection takes precedence.

(4) If an election or designation under subsection (8) or (9) has effect for the relevant accounting period by virtue of section 371SC(8)(b), the CFC is taken to be resident in the eligible territory which is the subject of the election or designation.

(5) If, throughout the relevant accounting period, the CFC's place of effective management is situated in one of the eligible territories only, the CFC is taken to be resident in that territory.

(6) If—
  (a) throughout the relevant accounting period, the CFC's place of effective management is situated in two or more of the eligible territories, and
  (b) immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of those eligible territories,

the CFC is taken to be resident in the territory in which over 50% of the amount of the CFC's assets is situated.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

(7) If, immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of the eligible territories, the CFC is taken to be resident in that territory.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

(8) If, in accordance with section 371SC(1), an election specifying an eligible territory is made, the CFC is taken to be resident in that territory.

(9) If an officer of Revenue and Customs designates an eligible territory on a just and reasonable basis (see section 371SC(5) to (7)), the CFC is taken to be resident in that territory.

371SC Elections and designations about residence

(1) An election under section 371SB(8)—

(a) may be made only by a company or companies determined under subsection (2) or (3),

(b) must be made by notice to an officer of Revenue and Customs,

(c) must be made no later than 12 months after the end of the relevant accounting period,

(d) must state, in relation to each company making the election, the percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to the company were the CFC charge to be charged in relation to the relevant accounting period,

(e) must be signed on behalf of each company making the election, and

(f) is irrevocable.

(2) A company may make an election if it is likely that, were the CFC charge to be charged in relation to the relevant accounting period, the company would be a chargeable company whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would represent more than half of X%.

(3) Two or more companies may together make an election if it is likely that, were the CFC charge to be charged in relation to the relevant accounting period, the companies would all be chargeable companies whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would, taken together, represent more than half of X%.

(4) In subsections (2) and (3) "X%" means the total percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to chargeable companies were the CFC charge to be charged in relation to the relevant accounting period.

(5) A designation under section 371SB(9) is irrevocable.

(6) An officer of Revenue and Customs must give notice of a designation to each company which the officer considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.

(7) The notice must specify—
(a) the date on which the designation was made,
(b) the CFC's name,
(c) the relevant accounting period, and
(d) the territory designated.

(8) An election or designation has effect in relation to—
(a) the relevant accounting period, and
(b) each successive accounting period of the CFC until subsection (9) applies to an accounting period,
regardless of any change in the persons who have interests in the CFC or any change in those interests.

(9) This subsection applies to an accounting period ("the later period") if—
(a) one or more of the territories which were eligible territories in relation to the relevant accounting period does not fall within section 371SB(1) in relation to the later period, or
(b) some other territory also falls within section 371SB(1) in relation to the later period.

CHAPTER 20

MANAGEMENT

371TA Introduction to Chapter

(1) The HMRC Commissioners are responsible for the management of the CFC charge, including the collection of sums charged.

(2) In this Chapter—
"closure notice" means a notice under paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry and statement of conclusions),
"company tax return" means a return required to be made under that Schedule,
"discovery assessment" means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including by virtue of paragraph 52 of that Schedule), and
"the Taxes Acts" has the same meaning as in TMA 1970.

371TB Application of the Taxes Acts to the CFC charge

(1) The provision of step 6 in section 371BA(2) relating to the charging of a sum as if it were an amount of corporation tax is to be taken as applying all enactments applying generally to corporation tax.

(2) This is subject to—
(a) any provisions of the Taxes Acts, and
(b) any necessary modifications.

(3) The enactments referred to in subsection (1) include—

(a) those relating to returns of information and the supply of accounts, statements and reports,

(b) those relating to the assessing, collecting and receiving of corporation tax,

(c) those conferring a right of appeal, and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(4) In particular, TMA 1970 is to have effect as if—

(a) any reference to corporation tax included a reference to a sum charged at step 6 in section 371BA(2) as if it were an amount of corporation tax, and

(b) any reference to profits of a company included, in the case of a chargeable company in relation to a CFC's accounting period, references to the percentage of the CFC's chargeable profts in respect of which the company is charged at step 6 in section 371BA(2).

(5) Nothing in—

(a) paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns), or

(b) Schedule 1A to TMA 1970 (claims or elections not included in returns),

applies to an election under section 371SB(8).

371TC Just and reasonable apportionments

(1) This section applies if—

(a) an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with section 371PC(2), and

(b) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return.

(2) An officer of Revenue and Customs may determine that another basis is to be used for the apportionment; and matters are then to proceed as if that were the only basis allowed by the Taxes Acts.

(3) The officer's determination may be questioned on an appeal against an amendment of the company's tax return made under paragraph 30 or 34 of Schedule 18 to FA 1998.

(4) But it may be questioned only on the ground that the basis of apportionment determined by the officer is not just and reasonable.

371TD Relief against sum charged

(1) Subsection (2) applies if (apart from subsection (2)) a chargeable company in relation to a CFC's accounting period is entitled, or on the making of a claim would be entitled, to a deduction in respect of a relevant allowance for the relevant corporation tax accounting period.

(2) The company may make a claim under this subsection for relief in respect of the relevant allowance.

(3) If the company makes a claim, the relief is given by setting off the relevant sum against the sum charged on the company at step 6 in section 371BA(2).

(4) "The relevant sum" is the sum equal to corporation tax at the appropriate rate on so much of the relevant allowance as is specified in the claim.

(5) So much of the relevant allowance as is specified in the claim is to be taken for the purposes of the Tax Acts as having been allowed as a deduction in accordance with the appropriate provision of those Acts.

(6) No other relief is available against a sum charged on a company at step 6 in section 371BA(2).

(7) In this section—
   (a) "the appropriate rate" and "the relevant corporation tax accounting period" have the meaning given by section 371BA(5), and
   (b) "relevant allowance" means—
      (i) any loss to which section 37 or 62(1) to (3) of CTA 2010 applies,
      (ii) any qualifying charitable donation,
      (iii) any expenses of management to which section 1219(1) of CTA 2009 applies,
      (iv) any expenses deduction under section 76(1) of ICTA,
      (v) any excess to which section 260(3) of CAA 2001 applies,
      (vi) any amount available to the company by way of group relief, or
      (vii) any non-trading deficit on the company's loan relationships.

371TE Appeals affecting more than one person

(1) This section applies if—
   (a) a relevant appeal involves any question concerning the application of this Part in relation to a particular person, and
   (b) the resolution of that question is likely to affect the liability under this Part of any other person in relation to the CFC concerned.

(2) Each of the following is a "relevant appeal"—
   (a) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company tax return, and
   (b) an appeal under paragraph 48 of that Schedule against a discovery assessment.

(3) The appeal is to be conducted as follows.

(4) Each of the persons whose liability under this Part is likely to be affected by the resolution of the question is entitled to be a party to the proceedings.

(5) The tribunal must determine the question separately from any other questions in the proceedings.

(6) The tribunal's determination on the question is to have effect as if made in an appeal to which each of those persons was a party.

371TF Recovery of sum charged from other UK resident companies

(1) This section applies if a sum charged on a company ("the defaulting company") at step 6 in section 371BA(2) as if it were an amount of corporation tax is not fully paid before the date on which it is due and payable in accordance with the Taxes Acts.

(2) An officer of Revenue and Customs may give a notice of liability on another UK resident company which holds or has held (directly or indirectly) the whole or any part of the same interest in the CFC concerned as is or was held by the defaulting company.

(3) If such a notice is given to a company ("the responsible company"), the following are payable by the responsible company—

(a) the whole or, as the case may be, the corresponding part of the sum charged so far as it is unpaid as at the time the notice is given,

(b) the whole or, as the case may be, the corresponding part of any unpaid interest due on the sum charged as at the time the notice is given, and

(c) any interest accruing on the sum charged after the notice is given so far as referable to the sum payable by the responsible company under paragraph (a).

(4) Subsection (5) applies if any sum payable by the responsible company under subsection (3) is not fully paid by the end of the period of 3 months starting with the date on which the notice is given.

(5) Without affecting the right of recovery from the responsible company, the outstanding amount may be recovered from the defaulting company.

CHAPTER 21

SUPPLEMENTARY PROVISION

371UA Definitions

In this Part—

"accounting period", in relation to a CFC, is to be read in accordance with section 371BB,

"arrangement" includes—

(a) any agreement, scheme, transaction or understanding (whether or not legally enforceable), and

(b) a series of arrangements,

"assumed taxable total profits", in relation to a CFC, is to be read in accordance with section 371RB(1) to (6),

"assumed total profits", in relation to a CFC, is to be read in accordance with section 371RB(9),

"banking business" means the business of—

(a) banking, deposit-taking, money-lending or debt-factoring, or

(b) any activity similar to an activity falling within paragraph (a),

"CFC" is to be read in accordance with section 371AA(2),

"the CFC charge" is to be read in accordance with section 371AA(1),

"chargeable company", in relation to a CFC's accounting period, has the meaning given at step 5 in section 371BA(2),

"chargeable profits", in relation to a CFC, is to be read in accordance with section 371GA,

"company" is to be read subject to section 371UC,

"contract of insurance" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

"control" is to be read in accordance with sections 371AB to 371AE,

"the corporation tax assumptions" is to be read in accordance with section 371RC,

"creditable tax", in relation to a CFC, is to be read in accordance with section 371OA,

"the HMRC Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"insurance business" means the business of effecting or carrying out of contracts of insurance, including the investment of premiums received,

"intellectual property" means—

(a) any patent, trade mark, registered design, copyright or design right, or

(b) any licence or other right in relation to anything falling within paragraph (a),

"interest", as in an interest in a company, is to be read in accordance with section 371UD,

"the local tax amount", in relation to a CFC, means the amount of tax determined at step 2 in section 371FB(1),

"non-trading finance profits", in relation to a CFC, means any amount included in the CFC's assumed total profits for the accounting period in question on the basis that the amount would be chargeable to corporation tax under—

(a) section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships) (including as applied by sections 481 and 574 of that Act), or

(b) Part 9A of that Act (company distributions),

"non-trading income" means income which is not trading income,

"tax advantage" has the meaning given by section 1139 of CTA 2010, and

"trading income", in relation to a CFC, means income brought into account in determining the CFC's assumed total profits for the accounting period in question on the basis that it would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income).

371UB Connected persons etc

(1) This section applies for the purposes of this Part.

(2) The following provisions of CTA 2010 apply—
  (a) section 882(2) to (7) ("associated" persons), and
  (b) section 1122 ("connected" persons).

(3) A person is "related" to a CFC if—
  (a) the person is connected or associated with the CFC,
  (b) at least 25% of the CFC's chargeable profits would be apportioned to the person at step 4 in section 371BA(2) were that step required to be taken in relation to the accounting period in question, or
  (c) if the CFC is a CFC by virtue of section 371AC, the person is connected or associated with either or both of the controllers.

(4) If a CFC is a CFC by virtue of section 371AE, a person is to be taken to be connected, associated or related to the CFC if it is reasonable to suppose that, apart from the arrangement falling within section 371AE(4), the person would be connected, associated or related to the CFC.

371UC Cell companies etc

(1) This Part applies in relation to unincorporated cells and incorporated cells as if they were non-UK resident companies.

(2) An "unincorporated cell" is an identifiable part of a relevant company (by whatever name known) which meets the following condition.

(3) The condition is that, under the law under which the relevant company is incorporated or formed, under the articles of association or other document regulating the relevant company or under any arrangement entered into by or in relation to the relevant company—
  (a) assets and liabilities of the relevant company may be wholly or mainly allocated to the part of the company in question,
  (b) liabilities so allocated are to be met wholly or mainly out of assets so allocated, and
  (c) there are members of the relevant company who have rights in relation to the company's assets which cover only or mainly assets so allocated.

(4) An "incorporated cell" is an entity (by whatever name known) established under the articles of association or other document regulating a relevant company—

(a) which, under the law under which the relevant company is incorporated or formed, has a legal personality distinct from that of the relevant company, but
(b) which is not itself a company (ignoring this section).

(5) In this section “relevant company” means a non-UK resident company which is not a CFC.

(6) The Treasury may by regulations provide for this Part to apply in relation to—
(a) parts of companies falling within specified descriptions, or
(b) other entities falling within specified descriptions which are not themselves companies (ignoring this section),
as if they were non-UK resident companies.

(7) Regulations under subsection (6) may add to, repeal or otherwise amend subsections (1) to (5).

371UD “Interests” in companies

(1) This section applies for the purposes of this Part.

(2) The following persons have an “interest” in a company—
(a) any person who has, or is entitled to acquire, share capital or voting rights in the company,
(b) any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,
(c) any person who is entitled to secure that income or assets of the company will be applied directly or indirectly for the person’s benefit, and
(d) any other person who, either alone or together with other persons, has control of the company.

(3) Rights which a person has as a loan creditor of a company are not an “interest” in the company.

(4) “Loan creditor” has the meaning given by section 453 of CTA 2010, but ignoring subsection (4) of that section.

(5) In subsection (2) references to a person being entitled to do anything cover cases in which a person—
(a) is presently entitled to do it at a future date, or
(b) will at a future date be entitled to do it.

(6) But an entitlement to secure that the income or assets of a company will be applied as mentioned in subsection (2)(c) which is contingent upon a default of the company or any other person under any agreement does not fall within subsection (2)(c) unless the default has occurred.

(7) Subsection (8) applies in relation to a CFC which is a CFC by virtue of section 371AE.

(8) The persons who have “interests” in the CFC, and the nature of their interests, are to be determined by applying section 371AE(3) and otherwise by reference to what it is reasonable to suppose would

have been the state of affairs in relation to the CFC apart from the arrangement falling within section 371AE(4).

(9) Subsections (10) and (11) apply if—
  (a) apart from subsection (10), a person has, or two or more persons together have, an interest in a company ("company 1"), and
  (b) company 1 has an interest in another company ("company 2").

(In paragraph (b) "interest" includes an interest by virtue of subsection (10).)

(10) The person or persons mentioned in subsection (9)(a) are to be taken to have an interest in company 2 (and references to a person's interest in a company are to be read accordingly).

(11) For the purposes of references to one person's interest in a company being the same as another person's interest—
  (a) the person mentioned in subsection (9)(a), or
  (b) each of the persons so mentioned,

is to be taken as having, to the extent of that person's interest in company 1, the same interest as company 1 has in company 2.

(12) If two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they are taken to have the interest in equal shares.

371UE Regulations

Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings."

PART 2

CONSEQUENTIAL AMENDMENTS

ICTA

2 ICTA is amended as follows.

3 Omit Chapter 4 of Part 17 (controlled foreign companies).

CTA 2010

4 CTA 2010 is amended as follows.

5 (1) Section 1139 (definition of "tax advantage") is amended as follows.

(2) In subsection (2) —
  (a) omit the "or" after paragraph (d), and
  (b) after paragraph (d) insert—
    "(da) the avoidance or reduction of a charge or assessment to a charge under Part 9A of TIOPA 2010 (controlled foreign companies), or".

TIOPA 2010

6 TIOPA 2010 is amended as follows.

7 (1) Section 314 (financing income amounts) is amended as follows.

(2) In subsection (1) for "or D" substitute ", D or E".

(3) After subsection (5A) insert—

"(5B) Condition E is that—

(a) the amount is included in a CFC's chargeable profits for an accounting period in relation to which the CFC charge is charged in accordance with Part 9A (controlled foreign companies),

(b) the amount is so included by virtue only of falling within Chapter 9 or 10 of that Part, and

(c) the amount is included in the CFC's assumed total profits for the accounting period by virtue of section 297 or 299 of CTA 2009 (including as applied by section 481 of that Act but not, in the case of section 299, as applied by section 574 of that Act).

(5C) Terms used in subsection (5B) have the same meaning as they have in Part 9A."

PART 3

COMMENCEMENT AND TRANSITIONAL PROVISION

Commencement

8 [...]

Transitional provision

9 [...]

EXPLANATORY NOTE

CFC REFORM MEASURE NUMBER

SUMMARY

1. This clause and Schedule 1 repeal the Controlled Foreign Companies (CFC) regime in Chapter 4 of Part 17 of the Income and Corporation Taxes Act 1988 (ICTA) and provide for a new CFC regime. The new regime is inserted as Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA).

DETAILS OF THE SCHEDULE

Part 1 of the Schedule

2. Paragraph 1 of Part 1 Schedule 1 inserts Part 9A after Part 9 of TIOPA

Part 9A Controlled Foreign Companies

Chapter 1 – Introduction

3. Chapter 1 of Part 9A provides an overview of the Part and defines "control" for the purposes of the CFC rules.

4. New section 371AA provides an overview of the Part by describing what is contained in the Chapters of the Part and a statement that it is part of the Corporation Tax Acts. In particular new subsection 371AA(1) states that "the CFC charge" will be charged on UK resident companies which have certain interests in CFCs and at new subsection 371AA(2) defines a CFC as a non-UK resident company which is controlled by a UK person or persons.

5. New section 371AB outlines three mechanical tests to determine when a person or persons control a company for the purposes of Part 9A. If any one of the tests is met then the company is controlled for the purposes of the Part.

6. New subsection 371AB(2) introduces the first test where a person controls a company if they have the power to secure that, directly or indirectly, the affairs of the company are conducted in accordance with their wishes through the possession of voting or similar powers.

7. New subsection 371AB(3) introduces the second test where a person controls a company through holding rights that entitle the person to receive, directly or indirectly, the majority of;

   - disposal proceeds in the event of a disposal of the whole of the company's share capital,
   - income on a distribution if the whole of the company's income was distributed,
   - assets on a winding up or other similar circumstances

   whether at the time of the disposal, distribution or winding up, or at any later time.

8. New subsection 371AB(4) however excludes from subsection (3) any rights held by a "relevant bank" and such rights are not included in the whole of the company's share capital, distributable income and assets on a winding up when determining the percentage that a person would be entitled to receive under subsection (3).

9. New subsection 371AB(5) defines a "relevant bank" as a bank carrying on a banking business (as defined at new section 371UA) which is regulated in the CFC's territory of residence. New paragraph 371AB(5)(b) limits the exclusion to cases where the lending of money that is made in the ordinary course of the bank's business.

10. New subsection 371AB(6) extends a person's entitlement detailed at subsections (3) and (4) to include proceeds, amounts or assets that a person is entitled to secure will be applied directly or indirectly for their benefit.

11. New subsection 371AB(7) states that if two or more persons taken together meet the conditions of the tests at subsections (2) and (3) they will be taken to control the company.

12. New subsections 371AB(8) to (10) introduces the third test, which is an accounting test based on Financial Reporting Standard 2 ("FRS 2") issued and updated by the Accounting Standards Board in the UK. A person controls a company if the person is the company's "parent undertaking" (defined as the person that would be required to prepare consolidated financial statements under FRS 2 whether they are actually prepared or not). If a company is a subsidiary undertaking of a parent undertaking and its results would be included in consolidated accounts of that parent undertaking (whether such accounts are prepared or not) then it is a controlled company for the purposes of Part 9A.

13. New section 371AC introduces an alternative test of whether a company is a CFC if two persons control the company. If a UK resident person has interests, rights or powers that represent at least 40 per cent of the holdings, rights or powers that give control of a company and a non-UK resident holds at least 40 per cent but not more than 55 per cent, the company will be taken to be a CFC. This test will apply mainly to joint venture companies.

14. New section 371AD attributes various rights and powers to a person in order to determine whether a person or two or more persons control a company for the purposes of the tests set out above.

15. New subsection 371AD(2) provides that there should be attributed to each person all the rights and power mentioned in new subsection 371AD(3) to the extent that they would not otherwise be attributed to that person.

16. The rights and powers within new paragraphs 371AD(3)(a) to (c) are:

    (a) rights and powers which the person (identified as "P") is entitled to acquire at a future date or will become so entitled to acquire at a future date;

    (b) rights and powers of other persons that fall within new subsection 371AD(4);

    (c) if P is UK resident, the rights and powers of other UK residents who are connected to P.

17. New paragraph 371AD(3)(d) covers more complex circumstances where P is a UK resident person. It includes rights and powers which would, under new subsection 371AD(2) be attributed to another UK resident person (identified as "Q") who is connected to P on the assumption that Q were P. This covers situations where there are three persons (for example A, B and C) and A is connected to B and B is connected to C but A and C are not connected. In these circumstances any rights and powers of A are to be attributed to C vice versa. This then extends to circumstances where there are more than 3 persons (say A to Z) and C is connected to D, D to E and so on forming a chain of connection. In these circumstances (and as long as the persons are UK resident) any rights and powers of any one person are to be attributed to each other.

18. New subsection 371AD(4) covers rights and powers so far as they are required or may be required to be exercised on behalf of P, under P's direction or for P's benefit. In the case of a loan made by one person to another, these are not limited to rights and powers conferred by the terms of any security relating to the loan.

19. New subsection 371AD(5) states that in subsections (3)(b) to (d) and subsection (4) references to rights and powers include rights and powers which the person is entitled to acquire at a future date or will, at a future date, become entitled to acquire.

20. New subsection 371AD(6) disapplies section 1122(4) of CTA 2010 (as applied by new paragraph 371UB(2)(b) when determining whether one person is connected with another for the purposes of this section.

21. New subsection 371AD(7) provides that for the purposes of new sections 371AB, 371AC and 371AD rights and powers of a person or rights and powers which a person is or will become entitled to acquire includes references to rights and powers that are exercisable jointly with one or more persons.

22. New Section 371AE introduces an anti-avoidance rule to prevent arrangements the main purpose, or one of the main purposes, of which is to secure that a company will not fall within the definition of control in Chapter 1.

Chapter 2 – The CFC charge

23. New section 371BA outlines the basis on which a CFC charge is to be applied to a UK resident company.

24. New subsection 371BA(1) specifies that a CFC charge is made in relation to every accounting period of a CFC unless one of the entity level exemptions (set out in Chapters 3 to 6 but subject to new section 371BC – solo consolidation etc.) applies or the charge is specifically excepted in the process of determining the charge in the steps detailed below.

25. New subsection 371BA(2) provides that the CFC charge is determined in accordance with a series of steps that are used to work out whether or not a charge arises and if it does which UK resident companies it should arise to. The detailed rules that explain how the various steps are to be applied are provided by subsequent Chapters of Part 9A.

26. Step 1 explains that a CFC's chargeable profits for an accounting period are calculated in accordance with Chapters 7 to 13 of Part 9A and that if the profits are nil then no charge arises for the accounting period. If this is the case no further steps are necessary.

27. Step 2 explains that the rules in Chapter 14 are used to determine the persons ("the relevant persons") who have relevant interests in the CFC at any time during the accounting period. A CFC charge will only arise for an accounting period where the relevant person (which is defined by new subsection 371BA(3)) is a company which is resident

in the UK at a time during the accounting period when it has a relevant interest in the CFC.

28. Step 3 determines the CFC's creditable tax for the accounting period in accordance with Chapter 15.

29. Step 4 determines, in accordance with Chapter 16, how the chargeable profits and creditable tax of a CFC are apportioned among the relevant persons.

30. Step 5 limits the CFC charge to "chargeable companies" which are companies that hold a specified level of interest in the CFC. New subsection 371BA(4) determines that to be a chargeable company the percentage of the chargeable profits apportioned to the company and the percentages of the chargeable profits (if any) apportioned to relevant persons connected or associated with the company at any time during the accounting period must be at least 25 per cent of the total chargeable profits of the CFC. So if following step 4, two UK resident companies, which are members of the same group, respectively have 90 per cent and 10 per cent of the CFC's chargeable profits apportioned to them, they are both chargeable companies. If there are no chargeable companies, step 6 is not taken.

31. Step 6. A CFC charge is charged on each chargeable company and the charge is a sum equal to the appropriate rate of corporation tax on the appropriate percentage of apportioned chargeable profits, less the appropriate percentage of creditable tax apportioned to the chargeable company. The appropriate rate and proportions to be used are set out in new subsection 371BA(5). The charge is calculated as if it were an amount of corporation tax charged on the company for the "relevant corporation tax accounting period". The calculation of the charge is subject to any adjustments to the chargeable profits or creditable tax required by Chapter 17.

32. New subsection 371BA(5) defines a number of terms for the purposes of Step 6. The appropriate rate of corporation tax is defined as the rate applicable to the chargeable company's relevant corporation tax accounting period on which tax is chargeable or an average where there is more than one such rate. The "relevant corporation tax accounting period" is defined as the chargeable company's accounting period for corporation tax purposes that ends at the same time as the CFC's accounting period or, where there is no accounting period ending at the same time as the CFC's, the accounting period of the company in which the CFC's accounting period ends. The subsection also states that the appropriate proportion of chargeable profits is the percentage of the chargeable profits apportioned to the chargeable company, and that the appropriate proportion of creditable tax is the percentage of the creditable tax apportioned to the chargeable company.

33. New section 371BB defines what is meant by "accounting periods" within Part 9A.

34. New subsection 371BB(2) states that an accounting period of a CFC begins when the company becomes a CFC or immediately after the end of a previous accounting period of the CFC where the company continues to be a CFC following the end of that preceding period.

35. New subsection 371BB(3) states that an accounting period of a CFC comes to an end when the CFC ceases to be a CFC, becomes or ceases to be liable to tax in a territory by reason of domicile, residence or place of management, ceases to have any source of income at all, or, a company which has a relevant interest in the CFC ceases to have that interest or ceases to be within the charge to corporation tax.

36. New subsection 371BB(4) imports certain rules within Chapter 2 CTA 2009 (corporation tax accounting periods) dealing with the cessation of accounting periods, companies with more than accounting date and companies being wound up to apply to the calculation of an accounting period for the purposes of Part 9A, but without affecting subsections (2) and (3).

37. New subsections 371BB(5) to (9) sets the circumstances and manner by which an officer of Revenue and Customs can determine the period of an accounting period. This applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC's accounting period is uncertain. New subsection 371BB(6) allows an officer of Revenue and Customs to specify by notice an accounting period for the CFC providing that period does not exceed 12 months.

38. New subsection 371BB(7) determines that where further facts or circumstances come to the knowledge of an officer of Revenue and Customs that suggests that the accounting period is not the true accounting period then new subsection 371BB(8) states that an officer must by notice amend the notice in subsection (6) to reflect the true accounting period.

39. New subsection 371BB(9) ensures that a notice under subsections (6) or (8) must be given to each company that the officer of Revenue and Customs considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the CFC's accounting period.

40. New section 371BC is relevant only for foreign subsidiaries of companies carrying on business subject to financial regulation. The section prevents subsidiaries of UK resident regulated companies from benefiting from any of the exemptions where the CFC and a UK resident company form a solo consolidation as defined within the FSA

Handbook, or where there are arrangements in place which reduce the regulatory capital requirements of a bank.

41. New subsection 371BC(1) prevents the exemptions set out in Chapters 3 to 6 from applying where the conditions in new subsections 371BC(2) or (3) apply in relation to a CFC, for an accounting period.

42. New subsection 371BC(2) contains the solo consolidation condition. This subsection applies if, at any time during a CFC's accounting period, the CFC is a subsidiary undertaking which is the subject of a solo consolidation waiver under section BIPRU 2.1 of the FSA Handbook, and the CFC's parent undertaking in relation to that waiver is a UK resident company.

43. New subsection 371BC(3) contains a condition for arrangements which reduce the regulatory capital requirements. This subsection applies if, at any time during a CFC's accounting period, the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC, and any fall in the value of those shares would be (wholly or mainly) ignored for the purpose of determining whether the UK resident bank meets the requirements of the FSA Handbook in relation to the bank's capital, and the main purpose, or one of the main purposes, of the UK resident bank in holding the shares is to obtain a tax advantage (which has the meaning given by section 1139 of CTA 2010) for itself or any connected company.

44. New subsection 371BC(4) provides a definition of terms used in the section.

- A bank carrying on banking business has the meaning given by new section 371UA.
- The FSA Handbook means the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time).

Chapter 3 – The low profits exemption

45. New section 371CA introduces Chapter 3 which sets out the low profits exemption ("LPE") for the purposes of section 371BA(1)(a).

46. New section 371CB outlines two alternative computational tests, based on the CFC's accounting profit, to determine whether the LPE applies for a CFC's accounting period. Both tests are entity based exemptions and so apply to the whole of the CFC's profits.

47. New subsection 371CB(2) gives exemption to a CFC if its accounting profits are not more than £50,000. There is no limitation in relation to the source of the profits.

48. New subsection 371CB(3) gives exemption to a CFC it its accounting profits are not more than £500,000 and do not include more than £50,000 non-trading income (which is defined at new section 371UA).

49. New subsection 371CB(4) requires the relevant thresholds for the overall limits and non-trading income amount at subsections (2) and (3) to be reduced on a proportional basis where the accounting period is less than 12 months.

50. New section 371CC defines what is meant by accounting profits for the purposes of the LPE.

51. New subsection 371CC(1) defines accounting profits as the CFC's pre-tax profits for the accounting period.

52. New subsection 371CC(2) states that if financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax accounting profits should be determined from amounts disclosed in these statements.

53. New subsection 371CC(3) applies new subsection 371CC(4) where either the CFC has not prepared financial statements in accordance with an acceptable accounting practice (which includes the case where part of those statements are not prepared in accordance with an acceptable accounting practice), or the CFC has not prepared any financial statements for the accounting period within 12 months after the end of that period.

54. New subsection 371CC(4) provides that the accounting profits of the CFC should be determined by reference to the amounts that would have been disclosed by financial statements drawn together in accordance with an acceptable accounting practice - if financial statements for the CFC are normally prepared in accordance with any such practice – or if this is not applicable, international accounting standards.

55. New subsection 371CC(5) defines an acceptable accounting practice as any of the following: international accounting standards, UK generally accepted accounting practice and accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.

56. New subsection 371CC(6) states that references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.

57. New subsection 371CC(7) requires the accounting profit (or any amounts included in them) to be translated into its sterling equivalent if it is denoted in a different currency and explains how to calculate the exchange rate for this purpose.

58. New subsection 371CC(8) explains that when establishing what the accounting profits of a CFC are under section 371CC, the calculation of those profits must also take account of the rules set out in new section 371CD .

59. New section 371CD supplements the definition of accounting profits.

60. New subsection 371CD(2) excludes distributions that would be exempt if received by a UK resident company (under Part 9A of CTA 2009), and capital gains and losses from the calculation of the accounting profits.

61. New subsection 371CD(3) requires that the calculation of accounting profits include:

    - any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary, and

    - a just and reasonable share of any income which accrues during that period to a partnership of which the CFC is a partner.

62. New subsection 371CD(4) applies to a situation where there is more than one settlor or beneficiary of a settlement and the CFC is one of the settlors or beneficiaries. Under those circumstances the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

63. New subsection 371CD(5) defines a partnership for the purposes of paragraph (3)(b).

64. New subsection 371CD(6) sets out a requirement that the transfer pricing rules at Part 4 of TIOPA must be applied in determining the CFC's profits as they apply in determining the CFC's assumed taxable total profits for the accounting period.

65. New subsection 371CD(7) disapplies subsection (6) where any adjustment to the CFC's accounting profits would be £50,000 or less.

66. New section 371CE provides anti-avoidance rules covering the calculation of a CFC's accounting profits.

67. New subsection 371CE(1) determines that the LPE otherwise provided by virtue of new section 371CB is denied for the "relevant accounting

period" of a CFC ("the relevant CFC") where one of four Conditions A, B, C or D is met.

68. New subsection 371CE(2) sets out Condition A. This condition is met where there is an arrangement, entered into at any time, which would ensure that the LPE provided by virtue of new section 371CB, is met for the relevant accounting period or other accounting periods, and it is the main purpose or one of the main purposes of the arrangement for the relevant CFC to benefit from the LPE.

69. New subsection 371CE(3) sets out Condition B. This condition is met where there is an arrangement, entered into at any time, which secures that profits are shifted to the relevant CFC from another company, and it is the main purpose or one of the main purposes of the arrangement to secure that the LPE would apply for one or more accounting periods of this CFC or any other CFCs. It prevents profits of a company that would not meet the LPE being fragmented between other companies.

70. New subsections 371CE(4) and (5) clarifies the meaning of profit shifting for the purposes of subsection (3).

71. New subsection 371CE(6) sets out Condition C. This condition is met if Part 21B of CTA 2010 (group mismatch schemes) would apply in determining the CFC's assumed taxable total profits for the relevant accounting period for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

72. New subsection 371CE(7) sets out condition D which is met where at any time during the relevant accounting period the relevant CFC's business is wholly or mainly the provision of UK intermediary services.

73. New subsection 371CE(8) defines UK intermediary services as services performed by a UK individual (or individuals) in the UK for a client but where the services are provided, not under a contract directly between the service provider and the client but instead under an arrangement that involves the relevant CFC.

74. New section 371CF gives exemption if the CFC's assumed taxable total profits are not more than £50,000 (new subsection 371CF(2)), or if the CFC's assumed taxable total profits are not more than £500,000 and do not include more than £50,000 of non-trading income (new subsection 371CF(3)).

75. New subsection 371CF(4) states that the thresholds and amount of non-trading income in subsections (2) and (3) are reduced proportionately for an accounting period of less than 12 months.

76. New section 371CG provides anti-avoidance rules covering the calculation of a CFC's assumed taxable total profits.

77. New subsection 371CG(1) determines that the LPE otherwise provided by virtue of new section 371CF is denied where one or more of three Conditions A, B or C is met.

78. New subsection 371CG(2) sets out Condition A. This condition is met where there is an arrangement, entered into at any time, which would ensure that the LPE provided by virtue of new section 371CF is met for the relevant accounting period or other accounting periods, and it is the main purpose or one of the main purposes of the arrangement for the relevant CFC to benefit from the LPE.

79. New subsection 371CG(3) sets out Condition B. This condition is met where for any accounting period there is an arrangement, entered into at any time, which secures that profits are shifted to the relevant CFC from another company, and it is the main purpose or one of the main purposes of the arrangement to secure that the LPE provided by virtue of new section 371CF would apply for this CFC and any other CFCs. It prevents profits of a company that would not meet the LPE being fragmented between other companies.

80. New subsections 371CG(4) and (5) clarify the meaning of profit shifting for the purposes of subsection (3).

81. New subsection 371CG(6) sets out condition C which is met where at any time during the relevant accounting period the relevant CFC's business is wholly or mainly the provision of UK intermediary services.

82. New subsection 371CG(7) defines UK intermediary services as services performed by a UK individual (or individuals) in the UK for a client but where the services are provided, not under a contract directly between the service provider and the client but instead under an arrangement that involves the relevant CFC.

Chapter 4 – The low profit margin exemption

83. New section 371DA introduces Chapter 4 which sets out the low profit margin exemption for the purposes of new paragraph 371BA(1)(a).

84. New section 371DB sets out the conditions which need to be met for this exemption to apply.

85. New subsection 371DB(1) states the exemption applies if the accounting profits do not exceed 10 per cent of the "relevant operating expenditure".

86. New subsection 371DB(2) adjusts the definition of accounting profits in new sections 371CC and 371CD to disregard income from trusts and partnerships and transfer pricing adjustments and to consider accounting profits before any interest deductions.

87. New subsection 371DB(3) defines "relevant operating expenditure" as operating expenses included in the CFC's accounts, but specifically excluding those costs detailed in new paragraphs 371DB(3)(a) and (b).

88. New paragraph 371DB(3)(a) excludes the cost of goods purchased for resale, unless those goods have been imported by the CFC into the territory in which it is resident for the accounting period.

89. New paragraph 371DB(3)(b) excludes any expenditure which, gives rise directly or indirectly to income of a person related to the CFC.

Chapter 5 – The excluded territories exemption

90. New section 371EA introduces Chapter 5 which sets out the excluded territories exemption ("ETE") for the purposes of new paragraph 371BA(1)(a).

91. New section 371EB sets out the basic rule.

92. New subsection 371EB(1) sets out four conditions that need to be met for the ETE to apply for a CFC's accounting period. These are that:

- the CFC is resident in an excluded territory for the accounting period,
- the total of amounts (if any) of Categories A, B, C and D of the CFC's income is not more than the "threshold" amount for the accounting period,
- the intellectual property (IP) condition is met and
- the CFC is not involved in an arrangement, the main purpose or one of the main purposes of which is to obtain a tax advantage (as defined by section 1139 of CTA 2010) for any person at any time during the accounting period.

93. New subsection 371EB(2) defines "excluded territory" as a territory specified in regulations made by HMRC Commissioners.

94. New subsection 371EB(3) provides that HMRC Commissioners may also, by regulations, specify further conditions which must be met in all or specified cases in order for the ETE to apply or provide that, in specified cases, the ETE will not apply even though the conditions set out in subsection (1) are met. For either of these purposes, the regulations may modify the application of the provisions in Chapter 5.

95. New subsection 371EB(4) states that, if an amount is included in more than one of the Categories A, B , C or D, the amount is to be counted only once in determining if the threshold amount is exceeded.

96. New section 371EC determines which territory a CFC is resident in for the purposes of the ETE and new subsection 371EC(1) states that "the CFC's territory" in this chapter means the territory determined by this section.

97. New subsection 371EC(2) states that the residence rules in new section 371SA are used to determine the residence of a CFC for this section.

98. New subsection 371EC(3) however goes on to state that new paragraph 371SA(1)(b) can only be applied as long as, throughout the accounting period, the CFC or persons with interests in the CFC are liable to tax under the law of the territory in question on the CFC's income.

99. New subsection 371EC(4) disapplies the ETE if a territory of residence cannot be determined for an accounting period under this section.

100. New section 371ED defines the threshold amount for the purpose of the second condition in new paragraph 371EB(1)(b).

101. New subsections 371ED(1) and (2) provide that the threshold amount for a CFC's accounting period is either 10 per cent of the CFC's accounting profits for the accounting period or £50,000 (proportionately reduced if the accounting period is less than 12 months) if the latter is a greater amount.

102. New subsection 371ED(3) defines "accounting profits" in accordance with new section 371CC and new section 371CD (the definition of "accounting profits" for the LPE) but excluding new subsections 371CD(6) and (7).

103. New section 371EE outlines the basic rule covering Category A income.

104. New subsection 371EE(1) states that Category A income for an accounting period comprises the gross amounts (that is amounts before deduction of expenses or reserves) of any relevant income detailed in new subsections 371EE(3), (4) or (5) subject to the application of new section 371EF.

105. New subsection 371EE(2) defines "relevant income" as any income brought into account in determining the CFC's accounting profits for the accounting period which:

- arises in the CFC's territory or

- arises from the operations of a PE which the CFC has in a territory outside the CFC's territory.

106. New subsection 371EE(3) includes as Category A income relevant income so far as it is exempt from tax in the CFC's territory (apart from any dividend or other distribution of a company).

107. New subsection 371EE(4) includes as Category A income relevant income which is taxed at a reduced rate under the law of the CFC's territory by virtue of a provision wholly or mainly to directly or indirectly encourage investment in the territory.

108. New subsection 371EE(5) includes as Category A income, any relevant income where, in relation to any tax that has been paid in the CFC's territory in respect of the relevant income, the CFC, an interest-holder of the CFC or any person connected with the CFC is entitled under the law of that territory to any repayment or payment in respect of credit in respect of the whole or part of the tax on the relevant income. However any repayment of tax or payment in respect of a credit in respect of relief for losses incurred by the CFC is excluded from the definition of repayment of tax or payment in respect of a credit.

109. New section 371EF excludes from Category A, certain relevant income arising from operations of a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.

110. New subsection 371EF(1) applies if a CFC's Category A income would (apart from this section) include the gross amount of any relevant income arising from the operations of a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.

111. New subsection 371EF(2) then excludes from Category A, any income included in the subsection (1) that would not be treated as Category A income if the references in subsections 371EE(3) to (5) were to the territory in which the PE is established rather than the CFC's territory.

112. New section 371EG covers the basic rule for Category B income by outlining four steps to take in determining whether the CFC has any Category B income in an accounting period and, if it does, the amount of Category B income.

113. Step 1 asks whether the CFC has any relevant non-local income (subject to an exclusion for certain non-local income in new section 371EH). If it does not, there is no Category B income and no further steps are taken.

114. Step 2 requires that the amount of tax paid in the CFC's territory on the relevant non-local income needs to be determined.

115. Step 3 requires that any relevant deductions should be made from the relevant non-local income (but not to reduce the amount below nil). This gives the net relevant non-local income.

116. Step 4 determines the amount of relevant corresponding UK tax and if the amount determined at step 2 is less than 75 per cent of the relevant corresponding UK tax, the CFC's Category B income is the net relevant non-local income. If it is 75 per cent or more, the CFC has no Category B income.

117. New section 371EH excludes from Category B, certain non-local income that is received by a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.

118. New subsection 371EH(1) states that this subsection applies if (apart from this section) a CFC's relevant non-local income for Category B purposes, determined at step 1 in new section 371EG, would include relevant non-local income which is received by a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.

119. New subsection 371EH(2) then provides that any income defined in subsection (1) will be excluded from step 1 of new section 371EG if the tax paid in respect of the PE's relevant non-local income in the territory in which the PE is established is 75 per cent or more of the relevant corresponding UK tax.

120. New section 371EI defines "relevant non-local" income, "relevant corresponding UK tax" and "relevant deduction" for the purposes of calculating Category B income.

121. New subsection 371EI(2) defines "relevant non-local income" as the gross amount (i.e. before the deduction of expenses or reserves) of any non-trading income which is brought into account in determining the CFC's accounting profits for the accounting period and which is received directly or indirectly from:

- a person resident outside the CFC's territory, or
- a PE which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory.

"Trading income" and "non-trading income" are defined at new section 371UA.

122. New subsection 371EI(3) provides that “relevant deduction” in relation to any relevant non-local income means a deduction to be made from the income in determining the CFC’s assumed total profits for the accounting period.

123. New subsection 371EI(4) defines “the relevant corresponding UK tax” as the amount of corporation tax which applying the corporation tax assumptions outlined in Chapter 18 would be charged in respect of the CFC’s assumed taxable total profits for the accounting period.

124. New subsections 371EI(5) and (6) states that in determining this amount of corporation tax the following should be taken into account:

- relief attributable to either tax paid in the CFC’s territory or in the territory in which the PE is established (as applicable) which would be given to the CFC by virtue of Part 2 of TIOPA (double taxation relief) should be ignored,

- there should be deducted from the corporation tax any amount of “relevant income tax” which (on the assumptions applied by new subsection (4)) would be set off by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and

- any amount of income tax or corporation tax actually charged in respect of any income included in the CFC’s assumed taxable total profits should be deducted.

125. In respect of the second bullet above, “relevant income tax” means income tax which the CFC bears by deduction on a payment so far as the payment is included in the CFC’s assumed taxable total profits and no part of any amount can be deducted in either the second or third bullets if that part has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

126. New subsection 371EI(7) states that for the purposes of new subsections (4) to (6) the CFC’s assumed taxable total profits for the accounting period are to be determined on the basis;

- that the CFC’s assumed total profits for the accounting period are limited to only so much of those profits as represent, as the case may be the net relevant non-local income determined at step 3 in new section 371EG or the PE income detailed at new section 371EH less any relevant deductions from that income and,

- that amounts are to be relieved against the CFC’s assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is

just and reasonable for them to be so relieved having regard to the income identified in the above bullet point.

127. New section 371EJ defines Category C income as the total of any amounts included in the CFC's accounting profits for an accounting period by virtue of new paragraph 371CD(3)(a) (whether they would otherwise be included in the accounting profits of the CFC or not) but with regard to new paragraph 371CD(3)(b) profits, they will only be included if they are deemed to be part of the accounting profits by virtue only of new paragraph 371CD(3)(b). Category C income therefore covers amounts accruing during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary (see new paragraph 371CD(3)(a)) and the CFC's share of any income which accrues during the accounting period to a partnership of which the CFC is a partner as determined by apportioning that income between the partners on a just and reasonable basis. This section does not apply in cases where the income earned by a partnership is included in the CFC's accounting profits without having to be deemed so (see new paragraph 371CD(3)(b).

128. New section 371EK defines Category D income.

129. New subsection 371EK(1) provides that a CFC's Category D income for an accounting period consists of gross amounts (i.e. before deduction of expenses or reserves) of any income which is included in Category D income in accordance with new subsections 371EK(3) or (4) and is brought into account in determining the CFC's accounting profits for the accounting period.

130. New subsection 371EK(2) states that new subsection (3) applies if:

- relevant income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,

- in the CFC's territory, the income is reduced by an amount ("the relevant amount") for tax purposes on the basis that the income is more than what it would have been had the company connected with the CFC not been connected with the CFC, and

- there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.

131. New subsection 371EK(3) provides that the amount calculated in subsection (2) is to be included in the CFC's Category D income.

132. New subsection 371EK(4) includes as category D income, so far as it is exempt from tax or taxed at a reduced rate in the CFC's territory by

virtue of a ruling, decision or arrangement made in relation to the CFC by a governmental authority in that territory.

133. New section 371EL outlines the IP condition for the purposes of new section 371EB.

134. New subsection 371EL(2) outlines that the condition is met unless the following are present:

- the CFC's assumed total profits for the accounting period include amounts arising from IP held by the CFC (the "exploited IP"),

- all or parts of the exploited IP were transferred directly or indirectly to the CFC by persons related to the CFC at times during the relevant period or otherwise derive (directly or indirectly) at times during that period out of or from IP held at times during that period by persons related to the CFC,

- as a result of those transfers or other derivations, the value of the IP held by those related persons taken together has been significantly reduced from what it would otherwise have been, and

- if only parts of the exploited IP were so transferred or derived, the significance condition is met.

135. New subsection 371EL(3) provides that the significance condition is met if:

- the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in new subsection (2) are, taken together, a significant part of the exploited IP, or

- as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they otherwise would have been.

136. New subsection 371EL(4) provides that in relation to a non-UK resident person who is related to the CFC in this section, references to the transfer or holding of IP by a person related to the CFC are limited to:

- the transfer of IP which before the transfer was held by the non UK resident person (wholly or partly) for the purposes of a PE which the person has in the UK, or

- the holding of IP by the non-UK resident person (wholly or partly) for those purposes.

137. New subsection 371EL(5) defines “the relevant period” as covering the accounting period and the 6 years before the accounting period.

Chapter 6 – The tax exemption

138. New section 371FA introduces Chapter 6 which sets out the rules for an exemption referred to as “the tax exemption”.

139. New section 371FB sets out the three steps required to determine if the tax exemption applies for a CFC’s accounting period.

140. Step 1 explains how to determine the CFC’s territory of residence for the accounting period. It states that this has to be done in accordance with the rules in new section S371SB (determination of CFC’s territory of residence). If after applying the residence rules in that section, the CFC has no territory of residence, the tax exemption cannot apply and Steps 2 and 3 are not considered.

141. Step 2 explains how to calculate the tax paid (the “local tax amount”) by the CFC for the accounting period in its territory of residence. First of all this requires calculation of the amount of tax actually paid in that territory for that accounting period in respect of the CFC. It then states that in calculating the amount of local tax the actual tax paid should be reduced by any amounts determined in accordance with new section 371FC, where it is relevant to do so. If however the local tax amount is calculated under designer rate tax provisions contained in new section 371FD then the tax exemption cannot apply and step 3 is not considered.

142. Step 3 explains how to calculate the amount of corresponding UK tax for the accounting period based on the provisions contained in new section 371FE. The tax exemption applies if the local tax amount is at least 75 per cent of the amount of the corresponding UK tax.

143. New subsection 371FB(2) clarifies the meaning of a CFC’s profits as its profits for an accounting period ignoring any capital gains or losses.

144. New section 371FC sets out the reductions that should be made where necessary in computing the local tax amount.

145. New subsection 371FC(1) explains that new section 371FC applies for the purposes of calculating the local tax in step 2 in new section 371FB.

146. New subsection 371FC(2) states that the local tax amount is to be reduced to what would have been paid if either one or both of two

circumstances set out in the new paragraphs 371FC(2)(a) and (b) are met.

147. New paragraph 371FC(2)(a) sets out the first circumstance. Where the CFC has any income, or any income and expenditure (which results in a loss), to which new subsection 371FC(3) applies, then the local tax amount is reduced to the amount of tax that would have been paid in the CFC's territory of residence for the accounting period if that income or income and expenditure had not been taken into account in calculating the profits that form the basis of the calculation of the local tax.

148. New paragraph 371FC(2)(b) sets out the second circumstance. Where the CFC has any expenditure to which new subsection 371FC(4) applies then the profits in paragraph (a) are calculated as though that expenditure had been brought into account.

149. New subsection 371FC(3) applies to any income, or any income and expenditure, for the accounting period which;

- is brought into account in calculating the CFC's taxable profits on which tax is charged in the CFC's territory of residence (see new paragraph 371FC(3)(a)); but

- isn't brought into account in determining the UK measure of tax of the CFC's profits (the "assumed taxable total profits" of the CFC) (see new paragraph 371FC(3)(b)).

150. New subsection 371FC(4) applies to any expenditure of the CFC for the accounting period which

- is not brought into account in calculating the CFC's taxable profits on which tax is charged in the CFC's territory of residence (see new paragraph 371FC(4)(a)); but

- is brought into account in determining the UK measure of tax of the CFC's profits (the "assumed taxable total profits" of the CFC) (see new paragraph 371FC(4)(b)).

151. New subsection 371FC(5) states that the new subsection (6) applies if each of three conditions are all met.

152. New paragraph 371FC(5)(a) sets out the first condition, which is that the CFC has paid tax charged by the territory in which it is resident, in respect of it's profits arising in the accounting period.

153. New paragraph 371FC(5)(b) sets out the second condition, which is that any repayment of tax, or any payment in respect of a credit for tax

under the law of territory in which the CFC is resident is made to a person other than the CFC.

154. New paragraph 371FC(5)(c) sets out the third condition, which is that the repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).

155. New subsection 371FC(6) applies where the three conditions new subsection 371FC(5) are met. The local tax amount is reduced (or further reduced after any reduction under subsection (2)) by the amount of the repayment or payment referred to in subsection (5).

156. New section 371FD sets out what are designer rate tax provisions.

157. New subsection 371FD(1) applies for the purposes of step 2 in new section 371FB. It explains that "designer rate tax provisions" mean provisions which appear to be designed to enable companies to exercise significant control over the amount of tax which they pay and which are specified as such in Regulations made by the HMRC Commissioners.

158. New subsection 371FD(2) explain that the Regulations under new subsection (1) may make different provision for different cases or with respect to different territories.

159. New section 371FE explains how to determine "the corresponding UK tax", which is the deemed UK measure of tax on the CFC's profits.

160. New subsection 371FE(1) explains that the corresponding UK tax used in step 3 of new section 371FB is the amount of corporation tax which would be charged in respect of the CFC's assumed taxable total profits for the accounting period. The CFC's assumed taxable total profits are calculated in accordance with Chapter 18 taking into account the corporation tax assumptions.

161. New subsection 371FE(2) explains that for the purposes of calculating the amount of corporation tax, the adjustments set out in new paragraphs 371FE(2)(a) and (b) are to be taken into account.

162. New paragraph 371FE(2)(a) denies any double taxation relief in respect of the local tax paid by the CFC in its territory of residence when calculating the corresponding UK tax.

163. New paragraph 371FE(2)(b) allows deductions when calculating the corresponding UK tax to be made in respect of;

- any amount which, after applying the corporation tax assumptions, would be set off by virtue of section 967 of CTA

2010 (cases in which a company receives a payment bearing income tax) (see new sub-paragraph 371FE(2)(b)(i)), and

- any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's UK measure of profits (the "assumed taxable total profits" of the CFC) (see new sub-paragraph 371FE(2)(b)(ii)).

164. New subsection 371FE(3) provides that in the new paragraph 371FE(2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount that has or will be repaid to the CFC, whether that repayment is dependent on making a claim or otherwise.

Chapter 7 – Chargeable profits of a CFC: main provision

165. New section 371GA introduces Chapter 7 and contains the main rules for determining the CFC's chargeable profits for an accounting period for the purposes of Step 1 of new subsection 371BA(2).

166. New subsection 371GA(2) states that the CFC's chargeable profits are its assumed taxable total profits for the accounting period. Those profits are determined on the basis that;

- the CFC's assumed total profits for the accounting period are limited to only so much of those profits as fall within Chapters 8 to 12, as adjusted under Chapter 13 (as applicable), and

- that amounts are to be relieved against the assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to the amount arrived at in the first bullet point above.

167. New subsection 371GA(3) provides that subsection (2) is subject to new subsections 371RB(7) and (8) (see below).

Chapter 8 – Chargeable profits of a CFC: profits attributable to UK SPFs

168. New section 371HA outlines the basic rule in determining the "Chapter 8 profits" which fall within the main chargeable profits provision (new paragraph 371GA(2)(a)).

169. Chapter 8 profits are those attributable to significant people functions ("SPF") performed in the UK. New subsection 371HA(1) sets out the basic rule in identifying this profit as a five step process. Terms used in these steps have the same meaning as they have in the Report on the Attribution of Profits to Permanent Establishments of the Organisation of Economic Co-operation and Development ("OECD"). This is referred to as the "OECD Report" (see new subsection (2)). In addition

Steps 1 to 3 are to be taken in accordance with the principles set out in that same report.

170. Step 1 identifies the assets the CFC has and the risks it bears, in so far as they give rise to the CFC's profits.

171. Step 2 determines the extent to which the SPFs that are relevant to the economic ownership of the assets identified at Step 1, and the SPFs that are relevant to the assumption and management of the risks identified at step 1 are UK SPFs. If there are no UK SPFs then no profits fall within Chapter 8 and no further steps are to be taken.

172. Step 3 firstly assumes that the identified UK SPFs are carried out by a UK PE of the CFC. It then determines the extent to which the assets and risks identified at step 1 would be attributed to the PE.

173. Step 4 re-determines the CFC's assumed total profits as if the CFC did not hold the assets and did not bear the risks so far as they would be attributed to the PE mentioned at step 3. The extent to which the step 4 re-determined profits exceed the CFC's assumed total profits, that excess shall be "the provisional Chapter 8 profits".

174. Step 5 excludes from "the provisional Chapter 8 profits" amounts excluded by new sections 371HB to 371HE, the result being "the Chapter 8 profits".

175. New subsection 371HA(2) defines, for the purposes of Chapter 8 the terms, "the OECD Report", "SPF" and "UK SPF".

176. New subsection 371HA(3) introduces Treasury regulatory powers to permit the amendment of Chapter 8 to take account of any "relevant document" published by OECD.

177. New subsection 371HA(4) defines "relevant document" as one which replaces, updates or supplements the OECD Report, or one that replaces, updates or supplements a "relevant document" of the OECD Report.

178. New section 371HB excludes from the provisional Chapter 8 profits an amount of profit arising from an asset or risk, if only a minority of the profit arising from the asset or risk would otherwise be included in the Chapter 8 amount.

179. New subsection 371HB(1) gives conditions for new subsection 371HB(2) to apply in relation to an amount included in the provisional Chapter 8 profits by virtue of any asset or risk identified in Step 1 of new subsection 371HA(1). Subsection (2) applies if the SPFs relevant to the economic ownership of the asset, or the assumption and

management of the risk, are only partly UK SPFs as determined by Step 2 of new subsection 371HA(1).

180. New subsection 371HB(2) outlines that the amount referred to in subsection (1) shall be excluded from the Chapter 8 profits where the amount of profit identified at Step 4 of new subsection 371HA(1) is no more than the further amount that would be added if at Step 4 it were assumed that the CFC held no part of the asset or bore no part of the risk mentioned in subsection (1).

181. This exclusion therefore applies where the actual amount otherwise to be included in the provisional Chapter 8 profits in consequence of an asset or risk is less than half of the maximum that could have been so included.

182. New subsections 371HB(3) and (4) provide for a bundle of assets or of risks to be treated as if it were a single asset or risk for the purposes of this section. Assets or risks are bundled in this way if it is not reasonably practicable to separate them for the purpose of identification of SPFs.

183. New section 371HC excludes amounts from the provisional Chapter 8 profits where substantial non-tax value arises from the CFC's holding of assets or its bearing of risks.

184. New subsections 371HC(1) and (2) exclude amounts calculated at Step 4 of new subsection 371HA(1) in relation to the CFC's holding of assets or its bearing of the risks identified in Step 1 and taken into account in Step 4 if:

- the CFC's holding of the asset or its bearing of the risk gives rise to non-tax value for the CFC group; and
- that value is a substantial proportion of the total value resulting from the CFC's holding the assets or bearing the risks.

185. New subsection 371HC(3) defines the term "net economic value" used in subsection (2). It excludes value directly, or indirectly derived from the reduction or elimination of a person to tax or duty imposed under the law of any territory.

186. New subsection 371HC(4) defines the term "CFC group".

187. New subsection 371HC(5) defines the term "relevant non-tax value" used in subsection (2). It is the part of the net economic value that does not derive from the reduction of any UK tax or duty.

188. Overall therefore, non-tax value is compared to the aggregate of non-tax value and value derived from UK tax advantage. Foreign tax effects are wholly disregarded for the purposes of this comparison.

189. New subsections 371HC(6) and (7) provide for a bundle of assets or of risks to be treated as if it were a single asset or risk for the purposes of this section. Assets or risks are bundled in this way if it is not reasonably practicable to separate them for the purpose of identification of SPFs.

190. New Section 371HD excludes amounts from the provisional Chapter 8 profits where they arise from an arrangement that independent companies would have entered into.

191. New subsection 371HD(1) sets the scene for the section by establishing the arrangements by which SPFs come to be separated from assets or risks with the result that a provisional Chapter 8 profit arises.

192. New subsection 371HD(2) excludes the amount arising from the arrangement identified in subsection (1), if it is reasonable to suppose that identical arrangements would have been entered into by the two companies if they were independent of each other.

193. New subsections 371HD(3) and (4) provide for a bundle of assets or of risks to be treated as if it were a single asset or risk for the purposes of this section. Assets or risks are bundled in this way if it is not reasonably practicable to separate them for the purpose of identification of SPFs.

194. New section 371HE introduces a mechanical exclusion from "the provisional Chapter 8 profits" for amounts representing trading income where it can be shown all of the following five conditions are met:

- business premises condition (new section 371HF),
- income condition (new section 371HG),
- management expenditure condition (new section 371HH),
- IP condition (new section 371HI), and
- export of goods condition (new section 371HJ).

195. New section 371HF outlines the "business premises" condition for the purposes of new section 371HE. It is met if, throughout the accounting period, the CFC in its territory of residence has "premises" (defined at new subsection 371HF(3)):

- which are, or are intended to be, occupied and used with a reasonable degree of permanence, and
- from which the CFC operations in that territory are wholly and mainly carried on.

196. New subsection 371HF(3) defines premises as:

- An office, shop, factory, other building or part thereof,
- a mine, oil or gas well, quarry or other place of where natural resources are extracted, or
- a building, construction or installation site if the project has or will last at least 12 months.

197. New section 371HG outlines the "income condition" for the purposes of new section 371HE.

198. New subsection 371HG(2) details that the condition shall be met where the CFC is not a regulated bank and where no more than 20 per cent of the CFC's "relevant trading income" derives, directly or indirectly, from

- UK resident persons, or
- UK PEs of a non-UK resident company.

199. New subsection 371HG(3) defines "relevant trading income" for the purposes of new subsection (2) as the CFC's trading income for the accounting period, excluding any income arising from the sale of goods in the UK which were produced by the CFC in its territory of residence

200. New subsection 371HG(4) applies new subsection 371HG(5) rather than new subsection (2) when a substantial part of the CFC's business consists of regulated banking activity.

201. New subsection 371HG(5) the income condition for a banking CFC within subsection (4) is met if no more than 10 per cent of the relevant trading income of the CFC is derived, directly or indirectly from

- UK resident persons, or
- UK PEs of a non-UK resident company

202. New subsection 371HG(6) explains that for the purposes of subsection (5), "relevant trading income" excludes interest received from UK resident companies connected or associated with the banking CFC.

203. New subsection 371HG(7) determines that subsections (2) and (5) do not apply to income derived from UK resident persons where a corresponding expense is brought into account for the purposes of section 18A of CTA 2009 (non-UK PEs of UK resident companies) in determining the profits or losses attributable to such PEs.

204. New section 371HH outlines the "management expenditure" condition for the purposes of new section 371HE.

205. New subsection 371HH(2) outlines that the condition is met where the "UK related management expenditure" is not more than 20 per cent of the "total related management expenditure"

206. New subsection 371HH(3) explains that the amounts to be included within "total related management expenditure" are the total of amounts set out in new paragraphs 371HH(3)(a) and (b).

207. New paragraph 371HH(3)(a) covers expenditure incurred during the accounting period by the CFC in the employment of its own staff, or the engagement of other persons related to the CFC, who carry out "relevant management functions".

208. New paragraph 371HH(3)(b) covers expenditure incurred during the accounting period (so far as not reflected in paragraph (3)(a)) by persons related to the CFC in the employment of their own staff who carry out "relevant management functions".

209. New subsection 371HH(4) defines "UK related management expenditure" as related management expenditure incurred in relation to staff or related persons who carry out relevant management functions in the UK.

210. New subsection 371HH(5) explains that a person carries out "a relevant management function" if that person manages any assets or risks identified at step 1 in new subsection 371HA(1).

211. New subsection 371HH(6) explains that relevant management function includes (for example) the formulation of plans or making of decisions in relation to:

- the creation, control, development or exploitation of such assets, or

- the assumption or control of such risks.

212. New subsection 371HH(7) introduces an alternative management expenditure condition. This condition applies if

- the main 20 per cent management expenditure condition is not met, but the other conditions in new subsection 371HE(1) are met, and
- the "50 per cent condition" is met in relation to an asset or risk identified in step 1 of new subsection 371HA(1) to which any related management expenditure relates, and
- an amount representing trading income arising from that asset or risk is included in the provisional Chapter 8 profits.

213. New subsection 371HH(8) sets out that, if the 50 per cent condition is met, the amount representing trading income arising from that asset or risk is to be excluded from the provisional Chapter 8 profits.

214. New subsection 371HH(9) determines that the "50 per cent condition" is in relation to an asset or risk if the UK related management expenditure which relates to that asset or risk is no more than 50 per cent of the total related management expenditure which relates to that asset or risk.

215. New subsection 371HH(10) applies where any part of the total related management expenditure relates to a number of assets or risks and it is not reasonably practicable to separate those assets or risks for the purpose of determining the amount of the total related management expenditure which relates to each separately.

216. New subsection 371HH(11) provides that subsections (7) and (9) shall apply to new subsection (10) assets or risks that are taken together and any references to an asset or risk are to be read accordingly. Thus the related management expenditure condition can be considered for each bundle of assets or risks identified under subsection (10).

217. New section 371HI outlines the "IP condition" for the purposes of new section 371HE.

218. New subsection 371HI(2) sets out that the IP condition shall be met unless all of the following apply:

- the CFC's assumed total profits for the accounting period include amounts arising from IP held by the CFC (the "exploited IP"),
- all or parts of the exploited IP were transferred directly or indirectly to the CFC by persons related to the CFC at times during the relevant period or otherwise derived (directly or indirectly) at times during that period out of or from IP held at times during that period by persons related to the CFC,

- as a result of those transfers or other derivations, the value of the IP held by those related persons taken together has been significantly reduced from what it would otherwise have been, and

- if only parts of the exploited IP were so transferred or derived, the "significance condition" is met.

219. New subsection 371HI(3) provides that the "significance condition" is met if:

- the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in new subsection (2) are, taken together, a significant part of the exploited IP, or

- as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than they otherwise would have been.

220. New subsection 371HI(4) provides that in relation to a non-UK resident person who is related to the CFC, references to the transfer or holding of IP by a person related to the CFC are limited to;

- the transfer of IP which before the transfer was held by the non UK resident person (wholly or partly) for the purposes of a PE which the person has in the UK, or

- the holding of IP by the non-UK resident person (wholly or partly) for those purposes.

221. New subsection 371HI(5) defines "the relevant period" as covering the accounting period and the six years before the accounting period.

222. New section 371HJ outlines the "export of goods" condition for the purposes of new section 371HE.

223. New subsection 371HJ(2) explains the condition is met where no more of than 20 per cent of the CFC's trading income arises from goods exported from the UK, but disregarding goods exported from the UK into the CFC's territory of residence.

224. New section 371HK introduces an anti avoidance rule that can apply if:

- A condition in new subsection 371HE(1) is met, or

- The 50 per cent condition in new section 371HH is met in relation to an asset or risk (or a number of assets or risks taken together),

- but it is reasonable to suppose that, apart from an arrangement falling within new subsection 371HK(3), that condition would not have been met.

225. New subsection 371HK(2) outlines that, if this section applies, the new subsection 371HE(1) condition, or new section 371HH condition, is to be taken not to be met.

226. New subsection 371HK(3) details that an arrangement falls within this subsection if the conditions of new paragraphs 371HK(3)(a) and (b) are met.

227. New paragraph 371HK(3)(a) requires that the arrangement involves "the CFC group" organising or reorganising any part of its business in a particular way.

228. New paragraph 371HK(3)(b) requires that the main purpose, or one of the main purposes, of that organising or reorganising is to secure that either

- one or more of the conditions within new subsection 371HE(1) are met, or

- the 50 per cent condition within new section 371HH is met in relation to one or more assets or risks.

229. New subsection 371HK(4) defines "the CFC group" as the CFC together with companies with which it is connected from time to time.

Chapter 9 – Chargeable profits of a CFC: non-trading finance profits

230. Chapter 9 includes certain non-trading finance profits within new paragraph 371GA(2)(a). Those profits are any non-trading finance profits that are included within the CFC's assumed total profits for the accounting period, so far as those non-trading finance profits fall within new sections 371IB to 371ID.

231. Non-trading finance profits are defined in new section 371UA. They are profits falling within Parts 5 and 9A of CTA 2009, including profits that fall within Part 5 by reason of Parts 6 or 7.

232. New section 371IB includes within Chapter 9 any non-trading finance profits that would have fallen within Chapter 8 but for the exclusions listed at step 5 of new subsection 371HA(1).

233. New section 371IC(1) outlines that non-trading finance profits shall fall within Chapter 9 so far as they arise from the investment or other use of "relevant UK funds".

234. New subsections 371IC(2) defines "relevant UK funds" as funds derived directly, or indirectly, from:

- a UK connected company acquiring shares in, or making any other type of capital contribution to, the CFC, or
- any amounts included within the CFC's chargeable profits for any earlier accounting period, or
- any amounts which are left out of account in determining the CFC's assumed total profits for that or any earlier accounting period due to a claim under section 174 (transfer pricing: claims by disadvantage person), or
- any other direct, or indirect, payments received by the CFC from a UK connected company except a payment for the provision or goods or services.

235. New subsection 371IC(3) defines "UK connected company" for the purposes of subsection (2).

236. New Section 371ID includes certain non-trading finance profits within Chapter 9 arising from loans (or parts of loans) made to UK resident companies connected with the CFC, or to UK PEs of foreign companies connected with the CFC.

237. Profits from these loans are included in Chapter 9 if the main reason or one of the main reasons for providing funds by way of loan, as opposed to by way of distribution, is a reason relating to any UK or foreign tax liability.

Chapter 10 – Chargeable profits of a CFC: trading finance profits

238. Chapter 10 includes certain trading finance profits within a CFC's chargeable profits, to the extent that they arise from excess capital or excess free assets.

239. New subsection 371JA(1) outlines the steps to take in determining the trading finance income".

240. Step 1 gives the scope of Chapter 10. It includes profits that, by identifying whether any "step 1 trading income" arises, would have been non-trading finance profits but for the priority given to Part 3 CTA 2009 over Parts 5 to 7 and 9A of that Act. If the assumed total

profits do not include any such income, then no profits fall within this Chapter and no further steps are to be taken.

241. Step 2 determines whether at any time during the accounting period the CFC's "free capital" exceeds what it is reasonable to suppose it would be were the CFC not controlled by any person. If there is excess free capital, "the step 2 amount" is either:

- the excess free capital, or
- if less, the CFC's free capital so far as it is attributable to UK connected capital contributions.

242. Step 3 determines whether there are any excess "free assets" when a CFC is carrying on insurance business. Excess free assets arise where the CFC's free assets exceed what it is reasonable to suppose that amount would be were the CFC not controlled by any person. If there are excess free assets, "the step 3 amount" is either:

- the excess free assets, or
- if less, the CFC's free assets so far as it is attributable to UK connected capital contributions.

243. Step 4 identifies that "the step 1 trading income" shall be the Chapter 10 profits so far as it is reasonable to suppose that the income arises from the investment or other use of "the step 2 amount" or "the step 3 amount" (or both).

244. New subsection 371JA(2) outlines, for the purposes of step 2 in subsection (1), the meaning of "free capital". This is where the funding it has for its business would not give rise to debits to be brought into account under Part 5 of CTA 2009 (loan relationships) in respect of the CFC's loan relationships in determining the CFC's assumed total profits for the accounting period.

245. New subsections 371JA(3) to (5) define how to calculate the CFC's free assets for the purposes of step 3 in subsection (1). This definition is consistent with that given in regulations made under Chapter 4 of Part 2 CTA 2009, which applies to foreign insurance companies trading in the UK through a PE (S.I. 2003/2714).

246. New subsection 371JA(6) gives the meaning of "UK connected capital contributions" for the purposes of steps 2 and 3 in subsection (1).

247. New section 371JB provides a power for the HMRC Commissioners to make regulations setting out conditions under which Chapter 10 will not apply in relation to the step 1 trading income in so far as that

income arises from the CFC's banking business, or banking business of a specified description.

248. New section 371JC provides a power for the HMRC Commissioners to make regulations setting out conditions under which Chapter 10 will not apply in relation to the step 1 trading income in so far as that income arises from the CFC's insurance business, or insurance business of a specified description.

249. New subsection 371JC(2) explains that subsection (1) will not apply to companies carrying on insurance business of the type described in new subsection 371KA(3) (captive insurance business).

Chapter 11 – Chargeable profits of a CFC: captive insurance business

250. New section 371KA introduces Chapter 11 which includes certain profits arising from captive insurance business within a CFC's chargeable profits for the purposes of new paragraph 371GA(2)(a).

251. New subsections 371KA(1) to (3) outline the profits to fall within Chapter 11. They are the amounts arising in a CFC whose main business is insurance and are derived from contracts of insurance in the following paragraphs of new subsection (3):

(a) a UK resident company connected with the CFC, or

(b) a UK PE of a connected non-UK resident company, or

(c) a UK resident person in relation to the provision of good or services (excluding insurance business) to or by that person.

252. New subsection 371KA(4) limits the application of paragraph (a) above. It shall not include a premium paid under a contract of insurance where the UK resident company has made an election under section 18A CTA 2009 and the premium is wholly brought into account in calculating the profits arising in a non-UK PE of the UK resident company.

253. New subsection 371KA(5) limits the scope of paragraphs (a) and (b) above to exclude contracts of reinsurance unless the original contract of insurance would fall within those same paragraphs.

254. New subsection 371KA(6) limits the scope of new subsection 371KA(7) to an amount where the CFC is resident in an EEA state for the accounting period and that amount does not arise from the operations of a PE of the CFC in a non-EEA state.

255. New subsection 371KA(7) applies to capture amounts so far as they are derived, directly or indirectly, from a contract of insurance which

the insured has no significant UK non-tax reason for entering into. This also applies if the original contract of insurance is reinsured.

256. New subsection 371KA(8) defines the term "UK non-tax reason".

Chapter 12 – Chargeable profits of a CFC: solo consolidation

257. New section 371LA encompasses Chapter 12 which includes certain profits for the purposes of new paragraph 371GA(2)(a) if the CFC is the subject of a solo consolidation waiver, or if the anti-avoidance rule in new subsection 371BC(2) or (3) applies to the CFC.

258. The Chapter 12 chargeable profits amount is the amount by which:

- The CFC's assumed total profits (see new section 371UA), exceeds
- The amount of profit that would (for the purposes of applying Chapter 3A, Part 2, CTA 2009) be attributed to a PE of the UK resident company.

259. The overall effect of Chapter 12 is that if the profits of the CFC exceed the profits which would be attributed to the CFC if it were a PE of the UK resident company, that excess will be included in the CFC's chargeable profits.

Chapter 13 – Chargeable profits of a CFC: amounts to be left out

260. New section 371MA introduces Chapter 13 which sets out the amounts to be left out of the assumed total profits which fall within Chapters 8 to 12 for the purposes of new paragraph 371GA(2)(a).

261. New section 371MB excludes profits from property business from the CFC's assumed total profits if those profits would be chargeable under under Part 4 CTA 2009 and they represent an amount of profit included in the Chapter 8 to 12 profits.

262. New section 371MC excludes non-trading financing profits from assumed total profits if they do not exceed a fixed 5 per cent limit.

263. New subsection 371MC(1) applies if the total non-trading finance profits within Chapters 8 to 12 do not exceed 5 per cent of the total amount within new subsections 371MC(3) and (4) as calculated before any deduction for interest or any tax or duty.

264. New subsection 371MC(2) determines that all non-trading finance profits and amounts which represent such profits are to be excluded from Chapter 8 to 12 profits.

265. New paragraph 371MC(3) covers any trading income included in the CFC's assumed total profits for the accounting period, so far as it is not included in Chapter 8 to 12 profits.

266. New paragraph 371MC(4) covers any property income included in the CFC's assumed total profits.

267. New section 371MD excludes incidental non-trading finance profits from assumed total profits. This is an alternative to the fixed 5 per cent non-trading finance profit exclusion in new section 371MC.

268. New subsection 371MD(1) excludes profits which arise from the investment of funds held for the purposes of a trade if that trade is carried on by a CFC and if the income of that trade does not fall within Chapters 8 to 12.

269. New subsection 371MD(2) excludes non-trading finance profits which arise from the investment of funds held by the CFC for the purposes of a UK or overseas property business.

270. New subsection 371MD(3) sets out a number of circumstances in which the exclusions in new subsections 371MD(1) and (2) will not apply. Those exclusions will not apply to non-trading finance profits arising from funds:

- Held because of a prohibition on the payment of dividends imposed under the law of the CFC's territory of incorporation,
- Held with a view to paying dividends or other distributions more than 12 months after the end of the accounting period,
- Held with a view to acquiring shares in, or making capital contributions to, any company,
- Held with a view to investing in land more than 12 months after the end of the accounting period,
- Held only or mainly for contingencies,
- Held in order to reduce or eliminate a tax or duty imposed by any territory.

271. New section 371ME introduces a specific exclusion for the non-trade finance profits of holding companies.

272. New paragraph 371ME(1)(a) requires that a substantial part of the business of the CFC is the holding of shares or securities in companies which are its 51 per cent subsidiaries.

273. New paragraph 371ME(1)(b) limits the "group non-trading finance profits" of the holding company to no more than 5 per cent of the "exempt distribution income" for that accounting period.

274. New subsection 371ME(2) defines "group non-trading finance profits" as the total of new paragraphs 371ME(2)(a) and (b).

275. New paragraph 371ME(2)(a) is the non-trading finance profits of the CFC for the accounting period.

276. New paragraph 371ME(2)(b) is the total of the "relevant non-trading finance profits" of all holding company subsidiaries of the CFC which meet the conditions of this exemption.

277. New subsection 371ME(3) deals with a CFC subsidiary whose accounting period either matches or falls entirely within the accounting period of the holding company CFC. The "relevant non-trading finance profits" of such a CFC are its non-trading finance profits to the extent that they are excluded from Chapters 8 to 12 by this section.

278. New subsection 371ME(4) deals with a CFC subsidiary whose accounting period overlaps with the accounting period of the holding company CFC. The "relevant non-trade financing profits" of such a CFC are a just and reasonable proportion of its non-trading finance profits to the extent that they are excluded from Chapters 8 to 12 by this section.

279. New subsection 371MD(5) defines "exempt distribution income" as the sum of any dividends or other distributions which are excluded from the assumed total profits of the CFC because they would be exempt under part 9A CTA 2009.

280. The effect of this exemption is to compare the total exempt distribution profits of the holding company CFC with the sum of the non-trading finance profits of this CFC and the non-trading finance profits of any exempt holding companies controlled by this CFC. If the total non-trading finance profits do not exceed 5 per cent of the exempt distribution income for the accounting period, then the non-trading finance profits of the holding company CFC are to be left out of the assumed total profits.

Chapter 14 – Relevant interests in a CFC

281. New section 371NA introduces Chapter 14 which applies for the purposes of determining the persons who have "a relevant interest" in a CFC for the purposes of step 2 in new subsection 371BA(2).

282. New section 371NB determines who holds a direct or indirect interest in a company in specified circumstances for the purposes of the Chapter.

283. New subsection 371NB(2) defines the term "indirect" and "direct" for the purposes of determining interests in a company. An indirect interest in a company exists where a person has an interest by virtue of having an interest in another company. It follows that a person who has an interest in the first company other than through another company has a direct interest in the first company.

284. New subsection 371NB(3) states that where a bare trustee or nominee holds an interest for a person or persons, that person or persons (rather than the trustee or nominee) are treated as holding the interest.

285. New subsection 371NB(4) defines the term bare trustee.

286. New subsections 371NB(5) and (6) apply in a case not covered by new subsection (3) if an interest is held in a fiduciary or representative capacity and there are one or more identifiable beneficiaries. In these circumstances the interest is treated as held by that beneficiary or, if there is more than one beneficiary the interest is apportioned between them on a just and reasonable basis.

287. New section 371NC determines when a UK company's interest will not be taken to be a relevant interest in a CFC. This will be where an indirect interest in that CFC is held by the UK resident company by virtue of it holding an interest in another UK resident company. This ensures that the relevant interest is held by the UK resident company that is at the bottom of a chain of two or more UK residents companies.

288. New section 371ND determines relevant interests of persons related to UK resident companies.

289. New subsection 371ND(1) provides that this section only applies if a UK resident company ("UKRC") has a relevant interest in a CFC.

290. New subsection 371ND(2) states that a related person's interest in the CFC is a relevant interest unless (by virtue of new subsection 371ND(4)) it is an indirect interest which the related person has by virtue of having an interest in a UK resident company or another related person, or (by virtue of new subsection 371ND5)) it is the same

relevant interest as UKRC's relevant interest in the CFC by virtue of the UKRC having an interest in the related person.

291. New subsection 371ND(3) defines related person as a person, other than a UK resident company, who is connected or associated with UKRC.

292. New section 371NE provides a further test for determining a relevant interest. .This is set out within new subsection 371NE(1) and only applies in a case where a person ("P") has a direct interest in a CFC which is not a relevant interest by virtue of new sections 371NC or 371ND.

293. New subsection 371NE(2) provides that P's direct interest is a relevant interest for the purposes of this section unless new subsection 371NE(3) applies to it.

294. New subsection 371NE(3) applies to P's direct interest so far as it is the same as another person's relevant interest in the CFC which they have indirectly because they have an interest in P.

295. New subsection 371NE(4) defines the reference in new subsection (3) to "another person's relevant interest" as being a person's relevant interest by virtue of section 371NC or 371ND. This has the effect that P's interest under this section will only be a relevant interest if it is a direct interest in the CFC that is not otherwise a relevant interest of a person related to a UK resident company or UK resident company by virtue of their own indirect interest.

Chapter 15 – Creditable tax of a CFC

296. New section 371OA defines a CFC's "creditable tax" for Part 9A.

297. New subsection 371OA(1) explains that for the purposes of step 3 in new subsection 371BA(2) a CFC's creditable tax for an accounting period is the sum of the amounts determined by new paragraphs 371OA(1)(a) to (c).

298. New paragraph 371OA(1)(a) includes any double taxation relief in respect of the local tax paid by the CFC in its territory of residence that would be taken into account in calculating the corresponding UK tax in respect of the CFC's chargeable profits (the UK measure of profits). It also includes any foreign tax paid on the CFC's chargeable profits where that foreign tax would be allowed as double taxation relief against UK corporation tax if the CFC were resident in the UK. In accordance with new subsection 371OA(2) 'foreign tax' refers to both the local tax amount and the foreign tax paid in a territory other than the UK or the territory where the CFC is resident.

299. New paragraph 371OA(1)(b) includes any amount of "relevant income tax" which, after applying the corporation tax assumptions in Chapter 18 (which assumes the CFC is resident in the UK for certain matters), would be set off by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax) against UK corporation tax that would be due in respect of the CFCs chargeable profits (the UK measure of profits).

300. New paragraph 371OA(1)(c) includes any amount of income tax or corporation tax actually charged in respect of any income that makes up the CFC's chargeable profits (the UK measure of profits).

301. New subsection 371OA(3) defines "relevant income tax" as income tax that has been deducted from a payment that makes up the CFC's chargeable profits and which the CFC bears as a result.

302. New subsection 371OA(4) provides that in the paragraphs (1)(b) and (c) the references to an amount being set off or an amount actually charged do not include so much of any such amount that has or will be repaid to the CFC, whether that repayment is dependent on making a claim or otherwise.

Chapter 16 – Apportionment of a CFC's chargeable profits and creditable tax

303. New section 371PA introduces Chapter 16, which contains the rules for apportioning the CFC's chargeable profits and creditable tax, for an accounting period, among the relevant persons for the purposes of step 4 in new subsection 371BA(2).

304. New section 371PB contains provision about interpretation for the purposes of Chapter 16.

305. New subsection 371PB(2) applies the interpretation provisions contained in new section 371NB to Chapter 16 in the same way as they apply to Chapter 14.

306. New subsections 371PB(3) and (4) define "Ordinary shares". It means for any company, shares of a single class (however they are described) which is the only class of share issued by that company. The term "share" can also refer to a fraction of a share. Shares issued by a company belong to different classes if they are paid up to different amounts.

307. New subsection 371PB(5) defines when a person 'indirectly' holds ordinary shares in a CFC. This occurs when the person directly holds shares in a company "share-linked" to the CFC.

308. New subsection 371PB(6) defines “share-linked” and “share- linked company” for the purposes of subsection (5). A share linked company is one whose only interest in the CFC is through the direct, or indirect (in other words through a chain of companies), holding of ordinary shares in that CFC.

309. New section 371PC covers the basic rules of how apportionments are to be made. There is a mathematical method of apportionment and a default method of apportionment.

310. New subsection 371PC(1) introduces conditions X, Y and Z as the qualifying conditions for the mathematical method of apportioning chargeable profits and creditable tax. Where those conditions are met, the apportionment to relevant persons will be in accordance with new section 371PD (supplemented by new sections 371PE and 371PF). The apportionment mechanism divides the chargeable profits and creditable tax in direct proportion to the percentage of ordinary shares issued by the CFC.

311. New subsection 371PC(2) provides the default method of apportionment where subsection (1) is not in point. In that case the apportionment of chargeable profits and creditable tax to each relevant person should be determined on a just and reasonable basis.

312. New subsection 371PC(3) explains condition X (for the purposes of subsection (1)) is satisfied if the relevant persons only have relevant interests in the CFC by holding directly, or indirectly, ordinary shares in that CFC.

313. New subsection 371PC(4) explains condition Y (for the purposes of subsection (1)) is satisfied if each of the relevant persons has been either only UK resident, or only non-UK resident, throughout the accounting period.

314. New subsection 371PC(5) explains condition Z (for the purposes of subsection (1)) is satisfied provided a company with “intermediate interest” in the CFC only has that interest from holding, directly or indirectly, ordinary shares in the CFC.

315. New subsection 371PC(6) defines “intermediate interest” for the purposes of subsection (5) as when a company has an interest in a CFC and one or more relevant persons have relevant interests in the CFC because they have an interest in that company.

316. New subsection 371PD(1) states that where the conditions of new subsection 371PC(1) are met, the mathematical apportionment method in new subsections 371PD(2) and 371PD(3) should be applied to each relevant person.

317. New subsection 371PD(2) states that the relevant person's relevant interest should be determined by reference to the percentage of the ordinary shares it holds in the CFC.

318. New subsection 371PD(3) states that the percentage calculated by the rule in subsection (2) for each relevant person should be used in apportioning the chargeable profits and creditable tax to that relevant person.

319. New subsection 371PD(4) explains that new section 371PE "Indirect shareholdings" and new section 371PF "Variable shareholdings" supplement the application of new section 371PD.

320. New section 371PE provides the rules to establish the relevant interest of a person in the CFC, where the person holds an indirect interest in the CFC.

321. New subsection 371PE(1) applies new section 371PE to establish the relevant interest of a relevant person ("R") in the CFC to the extent that person indirectly holds ordinary shares in that CFC ("the relevant shares").

322. New subsection 371PE(2) outlines the formula to be used in determining the percentage of ordinary shares in the CFC arising from the indirect shareholding by R. This determines the relevant interest of R.

323. The formula is P x S where;

- P is the product of the appropriate fractions of R, and each of the share-linked companies through which R indirectly holds the relevant shares in the CFC, apart from the share-linked company that directly holds the relevant shares

- S is the percentage of the issued ordinary shares in the CFC that the relevant shares represent

Example

Relevant person A owns 80 per cent of the shares in overseas company B, which in turn holds 90 per cent of the shares in overseas company C, which in turn holds 90 per cent of the issued ordinary shares in the CFC.

The fractional interest A has in B is 0.80 and the fractional interest B has in C is 0.90. As C directly holds shares in the CFC its fractional interest is not counted. P is the product of the two fractions: 0.80 x 0.90 = 0.72

S is 90 per cent, which is the percentage of the issued ordinary shares that A holds indirectly – it is the proportion of the issued shares held by C.

A has a relevant interest of 64.8 per cent (0.72 x 90 per cent) in the CFC.

324. New subsection 371PE(3) defines 'appropriate fraction' for the purposes of the formula in subsection (2). In any particular case it is the fraction of the issued ordinary shares in the share-linked company that the holding in that company represents.

325. New subsection 371PE(4) provides the process for determining the percentage in subsection (2), where the relevant person holds more than one indirect holding of ordinary shares in the CFC. In that case the formula in subsection (2) is applied to each holding and then the results of each calculation are added together.

Example

Relevant person A has a relevant interest of 64.8 per cent through one indirect holding in the CFC. A also owns 75 per cent of the shares in overseas company D, which in turn holds the remaining 10 per cent of the issued ordinary shares in the CFC.

The fractional interest A has in D is 0.75 and the fractional interest D has in C is 0.10. As C directly holds shares in the CFC its fractional interest is not counted. P is the product of the two fractions: 0.75 x 0.10 = 0.075

S is 90 per cent, which is the percentage of the issued ordinary shares that A holds indirectly – it is the proportion of the issued shares held by C.

A has a second relevant interest of 6.75 per cent (0.075 x 90 per cent) in the CFC.

The total relevant interest A has in the CFC is 71.55 per cent (the sum of the two relevant interest, 64.8 per cent and 6.75 per cent).

326. New subsection 371PF(1) states that new section 371PF will apply to determine the percentage of issued ordinary shares representing the relevant persons relevant interest, where that percentage holding varies during the accounting period.

327. New subsection 371PF(2) defines the percentage to be the sum of the relevant percentages for each holding period. So if during the accounting period the amount of a relevant person's relevant interest changes three times, then the overall relevant interest for the

accounting period is found by adding together the relevant percentage calculated for each of the three periods.

328. New subsection 371PF(3) defines "holding period" for the purposes of subsection (2), as a period during a relevant interest remains unchanged.

329. New subsection 371PF(4) outlines the formula to be used in determining a holding period's "relevant percentage" for the purposes of subsection (2). The relevant percentage for any holding period is the proportion of the holding period of the accounting period multiplied by the percentage of the CFC's issued ordinary shares that represents the relevant person's relevant interest for that holding period.

Example

Company A holds 60 per cent of the CFC's issued ordinary shares as a relevant interest during the first 100 days of the accounting period and 80 per cent during the remaining 265 days of the accounting period.

A's relevant interest for the whole accounting period is the sum of the relevant perecentages for the two holding periods:

Holding period 1: relevant percentage is 60 per cent x 100/365 = 16.4 per cent

Holding period 2: relevant percentage is 80 per cent x 265/365 = 58.1 per cent

A's relevant interest for the whole accounting period is 16.4 per cent plus 58.1 per cent = 73.5 per cent

Chapter 17 – Loan relationships with connected companies

330. New subsection 371QA(1) introduces Chapter 17 which provides the rules for partial exemption of intra-group finance investment profits. The partial exemption is given by way of an adjustment that is made to a CFC's chargeable profits and creditable tax for an accounting period at step 6 of new subsection 371BA(2).

331. New subsection 371QA(2) provides that the Chapter does not affect the percentage of the CFC's chargeable profits or creditable tax apportioned to the chargeable company as defined at new subsection 371BA(5).

332. New subsection 371QA(3) states that terms used in the Chapter should have the same meaning as they have in Part 5 of CTA 2009 (loan relationships).

333. New subsection 371QA(4) provides that references in the Chapter to a loan relationship include a part of a loan relationship

334. New section 371QB sets out the basic rule.

335. New subsection 371QB(1) sets out the three conditions that all need to be met in order for the section to apply. These are that:

- the CFC's total profits for the accounting period include "qualifying loan relationship profits" as determined at new section 371QC,
- the CFC has business premises as defined at new section 371HF, and
- a claim is made by the chargeable company to an officer of Revenue and Customs.

336. New subsection 371QB(2) explains that the determination of the sum charged on the claimant is achieved by re-determining:

- the CFC's chargeable profits for an accounting period under new section 371GA taking into account the modification set out in new subsection 371QB(3); and
- the CFC's creditable tax by reference to the re-determined chargeable profits above.

The calculation of the sum charged by re-determination only applies to the chargeable company.

337. New subsection 371QB(3) explains the modification required to new section 371GA. It explains that new paragraph 371GA(2) (a) should be substituted with a rule that provides that the CFC's assumed total profits should be limited to the following:

- 25 per cent of the CFC's "qualifying loan relationship profits", and
- the balance of assumed total profits not represented by "qualifying loan relationship profits" that fall within Chapters 8 to 12 as adjusted by Chapter 13 (where applicable).

338. New subsection 371QB(4) provides that "qualifying loan relationships" for the purposes of the substituted new paragraph 371GA(2)(a) are defined at new section 371QC.

339. New section 371QC sets out the steps for calculating the CFC's "qualifying loan relationship profits" These are;

- Step 1 – calculate the credits from the CFC's qualifying loan relationships defined at new section 371QD that are brought into account for the purposes of determining the CFC's non-trading finance profits for the accounting period. The amount determined is "the Step 1 credits";

- Step 2 – deduct from the Step 1 credits profits arising from the investment of funds held by the CFC for the purposes of a trade or property business carried on by the CFC as defined at new section 371MC. The amount determined is "the Step 2 credits";

- Step 3 – add to or deduct from the Step 2 credits any foreign exchange debits or credits (to the extent they are not already reflected in Step 1 credits) that arise in respect of derivatives or similar hedging arrangements entered into by the CFC as a hedge in connection with qualifying loan relationships. The amount so determined is "the Step 3 credits";

- Step 4 – calculate the debits (so far as not reflected in the Step 3 credits) that are brought into account for the purposes of determining the CFC's non-trading finance profits for the accounting period and subtract from the Step 3 credits a just and reasonable proportion of them to give the CFC's qualifying loan relationship profits.

340. New subsection 371QD(1) sets out the conditions for a loan relationship of a CFC to be treated as a qualifying loan relationship. These are where in relation to the qualifying loan relationship;

- the CFC is the creditor,

- "the ultimate debtor" as defined at new subsection 371QD(2) is connected to the CFC; and

- none of new subsections 371QD(4) to (9) treat the loan as non-qualifying.

341. New subsection 371QD(2) defines "the ultimate debtor" as the debtor in relation to the loan relationship unless new subsection 371QD(3) applies.

342. New subsection 371QD(3) provides that the ultimate debtor will be a person ("P") if;

- the loan to the debtor of the CFC is made for the purposes of funding a loan to P;

- the loan to P is not used for the purposes of funding a loan to any other person; and
- the loan to P gives rise to a loan relationship in relation to which P is the debtor.

343. New subsection 371QD(4) sets out the circumstances under which a loan cannot be a qualifying loan relationship where the ultimate debtor is a non-UK resident company. These are where the debtor's debits are:

- being taken into account for the purposes of determining the profits attributable to a UK PE of the debtor under Part 2 of CTA 2009, or
- being taken into account for the purposes of determining the profits attributable to a UK property business of the CFC under Part 3 ITTOIA 2005.

344. New subsection 371QD(5) provides that a loan cannot be a qualifying loan relationship where the ultimate debtor is UK resident unless it is being taken into account for the purposes of determining the profits attributable to an exempt non-UK PE of the ultimate debtor and an election is made under section 18A of CTA 2009 in relation to the ultimate borrower.

345. New subsection 371QD(6) provides that a loan relationship cannot be a qualifying loan relationship where the ultimate debtor is a company and some or all of the debits are brought into account:

- in calculating trading profits under section 297 of CTA 2009, or
- would be so brought into account if the company were a UK resident company within the charge to corporation tax.

346. New subsection 371QD(7) provides that a loan relationship cannot be a qualifying loan relationship where:

- the ultimate debtor is itself a CFC to which Chapters 3 or Chapters 8 to 12 apply in an accounting period and some or all of the debits of the CFC are being brought into account for the purposes of those Chapters, and
- as a result there is no CFC charge for the accounting period, or the charge is reduced.

347. New subsection 371QD(8) provides that the references to debits in subsections (4) to (7) are to the debits from the loan to the debtor or the loan to P.

348. New subsection 371QD(9) provides that a loan relationship cannot be a qualifying loan relationship where it is part of an arrangement the main purpose or one of the main purposes of which is to provide, directly or indirectly, funding for a loan relationship to a person from the ultimate debtor.

349. New subsection 371QD(10) gives HMRC Commissioners the power to make regulations to amend the definition of qualifying loan relationship.

Chapter 18 – Assumed taxable total profits, assumed total profits and the corporation tax assumptions

350. New section 371RA provides an overview of the Chapter and says that it is applies to explain the concepts of "assumed taxable total profits", "assumed total profits" and "the corporation tax assumptions" in this Part.

351. New subsection 371RB(1) defines a CFC's "assumed taxable total profits" for an accounting period as what, applying the corporation tax assumptions, would be the CFC's taxable total profits of the accounting period for corporation tax purposes.

352. New subsection 371RB(2) determines that "taxable total profits" has the meaning given by section 4(2) of CTA 2010.

353. However for this purpose new subsection 371RB(3) determines that in section 4(3) of CTA 2010 step 1 is to be applied (subject to new subsections 371RB(4) to (6)), and step 2 is to be ignored.

354. New subsection 371RB(4) applies an additional amount when computing the CFC's taxable total profits by adding to step 1 of section 4(3) of CTA 2010 any income which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary.

355. New subsection 371RB(5) states that where there is more than one settlor or beneficiary in relation to the settlement, the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

356. New subsection 371RB(6) covers circumstances whereby if by virtue of subsection (4) any income (the settlement income) is added to the income determined at step 1, any dividend or other distribution which

derives from the settlement income is to be excluded from the income determined at step 1. This prevents any economic double taxation.

357. New subsection 371RB(7) covers circumstances where subsection (8) applies. New subsection 371RB(8) applies where the beneficiary's chargeable profits are the subject of a CFC charge at step 4 in subsection 371BA(2) so that the income is not to be included in the settlor's chargeable profits. Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in;

- the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and
- the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.

358. New subsection 371RB(9) defines a CFC's "assumed total profits" for an accounting period to be its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.

359. New section 371RC explains what the "corporation tax assumptions" are and what they apply to.

360. New subsection 371RC(1) defines "the corporation tax assumptions" for the purposes of this Part as the assumptions set out in new sections 371RD to 371RL.

361. New subsection 371RC(2) outlines that the corporation tax assumptions are to be applied in determining the following for "the relevant accounting period" of a CFC:

- the CFC's assumed taxable total profits (see new subsection 371RB(1))
- the relevant corresponding UK tax (see new subsections 371EI(4) to (7));
- the corresponding UK tax (see new section 371FE)
- the CFC's creditable tax (see Chapter 15)

362. New section 371RD covers the application of the assumption of UK residence to a CFC.

363. New subsection 371RD(1) applies the assumption of UK residence to the CFC so that it continues throughout the relevant accounting period. Where the relevant accounting period is not the CFC's first accounting

period, it applies so that the CFC is assumed to have been UK resident from the beginning of the CFC's first accounting period. The assumption of UK residence will continue to apply until the company ceases to be a CFC. The assumption has the effect that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods are accounting periods for corporation tax purposes.

364. New subsection 371RD(2) clarifies that subsection (1) does not also require it to be assumed that there is any change in the place or places at which the CFC carries on its activities. This means that for the UK tax computation of profits the non UK resident company will be treated as undertaking its trading or business activities outside the UK (unless it is in fact carrying out activities through a PE in the UK). The subsection also requires that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (which provides an exemption for profits from securities free of tax to residents abroad).

365. New subsection 371RD(3) makes clear that where the CFC is actually UK resident immediately before the beginning of its first accounting period the assumption of UK residence does not as a consequence mean that there is a continuous period of UK residence running from the preceding period. This is ensured by making the additional assumption that its UK residence from the beginning of its first accounting period is not continuous with its (actual) UK residence before the beginning of that accounting period.

366. New subsection 371RD(4) assumes that a determination of the CFC's assumed taxable total profits has been made for all previous accounting periods back to (and including) the CFC's first accounting period with the exception of where the relevant accounting period is the CFC's first accounting period. New subsection 371RD(5) underpins the purpose of subsection (4) by explaining that the assumption is made in particular for the purposes of applying any relief which is relevant to two or more accounting periods.

367. New subsection 371RD(6) defines references to the CFC's first accounting period as being to the CFC's accounting period which begins when it becomes a CFC.

368. New section 371RE applies so that the CFC is assumed not to be a close company.

369. New subsection 371RF(1) assumes that any beneficial claims or elections have been made that would, on the assumption of UK residence, have been available in relation to any relief under the Corporation Tax Acts to the maximum amount that would be available under that provision, and to have been made within any applicable time limit.

370. New subsection 371RF(2) restricts the application of subsection (1) so that it does not cover a claim or election under section 18A of CTA 2009 (exemption for profits or losses of foreign PEs); section 1275 of CTA 2009 (relief for unremittable income); or, section 9A of CTA 2010 (designated currency of a UK resident investment company).

371. New section 371RG allows a chargeable company to vary any relief that has been assumed, as part of the corporation tax assumptions, to have been made for the purposes of computing the assumed taxable total profits and creditable tax of a CFC for an accounting period.

372. New subsection 371RG(1) applies so that if a notice is given to an officer of Revenue and Customs so requesting it can be assumed that the CFC:

- has not made for the accounting period a specified claim or election otherwise assumed automatically by the corporation tax assumptions at section 371RF(1),

- to instead have made for the accounting period a specified claim or election (other than one under section 18A of CTA 2009 or section 9A of CTA 2010), being different from one assumed by the corporation tax assumptions at section 371RF(1) but being one which (subject to compliance with any applicable time limit) could have been made by a company within the charge to corporation tax, or

- to have disclaimed or required the postponement, in whole or in part, of a specified allowance for the relevant accounting period if (subject to compliance with any applicable time limit) a company within the charge to corporation tax could have disclaimed the allowance or required such a postponement.

373. New subsections 371RG(2) and (3) require the CFC's assumed total profits chargeable profits, the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010 and creditable tax to be adjusted by applying the assumption set out in the notice, and disapplying the assumption set out at new subsection 371RF(1) to the extent necessary as a consequence.

374. New subsection 371RG(4) provides the time limits for submitting a notice under subsection (1). The notice must be given within 20 months after the end of the accounting period, or within such longer period as an officer of Revenue and Customs may allow. The subsection also restricts the giving of a valid notice to a company or companies determined by new subsections 371RG(5) or (6).

375. New subsection 371RG(4) states that a company may give a notice if it is a chargeable company and the percentage of the CFC's chargeable

profits apportioned to the company represents more than half of the total percentage of the CFC's chargeable profits apportioned to chargeable companies (see new subsection 371RG(7)).

376. New subsection 371RG(6) states that two or more companies may give a notice if the companies are all chargeable companies, and the percentage of the CFC's chargeable profits apportioned to the companies, taken together, represents more than half of the total percentage of the CFC's chargeable profits apportioned to chargeable companies (determined by reference to new subsection 371RG(7)).

377. New subsection 371RH(1) applies if a notice has been given to an officer of Revenue and Customs requesting that the CFC be assumed (applying the "corporation tax assumptions" and subject to meeting the requirements of section 9A and 9A(2) of CTA 2010) to have made an election under section 9A of that Act. This Part of the Acts applies to vary the designated currency of a UK resident investment company in the form specified in the notice.

378. New subsection 371RH(2) assumes that, where a notice is received designating a new functional currency, an election under section 9A of CTA 2010 has been made by the CFC and that sections 9A and 9B of that Act apply to determine the effect (if any) of that election.

379. New subsection 371RH(3) restricts the giving of a notice under this section to a company or companies falling within new subsection 371RH(4) or (5).

380. New subsection 371RH(4) specifies a company may give a notice if both of the following apply:

- the company would be likely to be a chargeable company in relation to the applicable accounting period were a CFC charge to apply in relation to that period

- the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company would represent more than half of X per cent

381. New subsection 371RH(5) specifies two or more companies may together give a notice if the following applies

- the companies would all be likely to be chargeable companies in relation to the applicable accounting period were the CFC scheme to apply in relation to that period,

- the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to

apportioned to the companies, taken together, would represent more than half of X per cent.

382. New subsection 371RH(6) explains that in subsections (4) and (5) (and this subsection) the applicable accounting period means the accounting period of the CFC in which the election would take effect. X per cent means the total percentage of the CFC's chargeable profits for the applicable accounting period apportioned to chargeable companies were the CFC charge to be charged in relation to the applicable accounting period.

383. New subsection 371RI(1) assumes that the CFC is neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts. The main effect of the assumption is to prevent the group relief provisions from applying.

384. New subsection 371RI(2) and (3) states that relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period where under Part 5 of CTA 2010 (group relief) the CFC actually surrenders any relief which is allowed to another company by way of group relief, but in applying the corporation tax assumptions the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period. These subsections have the effect of restricting relief for losses in the CFC's profits computation where they have arisen to a UK PE of a CFC and are group relieved in the UK thereby preventing the losses from being relieved twice.

385. New subsection 371RJ(1) applies if the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade before it's first accounting period.

386. New subsection 371RJ(2) assumes that for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) the plant or machinery was provided for purposes wholly other than those of the trade, and was not brought into use for the purposes of the trade until the beginning of the CFC's first accounting period, and that section 13 of CAA 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies accordingly. This has the effect of bringing in a value equal to the market value of the plant and machinery employed in the trade on the CFC's first accounting period.

387. New subsection 371RJ(3) determines that the CFC's first accounting period is the CFC's accounting period which begins when it becomes a CFC. Other than this specific adaptation for the first accounting period normal rules apply for computing the capital allowances of a CFC.

388. New subsection 371RJ(4) links the section to Part 2 of CAA 2001.

389. New subsection 371RK(1) assumes that for the purposes of Part 18 of CTA 2009 (unremittable overseas income) in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.

390. New subsection 371RK(2) defines the relevant territories as the United Kingdom, the territory (if any) in which the CFC is resident as determined under Chapter 19, and any other territory in which the CFC is in fact resident at any time during the relevant accounting period. The modification within this section prevents income arising in the territory of residence from being excluded from charge where it is not possible to remit it to the UK.

391. New section 371RL(1) ensures that where the application of the Taxes Acts is dependent upon a purpose test which considers whether an arrangement is in whole or in part to obtain a tax advantage within the meaning given to it at section 1139(2)(a) to (d) of CTA 2010, the provisions also apply where the arrangement has as one of its main purposes the avoidance or reduction of a CFC charge.

392. New subsection 371RL(2) states that so far as they would not otherwise do so the Taxes Acts are assumed to apply to the arrangement in the same way as they would if the purpose of obtaining the advantage under section 1139(da) were the same as obtaining an actual advantage within the meaning of a tax advantage under section 1139(a) to (d). This links the reduction or prevention of a CFC charge to the definition of "tax advantage" arising to a UK company for the purposes of computing the CFC's profits.

393. New subsection 371RM allows the rules on counteraction notices at section 81 TIOPA 2010 to apply in computing the creditable tax of a CFC.

394. New subsection 371 RM(1) applies if it is reasonable to suppose that, applying the corporation tax assumptions apart from this section, each of conditions A to D of section 82 TIOPA 2010 would or might be met in relation to the CFC in the relevant accounting period.

395. Where subsection (1) applies new subsection 371RM(2) assumes that such adjustments are to be made as are necessary for counteracting what, applying the corporation tax assumptions apart from this section, would be the effects of the scheme or arrangement in question in the relevant accounting period and that this should be by reference to purpose described at condition B of section 82.

Chapter 19 – residence of CFCs

396. New section 371SA sets out the basic application of the CFC residence rules by setting out two categories of residence where a CFC can be

taken to be resident for the purposes of this Part. The first category includes CFCs resident in territories identifiable by applying new section 371SB and the second category covers CFCs where the territory of residence cannot be identified by that section.

397. New subsection 371SA(1) covers the second category and provides that, if new subsection 371SA(2) applies, the territory in which the CFC will be taken to be resident for a relevant accounting period will be the territory in which the CFC is taken to be resident under the double taxation arrangements referred to in new subsection (2) or, if subsection (2) is not applicable, the territory in which the CFC is incorporated or formed.

398. New subsection 371SA(2) applies if the CFC is incorporated in the UK but is taken to be non-UK resident by virtue of section 18 of CTA 2009 (companies treated as non-UK resident under double taxation arrangements).

399. New subsection 371SA(3) states that this section is subject to new section 371EC (the residence requirement for the ETE) and step 1 in new subsection 371FB(1) (the tax exemption).

400. New section 371SB provides the rules to determine the territory in which a CFC is resident.

401. New subsection 371SB(1) states that the CFC is taken to be resident in the territory under the law of which it is liable to tax by reasons of its domicile, residence or place of management throughout the relevant accounting period.

402. New subsection 371SB(2) determines that where there could be two or more eligible territories of residence, the CFC can only be resident in one of those territories.

403. New subsection 371SB(3) sets out that the determination of that one eligible territory is established by going through the following subsections in turn. Where more than one of those subsections may apply to the residence of the CFC, the earlier or earliest subsection takes precedence.

404. New subsection 371SB(4) provides that where an election or designation of residence has been made for an earlier accounting period, the territory which is denoted in that election or designation is the territory of residence.

405. New subsection 371SB(5) requires that where the CFC's place of effective management is carried on in one of the eligible territories then that territory is the territory of residence.

406. New subsection 371SB(6) extends the above to the situation where the CFC's place of effective management is carried on in two or more territories. If this is the case, the territory in which more than 50 per cent of the CFC's assets are held (priced at their market value immediately before the end of the CFC's accounting period) is the territory of residence.

407. New subsection 371SB(7) provides that the territory in which more than 50 per cent of the CFC's assets are held (priced at their market value immediately before the end of the CFC's accounting period) is the territory of residence.

408. New subsection 371SB(8) sets out that, if an election is made in accordance with new subsection 371SC(1) specifying a territory then that territory is the territory of residence.

409. New subsection 371SB(9) provides that if an officer of Revenue and Customs designates a territory on a just and reasonable basis (see new section 371SC(5) to (7)) then that territory is the territory of residence.

410. New section 371SC provides for elections and designations about residence.

411. New paragraphs 371SC(1)(a)-(f) sets out in what form an election is to be made.

412. New subsection 371SC(2) allows a company to make an election where it is likely that the company would be a chargeable company if a CFC charge was charged in the relevant accounting period and more than half of the CFC's chargeable profits apportioned to chargeable companies would in those circumstances be apportioned and charged to the chargeable company.

413. New subsection 371SC(3) extends the subsection above to circumstances whereby two or more companies would be likely to be chargeable companies if a CFC charge were charged in the relevant accounting period and the aggregate of the CFC's chargeable profits apportioned to them represents more than half of the CFC's apportionable profits that would be apportioned to chargeable companies.

414. New subsection 371SC(4) defines X per cent for the purpose of subsections (2) and (3).

415. New subsection 371SC(5) states that a designation to an eligible territory made by an officer of Revenue and Customs is irrevocable.

416. New subsection 371SC(6) sets out that the officer making the designation must give notice of the designation to each of the

companies which would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.

417. New subsection 371SC(7) specifies what information the notice must contain.

418. New subsection 371SC(8) sets out that the election or designation of residence will apply to the CFC's relevant accounting period and each successive accounting period (even if the interest-holders in the CFC or the extent of their interest change) until such time as subsection (9) below is applicable to an accounting period.

419. New subsection 371SC(9) provides that the election or designation will not continue to be valid for an accounting period if one or more territories which were eligible territories in the accounting period no longer fall within new subsection 371SB(1) or some other territory also falls within new subsection 371SB(1) in the later period.

Chapter 20 - Management

420. New section 371TA introduces Chapter 20 which covers collection and management matters relevant to the CFC rules. It explains that the HMRC Commissioners are responsible for the collection and management of the CFC charge. It also defines, for the purposes of Chapter 20 the terms "closure notice", "company tax return", "discovery assessment" and "the Taxes Act".

421. New section 371TB sets out the application of the Taxes Acts to the CFC charge.

422. New subsection 371TB(1) ensures that all enactments that apply generally to corporation tax shall apply to step 6 in new subsection 371BA(2), as though the amount were an amount of corporation tax.

423. New subsection 371TB(2) ensures that the application of _subsection (1) is subject to any provisions of the Taxes Act and any necessary modifications.

424. New subsection 371TB(3) outlines that the enactments referred to in subsection (1) shall include those relating to:

- returns, accounts statements and reports,
- assessment, collection and receipt of corporation tax,
- rights of appeal, and
- administration, penalties, interest on unpaid tax and priority of tax in insolvency cases.

425. New subsection 371TB(4) further outlines how subsection (1) shall apply for the purposes of TMA 1970. It shall apply so that:

- any reference to corporation tax shall include reference to a sum charged at step 6 in new subsection 371BA(2) (the main CFC charging provision), as if it were an amount of corporation tax, and

- any reference to profits of a company shall include references to the percentage of the CFC's chargeable profits for the accounting period on which the company is charged at step 6 in new subsection 371BA(2).

426. New subsection 371TB(5) disapplies paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns) and Schedule 1A to TMA 1970 (claims or elections not included in returns) from applying to an election under new subsection 371SB(8).

427. New section 371TC applies to just and reasonable apportionments in Part 9A.

428. New subsection 371TC(1) applies when an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with new subsection 371PC(2) and a company tax return is made or amended adopting a particular basis of apportionment.

429. New subsections 371TC(2) and (3) give an officer of Revenue and Customs the power to determine that another basis is to be used for the apportionment and sets out the basis on which that determination can be appealed.

430. New subsection 371TC(4) specifies that the only ground for questioning the basis of apportionment at new subsection (2) is that the officer's determination is not just and reasonable.

431. New section 371TD introduces the reliefs that may be given against a CFC charge.

432. New subsection 371TD(1) provides that new subsection 371TD(2) will apply, where apart from that subsection, a chargeable company in relation to a CFC's accounting period is entitled, or on the making of a claim would be entitled, to a deduction in respect of a relevant allowance for the relevant corporation tax accounting period.

433. New subsection 371TD(2) permits the company to make a claim for relief in respect of the "relevant allowance".

434. New subsection 371TD(3) outlines that the relief should be given by setting off the "relevant sum" against the sum charged to the company at step 6 in new subsection 371BA(2).

435. New subsection 371TD(4) defines the "relevant sum" as a sum equal to corporation tax at the appropriate rate, on the amount of relevant allowance claimed.

436. New subsections 371TD(5) and (6) outlines that the "relevant allowance" specified in the claim is to be taken for the purposes of the Taxes Acts as having been allowed as a deduction. No other relief is available against the sum charged on a company at step 6 in new subsection 371BA(2).

437. New subsection 371TD(7) defines the terms "the appropriate rate", "the relevant corporation tax accounting period" and "relevant allowance".

438. New section 371TE outlines the rules for where a "relevant appeal" involves any question, about the application of this Part to a particular person where the resolution of that question is likely to affect the liability of any other person in relation to the CFC concerned.

439. New subsection 371TE(2) defines a "relevant appeal".

440. New subsections 371TE(3) to (6) sets out how that appeal is to be conducted.

441. New section 371TF introduces the rules for the recovery of a sum charged on a company ("the defaulting company") under step 6 in new subsection 371BA(2) where the amount remains unpaid on the date it was due and payable.

442. New subsection 371TF(2) permits an officer of Revenue and Customs to give a notice of liability on another UK resident company which holds or has held (directly or indirectly) the whole or any part of the same interest in the CFC concerned as is or was held by the defaulting company.

443. New subsection 371TF(3) outlines the amounts for which the company receiving the notice ("the responsible company") shall be liable where such a notice is issued.

444. New subsection 371TF(4) details that new subsection 371TF(5) shall apply where the amount payable by the responsible company is not fully paid within 3 months after the notice is given.

445. New subsection 371TF(5) permits the outstanding amount to be recovered from the defaulting company, without removing the right of recovery from the responsible company under subsection (3).

Chapter 21 – Supplementary provision

446. New section 371UA introduces a number of definitions for the purposes of this Part, including “arrangement”, “non-trading income” and “trading income”.

447. New section 371UB defines connected and related persons.

448. New subsection 371UB(2) outlines that section 882(2) to (7) CTA 2010 (“associated persons”) and section 1122 CTA 2010 (“connected persons”) shall apply.

449. New subsection 371UB(3) details when a person is “related” to a CFC. This shall be when either:

- the person is connected or associated with the CFC, or
- at least 25 per cent of the CFC’s chargeable profits would be apportioned to the person at step 4 of subsection 371BA(2) were that step required to be taken in relation to the accounting period in question, or
- if the CFC is a CFC by virtue of section 371AC, the person is connected or associated with either or both of the controllers.

450. New subsection 371UB(4) outlines that a person shall be taken to be connected, associated or related to the CFC if it is reasonable to suppose they would have been so connected, associated or related had it not been for an arrangement falling with the anti avoidance provision at new subsection 371AE(4) (the control provisions).

451. New section 371UC applies to cell companies and similar types of company.

452. New subsection 371UC(1) applies Part 9A to unincorporated cells and incorporated cells as if they were non-UK resident companies.

453. New subsection 371UC(2) states that an “unincorporated cell” is an identifiable part of a relevant company (by whatever name known) where it meets the condition in new subsection 371UC(3).

454. New subsection 371UC(3) The condition is that under the law under which the relevant company is incorporated or formed, under the articles of association or other document regulating the relevant company or under any arrangement entered into by or in relation to the relevant company:

- assets and liabilities of the relevant company may be wholly or mainly allocated to the part of the company in question,

- liabilities so allocated are to be met wholly or mainly out of assets so allocated, and
- there are members of the relevant company who have rights in relation to the company's assets which cover only or mainly assets so allocated.

455. New subsections 371UC(4) and (5) define an "incorporated cell" and "relevant company" respectively as:

- an entity (by whatever name known) which is not itself a company (ignoring this section), but which under the law under which the relevant company is incorporated or formed has a legal personality distinct from that of the relevant company
- a company resident outside the UK which is not a CFC.

456. New subsection 371UC(6) reserves a power for the Treasury to make regulations to provide for this Part to apply in relation to parts of companies falling within specified descriptions, or other entities falling within specified descriptions which are not themselves companies (ignoring this section), as if they were non-UK resident companies.

457. New subsection 371UC(7) provides that regulations made under subsection (6) may add to, repeal or otherwise amend subsections (1) to (5).

458. New section 371UD defines where a person has an "interest" in a company for the purposes of this Part.

459. New subsection 371UD(2) defines persons who have an interest in a company as:

- any person who has, or is entitled to acquire, share capital or voting rights in the company,
- any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,
- any person who is entitled to secure that income or assets of the company will be applied directly or indirectly for the person's benefit, and
- any other person who, either alone or together with other persons, has control of the company.

460. New subsection 371UD(3) excludes the rights which a person has as a loan creditor of a company from being an interest in the company.

461. New subsection 371UD(4) defines "loan creditor" by reference to section 453 of CTA 2010, but ignoring subsection (4) of that section.

462. New subsection 371UD(5) extends a person's entitlement to do anything under subsection (2) to cover cases in which a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

463. But new subsection 371UD(6) restricts an entitlement to secure that the income or assets of a company will be applied, as mentioned in paragraph (2)(c), where the entitlment is contingent upon a default of the company (or any other person under any agreement) unless the default has occurred.

464. New subsection 371UD(7) outlines that new subsection 371UD(8) shall apply where a CFC is a CFC by virtue of the anti avoidance provisions at section 371AE.

465. New subsection 371UD(8) states that a persons "interests" and the nature of those interests shall be determined by applying new subsection 371AE(3) and by reference to what it is reasonable to suppose would have been the state of affairs in relation to the CFC apart from the arrangement falling within new subsection 371AE(4).

466. New subsection 371UD(9) sets out the conditions for new subsections 371UD(10) and (11) to apply. The conditions are that:

- apart from subsection (10), a person has, or two or more persons together have, an interest in a company ("company 1"), and

- company 1 has an interest in another company ("company 2"). For the purposes of subparagraph 9(b) "interest" includes an interest by virtue of subsection (10).

467. New subsection 371UD(10) outlines that the person, or persons, mentioned in paragraph (9)(a) are to be taken as having an interest in company 2.

468. New subsection 371UD(11) details that for the purpose of references to one person's interest in a company being the same as another person's interest, a person or persons mentioned in paragraph (9)(a) is taken as having, to the extent of that person's (or persons) interest in company 1, the same interest as company 1 has in company 2.

469. New subsection 371UD(12) outlines that where two or more persons jointly have an interest in a company (otherwise than in a fiduciary or representative capacity) they are taken to have the interest in equal shares.

470. New section 371UE outlines that Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.

Part 2 of the Schedule

471. Part 2 deals with consequential amendments

472. Paragraphs 2 and 3 omits the current CFC rules from ICTA

473. Paragraphs 4 and 5 amend the definition of tax advantage in section 1139 CTA 2010 so that it includes any advantage created through the avoidance or reduction of a CFC charge.

474. Paragraphs 6 and 7 amend the definition of financing income amounts which is given in section 314 TIOPA 2010 for the purposes of Part 7 TIOPA (Tax Treatment of Financing Costs and Income). This prevents any double charge arising from the combination of Parts 7 and 9A TIOPA.

Part 3 of the Schedule

475. Part 3 will contain transitional and commencement provisions.

BACKGROUND

476. This measure provides for a new CFC regime to be introduced in Finance Bill 2012 and supports the Government's objective to deliver a more competitive corporate tax system.

477. The policy objectives of the new CFC regime are to:

- introduce a modernised CFC regime that better reflects the way that businesses operate in a global economy whilst maintaining adequate protection of the UK tax base;
- exempt profits where there is no artificial diversion of UK profits; and
- exempt profits arising from genuine economic activities undertaken overseas.

478. The Government announced this measure at the Budget in June 2010 and outlined the policy proposals on 29 November 2010 as part of the Corporate Tax Reform document. This document detailed proposals for interim improvements to the CFC rules which were legislated in Finance (No3) Act 2011.

479. Detailed proposals for this measure were published for consultation in *Controlled Foreign Companies (CFC) reform* in June 2011. On 6 December 2011 the Government published *Controlled Foreign Companies (CFC) reform: response to consultation* which provides an update on the developments on the reform of Controlled Foreign Companies rules following consultation and includes a summary of the responses received and a technical note which gives an overview of the legislation. All documents are available on the HM Treasury website.

480. If you have any questions about this change, or comments on the legislation, please contact Carol Johnson on 020 7270 6032 (email: carol.johnson@hmtreasury.gsi.gov.uk) or Andrew Page on 020 7147 2673 (email: andrew.page@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2012 No.

CORPORATION TAX

The Controlled Foreign Companies (Excluded Territories) Regulations 2012

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by section 371EB(2) and (3) of the Taxation (International and Other Provisions) Act 2010(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Controlled Foreign Companies (Excluded Territories) Regulations 2012 and come into force on ***.

(2) These Regulations have effect ***.

Interpretation

2. In these Regulations—

"the Schedule" means the Schedule to these Regulations;

"TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010.

Excluded territories

3. A territory listed in Part 1 of the Schedule is an excluded territory for the purposes of Chapter 5 of Part 9A of TIOPA 2010 (the excluded territories exemption).

Excluded territories exemption not to apply in specified cases

4. In a case specified in Part 2 of the Schedule, the excluded territories exemption is not to apply even though the conditions set out in subsection (1)(a) to (d) of section 371EB of TIOPA 2010 (the excluded territories exemption: the basic rule) are met for the CFC's accounting period.

Revocation

5. The following Regulations—

(a) the Controlled Foreign Companies (Excluded Companies) Regulations 1998(**b**);

(**a**) 2010 c. 4. As inserted by *** of the Finance Act 2012 (c. *).
(**b**) S.I. 1998/308.

(b) the Controlled Foreign Companies (Excluded Companies Amendment) Regulations 2002([a]);

(c) the Controlled Foreign Companies (Excluded Companies Amendment No. 2) Regulations 2002([b]);

(d) the Controlled Foreign Companies (Excluded Companies Amendment) Regulations 2005([c]);

(e) the Controlled Foreign Companies (Excluded Companies Amendment No. 2) Regulations 2005([d]);

are revoked with effect from ***.

Name
Name
Date Two of the Commissioners for Her Majesty's Revenue and Customs

---

(**a**) S.I. 2002/1963.
(**b**) S.I. 2002/2406.
(**c**) S.I. 2005/185.
(**d**) S.I. 2005/186.

SCHEDULE

Regulations 3 and 4

PART 1

Excluded Territories

Afghanistan
Algeria
Angola
Argentina
Armenia
Aruba
Australia
Austria
Azerbaijan
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Brunei
Burundi
Cameroon
Canada
China
Colombia
Croatia
Cuba
Czech Republic
Democratic Republic of the Congo
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia
Falkland Islands
Faroe Islands
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Guyana
Honduras
Iceland
India
Indonesia
Iran
Israel
Italy
Ivory Coast
Jamaica
Japan
Kenya
Lesotho
Libya
Luxembourg
Malawi
Malaysia
Malta
Mexico
Monaco
Morocco
Namibia
Netherlands
New Zealand
Nigeria
Norway
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Poland
Portugal
Puerto Rico
Republic of Korea
Russia
Saudi Arabia
Senegal
Sierra Leone
Slovakia
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Swaziland
Sweden
Tanzania
Thailand
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United States
Uruguay
Venezuela
Vietnam
Zambia
Zimbabwe

PART 2

Specified cases

1. For the purposes of regulation 4 a specified case is a CFC which—

(a) is authorised and regulated to carry on insurance business, and

(b) carries on that insurance business in Luxembourg.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exercise powers conferred by the Taxation (International and Other Provisions) Act 2010 (c. 4) ("TIOPA 2010") in relation to the excluded territories exemption ("the ETE") which is part of the controlled foreign company ("CFC") legislation of TIOPA 2010. The ETE will exempt a CFC resident in a territory where the CFC's income is taxed at a rate similar to the UK main corporation tax rate. It will do so in part by way of a list of territories that would qualify as an excluded territory for the purposes of the ETE. Other conditions will also have to be met as part of the ETE. If the ETE applies for a CFC's accounting period all of its profits will be exempted from charge under the CFC legislation.

Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation.

Regulation 3 and Part 1 of the Schedule give a list of excluded territories for the purposes of Chapter 5 of Part 9A of TIOPA 2010.

Regulation 4 and Part 2 of the Schedule provide that the excluded territories exemption is unavailable in respect of a CFC in a specified case, even though the conditions set out in subsection (1)(a) to (d) of section 371EB of TIOPA 2010 are met. The specified case concerns insurance business in Luxembourg.

Regulation 5 revokes the Controlled Foreign Companies (Excluded Companies) Regulations 1998 (S.I. 1998/3081), the Controlled Foreign Companies (Excluded Countries) (Amendment) Regulations 2002 (S.I. 2002/1963), the Controlled Foreign Companies (Excluded Countries) (Amendment No. 2) Regulations 2002 (S.I. 2002/2406), the Controlled Foreign Companies (Excluded Countries) (Amendment) Regulations 2002 (S.I. 2005/185) and the Controlled Foreign Companies (Excluded Countries) (Amendment No. 2) Regulations 2002 (S.I. 2005/186) with effect from ***.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

EXPLANATORY MEMORANDUM TO

THE CONTROLLED FOREIGN COMPANIES (EXCLUDED TERRITORIES) REGULATIONS 2012

[2012] No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue & Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Regulations provide a list of excluded territories for the purposes of the excluded territories exemption ("ETE") and set out a specific case in which the ETE is not to apply.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Regulations replace the Controlled Foreign Companies (Excluded Companies) Regulations (SI 1998/3081) which are revoked from the date the Regulations take effect.

4. Legislative Context

4.1 Subsections (2) and (3) of section 371EB of Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA)[1] detail the powers used by the Regulations. The powers are being used for the first time in making the Regulations. The powers allow for, the list of excluded territories to be amended, specification of further conditions which need to be met in order for a controlled foreign company ("CFC") to benefit from the ETE, and specification of cases to which the ETE will not apply.

4.2 The ETE is an exemption from the CFC provisions in Part 9A of TIOPA by the Finance Act 2012 ("the CFC legislation").

4.3 The CFC legislation itself will, in certain circumstances, impose a charge (equivalent to corporation tax) on UK resident companies in respect of overseas companies which are controlled from the UK and in which the UK resident company has a specified interest. There are various exemptions from the CFC legislation including the ETE. The ETE broadly replaces the Excluded Countries Exemption (mainly found in SI 1998/3081) which was part of the previous CFC legislation (mainly found in Chapter IV of Part XVII of ICTA 1988).

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[1] Inserted by the Finance Act 2012.

5. Territorial Extent and Application

5.1 The Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The CFC legislation, of which the ETE is part, is anti-avoidance legislation, the aim of which is to prevent the diversion of UK profits to low tax territories. Reform of the CFC legislation is intended to improve the UK's international tax competitiveness whilst retaining adequate protection for the UK's corporate tax base.

7.2 Within the CFC legislation the purpose of the ETE is to exempt those CFC's that pose a low risk to the UK corporate tax base due to their territory of residence. The ETE will exempt CFCs resident in territories where the CFC's income is taxed at a rate similar to the UK main corporation tax rate. It will do so in part by way of a list of territories that qualify as excluded territories for the purposes of the ETE. The Regulations set out that list of territories.

7.3 Other general conditions will also have to be met as part of the ETE.
If the ETE applies for a CFC's accounting period all of its profits will be exempted from charge under the CFC legislation.

- *Consolidation*

7.4 Not applicable

8. Consultation outcome

8.1 A consultation document was published in June 2011 on proposals for wider reform of the previous CFC legislation and representations on this were extensive. A further consultation on the draft CFC legislation (including the Regulations) took place from 6 December 2011.

8.2 As part of the consultation process HMRC (along with HM Treasury) met with various interested parties including business and their representatives and actively sought their input into the proposals and the draft CFC legislation.

8.3 The outcome of the consultation was that business wanted the ETE to have as many territories as possible on the excluded territories list in the Regulations and to have only a few targeted general conditions. It was considered that this would make the exemption simpler to apply than the previous Excluded Countries Exemption which the ETE replaces. Further information can be found in the Tax Information and Impact Note published on HMRC website.

9. Guidance

9.1 Guidance on the operation of the ETE, of which the Regulations form part, will be included in the wider update of the International Manual concerning the CFC legislation. The Guidance will be published on the HMRC website in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as those businesses already claiming exemption under the Excluded Countries Exemption will in the vast majority of cases still be eligible for the ETE.

10.2 The impact on the public sector is nil.

10.3 A Tax Information and Impact Note covering the Regulations will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The Regulations apply to small business in the same way as larger business. It will however be larger businesses that have CFCs as part of their group structure which will fall within the CFC legislation. No special approach for small business is therefore necessary.

12. Monitoring & review

12.1 HMRC will keep the Regulations under review to ensure that they meet the policy objectives set out above in section 7.

13. Contact

Mary Sharp or Stephen Moore at HMRC Tel: 0207 147 2656 or 0207 147 0797 (email: mary.sharp@hmrc.gsi.gov.uk or stephen.j.moore@hmrc.gsi.gov.uk) can answer any queries regarding the Regulations.

Patent Box

1 Profits arising from the exploitation of patents etc

Schedule 1 contains provision about the treatment for corporation tax purposes of profits arising from the exploitation of patents etc.

SCHEDULE 1

Section 1

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

PART 1

AMENDMENTS OF CTA 2010

1 (1) In CTA 2010, after Part 8 insert—

“PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

CHAPTER 1

REDUCED CORPORATION TAX RATE FOR PROFITS FROM PATENTS ETC

357A Election for special treatment of profits from patents etc

(1) A company may elect that any relevant IP profits of a trade of the company for an accounting period for which it is a qualifying company are chargeable at a lower rate of corporation tax.

(2) An election under subsection (1) is to be given effect by allowing a deduction to be made in calculating the profits of the trade for the period for the purposes of corporation tax.

(3) The amount of the deduction is—

$$RP \times \left(\frac{MR - IPR}{MR}\right)$$

where—

RP is the relevant IP profits of the trade of the company,
MR is the main rate of corporation tax, and
IPR is the special IP rate of corporation tax.

(4) The special IP rate of corporation tax is 10%.

(5) Chapter 2 specifies when a company is a qualifying company.

(6) Chapter 3 makes provision for determining the relevant IP profits or relevant IP losses of a trade.

(7) Chapter 4 makes provision for an alternative way of determining the relevant IP profits or losses of a trade known as “streaming”.

(8) Chapter 5 makes provision in relation to the relevant IP losses of a trade.

(9) Chapter 6 contains anti-avoidance provisions.

(10) Chapter 7 contains supplementary provision relating to this Part.

CHAPTER 2

QUALIFYING COMPANIES

357B Meaning of "qualifying company"

(1) A company is a qualifying company for an accounting period if—
   (a) condition A or B is met, and
   (b) in the case of a company that is a member of a group, condition C is met.

(2) Condition A is that, at any time during the accounting period, the company—
   (a) holds any qualifying IP rights, or
   (b) holds an exclusive licence in respect of any qualifying IP rights.

   (For the meaning of "exclusive licence", see section 357BA.)

(3) Condition B is that—
   (a) the company has held a qualifying IP right or an exclusive licence in respect of such a right,
   (b) the company has received income in respect of an event which occurred in relation to the right or licence, or any part of which so occurred, at a time when—
      (i) the company was a qualifying company, and
      (ii) an election under section 357A had effect in relation to it, and
   (c) the income falls to be taxed in the accounting period.

(4) A right is a qualifying IP right for the purposes of this Part if—
   (a) it is a right to which this Part applies (see section 357BB), and
   (b) the company meets the development condition in relation to the right (see section 357BC).

(5) Condition C is that the company meets the active ownership condition for the accounting period (see section 357BD).

357BA Meaning of "exclusive licence"

(1) In this Part "exclusive licence", in relation to a right, means a licence which—
   (a) is granted by the person who holds either the right or an exclusive licence in respect of the right ("the proprietor"), and
   (b) confers on the person holding the licence ("the licence-holder"), or on the licence-holder and persons authorised by it, the rights in respect of the protected item that are listed in subsection (2).

(2) The rights are—
   (a) one or more rights conferred to the exclusion of all other persons (including the proprietor) in one or more countries or territories who carry on the same, or a similar, description of trade as the licence-holder in those countries or territories, and
   (b) the right—

(i) to bring proceedings without the consent of the proprietor or any other person in respect of any infringement of the rights within paragraph (a), or

(ii) to receive the whole or the greater part of any damages awarded in respect of any such infringement.

(3) Where the licence-holder has any right within subsection (2)(b) by virtue of any enactment or rule of law, the right is to be regarded for the purposes of this section as conferred by the licence.

(4) Where—

(a) a company ("C") that is a member of a group holds either a right to which this Part applies or an exclusive licence in respect of such a right, and

(b) C confers on another company that is a member of the group all of the rights held by C in respect of the protected item,

that other company is to be treated for the purposes of this Part as holding an exclusive licence in respect of that right.

(5) For the purposes of subsection (4) it does not matter if the rights conferred by C do not include the right to enforce, assign or grant a licence of any of those rights.

357BB Rights to which this Part applies

(1) This Part applies to the following rights—

(a) a patent granted under the Patents Act 1977,

(b) a patent granted under the European Patent Convention,

(c) any right specified for the purposes of this section in an order made by the Treasury.

(2) In a case where—

(a) directions are in force under section 22 of the Patents Act 1977 (information prejudicial to national security or safety of public) with respect to an application for a patent under that Act, and

(b) the person making the application ("the applicant") has been notified under section 18(4) of that Act that the application complies with the requirements of the Act and the rules,

the applicant is to be treated for the purposes of this Part as if the applicant had been granted the patent under that Act.

(3) An order made under this section may make any incidental, supplemental, consequential, transitional or saving provision, including provision amending or modifying this Part.

(4) In this section—

"European Patent Convention" means the Convention on the Grant of European Patents;

"rules" means rules made under section 123 of the Patents Act 1977.

357BC The development condition

(1) A company meets the development condition in relation to a right if condition A, B, C or D is met.

(2) Condition A is that—
 (a) the company has at any time carried out qualifying development in relation to the right, and
 (b) the company has not ceased to be, or become, a member of a group since that time.

(3) Condition B is that—
 (a) the company has at any time carried out qualifying development in relation to the right,
 (b) the company has ceased to be, or become, a member of a group since that time, and
 (c) the company has, for a period of 12 months beginning with the day on which it ceased to be, or became, a member of the group, performed activities of the same description as those that constituted the qualifying development.

(4) Condition C is that—
 (a) the company is a member of a group,
 (b) another company has, at any time when that other company was a member of the group, carried out qualifying development in relation to the right, and
 (c) the company has been a member of the group since becoming the holder of the right or (as the case may be) an exclusive licence in respect of the right.

(5) Condition D is that—
 (a) the company is a member of a group,
 (b) another company that is or has been a member of the group has at any time carried out qualifying development in relation to the right, and
 (c) that other company has, for a period of 12 months beginning with the day on which it became a member of the group and during which it was a member of the group, performed activities of the same description as those that constituted the qualifying development.

(6) A company that meets the development condition in relation to a right by virtue of subsection (3) or (5) is to be regarded as meeting that condition in relation to the right for the period of 12 months mentioned in paragraph (c) of that subsection (as well as at any other time when the company meets the condition).

(7) A company carries out “qualifying development” in relation to a right if—
 (a) it creates, or significantly contributes to the creation of, the protected item, or
 (b) it performs a significant amount of activity for the purposes of developing the protected item or any item incorporating the protected item.

(8) The reference in subsection (7)(b) to developing the protected item includes developing ways in which the protected item may be used or applied.

(9) For the purposes of this section it does not matter whether the qualifying development was carried out before or after—
  (a) the company, or
  (b) where the company is a member of a group, any member of the group,

became the holder of the right or (as the case may be) an exclusive licence in respect of the right.

357BD The active ownership condition

(1) A company meets the active ownership condition for an accounting period if all or almost all of the qualifying IP rights held by the company in that accounting period are rights in respect of which Condition A or B is met.

(2) Condition A is that during the accounting period the company performs a significant amount of management activity in relation to the rights.

(3) In subsection (2) "management activity", in relation to any qualifying IP rights, means formulating plans and making decisions in relation to the development or exploitation of the rights.

(4) Condition B is that the company meets the development condition in relation to the rights by virtue of section 357BC(2) or (3).

(5) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company has an exclusive licence.

CHAPTER 3

RELEVANT IP PROFITS

Steps for calculating relevant IP profits of a trade

357C Relevant IP profits

(1) To determine the relevant IP profits of a trade of a company for an accounting period—

Step 1
Calculate the total gross income of the trade for the accounting period (see section 357CA).

Step 2
Calculate the percentage ("X%") given by the following formula—

$$\frac{RIPI}{TI} \times 100$$

where—

"RIPI" is so much of the total gross income of the trade for the accounting period as is relevant IP income (see sections 357CB and 357CC), and

"TI" is the total gross income of the trade for the accounting period.

Step 3

Calculate X% of the profits of the trade (calculated for the purposes of corporation tax) for the accounting period.

If there are no such profits, calculate X% of the losses of the trade (calculated for those purposes) for the accounting period.

See also section 357CF (adjustments in calculating profits of trade).

Step 4

Deduct from the amount given by Step 3 the routine return figure (see section 357CH).

The amount given by this step is the "qualifying residual profit".

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

Step 5

If the company has elected for small claims treatment, go to section 357CJ.

If the company has not, go to Step 6.

Step 6

Deduct from the qualifying residual profit the marketing assets return figure (see section 357CK).

Step 7

If the company has made an election under section 357CN (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

(2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.

(3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).

Total gross income of trade

357CA Total gross income of a trade

(1) For the purposes of this Part the "total gross income" of a trade of a company for an accounting period is the aggregate of the following amounts—

(a) any amounts which—

(i) in accordance with generally accepted accounting practice are recognised as revenue in the company's

profit and loss account or income statement for the accounting period, and

(ii) are brought into account as credits in calculating for corporation tax purposes the profits of the trade for the accounting period,

(b) any amounts (so far as not falling within paragraph (a)) which are brought into account as credits under Chapter 4 of Part 8 of CTA 2009 (realisation of intangible fixed assets) in calculating for those purposes the profits of the trade for the accounting period, and

(c) any profits from the sale by the company of the whole or part of any patent rights held for the purposes of the trade which are taxed under section 912 of that Act in the accounting period.

(2) But the total gross income of the trade does not include any of the following—

(a) any credits which are treated as receipts of the trade by virtue of section 297 of CTA 2009 (credits in respect of loan relationships),

(b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and

(c) any return, in relation to an amount, which—

(i) is produced for the company by an arrangement to which it is party, and

(ii) is economically equivalent to interest.

(3) In subsection (2)—

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

"financial asset" means a financial asset as defined for the purposes of generally accepted accounting practice.

(4) For the purposes of subsection (2)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to the company from a loan relationship.

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

Relevant IP income

357CB Relevant IP income

(1) For the purposes of this Part "relevant IP income" means income falling within any of the Heads set out in—

(a) subsection (2) (sales income),

(b) subsection (7) (licence fees),

(c) subsection (8) (proceeds of sale etc),

(d) subsection (9) (damages for infringement).

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

(2) Head 1 is income arising from the sale of any of the following items—
  (a) items protected by a qualifying IP right held by the company ("qualifying items");
  (b) items incorporating one or more qualifying items;
  (c) items that are wholly or mainly designed to be incorporated into items within paragraph (a) or (b).

(3) For the purposes of this Part an item and its packaging are not to be treated as a single item, unless the packaging performs a function that is essential for the use of the item for the purposes for which it is intended to be used.

(4) In subsection (3) "packaging", in relation to an item, means any form of container or other packaging used for the containment, protection, handling, delivery or presentation of the item, including by way of attaching the item to, or winding the item round, some other article.

(5) In a case where a qualifying item and an item that is designed to incorporate that item ("the parent item") are sold together as, or as part of, a single unit for a single price, the reference in subsection (2)(b) to an item incorporating a qualifying item includes a reference to the parent item.

(6) Income arising from the sale of items within paragraph (c) of subsection (2) is relevant IP income only if the company receiving the income holds the right referred to in paragraph (a) of that subsection.

(7) Head 2 is income consisting of any licence fee or royalty which the company receives under an agreement granting another person any of the following rights only—
  (a) a right in respect of any qualifying IP right held by the company, and
  (b) in the case of an agreement granting any right within paragraph (a), a right granted for the same purposes as those for which that right was granted.

(8) Head 3 is any income arising from the sale or other disposal of a qualifying IP right or an exclusive licence in respect of such a right.

(9) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right, in a case where—
  (a) the right was held by the company at the time of the infringement or alleged infringement, and
  (b) the infringement or alleged infringement (or any part of it) occurred at a time when—
    (i) the company was a qualifying company, and
    (ii) an election under section 357A had effect in relation to it.

(10) Where the whole of the infringement (or alleged infringement) does not occur at the time referred to in paragraph (b) of subsection (9), that subsection applies only to so much of the amount received by the company in respect of the infringement (or alleged infringement) as on a just and reasonable apportionment is properly attributable to such time.

(11) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company has an exclusive licence.

357CC Notional royalty

(1) This section applies where—

(a) a company, for the purposes of any trade of the company, holds any rights mentioned in paragraph (a) or (b) of section 357BB(1) or an exclusive licence in respect of any such rights, and

(b) the rights are relevant qualifying IP rights.

(2) For the purposes of this section a qualifying IP right is a "relevant qualifying IP right" in relation to an accounting period if—

(a) the total gross income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that right, and

(b) that income is not relevant IP income or excluded income.

Such income is referred to in this section as "IP-derived income".

(3) The company may elect that the notional royalty in respect of the trade for the accounting period is to be treated for the purposes of this Part as if it were relevant IP income.

(4) The notional royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the IP-derived income for that accounting period.

(5) The "appropriate percentage" is the proportion of any IP-derived income for an accounting period which the company would pay another person ("P") for the right to exploit the relevant qualifying IP rights in that accounting period if the company were not otherwise able to exploit them.

(6) For the purposes of determining the appropriate percentage under this section, assume that—

(a) the company and P are dealing at arm's length,

(b) the company, or the company and persons authorised by it, will have the right to exploit the relevant qualifying IP rights to the exclusion of any other person (including P),

(c) the company will have the same rights in relation to the relevant qualifying IP rights as it actually has,

(d) the relevant qualifying IP rights are conferred on the relevant day,

(e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,

(f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant qualifying IP rights, and

(g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the relevant qualifying IP rights.

(7) In subsection (6)(d) "the relevant day", in relation to a relevant qualifying IP right or a licence in respect of such a right, means—
   (a) the first day of the accounting period, or
   (b) if later, the day on which the company first began to hold the right or licence.

(8) In determining the appropriate percentage, the company must act in accordance with—
   (a) Article 9 of the OECD model, and
   (b) the transfer pricing guidelines.

(9) In this section—
   "excluded income" means any income falling within any of the Heads in section 357CD;
   "the OECD model" means—
      (a) the version of the Model Tax Convention on Income and on Capital published in July 2010 by the Organisation for Economic Co-operation and Development ("the OECD"), or
      (b) such other document approved and published by the OECD in place of that (or a later) version or in place of that Convention as is designated for the time being by order made by the Treasury;
   "the transfer pricing guidelines" means—
      (a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published in July 2010 by the OECD, or
      (b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,
   including, in either case, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated.

357CD Excluded income

(1) For the purposes of this Part income falling within any of the Heads set out in the following subsections is not relevant IP income—
   (a) subsection (2) (ring fence income),
   (b) subsection (3) (income attributable to non-exclusive licences).

(2) Head 1 is income arising from oil extraction activities or oil rights.

(3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a non-exclusive licence held by the company in respect of a qualifying IP right.

(4) In a case where—
   (a) a company holds an exclusive licence in respect of a qualifying IP right, and
   (b) the licence also confers on the company (or on the company and persons authorised by it) any right in respect of the

protected item otherwise than to the exclusion of all other persons,

the licence is to be treated for the purposes of this Part as if it were two separate licences, one an exclusive licence that does not confer any such rights, and the other a non-exclusive licence conferring those rights.

(5) In this section—

"non-exclusive licence", in relation to a right to which this Part applies, means a licence that is not an exclusive licence;

"oil extraction activities" and "oil rights" have the same meaning as in Part 8 (see sections 272 and 273).

357CE Mixed sources of income

(1) This section applies to any income that—

(a) is mixed income, or

(b) is paid under a mixed agreement.

(2) "Mixed income" means the proceeds of sale in a case where an item falling within subsection (2) of section 357CB and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.

(3) A "mixed agreement" is an agreement providing for—

(a) one or more of the matters in paragraph (a) or (b) of subsection (4), and

(b) one or more of the matters in paragraph (c), (d) or (e) of that subsection.

(4) The matters are—

(a) the sale of an item falling within section 357CB(2),

(b) the grant of any right falling within paragraph (a) or (b) of section 357CB(7),

(c) the sale of any other item,

(d) the grant of any other right,

(e) the provision of any services.

(5) So much of the income as on a just and reasonable apportionment is properly attributable to—

(a) the sale of an item falling within section 357CB(2), or

(b) the grant of any right falling within paragraph (a) or (b) of section 357CB(7),

is to be regarded for the purposes of this Part as relevant IP income.

(6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraph (c), (d) or (e) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

Calculating profits of trade

357CF Adjustments in calculating profits of trade

(1) For the purposes of determining the relevant IP profits of a trade of a company for an accounting period, in calculating the profits of the trade for that accounting period—

(a) there are to be added the amounts in subsection (2), and

(b) there are to be deducted the amounts in subsection (3).

(2) The amounts to be added are—

(a) the amount of any additional deduction for the accounting period obtained by the company under Part 13 of CTA 2009 for expenditure on research and development in relation to the trade, and

(b) the amount of any debits which are treated as expenses of the trade by virtue of section 297 of CTA 2009 (debits in respect of loan relationships).

(3) The amounts to be deducted are—

(a) any credits which are treated as receipts of the trade by virtue of section 297 of CTA 2009 (credits in respect of loan relationships),

(b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and

(c) any return, in relation to an amount, which—

(i) is produced for the company by an arrangement to which it is party, and

(ii) is economically equivalent to interest.

(4) In subsection (3)—

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

"financial asset" means a financial asset as defined for the purposes of generally accepted accounting practice.

(5) For the purposes of subsection (3)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to the company from a loan relationship.

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

(6) In a case where the R&D expenditure condition is met (see section 357CG), the amount of R&D expenditure that is to be brought into account in calculating the profits of the trade for a relevant accounting period is 75% of the average amount of R&D expenditure calculated in accordance with section 357CG.

(7) For the purposes of subsection (6)—

"R&D expenditure" means expenditure on research and development in relation to the trade;

"relevant accounting period" means—

(a) the first accounting period for which an election made by the company under section 357A has effect, and

(b) each accounting period that begins before the end of the period of 4 years beginning with that accounting period;

"research and development" means activities, other than oil and gas exploration and appraisal, that fall to be treated as research and development in accordance with generally accepted accounting practice.

357CG R&D expenditure condition

(1) The R&D expenditure condition is met if the amount of R&D expenditure that would, apart from section 357CF(6), be brought into account in calculating for corporation tax purposes the profits of a trade of a company for a relevant accounting period ("the actual R&D expenditure") is less than 75% of the average amount of R&D expenditure.

(2) In the case of a relevant accounting period that is less than 12 months, the average amount of R&D expenditure must be proportionately reduced.

(3) The average amount of R&D expenditure is—

$$\frac{E}{N} \times 365$$

where—

E is the amount of R&D expenditure incurred by the company during the relevant period, and

N is the number of days in the relevant period.

(4) The relevant period is the shorter of—

(a) the period of 4 years ending immediately before the first relevant accounting period, and

(b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.

(5) If the amount of the actual R&D expenditure in a relevant accounting period is greater than the average amount of R&D expenditure, the difference between the two amounts is to be added to the actual R&D expenditure in the next relevant accounting period for the purposes of determining whether the R&D expenditure condition is met in relation to that accounting period.

(6) If—

(a) the R&D expenditure condition is not met in relation to a relevant accounting period, but

(b) in the absence of any additional amount, the R&D expenditure condition would be met in relation to that accounting period,

the used-up portion of the additional amount is to be added to the actual R&D expenditure in the next relevant accounting period for

the purposes of determining whether the R&D expenditure condition is met in relation to that accounting period.

(7) For the purposes of this section—

"additional amount", in relation to a relevant accounting period, is any amount added to the actual R&D expenditure in that accounting period by virtue of this section, and

"the used-up portion", in relation to any additional amount, is so much of that amount as exceeds the difference between—

(a) the actual R&D expenditure in the relevant accounting period in the absence of the additional amount, and

(b) 75% of the average amount of R&D expenditure.

(8) If—

(a) the R&D expenditure condition is not met in relation to a relevant accounting period, and

(b) the R&D expenditure condition would not be met in relation to that accounting period in the absence of any additional amount,

the additional amount is to be added to the actual R&D expenditure in the next relevant accounting period for the purposes of determining whether the R&D expenditure condition is met in relation to that accounting period (in addition to any additional amount so added by virtue of subsection (5)).

(9) In this section "R&D expenditure" and "relevant accounting period" have the meaning given by section 357CF(7).

Routine return figure

357CH Routine return figure

(1) To determine the routine return figure in relation to a trade of a company for an accounting period—

Step 1

Take the aggregate of any routine expenses, other than expenses within subsection (2), brought into account in calculating for corporation tax purposes the profits of the trade for the accounting period.

For the meaning of "routine expenses", see section 357CI.

Step 2

Multiply that amount by 0.1.

Step 3

Calculate X% of the amount given by Step 2.

"X%" is the percentage given by Step 2 in section 357C(1).

(2) The expenses referred to in Step 1 are—

(a) the amount referred to in section 357CF(2)(b) (debits in respect of loan relationships), and

(b) R&D expenses.

(3) In subsection (2) "R&D expenses" means—

(a) the aggregate of—

(i) the amount of any expenditure on research and development in relation to the trade for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, and

(ii) the amount of that additional deduction, or

(b) where subsection (6) of section 357CF (adjustments in calculating profits of trade) applies, any R&D expenditure (within the meaning of that subsection) brought into account by virtue of that subsection.

(4) In the case of a company ("C") that is a member of a group, the reference in this section to any routine expenses brought into account in calculating the profits of a trade of C includes a reference to any routine expenses of another member of the group which—

(a) are incurred on behalf of C, and

(b) had they been incurred by C, would have been so brought into account.

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

357CI Routine expenses

(1) For the purposes of section 357CH "routine expenses" means expenses falling within any of the Heads set out in—

(a) subsection (2) (capital allowances),

(b) subsection (3) (costs of premises),

(c) subsection (4) (personnel costs),

(d) subsection (5) (plant and machinery costs),

(e) subsection (6) (miscellaneous services).

(2) Head 1 is any allowances under CAA 2001.

(3) Head 2 is any expenditure incurred by the company in respect of any premises occupied by the company.

(4) Head 3 is any expenditure incurred by the company in respect of—

(a) any director or employee of the company, or

(b) any externally provided workers.

(5) Head 4 is any expenditure incurred by the company in respect of any plant or machinery.

(6) Head 5 is expenditure on any of the following—

(a) the supply of water, fuel or power;

(b) consultancy or other professional services;

(c) telecommunications services;

(d) computing services, including computer software;

(e) postal services;

(f) the transportation of any items;

(g) the collection, removal and disposal of refuse.

(7) In this section—

"externally provided worker" has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),

"premises" includes any land,

"telecommunications service" means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service), and

"telecommunication system" means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.

(8) The Treasury may by order amend this section.

Small claims

357CJ Election for small claims treatment

(1) This section applies where the company elects for small claims treatment for an accounting period.

(2) The amount of the relevant IP profits of each trade of the company for the accounting period is—

(a) if the amount in subsection (3) is lower than the small claims threshold, 75% of the qualifying residual profit of the trade for the accounting period;

(b) in any other case, the small claims threshold (see subsections (5) and (6)).

(3) The amount referred to in subsection (2)(a) is—

$$0.75 \times QRP$$

where QRP is the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period (but see subsection (4)).

(4) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of subsection (3).

(5) If the company has no associated company in the accounting period, the small claims threshold is £1,000,000.

(6) If the company has one or more associated companies in the accounting period, the small claims threshold is—

$$\frac{£1,000,000}{1 + N}$$

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

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

(8) Sections 25 to 30 have effect for the purposes of this section.

Marketing assets return figure

357CK Marketing assets return figure

(1) The marketing assets return figure in relation to a trade of a company for an accounting period is—

$$NMR - AMR$$

where—

NMR is the notional marketing royalty in respect of the trade for the accounting period, and

AMR is the actual marketing royalty in respect of the trade for the accounting period.

(2) Where—

(a) AMR is greater than NMR, or

(b) the difference between NMR and AMR is less than 10% of the qualifying residual profit of the trade for the accounting period,

the marketing assets return figure is nil.

357CL Notional marketing royalty

(1) The notional marketing royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the relevant IP income for that accounting period.

In this section "relevant IP income", in relation to a trade of a company for an accounting period, means so much of the total gross income of the trade for the accounting period as is relevant IP income.

(2) The "appropriate percentage" is the proportion of any relevant IP income for an accounting period which the company would pay another person ("P") for the right to exploit the relevant marketing assets in that accounting period if the company were not otherwise able to exploit them.

(3) For the purposes of this section a marketing asset is a "relevant marketing asset" in relation to an accounting period if the relevant IP income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.

(4) For the purposes of determining the appropriate percentage under this section, assume that—

(a) the company and P are dealing at arm's length,

(b) the company, or the company and persons authorised by it, will have the right to exploit the relevant marketing assets to the exclusion of any other person (including P),

(c) the company will have the same rights in relation to the relevant marketing assets as it actually has,

(d) the right to exploit the relevant marketing assets is conferred on the relevant day,

(e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,

(f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant marketing assets, and

(g) no income other than relevant IP income will arise from anything done by the company that involves the exploitation by the company of the relevant marketing assets.

(5) In subsection (4)(d) "the relevant day", in relation to a relevant marketing asset, means—

(a) the first day of the accounting period, or

(b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.

(6) In determining the appropriate percentage, the company must act in accordance with—

(a) Article 9 of the OECD model, and

(b) the transfer pricing guidelines.

(7) In this section—

"marketing assets" means any of the following (whether or not capable of being transferred or assigned)—

(a) any trade mark within the meaning of section 1 of the Trade Marks Act 1994 (whether or not registered under that Act),

(b) any other signs or indications which may serve, in trade, to designate the geographical origin of goods or services, and

(c) any information relating to customers or potential customers of the company or any other member of a group of which the company is a member;

"the OECD model" means—

(a) the version of the Model Tax Convention on Income and on Capital published in July 2010 by the Organisation for Economic Co-operation and Development ("the OECD"), or

(b) such other document approved and published by the OECD in place of that (or a later) version or in place of that Convention as is designated for the time being by order made by the Treasury;

"the transfer pricing guidelines" means—

(a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published in July 2010 by the OECD, or

(b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,

including, in either case, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated.

357CM Actual marketing royalty

(1) The actual marketing royalty in respect of a trade of a company for an accounting period is X% of the aggregate of any sums which—

(a) were paid by the company for the purposes of acquiring any relevant marketing assets, or the right to exploit any such assets, in the accounting period, and

(b) were brought into account as debits in calculating for corporation tax purposes the profits of the trade for that accounting period.

(2) In this section—

"relevant marketing assets" has the same meaning as in section 357CL;

"X%" is the percentage given by Step 2 in section 357C(1).

Profits arising before grant of right

357CN Profits arising before grant of right

(1) This section applies where a company—

(a) holds a right mentioned in paragraph (a) or (b) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or

(b) would hold such a right or licence but for the fact that the company disposed of any rights in respect of the protected item or (as the case may be) the licence before the right was granted.

(2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period in which the right is granted, there is to be added the amount determined in accordance with subsection (3) (the "additional amount").

(3) The additional amount is the difference between—

(a) the aggregate of the relevant IP profits of the trade for each relevant accounting period, and

(b) the aggregate of what the relevant IP profits of the trade for each relevant accounting period would have been if the right had been granted on the relevant day.

(4) For the purposes of determining the additional amount, the amount of any relevant IP profits to which section 357A does not apply by virtue of Chapter 5 (relevant IP losses) is to be disregarded.

(5) In this section "relevant accounting period" means—

(a) the accounting period of the company in which the right is granted, and

(b) any earlier accounting period of the company which meets the conditions in subsection (6).

(6) The conditions mentioned in subsection (5)(b) are—

(a) that it is an accounting period for which an election made by the company under section 357A has effect,

(b) that it is an accounting period for which the company is a qualifying company, and

(c) that it ends on or after the relevant day.

(7) In this section "the relevant day" is the later of—

(a) the first day of the period of 6 years ending with the day on which the right is granted, or

(b) the day on which—

(i) the application for the grant of the right was filed, or

(ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.

(8) Where the company would be a qualifying company for any relevant accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.

(9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.

CHAPTER 4

STREAMING

357D Alternative method of calculating relevant IP profits: "streaming"

(1) A company may elect to apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of any trade of the company for an accounting period.

An election made under this subsection is known as a "streaming election".

(2) A streaming election made by a company has effect in relation to each trade of the company.

(3) A streaming election has effect—

(a) for the accounting period for which it is made, and

(b) for each subsequent accounting period.

This is subject to section 357DB.

(4) If the mandatory streaming condition in section 357DC is met in relation to a trade of a company for an accounting period, the company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of the trade for that accounting period.

357DA Relevant IP profits

(1) To determine the relevant IP profits of a trade of a company for an accounting period in accordance with this section—

Step 1

Divide the total gross income of the trade for the accounting period (see section 357CA) into two parts ("streams"), so much of that amount as is relevant IP income (see sections 357CB and 357CC) and so much of it as is not relevant IP income.

The stream consisting of relevant IP income is "the relevant IP income stream".

Step 2

Take any amounts which are brought into account as debits in calculating for corporation tax purposes the profits of the trade for the accounting period, other than any amounts referred to in section 357CF(2), and allocate them on a just and reasonable basis between the two streams.

Step 3

Deduct from the relevant IP income stream the amounts allocated to that stream under Step 2.

Step 4

Deduct from the amount given by Step 3 the routine return figure (see subsection (4)).

The amount given by this step is the "qualifying residual profit".

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

Step 5

If the company has elected for small claims treatment, go to section 357CJ.

If the company has not, go to Step 6.

Step 6

Deduct from the qualifying residual profit the marketing assets return figure (see section 357CK and subsection (7)).

Step 7

If the company has made an election under section 357CN (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

(2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.

(3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).

(4) The routine return figure, in relation to a trade of a company for an accounting period, is 10% of the aggregate of any routine expenses, other than R&D expenses, which—

(a) have been brought into account in calculating for corporation tax purposes the profits of the trade for the accounting period, and

(b) have been allocated to the relevant IP income stream under Step 2 in subsection (1).

(5) In subsection (4)—

"R&D expenses" has the meaning given by section 357CH(3), and

"routine expenses" is to be read in accordance with section 357CI.

(6) Subsections (4) and (5) of section 357CH have effect for the purposes of subsection (4) of this section as they have effect for the purposes of that section.

(7) For the purposes of determining the marketing assets return figure in Step 6, section 357CM (actual marketing royalty) has effect as if the reference to X% of the aggregate of any sums falling within subsection (1) of that section were a reference to the aggregate of any such sums which have been allocated to the relevant IP income stream under Step 2.

357DB Method of allocation

(1) In this section "method of allocation" means the method of allocating, for the purposes of Step 2 in section 357DA(1), the amounts mentioned in that step.

(2) A company that applies section 357DA for the purposes of determining the relevant IP profits of any trade of the company for an accounting period must use the same method of allocation for that accounting period as it used in the last accounting period of the company for which it applied that section for those purposes.

(3) But subsection (2) does not apply if there is a change of circumstances relating to any trade of the company which makes the use of that method of allocation for the accounting period inappropriate.

(4) In such a case, the company may—

(a) choose a different method of allocation for the accounting period (and subsection (2) applies accordingly for succeeding accounting periods), or

(b) elect not to apply section 357DA for the purposes of determining the relevant IP profits of any trade of the company for the accounting period.

(5) Subsection (4)(b) does not prevent the company making a fresh streaming election for any subsequent accounting period.

357DC The mandatory streaming condition

(1) The mandatory streaming condition is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—

(a) relevant IP income, and

(b) a substantial amount of licensing income that is not relevant IP income.

(2) An amount of income is "substantial" for the purposes of this section if it is greater than—
  (a) £2 million, or
  (b) 20% of the total gross income of the trade for the accounting period,

whichever is the lower.

(3) But an amount of income is not substantial for the purposes of this section if it does not exceed £50,000.

(4) In this section "licensing income" means income consisting of any licence fee, royalty or other payment which the company has received under an agreement granting another person any right in respect of any intellectual property held by the company.

In this subsection "intellectual property" has the meaning given by section 712(3) of CTA 2009.

CHAPTER 5

RELEVANT IP LOSSES

357E Company with relevant IP losses: set-off amount

Where a company would be entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period but for the fact that there are relevant IP losses of the trade for the accounting period, there is a "set-off amount" in relation to the trade of the company for the accounting period which is equal to the amount of the relevant IP losses.

357EA Effect of set-off amount on company with more than one trade

(1) This section applies where—
  (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
  (b) the company carries on any other trade.

(2) The set-off amount is to be reduced (but not to below nil) by any relevant IP profits of that other trade for the accounting period.

(3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of that other trade for the accounting period as is equal to the amount by which the set-off amount is reduced under subsection (2).

357EB Allocation of set-off amount within a group

(1) This section applies where—
  (a) there is a set-off amount in relation to a trade of a company for an accounting period,
  (b) the company is a member of a group, and
  (c) the set-off amount has not been reduced to nil by the operation of section 357EA(2).

(2) The set-off amount (or so much of it as has not been reduced by the operation of section 357EA(2)) is to be reduced (but not to below nil)

by any relevant IP profits of a trade of a relevant group member for the relevant accounting period.

(3) For the purposes of this section—

(a) "relevant group member" means another member of the group that has made an election under section 357A and is a qualifying company for the relevant accounting period, and

(b) "relevant accounting period", in relation to a company, means the accounting period of the company in or at the end of which the accounting period mentioned in subsection (1)(a) ends.

(4) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the relevant group member for the relevant accounting period as is equal to the amount by which the set-off amount (or so much of it as has not been reduced by the operation of section 357EA(2)) is reduced under subsection (2).

(5) Where there is more than one relevant group member, the relevant group members may jointly determine the order in which subsection (2) is to apply to them.

(6) If no determination is made under subsection (5), subsection (2) is to apply first to the trade that has the greatest amount of relevant IP profits of any trade of any of the relevant group members for a relevant accounting period, then to the trade that has the second greatest amount of relevant IP profits of any of those trades for such a period, and so on.

357EC Carry-forward of set-off amount

(1) This section applies where—

(a) there is a set-off amount in relation to a trade of a company for an accounting period, and

(b) the set-off amount has not been reduced to nil by the operation of section 357EA(2) or 357EB(2).

(2) The set-off amount (or so much of it as has not been reduced by the operation of section 357EA(2) or 357EB(2)) is to be reduced (but not to below nil) by the amount of any relevant IP profits of the trade of the company for the current accounting period.

The "current accounting period" is the accounting period immediately following the accounting period mentioned in subsection (1)(a).

(3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the company for the current accounting period as is equal to the amount by which the set-off amount (or so much of it as has not been reduced by the operation of section 357EA(2) or 357EB(2)) is reduced under subsection (2).

(4) If any portion of the set-off amount (or so much of it as was not reduced by the operation of section 357EA(2) or 357EB(2)) has not been reduced by the operation of subsection (2), that portion ("the unreduced portion") is to be treated as the set-off amount in relation to the trade of the company for the current accounting period (and the provisions of this Chapter apply accordingly).

(5) If there are relevant IP losses of the trade of the company for the current accounting period, the set-off amount in relation to the trade of the company for that accounting period is the aggregate of the unreduced portion and an amount equal to the amount of those relevant IP losses (and the provisions of this Chapter apply accordingly).

357ED Company ceasing to carry on trade, etc

(1) This section applies where—

(a) there is a set-off amount in relation to a trade of a company for an accounting period, and

(b) at any time in the accounting period immediately following that accounting period ("the current accounting period"), the company meets any of the conditions in subsection (2).

(2) The conditions are—

(a) that the company ceases to carry on the trade,

(b) that the company ceases to be within the charge to corporation tax in respect of the trade, or

(c) that any election made by the company under section 357A ceases to have effect.

(3) Sections 357EA to 357EC continue to have effect in relation to the set-off amount subject to the following provisions of this section.

(4) Section 357EB has effect as if—

(a) for subsection (2) there were substituted—

"(2) The set-off amount (or so much of it as has not been reduced by the operation of section 357EA(2)) is to become, or be added to, the set-off amount in relation to a trade of a relevant group member for the relevant accounting period.",

(b) subsection (4) were omitted,

(c) for the words after "determine" in subsection (5) there were substituted "the relevant group member to whom subsection (2) is to apply", and

(d) after subsection (6) there were inserted—

"(7) If there is no relevant group member with any relevant IP profits of a trade for the relevant accounting period, subsection (2) is to apply first to the trade that has the greatest set-off amount in relation to any trade of any of the relevant group members for a relevant accounting period, then to the trade that has the second greatest set-off amount in relation to any of those trades for such a period, and so on."

(5) Sections 357EA to 357EC cease to have effect in relation to the set-off amount in relation to the trade of the company for an accounting period if—

(a) the company is not carrying on any other trade in that accounting period, and

(b) in the case of a company that is a member of a group, none of the members of the group is a relevant group member for the relevant accounting period.

(6) In such a case, the set-off amount (so far as not already reduced by the operation of those sections) is to be reduced to nil.

(7) In subsection (5) "relevant group member" and "relevant accounting period" have the same meaning as in section 357EB.

357EE Intra-group transfer of a trade

(1) This section applies where—

(a) there is a set-off amount in relation to a trade of a company for an accounting period,

(b) the company is a member of a group,

(c) the company ceases to carry on the trade, and

(d) another company ("the transferee") that is a member of the group begins to carry on that trade.

(2) For the purposes of this Chapter an amount equal to the set-off amount is to become, or be added to, the set-off amount in relation to the trade of the transferee for the accounting period in which the transferee begins to carry on the trade.

CHAPTER 6

ANTI-AVOIDANCE

Licences conferring exclusive rights

357F Licences conferring exclusive rights

A licence that confers any right in respect of a protected item to the exclusion of all other persons is not to be regarded as an exclusive licence if the main purpose, or one of the main purposes, of conferring the right is to secure that the licence is an exclusive licence for the purposes of this Part.

Incorporation of qualifying items

357FA Incorporation of qualifying items

(1) Income arising from the sale of any item that incorporates a qualifying item is not relevant IP income if the main purpose, or one of the main purposes, of incorporating the qualifying item is to secure that income arising from any such sale is relevant IP income.

(2) "Qualifying item" has the same meaning as in section 357CB(2).

Tax advantage schemes

357FB Tax advantage schemes

(1) This section applies where—

(a) a company is entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period,

(b) the company is or has at any time been a party to a scheme, and

(c) the main purpose, or one of the main purposes, of the company or, where the company is a member of a group, any member of the group in being a party to the scheme is (or was) to obtain the chance of securing a relevant tax advantage.

(2) There is a "relevant tax advantage" for the purposes of this section if—

(a) (apart from this section) there would be an increase in the amount of any deduction made under section 357A(2) in calculating the profits of a trade of the company or (as the case may be) any other member of the group for any accounting period, and

(b) the increase would arise from—

(i) the avoidance of the operation of any provision of this Part,

(ii) not fully recognising as revenue for the accounting period any amount brought into account as a credit in calculating those profits, or

(iii) a mismatch between relevant IP income and expenditure.

(3) For the purposes of this section there is a mismatch between relevant IP income and expenditure if—

(a) any relevant IP income brought into account in calculating the profits mentioned in subsection (2)(a) is attributable to any qualifying IP right or an exclusive licence in respect of any such right, and

(b) any expenditure incurred in relation to that right is brought into account in calculating the profits of a trade of the company or (as the case may be) any other member of the group for an accounting period for which an election under section 357A did not have effect.

(4) The amount of the deduction which may be made by the company for the accounting period mentioned in subsection (1)(a) is the amount that would secure that no relevant tax advantage arises (and may be nil).

(5) In this section "scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

CHAPTER 7

SUPPLEMENTARY

Elections under section 357A

357G Making of election under section 357A

(1) An election made by a company under section 357A is made by giving notice in writing to an officer of Revenue and Customs.

(2) The notice must specify the first accounting period of the company for which the election is to have effect.

(3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.

(4) The election has effect in relation to each trade carried on by the company.

(5) Subject to section 357GA, the election has effect for the accounting period specified in the notice and all subsequent accounting periods of the company.

357GA Revocation of election made under section 357A

(1) A company may revoke an election made by it under section 357A by giving notice in writing to an officer of Revenue and Customs.

(2) The notice must specify the first accounting period of the company for which the revocation is to have effect.

(3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.

(4) The revocation has effect in relation to the accounting period specified in the notice and all subsequent accounting periods of the company.

(5) An election made under section 357A by a company that has given notice under this section does not have effect in relation to any accounting period of the company that begins before the end of the period of 5 years beginning with the day after the last day of the accounting period specified in the notice.

Partnerships

357GB Application of this Part in relation to partnerships

(1) This section applies if a firm (within the meaning of CTA 2009) carries on a trade and any partner in the firm is a company within the charge to corporation tax.
Such a partner is referred to in this section as a "corporate partner".

(2) Subject to the following provisions of this section, this Part applies in relation to the firm as it applies in relation to a company.

(3) Any election under this Part—
 (a) may be made or revoked not by the firm but instead by any one or more of the corporate partners (whether jointly or otherwise), and
 (b) has effect in relation to each corporate partner making or revoking it as if made or revoked by the firm.

(4) Accordingly, any reference in section 357G(3) or 357GA(3) (time limit for making or revoking elections under section 357A) to the company making or revoking the election is to be read as a reference to the corporate partner so doing.

(5) Section 1261 of CTA 2009 (accounting periods of firms) applies for the purposes of this Part as it applies for the purposes of Part 17 of that Act.

(6) In a case where the firm does not draw up accounts for an accounting period in accordance with generally accepted accounting practice, any reference in this Part to any amounts which in accordance with generally accepted accounting practice are recognised as revenue in the firm's profit and loss account or income statement for the accounting period is to be read as a reference to any amounts which would be so recognised if the firm had drawn up such accounts for that accounting period.

(7) Section 357B (meaning of "qualifying company") has effect as if in subsection (1) the words "in the case of a company that is a member of a group" were omitted.

(8) For the purposes of this Part the firm meets the development condition in relation to a right to which this Part applies if—
 (a) the firm has at any time carried out qualifying development in relation to the right, or
 (b) there is a relevant corporate partner in the firm who meets the development condition in relation to the right.

(9) A "relevant corporate partner" is a corporate partner who is entitled to a share of at least 40% of the profits or losses of the firm for any accounting period of the firm.

(10) Subsections (7) to (9) of section 357BC apply for the purposes of subsection (8)(a) of this section as they apply for the purposes of that section.

(11) Section 357BD (active ownership condition) has effect as if the reference in subsection (4) to section 357BC(2) or (3) included a reference to subsection (8)(a) of this section.

(12) Section 357CJ (election for small claims treatment) has effect as if any reference in subsection (5) or (6) of that section to the company that has made an election under that section were a reference to any corporate partner in relation to which an election under that section has effect.

(13) Subsection (14) applies where a corporate partner is a party to an arrangement at any time during an accounting period of the firm which produces for the corporate partner a return within section 357CA(2)(c).

(14) For the accounting period of the firm the corporate partner's share of a profit or loss of a trade carried on by the firm is determined for corporation tax purposes as if no election under section 357A had effect in relation to the trade.

Cost-sharing arrangements

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

(1) This section applies where a company is a party to an arrangement under which—

(a) one of the parties to the arrangement holds a qualifying IP right or an exclusive licence in respect of such a right,

(b) each of the parties to the arrangement is required to contribute to the cost of, or perform activities for the purpose of, creating or developing the protected item or any item incorporating the protected item, and

(c) each of those parties is entitled to a share of any income attributable to the right or licence.

(2) The company is to be treated for the purposes of this Part as if it held the qualifying IP right or (as the case may be) the exclusive licence in respect of the qualifying IP right.

(3) But this section does not apply where the arrangement produces for the company a return within section 357CA(2)(c).

(4) The reference in subsection (1)(b) to developing the protected item includes developing ways in which the protected item may be used or applied.

Interpretation

357GD Meaning of "group"

(1) For the purposes of this Part a company ("company A") is a member of a group at any time if any other company is at that time associated with company A.

(2) The group consists of company A and each company in relation to which the condition in subsection (1) is met.

(3) For the purposes of this section a company ("company B") is associated with company A at a time ("the relevant time") if any of the following five conditions is met.

(4) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.

(5) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.

(6) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.

(7) The fourth condition is that—
(a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
(b) at the relevant time the third company has a major interest in company B.

(8) The fifth condition is that—
(a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
(b) at the relevant time the third company has a major interest in company B.

(9) In this section, the financial results of any two companies for any period meet "the consolidation condition" if—
(a) they are required to be comprised in group accounts,
(b) they would be required to be comprised in such accounts but for the application of an exemption, or
(c) they are in fact comprised in such accounts.

(10) In subsection (9) "group accounts" means accounts prepared under—
(a) section 399 of the Companies Act 2006, or
(b) any corresponding provision of the law of a country or territory outside the United Kingdom.

(11) The following provisions apply for the purposes of this section—
sections 466 to 471 of CTA 2009 (companies connected for accounting period), and
sections 473 and 474 of CTA 2009 (meaning of "major interest").

357GE Other definitions

In this Part—
"item" includes any substance,
"protected item", in relation to a right to which this Part applies, means the item in respect of which the right is granted (and references to an item protected by a right are to be read accordingly), and
the "qualifying residual profit" of a trade, in relation to any accounting period, is the amount obtained by the application of Steps 1 to 4 in section 357C or (as the case may be) section 357DA in relation to the trade for the accounting period."

(2) In Schedule 4 to CTA 2010 (index of defined expressions), at the appropriate place insert—

"exclusive licence (in Part 8A)	section 357BA";
"group (in Part 8A)	section 357GD";
"item (in Part 8A)	section 357GE";

"protected item (in Part 8A)	section 357GE";
"qualifying company (in Part 8A)	section 357B";
"qualifying IP right (in Part 8A)	section 357B(4)";
"qualifying residual profit of a trade (in Part 8A)	section 357GE";
"relevant IP income (in Part 8A)	section 357CB";
"total gross income of a trade (in Part 8A)	section 357CA".

PART 2

AMENDMENTS OF OTHER LEGISLATION

Taxation (International and Other Provisions) Act 2010

2 In Part 4 of TIOPA 2010 (transfer pricing), Chapter 3 (exemptions from basic rule) is amended as follows.

3 In section 166 (exemption for small and medium-sized enterprises), in subsection (2)(a), for "section 167" substitute "sections 167 and 167A".

4 After section 167 insert—

"167A Small enterprises: exception from exemption: transfer pricing notice

(1) Section 166(1) does not apply in relation to any provision made or imposed if—
(a) the potentially advantaged person is a small enterprise for the chargeable period,
(b) the person meets the condition in subsection (2), and
(c) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.

(2) A person meets the condition referred to in subsection (1)(b) if—
(a) provision has been made or imposed as between the person and any other person by means of a transaction or series of transactions,
(b) the basic pre-condition in section 147 is met in respect of the provision, and
(c) the transaction, or one or more of the series of transactions, is taken into account in calculating, for the purposes of Part 8A of CTA 2010 (profits arising from the exploitation of patents etc), the relevant IP profits of a trade of a person who is or was a party to the transaction or transactions.

(3) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.”

5 In section 170 (appeals against transfer pricing notices), in subsection (1), for the words from “on the ground that” to the end substitute “on one of the following grounds—

(a) that the condition in section 167A(1)(b) is not met, or

(b) that the condition in section 168(1)(a) is not met.”

6 In section 171 (tax returns where transfer pricing notice given), in subsection (3)(a), before “medium-sized” insert “small or”.

PART 3

COMMENCEMENT AND TRANSITIONAL PROVISION

Application

7 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013 for which an election under section 357A of CTA 2010 has effect.

(2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2013 and ending on or after that date (“the straddling period”).

(3) For the purposes of Part 8A of CTA 2010—

(a) so much of the straddling period as falls before 1 April 2013, and so much of that period as falls on or after that date, are treated as separate accounting periods, and

(b) any amounts brought into account for the purposes of calculating the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

Special treatment of profits from patents etc to be phased in

8 (1) In each of the financial years in the Table below, the reference to RP in the formula in section 357A(3) of CTA 2010 is to be read as a reference to the percentage of RP given for that year—

Financial year	*Percentage of RP*
2013	60%
2014	70%
2015	80%
2016	90%

(2) Sub-paragraph (3) applies where there is a set-off amount in relation to any trade of a company for an accounting period falling wholly or partly within

a financial year mentioned in the Table in sub-paragraph (1) ("the relevant year") and—

(a) section 357EB of CTA 2010 (allocation of set-off amount within group) applies in relation to the set-off amount (or so much of it as has not been reduced by the operation of section 357EA(2) of that Act) for a relevant accounting period falling wholly or partly within the financial year following the relevant year, or

(b) section 357EC of that Act (carry-forward of set-off amount) applies in relation to the set-off amount (or so much of it as has not been reduced by the operation of section 357EA(2) or 357EB(2) of that Act).

(3) For the purposes of section 357EB or (as the case may be) 357EC of CTA 2010 there is to be deducted from the relevant amount an amount equal to the appropriate fraction of that amount.

"The relevant amount" is the amount in relation to which that section applies as mentioned in sub-paragraph (2).

(4) The appropriate fraction is—

$$\frac{10\%}{P}$$

where P is—

(a) the percentage given as the percentage of RP by that Table for the financial year following the relevant year, or

(b) where the relevant year is the financial year 2016, 100%.

(5) If a company's accounting period falls within more than one financial year—

(a) the amount of any relevant IP profits of a trade of the company for the accounting period, and

(b) where sub-paragraph (3) applies, the relevant amount (within the meaning of that sub-paragraph),

must be apportioned between the financial years in which the accounting period falls on such basis as is just and reasonable.

(6) In this paragraph—

"relevant accounting period" has the meaning given by section 357EB(3) of CTA 2010,

"relevant IP profits", in relation to a trade of a company for an accounting period, has the same meaning in this paragraph as in Part 8A of that Act, and

"set-off amount", in relation to a trade of a company for an accounting period, is to be construed in accordance with Chapter 5 of that Act.

EXPLANATORY NOTE

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

SUMMARY

1. This clause and Schedule introduce a new tax regime which will allow companies to elect to apply a 10 per cent corporation tax rate to profits attributable to patents and certain other qualifying intellectual property (IP) from 1 April 2013 (on a progressively incremental basis from 2013 to 2017).

DETAILS OF THE SCHEDULE

2. There are 3 parts in the Schedule. Part 1 introduces amendments to Corporation Taxes Act (CTA) 2010, whereas Part 2 provides for changes to other legislation. Part 3 contains the commencement and transitional provisions.

Part 1: Amendments of CTA 2010

3. Paragraph 1 introduces a new Part 8A to CTA 2010 concerning the new IP tax regime. It also explains that there are 7 chapters in Part 1 covering election to the new IP treatment, qualifying companies, 2 types of determination of IP profits/losses of a trade, provisions for setting off IP losses, anti-avoidance provisions, and supplementary provisions.

Chapter 1: Reduced Corporation Tax rate for profits from patents etc

4. New section 357A(1) outlines an elective regime to provide for a reduced rate of corporation tax for profits from patents and other specified intellectual property for qualifying companies.

5. Where an election is made, new section 357A(2) gives effect to that election not by applying a reduced rate of tax to eligible profits directly, but by granting a deduction from trading profits of such an amount as has the same effect as reducing the main rate of corporation tax on eligible profits to the special IP rate.

6. New section 357A(3) provides the formula for calculating the amount of the deduction.

7. New section 357A(4) sets the special IP rate of corporation tax at 10 per cent.

Chapter 2: Qualifying companies

8. New sections 357B(1) to (3) outline the requirements for a company to be a qualifying company in any accounting period for the purposes of an election under new section S357A. The company must either;

- hold a qualifying IP right or an exclusive licence in respect of a qualifying IP right at some time during the accounting period, or

- have previously held a qualifying IP right or an exclusive licence in respect of a qualifying IP right, and be taxable in the accounting period on income in respect of that right. That income must be attributable to events occurring wholly or partly during a period when the company was a qualifying company and had made an election under new section 357A.

9. The second condition allows a company to apply the Patent Box rules to income received when it would not otherwise be a qualifying company. An example is damages for infringement of patent rights where compensation is received after the expiry of a patent, but where the company had made a Patent Box election at the time of the infringement.

10. In addition, for a company that is a member of a group, new section 357B(5) requires it to also satisfy the active ownership condition of new section 357BD.

11. New section 357B(4) defines a qualifying IP right. The right must be one of those listed in new section 357BB and the company must also meet the development condition of new section 357BC in respect of that IP right.

12. New section 357BA defines the term exclusive licence.

13. New section 357BA(1) states that an exclusive licence is one granted by the proprietor, being someone who holds either the qualifying IP right or an exclusive licence over that right, which gives the person holding the licence exclusive rights over an item that is protected by the IP rights held by the proprietor.

14. New section 357BA(2) specifies that the rights granted under an exclusive licence must at least:

- confer one or more rights to the exclusion of any other person operating in a similar field to the licence-holder, including the proprietor, in relation to the protected item in at least a whole national territory, and

- either include the right to take legal proceedings for any infringement of the licence-holder's rights, or receive all or the greater part of any damages that might follow from such an infringement.

15. A licence which grants more limited rights which, for example, do not extend to at least one whole country or territory, or where the licence holder is precluded from being a party to proceedings for infringement within its territory and recover any damages, will not be a qualifying IP right.

16. New Section 357BA is subject to an anti-avoidance rule in new section 357F in Chapter 6 to ensure that an exclusive licence does not include one where rights are conferred for a main purpose of securing that the licence qualifies for the regime. This is aimed at ensuring that the grant of commercially spurious exclusive rights does not constitute the grant of an exclusive licence for the purposes of this Part.

17. A company can vest the rights it holds in an exclusive licence to another member of its group. Where that happens the other company is treated as if it holds the exclusive licence, even if the company holding the exclusive rights retains the right to enforce, assign or grant further licences in respect of the licence. This might be the case where, for example, the original licence holder is a group company whose primary role is the management of the group's intellectual property portfolio, and any exploitation or development of the rights is carried out elsewhere in the group.

18. It is quite possible for the proprietor to grant exclusive licences to several persons for use in the same country or territory, provided that their use of the rights over the protected item is in unrelated fields of activity.

19. New section 357BB specifies the rights to which Part 8A applies. Rights specified here are the only types of right that can be qualifying IP in accordance with new section 357B(4).

20. New section 357BB(1) lists the rights currently specified. These are patents granted by the UK Patent Office or under the European Patent Convention. Additional rights may be specified by order of the Treasury.

21. New section 357BB(2) allows certain patent applications which are subject to a prohibition on publication on the grounds of national security or safety of the public to be treated as though they had been granted under that Act. This allows the innovation which is the subject of such an application to be treated as a qualifying IP right.

22. New section 357BB(3) gives the Treasury power to make any additional changes that are necessary in connection with an order amending the rights to which Part 8A applies.

23. New section 357BB(4) gives the meaning of the terms European Patent Convention used in new section 357BB(1), and 'rules' used in new section 357BB(2).

24. New section 357BC sets out four ways (see Condition A to Condition D below) that a company can meet the development condition in respect of an IP right it holds. Where the development condition is met, and provided that the right concerned is also of a type specified by new section 357BB, the right will be a qualifying IP right for that company.

25. New sections 357BC(2) and (3) ensure that a company meets the development condition in respect of an IP right if it carried out qualifying development in respect of the right in question (see new sections 357B(7) and (8) below). Condition A applies where the company has not left or joined a group since carrying out the qualifying development. Where it has, Condition B applies if it continues to carry on activities of the same nature as those that amounted to the qualifying development for 12 months after joining or leaving the group. These activities need not necessarily be in respect of the same protected item or right.

26. New section 357BC(4) provides for Condition C which allows a company within a group that holds a qualifying IP right to meet the development condition under Condition C by virtue of the qualifying development undertaken by another group company. The company undertaking the qualifying development must have been a member of the relevant group when the qualifying development was carried out (even if the company that holds the right was not). However it is not necessary that the company holding the rights was a member of the group at the time the development occurred; it is sufficient for it to have been a member of the group at all times since acquiring the rights.

27. New section 357BC(5) stipulates Condition D to deal with the situation where a company, holding IP rights in respect of which it meets the development condition (as in Condition B), joins a new group and then transfers the IP rights to another company in the new group. Condition D allows the company to which those rights have been transferred to satisfy the development condition where the transferee remains a member of the group and continues to undertake activities of the same nature as those that amounted to the qualifying development for 12 months after joining the group.

28. New section 357BC(6) ensures that where a group company meets the development condition under either Condition B or D, it is regarded as meeting that condition from the date that either it or the other company respectively joined the group, rather than on the expiry of the 12 month period.

29. New sections 357BC(7) and (8) defines qualifying development of an IP right as the creation or development (including a significant contribution to these activities) of a protected item which is in turn set out in new section 357GE in Chapter 7. Developing a protected item includes developing ways to use or apply the item. Protected item is defined by new section 357GE.

30. New section 357BC(9) confirms that qualifying development undertaken before the IP right was acquired, whether by the company which holds the IP right or another member of the group, is taken into account in considering whether the development condition is satisfied.

31. New section 357BD sets out when a company is regarded as satisfying the active ownership condition. Companies that are not part of a group do not need to meet the active ownership condition, by virtue of new section 357B(1).

32. New section 357BD(1) states that a company meets the active ownership condition substantially all of its qualifying IP rights satisfy either of two conditions.

33. New sections 357BD(2) and (3) set out the first condition, which is met where the company performs significant management of its qualifying IP rights portfolio during the accounting period. In this context management activity includes the formulation of plans and decision-making in relation to the development or exploitation of the IP rights.

34. New section 357BD(4) sets out the second condition, which is met where the company carries out development activity in relation to the particular IP rights during the accounting period, meeting either of the development conditions set out in new sections 357BC(2) or (3). These require the development activity to be carried out by the company that has the IP rights rather than by any other member of the group.

Chapter 3: Relevant IP profits

35. New section 357C sets out the Steps necessary to determine the relevant IP profits of the trade. The relevant IP profits of the trade

are the profits that are used in the formula in new section 357A to calculate the appropriate amount of the deduction from the profits of the trade which gives effect to the lower rate of corporation tax.

36. New section 357C(1) outlines the six Steps involved in the computation of the relevant IP profits of a trade.

37. Step 1 specifies that the total gross income of a trade must be calculated. Total gross income of the trade is defined in new section 357CA.

38. Step 2 determines the percentage of the company's total gross income of the trade that is relevant IP income, denoted as X per cent. Relevant IP income includes not only the income identified under the various Heads in new section 357CA, but also any notional royalty identified under new section 357CB.

39. Step 3 apportions the total profit or loss of the trade between that attributed to activities of the trade involving the exploitation of qualifying IP rights and other matters. This is achieved using the proportion of total gross income of the trade that is RIPI computed at Step 2, X per cent. The total profit or loss of the trade for this purpose is the amount of profit or loss of the trade for corporation tax purposes (before any deduction under Part 8A).

40. Step 4 determines any qualifying residual profit figure by deducting an amount representing a routine return, calculated under new section 357CH, from the result of Step 3. Where this is a positive figure, this is the qualifying residual profit, which represents the additional profit over and above a routine return attributed to the exploitation of the all of the company's intangible assets. If the routine return figure is greater than X per cent of the total profit, then subject to Step 7, there will be a relevant IP loss for the period. No further adjustment is necessary under Steps 5 and 6 where there is a loss at this stage in the calculation.

41. Companies with a qualifying residual profit now make a decision regarding how to calculate the amount of this qualifying residual profit that is attributed to the qualifying IP rights. Step 5 sets out that where the company has not made an election for small claims treatment, it should proceed to Step 6; alternatively if the company has made such election, it should use the simplified procedure set out in new section 357CJ.

42. Step 6 deducts from any qualifying residual profit an amount to be attributed to marketing assets. Whilst it is possible that the result of deducting the marketing assets return figure from the qualifying residual profits creates a loss, in practice a company in that position

will always be better off making a small claims election and using the alternative method set out in new section 357CJ.

43. Step 7 is the point at which a company includes in its relevant IP profits for the period any additional amount in respect of profits arising in period where grant of a patent is pending that are allowed under new section 357CN.

44. New sections 357C(2) and (3) specify that any positive sum determined from the Steps set out above is the relevant IP profit for the period, whilst any negative amount will be the relevant IP loss for the period.

45. New section 357CA sets out the calculation of the total gross income of the trade for Patent Box purposes.

46. New section 357CA(1) specifies that total gross income of the trade includes any amounts which are both recognised as revenue in the company accounts, and brought into account in computing the profits of the trade for corporation tax purposes, any credits from the realisation of intangible fixed assets, and any profits from the sale of pre-2002 patent rights, held for the purposes of the trade which arise during the accounting period.

47. New sections 357CA(2) to (4) specify that total gross income of the trade excludes credits arising from financial assets, any interest treated as a receipt of the trade by virtue of section 297 of CTA 2009, and other amounts economically equivalent to interest which a company receives as a consequence of any arrangement to which it is a party. Income from financial assets includes dividends and other income from shares that forms part of the income of a financial trader.

48. New section 357CB sets out the amounts included in the total gross income of the trade which are to be regarded as relevant IP income. The aggregate of these amounts, together with any notional royalty identified under new section 357CC, will form the relevant IP income used in Step 2 of new section 357C(1). This is subject to any amounts that are treated as excluded income under new section 357CD.

49. Relevant IP income must fall under one of the Heads identified in new section 357CB(1).

50. Any income which falls within Heads 1 to 4 (see new sections 357CB(2), (7), (8) and (9) below) will nevertheless not be relevant IP income to the extent that it is excluded income by virtue of new section 357CD.

51. New section 357CB(2) outlines income falling within Head 1. This is not limited to income from the sale of qualifying items which are items protected by a qualifying IP right. It also includes the income from the sale of items either incorporating the qualifying item, or wholly or mainly designed to be incorporated into it.

52. For these purposes an item is defined in new section 357GE in Chapter 7 as including any substance.

53. New sections 357CB(3) and (4) deal with the distinction between a protected item and its packaging. These are treated separately unless the packaging performs an essential function relating to the use of an item. The requirement to treat packaging separately is subject to a de minimis exception in new section 357CE(6) and it should not be relevant for most companies. Companies selling protected items will not generally be required to separately identify the value attributable to its packaging. The principal exception, where separate treatment is necessary, is the sale of an item that is not a protected item but which is sold in patented packaging. The effect of the rule in such a case is to prevent the income from the sale of the item being regarded as part of the company's relevant IP income.

54. New section 357CB(5) extends the meaning of items incorporating one or more qualifying items in subsection 2(b) to include the situation where a qualifying item and an item designed to incorporate that item are sold together for a single price.

55. New section 357CB(6) ensures that income arising from the sale of items designed to be incorporated into a qualifying item (or into an item incorporating one or more qualifying items) is only relevant IP income if it is received by the same company that holds the qualifying IP rights as set out in new section 357B(4). This includes an exclusive licence in respect of such rights by virtue of new section 357CB(10).

56. New section 357CB(7) provides that income falling within Head 2 is income consisting of any licence fee or royalty received by the company under an agreement which only grants to another person:

- a right in respect of a qualifying IP right held by the company; and

- a right granted for the same purposes as the right granted in respect of such qualifying IP right.

57. Only licence fees or royalties that exclusively relate to the qualifying IP rights are included in Head 2 income. If the agreement provides for the receipt of royalties and / or fees for any other matter, then the

rules for a mixed agreement in new section 357CE must be applied to determine the amount of relevant IP income.

58. New section 357CB(8) outlines income falling within Head 3. This is any income arising from the disposal of a qualifying IP right.

59. New sections 357CB(9) and (10) outline income falling within Head 4. This is any amount received by the company arising from infringement or alleged infringement of any qualifying IP right held by the company. At the time of the infringement the company must have held the qualifying IP right and must also have been a qualifying company to which an election under new section 357A in Chapter 1 had effect. Where the damages etc. received for the infringement relate partly to periods when the company was a qualifying company and partly to periods when it was not, then a just and reasonable apportionment is to be made to determine the amount which is relevant IP income.

60. Income will be treated as relevant IP income within Head 4 even where it is received at a time when the company no longer holds a qualifying IP right, provided that it relates to an infringement which occurred at a time when the company did hold the qualifying IP right and was a qualifying company to which an election under new section 357A had effect. New section 357B(3)(b) ensures that the company is also treated as a qualifying company at the time it receives the amount.

61. New section 357CC provides a mechanism for determining the amount of a company's total gross income of the trade which is not relevant IP income arising as a direct result of the company's exploitation of a qualifying IP right under any of the heads of new section 357CB. An example of this might be the sale of non-patented goods that are produced using a patented process. The aim of this section is to arrive at a further amount of the total gross income that will be treated as relevant IP income. This is achieved by establishing a notional royalty that reflects what the company would pay out of the income generated by the exploitation of the IP in the accounting period to a third party for use of those qualifying IP rights. This amount will be added to the relevant IP income of the trade for use in Step 2 of the calculation of relevant IP profits in new section 357C.

62. New sections 357CC(1) and (2) provide that a relevant qualifying IP right arises if a company holds any rights mentioned in new sections 357BB(1)(a) and (b) (either held directly or through an exclusive licence) and the total gross income of the trade includes an amount arising from the company's exploitation of its qualifying IP rights which is neither relevant IP income under new section 357CB nor excluded income under new section 357CD.

63. New section 357CC(3) allows a company to elect to treat such a notional royalty as if it were relevant IP income. Where a company has negligible amounts of income that would fall within this section it may therefore decide not to carry out a calculation of any national royalty. However, where the company decides to elect to include a notional royalty, no formal election procedure is set down, and the company may simply include the notional royalty election by way of a note to the computations in its corporation tax return (or an amended return) for the period.

64. New sections 357CC(4) and (5) set out how to determine the notional royalty. This is the appropriate amount of any IP derived income for the accounting period that the company would pay to a third party for the right to exploit any qualifying IP rights used for that accounting period, assuming that the company were not otherwise able to exploit it.

65. New sections 357CC(6) and (7) set out the assumptions that are to be made in arriving at the appropriate percentage of the IP derived income for an accounting period. These are:

- the royalty will be payable at arms length;
- the company, or the company and persons authorised by it, will have the exclusive right to exploit the qualifying IP;
- the rights deemed to be granted are only those that the company actually has in relation to the qualifying IP right. This is most likely to be relevant in cases where, for the example, the company holds a right or licence of limited duration or which is restricted to a particular country or territory;
- the rights are conferred on the later of the start of the accounting period or the date when the company acquired the IP right;
- the percentage is determined at the start of the accounting period, and
- will continue at an unchanged level for subsequent accounting periods.

These assumptions ensure that the notional royalty relates to relevant IP-derived income generated during the accounting period. The amount of the notional royalty cannot exceed the amount of the IP-derived income because it is calculated as a percentage of that income, and any amount in excess of 100 per cent would clearly not be a commercial arrangement.

66. Thus, where there is no significant change in the company's circumstances, the actual percentage used in one accounting period should also be used in the following accounting period. Only if there is a significant change in the company's circumstances would a company need to reassess the appropriate amount in accordance with the above assumptions for a subsequent accounting period.

67. New section 357CC(9) requires that the amount of the royalty must be determined in accordance with article 9 of the OECD model and the transfer pricing guidelines. Both these terms are defined in new section 357(CC)(10).

68. New section 357CD specifies that 3 types of income, which could otherwise fall within one of the Heads of relevant IP income outlined at new section 357CA, will not be relevant IP income under any circumstances.

69. New sections 357CD(1) to (3) specify that ring fence income, from UK Continental Shelf oil and gas trades as set out in Part 8 of CTA 2010 (see sections 272 and 273), and income arising to a licensee that is attributable to any non-exclusive licence is excluded from being relevant IP income. Non exclusive licence is defined in new section 357CD(5).

70. Where it is necessary to attribute an amount of income to a non-exclusive licence in respect of a qualifying IP right as set out in new section 357B(4), then this is to be done on a just and reasonable basis.

71. New section 357CD(4) ensures that where a company has been granted a mixture of exclusive and non-exclusive rights over a qualifying IP right under a single licence, the licence is to be treated under Part 8A as comprising two separate licences; one an exclusive licence which confers only the exclusive right or related rights and the other non-exclusive covering the non-exclusive rights. Income in respect of the deemed non-exclusive licence is excluded income by virtue of new section 357CD(3).

72. New section 357CE requires a company to make a just and reasonable apportionment of income which includes elements of both relevant IP income and other income, for the purposes of determining the company's relevant IP income.

73. New section 357CE(1) provides that the section will apply to mixed income, and income paid under a mixed agreement.

74. New section 357CE(2) defines mixed income. This is income from the sale of qualifying items together with non-qualifying items as a single unit and for a single price. A qualifying item is one whose sale would produce relevant IP income under new section 357CB(2).

75. New sections 357CE(3) and (4) define a mixed agreement. This is any agreement that provides for both:

- the sale of a qualifying item, as set out in new section 357CB(1), or the granting of rights in respect of a qualifying IP rights held by the company under new sections 357CB(7)(a) or (b),

and also

- the sale of any non-qualifying item, the granting of any rights other than in respect of a qualifying IP right or the supply of any service.

76. New section 357CE(5) requires the amount of relevant IP income to be determined using a just and reasonable apportionment of the mixed income or the income received under mixed agreement. This is subject to a de minimis rule in new section 357CE(6). This provision can require a company to determine appropriate apportionments where none are provided within the agreement, or can override the terms of an agreement where it is necessary to do so to arrive at a just and reasonable result.

77. For example, an agreement provides a single price for the sale of a single unit, where the sale includes 50 hairdryers with a patented motor (with the protected IP item (see new section 357CB) owned by the vendor), and 70 curling tongs where the vendor has no interest in any protected IP rights. The vendor's basic wholesale price of the hairdryer is £10 per unit, and the curling tongs £6 per unit. Income from the sale which relates to the hairdryers falls within new section 357CB(2)(b), whereas that relating to the curling tongs does not fall within new section 357CB. A just and reasonable amount of relevant IP income from the sale of the hairdryers could be calculated as:

$$\pounds 750 \times \frac{(50 \times 10)}{(70 \times 6) + (50 \times 10)} = \pounds 407.61$$

78. New section 357CE(6) allows a company to disregard trivial amounts of income that can be attributed to the sale of non-qualifying items, the grant of other rights or the supply of services arising from a sale that generates mixed income, or under a mixed agreement, when calculating relevant IP income. Where there are several non-qualifying amounts it is the aggregate amount which must be considered to determine whether the income is trivial.

79. New section 357CF sets out the adjustments that a company needs to make to its taxable profits from a trade in order to determine its relevant IP profits from that trade.

80. New sections 357CF(2) to (4) provide for the profits of the trade to be adjusted for two amounts, relating to research and development (R&D) tax relief, and financial income or expenses as follows.

81. Adding back any additional deductions for R&D expenditure obtained under Part 13 of the CTA 2009 ensures that the company retains the full benefit of this tax relief even though its IP profits are taxed at a lower rate.

82. Removing any net credits or debits in respect of the trading loan relationships ensures that the method of financing the company's trade will not affect its relevant IP profits, and therefore the amount of tax relief it receives from the reduced rate of tax on those profits.

83. For the purposes of this section, net credits or debits in respect of loan relationships includes any interest treated as receipts of the trade, any amounts recognised as arising from a financial asset in accordance with generally accepted accounting practice, and amounts economically equivalent to interest. Income from financial assets includes dividends and other income from shares that forms part of the income of a financial trader.

84. New sections 357CF(5) and (6) define terms used in subsection (4).

85. New section 357CF(7) requires a company to use a greater amount of R&D expenditure in computing the profits of the trade in accounting periods when the R&D expenditure condition is met. The provision operates in situations where a company's R&D expenditure has predominantly been incurred in earlier periods while it was not within the Patent Box regime, and income from the results of that expenditure is mainly received in later periods at a time when it is within the regime, but its R&D expenditure has significantly reduced. It only applies in the four years after a company makes an election under new section 357A.

86. Where the R&D expenditure condition is met, the provision requires a company to substitute 75 per cent of the average figure for R&D expenditure when calculating the relevant IP profits of the trade.

87. New section 357CF(8) defines terms used in new section 357CF(7).

88. New section 357CG outlines the circumstances in which the R&D expenditure condition is met. Where that is the case, then the actual amount of R&D expenditure incurred in an accounting period will be replaced by 75 per cent of the average amount of R&D expenditure incurred in the four years prior to the accounting period in which the company made an election under new section 357A (or the time since the trade commenced if this is less than four years).

89. New section 357CG(1) specifies that the R&D condition is met where the actual R&D expenditure in the accounting period is less than 75 per cent of the average amount of R&D expenditure.

90. New section 357CG(2) directs that where an accounting period is less than 12 months, the average amount of R&D expenditure used to compare with the actual expenditure is reduced proportionately.

91. New section 357CG(3) sets out the method of calculating the average amount of R&D expenditure. This is the total amount of R&D expenditure incurred by the company during the relevant period (as defined in new section 357CG(4)) divided by the number of days in that period. This daily figure is then multiplied by 365 to give an annual amount.

92. New section 357CG(4) defines the relevant period for the purposes of new section 357CG(3).

93. New section 357CG(5) provides that where, in any relevant accounting period, actual R&D expenditure is greater than the average calculated under new section 357CG(3) the excess can be carried forward and added to the actual amount of R&D expenditure for the next relevant accounting period. That augmented amount of R&D expenditure is then compared with the average amount to determine whether the R&D condition is met.

94. New sections 357CG(6) and (7) apply where it is the only additional amount of R&D expenditure included for an accounting period by virtue of subsection (5) that ensures the R&D condition is not met. In such a case, the part of the additional amount which is necessary to increase the actual R&D expenditure for an accounting period to 75 per cent of the average R&D expenditure is used up. Any excess over that part may be carried forward for use in a future period.

95. However, where an additional amount of R&D expenditure is included for an accounting period by virtue of subsection (5), but it is not sufficient to prevent the R&D condition being met, then the whole of that amount may be carried forward to a later period for the purposes of determining whether the R&D condition is met.

96. The provisions in new sections 357CG(5) to (8) make it less likely that a company will need to make an adjustment to its profits under new section 357CF. Where an adjustment is required it will help smooth the results, for example where R&D is still being undertaken, but the amounts of expenditure are volatile from year to year.

97. New section 357CG(9) specifies that for the purpose of this section R&D expenditure and relevant accounting period have the meanings given by new section 357CF(8).

98. New section 357CH sets out how to compute a routine return figure for the purposes of Step 4 of new section 357A. Step 4 aims to exclude from such profits an amount of profit which represents a routine return. A routine return is the return which could be expected from the business if the company was not able exploit its qualifying IP rights and other intangible assets.

99. New sections 357CH(1) and (2) outline the three Steps for calculating the routine return.

100. Step 1 identifies the total of the routine expenses incurred by the company which have been brought into account in computing the profits of the trade. Routine expenses are those identified in new section 357CI. Any loan relationship amounts and R&D expenses are to be excluded from these routine expenses. The exclusion of any amounts that have qualified for R&D tax relief at this stage ensures that there is no incentive for Patent Box companies to outsource their R&D activities to other group companies. R&D expenses for this purpose are defined in new section 357CH(3).

101. Step 2 applies a mark-up of 10 per cent to the amount identified in Step 1. A cost-plus methodology is a used to determine the arms-length return expected from a trader that does not use unique intangible assets in its trade. It adopts the same principles as those set out in the OECD Transfer Pricing Guidelines for Multinational Enterprises. The 10 per cent rate reflects the fact that only a proportion of the actual expenses of the trade are used when estimating a routine return figure.

102. Step 3 determines how much of that routine return is to be attributed to profits from the company's relevant IP income. This is achieved on a pro-rata basis using the ratio of relevant IP income to the total gross income figure, as in Steps 1 and 2 of the computation under new section 357C, denoted as X per cent per cent

103. New section 357CH(3) defines R&D expenses for the purposes of the calculation in new section 357CH(1). This will include all amounts under any of the Heads of relevant expenses identified in new section 357CI which form part of a claim for R&D tax relief under Part 13 of CTA 2009, plus the amount of any additional deduction due under that Part that relates to those expenses, and also any R&D expenditure brought into account by virtue of new section 357CF(5).

104. New sections 357CH(4) and (5) ensure that the expenses taken into account for the purposes of determining a routine return also include any expenses incurred on a company's behalf by other members of the group, irrespective of whether or not these have been reimbursed, for example by way of a service fee or adjustment to intercompany balances. Where necessary, a just and reasonable apportionment of

expenses incurred by the other company should be made to determine the amount relating to the company's routine expenses.

105. New section 357CI sets out the meaning of routine expenses for the purposes of new section 357CH. These are the expenses to which a mark-up is applied to determine the routine return from the trade. Any loan relationship amounts and R&D expenses are specifically excluded by virtue of new section 357CH(2).

106. New section 357CI(1) sets out five general heads of expenditure, each of which is further explained in new sections 357CI(2) to (7).

107. New section 357CI(8) permits the Treasury to amend the list of items included in relevant expenses and their description by way of an Order.

108. New section 357CJ provides a simpler method for calculating the relevant IP profits of a company where such profits are small. In this circumstance, the company may make an election under new section 357CJ(1) and use a formulaic approach in the computation of their relevant IP profits instead of Step 6 as set out in new section 357C. No formal election procedure is set down, and a company may simply include the election for small claims treatment by way of a note to the computations in its corporation tax return (or an amended return) for the period.

109. New sections 357CJ(2) to (3) provide that where an election for small claims treatment is made by a company with just one trade, the amount of relevant IP profits is the lower of 75 per cent of the qualifying residual profit of the trade or the small claims threshold**.**

110. Where a company has more than one trade, the qualifying residual profit of each of the trades is aggregated to determine whether the small claims limit has been exceeded. Any negative amounts of qualifying residual profit in a trade are ignored, by virtue of new section 357CJ(4).

111. Where the total does not exceed the small claims threshold, the relevant IP profits are 75 per cent of the qualifying residual profit in each trade. If the aggregate exceeds the small claims threshold, then the relevant IP profit figure is the small claims threshold – this is a total figure rather than an amount per trade.

112. New section 357CJ(5) sets the small claims threshold for a company which has no associated companies that have made an election under new section 357A at £1 million for an accounting period of twelve months.

113. New sections 357CJ(6) and (7) reduce the small claims threshold proportionately where a company has one or more associated companies that have made an election under new section 357A, or where the accounting period is less than twelve months respectively.

114. New section 357CJ(8) specifies that when determining whether two companies are associated for the purposes of the small claims threshold as the rules used for claims to the small profits rate of corporation tax are to be followed.

115. New section 357CK details the method that is to be used to arrive at the marketing assets return figure required for a deduction from qualifying residual profit at Step 6 of new section 357C(1).

116. New section 357CK(1) specifies that the marketing assets return figure is the difference between notional marketing royalty in respect of the trade (NMR) for the accounting period and the actual marketing royalty in respect of the trade (AMR) for the accounting period. The NMR and the AMR are defined by new sections 357CL and 357M.

117. New section 357CK(2) states that the marketing assets return figure is taken to be where:

- AMR is greater than the NMR, or
- NMR is less than 10 per cent of qualifying residual profit (see new section 357GE(2) in Chapter 7).

118. New section 357CL outlines the principles to be used in determining the notional marketing royalty figure to be used in new section 357CJ.

119. New sections 357CL(1) and (2) specify that the notional marketing royalty is to be determined as the amount of its relevant IP income for the accounting period that the company would pay to a third party for the right to exploit its relevant marketing assets, assuming that otherwise it would have no such right. This is the appropriate amount of the relevant IP income.

120. New section 357CL(3) provides that relevant marketing assets are those marketing assets that are used to generate relevant IP income of the trade in the accounting period.

121. New section 357CL(4) details the assumptions used for deriving the amount of the notional marketing royalty. These are:

- the royalty will be payable at arms length;

- the company, or the company and persons authorised by it, will have the exclusive right to exploit the relevant marketing assets;
- the royalty will be paid only in respect of rights that the company actually holds;
- the right will be granted on the relevant day;
- the appropriate percentage is calculated at the start of an accounting period;
- the same percentage will apply for succeeding accounting periods, and
- the only benefits the company will derive from the exploitation of the rights will be in respect of relevant IP income during the accounting period.

These assumptions ensure that the notional marketing royalty relates on to relevant IP income generated during the accounting period. They will exclude the use of assumptions based on other market practices such as front- or rear-loaded payments, lump sums covering longer periods, etc.

122. New section 357CL(5) defines the relevant day for the purposes of the assumptions made about the appropriate amount.

123. New section 357CL(6) requires that the amount of the royalty must be determined in accordance with article 9 of the OECD model and the transfer pricing guidelines.

124. New section 357CL(7) defines the terms marketing assets, OECD model and the transfer pricing guidelines for the purposes of new section 357)CL).

125. New section 357CM sets out how to determine the actual marketing royalty of a trade for an accounting period.

126. New section 357CM(1) states that the actual marketing royalty is X per cent of the total amount paid by the company during the accounting period for the acquisition of, or the right to exploit, any relevant marketing assets, and which are included in its corporation tax profits of the company's trade for the accounting period,.

127. New section 357CM(2) provides that in new section 357CM(1) relevant marketing assets has the same meaning as that given in new section 357CL, and X per cent is the proportion of total gross income

of the trade that is relevant IP income, as computed under Step 2 of new section 357C(1).

128. New section 357CN provides that an amount of profits arising between the date of application to register a qualifying IP right and the date of grant may be included in the calculation of relevant IP income in the period in which that right is granted. Registration of a qualifying IP right may take a number of years; where the right is a patent right, the intervening period is generally known as the patent pending period. A maximum of six years' additional profits may be brought in for the period when the right is granted. New section 357BB defines relevant IP rights, and, other than in a case where the exception for patents that affect national security or public safety in new section 357BB(2) applies, requires the right to have been granted. Without this section any income received from the innovation which is the subject of the application, prior to grant, would not be relevant IP income.

129. New section 357CN (2) provides for a company to elect to include an additional amount in its calculation of the relevant IP profits of the accounting period in which a qualifying IP right is granted. No formal election procedure is set down, and a company may simply include the election by way of a note to the computations in its corporation tax return (or an amended return) for the period.

130. New section 357CN(3) sets out how the additional amount is calculated. It includes IP profits arising after the relevant day, in any relevant accounting period, that have not otherwise been included in relevant IP profits of the period. Relevant day and relevant period are defined in new sections 357CN(6) and (4) respectively.

131. New section 357CN(4) ensures that any relevant IP profits that have been allocated to a set-off amount are disregarded for the purposes of the calculation of the additional amount.

132. New sections 357CN(5) and (6) give the conditions which determine which accounting periods will be a relevant accounting periods. A relevant accounting period is any accounting period in which the right is granted, and any earlier accounting period, ending on or after the relevant day, for which the company is a qualifying company and has made an election under new section 357A.

133. New section 357CN(7) defines the relevant day for the purposes of the section. This will be the later of:

- 6 years prior to the date of grant; and
- either the date of application for the qualifying IP, or

- where a company holds an exclusive licence, the date the licence was granted.

134. New section 357CN(8) allows a company to be treated as if it was a qualifying company for the purposes of new section 357CN if the only reason it would not be a qualifying company is that the right had not yet been granted.

135. New section 357CN(9) allows a company to be treated for the purposes of new section 357A as if it was a qualifying company for the accounting period in which the right is granted if the only reason that it would not qualify is that the company disposed of the right, or the licence to that right before it was granted. This allows a deduction under new section 357A to be made by a company that would not otherwise be a qualifying company for that accounting period.

Chapter 4: Streaming

136. In certain circumstances apportioning the profits of a trade by using the overall ratio of relevant IP income to total gross income, as required at Step 3 of new section 357C, may give rise to a distorted result. This may occur where the relative proportions of income from the exploitation of IP rights and other income differs markedly from the relative proportions of profits derived from such income.

137. New section 357D therefore provides for a company to elect for the provisions of new section 357C to be set aside, and for the relevant IP profits of the trade to be ascertained using the streaming provisions of new section 357DA. It also provides that the provisions of new section 357DA will replace new section 357C where the mandatory streaming condition of new section 357DC is met.

138. New section 357D(1) allows a company to elect to apply new section 357DA. This is a streaming election. No formal election procedure is set down, and a company may simply include the streaming election by way of a note to the computations in its corporation tax return (or an amended return) for the period.

139. New section 357D(2) ensures that where a streaming election is made, it is to be applied to all the company's trades. Thus a company cannot pick and choose which of its trades would benefit from a streaming election.

140. New section 357D(3) states that a streaming election has effect for the accounting period in which it is made and each following period, unless the company ceases to use streaming where there has been a change of circumstances as set out in new section 357DB(3).

141. New section 357D(4) stipulates that where a company is required to use streaming because the condition in new section 357DC is met, it must apply the provisions of new section 357DA to calculate its relevant IP profits rather than new section 357C.

142. New section 357DA(1) outlines the steps used to determine the relevant IP profits of the trade where either, the company has made a streaming election, or the company meets the mandatory streaming condition.

143. Step 1 directs that the total gross income of the trade determined under Step 1 of new section 357C is to be split in to two streams; a relevant IP income stream (including any notional royalty computed under new section 357CC) and income that is not relevant IP income.

144. Step 2 requires that, having separated the total gross income of the trade into separate streams, all of the amounts deducted in calculating the corporation tax profits of the trade, should now be allocated on a just and reasonable basis against one or other of the streams of income. There is an exception for amounts identified under new section 357CF(2), that is any additional deductions for expenditure on research and development under Part 13 of CTA 2009, and any trading loan relationship debits.

145. Step 3 requires that the amounts allocated to the relevant IP income streams under Step 2 above are deducted from that income stream.

146. Step 4 determines any qualifying residual profit figure by deducting an amount representing a routine return, calculated under new section 357CH, from the result of Step 3. Where this is a positive figure, this is the qualifying residual profit, which represents the additional profit over and above a routine return attributed to the exploitation of the all of the company's intangible assets. If the routine return figure is greater than X per cent of the total profit, then subject to Step 7, there will be a relevant IP loss for the period. No further adjustment is necessary under Steps 5 and 6 where there is a loss at this stage in the calculation.

147. Companies with a qualifying residual profit now make a decision regarding how to calculate the amount of this qualifying residual profit that is attributed to the qualifying IP rights. Step 5 sets out that companies that have not made an election for small claims treatment proceed to Step 6; those that have made an election use the simplified procedure set out in new section 357CJ.

148. Step 6 deducts from any qualifying residual profit an amount to be attributed to marketing assets. Whilst it is possible that the result of deducting the marketing assets return figure from the qualifying residual profits creates a loss, in practice a company in that position

will always be better off making a small claims election and using the alternative method set out in new section 357CJ.

149. Step 7 is the point at which a company includes in its relevant IP profits for the period any additional amount in respect of profits arising in period where grant of a patent is pending that are allowed under new section 357CN.

150. New sections 357DA(2) and (3) specify that any positive sum determined from the Steps set out above is the relevant IP profit for the period, whilst any negative amount will be the relevant IP loss for the period.

151. New sections 357DA(4) and (5) specify that the routine return figure referred to in Step 4 is 10 per cent of the aggregate of routine expenses, less any R&D expenses, allocated against the relevant IP income stream at Step 2. Routine expenses for this purpose are those identified in new section 357CI, and R&D expenses are those defined in new section 357CH(3).

152. New section 357DA(6) applies the rule at new section 357CH(4) and (5) where a routine return in computed in cases where there is a streaming election. The effect of that rule is to ensure that the expenses taken into account also include any expenses incurred on a company's behalf by other members of the group, irrespective of whether or not these have been reimbursed, for example by way of a service fee or adjustment to intercompany balances. Where necessary, a just and reasonable apportionment of expenses incurred by the other company should be made to determine the amount relating to the company's routine expenses.

153. New section 357DA(7) adapts the rule for calculating a marketing assets return figure at Step 6 where the streaming provisions apply.

154. New section 357DB requires that where a company has made a streaming election, the method it uses to allocate deductions between income streams, at Step 2 of new section 357DA, should not change from accounting period to accounting period, unless there is a change of circumstances.

155. New section 357DB(1) states that the phrase method of allocation refers to the method applied at Step 2 of new section 357DA.

156. New section 357DB(2) requires that where a company applies the streaming rules it must use the same method of allocation in each accounting period for which the streaming election has effect. This applies irrespective of whether the rules are applied by election or are mandated.

157. However, new sections 357DB(3) and (4) provide that where there is a change of circumstances in respect of any of the company's trades, which makes the method of allocation inappropriate for an accounting period, the company can choose a different method of allocation, or elect not to apply the streaming election, for that accounting period. If the company chooses a different method then new section 357DB(2) will apply to require that that new method is applied for each subsequent accounting period. No formal procedure is set down, and a company may simply include an election not to apply streaming for the accounting period by way of a note to the computations in its corporation tax return (or an amended return) for the period.

158. New section 357DB(5) provides that where a company elects not to apply streaming for an accounting period under new section 357DB(4)(b), this does not prevent it from making fresh streaming elections in subsequent accounting periods.

159. New section 357DC details the circumstances under which a company is required to apply the streaming provisions of new section 357DA in determining relevant IP profits rather than those of new section 357C, other than where is has made an election to do so.

160. New section 357DC(1) states that a company is required to apply the streaming provisions for an accounting period where its total gross income from the trade includes relevant IP income, and a substantial amount of licensing income that is not relevant IP income. Licensing income is defined in new section 357DC(4).

161. New sections 357DC(2) and (3) specify that the licensing income is substantial if it exceeds the lower of £2 million or 20 per cent of the aggregate of the relevant IP income and such licensing income, subject to a de minimis figure of £50,000.

Chapter 5: Companies with relevant IP losses: set-off amount

162. New section 357E identifies a set-off amount where a company has a relevant IP loss for an accounting period that is equal to those losses. This is subject to the transitional rules for the Financial Years 2013 to 2016 whereby the relevant IP profits or losses for the period are reduced to a specified proportion, as set out in paragraph 8(3) of the Schedule.

163. New sections 357EA to EE describe how this set-off amount is to be dealt with in the computations. The principle underlying these rules is that the set-off amount should be matched with an amount of relevant IP profits either in another trade of the company, in other

group members who have made an election under new section 357A, or in a later accounting period, to reduce an amount of relevant IP profits in respect of which new section 357A can apply to give a deduction from the corporation profits of the trade.

164. New section 357EA provides that the set-off amount is first allocated against any relevant IP profits arising in the same accounting period in respect of another trade of the company.

165. New section 357EB(1) sets out the rules for allocating a set-off amount where a company is a member of a group in which more than one company has made an election under new section 357A. The effect of the allocation is to reduce both the set-off amount and the relevant IP profits of the other trade to which an election under new section 357A has effect by the lesser of those two amounts.

166. New sections 357EB(2) to (4) provide that where there is another company in the same group that has relevant IP profits for a relevant accounting period, any set-off amount not allocated against another trade of the company is to be allocated against the relevant IP profits of that other company. The effect of the allocation rule is to reduce both the set-off amount, and the relevant IP profits of the trade of other company to which new section 357A can apply, by the lesser of the remaining set-off amount and the relevant IP profits.

167. New section 357EB(5) allows the group companies to jointly determine in which order the set-off amount is to be applied to them where there is more than one company in the group with relevant IP profits against which the set-off amount can be allocated.

168. New section 357EB(6) sets out the order in which the allocation is to be made in the absence of any joint determination by companies in the group. This is firstly to the trade of the company with the highest amount of relevant IP profits, then that with the next highest profits, and so on until the either all of the set-amount has been allocated or there are no relevant IP profits remaining against which to allocate the remainder.

169. New section 357EC sets out the rules for carrying forward a set-off amount.

170. New section 357EC(1) specifies that the rule applies where some of its set-off amount remains after any allocation has been made against relevant IP profits in other trades in the company, or other relevant group members.

171. New sections 357EC(2) and (3) provide that any set-off amount which remains unallocated from an earlier accounting period is first allocated against relevant IP profits of the company in which the set-

off amount arose for the following accounting period. New section 357A does not apply to a matching amount of relevant IP profits.

172. New section 357EC(4) sets out that where any of the set-off amount remains after any allocation has been made against relevant IP profits in the following accounting period, it is treated as a set-off amount for this the subsequent accounting period. The allocation rules in the Chapter may then apply to that remaining amount.

173. New section 357EC(5) specifies that where a company which has carried forward all or part of a set-off amount it is to be added to any relevant IP losses in the later period, such that the set-off amount for that period is the sum of the two figures, and the allocation rules in the Chapter may then apply to that amount.

174. New section 357ED ensures that where a company in a group ceases to carry on a trade, any set-off amount incurred in the trade which has not been reduced to nil by the operation of new sections 357EA or 357EB continues to be carried forward until such time as it has been fully allocated against relevant IP profits of other members of the group.

175. New sections 357ED (1) to (3) sets out how any unallocated set-off amount is dealt with where a company in a group ceases to carry on a trade, no longer falls within the charge to corporation tax, or an election under new section 357A otherwise ceases to have effect for any reason._

176. New section 357ED(3) specifies that new sections 357EA to 357EC will apply with some modifications to any set-off amount incurred in the company's trade, or trades, which has yet to be allocated against relevant IP profits.

177. New section 357ED(4) modifies the wording of new section 357EB so that it applies in situations where a company ceases to trade, no longer falls within the corporation tax charge or an election under new section 375A ceases to have effect. The modifications act to transfer the unallocated set-off amount to a relevant group member. In the absence of a joint determination to the contrary, this will be the relevant group member with the highest amount of relevant IP profits in that accounting period. However if there are no relevant group members with relevant IP profits for the accounting period, the unallocated set-off amount is to be added to the set-off amount of the company with the largest set-off amount in that accounting period.

178. New sections 357ED(5) to (7) determine when any unallocated set-off amount will finally be extinguished. Where a company is not a member of a group, the amount is extinguished only when the company ceases to carry on any trade. Where a company is a

member of a group, the set-off amount will remain to be allocated amongst other members of the group until such time as there is no company in the group that has made an election under section 357A and is a qualifying company for the accounting period.

179. New section 357EE provides for the transfer of any unallocated set-off amount where the trade of a company is transferred to another group company.

180. New section 357EE(2) directs that in such cases the set-off amount is to become the unallocated set-off amount of the other group company for the accounting period in which it begins to carry on the transferred trade. Where the group company which acquires the trade already has an unallocated set-off amount, the unallocated set-off amount of the transferor company is added to the set-off amount of the transferee company.

Chapter 6: Anti-avoidance

181. New sections 357F to 357FB are anti avoidance provisions.

182. New section 357F applies in situations where licences may be entered into for non commercial reasons. These will be where the main or one of the main purposes of conferring any right in respect of a protected item is to ensure that the licence meets the definition of exclusive licence for the purposes of the new regime. Thus it may apply for example in cases where the exclusivity provided by the agreement was in respect of a spurious commercial right. In such cases, even though the licence may confer the right to the exclusion of all other persons, it will not be regarded as an exclusive licence for the purposes of Part 8A.

183. New section 357FA applies in situations where a qualifying item is incorporated into a larger item to ensure that income from the sale of that larger item will be relevant IP income. Where the main purpose or one of the main purposes of the inclusion of the item is to make income from the sale of the larger item relevant IP income, then such income will not be relevant IP income.

184. New section 357FB is a targeted anti-avoidance provision which limits or denies a Patent Box deduction to a company that is party to a scheme entered into in order to secure a tax advantage.

185. New section 357FB(1) applies the section where a company that is entitled to make a deduction under new section 357A is party to a scheme, one of the main purposes of which is to obtain a relevant tax advantage. A scheme is defined in new section 357FB(5).

186. New section 357FB(2) identifies a relevant tax advantage for the purposes of the section where there is an increase in the amount of any deduction due to the company, or another member of that company's group, under new section 357A. This increase must be attributable to:

- avoiding the operation of any provision of the regime, such as the R&D expenditure condition of new section 357CG, or the relevant IP loss provisions of Chapter 5, or
- not fully recognising as revenue amounts which are brought into accounts as credits in determining trade profits, or
- a mismatch between relevant IP income and the expenditure incurred in generating that relevant IP income.

187. New section 357FB(3) sets out when there is a mismatch between relevant IP income and expenditure for the purposes of the rule. This will be where:

- relevant IP income is brought in to account in calculating a deduction under new section 357A for a company, and
- expenditure in relation to that right is brought to account in a different accounting period of that company, or in a different company, where no election under new section 357A was in point.

188. New section 357FB(4) provides that where the section applies, the deduction to be made by the company is to be limited an amount that ensures that no relevant tax advantage arises.

Chapter 7: Supplementary

189. New section 357G sets out the procedure for making an election under new section 357A.

190. New sections 357G(1) and (2) require a company to provide a notice of election that specifies the first accounting period for which the rules are to apply.

191. New section 357G(3) sets out the latest date by which an election can be made for any particular accounting period. This is the date by which an amended corporation tax return for that period must have been submitted in accordance with paragraph 15 of Schedule 18 to Finance Act 1998.

192. New section 357G(4) ensures that the election applies to all the trades carried on by the company, so that it is not possible to make an election in respect of only some of a company's trades.

193. New subsection 357G(5) ensures that an election made under new section 357A need only be made once, and that the election will continue to have effect until it is revoked.

194. New section 357GA sets out the terms under which a company may revoke an election it has made under new section 357A.

195. New sections 357GA(1) and (2) require a company to provide a written notice revoking the election, which specifies the first accounting period for which the rules are to cease to apply.

196. New section 357GA(3) sets out the latest date by which an election can be revoked for any particular accounting period. This is the date by which an amended corporation tax return for that period must have been submitted in accordance with paragraph 15 of Schedule 18 to Finance Act 1998.

197. New section 357GA(4) specifies that the revoking of an election has effect for all future accounting periods of the company, until and unless the company makes a new valid election under new section 357A.

198. New section 357GA(5) specifies that a new election under new section 357A can only have effect after five years have elapsed since the company revoked a previous election.

199. New sections 357GB(1) and (2) introduce the amendments that are made to the rules in order for them to apply to a company that carries on a trade in partnership with other persons. In brief, the provisions of the regime are to be applied to the firm as a whole in similar way as they apply to a single company carrying on a trade, subject to the modifications set out in new sections 357GB(3) to (9). A partnership may include both corporate and non-corporate partners, and any deduction to be made in consequence of an election under new section 357A is made only for the purposes of determining the share of a member who is liable to corporation tax.

200. New section 357GB(3) sets out the procedure for a corporate partner to make or revoke an election for the Patent Box, and the effect of its doing so. Any corporate partner in a firm may choose to make or revoke an election under new section 357A. The effect of the election is that the partner's share in the profits (or losses) of the firm is computed as if the election had been made or revoked by the firm. An election made or revoked by one partner has no effect on the shares of any other partner.

201. New section 357GB(4) ensures that references to the time limits applying to the making or revoking of an election are those relevant to the corporate partner rather than the firm.

202. New section 357GB(5) applies the rules in section 1261 of the CTA 2009 for determining accounting periods of the firm where there is a corporate partner.

203. New section 357GB(6) ensures that where a firm does not draw up accounts following generally accepted accounting practice, any reference to amounts recognised as revenue is treated as amounts that would be so recognised if the firm had drawn up such accounts.

204. New section 357GB(7) ensures that any company which is a corporate partner in a firm must meet the active ownership condition, whether or not it is a member of a group.

205. New sections 357GB(8) and (9) sets out that a firm meets the development condition in respect of an IP right where either the partnership itself, or a corporate partner with at least a 40 per cent share in the partnership has carried out qualifying development in relation to that right.

206. New section 357GB(10) applies the definition of qualifying development set out in new sections 357BC(7) to (9) to the firm for the purposes of new section 357GB(5)(a).

207. New section 357GB(11) amends condition B of the active ownership condition where it is to be applied to a corporate partner.

208. New section 357GB(12) modifies the provision for a small claims election, so that it is appropriate to claims made by a corporate partner.

209. New sections 357GB(13) & (14) ensure that any corporate partner who is party to an arrangement designed to secure a return from the firm that is economically equivalent to the receipt of interest is treated as if they had not made an election under new section 357A.

210. New section 357GC sets out how the Patent Box regime is to be applied to a company that is a member of a cost-sharing arrangement.

211. New section 357GC(1) defines a cost-sharing arrangement as an arrangement between several parties that leads to the creation or development of qualifying IP rights, where the company is entitled to a share of the income attributable to that right.

212. New section 357GC(2) treats a company, which is party to the cost-sharing arrangement but which does not hold the qualifying IP rights

created or developed under the arrangement, as if it did hold those qualifying IP rights.

213. However, new section 357GC(3) prevents this treatment where the income received by the company in respect of its contributions to the arrangement is economically equivalent to interest.

214. New section 357GD defines a group for the purposes of the Patent Box regime. This is a company, A, and any other company that is associated with company A. For this purpose, a company (company B) is associated with company A at any time during an accounting period of company A if any one of following five conditions is met.

215. The first condition is that the financial results of company A and company B meet the consolidation condition. The consolidation condition is defined in new section 357GD(9).

216. The second condition is that company A and company B are connected. Sections 466 to 471 of CTA 2009 apply for the purposes of establishing connection.

217. The third condition is that company A has a major interest in company B or vice-versa. Major interest has the same meaning as in sections 473 and 474 of CTA 2009.

218. The fourth condition is that company A and a third company meet the consolidation condition and that third company has a major interest in company B.

219. The fifth condition is that company A and a third company are connected and that that third company has a major interest in company B.

220. New section 357D(9) defines the consolidation condition in terms of the financial results of any two companies which :

- Are required to be consolidated into group accounts,
- if they are not required to be consolidated in such accounts, then this is due to a specific exemption, or
- whether or not there is a requirement for them to be consolidated, are actually comprised in group accounts.

221. New section 357D(10) specifies that group accounts means accounts prepared under section 399 of the Companies Act 2006 or any corresponding provision of the law of a territory outside of the United Kingdom.

Part 2: Amendments of other legislation

222. Paragraphs 2 to 6 make changes to the transfer pricing rules contained in the Taxation (International and Other Provisions) Act (TIOPA) 2010 including changes to the exemption from the requirement to calculate profits and losses of a potentially advantaged person in accordance with arm's length principles where that person is a small or medium sized enterprise for a chargeable period.

223. Paragraph 4 inserts a new section 167A to TIOPA 2010.

224. New section 167A provides an exception to the general exemption from transfer pricing requirements for a company that is a small enterprise in the chargeable period. This exception applies where the Commissioners for Her Majesty's Revenue and Customs have issued a transfer pricing notice to the company. Such a notice may relate only to provisions affecting the calculation of relevant IP profits under Part 8A of CTA 2010. A medium sized enterprise can already be required to use arm's length principles in respect of any provision where a notice to that effect is issued under section 168 TIOPA.

Part 3: Commencement and transitional provisions

225. Paragraphs 7 and 8 set out the commencement and transitional provisions.

226. Paragraph 7 applies the changes made by the Schedule to income arising on or after 1 April 2013. Where the first accounting period to which an election under new section 357A relates straddles the commencement date, only income and expenses arising after commencement is to be taken into account for the purposes of computing its relevant IP profits. Where it is necessary to apportion income or expenses between pre- and post-commencement periods, then this may be done on any basis that provides a just and reasonable result.

227. Paragraph 8(1) provides for the benefits of an election under new section 357A to be progressively increased in relation to relevant IP profits arising in each of the Financial Years 2013 to 2017. For 2013, relevant IP profits to be included in the calculation set out in new section 357A(3) are 60 percent of the amount otherwise calculated in accordance with the Schedule. This rises by 10 percent in each succeeding Financial Year up to and including Financial Year 2017.

228. Paragraphs 8(2) to (4) set out how to determine the set-off amount in respect of an accounting period in the Financial Years affected by the phasing in rule in paragraph 8(1). Where a set-off amount is carried forward to a later accounting period under new section 357EB or 357EC, the amount brought forward is reduced incrementally by 10

per cent per annum, the rate at which benefits are phased in under paragraph 8(1), to give the actual set-off amount.

229. Paragraph 8(5) provides for an apportionment to be made of the profits of an accounting period that falls within more than one Financial Year.

BACKGROUND NOTE

230. The new Patent Box regime will allow companies to elect to apply a 10 per cent rate of corporation tax, starting from 1 April 2013 on a progressively incremental basis with the full rate applying from 1 April 2017, to all profits attributable to qualifying patents, and certain other IP rights.

231. The regime will also apply to other qualifying intellectual property rights such as regulatory data protection (also called data exclusivity), supplementary protection certificates and plant variety rights.

232. Other non-qualifying profits in these companies will continue to be taxed at the main rate of corporation tax.

233. The Patent Box regime will potentially benefit a wide range of companies which receive royalties in respect of qualifying IP rights, sell products, or use patented processes as part of their business.

234. Two consultation documents have been published:

- November 2010: *The Taxation of Innovation and Intellectual Property.* This sets out the high level principles for the Patent Box design and;

- June 2011: *Consultation on the Patent Box*. This is the Stage 2 consultation document which gives more detail on the design proposals.

235. A consultation response document is being published in December 2011, along with a *Technical Note and Guide to the Draft Legislation*.

236. If you have any questions about this change, or comments on the legislation, please contact Richard Rogers on 020 7147 2625 (email: richard.rogers@hmrc.gsi.gov.uk) or Ian Valentine on 020 7147 3428 (email: ian.valentine@hmrc.gsi.gov.uk)

STATUTORY INSTRUMENTS

2012 No.

CORPORATION TAX

The Corporation Tax (Profits Arising from the Exploitation of Patents, etc) (Description of Rights) Order 2012

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Order in exercise of the powers conferred by section 357BB(1)(c) of the Corporation Tax Act 2010(**a**):

Citation and commencement

1. This Order may be cited as the Corporation Tax (Profits Arising from the Exploitation of Patents, etc) (Description of Rights) Order 2012 and comes into force on…

Rights to which Part 8A applies

2. The rights described in this Order are, for the purpose of section 357BB of the Corporation Tax Act 2010, rights to which Part 8A(**b**) of that Act applies.

Medicinal products

3.—(1) The rights conferred by a marketing authorisation in relation to a medicinal product which has been granted in accordance with Chapters 1, 2 and 2a of Directive 2001/83/EC of the European Parliament and Council of 6 November 2001 on the Community Code relating to medicinal products for human use (as amended by Directives 2002/98/EC, 2004/24/EC and 2004/27/EC of the European Parliament and of the Council) ("Directive 2001/83/EC")(**c**).

(2) The rights conferred by the authorisation of a new indication for a well-established substance which has been granted in accordance with article 10.5 of Directive 2001/83/EC.

(3) The rights conferred on a company where—

(a) an authorisation of a change of classification of a medicinal product has been granted in accordance with Title VI to Directive 2001/83/EC, and

(b) article 74a of that Directive applies.

(4) A market exclusivity right which arises in relation to an orphan medical product in accordance with Article 8 of Regulation (EC) No 141/2000 of the European Parliament and of the Council on 16 December 1999 on orphan medical products ("Regulation 141/2000")(**d**).

(**a**) 2010 c. 4. Section 357BB was inserted by [section xx] of the Finance Act 2012 (c. XX).
(**b**) Part 8A was inserted by Schedule X of the Finance Act 2012.
(**c**) OJ L 311, 28.11.2001, p. 67.
(**d**) OJ L 18, 22.1.2000, p. 1.

(5) An extension of a right under Article 8 of Regulation 141/2000 which has been granted in accordance with Article 37 of EC Regulation 1901/2006 of the European Parliament and of the Council of 12 December 2006 on products for paediatric use and amending Regulation (EEC) No 1768/92, Directives 2001/20/EC and 2001/83/EC, and Regulation (EC) No 726/2004 ("Regulation 1901/2006")(**a**).

(6) A supplementary protection certificate granted in accordance with article 13 of Council Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products(**b**).

(7) An extension of the rights conferred by a patent or supplementary protection certificate to which the holder of a patent or supplementary protection certificate is entitled under article 36 of Regulation 1901/2006.

(8) The rights conferred by a paediatric-use marketing authorisation (within the meaning of article 30 of Regulation 1901/2006) in relation to a medicinal product.

Veterinary products

4.—(1) The rights conferred by a marketing authorisation in relation to a veterinary product which has been granted in accordance with Chapters 1 and 2 of Directive 2001/82/EC of the European Parliament and Council of 6 November 2001 on the Community Code relating to veterinary medical products(**c**).

(2) The rights conferred by a marketing authorisation in relation to a veterinary product which has been granted in accordance with Schedule 1 to the Veterinary Medicines Regulations 2009 or 2011(**d**).

Rights in relation to plants

5.—(1) The rights conferred by an authorisation for placing on the market and use of a plant protection product which has been granted in accordance with Chapter 3 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC(**e**).

(2) The right to advertise or sell a pesticide which has been granted under regulation 6 of the Control of Pesticides Regulations 1986(**f**).

(3) A right granted to a plant breeder in accordance with Chapter 1 of Part 1 of the Plant Varieties Act 1997(**g**).

(4) A right in relation to a plant variety which has been granted in accordance with Council Regulation (EC) 2100/94 of 27 July 1994 on Community plant variety rights(**h**).

(5) A supplementary protection certificate granted in accordance with Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products(**i**).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order describes rights to which Part 8A of the Corporation Tax Act 2010 applies.

(**a**) OJ L 378, 27.12.2006, p. 1.
(**b**) OJ L 152, 16.6.2009, p. 1.
(**c**) OJ L 311, 28.11.2001, p. 1.
(**d**) S.I. 2009/2297 and S.I. 2011/2159.
(**e**) OJ L 309, 24.11.2009, p. 1.
(**f**) S.I. 1986/1510 as amended by S.I. 1997/188. The instrument has been amended on other occasions, none of which are relevant.
(**g**) 1997 c. 66.
(**h**) OJ L 227, 1.9.1994, p. 1.
(**i**) OJ L 198, 8.8.1996, p. 30.

Article 1 provides for citation, commencement and effect and article 2 introduces the rights described by the Order.

Articles 3, 4 and 5 specify (respectively) rights in relation to medicinal products, veterinary products and plants which are subject to Part 8A of the Corporation Tax Act 2010.

EXPLANATORY MEMORANDUM TO

THE CORPORATION TAX (PROFITS ARISING FROM THE EXPLOITATION OF PATENTS, ETC) (DESCRIPTION OF RIGHTS) ORDER 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order describes certain rights which are rights to which Part 8A of the Corporation Tax Act 2010 applies.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Part 8A of the Corporation Tax 2010 was inserted by the Finance Act 2012 and provides for a lower rate of corporation tax on the profits of income from qualifying intellectual property. The rights described in this Order specify rights in addition to those set out in section 357BB of the Corporation Tax Act 2010, the income from which is subject to the tax regime in Part 8A.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 This instrument helps to implement the "Patent Box", which will provide an additional incentive for companies in the UK to retain and commercialise existing patents and to develop new innovative patented products. It will

achieve this by taxing the profits from such activities at a lower rate of corporation tax. The Patent Box legislation provides this benefit in respect of profits from the exploitation of patents granted by the UK Intellectual Property Office (IPO) and the European Patent Office (EPO).

7.2 There are other areas of innovation which have a similarly strong link to R&D and high-tech activity as patents but where patenting is not permitted. The Order provides for protected rights in other such innovations to benefit from the Patent Box legislation in the same way as patents granted by the IPO or EPO where these are afforded a similar level and scrutiny and protection as patents granted by the IPO or EPO.

- ***Consolidation***

7.2 Not applicable

8. Consultation outcome

8.1 The scope of intellectual property rights to which the Patent Box can be applied was included in a public consultation document issued in June 2011. Additionally, HMRC and HM Treasury officials have met with a number of representative bodies and companies to seek views on the matter.

8.2 The consultation document proposed including supplementary protection certificates, regulatory data protection and plant variety rights in the regime, which has been welcomed in the consultation responses. The Order provides for Part 8A of the Corporation Tax Act 2010 to apply to these.

9. Guidance

9.1 HMRC will issue detailed guidance on the Patent Box, including the matters referred to in the Order [prior to the commencement of the regime on 1 April 2013]. In addition HMRC is proposing to hold a number of events aimed at explaining the regime to practitioners and companies who are proposing to elect into the regime during 2012.

10. Impact

10.1 The impact on business is set out in the Tax Information and Impact Note.

10.2 The impact on the public sector is is set out in the Tax Information and Impact Note.

10.3 A Tax Information and Impact Note covering this instrument was published on [6 December 2011] alongside draft legislation on profits arising from the exploitation of patents etc. and is available on the HMT website at [insert link/doc].

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The impact on small businesses is set out in the Tax Information and Impact Note.

12. Monitoring & review

12.1 The measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

13. Contact

Richard Rogers at the HMRC Tel: 020 7147 2625 or email: richard.rogers@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Research and development (R&D) tax relief

1 Relief for expenditure on R&D

Schedule 1 contains provision about corporation tax relief for expenditure on research and development.

SCHEDULE 1

Section 1

Relief for expenditure on R&D

Introductory

1 Part 13 of CTA 2009 (additional relief for expenditure on research and development) is amended as follows.

Amount of relief for expenditure on R&D by small or medium-sized enterprises ("SMEs")

2 (1) Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.

(2) In section 1044 (additional deduction in calculating profits of trade), in subsection (8), for "100%" substitute "125%".

(3) In section 1045 (alternative treatment for pre-trading expenditure: deemed trading loss), in subsection (7), for "200%" substitute "225%".

(4) In section 1055 (tax credit: meaning of "Chapter 2 surrenderable loss"), in subsection (2)(b), for "200%" substitute "225%".

(5) In section 1058 (amount of tax credit), in subsection (1)(a), for "12.5%" substitute "11%".

Removal of R&D threshold

3 (1) Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.

(2) In section 1043 (overview of Chapter), in subsection (3), omit paragraph (e) (but not the "and" after it).

(3) In section 1044 (additional deduction in calculating profits of trade), omit subsection (3).

(4) In section 1045 (alternative treatment for pre-trading expenditure: deemed trading loss)—

(a) in subsection (1), omit ", B", and

(b) omit subsection (3).

(5) Omit section 1050 (R&D threshold).

4 (1) Chapter 3 (relief for SMEs: R&D sub-contracted to SME) is amended as follows.

(2) In section 1063 (additional deduction in calculating profits of trade)—

(a) in subsection (1), omit ", B", and

(b) omit subsection (3).

(3) Omit section 1064 (R&D threshold).

5 (1) Chapter 4 (relief for SMEs: subsidised and capped expenditure on R&D) is amended as follows.

(2) In section 1068 (additional deduction in calculating profits of trade)—

(a) in subsection (1), omit ", B", and

(b) omit subsection (3).

(3) Omit section 1069 (R&D threshold).

6 (1) Chapter 5 (relief for large companies) is amended as follows.

(2) In section 1074 (additional deduction in calculating profits of trade)—

(a) in subsection (1), omit ", B", and

(b) omit subsection (3).

(3) Omit section 1075 (R&D threshold).

7 (1) Chapter 7 (relief for SMEs and large companies: vaccine research etc) is amended as follows.

(2) In section 1085 (overview of Chapter), in subsection (5), omit paragraph (c).

(3) In section 1087 (deduction in calculating profits of trade)—

(a) in subsection (1), omit ", B", and

(b) omit subsection (3).

(4) In section 1092 (SMEs: deemed trading loss for pre-trading expenditure), omit subsection (3).

(5) Omit section 1097 (R&D threshold).

8 In consequence of the amendments made by paragraphs 3 to 7, in Schedule 4 to CTA 2009 omit each of the entries for "R&D threshold".

Company not a going concern when in administration or liquidation

9 Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.

10 (1) Section 1046 (relief only available where company is going concern) is amended as follows.

(2) At the end of subsection (2) insert—

"This is subject to subsection (2A)."

(3) After subsection (2) insert—

"(2A) A company is not a going concern at any time if it is in administration or liquidation at that time.

(2B) For the purposes of this section a company is in administration if—

(a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(2C) For the purposes of this section a company is in liquidation if—

(a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company."

11 (1) Section 1057 (tax credit only available where company is going concern) is amended as follows.

(2) At the end of subsection (4) insert—

"This is subject to subsection (4A)."

(3) After subsection (4) insert—

"(4A) A company is not a going concern at any time if it is in administration or liquidation at that time.

(4B) For the purposes of this section a company is in administration if—

(a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(4C) For the purposes of this section a company is in liquidation if—

(a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company."

12 Chapter 7 (relief for SMEs and large companies: vaccine research etc) is amended as follows.

13 (1) Section 1094 (relief only available to SME where company is going concern) is amended as follows.

(2) At the end of subsection (2) insert—

"This is subject to subsection (2A)."

(3) After subsection (2) insert—

"(2A) A company is not a going concern at any time if it is in administration or liquidation at that time.

(2B) For the purposes of this section a company is in administration if—

(a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(2C) For the purposes of this section a company is in liquidation if—

(a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.”

14 (1) Section 1106 (tax credit only available where company is going concern) is amended as follows.

(2) At the end of subsection (4) insert—

“This is subject to subsection (4A).”

(3) After subsection (4) insert—

“(4A) A company is not a going concern at any time if it is in administration or liquidation at that time.

(4B) For the purposes of this section a company is in administration if—

(a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(4C) For the purposes of this section a company is in liquidation if—

(a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.”

Removal of limit on amount of tax credit based on PAYE and NIC liabilities

15 (1) Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.

(2) In section 1058 (amount of tax credit), in subsection (1), omit paragraph (b) (and the “or” before it).

(3) Omit section 1059 (total amount of company’s PAYE and NIC liabilities).

Abolition of vaccine research relief for SMEs

16 (1) Section 1039 (overview of Part 13) is amended as follows.

(2) In subsection (6), for the words from “companies” to “companies)” substitute “large companies”.

(3) In subsection (7)—

(a) for “Chapters 2 and 7 also provide” substitute “Chapter 2 also provides”, and

(b) in paragraph (a), omit “or 7”.

17 In section 1042 (“relevant research and development”), in subsection (3), omit “SMEs and”.

18 In section 1046 (relief only available where company is going concern), in subsection (2)(b), omit “or Chapter 7”.

19 In section 1057 (tax credit only available where company is going concern), in subsection (4)(b), omit "or Chapter 7".

20 Chapter 7 (relief for SMEs and large companies: vaccine research etc) is amended as set out in paragraphs 21 to 30.

21 (1) Section 1085 (overview of Chapter) is amended as follows.

(2) In subsection (1), for the words from "companies" to "companies)" substitute "large companies".

(3) For subsection (3) substitute—

"(3) The relief available is a deduction under section 1087 (the amount of which is determined under section 1091)."

(4) Omit subsection (4).

(5) For subsection (5) substitute—

"(5) Sections 1098 to 1102 contain provision about when a company's expenditure is "qualifying Chapter 7 expenditure" for the purposes of obtaining relief and when such expenditure is "for" an accounting period."

(6) Omit subsection (6).

(7) In subsection (7), omit "or R&D tax credits".

22 (1) Section 1087 (deduction in calculating profits of trade) is amended as follows.

(2) In subsection (1), for "and C" substitute ", C and D".

(3) After subsection (4) insert—

"(4A) Condition D is that the company is a large company throughout the period."

(4) For subsection (7) substitute—

"(7) For the amount of the deduction see section 1091."

(5) In subsection (9)—

(a) in paragraph (a), omit "large",

(b) omit paragraph (b), and

(c) in paragraph (d), for "sections 1099 and 1100" substitute "section 1100".

23 (1) In section 1088 (large companies: declaration about effect of relief), in subsection (1), omit "large".

(2) Accordingly, the heading of that section becomes "**Declaration about effect of relief**".

24 Omit sections 1089 and 1090 (which relate only to SMEs).

25 (1) In section 1091 (large companies: amount of deduction), in subsection (1), omit paragraph (b) (and the "and" before it).

(2) Accordingly, the heading of that section becomes "**Amount of deduction**".

26 Omit sections 1092 to 1096 and 1099 (which relate only to SMEs).

27 (1) In section 1100 (large companies: qualifying expenditure “for” an accounting period), for subsection (1) substitute—

“(1) A company’s qualifying Chapter 7 expenditure is “for” an accounting period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.”

(2) Accordingly, the heading of that section becomes “**Qualifying expenditure “for” an accounting period**”.

28 Omit sections 1103 to 1111 (tax credits).

29 (1) Section 1112 (artificially inflated claims for relief or tax credit) is amended as follows.

(2) In subsection (1), for “the purposes mentioned in subsection (2)” substitute “the purpose of determining for an accounting period relief to which a company is entitled under this Chapter”.

(3) Omit subsection (2).

(4) In subsection (3)—

(a) at the end of paragraph (a) insert “or”, and

(b) omit paragraphs (c) and (d).

(5) Accordingly, the heading of that section becomes “**Artificially inflated claims for relief**”.

30 The heading of Chapter 7 becomes “RELIEF FOR LARGE COMPANIES: VACCINE RESEARCH ETC”.

31 (1) Chapter 8 (cap on aid for R&D) is amended as follows.

(2) In section 1113 (cap on R&D aid under Chapter 2 or 7), in subsection (4)(b), omit “SMEs and”.

(3) In section 1115 (“the tax credits”), in subsection (1), omit “or 7”.

32 In consequence of the amendments made by paragraphs 16 to 31—

(a) in Schedule 4 to CTA 2009 (index of defined expressions), omit the entry for “Chapter 7 surrenderable loss”,

(b) in Schedule 1 to CTA 2010, omit paragraphs 672 to 674, and

(c) in section 43 of FA 2011, omit subsections (7) to (11).

Meaning of “externally provided worker”

33 (1) Chapter 9 (supplementary) is amended as follows.

(2) In section 1128 (“externally provided worker”), in subsection (7), for “the staff provider” substitute “a person other than the company”.

(3) In section 1129 (connected persons), in subsection (6)(a), for “the contract mentioned in section 1128(7)” substitute “a contract between the worker and the staff provider”.

Application

34 The amendments made by paragraphs 2 and 16 to 33 have effect in relation to expenditure incurred on or after 1 April 2012.

35 The amendments made by paragraphs 3 to 8 and 15 have effect in relation to accounting periods ending on or after 1 April 2012.

36 The amendments made by paragraphs 9 to 14 have effect in relation to claims or elections made on or after 1 April 2012.

EXPLANATORY NOTE

RELIEF FOR EXPENDITURE ON R&D

SUMMARY

1. This clause and Schedule amends Part 13 of the Corporation Tax Act 2009 (CTA 2009) to make a number of changes to research and development (R&D) relief for both small or medium (SME) and large companies.

DETAILS OF THE SCHEDULE

2. Paragraph 2 of the Schedule increases the rate of the additional deduction for R&D expenditure provided by section 1044 CTA 2009 from 100 per cent to 125 per cent for SME companies.

3. It also increases the relief for pre-trading expenditure claimed as a deemed trading loss by a corresponding amount and reduces the rate of payable tax credit for a SME to 11 per cent of the surrendered loss.

4. Paragraphs 3 to 8 remove, for both SMEs and large companies, the £10,000 per annum minimum R&D expenditure.

5. Paragraphs 9 to 14 clarify that a company in administration or liquidation is not a going concern for the purposes of SME R&D relief and Vaccine Research Relief.

6. Paragraph 15 removes the restriction, to the level of the company's PAYE and NIC liabilities, of the amount of tax credit a SME company may claim.

7. Paragraphs 16 to 32 abolish Vaccines Research Relief for SMEs.

8. Paragraph 33 amends the definition of "externally provided worker" in sections 1128 and 1129 of CTA 2009.

BACKGROUND NOTE

9. Additional tax relief for expenditure on R&D was introduced in 2000 for SME companies and in 2002 for all other companies. Further relief - Vaccines Research Relief or VRR - was introduced in 2003 for expenditure into vaccines and medicines for strains of TB, malaria and Aids/HIV prevalent in the developing world.

10. A consultation document "Corporate Tax reform: delivering a more competitive system" was published on 29 November 2010 on the HM Treasury website and included consultation on the R&D tax relief. A response document, "Research and Development Tax Credits: response and further consultation" was published on 10 June 2011, and a further response on 6 December, both on the HM Treasury website.

11. Budget 2011 announced increases to the rate of SME R&D relief, together with abolition of the PAYE/ NIC limit and £10,000 pa minimum expenditure.

12. The SME R&D Relief currently gives an additional deduction equal to 100 per cent of the qualifying expenditure. This, combined with the normal deduction for such expenditure, gives a total of 200 per cent.

13. Losses arising from expenditure on R&D can be surrendered by a loss making company in return for a payment at a rate of 12.5 per cent. giving relief of 25 per cent on the original expenditure.

14. The rate of the additional deduction is to be increased to 125 per cent for expenditure incurred on or after 1 April 2011. The rate at which losses can be surrendered will be reduced to 11 per cent, giving relief overall worth 24.75 per cent of the R&D expenditure. The reduction is necessary to keep the value of the relief within the 25 per cent. threshold set out in EU State aid rules.

15. If you have any questions about this change, or comments on the legislation, please contact Neil Smillie on 020 7147 0864 (email: neil.smillie@hmrc.gsi.gov.uk)

Capital allowances: Enterprise Zones

1 Expenditure on plant and machinery for use in designated assisted areas

Schedule 1 contains provision about first-year allowances in respect of expenditure on plant and machinery for use in designated assisted areas.

SCHEDULE 1

Section 1

EXPENDITURE ON PLANT AND MACHINERY FOR USE IN DESIGNATED ASSISTED AREAS

1 CAA 2001 is amended as follows.

2 In section 39 (first-year allowances available for certain types of qualifying expenditure only), at the appropriate place in the list insert—

"section 45K	expenditure on plant and machinery for use in designated assisted areas."

3 After section 45J insert—

"45K Expenditure on plant and machinery for use in designated assisted areas

(1) Expenditure is first-year qualifying expenditure if—
  (a) it is incurred by a company on the provision of plant or machinery for use primarily in an area which at the time the expenditure is incurred is a designated assisted area,
  (b) it is incurred in the period of 5 years beginning with 1 April 2012,
  (c) Conditions A to E are met.

(2) "Designated assisted area" means an area which—
  (a) is designated by an order made by the Treasury, and
  (b) falls wholly within an assisted area.

(3) An area may be designated by an order under subsection (2)(a) only if at the time the order is made—
  (a) the area falls wholly within an enterprise zone, and
  (b) a memorandum of understanding, in respect of the area, relating to the availability of allowances in respect of expenditure to which this section applies has been entered into by the Treasury and the responsible authority for the area.

(4) An order made under subsection (2)(a) may provide that an area designated by the order is to be treated as having been so designated at times falling before the order is made.

(5) But where an area has previously been designated by an order under subsection (2)(a), section 14 of the Interpretation Act 1978 does not apply, by virtue of subsection (4), so as to imply a power to make an order ("the new order") treating that area (or any part of it) as if it were not so designated at times falling before the new order is made.

(6) Condition A is that the company is within the charge to corporation tax.

(7) Condition B is that the expenditure is incurred for the purposes of a qualifying activity within section 15(1)(a) or (f).

(8) Condition C is that the expenditure is incurred for the purposes of—

(a) a business of a kind not previously carried on by the company,

(b) expanding a business carried on by the company, or

(c) starting up an activity which relates to a fundamental change in a product or production process of, or service provided by, a business carried on by the company.

(9) Condition D is that the plant or machinery is unused and not second-hand.

(10) Condition E is that the expenditure is not replacement expenditure.

(11) "Replacement expenditure" means expenditure incurred on the provision of plant or machinery ("new plant or machinery") intended to perform the same, or a similar function, for the purposes of the qualifying activity of the company, as other plant or machinery ("replaced plant or machinery")—

(a) on which the company has previously incurred qualifying expenditure, and

(b) which has been superseded by the new plant or machinery.

(12) But if and to the extent that—

(a) the expenditure is incurred on the provision of new plant or machinery that is capable of and intended to perform a significant additional function, when compared to the replaced plant or machinery, and

(b) the additional function enhances the capacity or productivity of the qualifying activity in question,

so much of the expenditure as is attributable to the additional function is not to be regarded as replacement expenditure.

(13) The part of the expenditure attributable to the additional function is to be determined on a just and reasonable basis.

(14) In this section—

"assisted area" means—

(a) an area specified as a development area under section 1 of the Industrial Development Act 1982, or

(b) Northern Ireland;

"enterprise zone" means an area recognised by the Treasury as an area in respect of which there is a special focus on economic development and identified on a map published by the Treasury for the purposes of this section;

"the responsible authority", for an area, means—

(a) if the area is in England, a local authority for all or part of the area or two or more such local authorities,

(b) if the area is in Scotland, the Scottish Ministers,

(c) if the area is in Wales, the Welsh Ministers, and

(d) if the area is in Northern Ireland, the Department of Enterprise, Trade and Investment in Northern Ireland.

(15) The Treasury may by order amend the definition of "assisted area" in subsection (14) in consequence of any changes made to the areas in the United Kingdom granted assisted area status by virtue of

Article 107(3) of the Treaty on the Functioning of the European Union.

(16) This section is subject to—

section 45L (plant or machinery partly for use outside designated assisted areas),

section 45M (exclusions from section 45K allowances),

section 45N (effect of plant or machinery subsequently being primarily used in an area other than a designated assisted area), and

section 46 (general exclusions).

45L Exclusion of plant or machinery partly for use outside designated assisted areas

(1) Expenditure on plant or machinery is not first-year qualifying expenditure under section 45K if—

(a) at the time when it is incurred, the company incurring it intends the plant or machinery to be used partly in a non-designated area, and

(b) the main purpose, or one of the main purposes, for which any person is a party to the relevant arrangements is the obtaining of a first-year allowance, or a greater first-year allowance, in respect of the part of the expenditure that is attributable to that intended use in a non-designated area.

(2) For the purposes of subsection (1)(b), the part of the expenditure that is attributable to that intended use in a non-designated area is to be determined on a just and reasonable basis.

(3) In this section—

"non-designated area" means an area which is not a designated assisted area within the meaning of section 45K;

"the relevant arrangements" means—

(a) the transaction under which the expenditure is incurred, and

(b) any scheme or arrangements of which that transaction forms part.

45M Exclusions from allowances under section 45K

(1) Expenditure incurred by a person is not first-year qualifying expenditure under section 45K if it is within subsection (2), (4), (6) or (7).

(2) Expenditure is within this subsection if, at the time a claim is made under section 3 for a section 45K allowance in respect of the expenditure, the person who incurred the expenditure is, or forms part of, an undertaking within subsection (3).

(3) An undertaking is within this subsection if one or both of the following conditions are met—

(a) it is reasonable to assume that the undertaking would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02);

(b) the undertaking is subject to an outstanding recovery order made by virtue of Article 108(2) of the Treaty on the Functioning of the European Union (Commission Decision declaring aid illegal and incompatible with the common market).

(4) Expenditure is within this subsection if it is incurred for the purposes of a qualifying activity—

(a) in the fishery or aquaculture sector, as covered by Council Regulation (EC) No 104/2000,

(b) in the coal sector, steel sector, shipbuilding sector or synthetic fibres sector,

(c) relating to the management of waste of undertakings, or

(d) relating to—

(i) the primary production of agricultural products,

(ii) on-farm activities necessary for preparing an animal or plant product for the first sale, or

(iii) the first sale of agricultural products by a primary producer to wholesalers, retailers or processors, in circumstances where that sale does not take place on separate premises reserved for that purpose.

(5) In subsection (4)(c) the reference to waste of undertakings does not include waste of the person who incurred the expenditure or of any other person forming part of the same undertaking as that person.

(6) Expenditure is within this subsection if it is incurred on a means of transport or transport equipment for the purposes of a qualifying activity in the road freight sector or the air transport sector.

(7) Expenditure is within this subsection to the extent that it is taken into account for the purposes of a relevant grant, or relevant payment, made towards that expenditure.

(8) A grant or payment is relevant if it is—

(a) a State aid, other than an allowance under this Part, or

(b) a grant or subsidy, other than a State aid, which the Treasury by order declares to be relevant for the purposes of the witholding of a section 45K allowance.

(9) If a relevant grant or relevant payment towards the expenditure is made after the making of a section 45K allowance, the allowance is to be withdrawn to that extent.

(10) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (9).

(11) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.

(12) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.

(13) In this section—

"agricultural product", "coal sector", "steel sector", "shipbuilding sector" and "synthetic fibres sector" have the same meaning as in the General Block Exemption Regulation;

"General Block Exemption Regulation" means Commission Regulation (EC) No 800/2008 (General block exemption Regulation);

"management" and "waste" have the meaning given by Article 1 of Directive 2006/12/EC of the European Parliament and of the Council;

"section 45K allowance" means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45K;

"undertaking" means—

(a) an autonomous enterprise, or

(b) an enterprise (not within paragraph (a)) and its partner enterprises (if any) and its linked enterprises (if any),

and for this purpose "enterprise", "autonomous enterprise", "partner enterprises" and "linked enterprises" have the meaning given by Annex 1 to the General Block Exemption Regulation.

(14) Nothing in this section limits references to "State aid" to State aid which is required to be notified to and approved by the European Commission.

(15) The Treasury may by order make such provision amending this section as appears to them appropriate for the purpose of giving effect to any future amendments of or instruments replacing—

(a) the General Block Exemption Regulation,

(b) the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02),

(c) Council Regulation (EC) No 104/2000,

(d) Directive 2006/12/EC of the European Parliament and of the Council, or

(e) the Treaty on the Functioning of the European Union.

45N Effect of plant or machinery subsequently being primarily for use outside designated assisted areas

(1) Expenditure on the provision of plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45K if, at any relevant time—

(a) the primary use to which the plant and machinery is put is other than in an area which was a designated assisted area within the meaning of section 45K at the time the expenditure was incurred, or

(b) the plant or machinery is held for use otherwise than primarily in an area which was such a designated assisted area at that time.

(2) "Relevant time" means a time which—

(a) falls within the relevant period, and

(b) is a time when the plant or machinery is owned by—

(i) the person who incurred the expenditure, or

(ii) a person who is, or at any time in that period has been, connected with that person.

(3) "The relevant period" means the period of 5 years beginning with—

(a) the day on which the plant or machinery in question is first brought into use for the purposes of a qualifying activity carried on by the company, or

(b) if earlier, the day on which it is first held for such use.

(4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).

(5) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.

(6) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section."

4 In section 46 (general exclusions applying to first-year qualifying expenditure), in subsection (1), at the appropriate place in the list insert—

"section 45K	(expenditure on plant and machinery for use in designated assisted areas)."

5 (1) Section 52 (first-year allowances) is amended as follows.

(2) In subsection (3), at the appropriate place in the Table insert—

"Expenditure qualifying under section 45K (expenditure on plant and machinery for use in designated assisted areas)	100%"

(3) In subsection (5)—

(a) omit the "and" at the end of the entry for section 212T, and

(b) after that entry insert—

"section 212U (cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas), and".

6 In section 52A (prevention of double relief) for the words after "not" substitute "claim—

(a) an annual investment allowance and a first-year allowance in respect of the same expenditure, or

(b) first-year allowances under two or more of the provisions listed in section 39 in respect of the same expenditure."

7 (1) In Chapter 16B (cap on first-year allowances: zero-emission goods vehicles), after section 212T insert—

"212U Cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas

(1) A section 45K allowance is not available in respect of expenditure ("the current expenditure") incurred by a person ("the investor") in respect of a particular designated assisted area—

(a) if section 45K allowances have previously been made in respect of undertaking expenditure of 125 million euros incurred in respect of that area, or

(b) (where paragraph (a) does not apply) if, and to the extent that, the aggregate of—

(i) the undertaking expenditure incurred in respect of that area in respect of which section 45K allowances have previously been made, and

(ii) the current expenditure,

exceeds 125 million euros.

(2) "Undertaking expenditure" means—

(a) expenditure incurred by the investor, and

(b) if the investor and one or more other persons together form, or have at any time formed, an undertaking, expenditure which is—

(i) incurred by that undertaking, or

(ii) incurred by any of those other persons at a relevant time.

(3) Expenditure is incurred by a person at a "relevant time" if it is incurred—

(a) at a time when the investor and the person are part of the same undertaking, or

(b) at a time before the investor and the person became part of the same undertaking (or, if they became part of the same undertaking on more than one occasion, before the last time).

(4) Expenditure is incurred "in respect of a particular designated assisted area" if it is incurred on the provision of plant or machinery for use primarily in that area.

(5) For the purposes of subsection (1), expenditure incurred in a currency other than the euro is to be converted into its equivalent in euros using the spot rate of exchange for the day on which the expenditure is incurred.

(6) The Treasury may by regulations increase the amount specified in subsection (1)(a) and (b).

(7) In this section—

"designated assisted area" has the meaning given by section 45K;

"section 45K allowance" means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45K;

"undertaking" means—

(a) an autonomous enterprise, or

(b) an enterprise (not within paragraph (a)) and its partner enterprises (if any) and its linked enterprises (if any),

and "enterprise", "autonomous enterprise", "partner enterprise" and "linked enterprise" have the meaning given by Annex 1 to the Commission Regulation (EC) No 800/2008 (General block exemption Regulation)."

(2) Accordingly, in the heading for that Chapter omit "**: zero-emission goods vehicles**".

8 The amendments made by this Schedule have effect for chargeable periods ending on or after 1 April 2012.

EXPLANATORY NOTE

EXPENDITURE ON PLANT AND MACHINERY FOR USE IN DESIGNATED ASSISTED AREAS

SUMMARY

1. This Clause and Schedule provide 100 per cent first-year allowances (FYAs) for companies investing in plant or machinery for use primarily in designated assisted areas within Enterprise Zones. To qualify for this new relief, the expenditure must be incurred in the period from when an area is treated as being a designated assisted area and 31 March 2017.

DETAILS OF THE SCHEDULE

2. Paragraph 1 is introductory and explains that the Capital Allowances Act 2001 (CAA) is to be amended.

3. Paragraph 2 adds expenditure on plant and machinery for use in designated assisted areas to the categories of expenditure, listed in section 39 of CAA, that can qualify for FYAs.

4. Paragraph 3 introduces new sections 45K to 45N into CAA.

Section 45K Expenditure on plant and machinery for use in designated assisted areas.

5. New section 45K(1) sets out the circumstances in which expenditure on plant or machinery constitutes first-year qualifying expenditure. The conditions are that the expenditure must be incurred:

   - by a company on the provision of plant or machinery for use primarily in an area which is a designated assisted area at that time. (The restriction of the new FYAs to "a company" means that unincorporated businesses and partnerships of companies, even if the partnership may be a body corporate, are not eligible for these new FYAs);

   - in the period of five years beginning with 1 April 2012;

   and -

   - five further conditions (conditions A to E) must also be met.

6. New section 45K(2) sets out the meaning of "designated assisted area": this means an area which has been designated by an order made by the Treasury, and an area that falls wholly within an assisted area (see new subsection 14). This latter requirement is the first of a

number designed to ensure that these new FYAs fall within Commission Regulation (EC) No 800/2008 known as the General Block Exemption Regulation ("GBER") (see new subsection (13)) in respect of State aid. Because they provide a geographically selective benefit, the new FYAs would constitute regional State aid..

7. New section 45K(3) sets out the circumstances in which an area may be designated by an order. There are two requirements:

- the area must fall wholly within an enterprise zone (see new subsection 14), and

- the Treasury and the responsible authority (see new subsection 14) must have entered into a memorandum of understanding relating to the availability of the new FYAs in the area. (The memoranda of understanding, each of which will include a map of the relevant designated assisted area, will be pub lished on the HM Treasury website.)

8. New section 45K(4) ensures that, where appropriate, the order may have retrospective effect. So, for example, if the order so provides, the new FYAs may be made available in respect of qualifying expenditure incurred on or after 1 April 2012, even if the order is not made until some time after Royal Assent to Finance Bill 2012, say, in late August 2012.

9. New section 45K(5) prevents an area being revoked or reduced in size with retrospective effect.

10. New sections 45K (6) to (10) set out the five further conditions (that is, in addition to those in New section 45K(1)), which also have to be met:

- conditions A and B restrict the new relief to UK resident companies, which are liable to corporation tax, and that carry on a trade or a mining, transport or similar undertaking (as mentioned in section 12(4) of Income Tax (Trading and Other Income) Act 2005 (ITTOAI) or 39(4) of Corporation Tax Act 2009 (CTA 2009));

- condition C ensures that the GBER requirement for the expenditure to comprise investment aid, rather than operating aid, is met. This effectively means that the expenditure must be incurred on setting up a new business, expanding an existing business or on a fundamental change to a product or production process of, or service provided by, a business carried on by a company;

- condition D focuses the relief on new and unused plant and machinery, which is a GBER requirement; and

- condition E is that the expenditure is not "replacement expenditure" (as defined in New section 45K(11)), which is also a GBER requirement.

11. New sections 45K(11), (12) and (13) explain the meaning and scope of "replacement expenditure" and also provide for a just and reasonable apportionment where part only of the expenditure is replacement expenditure.

12. New section 45K (14) defines "assisted area", "enterprise zone" and "the responsible authority".

13. New section 45K (15) allows the Treasury to amend the definition of "assisted area" by order, if any changes are made to the areas in the UK which are granted assisted area status. The current list of assisted areas is due to be revised by the Commission with effect from 1 January 2014.

14. New section 45K(16) provides that new section 45K is subject to

- new section 45L (plant or machinery partly for use outside designated assisted areas),
- new section 45M (exclusions from section 45K allowances),
- new section 45N (effect of plant or machinery subsequently being primarily used in an area other than a designated assisted area), and
- section 46 (general exclusions).

Section 45L Exclusion of plant and machinery partly for use outside designated assisted areas.

15. New Section 45L is an anti avoidance rule to prevent exploitation where the company incurring the expenditure intends to use the plant or machinery outside the designated assisted area, but enters into "relevant arrangements", designed to meet the "for use primarily in the area" test, where the main, or one of the main, purposes of those arrangements is to obtain the FYA, or a greater amount of FYA. For example, a bus operator group of companies, that would normally have set up two new companies to operate two new bus fleets of similar size in two different areas (where one is a designated assisted area and the other is not), might seek to exploit the new FYAs by setting up one company and using both fleets alternately in both areas, to contrive the result that both fleets are used just over 50 per cent in the designated assisted area. In such a case, the part (here, one-half) of the combined fleet which the group intended to use outside of the designated assisted area would be determined on a just

and reasonable basis, and the expenditure on that part would be excluded from the FYA.

Section 45M Exclusions from allowances under section 45K

16. New section 45M(1) provides that expenditure incurred by a person is not first-year qualifying expenditure under new section 45K if it falls within sections 45M(2), (4), (6) or (7). The exclusions in these subsections are GBER requirements.

17. New sections 45M(2) to (5) provide that expenditure does not qualify for new section 45K allowances if the person who incurred the expenditure is, or forms part of, an "undertaking" that is:

- a "firm in difficulty";
- subject to an outstanding recovery order, declaring aid illegal;
- in the fishery or aquaculture sectors;
- in the coal, steel, shipbuilding or synthetic fibres sectors;
- engaged in the management of waste of other "undertakings";

or -

- is engaged in:
    i. the primary production of agricultural products,
    ii. on-farm activities necessary for preparing an animal or plant product for the first sale,
    iii. the first sale of agricultural products by a primary producer to wholesalers, retailers or processers where that sale does not take place on separate premises reserved for that purpose.

18. New section 45M(6) provides that expenditure does not qualify for relief if it is incurred on a means of transport or transport equipment by a person carrying on a qualifying activity in the road freight or air transport sectors. This does not mean that all expenditure incurred by businesses in those sectors is excluded; only their expenditure on means of transport and transport equipment is ineligible for relief.

19. New sections 45M(7) and (8) provide that no new section 45K allowances are to be made to the extent that the expenditure is taken into account for the purposes of a relevant grant or relevant payment. A grant or payment is relevant if it is a State aid (other than a FYA under these new provisions), or if it is declared, by Treasury order, to be relevant.

20. New sections 45M(9) to (12) provide that if a relevant grant or payment is made after the making of the new FYA allowance, the allowance is to be withdrawn to that extent. Provision is made for all necessary assessments and adjustments to be made for this purpose. In addition, a person who has made a return, who becomes aware that anything in the return has become incorrect because of the operation of this section, must give notice to an Officer of Revenue and Customs of the necessary amendment, within 3 months of first becoming aware of it.

21. New section 45M(13) defines various terms used in new section 45M.

22. New section 45M(14) makes it clear that any reference to State aid in the section is not to be read narrowly, so as to apply only to State aid that is required to be notified to, and approved by, the European Commission. So, for example, State aid that is brought within the terms of the GBER, so that it is exempt from prior notification, is still a relevant grant or payment.

23. New section 45M(15) states that the Treasury may, by order, make such provision to amend new section 45M as appears to them appropriate to give effect to any future amendments to, or instruments replacing, the particular European Regulations, Guidelines, Directive or Treaty, listed in this new subsection.

Section 45N Effect of plant or machinery subsequently being primarily for use outside designated assisted area.

24. New section 45N(1) of this new section requires that the plant or machinery, in relation to which the new section 45K FYAs have been claimed, must be primarily used by the person claiming the allowance (or a connected person) for at least 5 years within the relevant designated assisted area. If, within that 5 year period, the person claiming the allowance, or a connected person, begins to use the plant or machinery primarily outside that area, the FYAs must be withdrawn, as if the expenditure had never qualified for the new FYAs. This section is included both to prevent exploitation of the new FYAs and also to satisfy the GBER State aid requirements in relation to regional aid.

25. New sections 45N(2) and (3) define 'relevant time' and 'relevant period'.

26. New sections 45N(4) to (6) provide that all such necessary assessments and adjustments are to be made for the purpose of withdrawing the relief. In addition, a person who has made a return, who becomes aware that anything in the return has become incorrect because of the operation of this section, must give notice to an

Officer of Revenue and Customs of the necessary amendment, within 3 months of first becoming aware of it.

27. Paragraph 4 adds new section 45K to the list of provisions to which the general exclusions in section 46 apply. These general exclusions provide that expenditure is not FYA expenditure if, for example, it is incurred on the provision of a car, or on plant or machinery for leasing, or in the chargeable period in which the qualifying activity of the business is permanently discontinued.

28. Paragraph 5 adds expenditure on plant and machinery for use in designated assisted areas to the Table of FYAs, and their respective rates, in section 52(3) of CAA, and sets the rate of these new FYAs at 100 per cent. It also provides an addition to section 52(5), to the effect that the new FYAs are subject to new "section 212U (cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas)".

29. Paragraph 6 changes section 52A to make it clear that not only can a person not claim an annual investment allowance and a FYA in relation to the same expenditure, but also a person cannot claim a FYA under two or more of the provisions listed in section 39 in respect of the same expenditure.

30. Paragraph 7(1) introduces new section 212U into CAA.

Section 212U Cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas

31. New section 212U(1) caps the amount of expenditure incurred on plant or machinery, primarily for use in a particular designated assisted area that can qualify for the new FYAs, at a maximum of €125 million per person ("the investor") or at a maximum of €125 million for any "undertaking expenditure". The cap is designed to ensure compliance with the GBER aid intensity rules.

32. New section 212U(2) defines "undertaking expenditure". This is broadly expenditure incurred by the investor, and if the investor or one or more persons together form, or have formed, an undertaking, expenditure incurred by that undertaking.

33. New section 212U(5) provides how expenditure incurred in a currency other than the euro is to be converted into Euros for the purposes of the €125 million cap.

34. New section 212U(6) provides that the Treasury may by regulations increase the cap.

35. New section 212U (7) defines various terms used in new section 212U, including the meaning of "undertaking".

36. Paragraph 7(2) makes a minor consequential amendment to the heading to Chapter 16B.

37. Paragraph (8) provides that the amendments made by the new Schedule have effect for chargeable periods ending on or after 1 April 2012.

BACKGROUND NOTE

38. The proposal to introduce Enterprise Zones was announced at Budget 2011. The main benefits for businesses in the new zones comprise simplified planning and business rates discounts. The Budget statement also announced that the Government would work with Local Enterprise Partnerships (LEPs) to consider introducing enhanced capital allowances (in other words, first-year capital allowances ('FYAs') in Enterprise Zones in assisted areas.

39. In an HM Treasury Press Notice on 17 August 2011, the Government announced its decision to proceed with the enhanced capital allowances (that is, FYA) proposal. On 26 August 2011, HM Treasury wrote to LEPs providing details of the proposed design of the new 100 per cent FYAs scheme, and seeking bids from the LEPs, based on that design. In addition, the letter outlined the criteria against which the bids would be judged.

40. The standard rates of writing-down allowances for businesses' qualifying capital expenditure on plant or machinery are either 18 per cent or 8 per cent per annum (the rates that will apply from April 2012), depending on the nature of the asset. 100 per cent FYAs therefore provide business with a valuable tax-timing benefit.

41. Discussions are ongoing with the relevant devolved administrations about establishing Enterprise Zones in Scotland, Wales and Northern Ireland, which could include a limited number of designated assisted areas in which 100 per cent FYAs would be made available.

42. If you have any questions about this change, or comments on the draft legislation, please contact Joy Guthrie (email: joy.guthrie@hmrc.gsi.gov.uk) or Malcolm Smith (email: malcolm.smith3@hmrc.gsi.gov.uk) or telephone 020 7147 2610

Capital allowances: Feed-in Tariffs and the Renewable Heat Incentive

1 Allowances for energy-saving plant and machinery

(1) Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.

(2) In section 45A (expenditure on energy-saving plant or machinery), after subsection (1) insert—

"(1A) This section is subject to section 45AA (payments under Energy Act 2008 schemes)."

(3) After that section insert—

"45AA Section 45A exclusion: payments under Energy Act 2008 schemes

(1) Expenditure incurred on or after the relevant date on plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45A if—

(a) a payment is made, or another incentive is given, under a scheme established by virtue of section 41 of the Energy Act 2008 (feed-in tariffs) in respect of electricity generated by the plant or machinery, or

(b) a payment is made, or another incentive is given, under a scheme established by regulations under section 100 of that Act (renewable heat incentives) in respect of heat generated, or gas or fuel produced, by the plant or machinery.

(2) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).

(3) If a person who has made a tax return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, the person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.

(4) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.

(5) Except as provided by subsection (6), the relevant date is—

(a) for corporation tax purposes, 1 April 2012, and

(b) for income tax purposes, 6 April 2012.

(6) In the case of expenditure incurred on a combined heat and power system, the relevant date in relation to subsection (1)(b) is—

(a) for corporation tax purposes, 1 April 2014, and

(b) for income tax purposes, 6 April 2014."

(4) In section 104A (special rate expenditure)—

(a) in subsection (1), omit the "and" after paragraph (e), and after paragraph (f) insert ", and

(g) expenditure incurred on or after the third relevant date on the provision of solar panels.”, and

(b) after subsection (3) insert—

“(3A) The third relevant date is—

(a) for corporation tax purposes, 1 April 2012, and

(b) for income tax purposes, 6 April 2012.”

EXPLANATORY NOTE

ALLOWANCES FOR ENERGY-SAVING PLANT AND MACHINERY

SUMMARY

1. This clause provides that where feed-in tariffs or renewable heat incentive tariffs are paid in respect of electricity or heat generated (or gas or fuel produced) 100 per cent first-year allowances ("FYAs") are not available under section 45A of Capital Allowances Act 2001 (CAA) for expenditure incurred on the plant and machinery (P&M) that generates or produces it. This change generally applies for expenditure incurred on or after 1 April 2012 (for businesses within the charge to corporation tax) or 6 April 2012 (for businesses within the charge to income tax) but where the expenditure is on combined heat and power systems the change applies from 1 or 6 April 2014.

2. This clause also provides that expenditure incurred on solar panels, on or after 1 April 2012 (for corporation tax purposes) or 6 April 2012 (for income tax purposes), is special rate expenditure for capital allowances purposes.

DETAILS OF THE CLAUSE

3. Subsection (1) provides for changes to be made to Part 2 of CAA. The changes are specified in subsections 2 to 4.

4. Subsection (2) inserts a new subsection 45A(1A) into CAA. This provides that section 45A is subject to the new section 45AA.

5. Subsection (3) inserts new section 45AA into CAA.

6. New subsection (1) of section 45AA provides that expenditure incurred on P&M on or after the relevant dates (see paragraph 9) is treated as though it never qualified for FYAs under section 45A if a payment is made or another incentive is given for the purposes of:

   a. Section 41 Energy Act 2008, in respect of electricity generated by that P&M; or

   b. Section 100 Energy Act 2008 in respect of heat generated, or gas or fuel produced, by that P&M.

7. New subsection (2) provides for the making of assessments, or amendments to assessments, that may be necessary to give effect to new subsection (1), for example if an FYA is given and needs to be withdrawn because a feed-in tariff or renewable heat incentive tariff is paid subsequently.

8. New subsections (3) and (4) provide that a person who has made a tax return, and later becomes aware that it is incorrect because of subsection (1), must give notice of the amendments required as a result to HMRC within 3 months of the day on which the person became aware that the return had become incorrect.

9. New subsections (5) and (6) define the relevant dates for new subsection (1). These are, generally, 1 April 2012 for corporation tax purposes and 6 April 2012 for income tax purposes. Where the expenditure is incurred on combined heat and power systems, these are 1 April 2014 for corporation tax purposes and 6 April 2014 for income tax purposes.

10. Subsection (4) amends section 104A CAA. It adds a new subparagraph 104A(1)(g) which designates expenditure on solar panels as special rate expenditure for capital allowances purposes. New subsection 104A(3A) provides that the amendment to 104A(1) takes effect from 1 April 2012 for the purposes of corporation tax and 6 April 2012 for the purposes of income tax.

BACKGROUND NOTE

11. Capital allowances allow the cost of capital assets to be written off in computing the taxable profits of a business. They take the place of depreciation charged in the commercial accounts, which is not allowed for tax.

12. Most businesses are entitled to an annual 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most P&M up to an annual limit, which from April 2012 will be £25,000 per annum. For expenditure above that limit, writing-down allowances (WDA) are available, which from April 2012 will be given at the main rate of 18 per cent or the special rate of 8 per cent per annum. The legislation lists (in section 104A of CAA) the categories of expenditure that are special rate; special rate expenditure includes expenditure on integral features of a building and on long-life assets (generally equipment expected to have a useful economic life of 25 years). If expenditure is not designated as special rate then it will attract allowances at main rate.

13. First-year allowances (FYAs) may be available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA. FYAs are special allowances, currently available at a rate of 100 per cent, which provide a cash flow advantage over normal WDAs (as all the qualifying expenditure may be deducted from profits in the year in which it is incurred), as a targeted incentive to invest in particular P&M. FYAs, commonly described as enhanced capital allowances (ECAs), may be claimed on designated energy-saving P&M that meets the criteria required by either the Energy Technology Product or Criteria Lists.

14. The Energy Act 2008 provided for incentives to encourage low carbon energy and heat generation. The Feed-in Tariffs (FITs) scheme was introduced on 1 April 2010 and is designed to incentivise small scale electricity generation. The renewable heat incentive (RHI) supports heat generation from renewable sources. Generally, technologies that qualify under the FITs scheme will not be eligible for FYAs. However, many, although not all, of the technologies that could qualify for tariffs under the RHI scheme could also qualify for FYAs.

15. FYAs are intended to complement, rather than duplicate, the effects of other Government policies supporting such investment. Therefore, the legislation is being amended so that FYAs will not be available for expenditure on P&M, where the P&M generates heat or electricity or produces gas or fuel that attracts a tariff under either the FITs or the RHI scheme.

16. Businesses will be able to choose whether to claim the benefit of FYAs or tariff payments but will not be able to receive both. Where an FYA is given and a tariff payment is made subsequently, then the FYA will be withdrawn by means of an assessment or an amended assessment.

17. This change will apply to expenditure incurred on or after 1 April 2012 for businesses within the charge to corporation tax, or 6 April 2012 for businesses within the charge to income tax. However, because the RHI tariff rate for ‘renewable’ combined heat and power (CHP) will not be finalised until after April 2012 FYAs will continue to be available for expenditure incurred on renewable CHP until 31 March 2013 for businesses within the charge to corporation tax and 5 April 2013 for businesses within the charge to income tax, even when RHI tariffs are paid.

18. Expenditure on solar panels incurred on or after 1 April 2012 (by businesses within the charge to corporation tax) or 6 April 2012 (by businesses within the charge to income tax) will be designated as special rate so that it attracts the lower rate of WDA. Capital allowances are intended to provide tax relief that broadly reflects average rates of economic depreciation, so special rate is considered to be the appropriate rate of WDA for these assets. Expenditure on solar panels is being specifically designated as special rate to ensure clarity of treatment for business. The rate of WDA appropriate for expenditure on other plant or machinery that generates electricity or heat that attracts FITs or RHI tariffs will be determined on the facts by applying the normal rules for plant and machinery allowances.

19. If you have any questions about this change, or comments on the legislation, please contact Sue Pennicott on 020 7147 2610 (email: sue.pennicott@hmrc.gsi.gov.uk) or Malcolm Smith also on 020 7147 2610 (email:malcolm.smith3@hmrc.gsi.gov.uk).

Capital allowances: fixtures

1 Plant and machinery allowances: fixtures

Schedule 1 contains provision about plant and machinery allowances in respect of fixtures.

SCHEDULE 1

Section 1

PLANT AND MACHINERY ALLOWANCES: FIXTURES

Introductory

1 CAA 2001 is amended as follows.

Changes in ownership

2 After section 187 insert—

"187A Effect of changes in ownership of a fixture

(1) This section applies if—

(a) a person ("the current owner") is treated as the owner of a fixture as a result of incurring capital expenditure ("new expenditure") on its provision for the purposes of a qualifying activity carried on by the current owner,

(b) the plant or machinery is treated as having been owned at a relevant earlier time by a person as a result of incurring other capital expenditure ("historic expenditure") on its provision for the purposes of a qualifying activity carried on by that person,

(c) the plant or machinery is within paragraph (b) otherwise than as a result of section 538 (contribution allowances for plant and machinery), and

(d) a person mentioned in paragraph (b) was entitled to claim an allowance under this Part in respect of the historic expenditure.

(2) In this section "the past owner" means—

(a) the person mentioned in paragraph (d) of subsection (1), or

(b) if there is more than one amount of historic expenditure in respect of which a person was entitled to claim as mentioned in that paragraph, the person by whom expenditure was incurred most recently.

(3) In determining the current owner's qualifying expenditure, the new expenditure is to be treated as nil if—

(a) the pooling requirement is not satisfied,

(b) the fixed value requirement applies but is not satisfied, or

(c) the disposal value statement requirement applies but is not satisfied,

in relation to the past owner.

(4) Nothing in subsection (3) affects the disposal value (if any) which falls to be brought into account by the past owner (as a result of having made a claim in respect of the historic expenditure).

(5) The pooling requirement is that—

(a) the historic expenditure has been allocated to a pool in a chargeable period beginning on or before the day on which the past owner ceases to be treated as the owner of the fixture, or

(b) a first-year allowance has been claimed in respect of that expenditure (or any part of it).

(6) The fixed value requirement applies if the past owner is or has been required (as a result of having made a claim in respect of the historic expenditure) to bring the disposal value of the plant or machinery into account in accordance with item 1, 5 or 9 of the Table in section 196.

(7) The fixed value requirement is that after the pooling requirement is satisfied—

(a) the tribunal has determined the part of the apportionable sum that constitutes the disposal value, on an application made by one of the affected parties before the end of the relevant 2 year period, or

(b) an election has been made by the affected parties jointly before the end of the relevant 2 year period or, if an application is made as mentioned in paragraph (a) and not determined or withdrawn by the end of that period, before that application is determined or withdrawn.

(8) In subsection (7)—

(a) in a case falling within item 1 or 9 of the Table in section 196—

"affected parties" means the past owner and the purchaser;

"apportionable sum" means the sale price;

"election" means an election under section 198;

"relevant 2 year period" means the period of 2 years beginning with the date when the purchaser acquires the qualifying interest;

(b) in a case falling within item 5 of that Table—

"affected parties" means the past owner and the lessee;

"apportionable sum" means the capital sum given by the lessee for the lease;

"election" means an election under section 199;

"relevant 2 year period" means the period of 2 years beginning with the date when the lessee is granted the lease.

(9) The disposal value statement requirement applies if the past owner is or has been required (as a result of having made a claim in respect of the historic expenditure) to bring the disposal value of the plant or machinery into account in accordance with item 2 or 3 of the Table in section 196 or in accordance with item 7 of the Table in section 61.

(10) The disposal value statement requirement is—

(a) that the past owner has, no later than 2 years after the date when the past owner ceased to own the plant or machinery, made a written statement of the amount of the disposal value

that the past owner is or has been required to bring into account, and

(b) the current owner has obtained that statement or a copy of it (directly or indirectly) from the past owner.

(11) It is for the current owner to show—

(a) whether the fixed value requirement applies and, if so, is satisfied, and

(b) whether the disposal value statement requirement applies and, if so, is satisfied,

and, for this purpose, to provide an officer of Revenue and Customs, on request, with a copy of any tribunal decision, election or statement by reason of which a requirement mentioned in paragraph (a) or (b) is satisfied.

(12) For the purposes of this section, the current owner and the past owner may be the same person.

(13) In subsection (1)(b) "relevant earlier time" means (subject to subsection (14)) any time which falls—

(a) before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure, but

(b) on or after 24 July 1996.

(14) If, before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure—

(a) any person has ceased to own the plant or machinery as a result of a sale,

(b) the sale was not a sale of the plant or machinery as a fixture, and

(c) the buyer and seller were not connected persons at the time of the sale,

the relevant earlier time does not include any time before the seller ceased to own the plant or machinery."

3 In section 198 (election to apportion sale price on sale of qualifying interest)—

(a) in subsection (1), after "item 1" insert "or 9", and

(b) in subsection (2)(a), after "item 1" insert "or (as the case may be) 9".

4 (1) Section 201 (elections under sections 198 and 199: procedure) is amended as follows.

(2) In subsection (1), at the end insert—

"But this is subject to subsection (1A)."

(3) After that subsection insert—

"(1A) Where—

(a) the requirement of subsection (7) of section 187A (effect of changes in ownership of fixture: fixed value requirement) applies,

(b) an application is made to the tribunal as mentioned in paragraph (a) of that subsection, and

(c) that application is not determined before the end of the period mentioned in subsection (1) of this section,

subsection (1) does not apply and an election within section 187A(7)(b) may be made by notice to an officer of Revenue and Customs at any time before the tribunal determines the application or the application is withdrawn."

5 (1) In section 563 (procedure for determining certain questions affecting two or more persons), in subsection (1)(a) for "two" substitute "one".

(2) Accordingly, in the heading for that section for "**two**" substitute "**one**".

Fixtures on which business premises renovation allowance has been made

6 After section 186 insert—

"186A Fixtures on which a business premises renovation allowance has been made

(1) This section applies if—

(a) a person ("the past owner") has at any time claimed an allowance to which that person was entitled under Part 3A (business premises renovation allowances) in respect of qualifying expenditure under that Part incurred in respect of a qualifying building ("Part 3A expenditure"),

(b) there has been a balancing event within section 360N(1) as a result of which an asset representing the whole or part of the Part 3A expenditure ("the Part 3A asset") ceased to be owned by the past owner,

(c) the Part 3A asset was or included plant or machinery, and

(d) the current owner makes a claim under this Part in respect of expenditure ("new expenditure") incurred—

(i) on the provision of the plant or machinery, and

(ii) at a time when it is a fixture.

(2) If the new expenditure exceeds the maximum allowable amount, the excess is to be left out of account in determining the current owner's qualifying expenditure.

(3) If the proceeds from the balancing event mentioned in subsection (1)(b) exceed R, the maximum allowance amount is—

$$\frac{F}{T} \times R$$

where—

F is so much of the proceeds from the balancing event as are attributable to the fixture,

T is the total amount of the proceeds from the balancing event, and

R is the residue of qualifying expenditure attributable to the Part 3A asset immediately before the balancing event.

(4) Where subsection (3) does not apply, the maximum allowable amount is so much of the proceeds from the balancing event as are attributable to the fixture.

(5) For the purposes of this section, the current owner of the plant or machinery is—

(a) the person who acquired the Part 3A asset from the past owner, or

(b) any person who is subsequently treated as the owner of the plant or machinery."

7 In section 9 (interaction between fixtures claims and other claims), in subsection (2)—

(a) in paragraph (a), after "Part 3" insert ", 3A", and

(b) in paragraph (b), after "section 186(2)" insert ", 186A(2)".

8 In section 57 (available qualifying expenditure), in subsection (3), after "section 186(2)" insert ", 186A(2)".

9 In section 198 (election to apportion sale price on sale of qualifying interest), for subsection (5)(a) substitute—

"(a) sections 186, 186A and 187 (fixtures on which industrial buildings allowance, business premises renovation allowance or research and development allowance has been made),".

10 In section 199 (election to apportion capital sum given by lessee on grant of lease), for subsection (5)(a) substitute—

"(a) sections 186, 186A and 187 (fixtures on which industrial buildings allowance, business premises renovation allowance or research and development allowance has been made),".

Commencement and transitionals

11 The amendments made by paragraphs 2 to 5 have effect—

(a) for income tax purposes, in relation to new expenditure incurred on or after 6 April 2012, and

(b) for corporation tax purposes, in relation to new expenditure incurred on or after 1 April 2012.

12 The amendments made by paragraph 6 to 10 have effect—

(a) for income tax purposes, in relation to balancing events which occur on or after 6 April 2012, and

(b) for corporation tax purposes, in relation to balancing events which occur on or after 1 April 2012.

13 (1) Where (ignoring this sub-paragraph) plant or machinery would be treated for the purposes of subsection (1)(b) of section 187A of CAA 2001 as having been owned by a person for a period which began and ended before the commencement date, that period of ownership is, for those purposes, to be regarded as not occurring at a relevant earlier time.

(2) In the application of that section to new expenditure incurred during the transitional period, that section applies as if subsection (3)(a) were omitted.

(3) In this paragraph—

"the commencement date" means—

(a) for income tax purposes, 6 April 2012, and

(b) for corporation tax purposes, 1 April 2012.

"the transitional period" means—

(a) for income tax purposes, the period beginning with the commencement date and ending with 5 April 2014, and

(b) for corporation tax purposes, the period beginning with the commencement date and ending with 31 March 2014.

EXPLANATORY NOTE

PLANT AND MACHINERY ALLWOANCES: FIXTURES

SUMMARY

1. This Clause and Schedule make the availability of capital allowances to a purchaser of fixtures conditional on: (i) previous business expenditure on qualifying fixtures being pooled before a subsequent transfer on to another person, and (ii) the value of fixtures being fixed formally within two years of a transfer. In addition, the new provisions make a technical adjustment in respect of the Business Premises Renovation Allowances (BPRA) scheme, to enable a new owner to claim plant and machinery capital allowances on any fixtures expenditure not already relieved by BPRA.

DETAILS OF THE SCHEDULE

2. Paragraph 1 is introductory and explains that the Capital Allowances Act 2001 (CAA) is to be amended.

3. Paragraph 2 introduces new section 187A into CAA.

New Section 187A Effect of changes in ownership of a fixture

4. New subsection (1) of section 187A sets out the circumstances in which the section applies. It applies if :

- a current owner incurs capital expenditure on acquiring a property containing fixtures from another person, for the purposes of his business;

- that other person, or a previous owner, is treated as having been the owner of the fixtures at a relevant earlier time (see new subsection (13)) as a result of incurring other expenditure (“historic expenditure”) on their provision, for the purposes of a business carried on by that past owner;

- that past, business owner was entitled to claim plant and machinery allowances (PMAs) in respect of the historic expenditure; but -

the new section does not apply if the previous owner was only entitled to relief by virtue of the contributions legislation in section 538, CAA.

5. New subsection (2) explains what is meant by "the past owner". In respect of an amount of historic expenditure, it is the person who was entitled to claim most recently in respect of that amount.

6. New subsection (3) provides that the qualifying expenditure incurred by the new owner is to be treated as nil if -

    - the "pooling requirement"(see new subsection (5)) is not satisfied;
    - "the fixed value requirement" (see new subsections (6) and (7)) applies but is not satisfied; or
    - "the disposal value statement requirement" (see new subsections (9) and (10)) applies but is not satisfied,

    in relation to the past owner. So, in all cases to which this new section applies, the pooling requirement must be satisfied. In addition, one or other of the "value" requirements will apply and must be satisfied in every case to which this new section applies. (In practice, the "fixed value requirement" will apply in the vast majority of cases and the "disposal value statement requirement" is likely only to apply very infrequently.)

7. New subsection (4) makes it clear that none of the conditions in new subsection (3) in relation to the new owner, affects the disposal value that the past owner must bring into account. So, for example, if the fixed value requirement is not satisfied because no election has been made, and neither has the tribunal been asked to determine the part of the sales proceeds that relates to the fixtures, so that the new owner's qualifying expenditure is deemed to be nil, the past owner is still required to bring in a disposal value, in accordance with section 196, CAA.

8. New subsection (5) explains "the pooling requirement". It provides that the historic expenditure must have been allocated to a pool in a chargeable period beginning on or before the day on which the past owner ceased to own the fixture, or the past owner claimed a first-year allowance on the expenditure (or any part of it).

9. New subsection (6) explains when "the fixed value" requirement applies. It only applies where the past owner is or has been required to bring the disposal value of the plant or machinery into account in accordance with one of three particular disposal events described in the Table in section 196, CAA. (The relevant disposal events are items 1, 5 or 9 in that Table. Item 1 covers the case of a market value sale; item 5 covers the case of an incoming lessee paying a capital sum for the lease, which sum falls to be treated in whole or part as expenditure on the provision of the fixture; and item 9 covers

the case of a past owner, who permanently discontinues his business, followed by a sale of the qualifying interest in the property, including its fixtures. This last case should be distinguished from the example given in relation to new subsection 9 below, where there is a significant gap between the past owner ceasing his business and later deciding to sell the property, so that the capital allowances disposal event occurs on the earlier occasion.)

10. New subsection (7) makes it clear that the fixed value requirement only applies after the pooling requirement is satisfied and explains that the requirement is met when one of two outcomes occurs. That is, either:

    (a) the Tribunal has determined the part of the sale price that constitutes the disposal value of the fixtures, on an application made by one of the affected parties within 2 years of the purchaser's acquisition; or

    (b) there has been a joint election, under either section 198 or section 199 of CAA, as appropriate, between the past owner and the purchaser within 2 years of the acquisition (or, if an application to the tribunal is made within 2 years, and not determined or withdrawn, before the end of that period before that application is determined or withdrawn).

    The overwhelming majority of commercial property transactions involving second-hand fixtures will fall within this new subsection, so that there will be the requirement for a reference to the tribunal, or for a joint election to be made, within two years of a sale. In fact, it is to be expected that a joint election (option (b) above), under section 198 or 199 of CAA, will be the preferred course in the vast majority of cases. This is because it will clearly not be in the interests of either side to incur the trouble and any cost of going to a tribunal unnecessarily, in any case where it would have been possible to agree an apportioned value voluntarily.

    All sales of fixtures by a past owner, who carried on a qualifying activity at the time of sale, will require either a joint election with the immediate purchaser or a tribunal determination, if any future new owner is to be able to claim capital allowances on those fixtures. In other words, even an immediate purchaser, who is not a business and who does not have profits or gains that would be chargeable to tax, should ensure that the "fixed value requirement" is met, if they may wish to be able to pass on an entitlement to claim allowances on those fixtures to a new owner in future.

11. New subsection (8) defines various expression used in new subsection (7), and gives the statutory meaning of "election" for the three affected disposal events. That is, if the disposal event falls

within item 1 or 9 of the Table in section 196, the election will be under section 198 of CAA, whereas if the disposal event falls within item 5 of that Table, the election will be under section 199 of CAA.

12. New subsection (9) explains when "the disposal value statement requirement" applies. This provision is designed to cater for a very small subset of disposal events that may have occurred, other than by virtue of an immediate sale of, or grant of a lease of, the fixtures by a person carrying on a qualifying activity. The requirement would apply if, for example, a past owner had previously permanently ceased his business activity, finalising his cessation accounts and tax return, in which he would have been required to bring the market value of the fixtures, at that time, into account, in accordance with item 7 of the Table in section 61 of CAA. If, some years later, he then decided to sell his former business premises with its fixtures to a purchaser, "the disposal value statement requirement" would apply.

13. New subsection (10) explains how "the disposal value statement requirement" is satisfied. This is done by the past owner making a written statement of the amount of the disposal value of the fixtures that he is, or has been, required to bring into account, within 2 years of the date when he ceased to own them. The current owner must obtain this statement, or a copy of it, either directly or indirectly from the past owner.

    Thus if, for example, the immediate purchaser is not a business, but a later purchaser is a business, the later purchaser may obtain the required statement either directly from the past owner, or indirectly from the intermediate owner, who sold the property to the current owner. As with the "fixed value requirement", an intermediate purchaser, who is not a business should ensure that he obtains this written statement from the past owner, if he wants to make sure that he is able to pass on an entitlement to claim on those fixtures to a future owner. However, the later owner is free to try to obtain the statement, or a copy of it, directly from the past owner, if the past owner is still contactable and willing to oblige.

14. New subsection (11) provides that it is for the current owner seeking to claim allowances to demonstrate whether:

    - the fixed value requirement applies and, if so, is satisfied, and

    - the disposal value statement requirement applies and, if so, is satisfied

    and, for this purpose, to provide a copy of any relevant tribunal decision, election or statement, satisfying the relevant requirement, to HM Revenue and Customs (HMRC) on request. (Although it is

considered that it is for the taxpayer to substantiate a claim to capital allowances, so that, from this perspective, and to this extent, this new subsection could be viewed as somewhat superfluous, one of the main policy purposes of the new provisions is to increase the operational clarity and certainty of the fixtures regime. This new subsection is, therefore, intended to put beyond doubt what a current owner will need to obtain and retain in order substantiate a fixtures claim under the new provisions.)

As previously indicated, if a non-business purchases fixtures from a past owner who was entitled to claim allowances on those fixtures, the non-business should ensure that the required election, tribunal decision or value statement is obtained, if it wishes to ensure that an entitlement to claim may be passed on to a future owner. In general, current owners will require to hold on to the appropriate paperwork to demonstrate their entitlement to claim in respect of historic expenditure on fixtures.

15. New subsection (13) explains what is meant by ‘relevant earlier time’ in new subsection (1)(b). It is any time that falls before the earliest time when the current owner is treated as owning the fixtures, but that time must be on or after 24 July 1996.

16. New subsection (14) ensures that the legislation does not apply where there has been a sale of an asset that is no longer a fixture at the time of sale, unless that sale is to a connected person. For example: company A owns a building, containing an antique copper water heater, which it strips out and sells to an architectural salvage dealer. Company B, not connected with company A, buys the copper water heater from the dealer and installs it in a property it owns. Company B is not required to establish the disposal value brought into account by Company A and is not precluded from claiming allowances based on what it paid for the asset.

17. Paragraph 3 makes certain consequential amendments to section 198, CAA.

18. Paragraph 4 introduces changes to section 201 CAA.

19. Paragraph 4(3) introduces a new subsection 1A into section 201. The new subsection provides that where new subsection (7) of new section 187A applies, and an application is made to the tribunal, then the time limit in section 201(1) does not apply, but is modified to run to the time the tribunal determines the application or the application is withdrawn.

20. Paragraph 5(1) makes a change to section 563, CAA, so that a question concerning the amount to be fixed in relation to the fixed value requirement can be referred to the tribunal, even if it only

affects the liability to tax of one person, rather than of two or more persons. For example, where a taxpayer sells a fixture to a non taxpayer and agreement cannot be reached, then, absent the change to section 563, that matter could not have been referred to the tribunal, but in future it may be referred. Paragraph 5(2) makes a consequential change to the heading of section 563, CAA.

21. Paragraph 6 introduces new section 186A into CAA

186A Fixtures on which a business premises renovation allowance has been made

22. There is a general rule in section 9 of CAA that if any person has claimed an allowance under any Part other than Part 2, then no other person is able to claim a fixture allowance under Part 2. The general rule is relaxed in the case of fixtures on which industrial buildings allowances, or research and development allowances, have been claimed. New section 186A introduces a similar relaxation in relation to business premises renovation allowances (BPRA), ensuring that where a property which has qualified for BPRA, under Part 3A, is sold and a balancing charge arises, then the new owner can claim allowances under Part 2, to the extent that a balancing charge arose on the fixtures, but only to that extent. In all other cases no allowances are available to the new owner. The drafting of new section 186A follows section 186 in all material respects.

23. Paragraphs 7 to 10 make minor consequential amendments to sections 9, 57, 198 and 199 of CAA to include references to the amendments in respect of BPRA and the new section 186A.

24. Paragraph 11 explains that the amendments made by paragraphs 1 to 5 have effect:

- for income tax purposes, in relation to new expenditure incurred on or after 6 April 2012, and
- for corporation tax purposes, in relation to new expenditure incurred on or after 1 April 2012

25. Paragraph 12 explains that the amendments made in relation to BPRA by paragraphs 6 to 10 have effect:

- for income tax purposes, in relation to balancing events which occur on or after 6 April 2012, and
- for corporation tax purposes, in relation to balancing events which occur on or after 1 April 2012

26. <u>Paragraph 13(1)</u> deals with expenditure of a past owner where the period of ownership was entirely before 1/6 April 2012 and provides that neither the pooling requirement nor requirements to fix formally the value of fixtures apply in relation to such a period of ownership.

27. <u>Paragraph 13(2)</u> disapplies the pooling requirement in relation to the new section 187A for transitional periods as defined in paragraph 10(3).

28. <u>Paragraph 13(3)</u> gives the meaning of commencement date as used in paragraph 13(1) and the transitional period as used in paragraph 13(2).

The commencement date means

- for income tax purposes, 6 April 2012, and
- for corporation tax purposes, 1 April 2012

The transitional period means

- for income tax purposes, the period beginning with the commencement date and ending with 5 April 2014, and
- for corporation tax purposes, the period beginning with the commencement date and ending with 31 March 2014.

BACKGROUND NOTE

29. At Budget 2011, the Government announced that it would consult on proposals to ensure that the capital allowances rules for fixtures secured their original policy purpose of limiting allowances overall to the fixture's original cost. That is, that the cost of a fixture should be written-off once, and once only, during that fixture's useful economic life.

30. The Government decided to act in order to protect the Exchequer from further tax leakage and to make the rules fairer and clearer for businesses to understand and operate - without giving rise to disproportionate administrative burdens.

31. A formal consultation was launched on 31 May and closed on 31 August 2011. The Government's formal response to the consultation was published on 6 December 2011.

32. The fixtures legislation is contained in Chapter 14 of Part 2 of the Capital Allowances Act 2001 (CAA). To deliver the policy purpose - that expenditure on a fixture should be written-off against taxable profits only once over its economic life - the current legislation

contains rules to limit the allowances that can be given to the lower of original cost (section 62 CAA) or the last disposal value that has been brought into account by any previous owner of the fixture (section 185 CAA).

33. However, the current law does not prescribe when expenditure on fixtures should be pooled, and there is no time limit laid down to govern when a seller and purchaser should agree the part of the sale price of a property that should be attributed to the fixtures.

34. These gaps have given rise to uncertainties and difficult questions of proof. They have led to a large number of 'late' claims by current owners at a time when a single sale value for fixtures can no longer be agreed and brought into account by both parties.

35. This Clause and Schedule are designed to address these practical problems with the existing legislation, in order to ensure that the fixtures regime operates as originally intended in future.

36. An additional technical, fixtures issue, in relation to the Business Premises Allowances scheme (in Part 3A of CAA), emerged during the Government’s consideration of its proposed fixtures changes for Finance Bill 2012. The Government decided to address this issue at the same time as the other changes.

37. If you have any questions about this change, or comments on the legislation, please contact Joy Guthrie (email: joy.guthrie@hmrc.gsi.gov.uk) or Malcolm Smith on 020 7147 2610 (email: malcolm.smith3@hmrc.gsi.gov.uk).

Changes to the Real Estate Investment trust (REIT) legislation

1 Real estate investment trusts

Schedule 1 makes provision about real estate investment trusts.

SCHEDULES

SCHEDULE 1

Section 1

REAL ESTATE INVESTMENT TRUSTS

Introduction

1 Part 12 of CTA 2010 (real estate investment trusts) is amended as follows.

Being a UK REIT: conditions for company - close companies

2 (1) Section 525 (becoming a UK REIT: supplementary provision) is amended as follows.

(2) In subsection (1)(c) for “the conditions” substitute “conditions A, B, C, E and F”.

(3) In subsection (4)(a) omit “D,”.

(4) Omit subsections (5) to (8).

3 (1) Section 527 (being a UK REIT in relation to an accounting period) is amended as follows.

(2) After subsection (4) insert—

“(5) Subsections (2)(a) and (3)(a) are also subject to subsections (6) to (8).

(6) If the accounting period ends during the first 3-year period, condition D in section 528 does not have to be met.

(7) If the accounting period begins, but does not end, during the first 3-year period, condition D in section 528 only has to be met throughout the part of the accounting period falling after the end of the first 3-year period.

(8) In subsections (6) and (7) “the first 3-year period” means the period of 3 years beginning with the date specified in the notice given under section 523 or 524.”

4 (1) Section 528 (conditions for company) is amended as follows.

(2) In subsection (4)—

(a) omit the “or” after paragraph (a), and

(b) after paragraph (b) insert “, or

(c) is a close company only because it has an institutional investor as a participator (within the meaning given by section 454)”.

(3) After subsection (4) insert—

"(4A) "Institutional investor" means any of the following persons—

(a) the trustee or manager of—

(i) an authorised unit trust scheme (as defined in section 237(3) of FISMA 2000), or

(ii) a unit trust scheme (as defined in section 237(1) of FISMA 2000) which is authorised under the law of a territory outside the United Kingdom in a way which makes it, under that law, the equivalent of an authorised unit trust scheme (as defined in section 237(3) of that Act);

(b) a company—

(i) which is an open-ended investment company (as defined in section 236(1) of FISMA 2000) incorporated by virtue of regulations under section 262 of that Act, or

(ii) which is incorporated under the law of a territory outside the United Kingdom and is, under that law, the equivalent of an open-ended investment company (as defined in section 236(1) of FISMA 2000);

(c) the trustees or managers of a pension scheme (as defined in section 150(1) of FA 2004);

(d) a person acting in the course of a long-term insurance business (that is, the activity of effecting or carrying out contracts of long-term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544)) who—

(i) is authorised under FISMA 2000 to carry on such business, or

(ii) has an equivalent authorisation under the law of a territory outside the United Kingdom to carry on such business;

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

(4B) The Treasury may by regulations amend the definition of "institutional investor" by inserting, omitting or amending a description of person in subsection (4A)."

5 (1) Section 558 (demergers: disposal of asset) is amended as follows.

(2) In subsections (3) and (6) for "C to F" substitute "C, E and F".

6 (1) Section 559 (demergers: company leaving group UK REIT) is amended as follows.

(2) In subsections (6) and (9) for "C to F" substitute "C, E and F".

7 (1) Section 561 (notice of breach of relevant Chapter 2 condition) is amended as follows.

(2) After subsection (4) insert—

"(5) The following subsections apply in relation to condition D in section 528.

(6) In accordance with section 527(6) and (7), a notification does not have to be given under subsection (1) or (2) if condition D ceases to be met during the first 3-year period.

(7) If condition D is not met at the start of the first day after the end of the first 3-year period, for the purposes of subsections (1) to (4) condition D is treated as having ceased to be met at the start of that day.

(8) In subsections (6) and (7) "the first 3-year period" has the meaning given by section 527(8)."

8 (1) Section 562 (breach of conditions C and D in section 528) is amended as follows.

(2) In the heading for "**conditions C and D**" substitute "**condition C**".

(3) In subsection (1) for the words from "or D" to "conditions)" substitute "in section 528".

(4) In subsection (2)—

(a) for "both conditions C and D are" substitute "condition C is", and

(b) for "breaches are" substitute "breach is".

(5) Omit subsections (3) and (4).

(6) In subsection (5)—

(a) in paragraph (a) for "either condition C or D" substitute "condition C", and

(b) in paragraph (b) omit "or (3)".

9 After section 562 insert—

"562A Breach of condition D in section 528 (conditions for company)

(1) This section makes provision about cases relating to breaches of condition D in section 528 in relation to—

(a) the principal company of a group UK REIT, or

(b) a company UK REIT.

(2) In accordance with section 527(6) and (7), a breach of condition D during the first 3-year period is to be ignored.

(3) If condition D is not met at the start of the first day after the end of the first 3-year period, the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the first 3-year period.

(4) If condition D is not met at any time after the start of the day mentioned in subsection (3), the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at—

(a) the end of the accounting period preceding the accounting period in which the breach began, or

(b) if later, the end of the first 3-year period.

(5) Neither subsection (3) nor subsection (4) applies if condition D is not met as a result of—

(a) the principal company of a group UK REIT becoming a member of another group UK REIT, or

(b) a company UK REIT becoming a member of a group UK REIT,

and, accordingly, the breach is to be ignored.

(6) Subsection (4) does not apply if—

(a) condition D is not met as a result of anything done (or not done) by a person other than the company in question, and

(b) the company remedies the breach not later than the end of the accounting period after that in which the breach began,

and, accordingly, the breach is to be ignored.

(7) But if, in a case within subsection (6), the breach of condition D is not remedied by the time mentioned in that subsection, the group or company (as the case may be) is treated as having ceased to be a UK REIT at the end of the accounting period in which the breach began.

(8) In this section "the first 3-year period" has the meaning given by section 527(8)."

10 (1) Section 572 (termination by notice given by HMRC) is amended as follows.

(2) In subsection (2) after "573," insert "573A,".

(3) After subsection (5) insert—

"(5A) Subsection (4)(a) has effect subject to section 573A(4)."

11 After section 573 insert—

"573A Notice under section 572: condition D in section 528 not met

(1) An officer of Revenue and Customs may give a notice under section 572(1) if—

(a) at any time during the first 3-year period, condition D in section 528 is not met, and

(b) as at that time, subsection (2) has applied to a member of the group or the company (as the case may be) for a period exceeding 3 years or for a number of periods which in total exceed 3 years.

(2) This subsection applies to a company at any time when—

(a) the company is, or is a member of, a UK REIT,

(b) condition D in section 528 is not met in relation to the UK REIT, and

(c) the first 3-year period in relation to the UK REIT has not ended.

(3) Subsection (4) applies if—

(a) a company ceases to carry on a business ("the transferred business") which it carried on at a time ("the relevant time") when subsection (2) applied to the company, and

(b) another company ("company X") begins to carry on the transferred business.

In paragraph (a) the reference to a business includes a part of a business.

(4) Subsection (2) is to be taken to have applied to company X at the relevant time (including for the purposes of subsection (3)(a) if company X subsequently ceases to carry on the transferred business (or a part of it)).

(5) In this section "the first 3-year period" has the meaning given by section 527(8).

(6) If a notice is given under section 572(1) in a case within this section, subsection (7) applies instead of section 572(4)(a).

(7) The group or company (as the case may be) is to be taken to have ceased to be a UK REIT on—

(a) the first day of accounting period 1, or

(b) such later day as may be specified by the officer of Revenue and Customs in the notice."

12 (1) Section 577 (multiple breaches of conditions in Chapter 2) is amended as follows.

(2) In subsection (5)(a)—

(a) omit "and (3)", and

(b) before "section 563(2)" insert—

"section 562A(5) and (6),".

(3) In subsection (7)—

(a) in paragraph (b) omit "or D" and "or (5) to (7)", and

(b) in paragraph (c) for "C to F" substitute "C, E and F".

(4) After subsection (7) insert—

"(8) In accordance with section 527(6) and (7), a breach of condition D in section 528 during the first 3-year period (as defined in section 527(8)) is also to be ignored for the purposes of this section."

13 (1) The amendments made by paragraph 2 have effect in relation to notices given under section 523 or 524 specifying a date which is on or after the day on which this Act is passed.

(2) The amendments made by paragraphs 3 to 12 have effect in relation to—

(a) groups of companies in respect of which notices are given under section 523 specifying a date which is on or after the day on which this Act is passed, and

(b) companies which give notices under section 524 specifying a date which is on or after the day on which this Act is passed.

Being a UK REIT: conditions for company - trading of shares on recognised stock exchange

14 (1) Section 527 (being a UK REIT in relation to an accounting period) is amended as follows.

(2) In subsections (2) and (3) after paragraph (a) insert—

"(aa) the condition in section 528A (trading of shares on recognised stock exchange) must be met in relation to the period,".

15 (1) Section 528 (conditions for company) is amended as follows.

(2) In subsection (3) for "listed" substitute "admitted to trading".

16 After section 528 insert—

"528A Condition as to trading of shares on recognised stock exchange

(1) In the case of a group UK REIT, the condition in this section is met in relation to an accounting period if shares forming the principal company's ordinary share capital are traded on a recognised stock exchange during the period.

(2) In the case of a company UK REIT, the condition in this section is met in relation to an accounting period if shares forming the company's ordinary share capital are traded on a recognised stock exchange during the period."

17 (1) Section 561 (notice of breach of relevant Chapter 2 condition) is amended as follows.

(2) In subsection (3) before "conditions A and B in section 529" insert—

"the condition in section 528A (trading of shares on recognised stock exchange),".

18 Before section 563 insert—

"562B Breach of condition as to trading of shares on recognised stock exchange

(1) This section applies if the condition in section 528A (trading of shares on recognised stock exchange) is not met in relation to an accounting period.

(2) The group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the previous accounting period."

19 The amendments made by paragraph 14 to 18 have effect in relation to—

(a) groups of companies in respect of which notices are given under section 523 specifying a date which is on or after the day on which this Act is passed, and

(b) companies which give notices under section 524 specifying a date which is on or after the day on which this Act is passed.

Being a UK REIT: condition as to distribution of profits

20 (1) Section 530 (condition as to distribution of profits) is amended as follows.

(2) In subsection (6D) for "three" substitute "6".

21 After section 530 insert—

"530A Condition as to distribution of profits: increase in profits after delivery of tax return

(1) Section 530(1) applies subject to subsection (2) below in relation to an accounting period if—

(a) the principal company of the group delivered with its tax return for the period the financial statement under section

532(2)(b) showing the amount of the UK profits of the group arising in the period, and

(b) as at the relevant date, those profits have been increased from the amount originally shown in the statement.

(2) Any distribution of those profits made by the principal company before the end of the relevant period is to be treated as having been made within the deadline set by section 530(1)(c).

(3) But the total amount of profits that may be treated as having been distributed within that deadline by virtue of subsection (2) is limited to 90% of the amount of the increase in profits.

(4) In subsections (1) and (2) (and this subsection)—

"the relevant date" means the date on which the principal company's tax return can no longer be amended,

"the relevant period" means the period of 3 months beginning with the relevant date, and

"UK profits" has the meaning given by section 530(2).

(5) Section 530(4) applies subject to subsection (6) below in relation to an accounting period if—

(a) the company delivered its tax return for the period showing the amount of the profits of its property rental business arising in the period as calculated in accordance with section 599, and

(b) as at the relevant date, those profits have been increased from the amount originally shown in the return.

(6) Any distribution of those profits made before the end of the relevant period is to be treated as having been made within the deadline set by section 530(4)(b).

(7) But the total amount of profits that may be treated as having been distributed within that deadline by virtue of subsection (6) is limited to 90% of the amount of the increase in profits.

(8) In subsections (5) and (6) (and this subsection)—

"the relevant date" means the date on which the company's tax return can no longer be amended, and

"the relevant period" means the period of 3 months beginning with the relevant date.

(9) In this section "distribution" is to be read in accordance with section 530(6A) and (6B)."

22 (1) Section 564 (breach of condition as to distribution of profits) is amended as follows.

(2) Omit subsections (5) to (8).

23 (1) Section 565 (which defines the amount to be charged to corporation tax where there is a breach of the condition in section 530) is amended as follows.

(2) In subsections (2) and (3), in the definition of "D"—

(a) for "on or before" substitute "within",

(b) in paragraph (a) for "filing date referred to in" substitute "deadline set by", and

(c) in paragraph (b) for "date specified" substitute "deadline set".

(3) After subsection (3) insert—

"(4) The definition of "D" in subsections (2) and (3) needs to be read with section 530A (so far as applicable)."

24 (1) The amendment made by paragraph 20 has effect in relation to distributions made on or after the day on which this Act is passed.

(2) The amendments made by paragraphs 21 to 23 have effect in relation to accounting periods starting on or after the day on which this Act is passed.

Being a UK REIT: conditions as to balance of business

25 (1) Section 531 (conditions as to balance of business) is amended as follows.

(2) For subsection (5) substitute—

"(5) Condition B is that at the beginning of the accounting period the sum of—

(a) the value of the assets relating to property rental business, and

(b) the value of the assets relating to residual business so far as consisting of cash,

is at least 75% of the total value of assets held by the group or company (as the case may be)."

(3) In subsection (6)(b) after "business" insert "(and the amount of the group's cash is to be determined accordingly)".

(4) After subsection (7) insert—

"(8) In this section "cash" means—

(a) money held on deposit (whether or not in sterling),

(b) stocks or bonds of any description included in Part 1 of Schedule 11 to FA 1942 (gilts), or

(c) money held in any other way, or any investment of any other form, specified in regulations made by the Commissioners for Her Majesty's Revenue and Customs."

26 (1) Section 547 (funds awaiting reinvestment) is amended as follows.

(2) Omit subsection (3).

27 The amendments made by paragraphs 25 and 26 have effect in relation to accounting periods starting on or after the day on which this Act is passed.

Abolition of entry charge

28 Omit sections 538 to 540 (entry charge).

29 (1) Section 545 (cancellation of tax advantage) is amended as follows.

(2) In subsection (5) omit the words from "(and includes," to "538)".

30 (1) Section 556 (disposal of assets) is amended as follows.

(2) Omit subsection (4).

31 (1) Section 558 (demergers: disposal of asset) is amended as follows.

(2) In subsection (4) omit “and section 538 (entry charge)”.

32 (1) Section 559 (demergers: company leaving group UK REIT) is amended as follows.

(2) In subsection (8) omit “section 538 (entry charge),”.

33 (1) Section 583 (overview of Chapter 10 relating to joint ventures) is amended as follows.

(2) Omit subsection (4)(b).

34 Omit sections 595 to 597 (additional entry charges in cases involving joint ventures) and the italic heading before section 595.

35 The amendments made by paragraphs 28 to 34 have effect in relation to companies whose entry is on or after the day on which this Act is passed.

Financing cost ratio

36 (1) Section 543 (financing cost ratio) is amended as follows.

(2) In subsection (1) after “period” insert “(unless it is nil or a negative amount)”.

(3) For subsection (3) substitute—

“(3) The excess is charged to corporation tax in relation to the accounting period under the charge to corporation tax on income.

(3A) “The excess” means—
  (a) the amount equal to—
    (i) PFC, minus
    (ii) the property financing costs which would cause the calculation in subsection (2) to equal 1.25 for the accounting period, or
  (b) if less, the amount equal to 20% of PP.”

37 (1) Section 544 (meaning of “property financing costs” etc) is amended as follows.

(2) In subsection (3)—
  (a) in paragraph (a)—
    (i) for “the financing costs” substitute “interest on loans”, and
    (ii) for “excluding financing costs” substitute “excluding interest”, and
  (b) in paragraph (b) for “the financing costs” substitute “interest on loans”.

(3) In subsection (4) for ““financing costs” means the cost of debt finance” substitute ““loan” has the same meaning as in Part 5 of CTA 2009 (see section 476(1) of that Act)”.

(4) Omit subsection (5).

38 The amendments made by paragraphs 36 and 37 have effect for accounting periods starting on or after the day on which this Act is passed.

Disposal of assets

39 (1) Section 556 (disposal of assets) is amended as follows.

(2) In subsection (1)—

(a) omit the "and" after paragraph (a), and

(b) after paragraph (b) insert ", and

(c) if the company is a member of a UK REIT, the disposal is not to another member of the UK REIT".

(3) In subsection (3)—

(a) omit the "and" after paragraph (b), and

(b) after paragraph (c) insert ", and

(d) if the company is a member of a UK REIT, the disposal is not to another member of the UK REIT".

40 The amendments made by paragraph 39 have effect in relation to disposals occurring on or after the day on which this Act is passed.

EXPLANATORY NOTE

IMPROVEMENTS TO THE REIT REGIME

SUMMARY

1. This clause and Schedule amend Part 12 (Real Estate Investment Trusts) (REIT) of the Corporation Tax Act 2010 (CTA 2010). The amendments relax the conditions of entry to the REIT regime and relax requirements while in the regime.

DETAILS OF THE SCHEDULE

2. Paragraph 1 introduces amendments to Part 12 of CTA 2010. All references to amendments to legislation are to Part 12 CTA 2010 [unless otherwise stated].

3. Paragraph 2 amends section 525 which requires a company or group that gives a notice to be a REIT to include in the notice a statement that it can meet the REIT regime conditions, including those in section 528 (the company conditions). The amendments change the form of the notice to be given to reflect the changes being made to section 528 as detailed at 6 and 7 below.

4. Paragraph 3 amends section 527 which sets out the conditions for being a REIT in an accounting period. Condition D in section 528, which states that a REIT cannot be a close company, will not apply for the first three years after a company joins the regime.

5. Paragraph 4 amends Condition D in section 528, that a REIT cannot be a close company, so that the shareholding of an institutional investor will not, on its own, make a company close for REIT purposes. Paragraph 4 also introduces a new subsection 4A which defines what an institutional investor is for these purposes. In addition new subsection 4B grants a power to make Regulations concerning the definition of who is or is not to be regarded as an 'institutional investor' for the purposes of this section.

6. Paragraphs 5-6 make changes to sections 558 and 559, which cover how the demerger of a REIT is dealt with, to accommodate the changes being made to the conditions to be met by a REIT in section 527.

7. Paragraphs 7-8 amend sections 561 and 562 which deal with breaching the REIT conditions, including those in section 528, so that the REIT does not have to give notice that it has not met condition D

of section 528 in the first three years after joining the regime as a consequence of the amendment to section 527.

8. Paragraph 9 introduces a new section 562A which determines the circumstances when a breach of Condition D in section 528 is either to be ignored or to result in the REIT leaving the regime.

9. Paragraphs 10 and 11 amend section 572 which deals with notices to leave the regime and introduce new section 573A, so that a notice to leave the regime can be issued in certain circumstances where condition D in section 528 is not met.

10. Paragraph 12 amends paragraph 577, which deals with multiple breaches of the conditions by which a company or a group qualifies as a REIT, to reflect the changes being introduced to condition D of section 528.

11. Paragraph 13 sets out that the changes in paragraphs 2 – 12 will apply to those electing to become REITs with effect from on or after the date of Royal Assent to the Finance Bill.

12. Paragraphs 14-18 amend section 528(3), the REIT company condition that requires that shares in the company are listed on a recognised stock exchange. The amendment is to allow that shares are admitted to trading on a recognised stock exchange and a new section 528A is introduced which requires that such shares are traded. The introduction of new section 562B deals with the consequence of not meeting the trading condition in new section 528A, which will be that the group or company will cease to be a REIT.

13. Paragraph 19 sets out that the changes in paragraphs 14-18 will apply to those electing to become REITs with effect from on or after the date of Royal Assent to the Finance Bill.

14. Paragraph 20 amends section 530 which requires that 90% of the profits of the property rental business have to be distributed by the date at which the REIT's tax return is filed. This is referred to as the 'distribution requirement'. The amendment extends the date by which profits have to be distributed from three months after the filing date to six months after the filing date. This amendment only applies in particular circumstances where a stock dividend has been issued and a market value of the stock dividend has had to be used in accordance with section 530(6C)(b) and this has caused the distribution requirement not to be met.

15. Paragraph 21 introduces a new section 530A which deals with how the distribution requirement (see 15 above) is to be met in situations where profits of the property rental business are increased after the tax return has been submitted. This clarifies under what

circumstances additional time is given to meet the distribution requirement and when a charge to tax for not meeting the distribution requirement can be made.

16. Paragraphs 22-24 amend sections 564 and 565, which charge tax on the amount by which the distribution requirement is not met. The amendments clarify when a charge to tax can be made when the distribution requirement is not met and include the circumstances where the time limit is extended under section 530 or new section 530A. These changes apply to distributions made on or after the date of Royal Assent to the Finance Bill.

17. Paragraph 25-27 amends section 531 'conditions as to the balance of business'. This section requires that at the beginning of an accounting period, the REITs profits and assets are primarily derived from and involved in its property rental business. Currently Condition B in section 531 requires that at least 75% of the assets of the group or company relate to the property rental business. Following amendment the requirement will be that cash and assets involved in the property rental business should be at least 75% of the total assets of the business. The change will apply to accounting periods beginning on or after Royal Assent.

18. Paragraphs 28-35 abolish the entry charge for companies entering the REIT regime. The abolition applies to those companies that enter the regime on or after the date of Royal Assent to the Finance Bill.

19. Paragraphs 36-38 amend sections 543 and 544 which limit the amount of property financing costs that a REIT can pay in connection with its tax exempt business. For accounting periods starting on or after the date of Royal Assent to the Finance Bill, the limit will be based on interest on loans and will exclude the costs of arranging loan finance, and other accounting costs will no longer be included. The amendments also limit the amount charged to corporation tax under section 543 (4) to an amount equal to 20% of the property profits.

20. Paragraph 39-40 amends section 556 which deals with the tax treatment of an asset of the property rental business that is disposed of by way of a trade (ie the disposal is taxed). The amendment ensures that section 556 does not apply to disposals made to another member of the REIT. The amendment takes effect where the disposal is on or after the date of Royal Assent to the Finance Bill.

BACKGROUND NOTE

21. REITs are a tax advantaged vehicle introduced to encourage investment in the property sector. REITs are exempted from

corporation tax on the profits and gains arising from their property rental business. REITs have to distribute 90% of the profits of the property rental business to shareholders in whose hands this income is treated as income from property. In this way taxation of income from property is moved from the corporate level to the investor level.

22. The REIT regime was introduced in FA 2006. The legislation was subsequently rewritten to CTA 2010. To date, over 20 REITs have been created with particular focus on commercial property investment.

23. The Government indicated in its response to the 2010 Private Rental Sector consultation that it would look further at the barriers to entry to the REIT regime with the view to facilitating, in the longer term, the establishment of residential REITs. Subsequent further consultation with interested parties suggested that the best way to support the REITs industry in general (and the development of residential REITs in particular) was among other things, to reduce barriers to entry for new REITs and to ensure that the regime does not inhibit good business practice.

24. If you have any questions about this change, or comments on the legislation, please contact Tony Linehan on 020 7147 0527 (email: tony.linehan@hmrc.gsi.gov.uk).

Tax Transparent Fund

1 Collective investment schemes: chargeable gains

(1) TCGA 1992 is amended as follows.

(2) In section 99A(2) (treatment of umbrella schemes), after "subsection (1)" insert "and section 103C".

(3) After section 103B insert—

"103C Power to make regulations about collective investment schemes

(1) The Treasury may by regulations make provision about the treatment of participants in collective investment schemes for the purposes of this Act.

(2) Regulations under this section may make different provision for different cases or different purposes.

(3) Regulations under this section—

(a) may modify this Act or any other enactment or instrument (whenever passed or made), and

(b) may include consequential, supplementary and transitional provision.

(4) A statutory instrument containing regulations under this section must be laid before the House of Commons after being made.

(5) The regulations cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless before the end of that period the instrument is approved by a resolution of the House of Commons.

(6) After an instrument containing regulations under this section has been approved under subsection (5), subsections (4) and (5) do not apply to any subsequent such instrument (and accordingly section 287(3) applies to any such instrument).

(7) If regulations cease to have effect as a result of subsection (5), that does not—

(a) affect anything previously done under the regulations, or

(b) prevent the making of new regulations to the same or similar effect.

(8) In calculating the period of 40 days for the purposes of subsection (5), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.

(9) In this section—

"modify" includes amend, repeal or revoke, and

"participant", in relation to a collective investment scheme, is to be read in accordance with section 235 of the Financial Services and Markets Act 2000."

2 Collective investment schemes: stamp duty and stamp duty reserve tax

(1) The Treasury may by regulations confer an exemption or other relief from stamp duty or stamp duty reserve tax for transactions relating to collective investment schemes.

(2) The regulations may, in particular—

(a) specify descriptions of collective investment scheme in relation to which the exemption or relief is available, and

(b) specify the cases in which the exemption or relief is available.

(3) Regulations under this section may make different provision for different cases or different purposes.

(4) Regulations under this section—

(a) may modify any enactment or instrument (whenever passed or made), and

(b) may include consequential, supplementary and transitional provision.

(5) Regulations under this section are to be made by statutory instrument.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

(7) In this section—

"collective investment scheme" has the meaning given by section 235 of the Financial Services and Markets Act 2000, and

"modify" includes amend, repeal or revoke.

EXPLANATORY NOTE

COLLECTIVE INVESTMENT SCHEMES: CHARGEABLE GAINS

SUMMARY

1. This clause amends the Taxation of Chargeable Gains Act 1992 (TCGA) to provide a power for the HM Treasury to make regulations about the tax treatment of gains in the holdings of UK investors in assets subject to collective investment schemes and provides powers for the Treasury to define in regulations the types of schemes affected.

DETAILS OF THE CLAUSE

2. New section 103C provides a power to make regulations about the treatment of investors in collective investment schemes for the purposes of tax on chargeable gains.

3. Regulations made under this section will cease to have effect unless approved by the House of Commons within 40 days.

4. The background note below provides details of the intended use of the power provided.

BACKGROUND NOTE

5. The Government has announced its intention to legislate to enable the UK regulator to authorise, under the UCITS IV directive[1], tax transparent collective investment schemes, to be constituted by contractual arrangements. The purpose of this clause is to provide powers for the appropriate tax treatment of gains made by UK investors on assets held in specified new types of collective investment scheme.

6. As the legislation to enable authorisation of specific types of tax-transparent collective investment scheme is yet to be consulted on or enacted, this clause provides a power to specify the tax treatment of participants in collective investment schemes. It is anticipated that the power will be used on the enactment of legislation to authorise new schemes.

7. Specific anticipated uses of the power will be to:

   a. provide that, for the purposes of tax on chargeable gains, assets held by the investors within certain tax transparent collective

investment schemes will not be chargeable assets and that, instead, the investor's interest in the scheme will be treated as if it were a chargeable asset,

b. provide that, for assets held within a transparent scheme where interests in the scheme are treated as being the assets held by the investor then section 212 TCGA will apply to interests within the long term fund of an insurance company,

c. provide a relief for insurance companies which transfer assets to such transparent schemes that will ensure that no chargeable gain arises at the point of transfer, together with a provision to prevent abuse of that relief,

d. enable the provisions in TCGA to be adapted for use with the merger and reconstruction of new and existing types of collective investment scheme so that the provisions will work when applied to interests in tax-transparent schemes and be simplified in application to existing schemes.

8. If you have any questions on this change, or comments on the legislation, please contact John Buckeridge on 020 7147 2560 (email: john.buckeridge@hmrc.gsi.gov.uk)

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[1] Directive 2009/65/EC of the European Parliament and of The Council.

EXPLANATORY NOTE

COLLECTIVE INVESTMENT SCHEMES: STAMP DUTY AND STAMP DUTY RESERVE TAX

SUMMARY

1. This clause gives the Treasury the power to make regulations to provide an exemption or relief from stamp duty or stamp duty reserve tax for transactions relating to collective investment schemes.

DETAILS OF THE CLAUSE

2. Subsection (2) allows the regulations to specify the type of collective investment scheme affected and the circumstances in which an exemption or relief applies.

3. Subsection (4)(a) allows the regulations to modify existing or future primary or other legislation. Subsection (4)(b) makes provision for the regulations to make consequential, supplementary and transitional provision.

4. Subsection (6) provides that a statutory instrument made under this power is subject to the negative resolution procedure.

BACKGROUND NOTE

5. The Government has announced its intention to legislate to enable the UK regulator to authorise, under the UCITS IV directive[1], tax transparent collective investment schemes to be constituted by contractual arrangements. Transactions relating to the new schemes will need to have an appropriate stamp duty and stamp duty reserve tax treatment. This clause gives the Treasury the power to provide this.

6. If you have any questions about this change, or comments on the legislation, please contact Jeremy Schryber on 020 7147 2788 (email: Jeremy.schryber@hmrc.gsi.gov.uk).

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[1] Directive 2009/65/EC of the European Parliament and of The Council.

Bank Levy Rates

Bank Levy amendments

1 The bank levy

Schedule 1 contains provision about the bank levy.

SCHEDULE 1

Section 1

BANK LEVY

Introductory

1 Schedule 19 to FA 2011 (bank levy) is amended as follows.

Rates

2 In paragraph 6 (steps for determining the amount of the bank levy), in sub-paragraph (2)—
 (a) for "0.039%" substitute "0.044%", and
 (b) for "0.078%" substitute "0.088%".

3 In paragraph 7 (special provision for chargeable periods falling wholly or partly before 1 January 2012), in sub-paragraph (2)—
 (a) for "0.039%" substitute "0.044%", and
 (b) for "0.078%" substitute "0.088%".

4 The amendments made by paragraphs 2 and 3 are treated as having come into force on 1 January 2012.

Joint ventures

5 (1) Paragraph 43 (calculation of chargeable equity and liabilities where relevant group has an interest in a joint venture) is amended as follows.

(2) In sub-paragraph (1), for paragraphs (d) and (e) substitute ", and
 (d) in the absence of this paragraph, none of the liabilities taken into account in determining the amount of the chargeable equity and liabilities of the relevant group would include the JV liabilities."

(3) For sub-paragraph (2) substitute—

"(2) For the purposes of determining the chargeable equity and liabilities of the relevant group under paragraph 17 or 19 (as the case may be) the joint venture is to be treated as if—
 (a) it were a member of the group in relation to—
  (i) the liabilities of the joint venture which consist of the JV liabilities, and
  (ii) the assets of the joint venture so far as determined by the relevant interest, and
 (b) it were not a member of the group in relation to the remaining liabilities and assets of the joint venture."

6 In paragraph 44 (chargeable equity and liabilities of joint venture: prevention of double charge), in sub-paragraph (7)(b), for the words from "liabilities for" to "27(2)(a)" substitute "taken into account in calculating the

chargeable equity and liabilities of V (or where sub-paragraph (6) applies, A)”.”

7 The amendments made by paragraphs 5 and 6 have effect in relation to chargeable periods ending on or after 1 January 2012.

Double taxation relief

8 (1) In paragraph 66 (double taxation arrangements), after sub-paragraph (9) insert—

“(9A) If arrangements specified in an order under this paragraph provide for relief from the bank levy for periods before the order is made, regulations under this paragraph which are made on the same day as the order, and come into force on the same day as the order, may make provision in relation to those periods.”

(2) After paragraph 67 insert—

“Disclosure of information to foreign tax authorities etc

67A (1) If the Treasury by order declares that—

(a) international tax enforcement arrangements which are specified in the order have been made in relation to any territory or territories outside the United Kingdom in association with double taxation arrangements specified under paragraph 66 in the same or a previous order, and

(b) it is expedient that those international tax enforcement arrangements have effect,

those arrangements have effect, and do so in spite of anything in any enactment or instrument.

(2) “International tax enforcement arrangements” means arrangements which relate to one or both of the following—

(a) the exchange of information foreseeably relevant to the administration, enforcement or recovery of the bank levy or any equivalent foreign levy to which the double taxation arrangements relate;

(b) the service of documents relating to the bank levy or any such equivalent foreign levy.

(3) An order under this paragraph revoking an earlier order may contain transitional provisions that appear to the Treasury to be necessary or expedient.

(4) Subsections (4) and (5) of section 173 of FA 2006 (international tax enforcement arrangements: disclosure of information) apply to arrangements which have effect under this paragraph as they apply to arrangements which have effect under that section.

(5) Orders under this paragraph are to be made by statutory instrument.

(6) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.”

(3) Accordingly, the italic heading before paragraph 68 is omitted.

Transitional provision

9 (1) This paragraph applies where—

(a) an amount of the bank levy is treated as if it were an amount of corporation tax chargeable on an entity ("E") for an accounting period of E,

(b) the chargeable period in respect of which the amount of the bank levy is charged falls (or partly falls) on or after 1 January 2012, and

(c) under the Instalment Payment Regulations, one or more instalment payments, in respect of the total liability of E for the accounting period, were treated as becoming due and payable before the commencement date ("pre-commencement instalment payments").

(2) Paragraphs 2 to 7 are to be ignored for the purpose of determining the amount of any pre-commencement instalment payment.

(3) If there is at least one instalment payment, in respect of the total liability of E for the accounting period, which under the Instalment Payment Regulations is treated as becoming due and payable on or after the commencement date ("post-commencement instalment payments"), the amount of that instalment payment, or the first of them, is to be increased by the adjustment amount.

(4) If there are no post-commencement instalment payments, a further instalment payment, in respect of the total liability of E for the accounting period, of an amount equal to the adjustment amount is to be treated as becoming due and payable at the end of the period of 30 days beginning with the commencement date.

(5) "The adjustment amount" is the difference between—

(a) the aggregate amount of the pre-commencement instalments determined in accordance with sub-paragraph (2), and

(b) the aggregate amount of those instalment payments determined ignoring sub-paragraph (2) (and so taking account of paragraphs 2 to 7).

(6) In the Instalment Payment Regulations—

(a) in regulations 6(1)(a), 7(2), 8(1)(a) and (2)(a), 9(5), 10(1), 11(1) and 13, references to regulation 4A, 4B, 4C, 4D, 5, 5A or 5B of those Regulations are to be read as including a reference to sub-paragraphs (1) to (5) (and in regulation 7(2) "the regulation in question", and in regulation 8(2) "that regulation", are to be read accordingly), and

(b) in regulation 9(3), the reference to those Regulations is to be read as including a reference to sub-paragraphs (1) to (5).

(7) In section 59D of TMA 1970 (general rule as to when corporation tax is due and payable), in subsection (5), the reference to section 59E is to be read as including a reference to this paragraph.

(8) In this paragraph—

"the chargeable period" is to be construed in accordance with paragraph 4 or (as the case may be) 5 of Schedule 19 to FA 2011;

"the commencement date" means the day on which this Act is passed;

“the Instalment Payment Regulations” means the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175);

and references to the total liability of E for an accounting period are to be construed in accordance with regulation 2(3) of the Instalment Payment Regulations.

EXPLANATORY NOTE

BANK LEVY AMENDMENTS

SUMMARY

1. This Schedule makes a number of amendments to Schedule 19 to the Finance Act 2011.

2. The Schedule amends the rates at which the bank levy is charged from 1 January 2012 onwards.

3. It also makes amendments to paragraphs 43 and 44 of Schedule 19, Finance Act 2011 which deal with joint ventures. The changes to paragraph 43 ensure that joint ventures are treated consistently across different types of banking groups and relevant non banking groups. The changes to paragraph 44 ensure that no double taxation of joint ventures arises under the bank levy.

4. The Schedule also introduces two new provisions that relate to the relief from double taxation for equivalent foreign levies. Paragraphs 66(9A) which ensures that HM Revenue and Customs has the ability to restrict double taxation relief from the day it is given under a double taxation arrangement where excessive relief is given in respect of the equivalent foreign levy of another jurisdiction and paragraph 67A which allows for the exchange of information where an international tax enforcement arrangement has been entered into in respect of the bank levy.

DETAILS OF THE CLAUSE

Rates

5. Paragraph 2 replaces the rates that are used in the steps for determining the levy (paragraph 6, Schedule19).

6. Paragraph 3 replaces the rates that are used to determine the bank levy where paragraph 7, Schedule 19 applies (where periods fall partly before 1 January 2012). It changes the rates due on the proportion of short term liabilities and on the proportion of equity and long term liabilities for the part of the chargeable period that falls after 1 January 2012.

7. Paragraph 4 provides that the rate changes come into force on 1 January 2012.

Joint ventures

8. Paragraphs 5 to 7 amend paragraphs 43 and 44 of Schedule 19, which relate to the calculation of chargeable equity and liabilities where a relevant group has an interest in a joint venture.

9. Paragraph 5(1) introduces the changes that are being made.

10. Paragraph 5(2) replaces paragraph 43(1)(d) and (e) with a new paragraph 43(1)(d). The changes mean that paragraph 43 will now apply to both UK resident and non resident joint ventures, and will only apply where the liabilities of the joint venture have not already been taken into account when calculating the chargeable equity and liabilities of the relevant group.

11. Paragraph 5(3) substitutes a new paragraph 43(2). New paragraph 43(2)(a) requires the relevant group to determine its chargeable equity and liabilities on the basis that the joint venture is a member of the group, but only to the extent of the group's interest in the joint venture's assets and liabilities. New paragraph 43(2)(b) ensures that the joint venture is treated as if it were not a member of the group in relation to the remaining liabilities and assets.

12. Paragraph 6 amends paragraph 44(7)(b) to ensure that when calculating the chargeable equity and liabilities of a joint venture in its own right, any amounts that are already charged in the venturer's banking group under paragraph 43, are not charged for a second time.

13. Paragraph 7 explains that the amendment made by paragraphs 5 and 6 have effect for all chargeable periods ending on or after 1 January 2012.

Double taxation relief

14. Paragraph 8 of the Schedule adds a new paragraph and a subparagraph into Part 7 of Schedule 19 to the Finance Act 2011.

15. Paragraph 8(1) inserts new sub-paragraph 9A into Paragraph 66 Schedule 19.

16. New paragraph 66(9A) provides that where double taxation relief is allowed via arrangements entered into by the United Kingdom and another territory regarding relief from double taxation in respect of the bank levy and an equivalent foreign levy then regulations may be made that take effect from the same date that relief is allowed under the arrangements. However regulations under this sub-paragraph will only have this effect if they are made and come into force at the same time as the order giving effect to the arrangements.

17. Paragraph 8(2) inserts new paragraph 67A into Part 7 of Schedule 19. This paragraph allows for the exchange of information where international tax enforcement arrangements have been entered into in association with arrangements regarding relief from double taxation in respect of the bank levy.

18. New paragraph 67A(1) gives effect to arrangements that have been made with any territory or territories outside the UK relating to tax enforcement where the Treasury makes an Order in respect of those arrangements.

19. New paragraph 67A(2) explains that arrangements relating to international tax enforcement may include provisions on the exchange of information and the service of documents in relation to the United Kingdom bank levy or an equivalent foreign levy.

20. New paragraph 67A(3) provides that any Treasury Order that replaces an existing Order made under this Schedule may include appropriate transitional provisions.

21. New paragraph 67A(4) ensures that sections 173(4) and (5) of Finance Act 2006 apply to arrangements which have effect under this paragraph and these in turn allow any Minister or officer in another Government department to disclose any information to the Commissioners for HM Revenue and Customs that may be disclosed to another territory under the arrangements. It also allows the Commissioners or any authorised Revenue and Customs official to disclose such information to the authorised officer of any territory or territories with whom arrangements have been made. Section 173(5) Finance Act 2006 provides that the Commissioners or any authorised Revenue and Customs official may not disclose any information to another territory under the arrangements unless first satisfied that the confidentiality rules applied in the other territory are no less strict than those applying in the UK.

22. New paragraphs 67A(5) & 67A(6) provides the rules regarding the making of the secondary legislation to give effect to the international tax enforcement arrangements.

Transitional provisions

23. Paragraph 9 provides transitional provisions for collecting the additional amounts of bank levy that arise from the amendments relating to the increase of the rate of the bank levy and to the paragraphs concerning joint ventures.

24. Paragraph 9(1) ensures that paragraph 9 applies where certain conditions are met. The conditions require that an entity ("E") is charged to the bank levy for an accounting period in respect of a

chargeable period that falls wholly or partly after 1 January 2012 and one, or more, of the instalment payments for the accounting period in question are treated as becoming due and payable before Royal Assent.

25. Paragraph 9(2) provides that the effect of the rate changes and joint venture amendments are to be ignored when determining the amount of any instalment payment that is due before Royal Assent ("pre-commencement instalment payments").

26. Paragraph 9(3) provides that where there is at least one instalment payment for the accounting period of E which is due and payable on or after Royal Assent ("post-commencement instalment payments"), the amount of the first such instalment payment is increased by the adjustment amount.

27. Paragraph 9(4) provides that where E does not have any post-commencement instalment payments, the adjustment amount will be due and payable 30 days after Royal Assent.

28. Paragraph 9(5) explains how to determine the "adjustment amount" for the purposes of sub-paragraphs (3) and (4). The adjustment amount is the difference between the pre-commencement instalment payments calculated firstly on the basis that the effects of the rate change and joint venture amendments do apply and then again on the basis that the effects of the rate change and joint venture amendments are ignored.

29. Paragraph 9(6) ensures that references within the provisions of Corporation Tax (Instalment Payment) Regulations 1998 (S.I. 1998/3175) to regulations 4A to 4D, 5, 5A or 5B of those Regulations are to be read as including references to paragraphs 9(1) to (6).

30. Paragraph 9(7) ensures that section 59D of the Taxes Management Act 1970, which provides the general rule for the collection of corporation tax, is also subject to paragraphs 9(1) to (5).

31. Paragraph 9(8) provides definitions of terms used in this Schedule.

BACKGROUND NOTE

Rates

32. The Chancellor of the Exchequer announced in the June 2010 Budget the introduction of a bank levy to apply to all UK banks and building society groups, foreign banks and banking groups operating in the UK and UK banks in non-banking groups from 1 January 2011 onwards.

33. Following a period of consultation, draft legislation was published on 23 March 2011 and the bank levy entered into law when Finance Bill 2012 received Royal Assent and can be found at Schedule 19, Finance Act 2011.

34. The bank levy is an annual balance sheet charge based upon the chargeable equities and liabilities of relevant banking groups. Paragraph 6, Schedule 19 sets out the steps that are to be taken when determining the bank levy and sets out the rates that are charged upon long term chargeable equity and liabilities and short term liabilities.

35. Paragraph 7, Schedule 19 supplements the steps for determining the amount of the bank levy and provides rules for a group whose chargeable period falls partly before 1 January 2012.

Joint ventures

36. A joint venture is an entity where two or more parties ("the venturers") undertake an economic activity that is subject to joint control. International accounting standards currently allow joint ventures to be accounted for in two different ways, using either the equity method (where the investment in the joint venture is recorded at cost) or proportional consolidation where the consolidated balance sheet of the venturer includes its share of the assets and liabilities of the joint venture.

37. As no party has overall control of the joint venture, it does not meet the accounting definition of a subsidiary and, as a result, cannot be a member of a banking group (as defined within paragraph 4, Schedule 19). Instead where appropriate a joint venture is treated as a bank or banking group in its own right.

38. A UK banking group will calculate its chargeable equity and liabilities based upon the amounts recognised within its consolidated financial statements. So where the joint venture is proportionally consolidated then the liabilities of the joint venture will form part of the liabilities upon which the UK banking group calculates its chargeable equity and liabilities.

39. Where the joint venture is proportionally consolidated within a foreign banking group or a relevant non banking group the position may be different, as the joint venture's liabilities may not be consolidated into the balance sheet of any group member within the ambit of the bank levy and thus the groups' share of its liabilities would not be chargeable liabilities in determining the group's bank levy charge. Paragraph 43 removes this inconsistency in most cases to ensure that the joint venture is treated as if it were a member of the foreign banking group or relevant non banking group in relation to its interest in the joint venture's assets and liabilities. The amendments made by this clause ensure that paragraph 43 achieves this policy objective in all cases.

40. Paragraph 44 ensures that where paragraph 43 applies, a double charge to the levy is avoided as the chargeable equities and liabilities of the joint venture could be taxed once as part of the bank levy group and then again on the joint venture in its own right. Paragraph 44 allows the joint venture to leave out these liabilities when it calculates its own bank levy charge.

Double taxation relief

41. Part 7 of Schedule 19 to the Finance Act 2011 provides for double taxation relief to be given where a bank or banking group is doubly charged to the UK bank levy and an equivalent foreign levy. Relief is given either under paragraph 66 in accordance with arrangements affording double taxation relief in respect of the bank levy or under regulations made in accordance with paragraph 67. The above change ensures that the two methods are equivalent so that the proper amount of relief is given from the same day and if necessary in the same amount no matter which of the two methods is used to provide relief.

42. Information regarding taxes is often exchanged by the United Kingdom with other territories using Exchange of Information articles in arrangements regarding Income Tax, Corporation Tax and Capital Gains Tax. However where such arrangements do not provide for Exchange of Information in respect of taxes of all kinds or the other territory does not consider their levy to be a tax then those arrangements cannot be used to exchange information relating to the bank levies.

43. Paragraph 68 of Schedule 19 to the Finance Act 2011 allows information to be exchanged where the question of double taxation relief arises but not in other circumstances. The exchange of information article often used in international tax enforcement arrangements also covers information needed for the administration, enforcement or recovery of taxes and this provision allows information to be exchanged for those purposes where the arrangement is in respect of the bank levy. The new provision is

modelled on the legislation that enacts similar international tax enforcement arrangements for Income Tax, Corporation Tax and Capital Gains Tax.

Transitional provisions

44. Bank levy is treated as if it is corporation tax, and the relevant entity or, in the case of a banking group, the "the responsible member" (see paragraph 54, Schedule 19) is required to both make a return of the bank levy (as part of its company tax return) and to pay the bank levy.

45. Entities that pay the bank levy are required under the provisions of The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) as amended by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (SI 2011/1785) to do so by instalments.

46. If you have any questions about this change, or comments on the draft legislation, please contact Anthony Fawcett on 020 7147 0654 (email anthony.c.fawcett@hmrc.gsi.gov.uk regarding rate changes and joint ventures or Andrew Parkes on 020 7147 3427 (email andrew.parkes@hmrc.gsi.gov.uk) regarding double taxation.

Solvency II and the taxation of life insurance companies

CONTENTS

PART 1

INSURANCE COMPANIES CARRYING ON LONG-TERM BUSINESS

CHAPTER 1

INTRODUCTORY

Outline of provisions of Part

1 Overview

Meaning of "life assurance business"

2 Meaning of "life assurance business"

Meaning of "basic life assurance and general annuity business"

3 Meaning of "basic life assurance and general annuity business"
4 Section 3: meaning of "pension business"
5 Section 3: meaning of "child trust fund business"
6 Section 3: meaning of "individual savings account business"
7 Section 3: meaning of "overseas life assurance business"
8 Section 3: meaning of "protection business"

Meaning of "long-term business" and "PHI business"

9 Meaning of "long-term business" and "PHI business"

Meaning of contract of "insurance" or "long-term insurance" and "insurance company"

10 Meaning of "contract of insurance" and "contract of long-term insurance"
11 Meaning of "insurance company"

CHAPTER 2

CHARGE TO TAX ON I - E BASIS ETC

Separate businesses etc

12 Separate businesses for BLAGAB and other-long term business
13 Exception where BLAGAB small part of long-term business

BLAGAB taxed on I - E basis

14 Charge to tax on I - E profit
15 Exclusion of charge under s.35 of CTA 2009 etc
16 Rules for calculating I - E profit or excess BLAGAB expenses

Non-BLAGAB long-term business

17 Charge to tax on profits of non-BLAGAB long-term business

PHI only business

18 Companies carrying on only PHI business

CHAPTER 3

THE I - E BASIS

Introduction

19 The I - E basis

Definitions of expressions comprising "I"

20 Meaning of "income"
21 Meaning of "BLAGAB chargeable gains" etc

Definitions of expressions comprising "E"

22 Meaning of "adjusted BLAGAB management expenses"
23 Section 22: meaning of "ordinary BLAGAB management expenses" etc
24 Section 22: meaning of other expressions
25 Spreading of acquisition expenses
26 Section 25: meaning of "acquisition expenses"
27 Amounts treated as ordinary BLAGAB management expenses
28 Restrictions in relation to ordinary BLAGAB management expenses
29 General annuity business
30 General annuity business: meaning of "steep-reduction annuity" etc
31 General annuity business: payments made in pre-1992 accounting periods

Special rules applying to I - E basis

32 Loan relationships, derivative contracts and intangible fixed assets
33 Investment return where risk in respect of policy or contract re-insured
34 Regulations under section 33(4): supplementary provision

Deemed I - E receipts

35 Certain BLAGAB trading receipts to count as deemed I - E receipts

Minimum profits charge

36 Minimum profits test
37 Adjustment of I - E profit or excess BLAGAB expenses

Non-BLAGAB allowable losses

38 Use of non-BLAGAB allowable losses to reduce I - E profit

Overseas life insurance companies

39 Expenses referable to exempt FOTRA profits

CHAPTER 4

APPORTIONMENT RULES FOR I - E CHARGE

Introduction

40 Application of Chapter

Allocation of income and losses from assets and of expenses

41 Commercial allocation

Allocation of chargeable gains and allowable losses on disposals of assets

42 Application of sections 43 and 44
43 Assets wholly or partly matched to BLAGAB liabilities
44 Commercial allocation for disposals not wholly dealt with by section 43

CHAPTER 5

I - E PROFIT: POLICYHOLDERS' RATE OF TAX

Tax rate on policyholders' share of I - E profit

45 Policyholders' rate of tax on policyholders' share of I - E profit
46 Rules for determining policyholders' share of I - E profit
47 Meaning of "the adjusted amount"
48 Meaning of "BLAGAB non-taxable distributions" and "shareholders' share"

Policyholder tax and calculation of BLAGAB trade profit or loss

49 Deduction for current policyholder tax
50 Expenses or receipts for deferred policyholder tax
51 Meaning of "the closing deferred policyholder tax balance" etc

CHAPTER 6

TRADE CALCULATION RULES APPLYING TO LONG-TERM BUSINESS

52 Application of Chapter
53 Allocations to policyholders
54 Dividends and other distributions
55 Index-linked gilt-edged securities
56 Receipts or expenses relating to long-term business fixed capital

CHAPTER 7

TRADING APPORTIONMENT RULES

57 Application of Chapter
58 Commercial allocation of accounting profit or loss and tax adjustments

CHAPTER 8

ASSETS HELD FOR PURPOSES OF LONG-TERM BUSINESS

Transfers of assets from different categories

59 UK life insurance companies
60 Overseas life insurance companies: rule corresponding to s.59
61 Transfers of business and transfers within a group

Share pooling rules

62 UK life insurance companies
63 Overseas life insurance companies: rule corresponding to s.62
64 Sections 62 and 63: supplementary

Long-term business fixed capital

65 Assets forming part of long-term business fixed capital

CHAPTER 9

PROPERTY BUSINESSES

66 Separate property businesses for BLAGAB property etc
67 Losses from property businesses where land held for long-term business

CHAPTER 10

RELIEF FOR BLAGAB TRADE LOSSES ETC

The reliefs

68 Relief for BLAGAB trade losses against total profits
69 Carry forward of BLAGAB trade losses against subsequent profits
70 Group relief

Restrictions

71 Restrictions in respect of non-trading deficit
72 No relief against policyholders’ share of I - E profit

CHAPTER 11

TRANSFERS OF LONG-TERM BUSINESS

Transfers of BLAGAB

73 Relief for transferee in respect of transferor’s BLAGAB expenses
74 Intra-group transfers and demutualisation
75 Transfers between non-group companies: present value of in-force business

Transfers of non-BLAGAB long-term business

76 Application of ss. 74 and 75 to transfers of non-BLAGAB long-term business

Transfers of long-term business: anti-avoidance

77 Anti-avoidance
78 Clearance procedure
79 Section 78: supplementary

Interpretation

80 Meaning of “group” of companies

CHAPTER 12

DEFINITIONS

81 Meaning of “BLAGAB trade profit” and “BLAGAB trade loss”
82 Meaning of “the long-term business fixed capital”
83 Meaning of assets that are “matched to” liabilities
84 Minor definitions
85 Abbreviations
86 Index of defined terms, etc

CHAPTER 13

SUPPLEMENTARY

Powers conferred on Treasury or HMRC Commissioners

87 Power to amend Part 1 etc
88 Power to amend definition of “insurance business transfer scheme” etc
89 Power to modify provisions applying to overseas life insurance companies
90 Orders and regulations

Minor and consequential amendments and transitional provision

91 Minor and consequential amendments
92 Transitional provision

Commencement etc

93 Commencement
94 Accounting periods straddling 1 January 2013

PART 2

FRIENDLY SOCIETIES CARRYING ON LONG-TERM BUSINESS

Outline of provisions of Part

95 Overview

Long-term business rules to apply to friendly societies

96 Friendly societies subject to same basic rules as mutual insurers
97 Friendly societies subject to transfer of business rules

Exempt BLAGAB or eligible PHI business

98 Exemption for certain BLAGAB or eligible PHI business
99 Meaning of "BLAGAB or eligible PHI business"
100 Meaning of "exempt" BLAGAB or eligible PHI business
101 Societies with no provision for assuring gross sums exceeding £2,000 etc
102 Transfers from insurance companies to friendly societies
103 Transfers from friendly societies to insurance companies etc
104 Exception in case of breach of maximum benefits payable to members

Exempt BLAGAB or eligible PHI business: benefits payable by friendly societies etc

105 Maximum benefits payable to members
106 Section 105: supplementary
107 Section 105: statutory declarations

Exempt BLAGAB or eligible PHI business: directions to old societies

108 Directions given to old societies

Exemption for other business

109 Societies registered before 1 June 1973, etc
110 Incorporated friendly societies
111 Transfers from friendly societies to insurance companies etc
112 Transfers between friendly societies
113 Withdrawal of qualifying status
114 Payments by non-qualifying societies treated as qualifying distributions

Miscellaneous

115 Transfer schemes under s.6(5) of FSA 1992
116 Exemption for unregistered friendly societies

Interpretation

117 Minor definitions

118 Abbreviations
119 Index of defined terms

Regulations

120 Regulations

Consequential amendments and transitional provision

121 Consequential amendments
122 Transitional provision

Commencement etc

123 Commencement
124 Accounting periods straddling 1 January 2013

Schedule 1 — Part 1: minor and consequential amendments
Part 1 — Amendments of ICTA
Part 2 — Amendments of FA 1989
Part 3 — Amendments of other Acts
Part 4 — Consequential repeals
Schedule 2 — Part 1: transitional provision
Part 1 — Deemed receipts or expenses
Part 2 — Specific transitional provisions
Part 3 — Supplementary
Schedule 3 — Part 2: consequential amendments
Schedule 4 — Part 2: transitional provision

PART 1

INSURANCE COMPANIES CARRYING ON LONG-TERM BUSINESS

CHAPTER 1

INTRODUCTORY

Outline of provisions of Part

1 Overview

(1) This Part makes special provision for corporation tax purposes in relation to life assurance business and other long-term business carried on by insurance companies.

(2) Chapter 1 explains some of the key concepts for the purposes of this Part, including the concept of basic life assurance and general annuity business (abbreviated to "BLAGAB").

(3) Chapter 2—
- (a) provides for the profits of BLAGAB to be subject to a charge to corporation tax on the I - E basis as the profits of a separate business, and
- (b) provides for the profits of other long-term business to be charged to corporation tax under section 35 of CTA 2009 as the profits of a single trade.

(4) Chapter 3 sets out the rules applicable to the I - E charge (which operate in part by reference to the calculation of an insurance company's BLAGAB trade profit or loss).

(5) Chapter 4 sets out rules for determining for the purposes of the I - E charge how to apportion items to an insurance company's basic life assurance and general annuity business.

(6) Chapter 5—
- (a) provides for the policyholders' share of the I - E profit to be charged at the policyholders' rate (the basic rate of income tax), and
- (b) provides for policyholder tax to be taken into account in calculating an insurance company's BLAGAB trade profit or loss.

(7) Chapter 6 contains special rules that are to apply for the purpose of calculating an insurance company's BLAGAB trade profit or loss or the profits of an insurance company's other long-term business.

(8) Chapter 7 sets out rules for determining for the purposes of that calculation how to allocate items between BLAGAB and other long-term business.

(9) The remainder of the Part contains—
 (a) provision in relation to assets held for the purposes of an insurance company's long-term business (see Chapter 8),
 (b) provision in relation to property businesses carried on by insurance companies (see Chapter 9),
 (c) provision for relieving BLAGAB trade losses and restrictions in relation to the policyholders' share of an I - E profit (see Chapter 10),
 (d) provision in relation to the transfer of BLAGAB or other long-term business (see Chapter 11), and
 (e) provision in relation to definitions and other supplementary material (see Chapters 12 and 13).

Meaning of "life assurance business"

2 Meaning of "life assurance business"

(1) This section defines for the purposes of this Part what is meant by "life assurance business".

(2) Business is "life assurance business" if—
 (a) it consists of the effecting or carrying out of contracts of insurance which fall within paragraph I, II, III or VII(b) of Part 2 of Schedule 1 to the FSMA (Regulated Activities) Order 2001, or
 (b) it is capital redemption business (see subsection (3)).

(3) Business is "capital redemption business" if it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum of a specified amount (or a series of sums of a specified amount) become payable at a future time or over a period.

Meaning of "basic life assurance and general annuity business"

3 Meaning of "basic life assurance and general annuity business"

(1) This section defines for the purposes of this Part what is meant by "basic life assurance and general annuity business".

(2) "Basic life assurance and general annuity business" means life assurance business other than—
 (a) pension business (which is defined for the purposes of this section by section 4),
 (b) child trust fund business (which is defined for the purposes of this section by section 5),
 (c) individual savings account business (which is defined for the purposes of this section by section 6),
 (d) business which consists of the effecting or carrying out of immediate needs annuities (within the meaning of section 725 of ITTOIA 2005),
 (e) re-insurance of life assurance business other than excluded business,
 (f) overseas life assurance business (which is defined for the purposes of this section by section 7), or

(g) protection business (which is defined for the purposes of this section by section 8).

(3) In subsection (2)(e) "excluded business" means business of any description excluded for the purposes of this section by regulations made by HMRC Commissioners.

4 Section 3: meaning of "pension business"

(1) This section defines for the purposes of the definition of "basic life assurance and general annuity business" given by section 3 what is meant by "pension business".

(2) Life assurance business is "pension business" if—
(a) it consists of the effecting or carrying out of contracts entered into for the purposes of a registered pension scheme, or
(b) it is the re-insurance of business within paragraph (a).

(3) Subsection (4) applies if the pension scheme ceases to be a registered pension scheme as a result of the withdrawal of its registration under section 157 of FA 2004.

(4) The company's life assurance business that was pension business when the scheme was a registered pension scheme is treated as ceasing to be pension business at the beginning of the company's period of account in which the scheme so ceases to be a registered pension scheme.

(5) If—
(a) immediately before 6 April 2006 an annuity contract fell within any of the descriptions of contracts specified in section 431B(2) of ICTA as it had effect immediately before that date, but
(b) the contract does not fall to be regarded for the purposes of this section as having been entered into for the purposes of a registered pension scheme,

the contract is treated for the purposes of this section as having been entered into for those purposes.

5 Section 3: meaning of "child trust fund business"

(1) This section defines for the purposes of the definition of "basic life assurance and general annuity business" given by section 3 what is meant by "child trust fund business".

(2) Life assurance business is "child trust fund business" if it consists of the effecting or carrying out of child trust fund policies.

(3) But the re-insurance of business consisting of the effecting or carrying out of child trust fund policies is not "child trust fund business".

(4) In this section "child trust fund policy" means a policy of life insurance which is an investment under a child trust fund (within the meaning of the Child Trust Funds Act 2004).

6 Section 3: meaning of "individual savings account business"

(1) This section defines for the purposes of the definition of "basic life assurance and general annuity business" given by section 3 what is meant by "individual savings account business".

(2) Life assurance business is "individual savings account business" if it consists of the effecting or carrying out of individual savings account policies.

(3) But the re-insurance of business consisting of the effecting or carrying out of individual savings account policies is not "individual savings account business".

(4) In this section "individual savings account policy" means a policy of life insurance which is an investment of a kind specified in regulations made as a result of section 695(1) of ITTOIA 2005.

7 Section 3: meaning of "overseas life assurance business"

(1) This section defines for the purposes of the definition of "basic life assurance and general annuity business" given by section 3 what is meant by "overseas life assurance business".

(2) Life assurance business is "overseas life assurance business" if—

- (a) it consists of the effecting or carrying out of contracts with policyholders or annuitants who are not resident in the United Kingdom, and
- (b) it does not consist of excluded business,

but the re-insurance of business that meets conditions paragraphs (a) and (b) is not "overseas life assurance business".

(3) For this purpose "excluded business" means—

- (a) business which is pension business within the meaning of section 4,
- (b) business which is child trust fund business within the meaning of section 5,
- (c) business which is individual savings account business within the meaning of section 6, or
- (d) business of any description excluded by regulations made by HMRC Commissioners.

(4) HMRC Commissioners may by regulations—

- (a) make provision as to the circumstances in which a trustee who is a policyholder or annuitant residing in the United Kingdom is to be treated for the purposes of this section as not residing there, and
- (b) provide that nothing in Chapter 9 of Part 4 of ITTOIA 2005 is to apply to a policy or contract which constitutes overseas life assurance business as a result of provision made under paragraph (a).

(5) HMRC Commissioners may by regulations make provision for giving effect to this section.

(6) Regulations under subsection (5) may in particular—

- (a) provide that, in prescribed circumstances, any prescribed issue as to whether business is, or is not, overseas life assurance business (or overseas life assurance business of a particular kind) is to be determined by reference to prescribed matters,

(b) require companies to obtain certificates, undertakings, information or declarations from any person for the purposes of the regulations,

(c) make provision for dealing with cases where any issue within paragraph (a) is (for any reason) wrongly determined, including provision allowing for charges to tax to be imposed (with or without limits on time) on the insurance company concerned or on the policyholders or annuitants concerned,

(d) require companies to supply information and make available books, documents and other records for inspection by officers of Revenue and Customs, and

(e) make provision (including provision imposing penalties) for contravention of, or non-compliance with, the regulations.

(7) The matters that may be prescribed under subsection (6)(a) include—

(a) the giving of certificates or undertakings,

(b) the giving or possession of information, and

(c) the making of declarations.

(8) Regulations under this section may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision (including provision amending any enactment or instrument made under any enactment).

8 Section 3: meaning of "protection business"

(1) This section defines for the purposes of the definition of "basic life assurance and general annuity business" given by section 3 what is meant by "protection business".

(2) Life assurance business is "protection business" if it consists of the effecting or carrying out of any contract of long-term insurance in relation to which the following conditions are met—

(a) the benefits payable cannot exceed the amount of premiums paid except on death or in respect of incapacity due to injury, sickness or other infirmity, and

(b) the contract is made on or after 1 January 2013.

(3) For the purposes of subsection (2)(a) ignore—

(a) any benefit (other than a payment of money) that, when the contract is entered into, is provided as an inducement for entering into the contract and that is not repayable (to any extent) in any circumstances,

(b) any case where the amount by which the benefits can exceed the amount of premiums paid is an insignificant proportion of those premiums, and

(c) any case which a reasonable person, as the policyholder under the policy effected by the contract, can reasonably regard as highly unlikely to arise.

(4) If at any time—

(a) a contract is varied otherwise than as a result of the operation of, or the exercise of rights conferred by, provisions forming part of the contract or a connected arrangement, and

(b) as a result of the variation the contract becomes, or ceases to be, one in respect of which the condition in subsection (2)(a) is met,

the contract is to be treated for the purposes of this section as ending at that time and a new contract (on the varied terms) is to be treated for those purposes as being made immediately after that time.

(5) For this purpose a "connected arrangement", in relation to a contract, means any agreement or other arrangement entered into in connection with the making of the contract.

(6) If—

(a) a contract ("the new contract") is made on or after 1 January 2013 as a result of the operation of, or the exercise of rights conferred by, provisions of a contract ("the old contract") made before that date, and

(b) the provisions of the new contract were (or could have been) determined by reference to provisions of the old contract when the old contract was made,

the new contract is to be regarded for the purposes of this section as if it were made before 1 January 2013.

Meaning of "long-term business" and "PHI business"

9 Meaning of "long-term business" and "PHI business"

(1) For the purposes of this Part "long-term business" means—

(a) life assurance business, or

(b) other business which consists of the effecting or carrying out of contracts of long-term insurance.

(2) For the purposes of this Part "PHI business" means the other business mentioned in subsection (1)(b).

Meaning of contract of "insurance" or "long-term insurance" and "insurance company"

10 Meaning of "contract of insurance" and "contract of long-term insurance"

For the purposes of this Part—

"contract of insurance" has the meaning given by article 3(1) of the FSMA (Regulated Activities) Order 2001, and

"contract of long-term insurance" means a contract which falls within Part 2 of Schedule 1 to that Order.

11 Meaning of "insurance company"

(1) This section defines for the purposes of this Part what is meant by "insurance company".

(2) A person who carries on the activity of effecting or carrying out contracts of insurance is an "insurance company" if—

(a) the person has permission under Part 4 of FMSA 2000 to carry on that activity,

(b) the person is of the kind mentioned in paragraph 5(d) or (da) of Schedule 3 to FSMA 2000 (EEA passport rights) and carries on that

activity in the United Kingdom through a permanent establishment there, or

(c) the person qualifies for authorisation under Schedule 4 to FSMA 2000 (Treaty rights) and carries on that activity in the United Kingdom through a permanent establishment there.

(3) The above definition is subject to the following qualifications—

(a) a friendly society within the meaning of Part 2 is not an insurance company, and

(b) an insurance special purpose vehicle (see section 84) is an insurance company only if, in addition to falling within subsection (2)(a), (b) or (c), it is a BLAGAB group re-insurer.

(4) A person is a "BLAGAB group re-insurer" if for an accounting period—

(a) the person carries on basic life assurance and general annuity business,

(b) all, or substantially all, of the person's life assurance business is basic life assurance and general annuity business, and

(c) all of its life assurance business is re-insurance business of a description which is excluded business for the purposes of section 3(2)(e).

CHAPTER 2

CHARGE TO TAX ON I - E BASIS ETC

Separate businesses etc

12 Separate businesses for BLAGAB and other-long term business

(1) If an insurance company carries on—

(a) basic life assurance and general annuity business, and

(b) other long-term business,

the general rule is that business within paragraphs (a) and (b) is to be treated for corporation tax purposes as two separate businesses carried on by the company.

(2) One of the separate businesses is to consist of the basic life assurance and general annuity business.

(3) The other separate business is to be regarded for corporation tax purposes as a single trade consisting of the other long-term business.

(4) If an insurance company carries on—

(a) life assurance business none of which is basic life assurance and general annuity business, and

(b) PHI business,

the company is to be treated for corporation tax purposes as carrying on a single trade consisting of the businesses within paragraphs (a) and (b).

(5) For the purposes of this Part "non-BLAGAB long-term business" means—

(a) a single trade within subsection (3) or (4), or

(b) in a case where an insurance company carries on life assurance business none of which is basic life assurance and general annuity business but does not carry on other long-term business, that life assurance business.

(6) If an insurance company carries on short-term insurance business, that business is to be regarded for corporation tax purposes as a separate trade.

(7) For this purpose "short-term insurance business" means any insurance business which is not long-term business.

13 Exception where BLAGAB small part of long-term business

(1) There is an exception to the general rule set out in section 12(1) if for an accounting period of an insurance company substantially all of its long-term business is not basic life assurance and general annuity business.

(2) In that case, there is for the accounting period to be no separate business consisting of the company's basic life assurance and general annuity business.

(3) There is instead to be one business that is to be regarded for corporation tax purposes as a single trade of the company consisting of its long-term business.

(4) That single trade is to be regarded as "non-BLAGAB long-term business" for the purposes of this Part.

(5) Accordingly, references in this Part (apart from in section 12 and this section) to a company's basic life assurance and general annuity business do not include any business which, as a result of this section, is regarded as non-BLAGAB long-term business.

BLAGAB taxed on I - E basis

14 Charge to tax on I - E profit

(1) The charge to corporation tax applies to the I - E profit of the basic life assurance and general annuity business carried on by an insurance company.

(2) For the meaning of "I - E profit", see section 19.

15 Exclusion of charge under s.35 of CTA 2009 etc

The charge to corporation tax under section 14 has effect instead of—

(a) the charge to corporation tax on income under section 35 of CTA 2009 (charge to tax on trade profits),

(b) any other charge to corporation tax on income under any other provision of the Corporation Tax Acts that would otherwise have applied, and

(c) the charge to corporation tax in respect of chargeable gains so far as referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business.

16 Rules for calculating I - E profit or excess BLAGAB expenses

(1) The rules set out in Chapter 3 determine whether for an accounting period an insurance company carrying on basic life assurance and general annuity business has an I - E profit or excess BLAGAB expenses (and, if so, the amount of the profit or expenses).

(2) Those rules are referred to in this Part as "the I - E rules".

(3) The calculation of the I - E profit or excess BLAGAB expenses is to operate by reference to the amounts that are credited or debited in the accounts of the company for a period of account drawn up in accordance with generally accepted accounting practice.

(4) But, in the case of amounts of a particular description, that is subject to any provision which (whether expressly or by implication) provides for that calculation to operate by reference to something else.

(5) For the meaning of "excess BLAGAB expenses", see section 19.

Non-BLAGAB long-term business

17 Charge to tax on profits of non-BLAGAB long-term business

(1) The charge to corporation tax on income under section 35 of CTA 2009 (charge to tax on trade profits) applies to the profits of non-BLAGAB long-term business carried on by an insurance company.

(2) The rules for calculating those profits are subject to the provision made by—
  (a) Chapter 6 (trade calculation rules applying to long-term business), and
  (b) section 76 (transfers of business).

(3) Subsection (1) does not apply if the business is mutual business, and in that case no other provision of the Corporation Tax Acts has effect to charge the income of the business to corporation tax.

PHI only business

18 Companies carrying on only PHI business

Nothing in—
  (a) this Part, or
  (b) any other provision of the Corporation Tax Acts that makes special provision in relation to, or by reference to, long-term business carried on by insurance companies,

is to apply in relation to a company which carries on long-term business which consists wholly of PHI business.

CHAPTER 3

THE I - E BASIS

Introduction

19 The I - E basis

This section sets out rules, in relation to the basic life assurance and general annuity business carried on by an insurance company, for determining whether the company has an I - E profit or excess BLAGAB expenses for an accounting period (and, if so, the amount of the profit or expenses).

Step 1

Calculate the income chargeable for the accounting period that is referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business.
The meaning here of "income" is given by section 20.

Step 2
Calculate the BLAGAB chargeable gains of the company for the accounting period as adjusted for allowable losses (see section 21).

Step 3
Calculate so much of the amount (or the total amount) of any I - E receipt under section 35 or 36(5)(a) as is not taken into account in the calculation required by step 1 or 2.

Step 4
Add together the amounts given by the calculations required by steps 1 to 3.
Reduce the total of those amounts (but not below nil) by the amount of any non-trading deficit which the company has for the accounting period under section 388 of CTA 2009 (loan relationships and derivative contracts).
The result is "I".

Step 5
Calculate the adjusted BLAGAB management expenses of the company for the accounting period (see section 22).
The result is "E".

Step 6
Subtract E from I (which, if E is a negative figure, would have the effect of increasing the result of the calculation).

If the result is a positive amount, that is (subject to section 38) the amount for the accounting period chargeable to corporation tax under section 14.
That amount is referred to in this Part as an "I - E profit".

If the result is a negative amount, that amount is to be carried forward by the company as an expense to its next accounting period to be used in accordance with step 5 of section 22.
That amount is referred to in this Part as "excess BLAGAB expenses".

Definitions of expressions comprising "I"

20 Meaning of "income"

(1) In section 19 "income", in relation to an insurance company, means the following income or credits so far as arising from the company's long-term business—

(a) income of the company chargeable under Chapter 3 of Part 4 of CTA 2009 in respect of any separate UK property business or overseas property business within section 66(4),

(b) credits in respect of any loan relationships of the company,

(c) credits in respect of any derivative contracts of the company,
(d) credits brought into account by the company under Part 8 of CTA 2009 (intangible fixed assets),
(e) income of the company chargeable under Part 9A of CTA 2009 (company distributions),
(f) income of the company chargeable under Chapter 5 of Part 10 of CTA 2009 (distributions from unauthorised unit trusts),
(g) income of the company chargeable under Chapter 6 of Part 10 of CTA 2009 (sale of foreign dividend coupons),
(h) income of the company chargeable under Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged),
(i) income of the company arising from a source outside the United Kingdom which is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged),
(j) income of the company chargeable under any provision to which section 1173 of CTA 2010 (miscellaneous charges) applies.

(2) The reference in subsection (1)(a) to income chargeable under Chapter 3 of Part 4 of CTA 2009 includes income chargeable under that Chapter in respect of distributions treated by section 548(5) of CTA 2010 as profits of a UK property business carried on by the company.

(3) For the purposes of this section references to income that is chargeable under any provision are to income that, but for section 14, would be chargeable under that provision.

(4) For the purposes of this section no account is to be taken of income which arises from an asset forming part of the long-term business fixed capital of the company (see section 82).

21 Meaning of "BLAGAB chargeable gains" etc

(1) This section explains for the purposes of section 19 how to calculate the BLAGAB chargeable gains of the company for the accounting period as adjusted for allowable losses.

Step 1
First, calculate the chargeable gains—
(a) that accrue to the company in the accounting period from the disposal of assets held for the purposes of the company's long-term business, and
(b) that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business.

Step 2
Then, deduct from the amount of those gains—
(a) any allowable losses that accrue to the company in the accounting period from the disposal of assets held for the purposes of the company's long-term business and that are so referable, and
(b) so far as not previously deducted from any chargeable gains, any allowable losses that accrued to the company in a previous accounting period from the disposal of assets held for the purposes of the company's long-term business and that were so referable.

The resulting amount is the amount of the BLAGAB chargeable gains of the company for the accounting period as adjusted for allowable losses.

(2) The deduction at step 2 may reduce an amount to nil but no further.

(3) For the purposes of this section no account is to be taken of a chargeable gain or allowable loss accruing to the company on a disposal for the purposes of TCGA 1992 of an asset that forms part of the long-term business fixed capital of the company.

(4) References in this section to chargeable gains or allowable losses are references to those gains or losses as calculated in accordance with the rules contained in TCGA 1992.

Definitions of expressions comprising "E"

22 Meaning of "adjusted BLAGAB management expenses"

This section explains for the purposes of section 19 how to calculate the adjusted BLAGAB management expenses of the company for the accounting period.

Step 1
Calculate the ordinary BLAGAB management expenses of the company referable to the accounting period (see sections 23, 27 and 28).
In making the calculation ignore so much of those expenses as are deductible under other relevant rules (see section 24(2)).
If the company is an overseas life insurance company, see also section 39.

Step 2
If the expenses calculated in accordance with step 1 include acquisition expenses for the purposes of section 25, adjust the amount given by step 1 in accordance with the rules in that section (which, in the typical case, provide for six-sevenths of the adjusted amount of those expenses to be disallowed for the accounting period and relieved instead as deemed BLAGAB management expenses for the next six accounting periods).

Step 3
Calculate the total amount of any deemed BLAGAB management expenses (if any) for the accounting period (see section 24(3)).
For this purpose ignore any amounts that have already been included in step 1.

Step 4
Add together the amounts given by the calculations required by steps 1 to 3 to give the basic amount.
Adjust the basic amount by deducting from it any expenses reversed in the accounting period (see section 24(4)) and any BLAGAB trade loss relieved for the accounting period (see section 24(5)).

Step 5

Add together any amounts carried forward as expenses from the previous accounting period to the accounting period as a result of section 19 or 36 to give the carried-forward amount.

Add the carried-forward amount to the basic amount or, as the case may be, the basic amount adjusted in accordance with step 4.

The resulting amount is the amount of adjusted BLAGAB management expenses of the company for the accounting period.

23 Section 22: meaning of "ordinary BLAGAB management expenses" etc

(1) This section explains for the purposes of section 22 what is meant by the "ordinary BLAGAB management expenses of the company referable to the accounting period".

(2) Amounts are "ordinary BLAGAB management expenses" of the company if—

(a) they are, in accordance with generally accepted accounting practice, debited in accounts drawn up by the company for a period of account (but see subsection (3)),

(b) they are referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, and

(c) they are not excluded amounts (see subsections (4) to (7)).

(3) In a case where acquisition expenses (within the meaning of section 26) incurred in the accounting period fall to be debited in successive accounts drawn up for successive periods of account, those expenses are treated instead as if they were all debited in the accounts drawn up for the first of those periods of account.

(4) The following are "excluded amounts"—

(a) amounts of a capital nature,

(b) re-insurance premiums,

(c) refunds of premiums,

(d) profit commissions and profit participations (however described),

(e) a liability of the company to pay an amount of commission or other expenses so far as exceeding the amount which it could reasonably be expected to pay if sections 14 and 15 were not applicable,

(f) non-commercial amounts payable by the company,

(g) amounts payable in connection with a policy or contract to a policyholder or annuitant under the policy or contract or to any other person entitled to receive benefits under the policy or contract.

(5) For the purposes of subsection (4)(f) expenses or other amounts are "non-commercial amounts" payable by the company so far as the company's purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.

(6) Amounts payable as mentioned in paragraph (g) of subsection (4) include—

(a) amounts payable to any person acting on behalf of a person within that paragraph, and

(b) amounts payable to the personal representatives of a deceased person who was (or acted on behalf of a person who was) within that paragraph.

(7) Amounts payable as mentioned in subsection (4)(g) do not include amounts payable to an insurance company who is a policyholder under the policy.

(8) In the case of ordinary BLAGAB management expenses in respect of a period of account which coincides with or falls wholly in an accounting period of the company, all of those expenses are "referable to" the accounting period.

(9) In the case of ordinary BLAGAB management expenses in respect of any other period of account—
   (a) those expenses are to be apportioned to the accounting period of the company in accordance with section 1172 of CTA 2010, and
   (b) the apportioned amount of those expenses is "referable to" the accounting period.

24 Section 22: meaning of other expressions

(1) This section explains for the purposes of section 22 what is meant by—
   "other relevant rules",
   "deemed BLAGAB management expenses for the accounting period",
   "expenses reversed in the accounting period", and
   "BLAGAB trade loss relieved for the accounting period".

(2) An expense is deductible under another "relevant rule" if—
   (a) it is deductible as a result of section 35(3),
   (b) it is deductible in calculating, for corporation tax purposes, the profits of a UK property business, or
   (c) it is deductible as a result of section 272 of CTA 2009 in calculating income from the letting of rights to work minerals in the United Kingdom.

(3) An amount is a "deemed BLAGAB management expense for the accounting period" if it is treated for the purposes of section 22 as an expense of the accounting period as a result of—
   section 25 (spreading of acquisition expenses),
   section 29 (general annuity business),
   section 67(3) (losses from property businesses where land held for purposes of long-term business),
   paragraph 16(1) of Schedule 7 to FA 1991 (transitional relief for old general annuity contracts),
   section 256(2)(a) of CAA 2001 (allowances in respect of plant or machinery consisting of management asset),
   section 391(3) of CTA 2009 (loan relationships: carry forward of surplus to next accounting period),
   section 1080(2) of CTA 2009 (additional relief for expenditure on research and development),
   section 1162 of CTA 2009 (additional relief for remediation of contaminated or derelict land), or
   section 783(6), 785(4) or 791(6) of CTA 2010 (manufactured dividends).

(4) "Expenses reversed in the accounting period" means the total amount of the expenses—
   (a) which were included in accordance with step 1 or 3 of section 22 for any previous accounting period, but
   (b) which, for accounting purposes, are subsequently reversed in the accounting period.

(5) A "BLAGAB trade loss relieved for the accounting period" means so much of a BLAGAB trade loss of the company for the accounting period for which relief is given under—
  (a) section 37 of CTA 2010 (relief for trade losses against total income), as applied by section 68, or
  (b) Chapter 4 of Part 5 of that Act (group relief), as applied by section 70.

25 Spreading of acquisition expenses

(1) This section applies if the ordinary BLAGAB management expenses of an insurance company referable to an accounting period for the purposes of section 22 include acquisition expenses (as defined by section 26) incurred in the accounting period.

(2) In the case of the acquisition expenses—
  (a) only one-seventh of the adjusted amount of those expenses is to count as ordinary BLAGAB management expenses of the company referable to the accounting period, and
  (b) the remainder of that adjusted amount is to be relieved as deemed BLAGAB management expenses for succeeding accounting periods.

(3) References in this section to the adjusted amount of the acquisition expenses are to—
  (a) the amount of those expenses calculated as mentioned in step 1 of section 22 (and see, in particular, section 23(3)), less
  (b) any amount of re-insurance commission or any repayment or refund (in whole or in part) that forms part of an I - E receipt of the company for the accounting period as a result of section 35.

(4) The remainder of the adjusted amount of the acquisition expenses is relieved as follows.

(5) One-seventh of the adjusted amount of the acquisition expenses is treated for the purposes of section 22 as deemed BLAGAB management expenses for each succeeding accounting period.

(6) But, if a succeeding accounting period is less than a year, the fraction of that amount to be relieved for that period is proportionately reduced.

(7) The reliefs operate until the whole of the adjusted amount of the acquisition expenses has been used up (and, accordingly, the rules in subsections (5) and (6) have effect subject to this subsection).

26 Section 25: meaning of "acquisition expenses"

(1) This section explains for the purposes of section 25 what is meant by "acquisition expenses".

(2) The following are "acquisition expenses"—
  (a) commissions (however described) other than commissions for persons who collect premiums from house to house,
  (b) any other expenses payable solely for the purpose of the acquisition of business, and
  (c) so much of any other expenses payable partly for that purpose, and partly for other purposes, as are properly attributable to the acquisition of business.

(3) The exclusion from paragraph (a) of subsection (2) of commissions for persons who collect premiums from house to house does not prevent their counting as expenses under another paragraph of that subsection.

(4) For the purposes of that subsection "the acquisition of business" includes—

(a) the securing of the payment of increased or additional premiums in respect of a policy of insurance issued in respect of an insurance already made, and

(b) the securing of the payment of increased or additional consideration in respect of an annuity contract already made.

27 Amounts treated as ordinary BLAGAB management expenses

(1) This section applies in relation to amounts which meet the conditions in section 23(2)(a) and (b).

(2) The relevant permissive rules apply for the purpose of treating the amounts as ordinary BLAGAB management expenses for the purposes of section 22 as they apply for the purpose of treating amounts as expenses of management for the purposes of Chapter 2 of Part 16 of CTA 2009 (companies with investment business).

(3) The following provisions of CTA 2009 are "relevant permissive rules"—

(a) section 1000 (costs of setting up employee share ownership trust),

(b) section 1234 (payments for restrictive undertakings),

(c) section 1235 (employees seconded to charities and educational establishments),

(d) section 1237 (counselling and other outplacement expenses),

(e) section 1238(1) to (3) (retraining courses),

(f) sections 1239 to 1242 (redundancy payments and approved contractual payments),

(g) section 1243 (payments made by the Government), and

(h) section 1244 (contributions to local enterprise organisations or urban regeneration companies).

(4) If—

(a) an employer's liability to corporation tax for an accounting period is determined on the assumption that a deduction for expenditure is allowed as a result of the application by this section of section 1238(1) to (3) of CTA 2009, and

(b) the deduction would not otherwise have been allowed,

section 75(2) to (6) of CTA 2009 (retraining courses: recovery of tax) apply.

(5) If—

(a) an amount is treated as an ordinary BLAGAB management expense as a result of the application by this section of section 1242 of CTA 2009, and

(b) the amount would otherwise be regarded as an acquisition expense for the purposes of section 25,

the expense is not to be so regarded.

(6) Section 1253 of CTA 2009 (contributions to local enterprise organisations or urban regeneration companies: disqualifying benefits) applies in the case of amounts treated, as a result of the application by this section of section 1244 of

that Act, as ordinary BLAGAB management expenses as it applies in the case of amounts for which a deduction has been made under section 1219 of that Act as a result of section 1244 of that Act.

(7) For the purposes of this section—
  (a) references in any relevant permissive rule to a company carrying on business that consists wholly or partly of making investments or to a company with investment business are to be read as references to a company carrying on basic life assurance and general annuity business,
  (b) references in any relevant permissive rule to an amount being deductible under section 1219 of CTA 2009 are to be read as references to an amount being deductible as an ordinary BLAGAB management expense,
  (c) section 1239 of CTA 2009 is to be treated as having effect with the omission of subsection (1)(c),
  (d) the reference in section 1240(4) of CTA 2009 to sections 1224 to 1227 of that Act is to be read as a reference to section 23(8) and (9) of this Act, and
  (e) section 1243 of CTA 2009 is to be treated as having effect with the omission of subsection (1)(c).

(8) An amount is treated as an ordinary BLAGAB management expense as a result of this section only so far as it would not otherwise be regarded as an ordinary BLAGAB management expense.

28 Restrictions in relation to ordinary BLAGAB management expenses

(1) This section applies in relation to an amount which is (or, but for this section, would be) regarded for the purposes of section 22 as an ordinary BLAGAB management expense of an insurance company.

(2) Section 1249(1) and (2) of CTA 2009 (unpaid remuneration) apply for the purpose of determining the period of account for which the amount is debited in the accounts of the company for the purposes of section 23; but this subsection is subject to the operation of section 25.

(3) Section 1249(1) and (3) of CTA 2009 apply for the purpose of determining whether the amount is to be regarded as an ordinary BLAGAB management expense of the company.

(4) Section 1251(1) and (2) of CTA 2009 (car hire) apply for the purpose of determining the amount of the ordinary BLAGAB management expense of the company.

(5) For the purposes of subsections (2) to (4)—
  (a) references in section 1249 or 1251 of CTA 2009 to a company with investment business are to be read as references to a company carrying on basic life assurance and general annuity business (and, accordingly, the reference in section 1251(1) to total profits is to be read as a reference to profits of basic life assurance and general annuity business), and
  (b) references in section 1249 or 1251 of CTA 2009 to an amount being deductible under section 1219 of CTA 2009 are to be read as references to an amount being deductible as an ordinary BLAGAB management expense.

(6) If—

(a) an amount is reduced as a result of subsection (4) or a corresponding rule,

(b) subsequently there is a rebate (however described) of the hire charges, and

(c) an amount representing the rebate is deductible as a reversed expense or taken into account in calculating the amount of an I - E receipt under section 35,

the amount that would otherwise be so deductible or taken into account is reduced by 15%.

(7) If—

(a) an amount is reduced as a result of subsection (4) or a corresponding rule,

(b) subsequently a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency arrangement, and

(c) an amount representing the release is deductible as a reversed expense,

the amount that would otherwise be so deductible is reduced by 15%.

(8) For the purposes of subsections (6) and (7)—

"corresponding rule" means section 56(2) or 1251(2) of CTA 2009 or section 48(2) of ITTOIA 2005,

"deductible as a reversed expense" means deductible at step 4 in section 22 as an expense reversed in an accounting period, and

"statutory insolvency arrangement" has the meaning given by section 1319(1) of CTA 2009.

29 General annuity business

(1) This section applies if an insurance company pays qualifying BLAGAB annuities in an accounting period.

(2) An amount equal to the difference between—

(a) the total amount of those annuities paid by the company in the accounting period, and

(b) the total amount of the amounts exempt under section 717 of ITTOIA 2005 (exemption for part of purchased life annuity payments) contained in those annuities so paid,

is treated for the purposes of section 22 as a deemed BLAGAB management expense for the accounting period.

(3) An annuity is a "qualifying BLAGAB annuity" if—

(a) it is referable to the company's basic life assurance and general annuity business, and

(b) it is paid under a contract made by the company in an accounting period beginning on or after 1 January 1992 (but see section 31).

(4) For the purposes of this section the amounts exempt under section 717 of ITTOIA 2005 are so much of the payments under the qualifying BLAGAB annuities as would be within the exemption under that section if—

(a) section 718 of ITTOA 2005 were omitted, and

(b) the exemption under section 717 of ITTOIA 2005 applied in relation to companies as well as individuals.

(5) If a qualifying BLAGAB annuity ("the actual annuity") is a steep-reduction annuity, the calculations required by subsection (2)(a) and (b) are to be made as if—
   (a) the contract for the actual annuity provided instead for the annuities identified below ("the deemed annuities"), and
   (b) the consideration for each of the deemed annuities were equal to an apportionment of the consideration for the actual annuity on a just and reasonable basis.

(6) The deemed annuities are—
   (a) an annuity the payments in respect of which are confined to payments in respect of the actual annuity that fall to be made at the earliest time for the making in respect of that annuity of a reduced payment within section 30(1)(c), and
   (b) an annuity the payments in respect of which are all the payments in respect of the actual annuity other than those mentioned in paragraph (a).

(7) If a deemed annuity within subsection (6)(b) ("the later annuity") would itself be a steep-reduction annuity, the deemed annuities—
   (a) do not include the later annuity, but
   (b) include instead the annuities which would be identified by subsection (6) (with as many further applications of this subsection as may be necessary for securing that none of the deemed annuities is a steep-reduction annuity) if references in that subsection to the actual annuity were to the later annuity.

(8) This section needs to be read with section 30 (meaning of "steep-reduction annuity" etc).

30 General annuity business: meaning of "steep-reduction annuity" etc

(1) For the purposes of section 29 an annuity is a "steep-reduction annuity" if—
   (a) the amount of any payment in respect of it (but not its term) depends on a contingency other than the duration of a human life or lives,
   (b) the annuitant is entitled to payments of different amounts at different times, and
   (c) the payments include a payment ("a reduced payment") of an amount which is substantially smaller than the amount of at least one of the earlier payments.

(2) If there are different intervals between the payments, it is to be assumed for the purposes of subsection (1)(b) and (c)—
   (a) that the annuitant's entitlement, after the first payment, to payments is an entitlement to payments at yearly intervals on the anniversary of the first payment, and
   (b) that the amount to which the annuitant is assumed to be entitled is equal to the annuitant's assumed entitlement for the year ending with the anniversary in question.

(3) For this purpose the annuitant's assumed entitlement for a year is determined as follows—
   (a) the annuitant's entitlement to each payment is taken to accrue at a constant rate during the interval between the previous payment and that payment, and

(b) the annuitant's assumed entitlement for a year is taken to be equal to the total amount which, in accordance with paragraph (a), is treated as accruing in the year.

(4) In the case of an annuity to which subsection (2) applies, the reference in section 29(6)(a) to the making of a reduced payment is to be read as a reference to the making of a payment which (applying subsection (3)(a)) is taken to accrue at a rate that is substantially less than the rate at which at least one of the earlier payments is taken to accrue.

(5) If—

(a) a question arises whether a payment is substantially smaller than, or accrues at a rate substantially less than, an earlier payment, and

(b) the annuitant or (as the case may be) every annuitant is an individual who is beneficially entitled to all the rights conferred on him or her as such an annuitant,

the question is determined without regard to so much of the difference between the amounts or rates as is referable to a reduction falling to be made as a result of a death.

(6) If the amount of any one or more of the payments depends on a contingency, the annuitant's entitlement to the payments is determined for the purposes of section 29 and this section according to whatever is the most likely outcome in relation to the contingency (applying any relevant actuarial principles).

(7) If an agreement or other arrangement has effect for varying the rights of the annuitant in relation to a payment, the payment is taken for the purposes of section 29 and this section to be a payment of the amount to which the annuitant is entitled in accordance with the agreement or other arrangement.

(8) For the purposes of this section references to a contingency include a contingency consisting wholly or partly in the exercise of a option.

31 General annuity business: payments made in pre-1992 accounting periods

(1) If—

(a) a payment in respect of an annuity is made by an insurance company under a group annuity contract made in a pre-1992 accounting period, and

(b) the company's liabilities first include an amount in respect of that annuity in a post-1992 accounting period,

the payment is treated for the purposes of section 29(3)(b) as if the contract had been made in a post-1992 accounting period.

(2) If—

(a) a payment in respect of an annuity is made by a re-insurer under a re-insurance treaty made in a pre-1992 accounting period, and

(b) the re-insurer's liabilities first include an amount in respect of that annuity in a post-1992 accounting period,

the payment is, as respects the re-insurer, treated for the purposes of section 29(3)(b) as if the treaty had been made in a post-1992 accounting period.

(3) In this section—

"a pre-1992 accounting period" means an accounting period beginning before 1 January 1992,

"a post-1992 accounting period" means an accounting period beginning on or after 1 January 1992,

"group annuity contract" means a contract under which the insurance company undertakes to become liable to pay annuities to or in respect of persons who may subsequently be specified or otherwise ascertained under or in accordance with the contract (whether or not annuities under the contract are also payable to or in respect of persons who are specified or ascertained at the time the contract is made), and

"re-insurance treaty" means a contract under which one insurance company is obliged to cede, and another (referred to in this section as a "re-insurer") to accept, the whole or part of a risk of a class or description to which the contract relates.

Special rules applying to I - E basis

32 Loan relationships, derivative contracts and intangible fixed assets

(1) This section applies if an insurance company has—

(a) credits or debits in respect of any loan relationships,

(b) credits or debits in respect of any derivative contracts, or

(c) credits or debits brought into account by the company under Part 8 of CTA 2009 (intangible fixed assets),

that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business.

(2) In the application of the I - E rules in relation to the company's basic life assurance and general annuity business—

(a) the loan relationship rules,

(b) the derivative contract rules, and

(c) the intangible fixed asset rules,

have effect as if the activities carried on by the company in the course of its basic life assurance and general annuity business did not constitute the whole or any part of a trade or of a property business.

(3) The I - E rules also have effect in relation to the company subject to the application of sections 388 to 391 of CTA 2009 (which make special provision in a case where an insurance company has a non-trading deficit from its BLAGAB loan relationships).

(4) See also section 574 of CTA 2009 (which provides for non-trading credits or debits in respect of derivative contracts to be treated as non-trading credits or debits in respect of loan relationships).

(5) In this section—

"the loan relationship rules" means the rules set out in Part 5 of CTA 2009 (including provisions of other enactments by reference to which amounts are to be brought into account for the purposes of that Part),

"the derivative contract rules" means the rules set out in Part 7 of CTA 2009, and

"the intangible fixed asset rules" means the rules set out in Part 8 of CTA 2009.

33 Investment return where risk in respect of policy or contract re-insured

(1) This section applies if an insurance company re-insures any risk in respect of a policy or contract attributable to its basic life assurance and general annuity business.

(2) For the purposes of the I - E rules the investment return on the policy or contract is treated as accruing to the company while the risk remains re-insured by the company under the re-insurance arrangement.

(3) The investment return that is treated as accruing to the company—
  (a) is treated for the purposes of those rules as income that is referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, and
  (b) is, accordingly, brought into account for the purposes of those rules at step 1 in section 19.

(4) HMRC Commissioners may make provision by regulations as to the amount of investment return that is treated as accruing in each accounting period during which the re-insurance arrangement is in force.

(5) HMRC Commissioners may by regulations exclude from the operation of this section—
  (a) such descriptions of insurance company,
  (b) such descriptions of policies or contracts, and
  (c) such descriptions of re-insurance arrangement,
as may be prescribed by the regulations.

(6) Nothing in this section applies in relation to the re-insurance of a policy or contract where the policy or contract was made, and the re-insurance arrangement effected, before 29 November 1994.

34 Regulations under section 33(4): supplementary provision

(1) This section applies to regulations under section 33(4).

(2) The regulations may provide for the calculation of the investment return treated as accruing to a company in respect of a policy or contract in an accounting period to be made by reference to—
  (a) the total amount of sums paid (by way of premium or otherwise) by the company to the re-insurer during the accounting period and any earlier accounting periods,
  (b) the total amount of sums paid (by way of commission or otherwise) by the re-insurer to the company during the accounting period and any earlier accounting periods,
  (c) the total amount of the net investment return treated as accruing to the company in any earlier accounting periods, that is to say, net of tax at such rate as may be prescribed by the regulations, and
  (d) such percentage rate of return as may be prescribed by the regulations.

(3) The regulations may make provision dealing with the transfer of the re-insurance arrangement from one insurance company to another.

(4) The regulations must provide that the amount of investment return treated as accruing in respect of a policy or contract in the final accounting period during which the policy or contract is in force is the amount, ascertained in accordance

with the regulations, by which the overall profit exceeds the total amount treated as accruing in earlier accounting periods.

(5) "The overall profit" means the profit over the whole period during which the policy or contract, and the re-insurance arrangement, were in force.

(6) If the overall profit is less than the total amount treated as accruing in earlier accounting periods, the difference—
(a) must be set off against amounts treated as a result of section 33 as accruing in the final accounting period from other policies or contracts, and
(b) if not fully set off as mentioned in paragraph (a), may be carried forward for set-off against amounts treated as a result of that section as accruing in subsequent accounting periods.

(7) The regulations may—
(a) make different provision for different cases or circumstances, and
(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(8) An example of the kind of supplementary provision within subsection (7)(b) is provision requiring payments made during an accounting period to be treated as made on such date or dates as may be prescribed by the regulations.

(9) Nothing in this section authorising the inclusion of any particular kind of provision in the regulations is to be read as restricting the generality of the provision that may be included in them.

Deemed I - E receipts

35 Certain BLAGAB trading receipts to count as deemed I - E receipts

(1) This section applies if—
(a) an insurance company has receipts that are taken into account in calculating its BLAGAB trade profit or loss (see section 81) for an accounting period,
(b) the receipts would not fall within the charge to corporation tax apart from this section, and
(c) the receipts are not excluded receipts.

(2) The appropriate amount of the receipts is an I - E receipt of the company for the accounting period.

(3) The "appropriate amount" of the receipts is found by deducting expenses from the receipts so far as is necessary for calculating the full amount of the profits.

(4) Chapter 1 of Part 20 of CTA 2009 (general rules for restricting deductions) is to apply to that calculation.

(5) The following receipts are "excluded" receipts—
(a) premiums,
(b) sums received under re-insurance contracts (but see subsection (6) for exceptions),
(c) sums which do not fall within the charge to corporation tax because of an exemption,

(d) payments received under the Financial Services Compensation Scheme, and

(e) payments received from other insurance companies to enable the company to meet its obligations to policyholders.

(6) A sum received under a re-insurance contract is not an excluded receipt if—

(a) it is a re-insurance commission (however described), or

(b) it is a sum calculated to any extent by reference to the ordinary BLAGAB management expenses of the company referable to the accounting period (within the meaning of section 23).

Minimum profits charge

36 Minimum profits test

(1) This section applies if an insurance company has a BLAGAB trade profit for an accounting period.

(2) A comparison must be made between—

(a) the I - E profit or excess BLAGAB expenses for the accounting period, and

(b) the BLAGAB trade profit for the accounting period,

adjusted as need be in accordance with sections 37 and 69.

(3) For the purposes of subsection (2)(a), ignore the reference in step 3 of section 19 to subsection (5)(a) of this section.

(4) If there are excess BLAGAB expenses for the accounting period, the amount of the excess is treated for the purposes of this section as a negative figure equal to that amount.

(5) If, for the accounting period, the adjusted BLAGAB trade profit exceeds the adjusted I - E profit or excess BLAGAB expenses—

(a) an amount equal to the difference is an I - E receipt of the company for the accounting period (see section 19), and

(b) the same amount is carried forward to the company's next accounting period as an expense (see section 22).

37 Adjustment of I - E profit or excess BLAGAB expenses

(1) This section applies if the BLAGAB trade profit for the accounting period includes non-taxable distributions receivable by the company in that period that are referable, in accordance with Chapter 7, to the company's basic life assurance and general annuity business.

(2) For the purposes of section 36(5) (the comparison of the BLAGAB trade profit with the I - E profit or excess BLAGAB expenses), the calculation required by section 19 is performed again but adding to the amount of "I" found by step 4 the total amount of the non-taxable distributions receivable by the company in the accounting period that are so referable.

(3) Accordingly, once an adjustment is made in accordance with subsection (2), an amount of excess BLAGAB expenses for the accounting period might become an adjusted I - E profit for that period.

(4) For the purposes of this Part "non-taxable distributions" means distributions that are exempt for the purposes of Part 9A of CTA 2009 (company distributions).

(5) For the purposes of this Part the amount of a non-taxable distribution does not include any amount withheld from it on account of tax payable under the laws of a territory outside the United Kingdom.

Non-BLAGAB allowable losses

38 Use of non-BLAGAB allowable losses to reduce I - E profit

(1) This section applies if—
   (a) an insurance company has an I - E profit for an accounting period, and
   (b) non-BLAGAB allowable losses have accrued to the company that are available for deduction in accordance with section 210A(2) of TCGA 1992 from the shareholders' share of BLAGAB chargeable gains that have accrued to the company.

(2) Those losses may be deducted from those gains in accordance with that provision so as to reduce the amount of the I - E profit for the accounting period to nil but no further.

(3) For the purposes of subsection (1)(a), assume that non-BLAGAB allowable losses cannot be deducted from any BLAGAB chargeable gains (and, accordingly ignore the effect of this section).

Overseas life insurance companies

39 Expenses referable to exempt FOTRA profits

(1) This section applies if the profits for an accounting period of the basic life assurance and general annuity business carried on by an overseas life insurance company in the United Kingdom consist of or include exempt FOTRA profits.

(2) In making the calculation required by step 1 of section 22 for the accounting period, ignore so much of the ordinary BLAGAB management expenses of the company as are referable to exempt FOTRA profits.

(3) The relevant proportion of those expenses is to be regarded for the purposes of this section as referable to exempt FOTRA profits.

(4) The relevant proportion is—

$$\frac{\mathrm{FOTRA}}{\mathrm{FOTRA} + \mathrm{I}}$$

where—
FOTRA is the amount of the exempt FOTRA profits arising in the accounting period, and
I is the amount of I found by the calculations required by step 4 in section 19 in relation to the company's basic life assurance and general annuity business for the accounting period.

(5) In this section "exempt FOTRA profits" means profits in respect of which no liability to corporation tax arises as a result of section 1279 of CTA 2009.

CHAPTER 4

APPORTIONMENT RULES FOR I - E CHARGE

Introduction

40 Application of Chapter

(1) This Chapter applies in the case of an insurance company that carries on—
- (a) basic life assurance and general annuity business, and
- (b) other long-term business.

(2) This Chapter contains rules for determining for the purposes of Chapter 3—
- (a) the income or losses from assets, and the expenses, that are referable to the company's basic life assurance and general annuity business, and
- (b) the chargeable gains or allowable losses accruing on the disposal of assets (or parts of assets) that are referable to the company's basic life assurance and general annuity business.

Allocation of income and losses from assets and of expenses

41 Commercial allocation

(1) This section makes provision for determining—
- (a) the income or losses arising from assets held for the purposes of the company's long-term business, and
- (b) the expenses incurred in the course of the company's long-term business,

that, for the purposes of Chapter 3, are to be regarded as referable to its basic life assurance and general annuity business.

(2) Those items are to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the income or losses arise or the expenses are incurred.

(3) A method is an "acceptable commercial method" if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of Chapter 3 for determining for a period of account what is referable to the company's basic life assurance and general annuity business.

(4) The Treasury may make regulations for the purposes of this section—
- (a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
- (b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.

(5) Subject to any provision made by regulations under subsection (4), the method adopted for the purposes of this section for a period of account—

(a) must be consistent with the method adopted for the purposes of section 58 for that period, and
(b) in the case of an overseas life insurance company, must also be consistent with the method for that period for attributing assets in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009 to its permanent establishment in the United Kingdom.

(6) In this section "losses" means—
(a) losses in any separate UK property business carried on by the company which is within section 66(4),
(b) losses in any separate overseas business carried on by the company which is within section 66(4),
(c) debits in respect of any loan relationships of the company,
(d) debits in respect of any derivative contracts of the company,
(e) debits brought into account by the company under Part 8 of CTA 2009 (intangible fixed assets), and
(f) any losses of the company calculated in the same way as profits chargeable under any provision to which section 1173 of CTA 2010 (miscellaneous charges) applies.

Allocation of chargeable gains and allowable losses on disposals of assets

42 Application of sections 43 and 44

(1) Sections 43 and 44 apply for determining the chargeable gains or allowable losses that, for the purposes of Chapter 3, are to be regarded as referable to a company's basic life assurance and general annuity business whenever it disposes of assets held for the purposes of its long-term business (including cases where, as a result of Chapter 8, it is deemed to make a disposal).

(2) Expressions that are used in sections 43 and 44 and in TCGA 1992 have the same meaning in those sections as they have for the purposes of that Act.

43 Assets wholly or partly matched to BLAGAB liabilities

(1) If, immediately before the disposal, the whole of the asset was matched to a BLAGAB liability, the whole of the gain or loss is referable to the company's basic life assurance and general annuity business.

(2) If, immediately before the disposal, a part of the asset was matched to a BLAGAB liability, the appropriate portion of the gain or loss is referable to the company's basic life assurance and general annuity business.

(3) "The appropriate proportion" means the proportion equal to the proportion of the BLAGAB liability matched to the part.

(4) If, as a result of Chapter 8, there is a disposal of a part of an asset where the part concerned is matched to a BLAGAB liability, the whole of the gain or loss is referable to the company's basic life assurance and general annuity business.

(5) The concept of the whole or a part of an asset being matched to a BLAGAB liability is explained by section 83.

44 Commercial allocation for disposals not wholly dealt with by section 43

(1) This section applies if, in the case of the disposal—

(a) no part of the gain or loss is dealt with by section 43, or

(b) section 43 deals with only a proportion of the gain or loss.

(2) The gain or loss, or (as the case may be) the remaining proportion of the gain or loss, which is referable to the company's basic life assurance and general annuity business is determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the disposal is made.

(3) A method is an "acceptable commercial method" if it secures that gains or losses are referable to the company's basic life assurance and general annuity business in a way that fairly represents the contribution of the gains or losses to that business.

(4) The Treasury may make regulations for the purposes of this section—

(a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and

(b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.

(5) Subject to any provision made by regulations under subsection (4), the method adopted for the purposes of this section for a period of account—

(a) must be consistent with the method adopted for the purposes of section 41 for that period and the method adopted for the purposes of section 58 for that period, and

(b) in the case of an overseas life insurance company, must also be consistent with the method for that period for attributing assets in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009 to its permanent establishment in the United Kingdom.

CHAPTER 5

I - E PROFIT: POLICYHOLDERS' RATE OF TAX

Tax rate on policyholders' share of I - E profit

45 Policyholders' rate of tax on policyholders' share of I - E profit

(1) This section applies if an insurance company has an I - E profit for an accounting period.

(2) The rate of corporation tax chargeable for a financial year on the policyholders' share (if any) of the I - E profit is the policyholders' rate of tax.

(3) The policyholders' rate of tax is the rate at which income tax at the basic rate is charged for the tax year that begins on 6 April in the financial year.

(4) The policyholders' share of the I - E profit is determined in accordance with section 46.

(5) The policyholders' share of the I - E profit for an insurance company's accounting period is to be left out of account in determining for the purposes of Part 3 of CTA 2010 (companies with small profits)—
(a) the augmented profits of the company for the accounting period, and
(b) the taxable total profits of the company for the accounting period.

46 Rules for determining policyholders' share of I - E profit

(1) This section determines for the purposes of section 45 the policyholders' share of the I - E profit of an insurance company for an accounting period.

(2) If the basic life assurance and general annuity business of the company carried on by the company in the accounting period is mutual business, the policyholders' share of the I - E profit is the whole of that profit.

(3) In any other case, the policyholders' share of the I - E profit is determined as follows.

(4) The first step is to calculate whether the company has a BLAGAB trade profit for the accounting period, and, if so, its amount.

(5) If the company does not have a BLAGAB trade profit for that period, the policyholders' share of the I - E profit is the whole of that profit.

(6) If—
(a) the company has a BLAGAB trade profit for that period, and
(b) the adjusted amount of the BLAGAB trade profit is less than the amount of the I - E profit for that period,
the difference between those amounts represents the policyholders' share of the I - E profit.

(7) If—
(a) the company has a BLAGAB trade profit for that period, and
(b) the adjusted amount of the BLAGAB trade profit is equal to or more than the amount of the I - E profit,
there is no policyholders' share of the I - E profit.

(8) References to the adjusted amount of the BLAGAB trade profit are to be read in accordance with section 47.

47 Meaning of "the adjusted amount"

(1) This section explains for the purposes of section 46 what is meant by the adjusted amount of the BLAGAB trade profit.

(2) The following adjustments are to be made to the amount of the BLAGAB trade profit.

(3) If relief is available under section 69 (carry forward of BLAGAB trade losses against subsequent profits), the BLAGAB trade profit is to be reduced as mentioned in that section.

(4) If, as a result of relief given under that section ("the losses rule"), the BLAGAB trade profit is reduced to nil, then the adjusted amount of the BLAGAB trade profit for the purposes of section 46 is nil.

(5) If—

(a) the BLAGAB trade profit is not reduced to nil as a result of relief given under section 69 or no relief is available under that section, and

(b) in the accounting period BLAGAB non-taxable distributions are receivable by the company,

the BLAGAB trade profit is reduced or further reduced (but not below nil) by subtracting from it an amount equal to the shareholders' share of those distributions.

(6) The BLAGAB trade profit as so reduced or further reduced is the adjusted BLAGAB trade profit for the purposes of section 46.

48 Meaning of "BLAGAB non-taxable distributions" and "shareholders' share"

(1) This section explains for the purposes of section 47 what is meant by—

"BLAGAB non-taxable distributions", and

"the shareholders' share" of BLAGAB non-taxable distributions.

(2) Non-taxable distributions are "BLAGAB" non-taxable distributions if they are referable, in accordance with Chapter 7, to the company's basic life assurance and general annuity business.

(3) The "shareholders' share" of the BLAGAB non-taxable distributions receivable by the company in the accounting period is the relevant proportion of those distributions.

(4) The relevant proportion is—

$$\frac{BTP}{BNTD + I}$$

where—

BTP is the amount of the BLAGAB trade profit of the company for the accounting period,

BNTD is the amount of the BLAGAB non-taxable distributions receivable by the company in the accounting period, and

I is the total of the amounts given by the calculations required by steps 1 to 3 in section 19 (I - E basis: income referable to BLAGAB) in relation to the company's basic life assurance and general annuity business for the accounting period.

Policyholder tax and calculation of BLAGAB trade profit or loss

49 Deduction for current policyholder tax

(1) This section applies for the purpose of calculating the BLAGAB trade profit or loss for an accounting period of any basic life assurance and general annuity business carried on by an insurance company in a case where the company has an I - E profit for that period.

(2) In calculating the profit or loss for the accounting period, a deduction is allowed for an amount equal to the amount of corporation tax charged at the policyholders' rate of tax on the policyholders' share of the company's I - E profit for that period.

50 Expenses or receipts for deferred policyholder tax

(1) This section applies for the purpose of calculating the BLAGAB trade profit or loss for a period of account of any basic life assurance and general annuity business carried on by an insurance company.

(2) In calculating the profit or loss, an amount is brought into account that is equal to—

(a) the closing deferred policyholder tax balance for the period of account, less

(b) the closing deferred policyholder tax balance for the previous period of account.

(3) The amount—

(a) is brought into account as an expense, if it is a negative figure, and

(b) is brought into account as a receipt, if it is a positive figure.

(4) The amount is brought into account under this section only if, in accordance with generally accepted accounting practice, it is debited or credited in accounts drawn up by the company for the period of account.

(5) If the closing deferred policyholder tax balance for a period of account is a liability, the amount of the balance is taken to be a negative figure for the purposes of this section.

(6) If the closing deferred policyholder tax balance for a period of account is an asset, the amount of the balance is taken to be a positive figure for the purposes of this section.

(7) Section 51 applies for determining the closing deferred policyholder tax balance for a period of account.

51 Meaning of "the closing deferred policyholder tax balance" etc

(1) For the purposes of section 50 "the closing deferred policyholder tax balance for a period of account" means so much of the closing amount shown, in accordance with generally accepted accounting practice, in the accounts of the company for that period in respect of deferred tax as is wholly attributable to policyholder tax.

(2) Provision forming part of the closing amount is "wholly attributable to policyholder tax" if—

(a) the provision is made in respect of a BLAGAB matter (see subsection (3)), and

(b) the amount of the provision made in respect of that matter is calculated wholly by reference to the policyholders' rate of tax chargeable on the policyholders' share of the company's I - E profit for any accounting period.

(3) A "BLAGAB matter" means—

(a) an amount of excess BLAGAB expenses,

(b) an amount of acquisition expenses falling to be relieved in the future in accordance with section 25,

(c) an amount of expenses otherwise falling to be taken into account in the future under the I - E rules,

(d) an amount to which section 213 of TCGA 1992 applies (spreading of gains and losses under section 212),

(e) an amount in respect of the future disposal (or part disposal) of an asset which would fall to be taken into account in accordance with section 21, or

(f) an amount of a BLAGAB trade loss carried forward under section 69.

(4) If—

(a) for a period of account of the company the provision made in respect of a BLAGAB matter is taken into account for the purposes of section 50, and

(b) for a subsequent period of account of the company the provision made in respect of that matter is no longer wholly attributable to policyholder tax because the condition in subsection (2)(b) ceases to be met,

there is to be a reversal in the subsequent period of account in respect of the provision.

(5) The reversal in the subsequent period of account is to be made as follows—

(a) if the provision was made in respect of an amount which for accounting purposes was regarded as an asset, a negative amount equal to that amount is to be taken into account in calculating the closing deferred policyholder tax balance for that period for the purposes of section 50, and

(b) if the provision was made in respect of an amount which for accounting purposes was regarded as a liability, a positive amount equal to that amount is to be taken into account in calculating the closing deferred policyholder tax balance for that period for the purposes of section 50.

(6) The Treasury may by order amend the definition of a "BLAGAB matter".

(7) An order under subsection (6) may contain incidental, supplementary, consequential, transitional, transitory or saving provision.

CHAPTER 6

TRADE CALCULATION RULES APPLYING TO LONG-TERM BUSINESS

52 Application of Chapter

(1) The rules contained in this Chapter have effect for the purpose of—

(a) calculating the BLAGAB trade profit or loss of any basic life assurance and general annuity business carried on by an insurance company, and

(b) calculating for corporation tax purposes the profits of any non-BLAGAB long-term business carried on by an insurance company.

(2) In this Chapter references to the calculation of the profits are, in the case of the calculation of the BLAGAB trade profit or loss, to be read as references to the calculation of that profit or loss.

(3) See also section 47 of CTA 2009 (losses calculated on same basis as profits).

(4) In the case of the calculation of the BLAGAB trade profit or loss, see also sections 49 to 51.

53 Allocations to policyholders

(1) In calculating the profits for an accounting period, a deduction is allowed for an amount (other than an amount of a capital nature) which is allocated to policyholders or annuitants in respect of the accounting period.

(2) For this purpose a payment made in connection with the reattribution of inherited estate is to be regarded as an amount of a capital nature.

54 Dividends and other distributions

(1) Dividends or other distributions—
  (a) which are receivable by the company, and
  (b) which are referable, in accordance with Chapter 7, to the business concerned,

are to be brought into account as receipts in calculating the profits.

(2) This rule—
  (a) applies whether or not the distributions are exempt for the purposes of Part 9A of CTA 2009 or would otherwise be dealt with under that Part, but
  (b) does not apply in the case of distributions that are of a capital nature.

55 Index-linked gilt-edged securities

(1) If, for an accounting period, a company has a loan relationship which is represented by an index-linked gilt-edged security, sections 400 to 400C of CTA 2009 (adjustments for changes in index) are not to apply in calculating the profits for the accounting period.

(2) In this section "index-linked gilt-edged security" has the same meaning as it has in those sections (see section 399(4) of that Act).

56 Receipts or expenses relating to long-term business fixed capital

In calculating the profits, receipts or expenses which arise from an asset forming part of the long-term business fixed capital of the company are to be left out of account.

CHAPTER 7

TRADING APPORTIONMENT RULES

57 Application of Chapter

(1) This Chapter applies in the case of an insurance company which, as a result of section 12, has—
  (a) a business consisting of basic life assurance and general annuity business, and
  (b) a non-BLAGAB long-term business.

(2) The rules contained in this Chapter determine—
  (a) how to allocate the long-term business accounting profit or loss between those two businesses, and

(b) how to allocate the tax adjustments in making the calculations mentioned in subsection (6)(a) and (b).

(3) The reference here to the long-term business accounting profit or loss is a reference to the profit or loss of long-term business for a period of account calculated in accordance with generally accepted accounting practice.

(4) The amount of the long term business accounting profit or loss is referred to in this Chapter as the "accounting profit or loss".

(5) For the purposes of this Chapter "the tax adjustments" means the adjustments required or authorised by law in calculating for corporation tax purposes the profits of the long-term business (applying the same rules as apply to the calculation for those purposes of the profits of non-BLAGAB long-term business).

(6) The rules contained in this Chapter have effect for the purpose of—
(a) calculating the BLAGAB trade profit or loss of the company, and
(b) calculating for corporation tax purposes the profits of the non-BLAGAB long-term business carried on by the company.

58 Commercial allocation of accounting profit or loss and tax adjustments

(1) The accounting profit or loss, and the tax adjustments, are to be allocated between the two separate businesses in accordance with an acceptable commercial method adopted by the company.

(2) A method is an "acceptable commercial method" if it secures that the accounting profit or loss, and the tax adjustments, are allocated to the two separate businesses in a way that fairly represents the contribution made by those businesses to the accounting profit or loss as adjusted to take into account the tax adjustments.

(3) The Treasury may make regulations for the purposes of this section—
(a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
(b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.

(4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account—
(a) must be consistent with the method adopted for the purposes of section 41 for that period, and
(b) in the case of an overseas life insurance company, must also be consistent with the method for that period for attributing assets in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009 to its permanent establishment in the United Kingdom.

CHAPTER 8

ASSETS HELD FOR PURPOSES OF LONG-TERM BUSINESS

Transfers of assets from different categories

59 UK life insurance companies

(1) If, at any time in a period of account of a UK life insurance company, an asset (or a part of an asset) held by the company—

(a) ceases to be within one of the long-term business categories, and

(b) comes within another of those categories,

the company is treated for the purposes of corporation tax on chargeable gains as if it had disposed of and immediately re-acquired the asset (or part) at that time for a consideration equal to the fair value of the asset (or part) at that time.

(2) The long-term business categories in question are—

(a) assets which are matched to BLAGAB liabilities of the company,

(b) assets which are matched to other long-term business liabilities of the company,

(c) assets which are held by the company for the purposes of any with-profits fund but which are not matched to its long-term business liabilities, and

(d) assets which are held for the purposes of the company's long-term business but which are not matched to its long-term business liabilities or held by it for the purposes of any with-profits funds.

(3) If the company has more than one with-profits fund within subsection (2), the assets which are held by it for the purposes of a particular fund but which are not matched to its long-term business liabilities are treated as assets within a separate long-term business category.

(4) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.

(5) If, at any time in a period of account of a UK life insurance company, an asset (or a part of an asset) held by the company—

(a) ceases to be within a category set out in subsection (6), and

(b) comes within the other category set out there,

the company is treated for corporation tax purposes as if it had disposed of and immediately re-acquired the asset (or part) for a consideration equal to the fair value of the asset (or part) at that time.

(6) The categories in question are—

(a) assets which are held for the purposes of the company's long-term business, and

(b) other assets.

60 Overseas life insurance companies: rule corresponding to s.59

(1) If, at any time in a period of account of an overseas life insurance company, an asset (or a part of an asset) held by the company—

(a) ceases to be within one of the UK long-term business categories, and

(b) comes within another of those categories,

the company is treated for the purposes of corporation tax on chargeable gains as if it had disposed of and immediately re-acquired the asset (or part) at that time for a consideration equal to the fair value of the asset (or part) at that time.

(2) The UK long-term business categories in question are—

(a) UK assets which are matched to BLAGAB liabilities of the company,

(b) UK assets which are matched to other long-term business liabilities of the company,

(c) UK assets which are held by the company for the purposes of any with-profits fund but which are not matched to its long-term business liabilities, and

(d) UK assets which are held for the purposes of the company's long-term business but which are not matched to its long-term business liabilities or held by it for the purposes of any with-profits funds.

(3) If the company has more than one with-profits fund within subsection (2)(c), the UK assets which are held by it for the purposes of a particular fund but which are not matched to its long-term business liabilities are treated as assets within a separate UK long-term business category.

(4) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.

(5) If, at any time in a period of account of an overseas life insurance company, an asset (or a part of an asset) held by the company—

(a) ceases to be within a category set out in subsection (6), and

(b) comes within another category set out there,

the company is treated for corporation tax purposes as if it had disposed of and immediately re-acquired the asset (or part) for a consideration equal to the fair value of the asset (or part) at that time.

(6) The categories in question are—

(a) UK assets which are held for the purposes of the company's long-term business,

(b) other UK assets, and

(c) assets which are held by the company but which are not UK assets.

(7) For the purposes of this section and section 61 assets (whether situated in the United Kingdom or elsewhere) are "UK assets" of an overseas life insurance company if, in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009, they fall to be attributed to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

61 Transfers of business and transfers within a group

(1) If—

(a) as a result of an insurance business transfer scheme transferring long-term business, a UK life insurance company or an overseas life insurance company acquires an asset, and

(b) the asset (or part of it) is within one of the applicable categories at the time immediately before the acquisition but is not within that category immediately after that time,

the transferor is treated for the purposes of corporation tax on chargeable gains as if it had disposed of and immediately re-acquired the asset (or part) at the time immediately before the acquisition.

(2) The consideration for this deemed disposal and re-acquisition is deemed to be equal to the fair value of the asset (or part) at that time.

(3) If the transferor or transferee is an overseas life insurance company, an asset (or part of an asset) is taken as being in the same category immediately before and after the acquisition if the asset (or part)—
   (a) was within one category immediately before the acquisition, and
   (b) was within a corresponding category immediately after the acquisition.

(4) Subsections (1) to (3) do not apply if all the income of the long-term business of either the transferor or transferee is chargeable to corporation tax on income under section 35 of CTA 2009.

(5) For the purposes of subsections (1) to (3) "the applicable categories" means—
   (a) in the case of a UK life insurance company, the long-term business categories or a category of assets which are not held for the purposes of its long-term business, and
   (b) in the case of an overseas life insurance company, the UK long-term business categories, a category of UK assets which are not held for the purposes of its long-term business or a category of assets which are held by it but which are not UK assets.

(6) If—
   (a) a UK life insurance company or an overseas life insurance company disposes of or acquires an asset (or part of an asset),
   (b) immediately before or after doing so, the asset (or part) is within the applicable category, and
   (c) section 171 or 173 of TCGA 1992 (transfers within a group) would, but for this subsection, apply to the disposal or acquisition,

that section does not apply to the disposal or acquisition.

(7) For the purposes of subsection (6) "the applicable category" means—
   (a) in the case of a UK life insurance company, the category of assets which are held for the purposes of its long term business, and
   (b) in the case of an overseas life insurance company, the category of UK assets which are held for the purposes of its long-term business.

Share pooling rules

62 UK life insurance companies

(1) If the assets of a UK life insurance company include securities of a class all of which would, but for this section, be regarded as one holding for the purposes of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—
   (a) so many of the securities as are BLAGAB securities are treated as a separate holding which falls within section 59(2)(a),
   (b) so many of the securities as are other long-term business securities are treated as a separate holding which falls within section 59(2)(b),

(c) so many of the securities as are held for the purposes of the company's long-term business but are not BLAGAB or other long-term business securities are treated as a separate holding which falls within section 59(2)(d), and

(d) any remaining securities are treated as a separate holding which is held otherwise than for the purposes of the company's long-term business.

(2) For this purpose—

"BLAGAB securities" means securities that are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts—

(a) the effecting of all of which constitutes the carrying on of basic life assurance and general annuity business, or

(b) the effecting of all but an insignificant proportion of which constitutes its carrying on, and

"other long-term business securities" means securities that are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts—

(a) the effecting of all of which constitutes the carrying on of other long-term business, or

(b) the effecting of all but an insignificant proportion of which constitutes its carrying on.

(3) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.

(4) In that case, if the company's assets include securities of a class all of which would, but for this section, be regarded as one holding for the purposes of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—

(a) so many of the securities as are held for the purposes of its long-term business are treated as a separate holding, and

(b) any remaining securities are treated as a separate holding which is held otherwise than for the purposes of its long-term business.

63 Overseas life insurance companies: rule corresponding to s.62

(1) If the assets of an overseas life insurance company include securities of a class all of which would, but for this section, be regarded as one holding for the purposes of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—

(a) so many of the securities as are UK BLAGAB securities are treated as a separate holding which falls within section 60(2)(a),

(b) so many of the securities as are other UK long-term business securities are treated as a separate holding which falls within section 60(2)(b),

(c) so many of the UK securities as are held for the purposes of the company's long-term business but are not UK BLAGAB or other UK long-term business securities are treated as a separate holding which falls within section 60(2)(d),

(d) any remaining UK securities are treated as a separate holding which is held otherwise than for the purposes of the company's long-term business, and

(e) any securities which are held by the company but which are not UK securities are treated as a separate holding.

(2) For this purpose—

"UK BLAGAB securities" means UK securities that are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts—

(a) the effecting of all of which constitutes the carrying on of basic life assurance and general annuity business, or

(b) the effecting of all but an insignificant proportion of which constitutes its carrying on, and

"other UK long-term business securities" means UK securities that are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts—

(a) the effecting of all of which constitutes the carrying on of other long-term business, or

(b) the effecting of all but an insignificant proportion of which constitutes its carrying on.

(3) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.

(4) In that case, if the company's assets include securities of a class all of which would, but for this section, be regarded as one holding for the purposes of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—

(a) so many of the securities as are UK securities held for the purposes of its long-term business are treated as a separate holding,

(b) any remaining UK securities are treated as a separate holding which is held otherwise than for the purposes of its long-term business, and

(c) any securities which are held by the company but which are not UK securities are treated as a separate holding.

(5) For the purposes of this section securities (whether situated in the United Kingdom or elsewhere) are "UK securities" of an overseas life insurance company if, in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009, they fall to be attributed to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

64 Sections 62 and 63: supplementary

(1) The applicable pooling rules also apply if the assets of the company in question include securities of a class and but for this section—

(a) some of them would be regarded as a 1982 holding for the purposes of corporation tax on chargeable gains, and

(b) the rest of them would be regarded as a section 104 holding for those purposes.

(2) "The applicable pooling rules" means the pooling rules set out in—

(a) section 62(1)(a) to (d) and (4)(a) and (b), and

(b) section 63(1)(a) to (e) and (4)(a) to (c).

(3) In applying the applicable pooling rules in a case within subsection (1)—
(a) the reference in any of the paragraphs in section 62(1) or (4) or 63(1) or (4) to a separate holding is to be read, where necessary, as a reference to a separate 1982 holding and a separate section 104 holding, and
(b) the questions whether that reading is necessary for a paragraph and, if it is, how many securities falling within the paragraph constitute each of the two holdings are determined in accordance with paragraph 12 of Schedule 6 to FA 1990 and the identification rules applying on any subsequent acquisitions and disposals.

(4) If the applicable pooling rules apply, section 105 of TCGA 1992 has effect as if securities regarded as included in different holdings as a result of those rules were securities of different kinds.

(5) In this section—
"1982 holding" has the same meaning as in section 109 of TCGA 1992, and
"section 104 holding" has the same meaning as in section 104(3) of TCGA 1992.

(6) In this section and sections 62 and 63 "securities" means—
(a) shares,
(b) securities of a company, and
(c) any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

Long-term business fixed capital

65 Assets forming part of long-term business fixed capital

For the purposes of this Chapter assets that form part of the long-term business fixed capital of an insurance company are to be regarded as assets held by the company otherwise than for the purposes of its long-term business.

CHAPTER 9

PROPERTY BUSINESSES

66 Separate property businesses for BLAGAB property etc

(1) This section modifies the application of the rules in sections 208 and 209 of CTA 2009 (basic meaning of UK and overseas property business) in the case of an insurance company.

(2) The company is treated as carrying on separate UK property businesses or overseas property businesses in accordance with the following provisions.

(3) The exploitation of land held otherwise than for the purposes of the company's long-term business is treated as a separate business from the exploitation of land held for those purposes.

(4) In the case of the exploitation of land held for the purposes of the company's long-term business, each of the following is treated as a separate business—
(a) the exploitation of land which is matched to BLAGAB liabilities of the company,

(b) the exploitation of land which is matched to other long-term business liabilities of the company, and

(c) the exploitation of land so far as it is not matched to long-term business liabilities of the company.

(5) In the case of land part of which is matched to a BLAGAB liability or other long-term business liability, only the part of the land in question is to count for the purposes of this section as matched to the liability in question.

(6) In this section "land" means any estate, interest or right in or over land.

67 Losses from property businesses where land held for long-term business

(1) This section applies if, in an accounting period, an insurance company makes a loss in any of its separate UK property businesses or overseas property businesses within section 66(4).

(2) The provisions of Chapter 4 of Part 4 of CTA 2010 (loss relief: property businesses) do not apply to the loss.

(3) So far as the loss is referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, it is treated for the purposes of section 22 as a deemed BLAGAB management expense for the accounting period.

(4) If the company has more than one separate property businesses within section 66(4), then for the purposes of subsection (3) the loss in question is taken to be the total net loss after—

(a) setting the losses from the businesses which are referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, against

(b) the profits from the businesses which are so referable.

CHAPTER 10

RELIEF FOR BLAGAB TRADE LOSSES ETC

The reliefs

68 Relief for BLAGAB trade losses against total profits

(1) Section 37 of CTA 2010 (relief for trade losses against total profits) is to apply in relation to a BLAGAB trade loss for an accounting period as it applies in relation to any other loss made in a trade for an accounting period.

(2) Subsection (1) applies despite the fact that, had there been a BLAGAB trade profit for the accounting period, that profit would not have been charged to tax under section 35 of CTA 2009 and the I - E rules would have been applicable instead.

69 Carry forward of BLAGAB trade losses against subsequent profits

(1) This section applies if an insurance company carrying on basic life assurance and general annuity business makes a BLAGAB trade loss for an accounting period.

(2) Relief is available under this section for that part of the BLAGAB trade loss ("the unrelieved loss") for which no relief is given under section 37 of CTA 2010 (as applied by section 68).

(3) The relief for the unrelieved loss is to be given as follows.

(4) The unrelieved loss is to be carried forward to subsequent accounting periods (so long as the company continues to carry on basic life assurance and general annuity business).

(5) For the purposes of—
   (a) section 36(5) (minimum profits charge), and
   (b) section 47(3) (policyholders' rate of tax),

the BLAGAB trade profit of any such period is reduced by the unrelieved loss so far as that loss cannot be used under this subsection to reduce the BLAGAB trade profit of an earlier period.

(6) Relief under this section is subject to restriction or modification in accordance with section 137(7) of CTA 2010 and other applicable provisions of the Corporation Tax Acts.

70 Group relief

(1) Part 5 of CTA 2010 (group relief) is to apply in relation to a BLAGAB trade loss for an accounting period as it applies in relation to any other loss made in a trade for an accounting period.

(2) Subsection (1) applies despite the fact that, had there been a BLAGAB trade profit for the accounting period, that profit would not have been charged to tax under section 35 of CTA 2009 and the I - E rules would have been applicable instead.

(3) If for an accounting period an insurance company has—
   (a) an I - E profit, and
   (b) losses or other amounts within section 99(1)(d) to (g) of CTA 2010,

the company's gross profits of the accounting period for the purposes of section 105 of that Act (restriction on surrender of those amounts) are not to include the policyholders' share of the I - E profit (as determined for the purposes of section 45).

Restrictions

71 Restrictions in respect of non-trading deficit

The amount of a BLAGAB trade loss for an accounting period of an insurance company that is available for relief under—
   (a) section 37 of CTA 2010 (as applied by section 68),
   (b) section 69, or
   (c) Part 5 of CTA 2010 (group relief) (as applied by section 70),

is to be reduced by the amount of any non-trading deficit which the company has for the accounting period under section 388 of CTA 2009 (loan relationships and derivative contracts).

72 No relief against policyholders' share of I - E profit

(1) This section applies in the case of an insurance company carrying on basic life assurance and general annuity business.

(2) None of the following reliefs are to be given against the policyholders' share of any I - E profit of the company for any accounting period (as determined for the purposes of section 45).

(3) The reliefs in question are—
  (a) relief under section 37 of CTA 2010 (including as applied by section 68),
  (b) relief under Chapter 2 or 4 of Part 4 of CTA 2010 (loss relief),
  (c) relief under Part 5 of CTA 2010 (group relief) (including as applied by section 70),
  (d) relief in respect of any qualifying charitable donation,
  (e) relief in respect of any amount representing a non-trading deficit on the company's loan relationships calculated otherwise than by reference to debits and credits referable, in accordance with Chapter 4, to its basic life assurance and general annuity business.

(4) If the company's basic life assurance and general annuity business is mutual business, subsection (3)(d) does not apply.

CHAPTER 11

TRANSFERS OF LONG-TERM BUSINESS

Transfers of BLAGAB

73 Relief for transferee in respect of transferor's BLAGAB expenses

(1) This section applies if, under an insurance business transfer scheme, there is a transfer of basic life assurance and general annuity business (or any part of that business) from one insurance company to another.

(2) Acquisition expenses relief is to be given to the transferee for any acquisition expenses for which, on the assumptions set out below, that relief would have been given to the transferor for an accounting period starting after the date of the transfer.

(3) "Acquisition expenses relief" means relief given, in accordance with section 25 (spreading of acquisition expenses), at step 3 in section 22.

(4) For the transferee's first accounting period ending after the date of the transfer, acquisition expenses relief for the acquisition expenses within subsection (2) is to be determined as if that period had started with the date after the date of the transfer.

(5) Relief at step 5 in section 22 is to be given to the transferee for any excess BLAGAB expenses for which, on the assumptions set out below, that relief would have been given to the transferor for an accounting period starting after the date of the transfer.

(6) For the purposes of this section it is to be assumed that—
  (a) the transferor had continued to carry on the transferred business after the transfer, and

(b) the transferor had an accounting date ending with the date of the transfer (if that would not otherwise be the case).

(7) If the transfer is a transfer of part of the business, references in this section to any expenses are to be read as references to the appropriate part of the expenses.

(8) Any relief given to the transferee as a result of this section is instead of any relief that would otherwise have been given to the transferor.

74 Intra-group transfers and demutualisation

(1) This section applies if—

(a) under an insurance business transfer scheme, there is a transfer of basic life assurance and general annuity business (or any part of that business) from one insurance company to another, and

(b) the transfer is a relevant intra-group transfer or is in connection with a demutualisation.

(2) A transfer is a "relevant intra-group transfer" if—

(a) the transferor and transferee are members of the same group of companies when the transfer occurs, and

(b) the transferee is within the charge to corporation tax in relation to the transfer.

(3) A transfer is "in connection with a demutualisation" if—

(a) it is for the purposes of the conversion of a company (under the law of any territory) from one without share capital to one with share capital (without any change of legal personality), or

(b) it is a transfer by a mutual life insurance company of all, or substantially all, of its basic life assurance and general annuity business to an insurance company which is not a mutual life insurance company,

and for the purposes of paragraph (b) a "mutual life insurance company" means an insurance company which carries on mutual life assurance business.

(4) For the purpose of calculating the BLAGAB trade profit or loss of the transferor for any accounting period, no amount is to be brought into account in respect of the transfer.

(5) For the purpose of calculating the BLAGAB trade profit or loss of the transferee for any accounting period, the amount to be brought into account in respect of the transfer is to be—

(a) the amount that the transferor would have brought into account in respect of the transfer apart from this section, plus

(b) the amount that the transferee would have brought into account in respect of the transfer apart from this section.

(6) For the purposes of this section an amount of expenses is to be treated as a negative figure (and, accordingly, a negative figure is to be treated as an amount of expenses).

(7) If this section applies, the provisions of Part 4 of TIOPA 2010 (transfer pricing) do not apply.

75 Transfers between non-group companies: present value of in-force business

(1) This section applies if—

(a) under an insurance business transfer scheme, there is a transfer of basic life assurance and general annuity business (or any part of that business) from one insurance company to another,

(b) the transferor and transferee are not members of the same group of companies when the transfer occurs,

(c) the accounts of the transferee drawn up in accordance with generally accepted accounting practice include an asset that represents, as at the time of the transfer, the value of future profits arising from the business (or part of the business) transferred, and

(d) the asset is not one to which Part 8 of CTA 2009 (intangible fixed assets) applies.

(2) Amounts in respect of the asset that are debited or credited in accounts drawn up by the company in accordance with generally accepted accounting practice are to be taken into account in calculating the BLAGAB trade profit or loss of the transferee.

(3) For the purposes of subsection (1)(c) no account is to be taken of an asset so far as it is regarded for accounting purposes as internally-generated.

(4) For the purposes of subsection (2) the question whether an amount is debited or credited in the accounts is determined as if section 84(2) applied with the omission of paragraph (b).

(5) This section does not apply in any case where section 74(5) applies in relation to the transferee.

(6) Nothing in this section is to apply in relation to transfers taking place before 1 January 2013.

Transfers of non-BLAGAB long-term business

76 Application of ss. 74 and 75 to transfers of non-BLAGAB long-term business

(1) This section applies if, under an insurance business transfer scheme, there is a transfer of non-BLAGAB long-term business (or any part of that business) from one insurance company to another.

(2) If, for the purposes of section 74, the transfer—

(a) is a relevant intra-group transfer, or

(b) is in connection with a demutualisation,

section 74 applies for the purpose of calculating for corporation tax purposes the profits of the non-BLAGAB long-term business of the transferor or transferee for any accounting period.

(3) If the conditions in section 75(1)(b) to (d) are met in the case of the transfer, section 75 applies for the purpose of calculating for corporation tax purposes the profits of the non-BLAGAB long-term business of the transferee for any accounting period.

Transfers of long-term business: anti-avoidance

77 Anti-avoidance

(1) This section applies if—

(a) under an insurance business transfer scheme, there is a transfer from one insurance company to another of basic life assurance and general annuity business (or any part of that business) or non-BLAGAB long-term business (or any part of that business), and

(b) the main purpose, or one of the main purposes, of a company ("C") in entering into one or more of the arrangements included in the insurance business transfer arrangements is an unallowable purpose.

(2) The "insurance business transfer arrangements" consist of—

(a) the insurance business transfer scheme under which the transfer occurs, and

(b) any arrangement with a connection (direct or indirect) to that scheme.

(3) A purpose is an "unallowable purpose" if—

(a) it consists of securing a tax advantage for C or any other company, or

(b) it is not amongst C's business or other commercial purposes.

(4) There are to be made such adjustments of any income or gains chargeable to corporation tax as are required to negate any tax advantage arising to C or any other company so far as referable to the unallowable purpose on a just and reasonable apportionment.

(5) For the purposes of this section—

(a) "arrangement" includes any agreement, scheme, transaction or understanding (whether or not legally enforceable), and

(b) section 1139 of CTA 2010 (meaning of "tax advantage") applies, but reading references to tax as references to corporation tax.

(6) If C is not within the charge to corporation tax in respect of a part of its activities, C's business or other commercial purposes for the purposes of this section do not include the purposes of that part of its activities.

78 Clearance procedure

(1) Section 77 does not apply if, on an application by C, the HMRC Commissioners give a notice under this section stating that they are satisfied—

(a) that C's main purpose in entering into the arrangements included in the insurance business transfer arrangements is not an unallowable purpose or none of C's main purposes in entering into those arrangements is an unallowable purpose, or

(b) that the transferor and transferee are members of the same group of companies when the transfer occurs and that the transfer produces no tax advantage for the group.

(2) For this purpose the transfer produces no tax advantage for the group if—

(a) as a result of the insurance business transfer arrangements, there is an increase in the liability to corporation tax of one or more companies which are members of the group, and

(b) the amount (or total amount) of that increase is at least equal to the amount (or total amount) of the reduction in the liability to corporation

tax of the transferor or transferee that arises as a result of those arrangements.

79 Section 78: supplementary

(1) An application under section 78 must—
  (a) be in writing, and
  (b) contain particulars of the insurance business transfer arrangements.

(2) The HMRC Commissioners may by notice require C to provide further particulars in order to enable them to determine the application.

(3) A requirement may be imposed under subsection (2) within 30 days of the receipt of the application or of any further particulars required under that subsection.

(4) If a notice under that subsection is not complied with within 30 days or such longer period as the HMRC Commissioners may allow, they need not proceed further on the application.

(5) The HMRC Commissioners must give notice to C of their decision on an application under section 78—
  (a) within 30 days of receiving the application, or
  (b) if they give a notice under subsection (2), within 30 days of that notice being complied with.

(6) If any particulars provided under this section do not fully and accurately disclose all facts and considerations material for the decision of the HMRC Commissioners, any resulting notice under section 78 is void.

Interpretation

80 Meaning of "group" of companies

For the purposes of this Chapter whether or not at any time companies are members of the same group of companies is to be determined in accordance with section 170(2) to (11) of TCGA 1992.

CHAPTER 12

DEFINITIONS

81 Meaning of "BLAGAB trade profit" and "BLAGAB trade loss"

(1) In relation to the carrying on by an insurance company of basic life assurance and general annuity business, this section explains for the purposes of this Part what is meant by—
  (a) the "BLAGAB trade profit" of the company, and
  (b) the "BLAGAB trade loss" of the company.

(2) The company has a "BLAGAB trade profit" for an accounting period if, calculated in accordance with the ordinary trading rules, there are profits of that business for the accounting period that, but for sections 14 and 15, would be chargeable to corporation tax on income under section 35 of CTA 2009 (charge to tax on trade profits).

(3) The amount of the BLAGAB trade profit is the amount of those profits that, but for those sections, would be so chargeable.

(4) The company has a "BLAGAB trade loss" for an accounting period if, calculated in accordance with the ordinary trading rules, the company makes a loss in that business for the accounting period in a case where, had there been profits, they would, but for those sections, have been so chargeable.

(5) The ordinary trading rules have effect for the purpose of calculating the company's BLAGAB trade profit or loss subject to the provision made by—
 (a) sections 49 to 51 (policyholder tax),
 (b) Chapter 6 (trade calculation rules applying to long-term business), and
 (c) sections 74 and 75 (transfers of BLAGAB).

(6) For the purposes of this section "the ordinary trading rules" means the rules for calculating the profits of a trade for the purposes of the charge to corporation tax on income under section 35 of CTA 2009.

82 Meaning of "the long-term business fixed capital"

(1) This section explains for the purposes of this Part what is meant by an asset forming part of "the long-term business fixed capital" of an insurance company.

(2) An asset forms part of "the long-term business fixed capital" of the company if—
 (a) it is held for the purposes of its long-term business, and
 (b) it is a structural asset of that business.

(3) An asset is a "structural asset" of a company's long-term business if the asset is of a description specified in regulations made by the Treasury.

83 Meaning of assets that are "matched to" liabilities

(1) This section—
 (a) defines for the purposes of this Part what is meant by an asset that is matched to a BLAGAB liability or other long-term business liability and what is meant by the whole or a part of an asset being matched, and
 (b) explains for those purposes how to work out the part of an asset that is matched to a BLAGAB liability or other long-term business liability.

(2) An asset is matched to a BLAGAB liability if, in accordance with the applicable method, some or all of the income or other return arising from that particular asset is specifically referable to the company's basic life assurance and general annuity business.

(3) An asset is matched to another long-term business liability if, in accordance with the applicable method, some or all of the income or other return arising from that particular asset is specifically referable to the company's non-BLAGAB long-term business.

(4) The whole of an asset is matched to a BLAGAB liability if, in accordance with the applicable method, the whole of the income or other return arising from that particular asset is specifically referable to the company's basic life assurance and general annuity business.

(5) A part of an asset is matched to a BLAGAB liability or other long-term business liability if, in accordance with the applicable method, part of the income or other return arising from that particular asset is specifically referable to the company's basic life assurance and general annuity business or (as the case may be) its non-BLAGAB long-term business.

(6) A part of an asset is matched to a BLAGAB liability or other long-term business liability in proportion to the income or other return arising from that particular asset that, in accordance with the applicable method, is specifically referable to the company's basic life assurance and general annuity business or (as the case may be) its non-BLAGAB long-term business.

(7) For the purposes of this section "the applicable method"—
   (a) in relation to the company's basic life assurance and general annuity business, means the method adopted for the purposes of section 41 which has effect in relation to times in the period of account falling before the disposal in question, and
   (b) in relation to the company's non-BLAGAB long-term business, means the method adopted for the purposes of section 58 which has effect in relation to times in the period of account falling before the disposal in question.

(8) For the purposes of this section any income or other return arising from an asset is to be regarded as specifically referable to a category of business in accordance with the applicable method in so far as that method is adopted in relation to the income or other return in consequence of a contractual requirement or other obligation imposed on the company relating to the category of business in question.

84 Minor definitions

(1) In this Part—

"closing", in relation to a period of account, means the position at the end of the period of account,

"derivative contracts" has the same meaning as in Part 7 of CTA 2009,

"fair value"—
   (a) in relation to money, means its amount, and
   (b) in relation to other assets, means the amount which an independent person selling the assets would get,

"HMRC Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"insurance business transfer scheme" means—
   (a) a scheme falling within section 105 of FSMA 2000, including an excluded scheme falling within Case 2, 3, 4 or 5 of subsection (3) of that section, or
   (b) a scheme which would fall within that subsection but for subsection (1)(b) of that section,

"insurance special purpose vehicle" means an undertaking which—
   (a) assumes risks from insurance or re-insurance undertakings, and
   (b) fully funds its exposures to those risks through the proceeds of a debt issue or other financing mechanism where the repayment rights of the providers of the mechanism are subordinated to the re-insurance obligations of the undertaking,

"liabilities", in relation to an insurance company, means—

(a) the mathematical reserves of the company as determined in accordance with section 1.2 of the Insurance Prudential Sourcebook, and

(b) liabilities of the company (whose value falls to be determined in accordance with section 1.3 of the General Prudential Sourcebook) which arise from deposit back arrangements,

"overseas life insurance company" means an insurance company which is not resident in the United Kingdom but which carries on life assurance business in the United Kingdom through a permanent establishment there,

"re-insurance" includes retrocession,

"UK life insurance company" means an insurance company other than an overseas life insurance company,

"with-profits fund" has the meaning given by the Prudential Sourcebook (Insurers).

(2) In this Part any reference to the debiting or crediting of an amount in accounts drawn up by an insurance company is a reference to bringing in the amount as a debit or credit in—

(a) the company's profit and loss account or income statement, or

(b) a statement of total recognised gains and losses, statement of changes in equity or other statement of items in calculating the company's profits and losses for accounting purposes.

(3) For this purpose—

(a) "credit" means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account, and

(b) "debit" means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.

(4) In this section—

"deposit back arrangements" means arrangements by which an amount is deposited by the re-insurer under a contract of re-insurance with the cedant,

"the Insurance Prudential Sourcebook" means the Insurance Prudential Sourcebook made by the Financial Services Authority under FSMA 2000,

"the General Prudential Sourcebook" means the General Prudential Sourcebook made by the Financial Services Authority under FSMA 2000, and

"the Prudential Sourcebook (Insurers)" means the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under FSMA 2000.

85 Abbreviations

(1) In this Part—

"FSMA (Regulated Activities) Order 2001" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and

"FSMA 2000" means the Financial Services and Markets Act 2000.

(2) For abbreviations of other Acts, see [clause of Bill equivalent to section 92 of FA 2011].

86 Index of defined terms, etc

(1) In this Part the following expressions are defined or otherwise explained by the provisions indicated—

Expression	*Where explained*
basic life assurance and general annuity business (abbreviated to "BLAGAB")	sections 3 and 13(5)
BLAGAB trade loss	section 81
BLAGAB trade profit	section 81
closing	section 84(1)
contract of insurance	section 10
contract of long-term insurance	section 10
debiting or crediting an amount in accounts drawn up by a company	section 84(2) and (3)
derivative contracts	section 84(1)
excess BLAGAB expenses	section 19
fair value	section 84(1)
HMRC Commissioners	section 84(1)
I - E profit	section 19
the I - E rules	section 16(1) and (2)
insurance business transfer scheme	section 84(1)
insurance company	section 11
insurance special purpose vehicle	section 84(1)
liabilities	section 84(1)
life assurance business	section 2
long-term business	section 9(1)
long-term business fixed capital	section 82
matched (in case of assets matched to a BLAGAB liability or other long-term business liability)	section 83
non-BLAGAB long-term business	sections 12 and 13
non-taxable distributions	section 37(4) and (5)
overseas life insurance company	section 84(1)
PHI business	section 9(2)

Expression	*Where explained*
re-insurance	section 84(1)
UK life insurance company	section 84(1)
with-profits fund	section 84(1)

(2) The expressions in the above table have the same meaning in any other provision of the Corporation Tax Acts that makes special provision in relation to—
(a) insurance companies,
(b) any category of life assurance business carried on by insurance companies, or
(c) long-term business carried on by insurance companies.

CHAPTER 13

SUPPLEMENTARY

Powers conferred on Treasury or HMRC Commissioners

87 Power to amend Part 1 etc

(1) If, in consequence of the exercise of any power under FSMA 2000, they consider it expedient to do so, the Treasury may by order amend—
(a) this Part, or
(b) any other provision of the Corporation Tax Acts that makes special provision in relation to insurance companies, any category of life assurance business carried on by insurance companies or long-term business carried on by insurance companies.

(2) An order under subsection (1) may be made so as to have effect in relation to—
(a) any period ending on or before the day on which the order is made, or
(b) any period beginning before and ending after that day,
but only if the power under FSMA 2000 has effect in relation to the period.

(3) An order under subsection (1) may—
(a) make different provision for different cases or circumstances, and
(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

88 Power to amend definition of "insurance business transfer scheme" etc

(1) If, in consequence of any amendment of section 105 of FMSA 2000 (insurance business transfer schemes), they consider it expedient to do so, the Treasury may by order amend—
(a) the definition of "insurance business transfer scheme" given by section 84, or
(b) any other provision of the Corporation Tax Acts that makes special provision in relation to insurance companies, any category of life

assurance business carried on by insurance companies or long-term business carried on by insurance companies.

(2) An order under subsection (1) may be made so as to have effect in relation to—

(a) any period ending on or before the day on which the order is made, or

(b) any period beginning before and ending after that day,

but only if the amendment of section 105 of FMSA 2000 has effect in relation to that period.

(3) An order under subsection (1) may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

89 Power to modify provisions applying to overseas life insurance companies

(1) The Treasury may by regulations provide for—

(a) the Corporation Tax Acts, and

(b) enactments made under those Acts,

to have effect in relation to overseas life insurance companies subject to such exceptions and other modifications as may be prescribed by the regulations.

(2) The power under subsection (1) includes power to make provision in place of, and in consequence to repeal or revoke, any provision in relation to overseas life insurance companies which is made—

(a) by or under this Part, or

(b) by or under any other provision of the Corporation Tax Acts.

(3) Regulations under subsection (1) may be made so as to have effect in relation to any period ending on or after the day on which the regulations are made.

(4) Regulations under subsection (1) may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(5) The power to make consequential provision conferred by subsection (4)(b) includes power to amend any provision made by or under any Act.

90 Orders and regulations

(1) Any power of the Treasury or HMRC Commissioners to make any order or regulations under this Part is exercisable by statutory instrument.

(2) Any statutory instrument containing any order or regulations made by the Treasury or HMRC Commissioners under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

Minor and consequential amendments and transitional provision

91 Minor and consequential amendments

Schedule 1 contains minor and consequential amendments.

92 Transitional provision

Schedule 2 makes transitional provision in connection with the coming into force of this Part.

Commencement etc

93 Commencement

(1) The provisions of this Part (other than section 94) have effect in relation to accounting periods of companies beginning on or after 1 January 2013.

(2) Subsection (1) is subject to the operation of any provision of Schedule 2 in relation to times before that date.

94 Accounting periods straddling 1 January 2013

(1) If, apart from this section, an insurance company would have had an accounting period beginning before 1 January 2013 and ending on or after that date, the accounting period of the company is to end instead on 31 December 2012.

(2) Accordingly, the rules in section 10 of CTA 2009 (end of accounting period) are subject to this section.

PART 2

FRIENDLY SOCIETIES CARRYING ON LONG-TERM BUSINESS

Outline of provisions of Part

95 Overview

(1) This Part makes special provision for corporation tax purposes in relation to long-term and other business carried on by friendly societies.

(2) Sections 96 and 97 contain provision for applying provisions of the Corporation Tax Acts relating to insurance companies so that they also apply to friendly societies, subject to provision made by regulations.

(3) Sections 98 to 108 make provision for, and in connection with, a special exemption from corporation tax for BLAGAB or eligible PHI business.

(4) Sections 109 to 114 make provision for, and in connection with, a further exemption from corporation tax for other business.

(5) The remainder of the Part contains—
  (a) provision in relation to certain transfer schemes (see section 115),
  (b) provision for an exemption from corporation tax for unregistered friendly societies (see section 116), and
  (c) provision in relation to definitions and other supplementary material (see sections 117 to 124).

Long-term business rules to apply to friendly societies

96 Friendly societies subject to same basic rules as mutual insurers

(1) The Corporation Tax Acts apply to—
(a) life assurance business carried on by friendly societies, and
(b) other long-term business carried on by friendly societies,
in the same way as they apply respectively to mutual life assurance business carried on by insurance companies and other long-term business carried on by insurance companies.

(2) Subsection (1) does not apply to business which is exempt BLAGAB or eligible PHI business.

(3) The Treasury may by regulations provide that the Corporation Tax Acts as applied by subsection (1) have effect subject to such exceptions or other modifications as may be prescribed by the regulations.

(4) The regulations may require any part of any business to be treated as a separate business.

(5) The regulations may make provision having retrospective effect.

(6) The regulations may—
(a) make different provision for different cases or circumstances, and
(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

97 Friendly societies subject to transfer of business rules

(1) In this section "the transfer of business rules" means—
(a) Chapter 11 of Part 1, and
(b) any other provisions of the Corporation Tax Acts that apply on the transfer from an insurance company to another insurance company of the whole or part of its life assurance business or of its other long-term business.

(2) The transfer of business rules apply in the same way—
(a) on the transfer of the whole or part of the business of a friendly society to another friendly society,
(b) on the amalgamation of friendly societies,
(c) on the transfer of the whole or part of the business of a friendly society to a company which is not a friendly society,
(d) on the conversion of a friendly society into a company which is not a friendly society, and
(e) on the transfer of the whole or part of the business of an insurance company to a friendly society.

(3) The Treasury may by regulations provide that the transfer of business rules as applied by subsection (2) have effect subject to such exceptions or other modifications as may be prescribed by the regulations.

(4) Regulations under this section may make provision having retrospective effect.

(5) Regulations under this section may—

(a) make different provision for different cases or circumstances, and
(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

Exempt BLAGAB or eligible PHI business

98 Exemption for certain BLAGAB or eligible PHI business

(1) A friendly society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits arising from exempt BLAGAB or eligible PHI business.

(2) The exemption applies only if the society makes a claim.

(3) For the meaning of "BLAGAB or eligible PHI business", see section 99.

(4) For the meaning of "exempt" BLAGAB or eligible PHI business, see section 100.

99 Meaning of "BLAGAB or eligible PHI business"

(1) In this Part "BLAGAB or eligible PHI business" means—
(a) basic life assurance and general annuity business, and
(b) any PHI business so far as consisting of the effecting or carrying out of qualifying contracts,
but see subsections (3) and (4) for some qualifications.

(2) A contract is a "qualifying" contract if—
(a) it is made before 1 September 1996, or
(b) it is made on or after that date and it also falls within paragraph I, II or III of Part 2 of Schedule 1 to the FSMA (Regulated Activities) Order 2001.

(3) A contract made before 1 September 1996 which effects a policy affording provision for injury, sickness or other infirmity is to be regarded for the purposes of this Part as forming part of "BLAGAB or eligible PHI business" only if—
(a) the policy also affords assurance for a gross sum independent of injury, sickness or other infirmity,
(b) at least 60% of the total premiums are attributable to the provision afforded during injury, sickness or other infirmity, and
(c) there is no bonus or addition which may be declared or accrue upon the assurance of the gross sum.

(4) Business is not to be regarded as "BLAGAB or eligible PHI business" of a friendly society for the purposes of this Part so far as it consists of the assurance of any annuity the consideration for which consists of sums obtainable—
(a) on the maturity, or
(b) on the surrender,
of any other policy of assurance issued by the society which forms part of its exempt BLAGAB or eligible PHI business.

100 Meaning of "exempt" BLAGAB or eligible PHI business

(1) In this Part "exempt" BLAGAB or eligible PHI business means BLAGAB or eligible PHI business other than non-qualifying business.

(2) Business is "non-qualifying" so far as it consists of—
- (a) the assurance of gross sums, or the granting of annuities, which meet the conditions set out in the following table (which vary according to the date on which the contracts in question were made), or
- (b) the effecting or carrying out of contracts for the assurance of gross sums which are made on or after 20 March 1991 and which are expressed at the outset not to be made in the course of exempt BLAGAB or eligible PHI business.

(3) This is the table mentioned above—

Contracts to which assurance or annuities relate	*Applicable limit for premiums or gross sums*	*Applicable limit for annuities*
Contracts made on or after 1 May 1995	Assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £270	Granting of annuities of annual amounts exceeding £156
Contracts made on or after 25 July 1991 but before 1 May 1995	Assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £200	Granting of annuities of annual amounts exceeding £156
Contracts made on or after 1 September 1990 but before 25 July 1991	Assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £150	Granting of annuities of annual amounts exceeding £156
Contracts made on or after 1 September 1987 but before 1 September 1990	Assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £100	Granting of annuities of annual amounts exceeding £156
Contracts made on or after 14 March 1984 but before 1 September 1987	Assurance of gross sums exceeding £750	Granting of annuities of annual amounts exceeding £156
Contracts made before 14 March 1984	Assurance of gross sums exceeding £500	Granting of annuities of annual amounts exceeding £104

(4) In applying the limits in the above table in relation to the total premiums payable in any period of 12 months (in the case of contracts made on or after 1 September 1987)—

(a) if the premiums are payable more frequently than annually, ignore an amount equal to 10% of the premiums, and
(b) ignore so much of any premium as is charged on the ground that an exceptional risk of death or disability is involved.

(5) In applying the limits in the above table in the case of contracts made on or after 1 September 1987, ignore any bonus or addition declared upon an annuity.

(6) In applying the limits in the above table in the case of contracts made before 1 September 1987, ignore any bonus or addition which is—
(a) declared upon the assurance of a gross sum or annuity, or
(b) accrues upon the assurance of a gross sum or annuity by reference to an increase in the value of any investments.

(7) In the case of a contract for the assurance of a gross sum under exempt BLAGAB or eligible PHI business made on or after 1 September 1987 but before 1 May 1995, there is a special rule if the amount payable by way of premium under the contract is increased as a result of a variation made—
(a) in the period beginning with 25 July 1991 and ending with 31 July 1992, or
(b) in the period beginning with 1 May 1995 and ending with 31 March 1996.

(8) The rule is that, in relation to any profits relating to the contract as varied, the contract is to be treated for the purposes of the above table as made at the time of the variation.

101 Societies with no provision for assuring gross sums exceeding £2,000 etc

(1) This section applies to a friendly society if its rules makes no provision for it to carry on BLAGAB or eligible PHI business, or other long-term business, consisting of—
(a) the assurance of gross sums exceeding £2,000, or
(b) the granting of annuities of annual amounts exceeding £416.

(2) The table in section 100 applies in relation to a friendly society to which this section applies as if, in the final row of that table—
(a) the reference to £500 were a reference to £2,000, and
(b) the reference to £104 were a reference to £416.

(3) If at any time a friendly society to which this section applies amends its rules so as to cease to be such a friendly society, any part of its BLAGAB or eligible PHI business which—
(a) relates to contracts made before that time, and
(b) immediately before that time was exempt BLAGAB or eligible PHI business,

continues to be exempt BLAGAB or eligible PHI business for the purposes of this Part.

(4) If at any time a friendly society to which this section does not apply amends its rules so as to become a friendly society to which this section applies, any part of its BLAGAB or eligible PHI business which—
(a) relates to contracts made before that time, and
(b) immediately before that time was not exempt BLAGAB or eligible PHI business,

continues not to be exempt BLAGAB or eligible PHI business for the purposes of this Part.

(5) If at any time a friendly society to which this section does not apply acquires by way of transfer of engagements or amalgamation from another friendly society any BLAGAB or eligible PHI business which—

(a) relates to contracts made before that time, and

(b) immediately before that time was exempt BLAGAB or eligible PHI business,

that business continues to be exempt BLAGAB or eligible PHI business for the purposes of this Part.

(6) If at any time a friendly society to which this section applies acquires by way of transfer of engagements or amalgamation from another friendly society any BLAGAB or eligible PHI business which—

(a) relates to contracts made before that time, and

(b) immediately before that time was not exempt BLAGAB or eligible PHI business,

that business continues not to be exempt BLAGAB or eligible PHI business for the purposes of this Part.

102 Transfers from insurance companies to friendly societies

(1) If at any time an insurance business transfer scheme transfers any long-term business to a friendly society, any BLAGAB or eligible PHI business which relates to contracts included in the transfer is subsequently not to be capable of being exempt BLAGAB or eligible PHI business for the purposes of this Part.

(2) This rule does not apply in relation to business relating to contracts to which section 103 applied immediately before the transfer had effect.

103 Transfers from friendly societies to insurance companies etc

(1) If at any time an insurance company acquires by way of transfer of engagements from a friendly society any BLAGAB or eligible PHI business which—

(a) relates to contracts made before that time, and

(b) immediately before that time was exempt BLAGAB or eligible PHI business,

that business continues to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.

(2) If at any time a friendly society ceases as a result of section 91 of FSA 1992 (conversion into company) to be registered under that Act, any part of its BLAGAB or eligible PHI business which—

(a) relates to contracts made before that time, and

(b) immediately before that time was exempt BLAGAB or eligible PHI business,

continues to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.

(3) If contracts constituting or forming part of the business of a company covered by this section are varied during an accounting period of the company so as to increase the premiums payable under them, the business relating to those

contracts is not exempt from corporation tax for that or any subsequent accounting period.

(4) For the purposes of the Corporation Tax Acts any part of a company's business which is exempt from corporation tax as a result of this section is to be treated as a separate business from any other business carried on by the company.

(5) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax as a result of this section, the Corporation Tax Acts have effect subject to such exceptions or other modifications as they consider appropriate.

(6) The regulations may make provision having retrospective effect.

(7) The regulations may—
 (a) make different provision for different cases or circumstances, and
 (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

104 Exception in case of breach of maximum benefits payable to members

(1) The exemption from corporation tax afforded by section 98, 101(3) or (5) or 103 does not apply in relation to so much of the profits arising to a friendly society or insurance company from any business as is attributable to a policy which—
 (a) is not a qualifying policy as a result of sub-paragraph (2) of paragraph 6 of Schedule 15 to ICTA and is not an excluded policy, and
 (b) would not be a qualifying policy as a result of that sub-paragraph if all excluded policies were ignored.

(2) A policy is an excluded policy if—
 (a) it is held otherwise than with the friendly society or insurance company, or
 (b) the person who has the contract effecting the policy acquired the rights under it on an assignment (or, in Scotland, assignation) otherwise than for money or money's worth.

(3) This section does not withdraw the exemption from corporation tax afforded by section 98, 101(3) or (5) or 103 in relation to profits arising from any part of a business relating to contracts made on or before 3 May 1966.

Exempt BLAGAB or eligible PHI business: benefits payable by friendly societies etc

105 Maximum benefits payable to members

(1) This section imposes restrictions on the entitlement of a person to have at any time outstanding contracts with any one or more friendly societies, registered branches or insurance companies ("relevant persons") which are—
 (a) for the assurance of gross sums under business which is afforded exemption from corporation tax under section 98, 101(3) or (5) or 103 (see subsections (2) and (3)), or
 (b) for the assurance by way of annuity under business which is afforded exemption from corporation tax under any of those provisions (see subsection (4)).

(2) In the case of contracts for the assurance of gross sums made before 1 September 1987, a person is not entitled to have outstanding at any time with relevant persons contracts which, taking them all together, are for the assurance of more than £750 (but see subsection (9)).

(3) In the case of contracts made for the assurance of gross sums at least one of which was made on or after that date, a person is not entitled to have outstanding at any time with relevant persons—

(a) contracts under which the total premiums payable in any period of 12 months exceed £270,

(b) contracts made before 1 May 1995 under which the total premiums payable in any period of 12 months exceed £200,

(c) contracts made before 25 July 1991 under which the total premiums payable in any period of 12 months exceed £150, or

(d) contracts made before 1 September 1990 under which the total premiums payable in any period of 12 months exceed £100.

(4) In the case of contracts for assurance by way of annuity, a person is not entitled to have at any time outstanding with relevant persons contracts which, taking them all together, are for the assurance of more than £156 (but see subsection (9)).

(5) In applying the limits in this section in relation to the total premiums payable in any period of 12 months—

(a) if the premiums are payable more frequently than annually, ignore an amount equal to 10% of the premiums, and

(b) ignore so much of any premium as is charged on the ground that an exceptional risk of death or disability is involved.

(6) In applying the limits in this section, ignore —

(a) any bonus or addition which is declared upon an assurance of a gross sum or annuity or which accrues upon an assurance of a gross sum or annuity by reference to an increase in the value of any investments,

(b) any policy of insurance or annuity contract by means of which the benefits to be provided under an occupational pension scheme (within the meaning of section 150(5) of FA 2004) are secured,

(c) any annuity contract which constitutes, or is issued or held in connection with, a registered pension scheme other than one within paragraph (b), and

(d) any increase in a benefit under a friendly society contract (within the meaning given by section 6 of the Decimal Currency Act 1969) resulting from the adoption of a scheme prescribed or approved under subsection (3) of that section.

(7) In the case of a contract for the assurance of a gross sum made on or after 1 September 1987 but before 1 May 1995, there is a special rule if the amount payable by way of premium under the contract is increased as a result of a variation made—

(a) in the period beginning with 25 July 1991 and ending with 31 July 1992, or

(b) in the period beginning with 1 May 1995 and ending with 31 March 1996.

(8) The rule is that, in relation to times when the contract has effect as varied, the contract is to be treated for the purposes of this section as made at the time of variation.

(9) If a person's outstanding contracts with relevant persons were contracts which were all made before 14 March 1984—
   (a) subsection (2) has effect as if the reference to £750 were a reference to £2,000, and
   (b) subsection (4) has effect as if the reference to £156 were a reference to £416.

106 Section 105: supplementary

(1) This section makes further provision for the purposes of section 105 the application of which depends on whether or not a friendly society is an old society.

(2) For the purposes of this Part an "old society" means—
   (a) a registered friendly society which was registered before 4 February 1966,
   (b) a registered friendly society which was registered in the period beginning with that date and ending with 3 May 1966 and which on or before 3 May 1966 carried on any life or endowment business (within the meaning of section 29 of FA 1966), or
   (c) an incorporated friendly society which, before its incorporation, was a registered friendly society within paragraph (a) or (b).

(3) In applying the limits in section 105(3) in relation to the total premiums payable in any period of 12 months, ignore £10 of the premiums payable under any contract made before 1 September 1987 by an old society.

(4) In applying the limits in section 105(3), the premiums under any contract for an annuity which was made before 1 June 1984 by a friendly society other than an old society are to be dealt with as if the contract were for the assurance of a gross sum.

(5) In applying the limits in section 105 in any case where a person has outstanding with relevant persons one or more contracts made after 13 March 1984 and one or more contracts made on or before that date, any contract for an annuity which was made before 1 June 1984 by a friendly society other than an old society is to be regarded—
   (a) as a contract for the annual amount concerned, and
   (b) as a contract for the assurance of a gross sum equal to 75% of the total premiums which would be payable under the contract if it were to run for its full term or, as the case may be, if the member concerned were to die at the age of 75.

107 Section 105: statutory declarations

A friendly society, registered branch or insurance company may require a person to make and sign a statutory declaration—
   (a) that the total amount assured under outstanding contracts entered into by that person with any one or more friendly societies, registered branches or insurance companies (taken together) does not exceed the limits set out in section 105, and

(b) that the total premiums under those contracts do not exceed those limits.

Exempt BLAGAB or eligible PHI business: directions to old societies

108 Directions given to old societies

(1) HMRC Commissioners may give a direction under this section to an old society.

(2) The Commissioners may give the direction if—

(a) the society begins to carry on exempt BLAGAB or eligible PHI business or, in their opinion, begins to carry on exempt BLAGAB or eligible PHI business on an enlarged scale or of a new character, and

(b) it appears to them, having regard to the restrictions placed on qualifying policies issued by friendly societies other than old societies by paragraphs 3(1)(b) and 4(3)(b) of Schedule 15 to ICTA, that for the protection of the revenue it is expedient to give the direction.

(3) The direction is that (and has the effect that) the society is to be treated for the purposes of this Part and Schedule 15 to ICTA as a friendly society other than an old society with respect to business carried on after the date of the direction.

(4) The society may appeal against the direction on the ground that—

(a) it has not begun to carry on business as mentioned in subsection (2)(a), or

(b) the direction is not necessary for the protection of the revenue.

(5) The appeal must be made within 30 days of the date on which the direction is given.

(6) If a registered friendly society in respect of which a direction is in force under this section becomes an incorporated friendly society, the direction continues to have effect, so that for the purposes of this Part and Schedule 15 to ICTA it is treated as a friendly society other than an old society.

Exemption for other business

109 Societies registered before 1 June 1973, etc

(1) A registered friendly society which is a qualifying society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits other than those arising from—

(a) life assurance business, or

(b) PHI business comprised in BLAGAB or eligible PHI business.

(2) A registered friendly society is a qualifying society if—

(a) it was registered before 1 June 1973 (but see section 113 for circumstances in which it ceases to be a qualifying society),

(b) it is registered on or after that date and its business is limited to the provision, in accordance with its rules, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of this section by HMRC Commissioners, or

(c) it is registered on or after that date but before 27 March 1974 and its rules limit the total amount which may be paid by a member by way of contributions and deposits to not more than £1 per month or such greater amount as HMRC Commissioners may authorise for the purposes of this section.

(3) For the purposes of this section a registered friendly society formed on the amalgamation of two or more friendly societies is treated as registered before 1 June 1973 if, at the time of amalgamation, each of the societies amalgamated was a qualifying society (but otherwise is treated as registered at that time).

(4) The exemption applies only if the society makes a claim.

110 Incorporated friendly societies

(1) An incorporated friendly society which is a qualifying society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits other than those arising from—

(a) life assurance business, or

(b) PHI business comprised in BLAGAB or eligible PHI business.

(2) An incorporated friendly society is a qualifying society if it falls within any of cases A to C (but see section 113 for circumstances in which it ceases to be a qualifying society).

(3) Case A is that, immediately before its incorporation, it was a registered friendly society which was a qualifying society within the meaning of section 109.

(4) Case B is that—

(a) it was formed otherwise than by the incorporation of a registered friendly society or the amalgamation of two or more friendly societies, and

(b) its business is limited to the provision, in accordance with its rules, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of this section by HMRC Commissioners.

(5) Case C is that—

(a) it was formed by the amalgamation of two or more friendly societies, and

(b) at the time of the amalgamation each of the societies being amalgamated was a qualifying society within the meaning of section 109 or this section.

(6) The exemption applies only if the society makes a claim.

(7) The exemption does not apply to any profits arising or accruing to the society from, or by reason of its interest in, a body corporate—

(a) which is a subsidiary of the society (within the meaning of FSA 1992), or

(b) of which the society has joint control (within the meaning of FSA 1992).

111 Transfers from friendly societies to insurance companies etc

(1) For the purposes of this Part "relevant other business" means any business other than—

(a) life assurance business, or

(b) PHI business comprised in BLAGAB or eligible PHI business.

(2) If—

(a) at any time an insurance company acquires by way of transfer of engagements from a friendly society any relevant other business, and

(b) immediately before that time the society was exempt from corporation tax on profits arising from that business as a result of section 109 or 110,

the insurance company is exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.

(3) If a friendly society—

(a) at any time ceases as a result of section 91 of FSA 1992 (conversion into company) to be registered under that Act, and

(b) immediately before that time the society was, as a result of section 109 or 110, exempt from corporation tax on profits arising from any relevant other business carried on by it,

the company into which the society is converted is exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.

(4) If during an accounting period of a company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on relevant other business relating to contracts made before the time of transfer or conversion, the company is not exempt from corporation tax as a result of this section for that or any subsequent accounting period.

(5) For the purposes of the Corporation Tax Acts any part of a company's business which is exempt from corporation tax as a result of this section is to be treated as a separate business from any other business carried on by the company.

(6) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax as a result of this section, the Corporation Tax Acts have effect subject to such exceptions or other modifications as they consider appropriate.

(7) The regulations may make provision having retrospective effect.

(8) The regulations may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

112 Transfers between friendly societies

(1) If—

(a) at any time a friendly society acquires by way of transfer of engagements or amalgamation from another friendly society any relevant other business, and

(b) immediately before that time the transferor was exempt from corporation tax on profits arising from that business as a result of section 109 or 110,

the transferee is exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.

(2) If during an accounting period of the transferee there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on relevant other business relating to contracts made before that time, the transferee is not exempt from corporation tax as a result of this section for that or any subsequent accounting period.

(3) If—
 (a) at any time a friendly society acquires by way of transfer of engagements or amalgamation from another friendly society any relevant other business, and
 (b) immediately before that time the transferor was not exempt from corporation tax on profits arising from that business as a result of section 109 or 110,

the transferee is not exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.

(4) The Treasury may by regulations provide that, where any part of the business of a friendly society is, or is not, exempt from corporation tax as a result of this section, the Corporation Tax Acts have effect subject to such exceptions or other modifications as they consider appropriate.

(5) The regulations may make provision having retrospective effect.

(6) The regulations may—
 (a) make different provision for different cases or circumstances, and
 (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(7) Nothing in this section applies in relation to transfers or amalgamations taking place before 21 July 2008.

113 Withdrawal of qualifying status

(1) HMRC Commissioners may give a direction under this section to—
 (a) a registered friendly society which is a qualifying society for the purposes of section 109 as a result of its registration before 1 June 1973, or
 (b) an incorporated friendly society which is a qualifying society for the purposes of section 110 as a result of falling within case A or C and whose business and rules are not of a kind mentioned in section 109(2)(b) or (c).

(2) The Commissioners may give the direction if—
 (a) the society begins to carry on relevant other business or, in their opinion, begins to carry on relevant other business on an enlarged scale or of a new character, and
 (b) it appears to them, having regard to the restrictions imposed by section 109 on registered friendly societies registered on or after 1 June 1973, that for the protection of the revenue it is expedient to give the direction.

(3) The direction is that (and has the effect that) the society ceases to be a qualifying society as from the date of the direction.

(4) The society may appeal against the direction on the ground that—

(a) it has not begun to carry on business as mentioned in subsection (2)(a), or

(b) the direction is not necessary for the protection of the revenue.

(5) The appeal must be made within 30 days of the date on which the direction is given.

114 Payments by non-qualifying societies treated as qualifying distributions

(1) This section applies if—

(a) a friendly society which is not a qualifying society makes a payment to a member in respect of the member's interest in the society,

(b) the payment is made in the course of relevant other business, and

(c) the payment exceeds the total amount of any sums paid by the member to the society by way of contributions or deposits after deducting from that total any relevant previous payment and any relevant earlier repayment.

(2) The excess is treated for the purposes of corporation tax and income tax as a qualifying distribution.

(3) In this section—

(a) the reference to a relevant previous payment is to the amount of any previous payment made by the society to the member in respect of the member's interest in the society, and

(b) the reference to a relevant earlier repayment is to the amount of any earlier repayment of sums paid by the member to the society by way of contributions or deposits.

(4) In the case of an incorporated friendly society which, immediately before its incorporation, was a registered friendly society which was not a qualifying society—

(a) references in this section to payments (or repayments) to or from the society include payments (or repayments) to or from the registered friendly society, but

(b) subsection (3)(a) does not apply to a payment made before 27 March 1974 or, if the registered friendly society was previously a qualifying society but ceased to be one as a result of a direction given to it under section 113(1)(a), a payment made on or before such later date as was specified in the direction.

(5) In the case of any other incorporated friendly society which was previously a qualifying society but ceased to be one as a result of a direction given to it under section 113(1)(b), subsection (3)(a) does not apply to a payment made on or before the date specified in the direction.

(6) In the case of a registered friendly society, subsection (3)(a) does not apply to—

(a) a payment made before 27 March 1974, or

(b) if the society was previously a qualifying society but ceased to be one as a result of a direction given to it under section 113(1)(a), a payment made on or before such later date as was specified in the direction.

(7) For the purposes of this section—

(a) a registered friendly society is not a qualifying society at any time if, at that time, it is not a qualifying society within the meaning of section 109, and

(b) an incorporated friendly society is not a qualifying society at any time if, at that time, it is not a qualifying society within the meaning of section 110.

Miscellaneous

115 Transfer schemes under s.6(5) of FSA 1992

(1) This section applies if assets of a branch of a registered friendly society have been identified in a scheme under section 6(5) of FSA 1992 (property, rights etc excluded from transfer to the society on its incorporation).

(2) In relation to any time after the incorporation of the society, the assets are to be treated for the purposes of the Tax Acts as assets of the society (and, accordingly, any corporation tax or income tax liability arising in respect of them is a liability of the society rather than of the branch).

(3) If, as a result of this section, corporation tax or income tax in respect of any of the assets becomes chargeable on and is paid by the society, the society may recover from the trustees in whom those assets are vested the amount of the tax paid.

116 Exemption for unregistered friendly societies

(1) A friendly society which is neither a registered friendly society nor an incorporated friendly society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits if its income does not exceed £160 a year.

(2) The exemption applies only if the society makes a claim.

Interpretation

117 Minor definitions

(1) In this Part—

"friendly society", without qualification, means (except in section 116) a registered friendly society or an incorporated friendly society,

"incorporated friendly society" means a society incorporated under FSA 1992,

"policy", in relation to BLAGAB or eligible PHI business, includes an instrument evidencing a contract to pay an annuity upon human life,

"registered branch" means the same as in FSA 1992 (and includes any branch that as a result of section 96(3) of FSA 1992 is treated as a registered branch), and

"registered friendly society" means the same as in FSA 1992 (and includes any society that as a result of section 96(2) of FSA 1992 is treated as a registered friendly society).

(2) Any other expression which is used in this Part and in Part 1 has the same meaning in this Part as in that Part.

(3) References in this Part to a friendly society include, in the case of a registered friendly society, references to any branch of that society.

(4) It is declared that for the purposes of this Part (except where provision to the contrary is made) a friendly society formed on the amalgamation of two or more friendly societies is treated as different from the amalgamated societies.

(5) A registered friendly society formed on the amalgamation of two or more friendly societies is treated for the purposes of this Part as registered not later than 3 May 1966 if at the time of the amalgamation—

(a) all the societies amalgamated were registered friendly societies eligible for the exemption conferred by section 98, and

(b) at least one of them was an old society,

or, if the amalgamation took place before 19 March 1985, the society was treated as registered not later than 3 May 1966 as a result of the proviso to section 337(4) of the Income and Corporation Taxes Act 1970.

(6) An incorporated friendly society formed on the amalgamation of two or more friendly societies is treated for the purposes of this Part as a society which, before its incorporation, was a registered friendly society registered not later than 3 May 1966 if at the time of the amalgamation—

(a) all the societies amalgamated were registered friendly societies eligible for the exemption conferred by section 98, and

(b) at least one of them was an old society.

118 Abbreviations

(1) In this Part—

"FSA 1992" means the Friendly Societies Act 1992, and

"FSMA (Regulated Activities) Order 2001" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(2) For abbreviations of other Acts, see [clause of Bill equivalent to section 92 of FA 2011].

119 Index of defined terms

In this Part the following expressions are defined or otherwise explained by the provisions indicated—

Expression	*Where explained*
basic life assurance and general annuity business (abbreviated to "BLAGAB")	sections 3 and 13(5) and 117(2)
BLAGAB or eligible PHI business	section 99
contract of insurance	sections 10 and 117(2)
exempt BLAGAB or eligible PHI business	section 100
friendly society	section 117(1)
HMRC Commissioners	sections 84(1) and 117(2)

Expression	*Where explained*
incorporated friendly society	section 117(1)
insurance business transfer scheme	sections 84(1) and 117(2)
insurance company	sections 11 and 117(2)
life assurance business	sections 2 and 117(2)
long-term business	sections 9 and 117(2)
old society	section 106(2)
PHI business	section 9(2) and 117(2)
policy	section 117(1)
registered	section 117(5) and (6)
registered branch	section 117(1)
registered friendly society	section 117(1) and (3)
relevant other business	section 111
re-insurance	sections 84(1) and 117(2)

Regulations

120 Regulations

(1) Any power of the Treasury to make any regulations under this Part is exercisable by statutory instrument.

(2) Any statutory instrument containing any regulations made by the Treasury under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

Consequential amendments and transitional provision

121 Consequential amendments

Schedule 3 contains consequential amendments.

122 Transitional provision

Schedule 4 makes transitional provision in connection with the coming into force of this Part.

Commencement etc

123 Commencement

The provisions of this Part (other than section 124) have effect in relation to accounting periods of companies beginning on or after 1 January 2013.

124 Accounting periods straddling 1 January 2013

(1) If, apart from this section, a friendly society would have had an accounting period beginning before 1 January 2013 and ending on or after that date, the accounting period of the society is to end instead on 31 December 2012.

(2) Accordingly, the rules in section 10 of CTA 2009 (end of accounting period) are subject to this section.

SCHEDULES

SCHEDULE 1

Section 91

PART 1: MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF ICTA

1 ICTA is amended as follows.

2 Omit section 76 (expenses of insurance companies).

3 Omit section 76ZA (payments for restrictive undertakings).

4 Omit section 76ZB (seconded employees).

5 Omit sections 76ZC to 76ZE (counselling and retraining expenses).

6 Omit section 76ZF to 76ZJ (redundancy payments etc).

7 Omit section 76ZK (contributions to local enterprise organisations or urban regeneration companies).

8 Omit sections 76ZL and 76ZM (unpaid remuneration).

9 Omit section 76ZN (car hire).

10 Omit section 431 (interpretative provisions relating to insurance companies).

11 Omit section 431ZA (election that assets not be foreign business assets).

12 Omit section 431A (amendment of Chapter etc).

13 Omit section 431B (meaning of "pension business").

14 Omit section 431BA (meaning of "child trust fund business").

15 Omit section 431BB (meaning of "individual savings account business").

16 Omit section 431C (meaning of "life reinsurance business").

17 Omit sections 431D and 431E (meaning of "overseas life assurance business" etc).

18 Omit section 431EA (meaning of "gross roll-up business").

19 Omit section 431F (meaning of "basic life assurance and general annuity business").

20 Omit section 431G (company carrying on life assurance business).

21 Omit section 431H (company carrying on life assurance business and other insurance business).

22 Omit section 432YA (PHI business — adjustment consequent of change in Insurance Prudential Sourcebook).

23 Omit section 432ZA (linked assets).

24 Omit section 432A (apportionment of income and gains).

25 Omit section 432AA (property businesses).

26 Omit section 432AB (losses from property businesses).

27 Omit sections 432B to 432G (apportionment of receipts brought into account).

28 Omit section 434 (franked investment income etc).

29 Omit section 434A (computation of losses and limitation on relief).

30 Omit sections 434AZA to 434AZC (reduced loss relief for additions to non-profit funds).

31 Omit section 436A (gross roll-up business: separate charge on profits).

32 Omit section 436B (gains referable to gross-roll up business not to be chargeable gains).

33 Omit sections 437 and 437A (general annuity business).

34 Omit section 438 (pension business: exemption from tax).

35 Omit section 440 (transfers of assets etc).

36 Omit section 440A (securities).

37 Omit section 440B (modifications where tax charged under s.35 of CTA 2009).

38 Omit section 440C (modifications for change of tax basis).

39 Omit section 440D (modifications in relation to BLAGAB group reinsurers).

40 Omit section 442 (overseas business of UK companies).

41 Omit section 442A (taxation of investment return where risk reinsured).

42 Omit sections 444A to 444AED (transfers of business).

43 Omit sections 444AF to 444AL (surpluses of mutual and former mutual businesses).

44 In Schedule 15 (qualifying policies), in paragraph 24(3)(a), for "section 431(2)" substitute "section 2 of the Finance Act 2012".

45 Omit Schedule 19ABA (modifications in relation to BLAGAB group reinsurers).

PART 2

AMENDMENTS OF FA 1989

46 FA 1989 is amended as follows.

47 In section 67(2) (employee share ownership trusts), for paragraph (b) (and the "or" before that paragraph) substitute—

"(b) if the company is an investment company, shall be treated as expenses of management, or

(c) if the company is a company in relation to which the I - E rules apply and the sum is referable, in accordance with Chapter 4 of Part 1 of the Finance Act 2012, to the company's basic life assurance and general annuity business, shall be treated for the purposes of section 22 of that Act as ordinary BLAGAB management expenses of the company."

48 Omit section 82 (calculation of profits: bonuses etc).

49 Omit section 82A (calculation of profits: policy holders' tax).

50 Omit section 82B (unappropriated surplus on valuation).

51 Omit sections 82D to 82F (treatment of profits: life assurance — adjustment consequent on change in Insurance Prudential Sourcebook).

52 Omit section 83 (receipts to be taken into account).

53 Omit section 83XA (structural assets).

54 Omit sections 83YA and 83YB (changes in value of assets brought into account: non-profit companies).

55 Omit sections 83YC to 83YF (FAFTS).

56 Omit section 83A (meaning of "brought into account").

57 Omit section 83B (changes in recognised accounts: attribution of amounts carried forward under s.432F of ICTA).

58 Omit section 85 (charge of certain receipts of basic life assurance business).

59 Omit section 85A (excess adjusted life assurance trade profits).

60 Omit section 86 (spreading of relief for acquisition expenses).

61 Omit section 88 (corporation tax: policy holders' share of profits).

62 Omit section 89 (policy holders' share of profits).

PART 3

AMENDMENTS OF OTHER ACTS

Taxes Management Act 1970

63 TMA 1970 is amended as follows.

64 (1) Section 98 (special returns) is amended as follows.

(2) In the first column of the Table—

(a) omit the entry relating to regulations under section 431E(1) of ICTA, and

(b) at the end insert—

"regulations under section 7(5) of the Finance Act 2012".

(3) In the second column of the Table—

(a) omit the entry relating to section 76ZE(4) of ICTA,

(b) omit the entry relating to regulations under section 431E(1) of ICTA, and

(c) at the end insert—

"regulations under section 7(5) of the Finance Act 2012".

Inheritance Tax Act 1984

65 IHTA 1984 is amended as follows.

66 In section 59(3)(b) (qualifying interest in possession), for "Chapter I of Part XII of the Taxes Act 1988" substitute "Part 1 of the Finance Act 2012".

Finance Act 1991

67 FA 1991 is amended as follows.

68 In paragraph 16(1) of Schedule 7 (transitional relief for old general annuity contracts), for the words from "computation" to "1988" substitute "application of the I - E rules in relation to an accounting period of an insurance company, an amount equal to the lesser of the following amounts is to be treated (if it is not nil) for the purposes of section 22 of the Finance Act 2012 as deemed BLAGAB management expenses for the accounting period".

Taxation of Chargeable Gains Act 1992

69 TCGA 1992 is amended as follows.

70 In section 10B (non-resident company with United Kingdom permanent establishment), after subsection (3) insert—

"(3A) This section applies to an overseas life insurance company in the case of its long-term business with the omission from subsection (1)(b) of the words "situated in the United Kingdom and"."

71 In section 100(2B)(a) (exemption for authorised unit trusts etc), for "section 431 of the Taxes Act" substitute "section 11 of the Finance Act 2012".

72 In section 140C (transfer or division of non-UK business), omit subsection (8).

73 In section 151I(1) (meaning of "financial institution")—

(a) in paragraph (g), for "section 431(2) of ICTA" substitute "section 11 of the Finance Act 2012", and

(b) in paragraph (h), for "section 431(2) of ICTA" substitute "section 84(1) of the Finance Act 2012".

74 (1) Section 171C (elections under s.171A: insurance companies) is amended as follows.

(2) In subsection (2), for "section 440(3) of the Taxes Act" substitute "section 61 of the Finance Act 2012".

(3) In subsection (3)(b), for "part of that company's long-term insurance fund" substitute "held for the purposes of the company's long-term business".

(4) In subsection (4), for the words from "as arising" to the end substitute "for the purposes of section 210A (ring-fencing of losses) as a non-BLAGAB chargeable gain or (as the case may be) a non-BLAGAB allowable loss".

(5) Omit subsection (5).

75 In section 185 (deemed disposal of assets on company ceasing to be UK resident), after subsection (4) insert—

"(4A) Subsection (4) applies to an overseas life insurance company in the case of its long-term business with—

(a) the omission from paragraph (a) of the words "are situated in the United Kingdom and"; and

(b) the omission from paragraph (b) of the words "are so situated and"."

76 In section 204(10)(a) (policies of insurance and non-deferred annuities), for "Chapter 1 of Part 12 of the Taxes Act" substitute "section 2(3) of the Finance Act 2012".

77 (1) Section 210A (ring-fencing of losses) is amended as follows.

(2) For subsection (2) substitute—

"(2) Non-BLAGAB allowable losses accruing to an insurance company are allowable as a deduction from the shareholders' share (if any) of the BLAGAB chargeable gains accruing to the company (but are not otherwise allowable as a deduction from those gains)."

(3) For subsections (10) and (10A) substitute—

"(10) For the purposes of this section the "shareholders' share" of BLAGAB chargeable gains or BLAGAB allowable losses accruing to an insurance company in an accounting period is determined as follows.

(10A) If the company has an I - E profit for the accounting period—

(a) find the percentage (including, if applicable, nil) of the I - E profit that is not represented by the policyholders' share of that profit as determined in accordance with section 46 of the Finance Act 2012, and

(b) then multiply that percentage by the amount of the BLAGAB chargeable gains or BLAGAB allowable losses.

The result is the shareholder's share of the BLAGAB chargeable gains or BLAGAB allowable losses.

(10B) If the company does not have an I - E profit for the accounting period, the shareholders' share of the BLAGAB chargeable gains or BLAGAB allowable losses is nil.

(10C) In determining for the purposes of subsections (10A) and (10B) whether or not the company has an I - E profit for an accounting period, assume that non-BLAGAB allowable losses cannot be

deducted to any extent from BLAGAB chargeable gains (and, accordingly, assume that section 38 is not included in the Finance Act 2012).”

(4) In subsection (11)—

(a) for “the policy holders’ share” substitute “the shareholders’ share”, and

(b) for “subsection (10)” substitute “subsections (10) to (10C)”.

(5) Omit subsection (12).

(6) In subsection (13)—

(a) in the definitions of “BLAGAB allowable losses” and “BLAGAB chargeable gains”, for “(in accordance with section 432A of the Taxes Act)” substitute “, in accordance with Chapter 4 of Part 1 of the Finance Act 2012,”, and

(b) omit the definitions of “the relevant profits” and “the policy holders’ share of the relevant profits”.

78 (1) Section 210B (disposal and acquisition of section 440A securities) is amended as follows.

(2) In subsection (1)—

(a) in the opening words, for “section 440A securities” (in both places) substitute “section 62 or 63 securities”, and

(b) in paragraphs (a) and (b), for “chargeable section 440A holding” substitute “chargeable section 62 or 63 holding”.

(3) In subsection (7)(a), for “linked assets” substitute “assets wholly matched to BLAGAB liabilities and the assets are”.

(4) For subsection (8) substitute—

“(8) In this section—

“BLAGAB internal linked fund” means an internal linked fund all the assets appropriated to which are matched wholly to BLAGAB liabilities,

“chargeable section 62 or 63 holding” means a holding which is a separate holding as a result of section 62(1)(a) or (c) or section 63(1)(a) or (c) of the Finance Act 2012 (and section 64(1) and (2) of that Act),

“internal linked fund”, in relation to an insurance company, means an account—

(a) to which assets matched to the company’s life assurance liabilities are appropriated by the company, and

(b) which may be divided into units the value of which is determined by the company by reference to the value of those assets, and

“section 62 or 63 securities” means securities within the meaning of section 62 or 63 of the Finance Act 2012 (see section 64(6)).”

(5) In the heading, for “**section 440A securities**” substitute “**section 62 or 63 securities**”.

79 In section 210C(2) (losses on disposal of authorised investment fund assets to connected manager), in the definition of "authorised investment fund assets", for "of the company's long-term insurance fund consisting of" substitute "held by the company for the purposes of its long-term business that consist of".

80 (1) Section 211 (transfers of business) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a), for "of the transferor's long-term insurance fund" substitute "held by the transferor for the purposes of its long-term business", and

(b) in paragraph (b), for "of the transferee's long-term insurance fund" substitute "held by the transferee for the purposes of its long-term business".

(3) In subsection (2A), for "structural assets within the meaning of section 83XA of the Finance Act 1989" substitute "assets which formed part of the long-term business fixed capital of the company in question".

(4) After subsection (3) insert—

"(4) Subsection (2) does not apply in relation to assets which are referable to the long-term business of the transferor if all of the income of the transferor's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009."

81 In section 211ZA(10) (transfers of business: transfer of unused losses), for "(in accordance with section 432A of the Taxes Act)" substitute ", in accordance with Chapter 4 of Part 1 of the Finance Act 2012,".

82 (1) Section 212 (annual deemed disposal of holdings of unit trusts etc) is amended as follows.

(2) In subsection (1), for "of an insurance company's long-term insurance fund" substitute "held by an insurance company for the purposes of its long-term business".

(3) Omit subsection (2).

(4) At the end of the section insert—

"(9) This section applies to an overseas life insurance company as if references in subsection (1) to assets were to such of the assets concerned as are UK assets.

(10) Assets (whether situated in the United Kingdom or elsewhere) are "UK assets" if, in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009, they fall to be attributed to the permanent establishment in the United Kingdom through which the company carries on life assurance business."

83 (1) Section 213 (spreading of gains and losses under section 212) is amended as follows.

(2) In subsection (1A), for "(in accordance with section 432A of the Taxes Act)" substitute ", in accordance with Chapter 4 of Part 1 of the Finance Act 2012,".

(3) After subsection (4) insert—

"(4ZA) Subsection (4) applies in relation to an overseas life insurance company with the insertion after "long-term business" of the words "in the United Kingdom through a permanent establishment"."

84 (1) Schedule 7AC (exemptions for disposals by companies with substantial shareholdings) is amended as follows.

(2) In paragraph 6(1)(c), for "section 440(1) or (2) of the Taxes Act" substitute "any of sections 59 to 61 of the Finance Act 2012".

(3) Paragraph 17 is amended as follows.

(4) In sub-paragraph (2), for "of its long-term insurance fund" substitute "held by it for the purposes of its long-term business".

(5) In sub-paragraph (3)(b), for "of its long-term insurance fund" substitute "for the purposes of its long-term business".

(6) In sub-paragraph (4), for "as assets of its long-term insurance fund" substitute "for the purposes of its long-term business".

(7) In sub-paragraph (4A)—

(a) for "of the investing company's long-term insurance fund" substitute "held by the investing company for the purposes of its long-term business",

(b) for "as assets of its long-term insurance fund" substitute "for the purposes of its long-term business", and

(c) for "a structural asset, or structural assets, within the meaning of section 83XA of the Finance Act 1989" substitute "an asset or assets which formed part of the long-term business fixed capital of the company in question".

(8) In the italic heading before that paragraph, for "*insurance company's long-term insurance fund*" substitute "*insurance company held for the purposes of its long-term business*".

85 In paragraph 1 of Schedule 7AD (gains of insurance company from venture capital investment partnership), for "the assets of the long-term insurance fund of an insurance company ("the company")" substitute "the assets held by an insurance company ("the company") for the purposes of its long-term business".

Finance Act 1993

86 FA 1993 is amended as follows.

87 In section 91 (deemed disposals of unit trusts by insurance companies), omit subsection (2).

Finance Act 1999

88 FA 1999 is amended as follows.

89 In section 81(8) (acquisitions disregarded under insurance companies concession), in the definition of "insurance company", for "meaning of Chapter I of Part XII of the Taxes Act 1988" substitute "meaning given by section 11 of the Finance Act 2012".

Capital Allowances Act 2001

90 CAA 2001 is amended as follows.

91 In section 19(5) (special leasing of plant or machinery), for “life assurance business” substitute “long-term business”.

92 In the italic heading before section 254, for “*Life assurance*” substitute “*Long-term*”.

93 In section 254 (1) (introductory), for “life assurance business” substitute “long-term business”.

94 For section 255 substitute—

“255 Apportionment of allowances and charges

(1) This section applies if the long-term business of the company consists of—

(a) basic life assurance and general annuity business, and

(b) non-BLAGAB long-term business.

(2) In that case—

(a) any allowance to which the company is entitled for a chargeable period in respect of a management asset, and

(b) any charge to which it is liable for a chargeable period in respect of a management asset,

must be apportioned between the businesses in accordance with Chapter 7 of Part 1 of FA 2012.”

95 (1) Section 256 (different giving effect rules for different categories of business) is amended as follows.

(2) In subsection (1)(b)—

(a) for “under the I minus E basis” substitute “in accordance with the I - E rules”, and

(b) for “its life assurance business” substitute “that business”.

(3) In subsection (2)(a), for the words from “as expenses payable” to “section 76(7) of ICTA” substitute “for the purposes of section 22 of FA 2012 as deemed BLAGAB management expenses for the chargeable period in question”.

(4) Omit subsections (3) and (4).

(5) In the heading, for “**different categories of business**” substitute “**BLAGAB**”.

96 In section 257(2) (supplementary), for paragraphs (a) and (b) substitute—

“(a) section 36(5) of FA 2012 (minimum profits test), or

(b) section 46 of FA 2012 (rules for determining policyholders’ share of I - E profit).”

97 (1) Section 261 (special leasing: life assurance business) is amended as follows.

(2) For “life assurance business” substitute “long-term business”.

(3) In the heading, for “**life assurance business**” substitute “**long-term business**”.

98 In the title for Chapter 1 of Part 12, for "LIFE ASSURANCE" substitute "LONG-TERM".

99 (1) Section 544 (management assets) is amended as follows.

(2) In subsections (1) and (2), for "life assurance business" substitute "long-term business".

(3) Omit subsection (3).

100 (1) Section 545 (investment assets) is amended as follows.

(2) In subsection (1), for "life assurance business" substitute "long-term business".

(3) For subsections (3) to (5) substitute—

"(3) No allowance in respect of an investment asset is to be taken into account in calculating for corporation tax purposes the profits of any non-BLAGAB long-term business carried on by the company."

101 (1) Section 560 (transfer of insurance company business) is amended as follows.

(2) In subsection (1)(b)(ii), omit the words from "within" to the end.

(3) In subsection (5), after paragraph (d) insert—

"(e) "qualifying overseas transfer" means so much of a transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 14 of the Council Directive of 5 November 2002 concerning life assurance (2002/83/EC)."

102 (1) Schedule A1 (first-year tax credits) is amended as follows.

(2) In paragraph 7—

(a) in sub-paragraph (2), for the words from "which is treated" to the end substitute "which, as a result of section 67(3) of FA 2012, is treated for the purposes of section 22 of that Act as a deemed BLAGAB management expense for an accounting period", and

(b) in sub-paragraph (3), for "section 432AA" substitute "section 66" and for "section 432AB(4)" substitute "section 67(4)".

(3) In paragraph 9—

(a) in sub-paragraph (1), for "life assurance business" substitute "basic life assurance and general annuity business" and for "under the I minus E basis" substitute "in accordance with the I - E rules", and

(b) in sub-paragraph (2), for "section 76(12) of ICTA" substitute "section 19 of FA 2012".

(4) In paragraph 14—

(a) in sub-paragraph (2), for "section 76(12) of ICTA" substitute "section 19 of FA 2012",

(b) in sub-paragraph (3), for "section 76(12)" substitute "section 19",

(c) in sub-paragraph (5), for "section 76(12) of ICTA" substitute "section 19 of FA 2012", and

(d) for sub-paragraph (6) substitute—

“(6) Disregard any amounts brought forward from an earlier chargeable period which fall to be taken into account in calculating for the purposes of section 19 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the period in question as a result of—

(a) the previous application of section 19 or 36 of FA 2012, or

(b) the carry forward to the period in question of an amount under section 391(3) of CTA 2009 (loan relationship deficit carried forward).”

(5) In paragraph 16—

(a) in sub-paragraph (1), for “life assurance business” substitute “basic life assurance and general annuity business” and for “under the I minus E basis” substitute “in accordance with the I - E rules”, and

(b) for sub-paragraph (3) substitute—

“(3) For this purpose, no account is to be taken of any amounts brought forward from an earlier chargeable period which fall to be taken into account in calculating for the purposes of section 19 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the period in question as a result of—

(a) the previous application of section 19 or 36 of FA 2012, or

(b) the carry forward to the period in question of an amount under section 391(3) of CTA 2009 (loan relationship deficit carried forward).”

(6) In paragraph 21—

(a) in sub-paragraph (1)(a), for the words from “treated” to the end substitute “which, as a result of section 67(3) of FA 2012, is treated for the purposes of section 22 of that Act as a deemed BLAGAB management expense for the chargeable period”,

(b) in sub-paragraph (1)(b), for “section 76(12) of that Act” substitute “section 19 of FA 2012”, and

(c) in sub-paragraph (2), for “section 76(12) of ICTA” substitute “section 19 of FA 2012”.

(7) In paragraph 22—

(a) in sub-paragraph (1), for “life assurance business” substitute “basic life assurance and general annuity business” and for “under the I minus E basis” substitute “in accordance with the I - E rules”, and

(b) for sub-paragraph (2) substitute—

“(2) For the purposes of those rules, the total amount which may—

(a) be carried forward under section 19 of FA 2012 from a chargeable period in which the company claims a first-year tax credit, and

(b) be brought into account for the next chargeable period in accordance with step 5 in section 22 of FA 2012,

is treated as reduced by the amount of the loss surrendered.”

103 (1) Part 2 of Schedule 1 (index of defined expressions) is amended as follows.

(2) Omit the entry for “life assurance business”.

(3) Insert the following entries at the appropriate places—

“basic life assurance and general annuity business	sections 3 and 13(5) of FA 2012 (as applied by section 86(2) of that Act)”
“I - E rules	section 16(1) and (2) of FA 2012 (as applied by section 86(2) of that Act)”
“insurance company	section 11 of FA 2012 (as applied by section 86(2) of that Act)”
“long-term business	section 9 of FA 2012 (as applied by section 86(2) of that Act)”
“non-BLAGAB long-term business	sections 12 and 13 of FA 2012 (as applied by section 86(2) of that Act)”

Finance Act 2003

104 FA 2003 is amended as follows.

105 Omit section 156 (overseas life insurance companies).

Income Tax (Earnings and Pensions) Act 2003

106 ITEPA 2003 is amended as follows.

107 In section 357(3) (business entertainment and gifts: exception where employer’s expenses disallowed), for paragraph (b) substitute—

“(b) the ordinary BLAGAB management expenses of the employer for the purposes of section 22 of FA 2012.”

Finance Act 2004

108 FA 2004 is amended as follows.

109 In section 196(4) (relief for employers in respect of contributions paid)—

(a) in the opening words, for "section 76 of ICTA" substitute "section 22 of FA 2012", and

(b) in paragraph (a), for "brought into account at Step 1 in subsection (7) of that section to the extent that they otherwise would not be" substitute "treated as meeting the conditions in section 23(2)(a) and (c) of that Act to the extent that they would otherwise not meet them".

110 In section 196A(4)(c) (power to restrict relief), for "brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer" substitute "ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 22 of FA 2012".

111 In section 197(10)(b) (spreading of relief), for "section 76 of ICTA" substitute "section 22 of FA 2012".

112 In section 199 (deemed contributions), for subsection (5) substitute—

"(5) And, for the purposes of section 22 of FA 2012, it is to be treated as meeting the conditions in section 23(2)(a) and (c) of that Act to the extent that it would otherwise not meet them."

113 In section 199A(10)(c) (indirect contributions), for "brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of E" substitute "ordinary BLAGAB management expenses of E for an accounting period for the purposes of section 22 of FA 2012".

114 In section 200 (no other relief for employers in connection with contributions), for paragraph (c) substitute—

"(c) are to count as ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 22 of FA 2012,".

115 (1) Section 246 (restriction of deduction for non-contributory provision) is amended as follows.

(2) In subsection (2), for paragraph (c) substitute—

"(c) are not to count as ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 22 of FA 2012."

(3) In subsection (3)(b), for "section 76 of ICTA" substitute "section 22 of FA 2012".

116 In section 246A(4)(c) (case where no relief for provision by an employer), for "brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer" substitute "ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 22 of FA 2012".

117 In section 280(1) (abbreviations)—

(a) omit the "and" before the definition of "CTA 2009", and

(b) after that definition insert—

""FA 2012" means the Finance Act 2012."

Finance (No.2) Act 2005

118 F(No.2)A 2005 is amended as follows.

119 In section 18(3)(b) (specific powers relating to authorised unit trusts and open-ended investment companies), for sub-paragraph (iii) (but not the “or” at the end of it) substitute—

“(iii) by an insurance company (within the meaning of section 11 of FA 2012) as assets for the purposes of its long-term business (within the meaning of section 9 of that Act),”.

Income Tax (Trading and Other Income) Act 2005

120 ITTOIA 2005 is amended as follows.

121 In section 48(4A) (car hire)—

(a) at the end of paragraph (a) insert “or”,

(b) in paragraph (b), after “management),” insert “including as applied by section 28(4) of FA 2012.”, and

(c) omit paragraph (c) (together with the “or” before that paragraph).

122 In section 473(2) (policies and contracts to which Chapter 9 of Part 4 applies: general), in the definition of “capital redemption policy”, for “within the meaning of Chapter 1 of Part 12 of ICTA” substitute “within the meaning given by section 2(3) of FA 2012”.

123 In section 476(3) (special rules: foreign policies), in the definition of “overseas life assurance business”, for “same meaning as in Part 12 of ICTA (see section 431D of that Act)” substitute “meaning given by section 7 of FA 2012”.

124 In section 504(7) (part surrenders: payments under guaranteed income bonds etc), in the definition of “pension business”, for “section 431B of ICTA” substitute “section 4 of FA 2012”.

125 (1) Section 531 (gains from contracts for life insurance etc: cases where income tax not treated as paid) is amended as follows.

(2) In subsection (3), after paragraph (b) insert—

“(ba) a contract the effecting or carrying out of which constitutes protection business within the meaning of section 8 of FA 2012,

(bb) a contract which is not within paragraph (ba) but which, as a result of subsection (4) of that section, is treated for the purposes of that section as being made at any time,”.

(3) In subsection (4), in the definition of “basic life assurance and general annuity business”, for “Chapter 1 of Part 12 of ICTA (see section 431F)” substitute “Part 1 of FA 2012 (see sections 3 and 13(5))”.

126 In paragraph 118(2) of Schedule 2 (pre-1 January 2005 contracts for immediate needs annuities: income tax treated as paid), for the words from “means” to the end substitute “means the application of section 3(2)(d) of FA 2012”.

Income Tax Act 2007

127 ITA 2007 is amended as follows.

128 In section 564B(1) (meaning of "financial institution")—
(a) in paragraph (g), for "section 431(2) of ICTA" substitute "section 11 of FA 2012", and
(b) in paragraph (h), for "section 431(2) of ICTA" substitute "section 84(1) of FA 2012".

129 In section 681DP (relevant tax relief), for paragraph (c) substitute—
"(c) a deduction of an amount which for the purposes of section 19 of FA 2012 is adjusted BLAGAB management expenses of an insurance company for an accounting period,".

Corporation Tax Act 2009

130 CTA 2009 is amended as follows.

131 In section A1(2) (overview of the Corporation Tax Acts)—
(a) omit paragraph (a),
(b) in paragraph (b), for "of that Act" substitute "of ICTA", and
(c) omit the "and" before paragraph (j) and after that paragraph insert—
"(k) Part 1 of FA 2012 (insurance companies carrying on long-term business),".

132 (1) Section 18Q (UK resident insurance companies: profits of foreign permanent establishments) is amended as follows.

(2) In subsection (1), omit "(as defined in section 431(2) of ICTA)".

(3) Omit subsections (2) and (3).

133 For section 24 substitute—

"24 Application to insurance companies

(1) This section makes provision in a case where the non-UK resident company mentioned in subsection (1) of section 21 is an insurance company.

(2) In accordance with the principle in that subsection, the permanent establishment is treated as holding—
(a) the same or a similar quantity of assets, and
(b) assets of the same or similar description,
as would have been held by a distinct and separate enterprise acting as mentioned in paragraphs (a) and (b) of that subsection.

(3) The assets which the permanent establishment is treated as holding in accordance with the principle in that subsection may include a proportion of assets held by the company.

(4) Nothing in subsection (2) or (3) is to be read as preventing the application of similar principles to those provided for by that subsection in a case where the non-UK resident company mentioned in section 21(1) is not an insurance company.

(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations make other provision about the application of section 21(1) in a case where the non-UK resident company mentioned there is an insurance company.

(6) The regulations may, in particular, make provision in place of section 21(2)(b) as to the basis on which, in the case of an insurance company, capital is to be attributed to a permanent establishment in the United Kingdom."

134 In section 36(3) (farming and market gardening), for "of the company's long-term insurance fund" substitute "held by the company for the purposes of its long-term business".

135 In section 38(3)(d) (commercial occupation of land other than woodlands), for "of the company's long-term insurance fund" substitute "held by the company for the purposes of its long-term business".

136 In section 39(5)(a) (profits of mines, quarries and other concerns), for "of the company's long-term insurance fund" substitute "held by the company for the purposes of its long-term business".

137 In section 46(3)(a) (generally accepted accounting practice), omit sub-paragraph (ii) (together with the "or" before it).

138 In section 56(5) (car hire)—

(a) at the end of paragraph (a), insert "including as applied by section 28(4) of FA 2012, or", and

(b) omit paragraph (c) (together with the "or" before that paragraph).

139 In section 130(1)(a) (insurers receiving distributions etc), for "life assurance business" substitute "business in relation to which section 54 of FA 2012 applies".

140 In section 203(4) (property businesses), for "section 432AA of ICTA" substitute "section 66 of FA 2012".

141 (1) Section 298 (meaning of trade and purposes of trade) is amended as follows.

(2) In subsection (3)—

(a) at the end of paragraph (a), insert "or", and

(b) omit paragraph (c) (together with the "or" before it).

(3) After subsection (5) insert—

"(6) In the case of activities carried on by a company in the course of any basic life assurance and general annuity business, provision corresponding to that made by subsection (3) is made by section 32 of FA 2012 for the purpose of applying the I - E rules."

142 (1) Section 336 (transfers of loans on group transactions) is amended as follows.

(2) In subsection (4), for "is within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA (assets held for certain categories of long-term business)" substitute "is held for the purposes of a company's long-term business".

(3) After that subsection insert—

"(4A) For the purposes of subsection (4)—

(a) in the case of an overseas life insurance company, ignore transfers in relation to assets which are not UK assets (within the meaning of section 60 of FA 2012), and

(b) section 65 of that Act applies as it applies for the purposes of Chapter 8 of Part 1 of that Act."

143 (1) Section 337 (transfers of loans on insurance business transfers) is amended as follows.

(2) After subsection (3) insert—

"(3A) In subsection (3)(b) "qualifying overseas transfer" means so much of a transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 14 of the Council Directive of 5 November 2002 concerning life assurance (2002/83/EC)."

(3) In subsection (4)(a), for "the categories set out in section 440(4) of ICTA" substitute "the applicable categories".

(4) After subsection (4) insert—

"(4A) For the purposes of subsection (4)(a) "the applicable categories" means—

(a) in the case of a UK life insurance company, the long-term business categories or a category of assets which are not held for the purposes of its long-term business, and

(b) in the case of an overseas life insurance company, the UK long-term business categories, a category of UK assets which are not held for the purposes of its long-term business or a category of assets which are held by it but which are not UK assets.

(4B) For the purposes of subsection (4A)—

(a) "the long-term business categories" has the same meaning as in section 59 of FA 2012,

(b) "the UK long-term business categories" and "UK assets" have the same meanings as in section 60 of that Act, and

(c) section 65 of that Act applies as it applies for the purposes of Chapter 8 of Part 1 of that Act."

144 (1) Section 386 (overview of Chapter 10 of Part 5 (insurance companies)) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a), after "apply" insert "for the purposes of the I - E rules" and at the end insert "and", and

(b) omit paragraph (c) (together with the "and" before it).

(3) In subsection (3)—

(a) in paragraph (a), omit "or of BLAGAB",

(b) in paragraph (a), after "trade)" insert "and section 32 of FA 2012 (equivalent rule for activities carried on in the course of BLAGAB)", and

(c) in paragraph (f), for "as expenses of insurance companies at Step 1 of section 76(7) of ICTA" substitute "as ordinary BLAGAB management expenses".

145 In section 387(1) (treatment of deficit on BLAGAB: introduction), after "apply" insert "for the purposes of the I - E rules".

146 In section 388(3) (basic rule: deficit set off against income and gains of deficit period), for "before any expenses deduction under section 76 of ICTA (expenses of insurance companies)" substitute "in accordance with step 4 in section 19 of FA 2012 (that is to say, before any deduction for the adjusted BLAGAB management expenses of the company for the deficit period)".

147 In section 389 (claim to carry back deficit), after subsection (2) insert—

"(2A) If any of the claim amount is carried back in accordance with this section to an accounting period, the amount which is so carried back is to be left out of account for the purpose of applying section 36 of FA 2012 in the case of that period."

148 (1) Section 390 (meaning of "available profits") is amended as follows.

(2) In subsection (5)—

(a) in step 1(a), for "so much of the expenses deduction for the period given by Step 8 in section 76(7) of ICTA (expenses of insurance companies) as is referable to BLAGAB" substitute "the amount for the purposes of section 19 of FA 2012 of the adjusted BLAGAB management expenses of the company for the period",

(b) in step 1(b), for "so referable" substitute "referable to BLAGAB",

(c) in step 2(a), for the words from "so referable" to "ICTA" substitute "which could be applied in determining for the purposes of section 19 of FA 2012 the amount of the adjusted BLAGAB management expenses of the company for the period", and

(d) in step 2(b), for "so referable" substitute "referable to BLAGAB".

(3) For subsection (6) substitute—

"(6) In the case of any claim under section 389, references in subsection (5) to the amount for the purposes of section 19 of FA 2012 of the adjusted BLAGAB management expenses of the company for the period are references to that amount as determined on the assumptions in subsections (7) and (8)."

149 In section 391 (carry forward of surplus deficit to next accounting period), for subsection (3) substitute—

"(3) Any deficit so carried forward is treated for the purposes of section 22 of FA 2012 as deemed BLAGAB management expenses for the next period."

150 Omit sections 393 and 394 (insurance companies: determination of questions requiring apportionments) and the italic heading before those sections.

151 In section 399 (index-linked gilt-edged securities), at the end insert—

"(6) In the case of insurance companies, the application of sections 400 to 400C is subject to section 55 of FA 2012."

152 In section 464(3) (list of exceptions to general rule that Part 5 (loan relationships) has priority for corporation tax purposes), omit paragraph (h) (but not the "and" at the end of that paragraph).

153 In section 471(3) (connections between persons: creditors who are insurance companies carrying on BLAGAB), for "is linked for that period to that business" substitute "is matched for that period to a BLAGAB liability".

154 In section 472(4)(b) (meaning of "control"), for "of an insurance company's long-term insurance fund" substitute "held by an insurance company for the purposes of its long-term business".

155 In section 473(3)(b) (meaning of "major interest"), for "of an insurance company's long-term insurance fund" substitute "held by an insurance company for the purposes of its long-term business".

156 In section 486(4) (exclusion of exchange gains and losses in respect of tax debts etc), for paragraph (c) substitute—

"(c) as ordinary BLAGAB management expenses within the meaning of section 23 of FA 2012 (insurance companies carrying on basic life assurance and general annuity business)."

157 In section 502(1) (meaning of "financial institution")—

(a) in paragraph (g), for "section 431(2) of ICTA" substitute "section 11 of FA 2012", and

(b) in paragraph (h), for "section 431(2) of ICTA" substitute "section 84(1) of FA 2012".

158 In section 560(4) (investment life insurance contracts: introduction)—

(a) in paragraph (a), for "section 431(2) of ICTA" substitute "section 11 of FA 2012" and for "that section" substitute "section 9 of that Act", and

(b) in paragraph (b), for the words from "but" to the end substitute "if subsection (3)(a) were omitted from section 11 of that Act."

159 In section 561(2) (meaning of "investment life insurance contract"), in the definition of "capital redemption policy", for "section 431(2ZF) of ICTA" substitute "section 2(3) of FA 2012".

160 In section 563(6)(a) (increased non-trading credits for BLAGAB and EEA taxed contracts), for "section 88(1) of FA 1989" substitute "section 45(3) of FA 2012".

161 (1) Section 591 (conditions A to E mentioned in section 589(5)) is amended as follows.

(2) In subsection (2)(a), for "life assurance business" substitute "long-term business".

(3) In subsection (2)(b), after "Sourcebook" insert "(within the meaning given by section 84(4) of FA 2012)".

162 (1) Section 634 (insurance companies) is amended as follows.

(2) The existing text becomes subsection (1) of that section.

(3) In that subsection, omit paragraph (b) (together with the "or" before it).

(4) After that subsection insert—

"(2) In the case of activities carried on by a company in the course of any basic life assurance and general annuity business, provision corresponding to that made by subsection (1) is made by section 32 of FA 2012 for the purpose of applying the I - E rules."

163 (1) Section 635 (creditor relationships of insurance companies: embedded derivatives which are options) is amended as follows.

(2) In subsection (1)(a), for "life assurance business" substitute "basic life assurance and general annuity business".

(3) In subsection (2), for "This Part" substitute "For the purpose of applying the I - E rules, this Part".

164 (1) Section 636 (insurance companies: modifications of Chapter 5 (continuity of treatment on transfers within groups)) is amended as follows.

(2) In subsection (3), after the subsection (2B) which is treated as if it were inserted in section 626 insert—

"(2C) In subsection (2B) "qualifying overseas transfer" means so much of a transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 14 of the Council Directive of 5 November 2002 concerning life assurance (No. 2002/83/EC)."

(3) In subsection (4), for the words from "the asset was within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA" to the end substitute ", immediately before or after the transfer, the asset was held for the purposes of a company's long-term business (but, in the case of an overseas life insurance company, ignoring assets which are not UK assets (within the meaning of section 60 of FA 2012))."

(4) In subsection (5)(a), for "the categories set out in section 440(4) of ICTA (transfers of assets etc)" substitute "the applicable categories".

(5) After subsection (5) insert—

"(5A) For the purposes of subsection (5)(a) "the applicable categories" means—

(a) in the case of a UK life insurance company, the long-term business categories or a category of assets which are not held for the purposes of its long-term business, and

(b) in the case of an overseas life insurance company, the UK long-term business categories, a category of UK assets which are not held for the purposes of its long-term business or a category of assets which are held by it but which are not UK assets."

(6) After subsection (7) insert—

"(8) For the purposes of this section—

(a) "the long-term business categories" has the same meaning as in section 59 of FA 2012, and "the UK long-term business

categories” and “UK assets” have the same meanings as in section 60 of FA 2012, and

(b) section 65 of FA 2012 applies as it applies for the purposes of Chapter 8 of Part 1 of that Act.”

165 In section 699(3) (list of exceptions to general rule that Part 7 (derivative contracts) has priority for corporation tax purposes)—

(a) at the end of paragraph (a) insert “and”, and

(b) omit paragraph (c) (together with the “and” before it).

166 In section 710 (derivative contracts: other definitions)—

(a) in the definition of “capital redemption policy”, for “section 431(2ZF) of ICTA” substitute “section 2(3) of FA 2012”,

(b) in the definition of “contract of insurance”, for “section 431(2) of ICTA” substitute “section 10 of FA 2012”, and

(c) in the definition of “contract of long-term insurance”, for “section 431(2) of ICTA” substitute “section 10 of FA 2012”.

167 In section 746(2)(c) (“non-trading credits” and “non-trading debits”), for “section 901(3)” substitute “section 901”.

168 In section 800(3) (excluded assets: introduction), omit paragraph (b) (together with the “and” before it).

169 In section 806(3) (assets excluded from Part 8 (intangible fixed assets): financial assets), after paragraph (c) (but before the “and” at the end of that paragraph) insert—

“(ca) assets so far as they are derived from, or are referable to, contracts or policies of insurance or capital redemption policies,”.

170 In section 810 (mutual trade or business), omit subsection (2).

171 In section 815 (election to exclude capital expenditure on software), omit subsection (8).

172 In section 855(4) (further provision about regulations under section 854), omit “or section 902”.

173 For section 901 substitute—

“901 Effect of application of the I - E basis: non-trading amounts

In the application of the I - E rules in relation to a company’s basic life assurance and general annuity business, the provisions of this Part need to be read with section 32 of FA 2012 (which provides for the activities carried on by the company in the course of that business not to constitute the whole or any part of a trade or of a property business).”

174 Omit sections 902 (excluded assets) and 903 (elections to exclude capital expenditure on computer software) and the italic heading before those sections.

175 Omit section 904 (transfers of life assurance business: transfers of assets treated as tax-neutral).

176 In section 906(3) (list of exceptions to general rule that Part 8 has priority for corporation tax purposes), omit paragraph (b) (but not the "and" at the end of that paragraph).

177 In section 931S(3) (company distributions: meaning of "small company"), in the definition of "insurance company", for "section 431 of ICTA" substitute "section 11 of FA 2012".

178 In section 931W (provisions which must be given priority over Part 9A), omit subsection (3).

179 In section 985 (references to a deduction being allowed to a company), for subsection (4) substitute—

"(4) If—

(a) the company is a company in relation to which the I - E rules apply, and

(b) the expenses are referable, in accordance with Chapter 4 of Part 1 of FA 2012, to the company's basic life assurance and general annuity business,

the expenses are treated for the purposes of section 22 of that Act as ordinary BLAGAB management expenses of the company."

180 In section 999 (deduction for costs of setting up SAYE option scheme or CSOP scheme), for subsection (5) substitute—

"(5) If—

(a) the company is a company in relation to which the I - E rules apply, and

(b) the expenses are referable, in accordance with Chapter 4 of Part 1 of FA 2012, to the company's basic life assurance and general annuity business,

the expenses are treated for the purposes of section 22 of that Act as ordinary BLAGAB management expenses of the company."

181 (1) Section 1000 (deduction for costs of setting up employee share ownership trust) is amended as follows.

(2) In subsection (2), for "subsections (3) and (4)" substitute "subsection (3)".

(3) Omit subsection (4).

182 In section 1013 (relief if shares acquired by employee or other person: how relief is given), for subsection (4) substitute—

"(4) If—

(a) the employing company is a company in relation to which the I - E rules apply, and

(b) the relief is referable, in accordance with Chapter 4 of Part 1 of FA 2012, to the employing company's basic life assurance and general annuity business,

the amount of relief is treated for the purposes of section 22 of that Act as ordinary BLAGAB management expenses of the company referable to the accounting period."

183 In section 1021 (relief if employee or other person obtains option to acquire

shares: how relief is given), for subsection (4) substitute—

“(4) If—

(a) the employing company is a company in relation to which the I - E rules apply, and

(b) the relief is referable, in accordance with Chapter 4 of Part 1 of FA 2012, to the employing company’s basic life assurance and general annuity business,

the amount of relief is treated for the purposes of section 22 of that Act as ordinary BLAGAB management expenses of the company referable to the accounting period.”

184 (1) Section 1080 (entitlement to relief: I minus E basis) is amended as follows.

(2) In subsection (1), for “under the I minus E basis in respect of its life assurance business” substitute “in respect of its basic life assurance and general annuity business in accordance with the I - E rules”.

(3) For subsection (2) substitute—

“(2) If any additional deduction to which the company would otherwise be entitled under section 1074 is referable, in accordance with Chapter 4 of Part 1 of FA 2012, to the company’s basic life assurance and general annuity business, it is to be treated for the purposes of section 22 of that Act as deemed BLAGAB management expenses for the accounting period in question.”

(4) Omit subsections (3) and (4).

185 In section 1083 (refunds of expenditure treated as income chargeable to tax), omit subsections (4) and (5).

186 In section 1143(4) (overview of Part 14)—

(a) in paragraph (a), for “life assurance business” substitute “basic life assurance and general annuity business”, and

(b) in paragraph (b), for ““life assurance company tax credits”” substitute ““BLAGAB tax credits””.

187 (1) Section 1153 (land remediation tax credit: amount of a loss which is “unrelieved”) is amended as follows.

(2) In subsection (3), for the words from “, as a result of section 432AB(3) of ICTA,” to the end substitute “, as a result of section 67(3) of FA 2012, the loss is treated for the purposes of section 22 of that Act as a deemed BLAGAB management expense for the relevant accounting period.”

(3) In subsections (4) to (6), for “section 76(12) of ICTA” substitute “section 19 of FA 2012”.

(4) In subsection (7), for paragraph (b) substitute—

“(b) taken into account in calculating for the purposes of section 19 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the relevant accounting period as a result of—

(i) the previous application of section 19 or 36 of FA 2012, or

(ii) the carry forward to the relevant accounting period of an amount under section 391 of this Act (surplus deficit).”

(5) In subsection (8)—

(a) in paragraph (b), for “section 432AA of ICTA” substitute “section 66 of FA 2012”, and

(b) in the words after that paragraph, for “section 432AB(4) of ICTA” substitute “section 67(4) of FA 2012”.

188 (1) Section 1158 (restriction on losses carried forward where tax credit claimed) is amended as follows.

(2) In subsection (3)—

(a) for paragraph (a) substitute—

“(a) as a result of section 67(3) of FA 2012, a company’s UK property business loss is treated for the purposes of section 22 of that Act as a deemed BLAGAB management expense for the accounting period,” and

(b) in paragraph (b), for “section 76(12) of ICTA” substitute “section 19 of FA 2012”.

(3) In subsection (4), for “section 76(12) of ICTA” substitute “section 19 of FA 2012”.

189 In the heading for Chapter 4 of Part 14, for “LIFE ASSURANCE BUSINESS” substitute “BLAGAB”.

190 Omit section 1159 (limitation on relief under Chapter 2 of Part 14: insurance companies) and the italic heading before that section.

191 In section 1160 (provision in respect of I minus E basis)—

(a) for “The remaining provisions of this Chapter apply” substitute “This Chapter applies”, and

(b) for “under the I minus E basis in respect of its life assurance business” substitute “in respect of its basic life assurance and general annuity business in accordance with the I - E rules”.

192 (1) Section 1161 (relief in respect of I minus E basis: expenses payable) is amended as follows.

(2) In subsection (6), for “section 76(7) of ICTA” substitute “section 22 of FA 2012”.

(3) In subsection (7)(a), for “life assurance business” substitute “basic life assurance and general annuity business”.

193 (1) Section 1162 (additional relief) is amended as follows.

(2) In subsection (3), for the words from “as expenses payable” to the end substitute “for the purposes of section 22 of FA 2012 as deemed BLAGAB management expenses for the accounting period”.

(3) In subsection (4)(b), for the words from “which” to the end substitute “of the expenditure which, for the purposes of section 22 of FA 2012, is not an ordinary BLAGAB management expense of the company referable to the accounting period as a result of the application of section 23(2)(b) of that Act”.

194 In the italic heading before section 1164, for "*Life assurance*" substitute "*BLAGAB*".

195 (1) Section 1164 (entitlement to tax credit) is amended as follows.

(2) In subsections (1) and (2)—

(a) for "a life assurance company tax credit" substitute "a BLAGAB tax credit", and

(b) for "qualifying life assurance business loss" substitute "qualifying BLAGAB loss".

(3) In subsections (3) and (4), for "a life assurance company tax credit" substitute "a BLAGAB tax credit".

196 (1) Section 1165 (meaning of "qualifying life assurance business loss") is amended as follows.

(2) In subsection (1)—

(a) in the opening words, for ""qualifying life assurance business loss"" substitute ""qualifying BLAGAB loss"", and

(b) in paragraph (b), for "section 76(12) of ICTA (unrelieved expenses carried forward)" substitute "section 19 of FA 2012 as excess BLAGAB expenses".

(3) In subsection (2), for "section 76(12) of ICTA" substitute "section 19 of FA 2012 as excess BLAGAB expenses".

(4) In subsection (3), for paragraph (b) substitute—

"(b) taken into account in calculating for the purposes of section 19 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the relevant accounting period as a result of—

(i) the previous application of section 19 or 36 of FA 2012, or

(ii) the carry forward to the relevant accounting period of an amount under section 391 of this Act (surplus deficit)."

(5) In subsections (4), for "qualifying life assurance business loss" substitute "qualifying BLAGAB loss".

(6) In the title, for "**"qualifying life assurance business loss"**" substitute "**"qualifying BLAGAB loss"**".

197 In section 1166(1) (amount of tax credit)—

(a) for "life assurance company tax credit" substitute "BLAGAB tax credit", and

(b) for "qualifying life assurance business loss" substitute "qualifying BLAGAB loss".

198 In section 1167(1) and (3)(a) (payment of tax credit etc), for "a life assurance company tax credit" substitute "a BLAGAB tax credit".

199 (1) Section 1168 (restriction on carrying forward expenses payable where tax credit claimed) is amended as follows.

(2) In subsection (1), for "a life assurance company tax credit" substitute "a BLAGAB tax credit".

(3) In subsection (2)—
(a) for "section 76 of ICTA" substitute "section 19 of FA 2012",
(b) for "subsection (12) of that section" substitute "that section as excess BLAGAB expenses", and
(c) for "Step 7 in subsection (7) of that section" substitute "step 5 in section 22 of FA 2012".

(4) In subsection (3), for "qualifying life assurance business loss" substitute "qualifying BLAGAB loss".

200 In section 1169(2) (artificially inflated claims for relief or tax credit)—
(a) in paragraph (c), for "life assurance business" substitute "basic life assurance and general annuity business", and
(b) in paragraph (d), for "life assurance company tax credits" substitute "BLAGAB tax credits".

201 After section 1223 insert—

"1223A Exception for basic life assurance and general annuity business

(1) Sections 1219 to 1223 do not apply in relation to an accounting period of an insurance company with investment business so far as the business consists of basic life assurance and general annuity business.

(2) See instead the rules set out in Chapter 3 of Part 1 of FA 2012."

202 (1) Section 1251 (car hire) is amended as follows.

(2) In subsection (3), after "subsection (2)" insert "(including as applied by section 28(4) of FA 2012)".

(3) In subsection (5)—
(a) at the end of paragraph (a) insert "or", and
(b) omit paragraph (c) (together with the "or" before that paragraph).

203 In section 1288(4) (unpaid remuneration)—
(a) in paragraph (a), after "business)," insert "including as applied by section 28 of FA 2012", and
(b) omit paragraph (b) (together with the "and" before it).

204 (1) Section 1297 (life assurance business) is amended as follows.

(2) In subsection (1), for "section 76 of ICTA applies (expenses of companies carrying on life assurance business)" substitute "the I - E rules apply".

(3) In subsection (2), for "section 86 of FA 1989" substitute "section 25 of FA 2012".

(4) In subsection (4)—
(a) for "purposes of section 86 of FA 1989" substitute "purpose of calculating the adjusted BLAGAB management expenses of the company for the purposes of section 19 of FA 2012", and
(b) for "payable for that period which fall to be included at Step 1 in section 76(7) of ICTA" substitute "debited, in accordance with generally accepted accounting practice, in the accounts drawn up by the company for that period".

(5) In subsection (5)(a), for "an amount being brought into account under section 76 of ICTA as expenses payable" substitute "an amount constituting ordinary BLAGAB management expenses of the company for the purposes of section 22 of FA 2012".

(6) For the title substitute "**Basic life assurance and general annuity business**".

205 In section 1298(2) (business entertainment and gifts), for paragraph (c) substitute—

"(c) expenses to which this section applies are not to be regarded as constituting ordinary BLAGAB management expenses of the company for the purposes of section 22 of FA 2012."

206 In section 1304 (crime-related payments), for subsection (3) substitute—

"(3) Expenses to which subsection (4) or (5) applies are not to be regarded as constituting ordinary BLAGAB management expenses of a company for the purposes of section 22 of FA 2012."

207 (1) Schedule 2 (transitionals and savings) is amended as follows.

(2) In paragraph 139—

(a) in sub-paragraph (3), for the words from "Section 76ZE" to "section 75)" substitute "Section 27(4) of FA 2012 (which, in the case of companies carrying on basic life assurance and general annuity business, applies section 75(2) to (6))",

(b) in that sub-paragraph, for "condition in subsection (1) of that section" substitute "conditions in paragraphs (a) and (b) of that subsection", and

(c) in sub-paragraph (4), for "and section 76ZE of ICTA" substitute "(including as applied by section 27(4) of FA 2012)".

(3) In paragraph 140(1)(b), for "section 76ZL of ICTA" substitute "the application by section 28 of FA 2012 of section 1249(1) to (3) of this Act".

208 In Schedule 4 (index of defined expressions)—

(a) in the entry for "basic life assurance and general annuity business", for "section 431F of ICTA (as applied by section 431(2) of that Act)" substitute "sections 3 and 13(5) of FA 2012 (as applied by section 86(2) of that Act)",

(b) omit the entry for "deposit back arrangements",

(c) omit the entry for "gross roll-up business",

(d) in the entry for "the I minus E basis", for "I minus E basis" substitute "I - E rules" and for "section 431(2) of ICTA" substitute "section section 16(1) and (2) of FA 2012 (as applied by section 86(2) of that Act)",

(e) in the entry for "insurance business transfer scheme", for "section 431(2) of ICTA" substitute "section 84(1) of FA 2012 (as applied by section 86(2) of that Act)",

(f) in the entry for "insurance company", for "section 431(2) of ICTA" substitute "section 11 of FA 2012 (as applied by section 86(2) of that Act)",

(g) omit the entry for "the Insurance Prudential Sourcebook",

(h) in the entry for "life assurance business", for "section 431(2) of ICTA" substitute "section 2 of FA 2012 (as applied by section 86(2) of that Act)",

(i) omit the entry for "linked assets",

(j) in the entry for "long-term business", for "section 431(2) of ICTA" substitute "section 9 of FA 2012 (as applied by section 86(2) of that Act)",

(k) omit the entry for "long-term insurance fund",

(l) in the entry for "overseas life insurance company", for "section 431(2) of ICTA" substitute "section 84(1) of FA 2012 (as applied by section 86(2) of that Act)", and

(m) omit the entry for "qualifying overseas transfer".

Corporation Tax Act 2010

209 CTA 2010 is amended as follows.

210 In section 17(3) (interpretation of Chapter: meaning of "carried-forward amount")—

(a) in paragraph (f), for "section 76(12) or (13) of ICTA (certain expenses of insurance companies)" substitute "section 19 or 36 of FA 2012 for use at step 5 in section 22 of that Act (the I - E basis for insurance companies)", and

(b) omit paragraph (g).

211 In section 54(2) (non-UK resident company: receipts of interest, dividends or royalties), for the words from "any of these provisions—" to the end substitute "section 37 or 45".

212 In Chapter 4 of Part 4 (property losses), after section 67A insert—

"Insurance companies

67B Exclusion in the case of property businesses of insurance companies

(1) This Chapter does not apply in relation to a loss made by an insurance company in any of its separate UK property businesses or overseas property businesses within section 66(4) of FA 2012.

(2) But in the case of a loss which is referable, in accordance with Chapter 4 of Part 1 of that Act, to the company's basic life assurance and general annuity business, see section 67(3) and (4) of that Act."

213 In section 606(5) (groups), in the definition of "insurance company", for "section 431(2) of ICTA" substitute "section 11 of FA 2012".

214 (1) Section 783 (treatment of payer of manufactured dividend) is amended as follows.

(2) In subsection (6), for the words from "as if" to the end substitute "for the purposes of section 22 of FA 2012 as deemed BLAGAB management expenses for the accounting period in which it is paid."

(3) In subsection (7)—

(a) in paragraph (a), for "under section 432A of ICTA" substitute "in accordance with Chapter 4 of Part 1 of FA 2012", and

(b) in paragraph (b), for "under section 432A of ICTA" substitute "in accordance with that Chapter".

215 (1) Section 785 (treatment of payer: REITs) is amended as follows.

(2) In subsection (4), for the words from "as if" to the end substitute "for the purposes of section 22 of FA 2012 as deemed BLAGAB management expenses for the accounting period in which it is paid."

(3) In subsection (5)(b), for "under section 432A of ICTA" substitute "in accordance with Chapter 4 of Part 1 of FA 2012".

216 (1) Section 791 (treatment of payer of manufactured overseas dividend) is amended as follows.

(2) In subsection (6), for the words from "as if" to the end substitute "for the purposes of section 22 of FA 2012 as deemed BLAGAB management expenses for the accounting period in which it is paid."

(3) In subsection (7)—

(a) in paragraph (a), for "under section 432A of ICTA" substitute "in accordance with Chapter 4 of Part 1 of FA 2012", and

(b) in paragraph (b), for "under section 432A of ICTA" substitute "in accordance with that Chapter".

217 In section 799(5) (manufactured payments under arrangements with unallowable purpose), for paragraph (a) substitute—

"(a) section 23(4)(e) or (f) of FA 2012 (ordinary BLAGAB management expenses: excluded amounts),".

218 In section 835(2) (transferor or associate becomes liable for payment of rent), for paragraph (c) substitute—

"(c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 22 of FA 2012 (management expenses of insurance companies carrying on basic life assurance and general annuity business)."

219 In section 836(2) (transferor or associate becomes liable for payment other than rent), for paragraph (c) substitute—

"(c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 22 of FA 2012 (management expenses of insurance companies carrying on basic life assurance and general annuity business)."

220 (1) Section 839 (deduction under section 76 of ICTA not to exceed commercial rent) is amended as follows.

(2) In subsection (1), for "the deduction under section 76 of ICTA allowed for" substitute "the amount to be taken into account as mentioned in section 835(2)(c) or 836(2)(c) in respect of".

(3) In subsection (3), for "The deduction" substitute "The amount of the payment to be taken into account".

(4) In the title, omit "**under section 76 of ICTA**".

221 (1) Section 840 (carrying forward parts of payments) is amended as follows.

(2) In subsection (2), for "allowed as a deduction under section 76 of ICTA is not allowed" substitute "taken into account as mentioned in section 835(2)(c) or 836(2)(c) is not taken into account".

(3) In subsection (4), for "a deduction under section 76 of ICTA" substitute "the calculation at step 1 of section 22 of FA 2012".

(4) In subsection (5), for "allowed as a deduction under section 76 of ICTA" substitute "taken into account in the calculation at step 1 of section 22 of FA 2012".

222 In section 860 (relevant corporation tax relief), for paragraph (d) (but not the "and" at the end of that paragraph) substitute—

"(d) a deduction of an amount which for the purposes of section 19 of FA 2012 is an amount of adjusted BLAGAB management expenses of an insurance company for an accounting period,".

223 In section 886 (relevant tax relief), for paragraph (c) substitute—

"(c) a deduction of an amount which for the purposes of section 19 of FA 2012 is an amount of adjusted BLAGAB management expenses of an insurance company for an accounting period,".

224 In section 1171(2) (powers under orders and regulations excluded from general provision)—

(a) omit the "and" before paragraph (g), and

(b) after that paragraph insert ", and

(h) Parts 1 and 2 of FA 2012."

225 In section 1173(2) (miscellaneous charges), in Part 3 of the table, omit—

(a) the entry relating to section 436A(1) of ICTA,

(b) the entry relating to section 442A(1) of ICTA,

(c) the entry relating to section 85(1) of FA 1989, and

(d) the entry relating to section 85A(1) of FA 1989.

Taxation (International and Other Provisions) Act 2010

226 TIOPA 2010 is amended as follows.

227 In section 43(7) (profits attributable to permanent establishments for purposes of section 42(2)), omit "(within the meaning given by section 431(2) of ICTA)".

228 In section 72(2) (application of section 73(1)), omit paragraph (b) (together with the "or" before it).

229 In section 96(1) (companies with overseas branches: restriction of credit)—

(a) omit "or section 436A of ICTA",

(b) omit ", calculated in accordance with the provisions applicable for the purposes of section 35 of CTA 2009," and

(c) for "life assurance business or gross roll-up business" substitute "non-BLAGAB long-term business".

230 For section 97 substitute—

"97 Companies with more than one category of business: restriction of credit

(1) This section applies if—

(a) an insurance company carries on more than one category of long-term business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax is to be allowed under the arrangements.

(2) The amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable, in accordance with Part 1 of FA 2012, to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with subsection (3), is attributable to that category of business.

(3) The fraction of the foreign tax that is attributable to the category of business in question is the fraction given by—

$$\frac{RPRI}{TRI}$$

where—

RPRI is the amount of the relevant income referable to the category of business in question in accordance with section 97A, and

TRI is the total amount of the relevant income.

97A Commercial allocation of relevant income to different categories of long-term business

(1) The amount of the relevant income that, for the purposes of section 97, is to be regarded as referable to a category of business is to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the relevant income arises.

(2) A method is an "acceptable commercial method" if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of section 97 for determining for a period of account the amount of any income or gain arising in the period that is referable to a particular category of long-term business carried on by the company.

(3) The Treasury may make regulations for the purposes of this section—

(a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and

(b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.

(4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account must be consistent with the method adopted for the purposes of section 41 or 58 of FA 2012 for that period."

231 Omit section 98 (attribution for section 97 purposes if category is gross roll-up business).

232 Omit section 102 (interpreting sections 99 to 101 for life assurance or gross roll-up business).

233 (1) Section 103 (interpreting sections 99 to 101 for other insurance business) is amended as follows.

(2) In subsection (1), omit the words from "if" to the end.

(3) In the title, omit "**for other insurance business**".

234 In section 269(6) (insurance activities and insurance-related activities), in the definition of "contract of insurance", for "has the same meaning as in Chapter 1 of Part 12 of ICTA" substitute "has the meaning given by section 10 of FA 2012".

235 In section 310(2) (meaning of "carried-forward amount")—

(a) in paragraph (a), for "section 76(12) or (13) of ICTA (certain expenses of insurance companies)" substitute "section 19 or 36 of FA 2012 for use at step 5 in section 22 of that Act (the I - E basis for insurance companies)", and

(b) omit paragraph (b).

236 In Part 1 of Schedule 11 (index of defined expressions used in Parts 2 and 3 of Act), insert the following entries at the appropriate places—

"insurance company	section 11 of FA 2012 (as applied by section 86(2) of that Act)"
"long-term business	section 9 of FA 2012 (as applied by section 86(2) of that Act)"

Finance Act 2011

237 FA 2011 is amended as follows.

238 In paragraph 73(2) of Schedule 19 (bank levy: meaning of "excluded entity"), for "meaning given by section 431(2) of ICTA" substitute "meanings given by sections 11 and 84 of FA 2012 respectively".

PART 4

CONSEQUENTIAL REPEALS

239 In consequence of the amendments made by Parts 1 to 3 of this Schedule (or previous amendments made by other enactments), omit the following provisions—

(a) in FA 1989, section 84(4) and Schedule 8,

(b) in FA 1990—

  (i) sections 41 and 42,

  (ii) section 45(1) to (7) and (9) to (11),

  (iii) section 48,

  (iv) Schedules 6 and 7, and

  (v) paragraphs 4 and 7 of Schedule 9,

(c) in FA 1991—

(i) paragraphs 5 and 12 of Schedule 7, and
(ii) paragraph 15 of Schedule 15,

(d) in TCGA 1992, paragraph 14(22) to (24) of Schedule 10,
(e) in FA 1993, section 103(1) and (3),
(f) in FA 1995—
(i) section 51,
(ii) Schedule 8, and
(iii) paragraph 1 of Schedule 9,
(g) in FA 1996—
(i) section 163,
(ii) section 167(3),
(iii) section 168(2),
(iv) paragraph 23 of Schedule 14, and
(v) Schedules 31 and 33,
(h) in FA 1997, section 67,
(i) in FA 1998—
(i) section 123(5)(a), and
(ii) paragraph 39 of Schedule 5,
(j) in FA 2000, sections 108 and 109,
(k) in FA 2003, paragraphs 1, 2, 5, 8, 10, 12, 20, 22 to 24 and 29 of Schedule 33,
(l) in FA 2004—
(i) sections 40, 41 and 44,
(ii) Schedule 6,
(iii) paragraphs 5, 8 and 9(2) of Schedule 7, and
(iv) paragraph 20 of Schedule 35,
(m) in F(No.2)A 2005, paragraphs 1 to 3, 5, 10, 12 to 15, 17 and 18 of Schedule 9,
(n) in ITTOIA 2005, paragraphs 176 and 178 of Schedule 1,
(o) in FA 2006, section 86 and Schedule 11,
(p) in FA 2007—
(i) paragraphs 3, 6, 8 to 14, 16, 17, 19, 21 to 23, 25, 26, 31 to 33, 35 to 38, 57 to 59 and 80 to 84 of Schedule 7,
(ii) paragraphs 2 to 6, 8, 9, 11 to 16, 28 and 29 of Schedule 8,
(iii) paragraphs 1(1) and (3), 3(1) and (3), 4 to 8, 10, 11(3) and 12, 15 and 16 of Schedule 9, and
(iv) paragraphs 2(1), 4, 11 to 13 and 15(1) to (3) of Schedule 10,
(q) in FA 2008—
(i) paragraph 2 of Schedule 14, and
(ii) paragraphs 1, 2, 4 to 6, 8, 9(2) and (3), 10, 11, 17, 18, 20 to 22, 26, 28(3) and (4), 31 to 34 and 37 of Schedule 17,
(r) in CTA 2009, paragraphs 30 to 44, 126 to 154, 282, 307(3)(a) and 341 to 351 of Schedule 1,
(s) in FA 2009—
(i) section 46,
(ii) paragraph 24 of Schedule 7,
(iii) paragraph 60 of Schedule 11, and
(iv) paragraphs 1 to 7 of Schedule 23,

(t) in CTA 2010, paragraphs 9, 10, 42 to 51, 213 and 214 of Schedule 1,
(u) in FA 2010, section 47,
(v) in F(No.2)A 2010, section 9,
(w) in F(No.3)A 2010, section 15,
(x) in TIOPA 2010, paragraph 34 of Schedule 8, and
(y) in FA 2011, section 56.

SCHEDULE 2

Section 92

PART 1: TRANSITIONAL PROVISION

PART 1

DEEMED RECEIPTS OR EXPENSES

General outline of the provision of this Part of this Schedule

1 (1) This Part of this Schedule makes provision, by reference to the 2012 balance sheet and the 2012 periodical return of an insurance company (see paragraphs 2 to 4), for deeming amounts to be receipts or expenses of basic life assurance or general annuity business, or non-BLAGAB long-term business, carried on by the company (see paragraphs 9(1) and (2) and 10(1) and (2)).

(2) Those amounts are determined in accordance with provision made by or under paragraphs 5 to 8.

(3) The deeming is to have effect for the purpose of calculating the BLAGAB trade profit or loss, or (as the case may be) for the purpose of calculating for corporation tax purposes the profits of the non-BLAGAB long-term business (see paragraphs 9(3) and 10(3)).

(4) The general rule is that, subject to exceptions, the receipts or expenses are treated as arising over a 10-year period (see paragraphs 11 to 15).

(5) Special provision is made in relation to the operation of sections 83YC to 83YF of FA 1989 (see paragraph 16).

(6) Anti-avoidance provision is made by paragraphs 17 to 19.

(7) Provision in relation to overseas life insurance companies is made by paragraph 20.

Basic concepts

2 In this Part of this Schedule—

"the 2012 balance sheet", in relation to an insurance company, means—

(a) an actual balance sheet of the company drawn up as at the end of 31 December 2012 in accordance with generally accepted accounting practice, or

(b) a deemed balance sheet of the company under paragraph 3, and

"the 2012 periodical return", in relation to an insurance company, means—

(a) an actual periodical return of the company covering a period ending immediately before 1 January 2013, or

(b) a deemed periodical return of the company under paragraph 4.

3 (1) This paragraph applies if an insurance company does not have a balance sheet drawn up as at the end of 31 December 2012 in accordance with generally accepted accounting practice.

(2) For the purposes of this Part of this Schedule the company is deemed to have drawn up a balance sheet as at the end of 31 December 2012 in accordance with generally accepted accounting practice.

(3) For the purposes of this Part of this Schedule the entries shown in this deemed balance sheet are deemed to be those entries which would have been shown in an actual balance sheet of the company drawn up as mentioned in sub-paragraph (1).

(4) The generally accepted accounting practice that is to be applicable for the purposes of sub-paragraphs (2) and (3) is the practice that is actually adopted for the accounts of the company drawn up for the period in which 31 December 2012 falls.

4 (1) This paragraph applies if an insurance company does not have a periodical return covering a period ending immediately before 1 January 2013.

(2) For corporation tax purposes the company is deemed to have a periodical return covering the period—

(a) beginning immediately after the last period ending before 1 January 2013 that is covered by a periodical return of the company, and

(b) ending immediately before 1 January 2013.

(3) This deemed periodical return is deemed to contain such entries as would be included in an actual periodical return of the company covering the period beginning and ending as mentioned in sub-paragraph (2)(a) and (b).

(4) For corporation tax purposes the period beginning and ending as mentioned in sub-paragraph (2)(a) and (b) is deemed to be a period of account of the company.

The comparison etc

5 (1) In the case of an insurance company, a comparison must be made between—

(a) the amount attributed to shareholders as at 31 December 2012 (see sub-paragraphs (2) to (4)), and

(b) the cumulative taxed surplus as at 31 December 2012 (see sub-paragraph (5) and (6)).

(2) The amount attributed to shareholders as at 31 December 2012 is—

(a) the amount shown in line 75 of Form 14 of the 2012 periodical return in respect of the whole of the company's long-term business, less

(b) the amount (if any) shown in the 2012 balance sheet of the company in respect of the fund for future appropriations or unallocated divisible surplus.

(3) In prescribed cases the amount attributed to shareholders as at 31 December 2012 is to be found by making prescribed adjustments to the amount found by sub-paragraph (2)(a) and (b).

(4) In sub-paragraph (3) "prescribed" means prescribed, or of a description prescribed, by regulations made by the Treasury.

The regulations may be made so as to have effect in relation to any period beginning before but ending on or after the day on which the regulations are made (as well as in relation to periods no part of which falls before that day).

(5) The cumulative taxed surplus as at 31 December 2012 is found by adding together the amounts (if any) found by the following paragraphs—

(a) the amount shown in line 13 of Form 14 of the 2012 periodical return in respect of the whole of the company's long-term business but excluding the amount of any undistributed demutualisation surplus of the company for the period of account ending immediately before 1 January 2013, and

(b) the total amount brought into account for any period of account of the company as a result of section 83YA(3) of FA 1989 less the total amount brought into account for any period of account as a result of section 83YA(4) of FA 1989 (changes in value of assets brought into account: non-profit companies).

(6) In sub-paragraph (5)(a) "undistributed demutualisation surplus" means the undistributed demutualisation surplus of the company for the period of account in question for the purposes of section 444AF of ICTA.

(7) The difference between the amount attributed to shareholders as at 31 December 2012 and the cumulative taxed surplus as at 31 December 2012 is referred to in this Part of this Schedule as "the total transitional difference".

(8) If the amount attributed to shareholders as at 31 December 2012 exceeds the cumulative taxed surplus as at 31 December 2012, the total transitional difference is a positive figure.

(9) If the cumulative taxed surplus as at 31 December 2012 exceeds the amount attributed to shareholders as at 31 December 2012, the total transitional difference is a negative figure.

6 (1) The insurance company—

(a) must, by comparing amounts shown in the 2012 periodical return with amounts shown in the 2012 balance sheet, determine the particular items that, when taken together, result in the total transitional difference, and

(b) must allocate a positive or negative amount to each of those items.

(2) The positive or negative amounts allocated to those items in accordance with this paragraph must, when added together, equal the total transitional difference.

(3) The Treasury may make regulations prescribing—

(a) the way in which the comparison or determination under sub-paragraph (1)(a) must be done, and

(b) the method for making the allocation under sub-paragraph (1)(b).

(4) The provision that may be made by regulations under sub-paragraph (3)(a) includes provision prescribing descriptions of amounts which are, or are not, to be compared with each other.

7 (1) Each of the items determined in accordance with paragraph 6(1)(a) is a "relevant computational item" for the purposes of this Part of this Schedule except in so far as it consists of an excluded item.

(2) An item is "an excluded item" in so far as it—

(a) represents an amount forming part of the company's deferred acquisition costs which is included in its 2012 balance sheet and which has been taken into account in calculating its life assurance trade profits,

(b) represents an amount which is included in the company's 2012 balance sheet as an asset in respect of the value of future profits arising from a business (or part of a business) transferred to the company (but excluding an asset so far as it is regarded for accounting purposes as internally-generated),

(c) represents an outstanding contingent loan or an outstanding re-insurance amount,

(d) represents an asset to which Part 8 of CTA 2009 (intangible fixed assets) applies for an accounting period of the company beginning on or after 1 January 2013, or

(e) falls within a description of item excluded for the purposes of this paragraph by regulations made by the Treasury.

(3) In sub-paragraph (2)(c) "outstanding contingent loan" means the total amount of the credits brought into account by the company as part of total income—

(a) for the period of account ending immediately before 1 January 2013, or

(b) for any earlier period of account,

in respect of money debts so far as those debts have not been repaid before that date.

(4) In sub-paragraph (2)(c) "outstanding re-insurance amount" means the total of the amounts which would (but for section 83YF(2) of FA 1989) have been taken into account in calculating the company's life assurance trade profits—

(a) for the period of account ending immediately before 1 January 2013, or

(b) for any earlier period of account,

in respect of the re-insurance of relevant liabilities (within the meaning of section 83YC of FA 1989) to the extent that they have not ceased to be re-insured before that date.

(5) In this paragraph "life assurance trade profits" means profits arising from life assurance business calculated in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of CTA 2009 (charge on trade profits).

(6) For any accounting period beginning on or after 1 January 2013, an amount is not to be taken into account—

(a) in calculating the BLAGAB trade profit or loss of any basic life assurance and general annuity business, or

(b) in calculating for corporation tax purposes the profits of non-BLAGAB long-term business,

in so far as the amount consists of an excluded item as a result of falling within sub-paragraph (2)(a) to (d) or, in a case where the regulations provide for the application of this sub-paragraph, within sub-paragraph (2)(e).

8 (1) Each relevant computational item must be apportioned between—

(a) any basic life assurance and general annuity business carried on by the company as at 31 December 2012,

(b) any gross roll-up business carried on by the company as at that date, and

(c) any PHI business carried on by the company as at that date.

(2) The Treasury may make regulations for apportioning for the purposes of this Part of this Schedule relevant computational items between those businesses (including provision for the whole amount of a relevant computational item to be apportioned to one of those businesses).

(3) A relevant computational item (or a part of a relevant computational item) allocated in accordance with this paragraph to the company's basic life assurance and general annuity business or gross roll-up business is dealt with in accordance with paragraph 9 or 10.

(4) But a relevant computational item (or a part of a relevant computational item) allocated in accordance with this paragraph to the company's PHI business is ignored in the application of the remaining provisions of this Part of this Schedule.

Deemed receipts or expenses of BLAGAB or non-BLAGAB long-term business

9 (1) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's basic life assurance and general annuity business is a positive amount, the item (or part of the item) is to be treated as a receipt of that business.

(2) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's basic life assurance and general annuity business is a negative amount, the item (or part of the item) is to be treated as an expense of that business.

(3) Receipts and expenses within this paragraph are to be taken into account, in accordance with the provisions of this Part of this Schedule, in calculating the BLAGAB trade profit or loss of that business for accounting periods beginning on or after 1 January 2013.

10 (1) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's gross roll-up business is a positive amount, the item (or part of the item) is to be treated as a receipt of the company's non-BLAGAB long-term business.

(2) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's gross roll-up business is a negative amount, the item (or part of the item) is to be treated as an expense of the company's non-BLAGAB long-term business.

(3) Receipts and expenses within this paragraph are to be taken into account, in accordance with the provisions of this Part of this Schedule, in calculating

for corporation tax purposes the profits of the company's non-BLAGAB long-term business for accounting periods beginning on or after 1 January 2013.

Period over which deemed receipts or expenses arise

11 (1) A receipt or expense within paragraph 9 or 10 is to be treated as arising over the period of 10 years beginning with 1 January 2013.

(2) The amount of the receipt or expense apportioned to (and treated as arising in) any accounting period falling wholly or partly in that 10-year period is to be determined in proportion to the number of days of the accounting period falling within that 10-year period.

(3) This paragraph does not apply to a receipt which consists of a relevant court-protected item within the meaning of paragraph 12.

(4) This paragraph is subject to paragraphs 13 to 15 (transfers and cessation of business etc).

12 (1) For the purposes of this paragraph a "relevant court-protected item" means a relevant computational item that relates to an excess of assets over liabilities held in a non-profit fund in respect of which an order made by a court is in force preventing the distribution of the excess (in any circumstances whatever) before the end of a period specified in the order.

(2) A receipt within paragraph 9 or 10 consisting of a relevant court-protected item is to be treated as arising over the period of 10 years beginning with the relevant day.

(3) The relevant day is whichever of the following days occurs first—

(a) the day on which the court order ceases to be in force, or

(b) 1 January 2015.

(4) The amount of the receipt apportioned to (and treated as arising in) any accounting period falling wholly or partly in that 10-year period is to be determined in proportion to the number of days of the accounting period falling within that 10-year period.

(5) This paragraph is subject to paragraphs 13 to 15 (transfers and cessation of business etc).

13 (1) This paragraph applies if—

(a) under an insurance business transfer scheme, there is a transfer from one insurance company to another of basic life assurance and general annuity business (or any part of that business) or non-BLAGAB long-term business (or any part of that business),

(b) the transfer is a relevant intra-group transfer, and

(c) the transfer occurs at a time when the full amount of the receipts or expenses within paragraph 9 or 10 of the business the whole or part of which is transferred has not been treated as arising.

(2) A transfer is a "relevant intra-group transfer" for the purposes of this paragraph if—

(a) the transferor and transferee are members of the same group of companies when the transfer occurs (as determined in accordance with section 170(2) to (11) of TCGA 1992), and

(b) the transferee is within the charge to corporation tax in relation to the transfer.

(3) The receipts or expenses are to continue to be dealt with in accordance with the provisions of this Schedule, but are treated as arising to the transferee over so much of the 10-year period in question as falls after the date on which the transfer takes place.

(4) If only part of a business is transferred—

(a) the appropriate proportion of the receipts or expenses is treated as arising to the transferee over so much of the 10-year period in question as falls after the date on which the transfer takes place, and

(b) the remainder of the receipts or expenses is treated as arising to the transferor over so much of that period.

(5) The appropriate proportion of the receipts or expenses of a business is equal to the proportion which the amount or value of the liabilities relating to the part of the business transferred bears to the total amount or value of the liabilities of the whole of the business.

(6) For the purposes of this paragraph and paragraphs 11 and 12 the accounting periods of the transferor and the transferee in which the transfer takes place are deemed to end immediately before the transfer takes place.

14 (1) This paragraph applies if—

(a) under an insurance business transfer scheme, there is a transfer from one insurance company to another of basic life assurance and general annuity business (or any part of that business) or non-BLAGAB long-term business (or any part of that business),

(b) the transfer is not a relevant intra-group transfer for the purposes of paragraph 13, and

(c) the transfer occurs at a time when the full amount of the deemed receipts or expenses of the relevant business has not been treated as arising to the transferor.

(2) The remaining amount of the deemed receipts or expenses of the relevant business is to be treated as arising to the transferor in the accounting period in which the transfer takes place.

(3) In this paragraph references to the deemed receipts or expenses of the relevant business—

(a) are references to the receipts or expenses within paragraph 9 or 10 of the business the whole or part of which is transferred, but

(b) do not include references to so much of those receipts or expenses as fall (or have fallen) to be treated as arising to a company other than the company which is the transferor for the purposes of this paragraph.

15 (1) This paragraph applies if—

(a) an insurance company ceases at any time to carry on basic life assurance and general annuity business or non-BLAGAB long-term business otherwise than as a result of a transfer under an insurance business transfer scheme, and

(b) at that time the full amount of the deemed receipts or expenses of the business concerned has not been treated as arising to the company.

(2) The remaining amount of the deemed receipts or expenses of the business concerned is to be treated as arising to the company in the accounting period in which it ceases to carry on the business concerned.

(3) For the purposes of this paragraph an insurance company is to be regarded as ceasing to carry on a business at any time if, at that time, it ceases to be within the charge to corporation tax in relation to the business.

(4) In this paragraph references to the deemed receipts of the business concerned—

(a) are references to the receipts or expenses within paragraph 9 or 10 of the business concerned, but

(b) do not include references to so much of those receipts or expenses as fall (or have fallen) to be treated as arising to a company other than the company concerned.

Financing-arrangement-funded transfers to shareholders in relation to non-profit funds

16 (1) This paragraph applies if, as at 1 January 2013, an insurance company has an unrelieved charge under subsection (3) of section 83YC of FA 1989 (FAFTS: charge in relevant period of account).

(2) An insurance company has, as at that date, an unrelieved charge under that subsection if either—

(a) that subsection has operated in the case of the company for the period of account ending immediately before that date ("the 2012 period of account"), or

(b) that subsection has operated in the case of the company for one or more earlier periods of account, and the total of the amounts which are the relevant amount for the 2012 period of account or those earlier periods under section 83YD of FA 1989 does not exceed the amount which is the taxed amount under that section.

(3) The appropriate amount of the unrelieved charge is to be treated for the purposes of this Part of this Schedule as if it were a relevant computational item of a negative amount.

(4) The appropriate amount of the unrelieved charge is whichever is the smaller of—

(a) in a case within sub-paragraph (2)(a), the amount brought into account under section 83YC(3) of FA 1989, or, in a case within sub-paragraph (2)(b), the amount by which the taxed amount mentioned there exceeds the relevant amount mentioned there, and

(b) the sum of the outstanding debt amount and the outstanding re-insurance amount.

(5) "The outstanding debt amount" means the total amount of the credits brought into account by the company in relation to a non-profit fund for the purposes of section 83YC of FA 1989 as part of total income—

(a) for the 2012 period of account, or

(b) for any earlier period of account,

in respect of relevant money debts to the extent that they have not been repaid before that date.

(6) "The outstanding re-insurance amount" means the total of the amounts which would (but for section 83YF(2) of FA 1989) have been taken into

account in calculating the profits of the company's life assurance business in accordance with the life assurance trade profits provisions—
(a) for the 2012 period of account, or
(b) for any earlier period of account,

in respect of the re-insurance of relevant liabilities to the extent that they have not ceased to be re-insured before that date.

(7) Any expression which is used in this paragraph and in section 83YC of FA 1989 has the same meaning in this paragraph as in that section.

(8) In this paragraph references to sections 83YC and 83YD of FA 1989 include references to those sections as they have effect in accordance with paragraph 4(2) to (6) of Schedule 17 to FA 2008.

Anti-avoidance

17 (1) This paragraph applies if—
(a) an insurance company ("C") enters into any arrangements, or does any other thing, directly or indirectly for the purposes of, or in connection with, the operation of the transitional rules, and
(b) the main purpose, or one of the main purposes, of C in entering into the arrangements or doing the other thing is an unallowable purpose.

(2) A purpose is an "unallowable purpose" if—
(a) it consists of securing a tax advantage for C or any other company, or
(b) it is not amongst C's business or other commercial purposes.

(3) If a tax advantage arises to C, there are to be made such adjustments of any income or gains chargeable to corporation tax as are required to negate the tax advantage so far as referable to the unallowable purpose on a just and reasonable apportionment.

(4) If a tax advantage arises to a company other than C, there are to be made such adjustments of income or gains chargeable to corporation tax as are required to negate the tax advantage.

(5) For the purposes of this paragraph—
(a) "arrangement" includes any agreement, scheme, transaction or understanding (whether or not legally enforceable),
(b) the reference to the operation of the transitional rules is a reference to the operation of any one or more of the rules of this Part of this Schedule,
(c) one example (among others) of entering into arrangements or otherwise doing something for the purposes of, or in connection with, the operation of those rules is entering into the arrangements or otherwise doing the thing to secure that an item is, or is not, taken into account in calculating the total transitional difference, and
(d) section 1139 of CTA 2010 (meaning of "tax advantage") applies, but reading references to tax as references to corporation tax.

(6) If C is not within the charge to corporation tax in respect of a part of its activities, C's business or other commercial purposes for the purposes of this paragraph do not include the purposes of that part of its activities.

18 (1) Paragraph 17 does not apply if, on an application by C, the HMRC Commissioners give a notice under this paragraph stating that they are satisfied that C's main purpose in doing the relevant things is not an unallowable purpose or none of C's main purposes in doing the relevant things is an unallowable purpose.

(2) The reference here to doing the relevant things is a reference to entering into any arrangements, or doing any other thing, directly or indirectly for the purposes of, or in connection with, the operation of the transitional rules (within the meaning of paragraph 17).

19 (1) An application under paragraph 18 must—

(a) be in writing, and

(b) contain particulars of the arrangements or the thing done.

(2) The HMRC Commissioners may by notice require C to provide further particulars in order to enable them to determine the application.

(3) A requirement may be imposed under sub-paragraph (2) within 30 days of the receipt of the application or of any further particulars required under that sub-paragraph.

(4) If a notice under that sub-paragraph is not complied with within 30 days or such longer period as the HMRC Commissioners may allow, they need not proceed further on the application.

(5) The HMRC Commissioners must give notice to C of their decision on an application under paragraph 18—

(a) within 30 days of receiving the application, or

(b) if they give a notice under sub-paragraph (2), within 30 days of that notice being complied with or within such longer period as may be agreed with C.

(6) If any particulars provided under this paragraph do not fully and accurately disclose all facts and considerations material for the decision of the HMRC Commissioners, any resulting notice under paragraph 18 is void.

Overseas life insurance companies

20 Receipts or expenses are not to be treated as arising under this Part of this Schedule in a case where—

(a) an overseas life insurance company has, in accordance with international accounting standards, prepared accounts for a period which includes 31 December 2012, and

(b) parts of the income statements included in those accounts are recognised for the purposes of sections 82A to 83ZA of FA 1989 as a result of provision made by regulation 24 of the Overseas Life Insurance Companies Regulations 2006.

PART 2

SPECIFIC TRANSITIONAL PROVISIONS

Insurance company with BLAGAB consisting wholly of protection business

21 (1) This paragraph applies if—

(a) in its first accounting period to which this Part applies an insurance company carries on business which, under the old law, would have been basic life assurance and general annuity business,

(b) the business in question consists wholly of the effecting or carrying out of contracts of long-term insurance in relation to which the condition in section 8(2)(a) is met, and

(c) some or all of the contracts are made before 1 January 2013.

(2) On or before the filing date for that accounting period, the company may make an election for the contracts made before that date to be treated for the purposes of section 8 as if they were made on or after that date.

(3) Accordingly, no relief is available for any amount that, but for the election, would have constituted excess BLAGAB expenses for that accounting period.

(4) The election has effect for the first accounting period of the company to which this Part applies and all subsequent accounting periods.

(5) The election is irrevocable.

(6) In this paragraph—

"the filing date", in relation to an accounting period of an insurance company, means the date which, for the purposes of paragraph 14 of Schedule 18 to FA 1998, is the filing date for the company's tax return for that period, and

"the old law" means the law as it had effect immediately before the day on which this Act is passed.

Disregard of amounts previously taken into account for tax purposes

22 (1) This paragraph applies if, for an accounting period ending before 1 January 2013, an amount is taken into account in calculating the profits of an insurance company arising from life assurance business in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of CTA 2009 (charge on trade profits).

(2) For any accounting period beginning on or after 1 January 2013—

(a) the amount is not to be taken into account in calculating the BLAGAB trade profit or loss of any basic life assurance and general annuity business carried on by the company, and

(b) the amount is not to be taken into account in calculating for corporation tax purposes the profits of any non-BLAGAB long-term business carried on by the company.

Intangible fixed assets

23 (1) This paragraph applies to assets—

(a) which, under the old law, were assets excluded from Part 8 of CTA 2009 (intangible fixed assets), and

(b) which, as a result of provision made by this Part of this Act, become assets which are not excluded from that Part.

(2) Any expenditure incurred before 1 January 2013 on assets to which this paragraph applies is to be left out of account in determining any amount to be brought into account under Part 8 of CTA 2009.

(3) For the purposes of this paragraph references to an asset's exclusion from Part 8 of CTA 2009 includes its exclusion from that Part except as respects royalties.

(4) In this paragraph "the old law" means the law as it had effect immediately before the day on which this Act is passed.

Carry-forward of trading losses and excess management expenses

24 (1) Any unused losses arising to an insurance company in an accounting period ending before 1 January 2013 from gross roll-up business may be relieved in subsequent accounting periods in accordance with section 45 of CTA 2010 (carry forward of trade loss against subsequent trade profits) as if they were losses that had arisen from non-BLAGAB long-term business.

(2) For this purpose a loss is "unused" so far as no relief has been given for it under—

(a) section 436A of ICTA (including as applied by any provision of Part 2 of Schedule 7 to FA 2007), or

(b) any other provision of the Corporation Tax Acts.

25 (1) Any unused losses arising to an insurance company in an accounting period ending before 1 January 2013 from PHI business may be relieved in subsequent accounting periods in accordance with section 45 of CTA 2010 as if they were losses that had arisen from non-BLAGAB long-term business.

(2) For this purpose a loss is "unused" so far as, but for this Part of this Act, it would have been available for carry forward under section 45 of CTA 2010 for use in relation to profits of the PHI business for subsequent accounting periods.

26 (1) The appropriate part of any unused life assurance trade losses arising to an insurance company in an accounting period ending before 1 January 2013 is to be treated for the purposes of section 69 as if it were the unrelieved loss available for relief in subsequent accounting periods in accordance with that section.

(2) A "life assurance trade loss" means a loss arising to an insurance company from life assurance business which is calculated in accordance with the life assurance trade profits provisions.

(3) A life assurance trade loss is "unused" so far as no relief is given for it under—

(a) section 85A or 89 of FA 1989, or

(b) any other provision of the Corporation Tax Acts.

(4) The "appropriate" part of any unused life assurance trade losses is the amount (if any) by which—

(a) the amount of the unused life assurance trade losses, exceeds

(b) the amount of unused losses arising to an insurance company in an accounting period ending before 1 January 2013 from gross roll-up business (with the definition of "unused" in paragraph 24(2) applying here).

27 (1) This paragraph applies if, but for this Part of this Act, an amount would have been carried forward to an accounting period of an insurance company under section 76(12) or (13) of ICTA (expenses of insurance companies).

(2) The amount is to be treated for the purposes of step 5 of section 22 as an expense from a previous accounting period carried forward as a result of section 19 to the accounting period of the company beginning on 1 January 2013.

Relief for BLAGAB trade losses for accounting period beginning on or after 1 January 2013

28 (1) This paragraph applies if—

(a) an insurance company carries on basic life assurance and general annuity business in an accounting period beginning on or after 1 January 2013, and

(b) the company has a BLAGAB trade loss for the accounting period.

(2) For the purposes of section 37(6) of CTA 2010 (as applied by section 68) the company is to be treated as carrying on that business in a previous accounting period if the company carried on life assurance business in that period.

Assets of the shareholder fund

29 (1) This paragraph applies in relation to assets of an insurance company carrying on life assurance business which were assets of the shareholder fund of the company for the period of account ending immediately before 1 January 2013.

(2) Those assets are, in relation to times on or after that date, to be regarded for the purposes of this Part as assets forming part of the long-term business fixed capital of the company (whether or not they would otherwise be so regarded).

(3) An asset is an "asset of the shareholder fund of an insurance company for the period of account ending immediately before 1 January 2013" if it is shown in any of lines 11 to 86 of Form 13 in the company's periodical return ending immediately before that date in respect of assets other than those of its long-term business.

(4) But an asset is not to be regarded as an asset of the shareholder fund for that period of account if for any accounting period ending before 1 January 2013—

(a) income arising from the asset was, or chargeable gains or allowable losses accruing on any part disposal of the asset for the purposes of TCGA 1992 were, taken into account for the purposes of the charge to corporation tax on the I minus E basis, or

(b) income arising from the asset was taken into account in calculating the profits of the company in respect of its life assurance business in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of CTA 2009 (charge on trade profits).

PART 3

SUPPLEMENTARY

General transitional provision in relation to provisions re-enacted in Part 1 of this Act

30 (1) This paragraph applies where any provision of this Part of this Act re-enacts (with or without modification) an enactment repealed by this Part of this Act.

(2) The repeal and re-enactment does not affect the continuity of the law.

(3) Any subordinate legislation or other thing which—

(a) has been made or done, or has effect as if made or done, under or for the purposes of the repealed provision, and

(b) is in force or effective in relation to accounting periods of insurance companies ending on 31 December 2012,

has effect in relation to subsequent accounting periods of insurance companies as if made or done under or for the purposes of the corresponding provision of this Part of this Act.

(4) Any reference (express or implied) in any enactment, instrument or document to a provision of this Part of this Act is to be read as including, in relation to times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.

This sub-paragraph applies only so far as the context permits.

(5) Any reference (express or implied) in any enactment, instrument or document to a repealed provision is to be read, in relation to times, circumstances or purposes in relation to which the corresponding provision of this Part of this Act has effect, as a reference or (as the context may require) as including a reference to that corresponding provision.

This sub-paragraph applies only so far as the context permits.

(6) This paragraph is subject to any specific transitional, transitory or saving provision made by or under this Schedule.

(7) The generality of this paragraph is not to be affected by specific transitional, transitory or saving provision made by or under this Schedule.

(8) This paragraph has effect instead of section 17(2) of the Interpretation Act 1978.

Power to make supplementary transitional provision etc

31 (1) The Treasury may by regulations make further transitional, transitory or saving provision in connection with the coming into force of any of the provisions of this Part of this Act.

(2) The provision that may be made by the regulations includes provision (whether by way of textual amendment or otherwise) altering or supplementing the effect of any provision made by or under this Schedule.

(3) The regulations may be made so as to have effect in relation to any period beginning before but ending on or after the day on which the regulations are made (as well as in relation to periods no part of which falls before that day).

32 Any regulations made by the Treasury under any provision of this Schedule may—
(a) make different provision for different cases or circumstances, and
(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

Interpretation

33 The following expressions have the same meaning in this Schedule as they have in Chapter 1 of Part 12 of ICTA—
"brought into account" (except in paragraph 23),
"gross roll-up business",
"the I minus E basis",
"the life assurance trade profits provisions",
"non-profit fund",
"period of account",
"periodical return", and
"PHI business".

SCHEDULE 3

Section 121

PART 2: CONSEQUENTIAL AMENDMENTS

Income and Corporation Taxes Act 1988

1 ICTA is amended as follows.

2 Omit section 459 (unregistered friendly societies: exemption from tax).

3 Omit section 460 (exemption from tax in respect of life or endowment business).

4 Omit section 461 (taxation in respect of other business).

5 Omit sections 461A to 461C (taxation in respect of other business: incorporated friendly societies qualifying for exemption).

6 Omit section 461D (transfers of business).

7 Omit section 462 (conditions for tax exempt business).

8 Omit section 463 (long-term business of friendly societies: application of Corporation Tax Acts).

9 Omit section 464 (maximum benefits payable to members).

10 Omit section 465 (old societies).

11 Omit section 465A (assets of branch of registered friendly society to be treated as assets of society after incorporation).

12 Omit section 466 (interpretation of Chapter 2 of Part 12).

13 (1) Schedule 15 (qualifying policies) is amended as follows.

(2) In paragraph 3—

(a) in sub-paragraphs (1) and (4)(c), for “tax exempt life or endowment business” substitute “exempt BLAGAB or eligible PHI business”,

(b) in sub-paragraph (8)(b)(i), for “a new society” substitute “a society other than an old society”, and

(c) in sub-paragraph (8)(b)(ii), for “a society other than a new society” substitute “an old society”.

(3) In paragraph 4(3)(b)(ii), for “a new society” substitute “a society other than an old society”.

(4) Omit paragraph 5.

(5) In paragraph 6—

(a) in sub-paragraph (1)—

(i) omit “(as defined in section 466)” in both places, and

(ii) for “tax exempt life or endowment business” substitute “exempt BLAGAB or eligible PHI business”, and

(b) in sub-paragraph (2), for “section 464” substitute “section 105 of the Finance Act 2012”.

(6) After paragraph 6 insert—

“6A Any expression—

(a) which is used in any provision made by any of paragraphs 3 to 6, and

(b) which is used in Part 2 of the Finance Act 2012,

has the same meaning in that provision as it has in that Part.”

Taxation of Chargeable Gains Act 1992

14 TCGA 1992 is amended as follows.

15 In section 100(2B)(b) (exemption for authorised unit trusts etc), for “section 466(2) of the Taxes Act” substitute “section 117 of the Finance Act 2012”.

Income Tax (Trading and Other Income) Act 2005

16 ITTOIA 2005 is amended as follows.

17 (1) Section 531 (gains from contracts for life insurance etc: cases where income tax not treated as paid) is amended as follows.

(2) In subsection (3)(a), for “tax exempt life or endowment business” substitute “exempt BLAGAB or eligible PHI business”.

(3) In subsection (4), for the definition of “tax exempt life or endowment business” substitute—

““exempt BLAGAB or eligible PHI business” has the same meaning as in Part 2 of FA 2012 (see sections 99 and 100).”

Corporation Tax Act 2009

18 CTA 2009 is amended as follows.

19 In section A1(2) (overview of the Corporation Tax Acts), after paragraph (k)

(as inserted by paragraph 131(c) of Schedule 1 to this Act) insert ", and

(l) Part 2 of that Act (friendly societies carrying on long-term business)."

20 In section 564(1) (section 563: interpretation), for "section 460 of ICTA" substitute "section 103 of FA 2012".

21 In section 931S(3) (company distributions: meaning of "small company"), in the definition of "friendly society", for "section 466(2) of ICTA" substitute "section 117 of FA 2012".

Consequential repeals

22 In consequence of the amendments made by this Schedule, omit the following provisions—

(a) in FA 1990—
   (i) section 49(1) to (4),
   (ii) section 50, and
   (iii) paragraph 6 of Schedule 9,
(b) in FA 1991, paragraphs 1 to 3 of Schedule 9,
(c) in FA 1995, paragraphs 1 and 2 of Schedule 10,
(d) in FA 1996, section 171,
(e) in FA 2007—
   (i) section 44,
   (ii) paragraphs 40 and 43 of Schedule 7, and
   (iii) Schedule 12, and
(f) in FA 2008, section 44 and Schedule 18.

SCHEDULE 4

Section 122

PART 2: TRANSITIONAL PROVISION

Approvals given for purposes of section 461 or 461C of ICTA

1 Anything which, as a result of section 461(11) or 461A(4) of ICTA, is treated as having been done by HMRC Commissioners on a particular date under a provision of ICTA repealed by this Act is to continue to be treated as having been done by them on that date under the provision of this Part corresponding to that repealed provision, despite the fact that neither section 461(11) nor section 461A(4) of ICTA is rewritten in this Act.

General transitional provision in relation to provisions re-enacted in Part 2 of this Act

2 (1) This paragraph applies where any provision of this Part of this Act re-enacts (with or without modification) an enactment repealed by this Part of this Act.

(2) The repeal and re-enactment does not affect the continuity of the law.

(3) Any subordinate legislation or other thing which—

(a) has been made or done, or has effect as if made or done, under or for the purposes of the repealed provision, and

(b) is in force or effective in relation to accounting periods of friendly societies ending on 31 December 2012,

has effect in relation to subsequent accounting periods of friendly societies as if made or done under or for the purposes of the corresponding provision of this Part of this Act.

(4) Any reference (express or implied) in any enactment, instrument or document to a provision of this Part of this Act is to be read as including, in relation to times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.

This sub-paragraph applies only so far as the context permits.

(5) Any reference (express or implied) in any enactment, instrument or document to a repealed provision is to be read, in relation to times, circumstances or purposes in relation to which the corresponding provision of this Part of this Act has effect, as a reference or (as the context may require) as including a reference to that corresponding provision.

This sub-paragraph applies only so far as the context permits.

(6) This paragraph is subject to any specific transitional, transitory or saving provision made by or under this Schedule.

(7) The generality of this paragraph is not to be affected by specific transitional, transitory or saving provision made by or under this Schedule.

(8) This paragraph has effect instead of section 17(2) of the Interpretation Act 1978.

EXPLANATORY NOTE

SOLVENCY II & THE TAXATION OF LIFE INSURANCE COMPANIES

SUMMARY

1. These clauses establish a new regime for the taxation of life insurance companies. It represents a wide-ranging and fundamental revision of both the basis on which life companies' taxable profits are computed and the detailed rules by which those profits are taxed.

DETAILS OF THE CLAUSES

Part 1

Chapter 1

2. Chapter 1 contains sections 1 to 11 which explain the structure of this Part of the Act and define terms used in the legislation.

3. Section 2 defines "life assurance business", and section 3 defines "basic life assurance and general annuity business" (BLAGAB), which excludes "protection business", among other items. Sections 4 to 8 define terms used in section 3.

Chapter 2

4. Chapter 2 sets out the charge to tax on BLAGAB business, which is taxed on an I - E basis.

5. Section 12 explains that BLAGAB, non-BLAGAB long-term business and general insurance are to be treated as separate trades.

6. Section 13 provides an exception to the separate trade treatment for BLAGAB when substantially all of the long-term business is not BLAGAB.

7. Section 14 imposes the charge to corporation tax on the I - E profit for BLAGAB; the "I - E profit" is explained in section 19.

8. Section 15 gives precedence to the I - E charge over the general charge to corporation tax on trade profits under section 35 of the Corporation Tax Act (CTA) 2009.

9. Section 16 explains what is meant by "the I - E rules".

10. Section 17 applies the general corporation tax charge on trade profits to profits of non-BLAGAB long-term business, subject to Chapter 6 of the legislation and specific rules for transfers of non-BLAGAB long-term business.

11. Section 18 excludes companies carrying on only Permanent Health Insurance (PHI) business from Part 1 of the legislation and from provisions elsewhere in the Corporation Tax Acts which make special provision for long-term business carried on by insurance companies.

Chapter 3

12. Chapter 3 explains the I – E basis.

13. Section 19 sets out the steps used to calculate the I – E profit (where the result is a positive amount) or the excess BLAGAB expenses (where the result is a negative amount). It points to other sections where specific terms are explained.

14. Section 20 lists items that come within the definition of income in step 1 of section 19.

15. Section 21 explains how to calculate the BLAGAB chargeable gains for the purposes of step 2 of section 19.

16. Section 22 explains how to calculate the BLAGAB management expenses for the purposes of step 5 of section 19.

17. Sections 23 and 24 define some of the terms used in the calculation of BLAGAB management expenses in section 22.

18. Section 25 sets out special rules for acquisition expenses (which are defined in section 26). These are expenses that are payable for the purpose of the acquisition of new business. They are spread over 7 years rather than deducted in full when incurred.

19. Section 27 details some specific amounts that are allowable as BLAGAB management expenses.

20. Section 28 applies certain restrictions, which apply to the management expenses of a company with investment business, to the calculation of BLAGAB management expenses.

21. Sections 29 and 31 bring into the new regime the existing provisions allowing relief, in computing I - E profits, for certain annuity payments.

22. Section 32 ensures that for the purposes of the I – E profit calculation the rules on loan relationships, derivative contracts and intangible fixed assets apply as though the BLAGAB business were not a trade. The relevant rules in CTA 2009 apply accordingly.

23. Sections 33 and 34 carry forward existing provisions which impute investment return for I – E purposes when certain risks under BLAGAB contracts of insurance are reinsured.

24. Section 35 deems certain BLAGAB trading receipts, which would not otherwise fall within the charge to corporation tax, to be I - E receipts.

25. Section 36 requires a comparison between the BLAGAB trade profit and the I - E result and imputes an additional I - E receipt if the former is greater than the latter.

26. Section 37 requires that, in making the comparison in section 36, any exempt dividends referable to BLAGAB are to be included as I - E receipts. This is because all dividends are taken into account when computing the BLAGAB trade profit.

27. Section 38 allows non-BLAGAB allowable losses to be deducted from the shareholders' share of BLAGAB chargeable gains, but not to the extent that they would create an I - E loss.

28. Section 39 restricts management expenses of an overseas life insurance company carrying on BLAGAB business in the UK where the income of the company allocated to BLAGAB includes FOTRA (free of tax to residents abroad) profits.

Chapter 4

29. Section 40 introduces Chapter 4, which contains rules for the allocation to BLAGAB of investment income and losses, expenses, and chargeable gains and allowable losses for the purposes of I – E.

30. Section 41 requires that investment income or losses, and expenses referable to BLAGAB are to be determined by an acceptable commercial method. It explains what is an acceptable commercial method. HM Treasury is given a power to make regulations prescribing what is, or is not, an acceptable commercial method.

31. Sections 42 to 44 explain how chargeable gains and allowable losses referable to BLAGAB are determined.

32. Section 43 provides that gains or losses on assets are attributable to BLAGAB to the extent that the assets are wholly or partly matched to BLAGAB liabilities. The concept of matching is explained in section 83.

33. Section 44 explains that the extent to which gains or losses on assets, which are not matched to BLAGAB liabilities, are referable to BLAGAB is determined using an acceptable commercial method. The section applies to the unmatched proportion of a gain or loss

where the asset is partly matched. It explains what is an acceptable commercial method, and gives HM Treasury a power to make regulations prescribing what is, or is not, an acceptable commercial method.

Chapter 5

34. Chapter 5 sets out the rate of tax to be applied to the policyholders' share of the I–E profit and sets out how that share is to be determined.

35. Section 45 defines the rate of tax applicable to the policyholders' share of the I – E profit as the basic rate for income tax.

36. Section 46 sets out how the policyholders' share of the I – E profit is to be determined. For mutual insurance companies, the whole of the profit is attributable to policyholders.

37. Sections 47 and 48 explain terms used in section 46.

38. Section 49 provides for a deduction in the calculation of the BLAGAB trade profits for tax of the accounting period charged at the policyholder rate.

39. Section 50 provides for an adjustment to BLAGAB trade profits in respect of deferred policyholder tax, and explains how it is to be calculated.

40. Section 51 defines terms used in section 50 and specifies the BLAGAB assets and liabilities in respect of which an adjustment may arise under that section. HM Treasury is given a power to amend by regulation the list of BLAGAB assets and liabilities.

Chapter 6

41. Section 52 applies the rules in Chapter 6 to the calculation of BLAGAB trade profit or loss and the non-BLAGAB long-term business profit.

42. Section 53 allows a deduction in calculating profits for sums allocated to policyholders except where sums are of a capital nature.

43. Section 54 brings dividends and other company distributions into account as receipts in calculating the profits unless they are capital distributions. This section overrides the general rule that such dividends and distributions are not taxable.

44. Section 55 disapplies the provisions in CTA 2009 which exempt the indexation return on index-linked gilts from tax under the loan relationship rules in computing trade profits.

45. Section 56 excludes profits, receipts and expenses arising from fixed capital assets from the computation of profits.

Chapter 7

46. Section 57 explains that Chapter 7 details how to allocate accounting profits, losses and various adjustments between BLAGAB and non-BLAGAB long-term business.

47. Section 58 requires that the allocation is to be in accordance with an acceptable commercial method. The method must be consistent with the method used for the purposes of section 41(allocation of BLAGAB income, etc). The section also gives HM Treasury the power to prescribe cases in which a method is to be, or is not to be, regarded as an acceptable commercial method.

Chapter 8

48. Chapter 8 deals with changes in the allocation of assets and share pooling rules for life insurance business.

49. Section 59 deems a disposal and reacquisition at fair value when an asset moves between the categories set out in the section. This rule does not apply where none of the profits of a company are taxed on an I - E basis.

50. Section 60 modifies the rules in section 59 for overseas life insurance companies.

51. Section 61 sets out the rules where there is a transfer of business and as a consequence assets transferred move from one category to another.

52. Sections 62 and 64 adapt the share pooling rules for life insurance companies.

Chapter 9

53. Chapter 9 is concerned with the taxation of property income.

54. Section 66 provides that a life insurance company may have more than one property business. There is a separate property business in respect of property held other than for the purposes of the long-term business. Separate businesses are established for property matched to BLAGAB liabilities; for property matched to other long-term liabilities; and for unmatched property held for the purposes of the long term business.

55. Section 67 explains how losses from a property business are to be treated.

Chapter 10

56. Chapter 10 explains how relief is provided for BLAGAB trade losses.

57. Section 68 applies the general trade loss rules in CTA 2009 to BLAGAB trade losses.

58. Section 69 describes how a BLAGAB trade loss may be carried forward to later accounting periods.

59. Section 70 explains the application of group relief rules to BLAGAB trade losses.

60. Section 71 says that losses relieved by way of section 68, section 69 or section 70 are to be reduced by the amount of any non-trading loan relationship deficit for the accounting period.

61. Section 72 prevents various reliefs (as identified in section 72(3)) from being set against the policyholders' share of the I – E profit.

Chapter 11

62. Chapter 11 contains the rules on transfers of long-term business.

63. Where there is a transfer of BLAGAB business, Section 73 permits the transferee to receive relief for spread acquisition expenses (see section 25) which would have become available to the transferor in a period after the transfer if the transfer had not taken place.

64. Section 74 sets out the rules for the calculation of BLAGAB trade profits of the transferor and the transferee where there is a transfer of BLAGAB business within a group or from a mutual company to a non-mutual company.

65. Section 75 provides that, when there has been a transfer of business between unconnected parties on or after 1 January 2013, the transferee will get relief for the amortisation of an asset recognising the value of future profits arising from the business acquired when that amortisation is charged to the accounts .

66. Section 76 applies sections 74 and 75 where there is a transfer of non-BLAGAB long-term business.

67. Section 77 is an anti-avoidance provision, which applies where there is a transfer of long-term business (or part of a business) and the main purpose of a company entering into one or more of the arrangements is an unallowable purpose. Where it applies, the section permits necessary steps to be taken to negate the tax advantage arising.

68. Sections 78 and 79 set out the clearance procedure by which a company can seek confirmation from HMRC that section 77 does not apply.

69. Section 80 states that whether companies are members of the same group for the purposes of Chapter 11 is to be determined in accordance with section 170(2) to (11) of the Taxation of Chargeable Gains Act 1992.

Chapter 12

70. Chapter 12 contains definitions of terms and abbreviations used in this Part.

71. Section 83 explains the concept of matching of assets (or part assets) to liabilities, which is used in Chapter 4 and Chapter 9 of this Part.

Chapter 13

72. Sections 87 gives HM Treasury powers to amend the legislation relating to life assurance business by way of secondary legislation in consequence of powers being exercised under the Financial Services and Markets Act 2000 (FSMA 2000).

73. Section 88 allows the meaning of the term "insurance business transfer scheme" to be amended by order following any change to section 105 FSMA 2000.

74. Section 89 provides a power to modify by regulations the legislation relating to overseas life insurance companies.

75. Sections 91 and 92 introduce Schedules 1 and 2, which contain minor and consequential amendments and transitional provisions respectively.

76. Section 93 states that the provisions of this Part are to have effect for accounting periods beginning on or after 1 January 2013.

77. Section 94 ensures that all life insurance companies will have an accounting period ending on 31 December 2012.

Part 2

78. Part 2 provides specific rules for the taxation of life assurance business and other long-term business carried on by friendly societies. Section 95 gives an overview of the contents of Part 2.

79. Section 96 applies the Corporation Tax Acts to long-term business carried on by friendly societies in the same way that they apply to mutual business carried on by insurance companies.

80. Section 97 states that the transfer of business rules in Chapter 11 of Part 1 or elsewhere apply to friendly societies and gives HM Treasury the power to modify those provisions by way of regulations.

81. Section 98 states that certain exempt BLAGAB or eligible PHI business will not be liable to corporation tax, and section 99 defines the term "BLAGAB or eligible PHI business". Section 100 defines "exempt" BLAGAB or eligible PHI business.

82. Section 101 sets out specific provisions relating to exempt BLAGAB or PHI business (see section 100) for friendly societies whose rules prevent them from writing business above specified values.

83. Section 102 applies on a transfer of business to prevent any long-term business transferred in to a friendly society from being exempt unless section 103 applied to the contracts before the transfer.

84. Section 103 allows previously exempt business to remain exempt if it is transferred to an insurance company, or the friendly society converts to a company. Such business comprises a separate business in the insurance company. Section 103 also provides for regulations to be made to modify the rules in the section.

85. Section 104 prevents profits on certain policies from coming within the exemptions from corporation tax provided by the legislation where the limits of the maximum benefits payable to members are breached.

86. Section 105 sets out limits on the value of exempt contracts which a policyholder may hold with one or more friendly societies at any time. Section 106 makes additional provisions for the purposes of section 105.

87. Section 106 provides for a friendly society or insurance company to require a policyholder to make a statutory declaration that the limits in section 105 have not been exceeded.

88. Section 108 allows the HMRC Commissioners to give a direction where it is considered necessary for the protection of revenue that an "old" society is to lose its status as an "old" society in respect of business carried on after the date of the direction.

89. Section 109 exempts a registered qualifying society (as defined) from a liability to tax on profits other than from life assurance business or PHI within "BLAGAB or eligible PHI business", providing the society makes a claim.

90. Section 110 exempts an incorporated qualifying society (as defined) from a liability to tax on profits other than from life assurance business or from PHI within “BLAGAB or eligible PHI business”, providing the society makes a claim.

91. Section 111 explains that an insurance company acquiring business other than life insurance business or PHI within “BLAGAB or eligible PHI business” from a friendly society exempted under section 109 or 110 is exempt from corporation tax on the profits from that business. A friendly society converting to an insurance company is likewise exempt. Such business comprises a separate business in the insurance company. Section 111 also provides for regulations to be made to modify the rules in the section.

92. Section 112 explains what happens when business is transferred between friendly societies and sections 109 or 110 previously applied to the transferor. Business other than life insurance business or PHI within “BLAGAB or eligible PHI business” which was exempt in the transferor remains exempt in the transferee.

93. Section 113 allows the HMRC Commissioners to make a direction withdrawing a registered or incorporated society’s qualifying status in certain circumstances.

94. Section 114 sets out the circumstances in which a payment by a non-qualifying society to a member is treated as a qualifying distribution.

95. Where a registered friendly society becomes incorporated, Section 115 provides that assets of a branch of the society which are identified under section 6(5) of the Friendly Societies Act 1992 as not transferred to the new company are nonetheless to be treated as assets of the company for tax purposes.

96. Section 116 provides, where a claim is made, for an exemption from corporation tax for unregistered and unincorporated friendly societies whose income does not exceed £160 a year.

97. Section 123 states that the provisions of this Part are to have effect for accounting periods beginning on or after 1 January 2013.

98. Section 124 ensures that all friendly societies will have an accounting period beginning on 1 January 2013 (even if that would not otherwise be the case).

Schedule 1

99. Schedule 1 contains minor and consequential amendments to other Acts that flow from this new legislation.

Schedule 2

100. Schedule 2 contains transitional provisions.

Schedule 2 Part 1

101. Part 1 of Schedule 2 provides for deemed receipts or deemed expenses to arise on transition for the purposes of computing BLAGAB trade profits and non-BLAGAB long-term business profits. The general rule is that receipts and expenses are treated as arising over a 10-year period.

102. Paragraph 2 explains what is meant by “the 2012 balance sheet” and “the 2012 periodical return”.

103. Paragraphs 3 and 4 deem a balance sheet and/or periodical return to have been drawn up at 31 December 2012 if the company does not have an actual balance sheet and/or periodical return at that date.

104. Paragraph 5 requires the insurance company to calculate the total transitional difference by way of a comparison of the amount attributed to shareholders (that is, amounts which would have been recognised in profits if an accounts basis had always applied) as at 31 December 2012 with the cumulative taxed surplus at the same date (that is, surplus recognised in the regulatory return and taken into account when computing profits). The paragraph permits HM Treasury to prescribe by regulations adjustments to the method by which the amount attributed to shareholders is calculated.

105. Paragraph 6 requires the insurance company to identify the items which together make up the total transitional difference, and to allocate a positive or negative amount to each item. The paragraph permits HM Treasury to prescribe by regulations how the items are to be determined.

106. Paragraph 7 provides that the items making up the total transitional difference are “relevant computational items” unless they are “excluded items”. It specifies certain excluded items and gives HM Treasury power to specify others by regulations.

107. Paragraph 8 apportions the relevant computational items between the pre-transition categories of business, that is, BLAGAB, gross roll-up business (GRB) and PHI. Amounts apportioned to PHI are ignored in applying the rest of the transitional rules.

108. Paragraphs 9 and 10 explain that relevant computational items (or parts of them) allocated to BLAGAB or non-BLAGAB long-term business are treated as receipts or expenses in computing BLAGAB

trade profits or profits of non-BLAGAB long term business for accounting periods commencing on or after 1 January 2013.

109. Paragraph 11 describes the 10-year period over which receipts and expenses are treated as arising. The 10-year period begins on 1 January 2013. It excludes receipts which are "relevant court-protected items" (see paragraph 12).

110. Paragraph 12 defines a relevant court-protected item, and provides that receipts arising from such items are treated as arising over a 10-year period beginning on the date the court order ceases to be in force or 1 January 2015, whichever is the earlier.

111. Paragraphs 13 and 14 explain how transitional receipts or expenses are to be treated where there is a subsequent transfer of insurance business.

112. Paragraph 15 deals with the treatment of transitional amounts where an insurance company ceases to carry on long-term business other than as a result of a transfer.

113. Paragraph 16 provides that where there is an unrelieved charge under the financing arrangement-funded transfer legislation in section 83YC of Finance Act 1989 that charge is to be treated as a negative 'relevant computational amount'.

114. Paragraph 17 is an anti-avoidance provision, which applies where an insurance company enters into arrangements or does something in connection with the transitional rules, and its purpose is to obtain a tax advantage. Where it applies, it permits necessary steps to be taken to nullify any tax advantage.

115. Paragraphs 18 and 19 set out the clearance procedure by which a company can seek confirmation from HMRC that paragraph 17 does not apply.

116. Paragraph 20 makes special provision for overseas life insurance companies in certain circumstances.

Schedule 2 Part 2

117. Paragraph 21 provides for a company to make an irrevocable election to treat certain contracts of insurance effected prior to 1 January 2013 as having been made on or after that date for the purposes of section 8.

118. Paragraph 22 prevents an amount being taken into account in computing BLAGAB trade profits or non-BLAGAB long-term business profits where it was already taken into account in computing trade profits in a period before the transition.

119. Paragraph 23 applies to intangible fixed assets which were excluded from Part 8 of CTA 2009 under the old law, but which are brought within Part 8 by this legislation. Expenditure incurred before 1 January 2013 is to be ignored in determining amounts to be brought into account under Part 8.

120. Paragraphs 24 to 27 describe the treatment of various losses and excess management expenses carried forward from an accounting period ending before 1 January 2013 into the new regime.

121. Paragraph 28 enables BLAGAB trade losses to be carried back to pre-transition accounting periods under section 37 CTA 2010.

122. Paragraph 29 states that assets previously treated as assets of the shareholder fund for the last period of account ending before 1 January 2013 are to be treated as fixed capital assets from 1 January 2013. The paragraph defines when an asset is to be regarded as having been an asset of the shareholder fund.

Schedule 2 Part 3

123. Paragraph 30 applies where Part 1 of this Act re-enacts an enactment that has been repealed by the legislation. It provides that any statutory instrument which was made under a provision repealed by this legislation and which has effect for accounting periods ending on 31 December 2012 has effect in relation to subsequent accounting periods as if it had been made under the corresponding provision in this legislation.

124. Paragraph 31 gives HM Treasury a power to make further transitional provisions by way of regulations.

BACKGROUND NOTE

125. The EU Solvency II Directive will fundamentally change the regulatory reporting framework on which life insurance company taxation is currently based. As a result of the changes introduced by the Directive, regulatory returns made by insurance companies to the Financial Services Authority will no longer provide the information on which the current basis of taxation relies.

126. A new regime is therefore being introduced, which will apply from 1 January 2013. It aims to simplify the unique and complex rules currently governing life company taxation by bringing them more in line with those which apply to companies generally, and aligning them more closely with the commercial realities of life insurance

business. The changes being introduced are extensive; the main points are summarised below.

- Trading profits will be calculated on the basis of life companies' financial statements, in line with general corporation tax rules, rather than being derived from regulatory returns made to the Financial Services Authority, as now.

- Life companies are subject to the "Income minus Expenses" (I minus E) tax basis, which aims to tax (at different rates) profits made by shareholders and the investment return arising for the benefit of certain policyholders. I minus E will continue to apply but, unlike now, only to the type of business where it is appropriate to tax both shareholder profit and policyholder investment return. Life protection business, which does not attract significant investment return, will be excluded from I minus E.

- Three categories of insurance business are currently recognised for tax purposes, all subject to different tax rules. Two of the three existing categories will be amalgamated, reducing their total number to two.

- At present life insurance companies' investment income, gains and losses are apportioned between categories of business by way of a series of formulae set out in legislation. Under the new regime, the allocation will instead be determined by reference to the actual commercial activities of individual companies.

- Life companies will be brought within the rules on loan relationships and intangible fixed assets which apply to the computation of taxable trading profits for companies generally.

127. If you have any questions about this change, or comments on the legislation, please contact Andy Stewardson on 020 7147 (email: andy.stewardson@hmrc.gsi.gov.uk)

Claims Equalisation Reserves (CERs)

1 Abolition of relief for equalisation reserves: general insurers

(1) Sections 444BA to 444BD of ICTA (equalisation reserves) are repealed.

(2) In consequence of this repeal, omit—
  (a) in TMA 1970, in the second column of the table in section 98, the entry relating to regulations under section 444BB of ICTA and the entry relating to regulations under section 444BD of ICTA,
  (b) in FA 1996, section 166 and Schedule 32,
  (c) in FA 2003, in section 153(1)(a), the words "444BB(3)(b),",
  (d) in CTA 2009, paragraphs 155 and 156 of Schedule 1, and
  (e) in TIOPA 2010, paragraph 9 of Schedule 8.

(3) The amendments made by this section have effect in relation to accounting periods ending on or after such day ("the specified day") as is specified in an order made by the Treasury.

(4) In the case of a company's existing equalisation or equivalent reserve—
  (a) an amount equal to one-sixth of the amount of the reserve is to be treated as a receipt of the company's business in the calendar year in which the specified day falls, and
  (b) an amount equal to one-sixth of the amount of the reserve is to be treated as a receipt of the company's business in each of the next five calendar years.

(5) If a company has different accounting periods falling in a calendar year, the receipt is apportioned between those periods in proportion to the number of days of the calendar year falling in those periods.

(6) If a company ceases to carry on the business before the full amount of its existing equalisation or equivalent reserve is dealt with as mentioned in subsection (4), the remaining balance of the reserve is to be treated as a receipt of the company's business in the accounting period in which the company ceased to carry it on.

(7) For the purposes of this section—
  (a) "equalisation reserve", in relation to a company, means the equalisation reserve in respect of a business which the company was required, by virtue of equalisation reserves rules (within the meaning of section 444BA of ICTA), to maintain,
  (b) "equivalent reserve" means an equivalent reserve (within the meaning of section 444BD of ICTA) in relation to which section 444BA of ICTA applied,
  (c) a company's "existing" equalisation or equivalent reserve means the equalisation or equivalent reserve as it stood immediately before the first accounting period of the company ("the relevant accounting period") in relation to which the amendments made by this section have effect (but see subsection (8)), and

(d) references in this section to the company's business are to the business in respect of which the equalisation or equivalent reserve was maintained.

(8) If—

(a) a company has made an election under section 444BA(4) of ICTA in relation to an accounting period ending before the specified day, and

(b) an amount would, but for this section, have been carried forward to the relevant accounting period of the company as a deductible amount,

that amount is not to be carried forward to that period as a deductible amount but is instead to be deducted from the amount of the equalisation or equivalent reserve as it stood immediately before that period.

(9) References in this section to section 444BA of ICTA include that section as modified by regulations made under section 444BB or 444BC of that Act.

2 Deemed receipts under s.1(4): double taxation relief

(1) This section applies if—

(a) a receipt is treated as arising to a company's business in an accounting period as a result of section 1(4), and

(b) the company carries on business through a permanent establishment outside the United Kingdom by reference to which double taxation relief is afforded in respect of any income or gains.

(2) For the purpose of calculating the profits or losses by reference to which double taxation relief is afforded for the accounting period, only the appropriate proportion (if any) of the receipt is to be taken into account.

(3) The appropriate proportion of the receipt is equal to the mean of each proportion found for each relevant period (if any).

(4) A proportion for a relevant period is the proportion which the PE's premium income for the period bears to the company's premium income for the period.

(5) For the purposes of this section—

"the company's premium income", in relation to a relevant period, means the total amount of net premiums written in the course of the business mentioned in subsection (1)(a) arising in that period,

"the PE's premium income", in relation to a relevant period, means the total amount of net premiums written in the course of that business arising in that period that are attributable to the permanent establishment, and

a "relevant period" means an accounting period of the company in relation to which each of the following conditions is met—

(a) section 444BA of ICTA has applied in relation to the accounting period,

(b) the business mentioned in subsection (1)(a) has been carried on through the permanent establishment in the accounting period, and

(c) the accounting period is the company's last accounting period in relation to which section 444BA of ICTA applied or is one that falls wholly or partly in the period of six years ending with the day on which that last accounting period ended.

(6) In subsection (5)—

(a) "net premiums written" means gross premiums written net of reinsurance premiums payable under reinsurance ceded, and

(b) references to section 444BA of ICTA include that section as modified by regulations made under that Act.

3 Abolition of relief for equalisation reserves: Lloyd's corporate members etc

(1) Regulations made by the Treasury under section 47 of FA 2009 (equalisation reserves for Lloyd's corporate and partnership members) that revoke previous regulations made under that section may include provision corresponding to the provision made by section 1(4) to (8), subject to such modifications as may be made in the regulations.

(2) Section 47 of FA 2009 is repealed.

(3) That repeal has effect in relation to accounting periods ending on or after such day ("the specified day") as is specified in an order made by the Treasury.

(4) Subsections (2) and (3) are not to affect the operation of any transitional or saving provision included (whether as a result of this section or otherwise) in regulations made under section 47 of FA 2009 that revoke previous regulations made under that section so far as the provision remains capable of having effect in relation to times falling on or after the specified day.

EXPLANATORY NOTE

ABOLITION OF RELIEF FOR EQUALISATION RESERVES: GENERAL INSURERS

SUMMARY

1. This clause repeals sections 444BA to 444BD of the Income and Corporation Taxes Act 1988 (‘ICTA’) that provide for tax relief for equalisation reserves maintained by general insurance companies. It also sets out transitional provisions following on from the repeal.

DETAILS OF THE CLAUSE

2. Subsection (1) repeals sections 444BA to 444BD of ICTA.

3. Subsection (2) sets out consequential repeals arising from the repeal of sections 444BA to 444BD of ICTA.

4. Subsection (3) provides that the amendments made by this clause shall have effect in relation to accounting periods ending on or after a date to be specified in a Treasury order.

5. Subsection (4) provides that one sixth of a company’s existing equalisation, or equivalent reserve, is to be treated as a receipt of the company’s business in each of the 6 calendar years, beginning with the calendar year in which the date specified in an order made by the Treasury falls.

6. Subsection (5) provides that if a company has different accounting periods falling in a calendar year, the receipt is to be apportioned between those periods by reference to the number of days of the calendar year falling in those periods.

7. Subsection (6) provides that if a company ceases to carry on the business before the expiry of the 6 year period referred to in subsection (4), any remaining balance of the existing equalisation, or equivalent reserve, is to be treated as a receipt of the company’s business in the accounting period in which the company ceased to carry it on.

8. Subsection (7) defines the terms “equalisation reserve”, “equivalent reserve”, “existing equalisation or equivalent reserve” and “the company’s business”.

9. Subsection (8) sets out the tax treatment where a company has made an election under section 444BA(4) of ICTA for an accounting period ending before the date specified in a Treasury order, and such a sum

would have been carried forward as a deductible amount. The amount shall be deducted from the amount of the equalisation or equivalent reserve as it stood immediately before the accounting period to which it would have been carried forward.

10. Subsection (9) provides that references to section 444BA of ICTA include that section as modified by sections 444BB or 444BC of that Act.

BACKGROUND NOTE

11. There is currently a regulatory requirement for general insurance companies (but not members of Lloyd's) to maintain equalisation reserves in respect of certain lines of business. From 1996, amounts transferred into equalisation reserves were made tax deductible, and transfers out were treated as taxable receipts of the company's business.

12. The relief currently available is dependent on the regulatory requirement for general insurance companies to maintain equalisation reserves. As a result of the European Union Solvency II Directive that requirement will be withdrawn.

13. An informal consultation took place between April and August 2011 with an industry working group. Both the Association of British Insurers and Lloyd's, representing general insurance companies and corporate and partnership members at Lloyd's, have been included in the consultation process.

14. Taking into account these discussions, the Government has decided to repeal the legislation that allows tax relief for equalisation reserves. The Government has also decided to introduce a transitional period for the release of built-up reserves that involves spreading that release in equal instalments over a 6 year period, commencing from the date that the Solvency II capital requirements come into force.

15. If you have any questions about this change, or comments on the legislation, please contact David Moran on 020 7147 2612 (email david.moran@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

DEEMED RECEIPTS UNDER SECTION 1(4): DOUBLE TAXATION RELIEF

SUMMARY

1. This clause provides rules for the amount to be brought into account in the calculation of double taxation relief where a receipt arises under section 1(4) ("Abolition of relief for equalisation reserves: general insurers").

DETAILS OF THE CLAUSE

2. Subsection (1) provides that this section applies if a receipt arises to a company as a result of section 1(4) and that company carries on business through a permanent establishment ('PE') outside the United Kingdom for which double taxation relief is due in respect of any income or gain.

3. Subsection (2) provides that only the appropriate proportion (if any) of the receipt is to be taken into account in calculating the profits or losses on which double taxation relief is calculated.

4. Subsection (3) defines the appropriate proportion of the receipt as being equal to the mean of each proportion found for each relevant period.

5. Subsection (4) defines a proportion for a relevant period as the proportion of the company's premium income constituted by the PE's premium income for the same period.

6. Subsection (5) provides definitions of "the company's premium income", "the PE's premium income" and a "relevant period".

7. Subsection (6) defines "net premiums written" and provides that references to section 444BA of the Income and Corporation Taxes Act of 1988 include that section as modified by regulations made under that Act.

BACKGROUND NOTE

8. There is currently a regulatory requirement for general insurance companies (but not members of Lloyd's) to maintain equalisation reserves in respect of certain lines of business. From 1996, amounts transferred into equalisation reserves were made tax deductible and

transfers out were treated as taxable receipts of the company's business.

9. The relief currently available is dependent on the regulatory requirement for general insurance companies to maintain equalisation reserves. As a result of the European Union Solvency II Directive that requirement will be withdrawn.

10. An informal consultation took place between April and August 2011 with an industry working group. Both the Association of British Insurers and Lloyd's, representing general insurance companies and corporate and partnership members at Lloyd's, have been included in the consultation process.

11. Taking into account these discussions, the Government has decided to repeal the legislation that allows tax relief for equalisation reserves. The Government has also decided to introduce a transitional period for the release of built-up reserves that involves spreading that release in equal instalments over a 6 year period commencing from the date that the Solvency II capital requirements come into force.

12. If you have any questions about this change, or comments on the legislation, please contact David Moran on 020 7147 2612 (email: david.moran@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

ABOLITION OF RELIEF FOR EQUALISATION RESERVES: LLOYD'S CORPORATE MEMBERS ETC.

SUMMARY

1. This clause repeals section 47 of the Finance Act 2009 ('FA 2009'). The repeal is not effective in relation to transitional provisions being made under this section which are capable of having effect after the date of the repeal.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that regulations made by the Treasury under section 47 of FA 2009 that revoke previous regulations made under that section may include provisions corresponding to the provisions made by section 1(4) to (8) subject to any modifications specified in the regulations.

3. Subsection (2) repeals section 47 of FA 2009.

4. Subsection (3) provides that the repeal shall have effect for accounting periods ending on or after a date specified in a Treasury order.

5. Subsection (4) provides that the repeal of section 47 of FA 2009 shall not affect any transitional or savings provisions made under section 47 in so far as those transitional or savings provisions are capable of having effect after the date specified in a Treasury order.

BACKGROUND NOTE

6. There is currently a regulatory requirement for general insurance companies (but not members of Lloyd's) to maintain equalisation reserves in respect of certain lines of business. From 1996, amounts transferred into equalisation reserves were made tax deductible and transfers out were treated as taxable receipts of the company's business.

7. Section 47 FA 2009 provided a power to apply similar treatment to Lloyd's corporate and partnership members. The power was used in 2009 to make regulations (The Lloyd's Underwriters (Equalisation Reserves) (Tax) Regulations 2009 (SI 2009/2039)) to allow Lloyd's corporate and partnership members to calculate and hold an equivalent reserve for tax purposes only. Therefore, as with general insurance companies, amounts transferred into an equivalent reserve

were made tax deductible and transfers out were treated as taxable receipts of the member's business.

8. The relief currently available to general insurance companies is dependent on the regulatory requirement for those companies to maintain equalisation reserves. As a result of the European Union Solvency II Directive that requirement will be withdrawn.

9. An informal consultation took place between April and August 2011 with an industry working group. Both the Association of British Insurers and Lloyd's, representing general insurance companies and corporate and partnership members at Lloyd's, have been included in the consultation process.

10. Taking into account these discussions, the Government has decided to repeal the legislation that allows tax relief for equalisation reserves. The Government has also decided to introduce a transitional period for the release of built-up reserves that involves spreading that release in equal instalments over a 6 year period commencing from the date that the Solvency II capital requirements come into force.

11. If you have any questions about this change, or comments on the legislation, please contact David Moran on 020 7147 2612 (email: david.moran@hmrc.gsi.gov.uk).

Lloyds stop-loss insurance

1 Corporate members of Lloyd's: stop-loss insurance and quota share contracts

(1) In section 225 of FA 1994 (corporate members of Lloyd's: stop-loss and quota share insurance), after subsection (3B) insert—

"(3C) Subsection (3D) applies to any premium which is payable by a corporate member under a stop-loss insurance taken out in respect of its underwriting business and in relation to which section 220(2)(a) does not apply.

(3D) The premium is to be treated for the purposes of the Corporation Tax Acts—

(a) as an amount that arises to the member directly from its membership of the syndicate or syndicates in relation to the activities of which the stop-loss insurance was taken out, and

(b) as if it were payable in the underwriting year in which the profits or losses arising to the member directly from its membership of the syndicate or syndicates concerned are declared.

(3E) If a premium is payable under a stop-loss insurance in respect of two or more underwriting years, the amount of the premium treated, as a result of subsection (3D)(b), as payable in each of those years is to be determined on a just and reasonable basis.

(3F) If—

(a) a corporate member enters into a quota share contract, and

(b) the main purpose, or one of the main purposes, of entering into it was to secure that amounts payable by the member under the contract were not dealt with on the basis set out in subsection (3G),

the contract is treated for the purposes of subsections (3C) to (3E) as if it were a stop-loss insurance (and, accordingly, the amounts payable under it are treated for those purposes as premiums).

(3G) Amounts are dealt with on the basis set out in this subsection if they are treated as payable in the underwriting year in which the profits or losses arising to a corporate member directly from its membership of one or more syndicates are declared."

(2) The amendment made by this section has effect in relation to—

(a) any stop-loss insurance (as defined by section 230(1) of FA 1994) taken out on or after 6 December 2011, or

(b) any quota share contract (as defined by section 225(4) of FA 1994) entered into on or after that date.

EXPLANATORY NOTE

CORPORATE MEMBERS OF LLOYD'S: STOP-LOSS INSURANCE AND QUOTA SHARE CONTRACTS

SUMMARY

1. This clause introduces new rules for the taxation of premiums payable by corporate members of Lloyd's under stop-loss insurance. It also includes an anti-avoidance provision in respect of quota share contracts.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts new subsections (3C) to (3G) into section 225 of Finance Act 1994 ('FA 1994').

3. New section 225(3C) provides that the tax treatment described in new section 225(3D) shall apply to any premium payable by a corporate member of Lloyd's in respect of that member's underwriting business which is not already taxed under the rules in section 220(2)(a) of FA 1994.

4. New section 225(3D) sets out the tax treatment for a premium which meets the description in new section 225(3C). The premium will be treated as if it were an amount that had arisen directly as a consequence of that member's membership of the syndicate or syndicates in respect of which the stop-loss insurance was taken out. In addition, it will be treated as if it were payable in the underwriting year in which the profits or losses of those activities are declared.

5. New section 225(3E) provides for the situation where a stop-loss insurance premium is payable in respect of two or more underwriting years. The premium payable in respect of each of those years for the purposes of new section 225(3D) must be determined on a just and reasonable basis.

6. New section 225(3F) sets out the tax treatment where a corporate member of Lloyd's enters into a quota share contract and the main purpose, or one of the main purposes, for entering into that contract was to avoid the tax treatment set out in new section 225(3G). In such a case, the contract will be treated as if it were a stop-loss insurance and any amounts payable under the contract will be treated as premiums. The deemed premiums will be taxed in accordance with new section 225(3D).

7. New section 225(3G) describes the tax treatment referred to in new section 225(3F), the attempted avoidance of which triggers the operation of new section 225(3F). The relevant tax treatment is that amounts are treated as payable in the underwriting year in which the profits or losses arising to a corporate member directly from its membership of one or more syndicates are declared.

8. Subsection (2) provides that the amendment made by this section applies to stop-loss insurance (as defined by section 230(1) of FA 1994) and quota share contracts (as defined by section 225(4) of FA 1994) taken out or entered into on or after 6 December 2011.

BACKGROUND NOTE

9. Following the Budget 2011 announcement, the Government has been consulting with Lloyd's and interested parties on proposals to amend the timing of the tax deduction for Lloyd's member-level stop-loss premiums.

10. Taking into account these discussions, the Government has decided to amend the timing of the tax deduction for all premiums payable by corporate members of Lloyd's in respect of member-level stop-loss insurance taken out on or after 6 December. The legislation will align the timing of the tax deduction for the premiums with the recognition of the profits to which they relate.

11. If you have any questions about this change, or comments on the draft legislation, please contact David Moran on 020 7147 2612 (email: david.moran@hmrc.gsi.gov.uk).

Company Distributions

1 Company distributions

(1) Part 23 of CTA 2010 (company distributions) is amended as follows.

(2) Section 1002 (exceptions for certain transfers of assets or liabilities between a company and its members) is repealed.

(3) In section 1020 (transfers of assets or liabilities treated as distributions)—
(a) in subsection (2), omit from "But" to the end, and
(b) after that subsection insert—

"(2A) But the company is not treated as making a distribution under subsection (2) if the transfer of assets or liabilities—
(a) is a distribution by virtue of paragraph B in section 1000(1), or
(b) would be such a distribution in the absence of sub-paragraph (a) of that paragraph (distribution representing repayment of capital on the shares)."

(4) Section 1021 (transfers of assets or liabilities treated as distributions: exceptions) is repealed.

(5) In consequence of the repeal made by subsection (2)—
(a) omit section 194(2) of CTA 2010,
(b) in section 998(3) of that Act, for "1002" substitute "1003",
(c) in section 1001 of that Act, in the third column of the table, omit "Section 1002 (exception for certain transfers of assets and liabilities)", and
(d) omit paragraph 1(2) of Schedule 3 to the Finance (No. 3) Act 2010.

(6) The amendments made by this section have effect in relation to distributions made on or after the day on which this Act is passed.

EXPLANATORY NOTE

DISTRIBUTIONS IN THE FORM OF TRANSFERS OF ASSETS AND LIABILITIES

SUMMARY

1. This clause provides that certain transactions involving transfers of assets or liabilities between UK resident companies are not excluded from being treated as distributions for the purposes of Corporation Tax, removing an anomaly left over from the repeal of Advance Corporation Tax by Finance Act (FA) 1998.

2. This clause also removes an overlap between different parts of the legislation which define what a distribution is.

DETAILS OF THE CLAUSE

3. Subsection (2) repeals section 1002 of the Corporation Tax Act (CTA) 2010. Section 1002 CTA excludes from the definition of distribution in section 1000(1) of CTA 2010, paragraph B ("paragraph B distribution"), transfers of assets or liabilities between:

   - UK resident companies neither of which is a 51 per cent subsidiary of a non-resident company and which are not under common control; or
   - UK resident companies where one is a 51 per cent subsidiary of the other, or both are 51 per cent subsidiaries of another UK resident company.

   Such transfers will now be paragraph B distributions if all other conditions are satisfied.

4. Subsection (3) inserts new subsection (2A) into section 1020 of CTA 2010. New subsection (2A) prevents a transfer of assets or liabilities being treated as a distribution under section 1000(1) of CTA 2010, paragraph G ("paragraph G distribution"), where the transfer is also a distribution under paragraph B, or would be if the exclusion of repayment of capital on the shares within paragraph B did not apply.

5. Subsection (4) repeals section 1021 of CTA 2010. Section 1021 of CTA 2010 provides for exception from treatment as a distribution under paragraph G transfers of assets or liabilities between:

- UK resident companies neither of which is a 51 per cent subsidiary of a non-resident company and which are not under common control; or
- UK resident companies where one is a 51 per cent subsidiary of the other, or both are 51 per cent subsidiaries of another UK resident company.

Such transfers will now be paragraph G distributions if all other conditions of are satisfied.

6. Subsection (5) makes consequential amendments.

7. Subsection (6) provides that the amendments apply to distributions made on or after the day on which the Finance Bill receives the Royal Assent.

BACKGROUND NOTE

8. Part 23 CTA 2010 covers the meaning of distribution for the purposes of Corporation Tax. This includes:

- any distribution out of the assets of the company in respect of shares except amounts that represent the repayment of capital on shares, ("paragraph B distribution") and,
- a transfer of assets or liabilities by a company to its member, or by a member to the company where the benefit to the member exceeds the consideration given by the member, ("paragraph G distribution").

Previously, a transfer of assets or liabilities between a company and its members could fall within both paragraph B and paragraph G if all other conditions of those sections were satisfied.

9. This clause will ensure that where the transfer is a paragraph B distribution, or would be if not for the exception for repayment of capital on the shares, it will not be treated as a paragraph G distribution.

10. Sections 1002 and 1021 CTA 2010 excluded from the definition of distribution in paragraph B and paragraph G respectively transfers of assets and liabilities between:

- UK resident companies neither of which is a 51 per cent subsidiary of a non-resident company and which are not under common control; and

- UK resident companies where one is a 51 per cent subsidiary of the other, or both are 51 per cent subsidiaries of another UK resident company.

11. The predecessor legislation to sections 1002 and 1021 CTA 2010 was introduced to relieve companies from the obligation to account for income tax or (after the imputation system was introduced by FA 1972) Advance Corporation Tax (ACT) on making a distribution in the form of a transfer of an asset or liability to another UK company. Since the abolition of ACT by FA 1998, the legislation is no longer required and is now producing anomalies, with tax treatment depending on the residence of the companies involved.

12. This legislation will align the tax treatment of transfers between UK resident companies with transfers between UK and non-UK resident companies, by allowing transfers between UK companies to be treated as distributions for the purposes of CTA 2010.

13. If you have any questions about this change, or comments on the legislation, please contact Clare Dunne on 020 7147 2657 (email: clare.e.dunne@hmrc.gsi.gov.uk).

Amendments to the tax treatment of financing costs and income (debt cap)

1 Tax treatment of financing costs and income

Schedule 1 contains provision about the tax treatment of financing costs and income.

SCHEDULE 1

Section 1

TAX TREATMENT OF FINANCING COSTS AND INCOME

1 Part 7 of TIOPA 2010 (tax treatment of financing costs and income) is amended as follows.

2 (1) Section 261 (application of Part) is amended as follows.

(2) In subsection (1), at the end insert—

"This is subject to subsections (1A) and (2)."

(3) For subsection (2) substitute—

"(1A) This Part does not apply to a period of account unless the worldwide group meets the requirements of paragraphs (a) and (b) of section 337(1) (meaning of "the worldwide group") throughout that period.

(2) This Part does not apply to a period of account if the worldwide group is a qualifying financial services group in that period (see section 266)."

3 In section 262 (UK net debt of worldwide group for period of account of worldwide group), in subsection (4), for "dormant (within the meaning of section 1169 of the Companies Act 2006)" substitute "a dormant company".

4 In section 276 (disallowance of deductions: appointment of authorised company for relevant period of account), after subsection (2) insert—

"(2A) In subsection (2), the reference to each company to which this Chapter applies does not include a company that is a dormant company throughout the relevant period of account."

5 In section 280 (statement of allocated disallowances: requirements), after subsection (5) insert—

"(5A) An amount may not be specified in relation to a company under subsection (4)(b) if it arises at a time at which the company is not a relevant group company."

6 In section 288 (exemption of financing income: appointment of authorised company for relevant period of account), after subsection (2) insert—

"(2A) In subsection (2), the reference to each company to which this Chapter applies does not include a company that is a dormant company throughout the relevant period of account."

7 In section 292 (statement of allocated exemptions: requirements), after subsection (5) insert—

"(5A) An amount may not be specified in relation to a company under subsection (4)(b) if it arises at a time at which the company is not a UK group company."

8 In Chapter 6 (tax avoidance), before section 306 insert—

"305A Schemes preventing this Part applying to a large group

(1) This section applies in relation to a period of account of a large group of entities if, apart from this section, this Part would not apply in relation to that period because of a failure by the group to meet the requirement of section 337(1)(b) (the worldwide group must contain one or more relevant group companies) throughout that period.

(2) If conditions A and B are met, this Part applies to the group as it would have applied had the scheme mentioned in condition A not been entered into.

(3) Condition A is that—

(a) at or before the end of the period of account, a scheme is entered into, and

(b) the main purpose, or one of the main purposes, for which a person becomes or is party to the scheme is to secure that the requirement of section 337(1)(b) is not met by the group throughout that period.

(4) Condition B is that the scheme is not an excluded scheme."

9 (1) Section 313 (the financing expense amounts of a company) is amended as follows.

(2) In subsection (6), for "the same proportion" substitute "such proportion as is just and reasonable".

(3) After that subsection insert—

"(6A) An amount may be reduced to nil under subsection (6)."

10 (1) Section 314 (the financing income amounts of a company) is amended as follows.

(2) In subsection (6), for "the same proportion" substitute "such proportion as is just and reasonable".

(3) After that subsection insert—

"(6A) An amount may be reduced to nil under subsection (6)."

11 In section 316 (group treasury companies), omit subsection (4).

12 (1) Section 329 (the tested expense amount) is amended as follows.

(2) In subsection (3), omit "as a result of a transaction that takes place".

(3) After subsection (5) insert—

"(6) But subsection (5) does not apply if an election under section 331ZA has effect for the period of account."

13 (1) Section 330 (the tested income amount) is amended as follows.

(2) In subsection (3), omit "as a result of a transaction that takes place".

(3) After subsection (5) insert—

"(6) But subsection (5) does not apply if an election under section 331ZA has effect for the period of account."

14 After section 331 insert—

"331ZA Elections disapplying sections 329(5) and 330(5)

(1) The relevant reporting body of the worldwide group may elect that sections 329(5) and 330(5) are not to apply in relation to the group.

(2) The election must specify—
(a) the first period of account of the worldwide group in relation to which it has effect, and
(b) the name and tax reference of—
(i) each company that is a UK group company at the time the election is made, and
(ii) any other company that was a UK group company at any time during the period beginning at the same time as that period of account and ending when the election is made.

(3) An election has effect for the specified period of account and subsequent periods of account of the worldwide group (unless withdrawn under subsection (4) or replaced by a further election made in relation to the group).

(4) The relevant reporting body of the worldwide group may withdraw an election with effect from the beginning of the period of account specified in the withdrawal.

(5) "The relevant reporting body" means—
(a) if an appointment under section 288 has effect in relation to the specified period of account, the company appointed under that section, and
(b) if such an appointment does not have effect, the companies which are UK group companies at the relevant time, acting jointly.

But the companies within paragraph (b) do not include any company that is a dormant company throughout the specified period of account.

(6) An election or withdrawal must—
(a) be made by notice in writing to an officer of Revenue and Customs, and
(b) be received by HMRC within 12 months of the end of the specified period of account.

(7) The notice must be signed—
(a) in a case within paragraph (a) of subsection (5), by the appropriate person in relation to the company appointed under section 288, and
(b) in a case within paragraph (b) of that subsection, by the appropriate person in relation to each company within that paragraph.

(8) For the purposes of this section—
"the appropriate person", in relation to a company, means—
(a) the proper officer of the company, or

(b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Part,

and subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of "proper officer") apply as they apply for the purposes of that section;

"relevant time" means—

(a) in the case of an election, the time the election is made, and

(b) in the case of a withdrawal of an election, the time the withdrawal is made;

"specified period of account" means—

(a) in the case of an election, the period specified under subsection (2)(a), and

(b) in the case of a withdrawal of an election, the period specified under subsection (4)."

15 (1) Section 337 (meaning of "the worldwide group") is amended as follows.

(2) The existing provision becomes subsection (1).

(3) After that subsection insert—

"(2) For the purposes of subsection (1), section 345(3) to (7) (meaning of "relevant group company") has effect as if references to the worldwide group were to the group of entities mentioned in subsection (1)."

16 In section 339 (meaning of "ultimate parent"), in subsection (1), in paragraph (c) for the words from "an entity" to the end substitute "a partnership formed under the law of a territory outside the United Kingdom which would be a collective investment scheme if it were formed under the law of any part of the United Kingdom."

17 After section 348 insert—

"348ABusiness combinations and periods of account

(1) Subsections (2) applies where—

(a) a business combination or demerger occurs to which the worldwide group is party ("the relevant event"),

(b) as a result of the relevant event, there is a change in the identity of the ultimate parent of—

(i) the worldwide group, or

(ii) any other group which is party to the relevant event, and

(c) financial statements of the worldwide group are drawn up, or (in the absence of this section) would be treated as drawn up under section 348, for a period which begins before and ends after the relevant event ("the straddling period").

(2) This Part (apart from this section) applies as if—

(a) no financial statements of the worldwide group had been drawn up for the straddling period,

(b) section 348 did not apply to that period, and

(c) IAS financial statements had been drawn up in respect of each the following—
(i) the period beginning at the same time as the straddling period and ending immediately before the relevant event, and
(ii) the period beginning with the relevant event and ending at the same time as the straddling period.

(3) For the purposes of this section—
(a) "demerger" means a transaction by which one or more groups cease to be members of a group,
(b) a group is party to a business combination or demerger if the business combination or demerger affects one or more members of the group, and
(c) the reference to "IAS financial statements" is to be construed in accordance with section 348(5)."

18 In section 351 (expressions taking their meaning from international accounting standards), in subsection (1), before the entry for "effective interest method" insert—
""business combination",".

19 In section 353 (other expressions), at the appropriate place insert—
""dormant company" means—
(a) a company that is "dormant" within the meaning of section 1169 of the Companies Act 2006, or
(b) a company of an equivalent description which is incorporated outside the United Kingdom,
other than, in the case of paragraph (a), a company in respect of which adjustments fall to be made under section 147(3) or (5) (transfer pricing: tax calculations to be based on arm's length not actual provision),".

20 After section 353A insert—

"353AA Power to make regulations where accounting standards change

(1) The Treasury may by regulations amend this Part to take account of any relevant accounting change resulting from a change in accounting standards.

(2) "Relevant accounting change" means a change in the way in which a company is permitted or required for accounting purposes to present, or disclose amounts in, consolidated financial statements of an ultimate parent of a group and its subsidiaries.

(3) "Change in accounting standards" means the issue, revocation, amendment or recognition of, or withdrawal of recognition from, an accounting standard by an accounting body.

(4) Regulations under this section may make provision subject to an election or other specified circumstances.

(5) Regulations under this section may apply to a pre-commencement period if they make provision in relation to a relevant accounting change which may or must be adopted, for accounting purposes, for

a period of account, or part of a period of account, which coincides with that pre-commencement period.

(6) A statutory instrument containing regulations under this section to which subsection (7) applies may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(7) This subsection applies if the regulations contain any provision which has or may have the effect of increasing any person's liability to tax.

(8) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

(9) In this section—

"accounting body" means the International Accounting Standards Board or the Accounting Standards Board, or a successor body to either of those Boards;

"accounting standard" includes any statement of practice, guidance or other similar document;

"pre-commencement period", in relation to regulations, means an accounting period, or part of an accounting period, which begins before the regulations are made."

21 (1) The amendment made by paragraph 20 has effect in relation to any change in accounting standards made on or after the day on which this Act is passed.

(2) The other amendments made by this Schedule have effect in relation to periods of account of the worldwide group ending on or after the day on which this Act is passed.

EXPLANATORY NOTE

TAX TREATMENT OF FINANCING COSTS AND INCOME

SUMMARY

1. This clause and Schedule amend the taxation of financing expenses and financing income – commonly called the debt cap.

DETAILS OF THE CLAUSE

2. The clause introduces the schedule amending the tax treatment of financing costs and income.

3. Paragraph 1 of the Schedule amends the provisions of Part 7 of the Taxation (International and other Provisions) Act 2010 (TIOPA) which sets out the debt cap rules.

4. Paragraph 2 amends section 261 TIOPA and applies the debt cap rules to groups that are worldwide groups throughout the period of account in question. This is to ensure that the debt cap rules do not apply to groups that begin or cease to be worldwide groups during a period of account.

5. Paragraph 3 makes a minor change to the definition of dormant company for the purposes of section 262.

6. Paragraph 4 amends section 276 by inserting new section 276(2A). Section 276 describes how an authorised company should be appointed to allocate the disallowance of deductions. New section 276(2A) ensures that relevant group companies that are dormant companies throughout the relevant period of account do not need to sign the appointment of an authorised company. Paragraph 6 introduces a similar rule for the appointment of an authorised company for the exemption of financing income through new section 288(2A).

7. Paragraphs 5 and 7 add an additional requirement to the existing requirements in sections 280 and 292 for statements of allocated disallowances and exemptions. The additional requirement in new section 280(5A) is that a disallowance can only be allocated against a relevant group company's financing expense if at the time that the financing expense arose the company was a relevant group company of the worldwide group. There is a similar provision in new section 292(5A) for the exemption of financing income for a UK group company. Both of these new sections ensure that financing expenses

are disallowed or financing income exempted only if they arise when the company is a member of the worldwide group.

8. Paragraph 8 introduces new section 305A which is anti-avoidance legislation. New section 305A applies if a large group attempts to remove itself from the application of the debt cap rules by ensuring that the group does not have any relevant group companies in the period of account. If a group does not have any relevant group companies then it is not a worldwide group for the purposes of the debt cap. The legislation has two conditions that have to be met before Part 7 can apply to the large group. The conditions are in subsections (3) and (4) of the new section 305A. The first condition is that during a period of account the group entered into a scheme and the main purpose or one of the main purposes for entering into the scheme or being a party to the scheme is to secure that the group does not contain any relevant group companies. The second condition is that the scheme is not an excluded scheme.

9. Paragraph 9 makes a minor change to the computation of financing expense amounts under section 313. It amends section 313(6) to allow adjustments to be made to financing expenses on a just and reasonable basis where part of the accounting period of the company falls outside the period of account of the worldwide group. It also introduces new section 313(6A) which allows for the amount of financing expenses to be reduced to nil. Paragraph 10 similarly amends section 314 (6) and introduces new section 314(6A) for financing income.

10. Paragraph 11 removes section 316(4) which provided that if there was more than one group treasury company in a worldwide group then each of the group treasury companies had to make an election under section 316 for their financing expenses and financing income to be disregarded for the debt cap.

11. Paragraphs 12 and 13 amend sections 329(3) and 330(3) by removing the reference to a transaction so it is clear that amounts that might not be thought of as transactions, such as interest, are included in any apportionment necessary because the company was not a relevant group or UK group company. They also insert new sections 329(6) and 330(6). These allow an election to override the de-minimis rules in sections 329(5) and 330(5).

12. Paragraph 14 inserts new section 331ZA into Part 7. This section enables worldwide groups to elect out of the de-minimis rule for net financing deductions and net financing income of group companies. The election is made by the reporting body of the worldwide group and will apply to both net financing deductions and net financing income. The election requires the reporting body to provide certain information when making the election such as the first period of

account to which it applies, details of the UK group companies at the time the election is made and of any UK group companies that have left the group between the beginning of the first period of account subject to the election and the date that the election is made.

13. New sections 331ZA(3) – (5) specify that the election has effect until it is withdrawn or replaced by a further election. The withdrawal of the election must be made by the reporting body of the worldwide group and must specify from when the election is withdrawn. If the reporting body of the worldwide group is the UK group companies acting jointly then dormant companies are not included in the reporting body.

14. New section 331ZA(6) requires that an election or withdrawal must be made in writing and be received by HMRC within 12 months of the end of the first period of account to which the election applies or for which the election is withdrawn. New section 331ZA(7) requires that the notice of election or withdrawal should be signed by the appropriate person. New section 331ZA(8) provides the definitions of "appropriate person", "relevant time" and "specified period of account".

15. Paragraph 15 inserts new section 337(2) into the definition of worldwide group. This is to ensure that the definitions of relevant group company in section 345 and worldwide group in sections 337 are not self referential.

16. Paragraph 16 clarifies the definition of ultimate parent in section 339 to prevent foreign partnerships that would be collective investment schemes if they were formed under UK law from being the ultimate parent of a worldwide group.

17. Paragraph 17 introduces new section 348A which deals with how the debt cap rules apply to a worldwide group before and after a business combination or de-merger. New section 348A(1) has three conditions. The first is that a worldwide group is a party to a business combination or de-merger, the relevant event. The second is that as a result of the relevant event there is a change in the ultimate parent of the worldwide group or any other group that is party to the relevant event. The final condition is that financial statements of the worldwide group are drawn up (or would be treated as drawn up but for section 348A) for a period of account during which the relevant event occurs – the straddling period.

18. If these three conditions are met then new section 348A(2) applies Part 7 as if no financial statements had been drawn up by the worldwide group for the straddling period and section 348 does not apply to require the worldwide group to draw up financial statements for that period. Instead Part 7 applies as if financial statements had

been drawn up in respect of a period of account beginning at the same time as the straddling period and ending the day before the relevant event and a second period of account beginning on the day of the relevant event and ending at the same time as the straddling period. In effect any worldwide group involved in the relevant event is required to finalise its debt cap computation for the period before the relevant event and begin a new debt cap computation from the date of that event.

19. New section 348A(3) defines "de-merger" and applies the section 348(5) definition of IAS financial statements to new section 348A.

20. Paragraph 18 includes "business combination" in the list of expressions taking their meaning from international accounting standards in section 351.

21. Paragraph 19 includes "dormant company" in the list of other expressions in section 353. A dormant company is a company that is dormant by virtue of section 1169 of the Companies Act 2006 and which is not subject to transfer pricing adjustments arising under section 147. The definition also includes non-resident companies that are dormant under legislation equivalent to section 1169 of the Companies Act 2006.

22. Paragraph 20 introduces a power to make regulations where a change in accounting standards effects how the ultimate parent of a group presents or discloses amounts in its consolidated financial statements. The power is to enable regulations to be made particularly in response to expected changes to International Financial Reporting Standards 10, 11 and 12.

23. New section 353AA allows the regulations to amend Part 7 if there is a relevant accounting change. A relevant accounting change is a change in the way that a company is required or permitted to present or disclose amounts in its consolidated accounts. A change in accounting standards includes the issue, revocation, amendment, recognition or withdrawal of recognition of accounting standards by an accounting body. The regulations may include an election. New section 353AA(5) allows the regulations to apply to a pre-commencement period which is defined as an accounting period or part of an accounting period that begins before the regulations are made. This will enable the regulations to apply to early adopters of the changes in accounting standards if necessary. The regulations will be made under the draft affirmative procedure or negative procedure depending on whether or not they have the effect of increasing any person's tax liability. New section 353AA(9) contains definitions of "accounting body", "accounting standard" and "pre-commencement period".

24. Paragraph 21 gives the commencement dates for the amendments. The power to make regulations where accounting standards change has effect for any change of accounting standards on or after the date of Royal Assent. All other amendments apply to periods of account of the worldwide group ending on or after the date of Royal Assent.

BACKGROUND NOTE

25. Finance Act (FA) 2009 introduced a package of changes to the taxation of companies on their foreign profits. This package included the introduction of a measure to restrict the interest and other finance expenses that can be deducted in computing the corporation tax payable by UK members of a worldwide group of companies.

26. The debt cap rules introduced as Schedule 15 to FA 2009 have now been rewritten as Part 7 of TIOPA 2010. They broadly operate by requiring UK groups to compare their UK financing costs, as calculated under the Schedule, with the finance costs of their worldwide group. If the UK costs exceed the worldwide costs then the UK companies do not get any relief for the excess.

27. Discussions with industry have identified that some amendments to the debt cap rules would be needed. A number of changes were made in Finance (No.3) Act 2010 but further issues have since arisen.

28. The current Schedule incorporates a small number of changes that arose from consultation with groups and their representatives.

29. If you have any questions about this Explanatory Note or the draft legislation, please contact Lesley Hamilton on 020 7147 2564 (email: lesley.hamilton@hmrc.gsi.gov.uk) or Fiona Hay on 020 7147 2543 (email: fiona.hay@hmrc.gsi.gov.uk).

Changes to UK Generally Accepted Accounting Practice (UK GAAP)

1 Changes of accounting policy

(1) In section 227 of ITTOIA 2005 (adjustment on change of accounting basis: income tax)—

(a) in subsection (3)(a) for "relevant change of accounting approach" substitute "change of accounting policy", and

(b) for subsection (4) substitute—

"(4) A "change of accounting policy" includes, in particular—

(a) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards, and

(b) a change from using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards to using UK generally accepted accounting practice."

(2) In section 180 of CTA 2009 (adjustment on change of accounting basis: corporation tax)—

(a) in subsection (3)(a) for "relevant change of accounting approach" substitute "change of accounting policy", and

(b) for subsection (4) substitute—

"(4) A "change of accounting policy" includes, in particular—

(a) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards, and

(b) a change from using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards to using UK generally accepted accounting practice."

(3) Corresponding amendments are to be treated as having been made in section 64 of FA 2002.

(4) In consequence of the amendment made by subsection (1)(b), omit paragraph 2 of Schedule 6 to F(No.2)A 2005.

(5) The amendments made by this section have effect in relation to a change of basis if the new basis—

(a) is adopted for a period of account which begins on or after 1 January 2012, or

(b) is adopted for a period of account which begins before 1 January 2012 and the adoption is in consequence of the issue, revocation, amendment or recognition of, or withdrawal of recognition from, an accounting standard by an accounting body on or after 1 January 2012.

(6) In this section—

"accounting body" means the International Accounting Standards Board, the Accounting Standards Board, or a successor body to either of those Boards;

"accounting standard" includes any statement of practice, guidance or other similar document.

EXPLANATORY NOTE

CHANGES OF ACCOUNTING POLICY

SUMMARY

1. This clause will ensure the change of basis tax legislation, dealing with the consequences of certain changes of accounting policy, applies to the accounting transition adjustments arising from all changes of accounting policy between one period of accounts and the next. The revised legislation will therefore apply to the accounting transition adjustments arising from the proposed changes to UK Generally Accepted Accounting Practice (UK GAAP).

2. Acceptable accounting policies for computing taxable profits are those contained within International Accounting Standards (IAS) and UK Generally Accepted Accounting Practice (UK GAAP). The Accounting Standards Board (ASB) announced in October 2010 that it intends to significantly change what constitutes UK GAAP during 2012. There are a number of areas where the proposed new UK GAAP differs from current UK GAAP resulting in one-off accounting adjustments on transition.

DETAILS OF THE CLAUSE

3. Subsection (1) replaces the term "relevant change of accounting approach" in section 227(3)(a) ITTOIA 2005 with the term "change of accounting policy". Section 227(4) ITTOIA 2005 is replaced with a new section 227(4) that explains a change of accounting policy can include, but is not limited to, a change from using UK GAAP to using IAS and vice versa.

4. Subsection (2) replaces the term "relevant change of accounting approach" in section 180(3)(a) CTA 2009 with the term "change of accounting policy". Section 180(4) CTA 2009 is replaced with a new section 180(4) that explains a change of accounting policy can include, but is not limited to, a change from using UK GAAP to using IAS and vice versa.

5. Subsection (3) provides that corresponding amendments are to be treated as having been made to section 64 FA 2002, the predecessor to s227 ITTOIA 2005 and CTA 2009.

6. Subsection (5)(a) provides that the clause applies where a change of basis is adopted for a period of account which begins on or after 1 January 2012.

7. Subsection (5)(b) ensures that the clause will also apply where accounts have not been prepared for periods of account beginning prior to 1 January 2012 where there is a change of basis for those periods of account resulting from adopting an accounting standard that changes on or after 1 January 2012.

8. Subsection (6) defines what constitutes an accounting standard.

BACKGROUND NOTE

9. Acceptable accounting policies for computing taxable profits are those contained within IAS and UK GAAP. The Accounting Standards Board (ASB) announced in October 2010 that it intends to significantly change what constitutes UK GAAP during 2012. There are a number of areas where the proposed new UK GAAP differs from current UK GAAP resulting in one-off accounting adjustments on transition.

10. Current tax legislation governing accounting transition adjustments arising from certain specified changes of accounting policy is at Chapter 14, Part 3 Corporation Tax Act 2009 and Chapter 17, Part 2 Income Tax (Trading and Other Income Act) 2005. The legislation provides that, in particular circumstances, on a change of accounting policy income is taxed once and once only and expenditure allowed once and once only. Current tax legislation would not apply to the accounting transition adjustments arising from the changes to UK GAAP.

11. This clause will ensure that the legislation applies to all changes of accounting policy. The revised legislation will apply to the accounting transition adjustments arising from the changes to UK GAAP.

12. If you have any questions about this change, or comments on the legislation, please contact Alison Bull on 020 7147 2595 (email: alison.bull@hmrc.gsi.gov.uk or Tony Linehan on 020 7147 0527 (email: tony.linehan@hmrc.gsi.gov.uk).

Restriction on decommissioning relief

1 Restriction of relief available for decommissioning expenditure

(1) Part 8 of CTA 2010 (oil activities) is amended as follows.

(2) In section 330 (supplementary charge in respect of ring fence trades), at the end of subsection (2) insert—

"See also sections 330A and 330C (which provide for the amount of adjusted ring fence profits to be further adjusted where decommissioning expenditure has been taken into account)."

(3) After section 330 insert—

"330A Decommissioning expenditure taken into account in calculating ring fence profits

(1) This section applies where—

(a) any decommissioning expenditure is taken into account in calculating the amount mentioned in paragraph (a) of subsection (3) of section 330 or the amount mentioned in paragraph (b) of that subsection, and

(b) if that expenditure were not so taken into account, the amount of the adjusted ring fence profits of the company for the accounting period would be greater than nil.

(2) In calculating for the purposes of section 330(1) the amount of the adjusted ring fence profits of the company for the accounting period, there is to be added an amount equal to the appropriate fraction of the used-up amount of that expenditure.

(3) For the purposes of this section—

"the appropriate fraction" is—

$$\left(\frac{SC - 20\%}{SC}\right)$$

where SC is the percentage specified in section 330(1) for the accounting period, and

"the used-up amount", in relation to any expenditure, is the difference between—

(a) the adjusted ring fence profits of the company for the accounting period determined in the absence of this section (which may be nil), and

(b) what the adjusted ring fence profits of the company for that accounting period would be if that expenditure were not taken into account as mentioned in subsection (1).

(4) In determining for the purposes of this section whether, and to what extent, any losses which have been taken into account as mentioned in subsection (1) are attributable to decommissioning expenditure—

(a) assume that any amounts of any other expenditure which could be taken into account in calculating those losses are taken into account before any amounts of decommissioning expenditure, and

(b) where any losses have been surrendered in accordance with Part 5, the company must specify, in accordance with a basis determined jointly by the company, the surrendering company

(if different) and any other claimant company, whether any of those losses is attributable to decommissioning expenditure.

(5) But if paragraph (a) of subsection (4) would work unfavourably in the company's case, the company may elect for that paragraph not to apply in relation to it and for any amounts of expenditure which could be taken into account in calculating those losses instead to be taken into account in the order specified in the election.

(6) In determining for the purposes of this section the used-up amount of decommissioning expenditure, assume that any other amounts that could be deducted in calculating the adjusted ring fence profits of the company for the accounting period have already been so deducted.

(7) But if subsection (6) would work unfavourably in the company's case, the company may elect for that subsection not to apply in relation to it and for any amounts that could be deducted in calculating those adjusted ring fence profits instead to be deducted in the order specified in the election.

(8) For the purposes of this section, any deduction made under section 330C is to be disregarded.

(9) This section does not apply in relation to any accounting period for which the percentage specified in section 330(1) is less than or equal to 20% (including any accounting period beginning before 24 March 2011 and ending on or after that date).

(10) In this section—

"claimant company" and "surrendering company" are to be read in accordance with Part 5 (see section 188), and

"decommissioning expenditure" has the meaning given by section 330B.

330B Meaning of "decommissioning expenditure"

(1) In section 330A "decommissioning expenditure" means expenditure incurred in connection with—

(a) demolishing any plant or machinery,

(b) preserving any plant or machinery pending its reuse or demolition,

(c) preparing any plant or machinery for reuse,

(d) arranging for the reuse of any plant or machinery, or

(e) the restoration of any land.

(2) It is immaterial for the purposes of subsection (1)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(3) It is immaterial for the purposes of subsection (1)(c) and (d) whether the plant or machinery is in fact reused.

(4) In subsection (1)(e) "restoration" includes landscaping.

330C Decommissioning expenditure taken into account for PRT purposes

(1) This section applies where—

(a) any decommissioning expenditure is taken into account in calculating the assessable profit accruing to a participator in any chargeable period from an oil field, and

(b) if that expenditure were not so taken into account, the amount of petroleum revenue tax with which the participator would be chargeable for the chargeable period would be greater than nil.

(2) In calculating for the purposes of section 330(1) the amount of the participator's adjusted ring fence profits for the relevant accounting period, there is to be deducted an amount equal to the appropriate fraction of the PRT difference.

(3) For the purposes of this section—

"the appropriate fraction" is

$$\left(\frac{SC - 20\%}{SC}\right)$$

where SC is the percentage specified in section 330(1) for the relevant accounting period, and

"the PRT difference" is the difference between—

(a) the amount of petroleum revenue tax with which the participator is chargeable for the chargeable period (which may be nil), and

(b) the amount of petroleum revenue tax with which the participator would be chargeable for that chargeable period if the decommissioning expenditure were not taken into account as mentioned in subsection (1).

(4) In determining for the purposes of this section whether, and to what extent, any allowable losses which have been taken into account as mentioned in subsection (1) are attributable to decommissioning expenditure, assume that any amounts of any other expenditure which could be taken into account in calculating those losses are taken into account before any amounts of decommissioning expenditure.

(5) But if subsection (4) would work unfavourably in the participator's case, the participator may elect for that subsection not to apply in relation to it and for any amounts of expenditure which could be taken into account in calculating those losses instead to be taken into account in the order specified in the election.

(6) This section does not apply in relation to any accounting period for which the percentage specified in section 330(1) is less than or equal to 20% (including any accounting period beginning before 24 March 2011 and ending on or after that date).

(7) In this section—

"assessable profit" and "allowable loss" have the same meaning as in Part 1 of OTA 1975 (see section 2 of that Act),

"decommissioning expenditure" means any expenditure allowable under section 3 of OTA 1975 (allowance of expenditure) by virtue of subsection (1)(i) or (j) of that section, and

"the relevant accounting period"—

(a) in a case where section 301 applies, is to be construed in accordance with subsection (7) of that section, and

(b) in any other case, means the accounting period for which a deduction in respect of any petroleum revenue tax with which the participator may be chargeable for the chargeable period mentioned in subsection (1) would be made under section 299(2) (deduction of PRT in calculating income for corporation tax purposes)."

(4) In section 7 of FA 2011 (increase in rate of supplementary charge), in subsection (6), at the end insert—

"See also sections 330A and 330C of CTA 2010 (which have effect in relation to the separate accounting period consisting of so much of the straddling period as falls on or after 24 March 2011)."

(5) The amendments made by this section have effect in relation to expenditure incurred in connection with decommissioning carried out on or after [date of 2012 Budget].

(6) In subsection (5) "decommissioning" means anything falling within—

(a) any of paragraphs (a) to (e) of section 330B(1) of CTA 2010, or

(b) paragraph (i) or (j) of section 3(1) of OTA 1975.

EXPLANATORY NOTE

RESTRICTION OF RELIEF AVAILABLE FOR DECOMMISSIONING EXPENDITURE

SUMMARY

1. This clause restricts the rate of tax relief available for decommissioning expenditure for Supplementary Charge (SC) purposes to 20%. It does so by increasing the profits liable to the SC where decommissioning expenditure is taken into account in computing those profits. Where such expenditure reduces the amount of Petroleum Revenue Tax "PRT" chargeable the clause also provides a reduction from profits liable to the SC where the profits resulting from the reduction in PRT would be subject to SC at a rate of more than 20%.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that Part 8 of Corporation Tax Act 2010 (CTA 2010) is amended by the insertion of sections 330A, 330B and 330C.

3. Subsection (2) amends section 330(2) of CTA 2010 to include a cross reference to sections 330A and 330C.

4. Subsection (3) inserts into CTA 2010:

   - section 330A ('decommissioning expenditure taken into account in calculating ring fence profits'),
   - section 330B ('meaning of 'decommissioning expenditure''), and
   - section 330C ('decommissioning expenditure taken into account for PRT purposes')

5. Subsection (1) of section 330A provides that section 330A applies where:

   (a) any decommissioning expenditure is taken into account in calculating the profit or loss of any ring fence trade or loss surrendered to the company, and

   (b) if that expenditure were not taken into account the amount of the adjusted ring fence profits for the accounting period would be greater than nil.

6. Subsection (2) of section 330A provides that an amount equal to the appropriate fraction of the used-up amount of that expenditure is added to the adjusted ring fence profits for the accounting period.

7. Subsection (3) of section 330A defines ‘the appropriate fraction’ and ‘the used-up amount’.

8. Subsection (4) of section 330A provides that in establishing the extent to which any losses which have been taken into account are attributable to decommissioning expenditure:

   (a) any other amounts which could be taken into account in calculating those losses are assumed to be taken into account before any amounts of decommissioning expenditure, and

   (b) where any group relief has been surrendered, the various companies concerned must specify whether any of those losses is attributable to decommissioning expenditure.

9. Subsection (5) of section 330A provides that a company can elect for paragraph (a) of subsection (4) not to apply if that paragraph would work unfavourably in the company’s case, and for any amounts instead to be taken into account in the order specified in the election.

10. Subsection (6) of section 330A provides that in determining the used-up amount, any other amounts that could be deducted in calculating the adjusted ring fence profits are assumed to have already been so deducted.

11. Subsection (7) of section 330A provides that a company can elect for subsection (6) not to apply if it would work unfavourably in the company’s case, and for any amounts instead to be deducted in the order specified in the election.

12. Subsection (8) of section 330A provides that for the purposes of this section, any deduction made under section 330C is to be disregarded.

13. Subsection (9) of section 330A provides that section 330A does not apply to any accounting period (including any accounting period beginning before 24 March 2011 and ending on or after that date) for which the rate of SC is less than or equal to 20%.

14. Subsection (10) of section 330A provides that ‘claimant company’ and ‘surrendering company’ take their meaning from chapter 5, and ‘decommissioning expenditure’ is as defined by section 330B.

15. Subsection (1) of section 330B defines ‘decommissioning expenditure’ for the purposes of section 330A.

16. Subsection (2) of section 330B clarifies the interpretation of section 330B (1)(b).

17. Subsection (3) of section 330B clarifies the interpretation of section 330B (1)(c) and (d).

18. Subsection (4) of section 330B extends the scope of section 330B (1)(e).

19. Subsection (1) of section 330C provides that the section applies where:

    (a) any decommissioning expenditure is taken into account in calculating the assessable profit of a participator in any chargeable period from an oil field, and

    (b) if that expenditure were not taken into account, some PRT would be chargeable on the participator for the chargeable period.

20. Subsection (2) of section 330C provides that an amount equal to the appropriate fraction of the PRT difference is deducted in calculating the amount of the participator's adjusted ring fence profits for the relevant accounting period.

21. Subsection (3) of section 330C defines 'the appropriate fraction' and 'the PRT difference'.

22. Subsection (4) of section 330C provides that in determining the extent to which any allowable losses taken into account in calculating the assessable profit are attributable to decommissioning expenditure, any amounts of any other expenditure which could be taken into account in calculating those losses are assumed to be taken into account before any amounts of decommissioning expenditure.

23. Subsection (5) of section 330C provides that a participator may elect for subsection (4) not to apply if that subsection would work unfavourably and for any amounts of expenditure which could be taken into account in calculating those losses instead to be taken into account in the order specified in the election.

24. Subsection (6) of section 330C provides that section 330C does not apply to any accounting period (including any accounting period beginning before 24 March 2011 and ending on or after that date) for which the rate of SC is less than or equal to 20%.

25. Subsection (7) of section 330C defines 'assessable profit', allowable loss', 'decommissioning expenditure' and 'the relevant accounting period' for the purposes of this section.

26. Subsection (4) amends section 7 of FA 2011 to include a cross-reference to sections 330A and 330C.

27. Subsection (5) provides that the amendments made by the section have effect for expenditure incurred in connection with decommissioning carried out on or after Budget Day 2012.

28. Subsection (6) provides the meaning of 'decommissioning' in subsection (5).

BACKGROUND NOTE

29. Effective from 24 March 2011, the rate of Supplementary Charge increased from 20% to 32%.

30. Budget 2011 also announced that legislation would be introduced in the Finance Bill 2012, with effect from Budget 2012, to restrict the rate of tax relief for decommissioning expenses to 20% for Supplementary Charge purposes.

31. The clause seeks to ensure that the principles governing the restriction of decommissioning relief are applied consistently to PRT and non-PRT fields.

32. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

Oil and Gas: Scope of Supplementary Charge

1 Supplementary charge

(1) In section 330 of CTA 2010 (supplementary charge in respect of ring fence trades), in subsection (2), for "profits of the company's ring fence trade" substitute "company's ring fence profits".

(2) This section comes into force on 6 December 2011.

EXPLANATORY NOTE

SUPPLEMENTARY CHARGE

SUMMARY

1. This clause clarifies the definition of the scope of the supplementary charge (SC) set out in section 330 of Corporation Tax Act 2010 (CTA 2010). The clause provides SC is charged by reference to a company's ring fence profits.

2. This clause has effect from 6th December 2011.

DETAILS OF THE CLAUSE

3. Subsection (1) amends section 330 (2) of CTA 2010 by substituting "company's ring fence profits" for "profits of the company's ring fence trade".

BACKGROUND NOTE

4. The SC is chargeable on a company's adjusted ring fence profits as if it were an amount of corporation tax chargeable on the company.

5. A company's adjusted ring fence profits for an accounting period are currently defined in section 330(2) CTA 2010 as the profits of the company's ring fence trade chargeable to corporation tax, on the assumption in subsection (3) that financing costs are left out of account.

6. It was Government's intention when the legislation was introduced in 2002 that a company's adjusted ring fence profits should include all profits that could arise to a company carrying on a ring fence trade from ring fence activities. In other words the intention was that the scope of the SC should match the scope of ring fence corporation tax (RFCT). This includes chargeable gains which can arise on the disposal of an interest in an oil licence.

7. It remains the Government's view that under the existing law the scope of the SC does match the scope of RFCT. Government is however aware that some in industry take a different view and that they believe that chargeable gains fall outside the scope of the SC.

8. For this reason, this clause clarifies the scope of the SC by ensuring that it matches that of RFCT, in accordance with the intention of the Government when the legislation was enacted in 2002.

9. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 020 7438 6993 (email: paul.philip@hmrc.gsi.gov.uk).

1 Transfers within a group by companies carrying on ring fence trade

(1) Section 171A of TCGA 1992 (election to reallocate gain or loss to another member of the group) is amended as follows.

(2) In subsection (4), at the end insert "(but see subsection (4A))".

(3) After subsection (4) insert—

"(4A) An election may not be made under this section to transfer the whole or part of a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on such a trade.

(4B) In subsection (4A)—

"ring fence chargeable gain", in relation to a company, means—

(a) a chargeable gain accruing to the company on a material disposal within the meaning of section 197 (disposals of interests in oil fields etc: ring fence provisions), or

(b) a chargeable gain treated as accruing to the company by virtue of section 197(4);

"ring fence trade" has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act)."

(4) The amendments made by this section have effect in relation to chargeable gains accruing, or treated by virtue of section 197(4) of TCGA 1992 as accruing, in chargeable periods ending on or after 6 December 2011 (but see also subsection (5)).

(5) In relation to a chargeable period of a company beginning before 6 December 2011 and ending on or after that date ("the straddling period"), the amendments made by this section have effect as if, for the purposes of section 197 of TCGA 1992, so much of the straddling period as falls before 6 December 2011, and so much of that period as falls on or after that date, were separate chargeable periods.

EXPLANATORY NOTE

TRANSFERS WITHIN A GROUP BY COMPANIES CARRYING ON A RING FENCE TRADE

SUMMARY

1. This clause amends section 171A of the Taxation of Chargeable Gains Act 1992 (TCGA 1992), which provides an election to transfer a gain or loss from one company to another member of the group. This clause restricts the scope of section 171A. Under the current law where there is a transfer of a ring fence chargeable gain from a ring fence company to a non-ring fence company the ring fence gain is not subject to supplementary charge, because the non-ring fence company does not fall within the scope of the supplementary charge.

2. This clause amends section 171A to ensure that an election cannot be made to transfer a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on a ring fence trade.

3. This clause has effect in relation to chargeable gains accruing, or treated as accruing under section 197(4), in chargeable periods ending on or after 6 December 2011.

4. Where a chargeable period begins before 6 December and ends on or after that date ("the straddling period") this clause has effect as if so much of the straddling period as falls before 6 December, and so much of that period as falls on or after that date were separate chargeable periods.

DETAILS OF THE CLAUSE

5. Subsection (3) inserts subsections (4A) and (4B) into section 171A TCGA 1992.

6. Subsection (4A) provides that an election cannot be made to transfer a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on a ring fence trade.

7. Subsection (4B) provides the definitions of "ring fence chargeable gain" and "ring fence trade".

BACKGROUND NOTE

8. From 1 April 2000 to 20 July 2009 it was possible for two companies ("A" and "B") which were members of a group to make a joint election whose effect was that a disposal by one member of the group A to a person outside the group ("C") would be treated as a disposal by A to B under the no gain/no loss rules in section 171(1) TCGA 1992 and then from B to C.

9. The legislation was changed significantly in Finance Act 2009 (FA 2009) and the effect of an election was altered.

10. Since the changes made by FA 2009 and now included within section 171A TCGA 1992, the effect of an election has been that an amount of a chargeable gain or allowable loss is treated as accruing in another group company. As a result under an election under section 171A the transferee company cannot be deemed to carry on a ring fence trade, and so the supplementary charge does not necessarily apply.

11. This clause amends section 171A TCGA 1992 to ensure that an election cannot be made to transfer a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on a ring fence trade and so not subject to the supplementary charge.

12. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 020 7438 6993 (email: paul.philip@hmrc.gsi.gov.uk).

Indirect tax

Machine games duty

1 Machine games duty

Schedule 1 contains provision replacing amusement machine licence duty with a new excise duty and exempting related supplies from VAT.

SCHEDULE 1

Section 1

MACHINE GAMES DUTY

PART 1

IMPOSITION OF DUTY

The duty

1 A duty of excise, to be known as machine games duty, is to be charged on the playing of dutiable machine games in the United Kingdom.

Dutiable machine games

2 (1) A "machine game" is a game (whether of skill or chance or both) played on a machine for a prize.

(2) A machine game is "dutiable" if—

(a) the prize or at least one of the prizes that can be won from playing the game on the machine is or includes cash, and

(b) the maximum amount of cash that a player can win from playing the game on the machine exceeds the lowest charge payable for playing the game on the machine.

(3) "Cash" means money or anything that may reasonably be considered to equate to money, including—

(a) anything that can be used in the same way as if it were money, and

(b) anything that allows a person to obtain money on demand or otherwise represents a promise to pay a person money on demand.

(4) The things mentioned in sub-paragraph (3) include—

(a) anything of an intangible nature (such as points), and

(b) anything that a person has as a result of the taking of any step by someone else (such as the crediting of an account).

(5) If an adult would reasonably assume that a machine game satisfies the tests in sub-paragraph (2)(a) and (b) (taking into account the way in which the game is presented and all the other circumstances of the case), the game is taken to be a dutiable machine game, whether or not it does in fact satisfy those tests.

(6) In identifying for the purposes of this paragraph the lowest charge payable for playing a game, any offer that waives or permits a player to pay less than the charge that the player would be required to pay without the offer is disregarded.

(7) Paragraph 3 makes further provision about what counts as a dutiable machine game for the purposes of this Schedule.

3 (1) A game that would otherwise be a dutiable machine game does not count as one if—
(a) it involves betting on future real events,
(b) bingo duty is charged on the playing of it,
(c) lottery duty is charged on the taking of a ticket or chance in it, or
(d) it is a real game of chance and playing it—
(i) amounts to dutiable gaming for the purposes of section 10 of FA 1997, or
(ii) would do so but for subsection (3), (3B) or (4) of that section.

(2) A "real game of chance" is a game of chance (within the meaning of BGDA 1981) that is non-virtual.

(3) A game consisting of several stages counts as a dutiable machine game if—
(a) at least one stage would (if played on its own) be a dutiable machine game, or
(b) the stages (taken together) amount to a dutiable machine game.

(4) If more than one game can be played on a given machine, each game is to be considered separately in deciding whether it is a dutiable machine game.

4 The Treasury may by order specify criteria to be taken into account in deciding whether a particular game falls within the definitions in paragraph 2(1) and (2).

Types of machine

5 (1) Machines are divided into two types for the purposes of machine games duty.

(2) A machine is a "type 2 machine" if it can be demonstrated that—
(a) the highest charge payable for playing a dutiable machine game on the machine does not exceed 10p, and
(b) the maximum amount of cash that can be won from playing a dutiable machine game on the machine does not exceed £8.

(3) Any other machine is a "type 1 machine".

(4) The Treasury may by order substitute for a sum for the time being specified in sub-paragraph (2)(a) or (b) such higher sum as may be specified in the order.

How the duty is charged

6 (1) Machine games duty is charged on a taxable person's total net takings in an accounting period for each type of machine.

(2) The amount of the duty is found by—
(a) applying the standard rate to the person's total net takings in the accounting period for type 1 machines,
(b) applying the lower rate to the person's total net takings in the accounting period for type 2 machines, and
(c) aggregating the results.

(3) This is subject to paragraph 10 (negative amounts of duty).

(4) The person's "total net takings" in the accounting period for a type of machine are the sum of the person's net takings in the period for all the relevant machines of that type.

(5) The person's "net takings" in the period for each relevant machine are determined in accordance with paragraphs 7 and 8.

(6) If any of the relevant machines changes type during the accounting period—
   (a) the net takings in the part of the period before the change and the net takings in the part after the change are to be allocated separately in calculating the person's total net takings in the period for each type of machine, and
   (b) if it is not possible to identify the part of a period to which an amount relates, the amount is to be apportioned on a just and reasonable basis.

Net takings per machine

7 (1) A taxable person's net takings in an accounting period for a relevant machine are—
   (a) the takings, less
   (b) the payouts.

(2) The takings are the charges that become due at any material time from players for playing dutiable machine games on that machine (irrespective of when the games are played or the prizes are paid out).

(3) The payouts are the prizes (whether cash or non-cash) that are paid out at any material time to players as a result of playing dutiable machine games on that machine (irrespective of when the games are played or the charges become due).

(4) Sub-paragraph (3) does not include prizes paid out to—
   (a) a person who is a registrable person in respect of the premises where the machine is located,
   (b) a representative or employee of such a person at those premises, or
   (c) a person acting for or at the direction of such a person.

(5) The calculation of a person's net takings is subject to paragraph 8.

(6) If it is not reasonably practicable to attribute charges and prizes to dutiable machine games or to apportion them between dutiable machine games and other games or other activities, any attribution or apportionment is to be done on a just and reasonable basis.

(7) "Material time" means any time in the accounting period when the person is liable for machine games duty in respect of the machine.

(8) The Commissioners may by regulations make provision about the point in time at which a charge is taken to become due, or a prize is taken to be paid out, for the purposes of this paragraph.

(9) Without limiting sub-paragraph (8), if a machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would be required to pay without the offer, the charge (if any) is treated as becoming due when the player plays the game.

8 (1) In calculating the takings and the payouts under paragraph 7, the following amounts are to be left out of account—
(a) amounts arising from playing dutiable machine games on a domestic occasion, and
(b) amounts arising in any other circumstances specified by the Treasury by order.

(2) The power in sub-paragraph (1)(b)—
(a) may be exercised generally or in relation to particular cases or kinds of case, and
(b) may include provision requiring specified conditions to be met before amounts are left out of account.

The rates

9 (1) The standard rate is [ ]%.

(2) The lower rate is [ ]%.

(3) If a rate changes during an accounting period—
(a) the old rate is to be applied to the person's total net takings in the part of the period before the change, and
(b) the new rate is to be applied to the person's total net takings in the part of the period after the change.

(4) If it is not possible to identify for the purposes of sub-paragraph (3) the part of the period to which an amount relates, it is to be apportioned on a just and reasonable basis.

Negative amounts of duty

10 (1) If the calculation of the amount of machine games duty for which a taxable person is liable for an accounting period results in a negative amount ("amount X")—
(a) the amount of machine games duty for which that person is liable for that period is treated as nil, and
(b) the amount of duty for which that person is liable for the next accounting period is to be reduced by amount X.

(2) Sub-paragraph (1) applies to an accounting period whether or not amount X results wholly or partly from the previous application of that sub-paragraph.

(3) Subject to any reduction required by sub-paragraph (1)(b), the person is not entitled to any repayment or refund of machine games duty in respect of amount X.

Who is liable

11 (1) A person is liable for machine games duty in respect of a machine at any time if at the time—
(a) the person is responsible for the premises where the machine is located (see paragraph 12),
(b) the machine is available there for use by others for playing dutiable machine games on it, and

(c) the machine is not an excluded dual-use machine (see paragraph 13).

(2) If, at any time, there is more than one person who satisfies sub-paragraph (1)(a) to (c) in respect of a machine, each of them is jointly and severally liable for the duty.

(3) A person who is liable for machine games duty in accordance with this paragraph is referred to as a "taxable person".

Responsible for premises

12 (1) This paragraph sets out who is "responsible" for premises for the purposes of paragraph 11.

(2) If a person is registered in respect of premises, that person is responsible for the premises.

(3) A person is "registered" at any time in respect of premises if at the time there is an entry in force for that person in the MGD register in respect of those premises.

(4) If no-one is registered in respect of premises, any person who is a registrable person in respect of the premises or a representative of such a person is responsible for the premises.

(5) Paragraphs 20 to 24 make further provision about registration and registrable persons.

Excluded dual-use machines

13 (1) A machine is an "excluded dual-use machine" if—

(a) it is capable of being used both for playing machine games and for some other purpose that is not related to playing machine games, and

(b) condition A or B is met.

(2) Condition A is that the machine is not designed, adapted or presented in such a way as to—

(a) facilitate its use for playing dutiable machine games, or

(b) draw attention to the possibility of its use for playing such games.

(3) Condition B is that the machine is so designed, adapted or presented but the person mentioned in paragraph 11(1) does not know, and could not reasonably be expected to know, that it is.

(4) References to a machine being "adapted" include a machine to which anything has been done, including the installation of computer software on it.

(5) The Commissioners may by order specify criteria to be taken into account in deciding whether a machine falls within the definition in sub-paragraph (1).

(6) The Treasury may by order amend this paragraph.

Accounting periods

14 (1) An accounting period for machine games duty is a period of 3 consecutive months.

(2) The first day of an accounting period is such day as HMRC may direct.

(3) A direction under sub-paragraph (2) may apply generally or only to a particular case or class of case.

(4) HMRC may agree with a registered person to make either or both of the following changes for the purposes of that person's liability to machine games duty—

(a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods,

(b) to begin accounting periods on days other than those applying by virtue of sub-paragraph (2).

(5) HMRC may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where—

(a) a person becomes or ceases to be registered, or

(b) an agreement under sub-paragraph (4) begins or ends.

(6) If there is reason to believe that a person who is liable for machine games duty may not discharge that liability as it falls due from time to time—

(a) HMRC may by direction specify shorter periods to be treated as accounting periods for the purposes of that person's liability to machine games duty,

(b) any such direction continues to have effect until it is withdrawn by HMRC (unless otherwise specified in the direction), and

(c) withdrawal of a direction does not prevent the giving of further directions in respect of the same person.

Valuing prizes

15 (1) This paragraph applies in valuing prizes for the purposes of this Schedule (including in determining the maximum amount of cash that can be won from playing a machine game).

(2) The value of a prize includes any portion that—

(a) represents a refund of the charge payable for playing the game, or

(b) is calculated by reference to the amount of any such charge.

(3) The value of a prize in the form of something that is reasonably considered to equate to money is equal to the amount of money to which the thing is reasonably considered to equate.

(4) The value of a prize in the form of foreign currency or something that is reasonably considered to equate to foreign currency—

(a) is, in relation to any day, the sterling equivalent of that currency determined by reference to the London closing rate for that currency for the previous day, and

(b) for the purposes of paragraph 7(3), the day in relation to which the value is assessed is the last day of the relevant accounting period.

(5) The value of a prize other than cash is—

(a) if the person paying it out ("P") obtained it from an independent third party, the cost to P of obtaining it from that third party,

(b) otherwise, the amount that it would have cost P, at the time P obtained the prize, to obtain it from an independent third party.

(6) But if the value of a prize other than cash cannot reasonably be determined in accordance with sub-paragraph (5), the value of the prize is such amount as is just and reasonable.

(7) For a prize in the form of one or more vouchers that may be used for obtaining a non-cash benefit, sub-paragraphs (5) and (6) have effect as if references to the prize were to—

(a) that benefit, or

(b) where there is a choice of benefits, the benefit with the [...] value.

(8) For the purposes of sub-paragraph (5), an amount paid by way of value added tax on the acquisition of a thing is to be treated as part of its cost (whether or not the amount is taken into account for the purpose of a credit or refund).

(9) The Commissioners may by regulations make further provision about the way in which prizes are to be valued for the purposes of this Schedule.

(10) In this paragraph—

"benefit" means goods or services or any other kind of benefit;

"foreign currency" means a currency other than sterling;

"independent third party" means a person not connected with P (and "connected" is to be construed in accordance with section 1122 of CTA 2010);

"voucher" includes anything, in whatever form it is recorded or stored, that entitles, or may be used by, the recipient to obtain a benefit.

(11) This paragraph applies to a part of a prize as it applies to a whole prize, and references to a prize are to be read accordingly.

Valuing charges

16 (1) This paragraph applies in determining for the purposes of this Schedule the amount of a charge (or the highest or lowest charge) payable or due for playing a machine game.

(2) If the amount of a charge in money's worth cannot be determined, it is assumed to be such amount as is just and reasonable.

(3) If a composite charge is payable or due for the opportunity to play a machine game more than once, the amount of the charge payable or due for each individual go is to be determined on a just and reasonable basis.

(4) If a composite charge is payable or due for the opportunity to play a machine game and for something else, the amount of the charge payable or due for playing the game is to be determined on a just and reasonable basis.

(5) The Commissioners may by regulations make further provision about the way in which the amount of charges is to be determined for the purposes of this Schedule.

(6) Sub-paragraph (7) applies if—

(a) a dutiable machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would have been required to pay without the offer,

(b) the offer was made available to the player by way of winnings from an activity in respect of which another duty of excise or value added tax is charged, and

(c) the value of the offer is deductible in calculating the amount of that other duty or value added tax payable in respect of that activity.

(7) The amount of the charge due from the player for playing the dutiable machine game is taken for the purposes of paragraph 7 to be the amount that the player would have been required to pay without the offer.

(8) Regulations under sub-paragraph (5) may include provision extending or modifying the circumstances in which sub-paragraph (7) applies.

Collection and management

17 The Commissioners are responsible for the collection and management of machine games duty.

Returns

18 (1) The Commissioners may make regulations requiring registrable persons to make returns to HMRC in respect of relevant machines.

(2) Regulations under this paragraph may in particular make provision about—

(a) liability to make a return,
(b) timing,
(c) form,
(d) content,
(e) method of making (including provision requiring returns to be made electronically),
(f) declarations,
(g) authentication, and
(h) when a return is to be treated as made.

Assessment and payment

19 (1) The Commissioners may make regulations about payment of machine games duty.

(2) The regulations may in particular make provision about—

(a) timing,
(b) instalments,
(c) methods of payment,
(d) when payment is to be treated as made, and
(e) the process and effect of assessments by HMRC of amounts due.

(3) Subject to regulations under this paragraph, section 12 of FA 1994 (assessment) applies in relation to liability to pay machine games duty.

Registration

20 (1) The Commissioners must maintain a register of those responsible for premises where relevant machines are located.

(2) The register is to be known as the MGD register.

(3) A person must not make a relevant machine available for use by others for playing dutiable machine games on it unless a registrable person (whether that person or someone else) is registered in respect of the premises where the machine is located.

(4) Paragraph 21 identifies who is a registrable person in respect of premises.

(5) This paragraph does not apply in relation to a relevant machine if it is reasonable to expect that the only takings and the only payouts in respect of the machine would be amounts that would be left out of account by virtue of paragraph 8.

Registrable persons

21 (1) If a person holds a relevant licence or permit in respect of premises, that person is a registrable person in respect of those premises.

(2) But if the premises are leased to a person ("T") for the purposes of an activity for which an alcohol licence is required and the alcohol licence in respect of the premises is held by someone else, T (and not the licence-holder) is a registrable person in respect of those premises.

(3) If the premises are a stall at a travelling fair, each of the following is a registrable person in respect of the premises—

(a) the holder of the stall, and

(b) the person in charge of the fair.

(4) For premises not falling within any of the preceding sub-paragraphs, each person listed in sub-paragraph (5) is a registrable person in respect of the premises.

(5) The persons are—

(a) a person required to hold a relevant licence or permit in respect of the premises,

(b) an owner, lessee or occupier of the premises,

(c) a person who is responsible to the owner, lessee or occupier for the management of the premises,

(d) a person who is responsible for controlling the use of machines that are made available on the premises for use by others for playing dutiable machine games on them, and

(e) a person who is responsible for controlling the admission of persons to the premises or for providing persons resorting to the premises with goods or services.

(6) "Relevant licence or permit" is defined in paragraph 22.

(7) "Alcohol licence" means—

(a) a premises licence issued under Part 3 of the Licensing Act 2003 that authorises the supply of alcohol for consumption on the licensed premises,

(b) a premises licence issued under Part 3 of the Licensing (Scotland) Act 2005, except where such a licence only applies to the sale of alcohol for consumption off the premises, and

(c) a licence issued under the Licensing (Northern Ireland) Order 1996 (S.I. 1996/3158 (N.I. 22)), except where such a licence only applies to

the sale of intoxicating liquor by retail for consumption off the premises.

(8) "Travelling fair" means a fair—
(a) consisting wholly or principally of the provision of amusements,
(b) provided wholly or principally by persons who travel from place to place for the purpose of providing such fairs, and
(c) held at a place no part of which has been used for the provision of such a fair on more than 27 days in the same calendar year.

22 (1) A "relevant licence or permit" is—
(a) a licence issued under Part 8 of the Gambling Act 2005,
(b) a family entertainment centre gaming machine permit as defined in section 247 of that Act,
(c) a club gaming permit as defined in section 271 of that Act,
(d) a club machine permit as defined in section 273 of that Act,
(e) a prize gaming permit as defined in section 289 of that Act,
(f) an on-premises alcohol licence or a relevant Scottish licence as defined, in each case, in section 277 of that Act but only if a licence or permit listed above is not held in respect of the same premises,
(g) a club premises certificate granted under Part 4 of the Licensing Act 2003 but only if a licence or permit listed above is not held in respect of the same premises,
(h) a certificate of registration within the meaning of the Betting, Gaming Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)),
(i) a bookmaking office licence within the meaning of that Order,
(j) a bingo club licence within the meaning of that Order,
(k) an amusement permit within the meaning of that Order,
(l) a certificate of registration within the meaning of the Registration of Clubs (Northern Ireland) Order 1996 (S.I. 1996/3159 (N.I. 23)), or
(m) a licence issued under the Licensing (Northern Ireland) Order 1996 (S.I. 1996/3158 (N.I. 22)) but only if a licence, permit or certificate listed above is not held in respect of the same premises.

(2) In sub-paragraph (1), "listed above" means listed in any of the preceding provisions of that sub-paragraph.

(3) The Treasury may by order amend this paragraph to add to, vary or restrict the list in sub-paragraph (1).

Compulsory registration

23 (1) Sub-paragraph (2) applies if—
(a) it appears to HMRC that a relevant machine is being made available by anyone at premises for use by others for playing dutiable machine games on it, and
(b) no-one is registered in respect of the premises.

(2) HMRC may give a notice under this paragraph to any person they believe to be a registrable person in respect of the premises.

(3) The notice is referred to as a "registration notice".

(4) A person to whom a registration notice is given may appeal to an appeal tribunal against the notice.

(5) The appeal may be made on either or both of the following grounds—
   (a) that the person is not a registrable person in respect of the premises,
   (b) that relevant machines are not being made available at the premises for use by others for playing dutiable machine games on them.

(6) The appeal must be made within the period of 30 days beginning with the date of the registration notice.

(7) If—
   (a) no appeal is made within that period, or
   (b) an appeal made within that period is dismissed or withdrawn,

HMRC may proceed to register the person in respect of the premises (unless another person has since become registered in respect of them).

(8) Registration under this paragraph is treated as made with effect from the date of the registration notice.

Procedure for registration, de-registration etc

24 (1) The Commissioners may make regulations about registration.

(2) Regulations under this paragraph may in particular make provision about—
   (a) the procedure for applying for registration (including provision requiring applications to be made electronically),
   (b) the timing of applications,
   (c) the information to be provided,
   (d) the giving of registration notices and the making of appeals against them,
   (e) the procedure for compulsory registration under paragraph 23,
   (f) notification of changes to the register,
   (g) de-registration, and
   (h) re-registration after a person ceases to be registered.

(3) The regulations may permit HMRC to make registration, or continued registration, subject to conditions.

(4) Those conditions may in particular require—
   (a) the provision of security for the payment of machine games duty, and
   (b) (in the case of a foreign person) the appointment of a United Kingdom representative with responsibility for discharging liability to machine games duty.

(5) In sub-paragraph (4) “foreign person” means a person who—
   (a) in the case of an individual, is not usually resident in the United Kingdom,
   (b) in the case of a body corporate, does not have an established place of business in the United Kingdom, and
   (c) in any other case, does not include an individual who is usually resident in the United Kingdom.

(6) The regulations may include provision for the registration of groups of persons; and may provide for the modification of the provisions of this Part of this Schedule in their application to groups.

Publication of register

25 (1) The MGD register is to contain such details of those who are entered on the register and of the premises in respect of which they are registered as the Commissioners think fit.

(2) The Commissioners may publish the register (or a part of it).

(3) If they choose not to publish it or they choose to publish only a part of it, the Commissioners must nonetheless make arrangements for the provision of a copy of an entry in the register (or the unpublished part of it) to a member of the public on request.

(4) But the Commissioners may refuse a request under sub-paragraph (3) if the person making the request does not pay a fee specified by the Commissioners.

(5) The fee must not exceed the reasonable cost (including any indirect cost) of meeting the request.

Profit-sharers

26 (1) Sub-paragraph (2) applies if—
(a) it appears to HMRC that machine games duty may be chargeable in respect of a machine,
(b) no-one is registered in respect of the premises where the machine is located, and
(c) either—
(i) HMRC do not know the identity of any of those responsible for the premises (see paragraph 12), or
(ii) HMRC do know the identity of one or more such persons but none of them is in the United Kingdom.

(2) HMRC may give a notice under this paragraph to any person they believe to be beneficially entitled to a share of the machine's takings.

(3) The notice must inform the person to whom it is given ("P") that P will become liable to pay a share of the duty in accordance with this paragraph unless, within the specified period—
(a) P provides HMRC with sufficient information to identify a person in the United Kingdom who is responsible for the premises, or
(b) P satisfies HMRC that, when P became beneficially entitled to a share of the machine's takings, P took all reasonable steps to ascertain that a registrable person was registered in respect of the premises.

(4) The specified period is—
(a) such period of 30 days or more as is specified in the notice, or
(b) such other period as may be agreed between HMRC and P.

(5) If P fails to satisfy sub-paragraph (3)(a) or (b) within the specified period, HMRC may assess to the best of their judgement an amount equal to P's share of the machine games duty that would have been due in respect of the

machine for an accounting period on the assumptions set out in sub-paragraph (6).

(6) The assumptions are—

(a) that P had been liable for machine games duty in respect of the machine in the accounting period in accordance with paragraph 11,

(b) that the machine had been the only machine in respect of which P was so liable, and

(c) that the dutiable machine games in respect of which P is beneficially entitled to a share of the takings had been the only dutiable machine games played on the machine.

(7) P's share is a percentage equal to the share of the machine's takings to which P is beneficially entitled.

(8) An assessment under this paragraph may relate to more than one machine, more than one set of premises and more than one accounting period.

(9) But it may not relate to a period that began more than 4 years before the date of the assessment.

(10) An amount assessed under this paragraph is deemed to be an amount of machine games duty assessed under section 12 of FA 1994 and due from P in accordance with regulations under paragraph 19 of this Schedule.

(11) P is not entitled to any repayment from HMRC of an amount assessed under this paragraph if HMRC subsequently identify a person responsible for the premises.

(12) But if, after P has paid such an amount, HMRC make an assessment under section 12 of FA 1994 of an amount of machine games duty due from another person in respect of the same takings from the same machine for the same accounting period, account must be taken in that assessment of the amount paid by P.

Reviews and appeals

27 (1) The decisions mentioned in sub-paragraph (2) are to be treated as if they were listed in subsection (2) of section 13A of FA 1994 (customs and excise reviews and appeals: meaning of "relevant decision") and, accordingly, as if they were relevant decisions for the purposes mentioned in subsection (1) of that section.

(2) The decisions are—

(a) a decision of HMRC to refuse a request for an agreement under paragraph 14,

(b) a decision to give a direction under that paragraph,

(c) a decision not to give such a direction,

(d) a decision of HMRC under regulations by virtue of paragraph 24(2),

(e) a decision of HMRC about security by virtue of paragraph 24(4)(a), and

(f) a decision of HMRC about the appointment of a United Kingdom representative by virtue of paragraph 24(4)(b).

Interest

28 (1) This paragraph applies if an order is made under section 104(3) of FA 2009 appointing a day on which sections 101 to 103 of that Act are to come into force for the purposes of machine games duty.

(2) Interest charged under section 101 of that Act on an amount of machine games duty (or an amount enforceable as if it were machine games duty) may be enforced as if it were an amount of machine games duty payable by the person liable for the amount on which the interest is charged.

Penalties and enforcement

29 In Schedule 24 to FA 2007 (penalties for errors), in the Table in paragraph 1, after the entry relating to remote gaming duty insert—

"Machine games duty	Return under regulations under paragraph 18 of Schedule 1 to FA 2012."

30 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry relating to remote gaming duty insert—

"Machine games duty	Obligation under paragraph 20(3) of Schedule 1 to FA 2012 (obligation to register in respect of premises)."

31 In Schedule 55 to FA 2009 (penalty for failure to make returns etc), in the Table in paragraph 1, after item 28 insert—

"29	Machine games duty	Return under regulations under paragraph 18 of Schedule 1 to FA 2012".

32 In that Schedule, in each of the following provisions, for "28" substitute "29"—
(a) paragraph 2(1)(b),
(b) paragraph 13A(1), and
(c) paragraph 13F(1).

33 In Schedule 56 to FA 2009 (penalty for failure to make payments on time), in the Table in paragraph 1, after item 11M insert—

"11N	Machine games duty	Amount payable under paragraph 6 of Schedule 1 to FA 2012 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under paragraph 19 of Schedule 1 to FA 2012 as the date by which the amount must be paid".

34 In that Schedule, in each of the following provisions, for "11M" substitute "11N"—

(a) items 17A, 23 and 24 of the Table in paragraph 1,
(b) paragraph 2(c),
(c) paragraph 3(1)(b),
(d) paragraph 8A(1), and
(e) paragraph 8F(1).

35 (1) Contravention of a provision mentioned in sub-paragraph (2) attracts a penalty under section 9 of FA 1994 (penalties) and also attracts daily penalties under that section.

(2) The provisions are—

(a) any provision of regulations made under paragraph 18,
(b) any provision of regulations made under paragraph 19,
(c) paragraph 20(3), and
(d) any provision of regulations made under paragraph 24.

Forfeiture

36 (1) A machine is liable to forfeiture if—

(a) an officer of Revenue and Customs finds it on any premises,
(b) the officer is satisfied that it is being, has been or is about to be made available on the premises for use by others for playing dutiable machine games on it, and
(c) condition A or B is met.

(2) Condition A is that—

(a) no-one is registered in respect of the premises, and
(b) there is a serious risk that any machine games duty chargeable in respect of the machine would not be paid.

(3) Condition B is that the officer is satisfied that an amount of machine games duty has become due and payable in respect of the machine, but has not been paid.

Offences

37 (1) A person commits an offence if the person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion (by that person or any other person) of any machine games duty.

(2) A person guilty of an offence under this paragraph is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the maximum amount, or both,

(3) The maximum amount is the greater of—

(a) the statutory maximum, and

(b) three times the duty or other amount that is unpaid or the payment of which is sought to be avoided.

(4) In the application of this paragraph—

(a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, or

(b) in Northern Ireland,

the reference in sub-paragraph (2)(b) to 12 months is to be read as a reference to 6 months.

(5) Section 27 of BGDA 1981 (offences by bodies corporate) has effect for the purposes of any offence under this paragraph as it has effect for the purposes of the offences mentioned in that section.

Protection of officers

38 Section 31 of BGDA 1981 applies in relation to machine games duty as it applies in relation to remote gaming duty.

Orders and regulations

39 (1) This paragraph applies to orders and regulations under this Part of this Schedule.

(2) Orders and regulations—

(a) may make provision that applies generally or only for specified purposes,

(b) may make different provision for different purposes, and

(c) may include transitional provision and savings.

(3) Regulations may confer a discretion on HMRC.

(4) Orders and regulations are to be made by statutory instrument.

(5) For the purposes of making an order under paragraph 8(1)(b)—

(a) the statutory instrument containing the order must be laid before the House of Commons, and

(b) the order ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, it is approved by a resolution of the House of Commons.

(6) In reckoning the 28-day period, no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued, or

(b) the House of Commons is adjourned for more than 4 days.

(7) An order ceasing to have effect by virtue of sub-paragraph (5)(b) does not affect—

(a) anything previously done under the order, or

(b) the making of a new order.

(8) A statutory instrument containing an order under paragraph 13(6) or 22(3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(9) Subject to sub-paragraphs (5) and (8), a statutory instrument containing an order or regulations is subject to annulment in pursuance of a resolution of the House of Commons.

Transitional provision

40 (1) The Commissioners may by notice direct that regulations under paragraph 24 (procedure for registration, de-registration etc) are to apply in relation to the period before the go-live date with the modifications specified in the notice.

(2) A notice under sub-paragraph (1) must be published by the Commissioners.

(3) For a person who, on the go-live date, is responsible for premises where a relevant machine is located, the first accounting period is to be the period beginning with that day and ending with—

(a) the day before the day on which the next accounting period is to begin by virtue of a direction given under paragraph 14(2), or

(b) such other day as is necessary to give effect to an agreement made under paragraph 14(4).

Consequential amendments

41 (1) Section 1(1) of CEMA 1979 (interpretation) is amended as follows.

(2) In the definition of "the revenue trade provisions of the customs and excise Acts", at the end insert—

"(f) the provisions of Part 1 of Schedule 1 to the Finance Act 2012;".

(3) In the definition of "revenue trader", in paragraph (a)—

(a) omit "or" at the end of sub-paragraph (ic),

(b) after that sub-paragraph insert—

"(id) being responsible for premises where relevant machines are located (within the meaning of Part 1 of Schedule 1 to the Finance Act 2012); or", and

(c) in sub-paragraph (ii), for "or (ic)" substitute ", (ic) or (id)".

42 (1) For section 118BC of that Act (inspection powers: gaming duty) substitute—

"118BC Inspection powers: gaming duty and machine games duty

(1) Subsection (2) applies to premises if an officer has reasonable cause to believe that—

(a) section 10 gaming is taking place, has taken place or is about to take place on the premises, or

(b) machines are located on the premises in respect of which a person is, has been or is about to become liable for machine games duty.

(2) The officer may at any reasonable time enter and inspect the premises and inspect—
 (a) accounts, records and other documents in the custody or control of any relevant person, and
 (b) any relevant equipment.

(3) Subsection (1) does not permit an officer to enter or inspect a particular part of premises if—
 (a) the officer has no reasonable cause to believe that paragraph (a) or, as the case may be, (b) of that subsection is satisfied with respect to that particular part, and
 (b) the part is used solely as a dwelling.

(4) An officer may at any reasonable time (whether or not as part of an inspection under subsection (2)) require a relevant person or anyone acting on such a person's behalf—
 (a) to open relevant equipment, and
 (b) to carry out any other operation that may be necessary to enable the officer to ascertain whether any gaming duty or machine games duty is payable in respect of it and, if so, how much.

(5) A "relevant person" is—
 (a) in relation to gaming duty, a person who is engaging, or whom the officer reasonably suspects of engaging, in section 10 gaming or in any activity by reason of which the person is or may become liable to gaming duty, and
 (b) in relation to machine games duty, a person who is, has been or is about to become liable to machine games duty or whom the officer reasonably suspects of being, having been or being about to become so liable.

(6) "Relevant equipment" is—
 (a) in relation to gaming duty, equipment that is being, or the officer reasonably suspects of having been or of being intended to be, used on the premises for or in connection with section 10 gaming, and
 (b) in relation to machine games duty, any equipment that is, or the officer reasonably suspects of being, a machine in respect of which a person is, has been or may become liable to machine games duty and any other equipment used in connection with such a machine.

(7) In this section—
 (a) "section 10 gaming" means gaming to which section 10 of the Finance Act 1997 applies, and
 (b) a reference to premises where a machine is located is to be read in accordance with Part 1 of Schedule 1 to the Finance Act 2012."

(2) In section 118G of that Act (offences under Part 9A), in subsection (1), for "or section 118B" substitute ", 118B or 118BC(4)".

43 In section 2 of BGDA 1981 (bookmakers: general bets), in subsection (2), omit paragraph (d).

44 (1) Section 26H of BGDA 1981 (exemptions from remote gaming duty) is amended as follows.

(2) After subsection (2A) insert—

"(2B) Subsection (2) does not apply in cases where the other gambling tax is machine games duty."

(3) In subsection (3), after paragraph (a) insert—

"(aa) machine games duty,".

45 In Schedule A1 to BGDA 1981 (betting duties: double taxation relief), in paragraph 7, after paragraph (c) insert—

"(ca) machine games duty,".

46 In Schedule 4B to BGDA 1981 (remote gaming duty: double taxation relief), in paragraph 7, after paragraph (c) insert—

"(ca) machine games duty,".

47 In section 12 of FA 1994 (assessment to excise duty), in subsection (2)(c), after "1997" insert "or Part 1 of Schedule 1 to the Finance Act 2012".

48 In section 10 of FA 1997 (gaming duty), for subsection (3AA) substitute—

"(3AA) This section does not apply to the playing of a game in respect of which—

(a) bingo duty or lottery duty is chargeable, or would be chargeable but for an express exception, or

(b) machine games duty is chargeable."

49 In section 7 of the Borders, Citizenship and Immigration Act 2009 (Customs revenue functions of the director), in subsection (2)(e)—

(a) omit "and" at the end of sub-paragraph (vi), and

(b) at the end of sub-paragraph (vii) insert "and

(viii) machine games duty;".

Interpretation

50 In this Part of this Schedule—

"appeal tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

"cash" has the meaning given in paragraph 2 (and "non-cash" is to be read accordingly);

"charge", in relation to a game, means a charge or deduction in money or money's worth, however it is described or levied and whether it becomes due before or after the game is played;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"dutiable machine game" has the meaning given in paragraph 2, subject to paragraphs 3 and 4;

"game" does not include a sport;

"the go-live date" is defined in paragraph 66(5);

"HMRC" means Her Majesty's Revenue and Customs;

"machine" means any apparatus that uses or applies mechanical power, electrical power or both;

"machine game" has the meaning given in paragraph 2;

"MGD register" has the meaning given in paragraph 20;

"money" means money in sterling or any other currency;

"payouts" means prizes paid out to players as a result of playing dutiable machine games on a machine;

"the payouts", in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;

"premises" includes any place, any means of transport and any stall or other moveable structure;

"prize", in relation to a game—

(a) means a prize in the form of cash or non-cash (or both), however it is described or paid out and whether it is a prize provided by a person making the game available or is winnings of money staked, but

(b) a benefit consisting of nothing more than the opportunity to play the game again does not count as a prize;

"registered" has the meaning given in paragraph 12 (and "registration" is to be read accordingly);

"registrable person" has the meaning given in paragraph 21;

"relevant machine" means—

(a) a machine in respect of which machine games duty is or will be chargeable, or

(b) in relation to a particular taxable person and accounting period, a machine in respect of which that person is liable for machine games duty in that period;

"representative" means a personal representative, trustee in bankruptcy, receiver or liquidator or any other person acting in a representative capacity;

"specified" includes described;

"takings" means charges due from players for playing dutiable machine games on a machine;

"the takings", in relation to a particular taxable person and accounting period, is defined in paragraph 7;

"taxable person" has the meaning given in paragraph 11;

"total net takings" has the meaning given in paragraph 6;

"United Kingdom" includes the territorial sea of the United Kingdom.

51 (1) This Part of this Schedule is to be read in accordance with this paragraph.

(2) A person "plays" a game if the person participates in the game—

(a) whether or not there are other participants in the game, and

(b) whether or not a computer generates images or data taken to represent the actions of other participants in the game.

(3) A reference to the charge (or the lowest or highest charge) payable for playing a machine game—

(a) is a reference to the charge (or the lowest or highest charge) payable for a single go at playing the game, and

(b) includes any charge that entitles the person paying it to play a machine game or to play it at a reduced rate (even if the charge is ostensibly a charge for something else).

(4) A reference to "paying" a charge is to be read, in the case of a charge in money's worth, as a reference to the provision of the thing, or performance of the service, in money's worth.

(5) A reference to a prize (or the maximum amount of cash) that can be won from playing a machine game is a reference to a prize (or the maximum amount of cash) that can be won from a single go at playing the game.

(6) A reference to "paying out" a prize is to be read, in the case of a prize in money's worth, as a reference to the provision of the thing, or performance of the service, in money's worth.

(7) A reference to the premises where a machine is located or made available includes, in the case of a portable machine, the premises where the machine is issued to those wanting to play dutiable machines games on it.

52 The imposition or payment of machine games duty does not make lawful anything that is otherwise unlawful.

PART 2

REMOVAL OF AMUSEMENT MACHINE LICENCE DUTY

Amendment of BGDA 1981

53 The following provisions of BGDA 1981 are omitted—
(a) sections 21 to 26,
(b) section 26H(3)(a),
(c) section 26N(3) and (4), and
(d) Schedules 4 and 4A.

54 (1) Part 3 of that Act (general) is amended as follows.

(2) In section 27 (offences by bodies corporate), for the words from "section 24" to "Schedule 4" substitute "paragraph 13(1) or (3) or 14(1) of Schedule 1 or paragraph 16 of Schedule 3".

(3) In section 31 (protection of officers), for "remote gaming duty or the duty on amusement machine licences" substitute "or remote gaming duty".

(4) In section 33 (interpretation), in subsection (2), for "remote gaming duty or the duty on amusement machine licences" substitute "or remote gaming duty".

Amendment of other enactments

55 In section 102 of CEMA 1979, in subsection (3)(a), omit "or an amusement machine licence".

56 In section 10 of FA 1997 (gaming duty), omit subsection (3A).

57 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, omit the entry relating to amusement machine licence duty.

58 In section 7 of the Borders, Citizenship and Immigration Act 2009 (Customs revenue functions of the director), in subsection (2)(e), omit sub-paragraph (i).

Transitional provision and savings

59 (1) If a licence granted under section 21 of BGDA 1981 is to expire on or after the go-live date, the holder of the licence is entitled to repayment of an amount of duty.

(2) That amount is the difference between—

(a) the amount of duty actually paid on the licence before the go-live date in accordance with section 23 of that Act, and

(b) the amount (if less) determined in accordance with sub-paragraph (3).

(3) The amount is to be determined as follows—

Step 1

Calculate the amount of duty that would have been paid if the period for which the licence was granted had been the number of complete months beginning with the date on which the licence was granted and ending immediately before the go-live date. The day immediately following the end of that period of complete months is referred to as "day X".

Step 2

Add to the amount calculated under Step 1 an amount representing the duty payable for the period of days beginning with day X and ending with the day before the go-live date. The duty payable for each such day in that period is to be calculated as 1/365th of the amount of duty payable for a licence of 12 months for a machine of the relevant category.

(4) If—

(a) duty is being paid on the licence in accordance with arrangements made under paragraph 7A of Schedule 4 to BGDA 1981 (payment of duty by instalments), and

(b) the amount of duty actually paid on the licence before the go-live date in accordance with section 23 of that Act is less than the amount determined in accordance with sub-paragraph (3),

the difference between those amounts is to be treated under that Act as unpaid duty.

(5) A person is not entitled to a repayment under this paragraph if the person has been convicted of an offence under section 24 of that Act in respect of a contravention of section 21(1) or 24 of that Act that occurred between the grant of the licence and the go-live date.

(6) If, at the go-live date, proceedings for such an offence are pending against the person, the right to repayment under this paragraph does not arise unless and until the proceedings are terminated and every person charged in those proceedings with such an offence has been acquitted of it.

(7) If a person entitled to a repayment of more than £10 under this paragraph has not received the repayment within the period of 90 days beginning with the go-live date (or, in a case falling within sub-paragraph (6), the date when the right arises in accordance with that sub-paragraph)—

(a) the person may give notice to HMRC of that fact,

(b) the Commissioners must pay interest to the person on the amount of the repayment for the period from the end of that 90-day period until the day on which the repayment is made, and

(c) any such interest accrues at the rate under section 197 of FA 1996 (rates of interest) that is applicable for Parts 2 and 3 of Schedule 3 to FA 2001 (excise duty payment by Commissioners in case of error or delay).

60 (1) If a licence granted or to be granted under section 21 of BGDA 1981 would expire within the period of 30 days ending with the go-live date, a person may apply—

(a) for the licence to be treated as extended for the necessary period, or

(b) for a new amusement machine licence to be treated as granted in its place under Schedule 4 to that Act for the necessary period.

(2) The necessary period is the period from expiry of the licence until immediately before the go-live date.

(3) An application under this paragraph may be made before or after the licence is granted but, if made after the licence is granted, it must be made before the day on which the licence is to expire.

(4) The application must be made to HMRC in such form and manner as HMRC may require.

(5) HMRC must grant the application once it has received payment of an amount of duty payable on the licence (or new licence) in respect of the necessary period.

(6) The amount of duty payable in respect of the necessary period is to be the sum of the amounts payable for each day in that period, each such amount being 1/365th of the duty payable for a licence of 12 months for a machine of the relevant category.

(7) Schedule 4 to BGDA 1981 and any regulations made under that Schedule apply (subject to any modifications specified by the Commissioners in a notice published for the purposes of this paragraph) to an amount of duty payable in accordance with this paragraph as to an amount of duty payable in accordance with section 23 of that Act.

(8) Nothing in this paragraph affects the operation of that Act with respect to the provision of amusement machines in the necessary period in a case where no application is made under this paragraph or an application is not granted.

(9) But if a default licence is granted under Schedule 4A to BGDA 1981 for the necessary period, the amount of duty that may be assessed under paragraph 4 of that Schedule is limited to the amount that would have been payable if an application had been made for a licence under this paragraph.

61 (1) This paragraph applies to licences to be granted under section 21 of BGDA 1981 on or after 2 January 2013 (a "final month licence").

(2) Section 21(3) of that Act has effect as if—

(a) the requirement to grant amusement machine licences for a period of one or more whole months were omitted, and

(b) the power to grant amusement machine licences for a period not exceeding 12 months were a power to grant such licences for a period ending with a day that is no later than the day before the go-live date.

(3) The requirement in section 21(4) of that Act to grant special amusement machine licences for a period of 12 months has effect in relation to a final month licence as if it were a requirement to grant a licence for the period beginning with the date of grant and ending with the day before the go-live date.

(4) The amount of duty payable on a final month licence is to be calculated in the manner described in paragraph 60(6).

(5) The Commissioners may by notice direct that Schedules 4 and 4A to BGDA 1981 and any regulations made under those Schedules are to apply to a final month licence with such modifications as may be specified in the notice.

(6) A notice under sub-paragraph (5) must be published by the Commissioners.

62 The enactments repealed by this Part of this Schedule continue to have effect on and after the go-live date in relation to the provision of amusement machines before that date.

PART 3

VAT EXEMPTION

Amendment of VATA 1994

63 For section 23 of VATA 1994 substitute—

“23 Value of supplies involving relevant machine games

(1) If a person plays a relevant machine game, then for the purposes of VAT the amount paid by the person is to be treated as consideration for a supply of services to that person.

(2) “Relevant machine game” is defined in section 23A.

(3) The value to be taken as the value of supplies made by a person (“the supplier”) in the circumstances mentioned in subsection (1) in any period is to be determined as if the consideration for the supplies were reduced by an amount equal to X.

(4) X is the amount (if any) paid out in that period by way of winnings in respect of relevant machine games made available by the supplier (whether the games were played in the same period or an earlier one).

(5) X does not include any winnings paid out to the supplier or a person acting on the supplier’s behalf.

(6) Inserting a token into a machine on which a relevant machine game is played is to be treated for the purposes of subsection (1) as the payment of an amount equal to that for which the token can be obtained.

(7) Providing a specified kind of token by way of winnings is to be treated for the purposes of subsection (4) as the payment out of an amount by way of winnings equal to the value of the token.

(8) A specified kind of token is—
(a) a token that can be inserted into the same machine to enable games to be played on the machine, or
(b) a token that is not of such a kind but can be exchanged for money.

(9) The value of a specified kind of token is—
(a) for a token within subsection (8)(a), an amount equal to that for which the token can be obtained, and
(b) for a token within subsection (8)(b), an amount equal to that for which the token can be exchanged.

(10) If it is not reasonably practicable to attribute payments and winnings to relevant machine games or to apportion them between relevant machine games and other games or other activities, any attribution or apportionment is to be done on a just and reasonable basis.

(11) For the purposes of this section, a person plays a game if the person participates in the game—
(a) whether or not there are other participants in the game, and
(b) whether or not a computer generates images or data taken to represent the actions of other participants in the game.

23A Meaning of "relevant machine game"

(1) A "relevant machine game" is a game (whether of skill or chance or both) that—
(a) is played on a machine for a prize, and
(b) is not excluded by subsection (2).

(2) A game is excluded by this subsection if—
(a) takings and payouts in respect of it are taken into account in determining any charge to machine games duty,
(b) it involves betting on future real events,
(c) bingo duty is charged on the playing of it or would be so charged but for paragraphs 1 to 5 of Schedule 3 to the Betting and Gaming Duties Act 1981 (exemptions from bingo duty),
(d) lottery duty is charged on the taking of a ticket or chance in it or would be so charged but for an express exception,
(e) it is a real game of chance and playing it amounts to dutiable gaming for the purposes of section 10 of the Finance Act 1997 or would do so but for subsection (3), (3B) or (4) of that section, or
(f) remote gaming duty is charged on the provision of facilities used to play it or would be so charged but for an exemption conferred by an order made under section 26H(4)(a) of the Betting and Gaming Duties Act 1981.

(3) In this section—
"game" does not include a sport;

"machine" means any apparatus that uses or applies mechanical power, electrical power or both;

"prize", in relation to a game, does not include the opportunity to play the game again;

"real game of chance" means a game of chance (within the meaning of the Betting and Gaming Duties Act 1981) that is non-virtual.

(4) The Treasury may by order amend this section."

64 (1) In Part 2 of Schedule 9 to that Act (exemptions: the groups), the provisions of Group 4 are amended as follows.

(2) After Item 1 insert—

"1A The provision of any facilities for the playing of dutiable machine games (as defined in Part 1 of Schedule 1 to the Finance Act 2012) but only to the extent that—

(a) the facilities are used to play such games, and

(b) the takings and payouts in respect of those games are taken into account in determining the charge to machine games duty."

(3) In Note (1)—

(a) for "Item 1 does" substitute "Items 1 and 1A do", and

(b) omit paragraph (d) and the word "or" immediately preceding that paragraph.

(4) After Note (1) insert—

"(1A) Item 1 does not apply to the provision of facilities to the extent that the facilities are used to play a relevant machine game (as defined in section 23A)."

(5) Accordingly—

(a) in Part 2 of Schedule 9, in the heading of Group 4, after "GAMING" insert ", DUTIABLE MACHINE GAMES", and

(b) in Part 1 of that Schedule, in the Index, for "Betting, gaming and lotteries" substitute "Betting, gaming, dutiable machine games and lotteries".

65 (1) Paragraph 9 of Schedule 11 to that Act (administration, collection and enforcement) is amended as follows.

(2) For paragraph (a) substitute—

"(a) to open any machine on which relevant machine games (as defined in section 23A) are capable of being played; and".

(3) In paragraph (b), for "subsection (2) of that section" substitute "section 23(3)".

(4) Accordingly, in the heading immediately before paragraph 9, for "*gaming machines*" substitute "*machines on which relevant machine games are played*".

PART 4

MISCELLANEOUS

Application

66 (1) The provisions of this Schedule have effect as follows.

(2) Part 1 has effect in relation to the playing of machine games on or after 1 February 2013.

(3) Part 2 has effect in relation to the provision of amusement machines on or after that date.

(4) Part 3 has effect in relation to supplies made on or after that date.

(5) A reference in this Schedule to the "go-live date" is to 1 February 2013.

67 (1) The Treasury may by regulations make transitional or saving provision in connection with the removal of amusement machine licence duty and the introduction of machine games duty.

(2) The power in sub-paragraph (1) is without prejudice to—

(a) the provision made by Part 2 of this Schedule, and

(b) any power in this Schedule apart from this paragraph to make transitional or saving provision in connection with the matters mentioned in sub-paragraph (1).

(3) Regulations under this paragraph are to be made by statutory instrument.

(4) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

EXPLANATORY NOTE

MACHINE GAMES DUTY

SUMMARY

1. This clause and schedule replaces amusement machine licence duty (AMLD) with a new excise duty, machine games duty (MGD), and exempts the takings from machine games from a charge to VAT where those takings are liable to MGD.

DETAILS OF THE SCHEDULE

Part 1 Imposition of Machine Games Duty

2. Paragraph 2(1) of the Schedule defines a machine game as a game that is played on a machine for a prize regardless of whether the game is a game of chance or a game of skill.

3. Paragraph 2(2) to (6) defines a dutiable machine game as one where any element of its prize is cash, or something that equates to cash, and the maximum amount offered as a cash prize is greater than the lowest charge to play the game on the machine. "Cash" is further defined as money or anything that may reasonably be considered to equate to money, including things of an intangible nature. Paragraph 2(5) provides that if an adult would reasonably assume that these conditions are met, the machine game will be taken to be a dutiable game, even where it does not in fact satisfy these tests. Paragraph (2)6 provides that in order to identify the lowest charge to play a game, for the purpose of determining whether it is a dutiable game, any offer that allows a player to play for nothing or at a reduced cost will be ignored and what would otherwise be the normal charge will be the amount that determines if it is a dutiable game.

4. Paragraphs 3(1) and (2) exclude certain games from the definition of a dutiable machine game if it is a specific form of gambling or there is a liability to, or specific exclusion from, another of the gambling duties. Paragraph 3(3) provides that where a game is played in a number of stages the game will be a dutiable machine game if any one stage on its own, or all the stages together, meet the definition of a dutiable machine game.

5. Paragraph 4 enables the Treasury to specify by order further criteria to take into account in deciding whether a particular game qualifies as a dutiable machine game.

6. Paragraph 5 makes provision for two types of machines to be defined by reference to the highest charge payable for playing a game and the highest cash prize that can be won from playing a game.

7. Paragraph 6 provides that in any accounting period MGD will be charged on the total net takings from all machines of each type, and prescribes how it will be calculated. Sub-paragraph (6) provides that if a machine changes type during an accounting period the net takings must be calculated separately for the periods before and after the change, and where this is not possible the net takings may be apportioned between the periods either side of the change.

8. Paragraph 7 provides the definition of a person's net takings from a machine as those which are due to them for any period that they are liable for MGD in respect of the machine. Subject to certain stipulations which are specified in this paragraph, or which may be specified in secondary legislation, the net takings are:

- the charges due from players in that period for playing dutiable machine games on the machine; less
- the amounts that are paid out to players as prizes (including the value of non-cash prizes where such prizes are offered by machines also offering at least one cash prize greater than the amount paid to play) in that period as a result of playing dutiable machine games.

9. Paragraph 7(6) provides for a just and reasonable apportionment of charges or prizes in circumstances where it is not reasonably practicable to make a precise attribution or apportionment. Sub-paragraph (9) provides that where a game is played for free, or at a lower cost than would normally be the case, it is the lower charge that will be included in the net takings.

10. Paragraph 8 provides that certain amounts must be disregarded (left out of account) when calculating the takings and payouts described at paragraph 7. This has the effect of creating exemptions in those circumstances. Further circumstances may be provided for by secondary legislation. A draft of the Treasury order has been published with this legislation for consultation. The intention is to make the order under provisions of this paragraph and of Paragraph 39.

11. Paragraph 9 prescribes the standard and lower rates of MGD and makes provision for circumstances where there is a rate change during an accounting period to allow the old and new rates to be applied as appropriate.

12. Paragraph 10 provides that where a person's duty calculation results in a negative amount their liability for that period will be zero, and

the negative amount will be carried forward and offset against their liability in the next period. Negative amounts will continue to be carried forward to future periods until such time as the duty calculation results in a positive amount but no repayments or refunds will be made in respect of a negative amount.

13. Paragraph 11 provides that a person is liable for MGD at any time that they are responsible for any premises where dutiable machine games are available for play on a machine that is not an excluded machine. Where there is more than one person who satisfies the conditions specified in paragraph 11(1) each shall be jointly and severally liable for the duty.

14. Paragraph 12 provides the definition of a responsible person for the purposes of determining liability under paragraph 11. A person is defined as a responsible person if they are registered, or registrable, in respect of those premises where machines are available for play. When one of these persons registers for MGD the others will have no liability (further provision about registration is found at paragraphs 20 – 24).

15. Paragraph 13 defines an excluded dual-use machine as one that can be used for playing dutiable machine games and for some other unrelated purpose. It only qualifies as an excluded machine if:

- it is not designed, adapted, or presented to facilitate its use for playing dutiable machine games, or draw attention to such a possibility; or
- the responsible person is unaware, and could not reasonably be expected to be aware, that it is designed, adapted, or presented in such a way.

16. Paragraph 14 provides that MGD will have quarterly accounting periods and that HMRC may:

- direct the day on which an accounting period will begin;
- agree to accounting periods of other than exactly 3 months with starting days other than the first day of the month;
- make transitional arrangements that will allow periods of other than 3 months to be treated as accounting periods in circumstances where someone registers, deregisters or is moving from standard to non-standard periods; and
- specify shorter accounting periods in any case where they believe that a person may not discharge their liabilities.

17. Paragraph 15 provides for the valuation of prizes and includes specific valuation provisions where the prize consists of foreign currency or something, for example, a voucher that may be exchanged for cash.

18. Paragraph 15(4) provides that where a prize consists of foreign currency the value of that prize will be calculated on the last day of an accounting period using the London closing rate from the day before.

19. Paragraphs 15(5) and 15(6) provide that where the prize is a non-cash prize its value will be the cost of obtaining it from an independent third party, or the amount it would have cost if obtained from an independent third party. If that cost cannot be reasonably determined it shall be given a value that is just and reasonable. Where the cost of a prize includes VAT paragraph 15(8) provides that the VAT must be included in the value of the prize.

20. Paragraph 15(7) provides that where the prize is any number of vouchers that may exchanged for any non-cash benefit the value of the prize shall be [determined by the value of any benefit] for which the vouchers may be exchanged.

21. Paragraph 16 makes provision for the valuation of the amounts charged for playing a game. Where the charge to play is unclear, or where the charge allows more than one play or covers something in addition to game play (a "composite charge"), this paragraph allows for the charge for playing a game to be determined on a just and reasonable basis. Paragraphs 16(6) and 16(7) provide that in specified, limited circumstances a charge will be attributed to what would otherwise be presented as a free play, or reduced charge. If all of the conditions in sub-paragraph (6) are met the amount of the charge that is due will be the amount that would have been charged in the absence of any offer.

22. Paragraph 17 provides that HMRC is responsible for the collection and management of machine games duty.

23. Paragraphs 18 and 19 provide for HMRC to set out the requirements in respect of MGD returns, payments and assessments in secondary legislation, and that the excise duty assessment provisions in the Finance Act 1994 apply in relation to MGD. A draft of the regulations will be published for consultation in 2012.

24. Paragraphs 20 to 25 make provision about registration and registrable persons, and the publication of the MGD register. Paragraph 20 requires that HMRC maintain a register, the MGD register, and provides that subject to the exclusion described in paragraph 20(5) no-one may make a machine with dutiable machine games on it

available for play on any premises unless a registrable person is registered in respect of those premises. The definitions and descriptions of each of these registrable persons are provided at paragraphs 21 and 22.

25. Paragraph 21(1) provides that the holder of a relevant permit or licence (under paragraph 22) is a registrable person. Where there is a licence or permit specified in that paragraph the holder must register in respect of those premises. Paragraph 21(2) makes provision in respect of tenanted pubs such that the tenant is registrable regardless of whether someone else holds the alcohol licence. Paragraph 21(3) makes provision about registrable persons in respect of travelling fairs and paragraphs 21(4) and 21(5) makes provision about registrable persons in respect of premises that are not covered by paragraphs 21(1) to 21(3).

26. Paragraph 22 defines the licences and permits that are described as "relevant licences or permits" for the purposes of paragraph 21.

27. Paragraph 23 makes provision, and describes the process that HMRC must follow, for compulsory registration when dutiable machine games are available for play on premises for which there is no registration in place. HMRC may give a registration notice to any person believed to be a registrable person in respect of the premises. Paragraphs 23(6) and 23(7) provide for an appeals process against the registration notice and if no appeal is made within the specified time or it is dismissed or withdrawn, HMRC may proceed to register the person in respect of the premises.

28. Paragraph 24 provides for HMRC to set out the procedures and requirements for registration and de-registration in secondary legislation, and prescribes particular aspects and conditions of the registration process that may be provided by those regulations. In particular, paragraphs 24(4), 24(5) and 24(6) make provision in relation to the payment of security, the appointment of a tax representative, and group registrations. A draft of the regulations will be published for consultation in 2012.

29. Paragraph 25 makes provision about the information to be recorded on the MGD register and the conditions that may be attached to its publication.

30. Paragraph 26 provides that in certain circumstances HMRC may give a notice to any person who is believed to be entitled to a share of the takings from a machine on which dutiable machine games are played. The person is referred to in the legislation as a "profit-sharer". That person may become liable to account for MGD for the period specified in the notice. This liability may only be imposed if it appears that MGD may be chargeable; no-one is registered in respect

of the premises; and the responsible persons are not known to HMRC, or are known but overseas. Unless the person, having received a notice from HMRC, can provide HMRC with sufficient information to identify a responsible person, or show that they had taken all reasonable steps to determine that someone was registered in respect of the premises, HMRC may make an assessment for MGD that will be based on that person's share of the machine's takings. Any assessment under this paragraph will be subject to the excise duty assessments and appeals provisions of the Finance Act 1994. If HMRC subsequently identify someone who is responsible, any assessment made against them must take account of the amount that has already been recovered from the other person, but that other person is not entitled to any repayment of the amount for which he was assessed.

31. Paragraph 27 makes provision for the HMRC decisions listed in paragraph 27(2) to be treated as if they were appealable decisions under section 13A of the Finance Act 1994 and covered by the reviews and appeals provisions of that Act.

32. Paragraph 28 provides that the provisions of the Finance Act 2009 that allow for interest to be charged on unpaid duty and assessments may be applied to MGD.

33. Paragraphs 29 to 35 provide that MGD shall become subject to the penalty provisions that already exist in other legislation and which are specified in each of those paragraphs.

34. Paragraph 36 provides that a machine is liable to forfeiture in circumstances where it is, was or is about to be made available for play for dutiable machine games, and either :

- there is no registration for the premises and there is a serious risk that MGD will not be paid, or

- MGD that is due has not been paid in respect of the machine.

35. Paragraph 37 provides that it is an offence to be knowingly involved in the fraudulent evasion of MGD and describes the penalties that may apply to those who are guilty. Paragraph 37(4) qualifies the prescribed penalty provision of paragraph 37(2)(b) to provide that where a person is found guilty on summary conviction of an offence that is committed in Northern Ireland, or in England and Wales before the commencement of s154(1) of the Criminal Justice Act 2003, the maximum term of imprisonment of twelve months that is specified at paragraph 37(2)(b) shall be read as six months. Paragraph 37(5) provides that where fraudulent evasion of MGD is committed by a body corporate, the directors of that body shall be deemed to be guilty of that offence unless it can be proved that they did not

commit, or connive to commit, the offence and that they acted with appropriate due diligence with regard to their role to ensure that no offence was committed.

36. Paragraph 38 adds MGD to the list of betting and gaming duties in section 31 of the Betting and Gaming Duties Act 1981 (BGDA) and provides that an officer of HMRC does not commit an offence when properly undertaking duties in respect of MGD.

37. Paragraph 39 makes provision about orders and regulations that may be made under Part 1 (paragraphs 1-52) of this Schedule and prescribes the Parliamentary procedures that must be followed in respect of the particular statutory instruments containing those orders or regulations.

38. Paragraphs 40(1) and 40(2) provide that HMRC may direct in a published notice that the registration provisions of paragraph 24 shall apply in advance of the implementation of MGD and that that notice may modify those provisions for the transitional period.

39. Paragraph 40(3) provides for transitional arrangements in respect of any person who has been directed, or has been approved, to use accounting periods other than the standard period of 3 consecutive months. These arrangements give the flexibility to provide that the first accounting period for those persons shall start on the MGD go-live date and end on whichever date is appropriate to allow them to then move to the accounting periods that have been directed or approved.

40. Paragraph 41 provides that the definition of "the revenue trade provisions of the customs and excise acts" in the Customs and Excise Management Act 1979 (CEMA) is amended to include the provisions of Part 1 of this Schedule, and that the definition of "revenue trader" in that Act is amended to include those who are responsible persons within the meaning of this Schedule.

41. Paragraph 42(1) makes a consequential amendment to CEMA to substitute a new section 118BC. This new section provides that HMRC's powers of entry and inspection applying in relation to gaming duty shall apply also in relation to MGD, and provides a power to open machines. New sections 118BC (2) and (3) specify what may be inspected and when the inspection may take place, and prescribe the circumstances under which entry or inspection is not permitted. New section 118BC(4) provides that HMRC may require a relevant person to open or operate any relevant equipment and to carry out other operations so that they may determine whether there is any duty liability, and if so, how much. New sections 118BC(5) and (6) define the persons and equipment that may be subject to the inspection powers of this section, while new section 118BC(7)

defines "section 10 gaming" by reference to the Finance Act 1997 and prescribes that "premises where a machine is located" are to be interpreted by reference to Part 1 of this Schedule.

42. Paragraph 42(2) provides that civil penalties under the Finance Act 1994 will apply where there is a failure to open relevant equipment for inspection and perform the operations required under new section 118BC.

43. Paragraph 43 amends section 2 of the BGDA to remove the reference to gaming machines as a consequence of the introduction of MGD and the abolition of AMLD.

44. Paragraph 44 amends section 26H BGDA, which provides for exemptions from remote gaming duty (RGD) in circumstances where another gambling tax applies, or would apply but for an express exception.

45. Paragraph 45 inserts a reference to MGD in Schedule A1(7) to BGDA, a new Schedule introduced by the Finance Act 2012. Paragraph 7 of that Schedule stipulates that there will be no payment of double tax relief for general betting duty or pool betting duty where there has been a breach of statutory obligations in respect of the betting and gaming duties listed there.

46. Paragraph 46 inserts a reference to MGD in Schedule 4B(7) to BGDA, a new Schedule introduced by the Finance Act 2012. Paragraph 7 of that Schedule that there will be no payment of double tax relief for remote gaming duty where there has been a breach of statutory obligations in respect of the betting and gaming duties listed there.

47. Paragraph 47 amends the Finance Act 1994 to make MGD subject to the excise duty assessment provisions in section 12 of that Act.

48. Paragraph 48 amends section 10 of the Finance Act 1997, which provides for exemptions from gaming duty, by substituting a reference to MGD for the previous reference to AMLD.

49. Paragraph 49 amends the Borders, Citizenship and Immigration Act 2009 to include MGD in the list of excise duties which are not functions of the Director of Border Revenue.

50. Paragraphs 50 and 51 provide the definitions of specific terms and expressions for the purposes of Part 1 of this Schedule.

Part 2 Removal of Amusement Machine Licence Duty

51. Paragraphs 53 and 54 amend BGDA to omit those provisions that deal specifically with the imposition and administration of AMLD,

and remove references to AMLD from those provisions that deal with the general administration of betting and gaming duties.

52. Paragraph 55 omits the reference to an amusement machine licence from the provisions in CEMA about the payment of excise licences by cheque.

53. Paragraph 56 omits the provision in the Finance Act 1997 that provides an exemption from gaming duty by reference to AMLD.

54. Paragraph 57 removes the reference to AMLD from the table of taxes and duties that are subject to penalties for failure to notify etc. in Schedule 41 to the Finance Act 2008.

55. Paragraph 58 removes the reference to AMLD from the list of excise duties for which the Director of Border Revenue has no responsibility to reflect the fact that AMLD is being removed.

56. Paragraph 59 provides a formula which will achieve refunds in respect of the whole months and days which are the subject of the portion of the licence unexpired at the MGD go-live date.

57. Paragraph 59(4) provides that where AMLD is being paid in monthly instalments there may be a liability to pay an amount in respect of any days that form a part-month before the go-live date.

58. Paragraphs 59(5) and (6) provide that a person will not be entitled to a repayment if they have been found guilty of making amusement machines available for play without a licence between the start date of their licence and MGD go-live date. If court proceedings are pending at go-live date there will be no right to repayment until all those charged with the offence are acquitted.

59. Paragraph 59 (7) provides that any person who is entitled to a repayment of more than £10 will be entitled to interest on that amount if they have not been repaid within 90 days of go-live and have notified HMRC of that fact. Interest will be calculated until the day the repayment is made at the rate specified for excise duty payments under s197 of the Finance Act 1996.

60. Paragraph 60 provides that where a licence expires in the final month of AMLD an amount will be payable in respect of the days up to go-live (a "daily rate"). Paragraph 60(6) provides that this rate will be 1/365th of the amount charged for a twelve-month licence. If payment is made before its expiry date, the previous licence will be treated as extended to go-live.

61. Paragraphs 60(7) and (8) provide that the standard requirements for the payment of AMLD and for the enforcement and administration of

AMLD shall continue to apply during the 30 day period before go-live. If any machines (for which an AMLD licence is required) are provided for play without a licence in this 30 day period paragraph 60(9) provides that the amount of any assessment for that period will be calculated by reference to 1/365th of the amount charged for a twelve-month licence.

62. Paragraph 61 makes provision in respect of licences that will be granted less than one month before MGD go-live. For licences granted in this period this paragraph disapplies those provisions in BGDA that stipulate the minimum and maximum periods for which a licence application may be made, and provides that these licences will expire on the day before go-live. Paragraph 61(5) provides that HMRC may direct that the existing administrative arrangements for AMLD shall apply in relation to any final month licences as they do to other licences.

63. Paragraph 62 provides that any legislation that is repealed by Part 2 of this Schedule will continue to have effect after go-live date in relation to things that happened before go-live date.

Part 3 VAT Exemption

64. Paragraph 63 substitutes a new section 23 and inserts an additional section 23A into the Value Added Tax Act 1994 (VATA). The new section 23 provides a mechanism for valuing supplies involving relevant machine games, which are defined in section 23A.

65. New Section 23(1) and (2) provide that the amount a person pays to play a relevant machine game is treated as the consideration for a supply of services.

66. Section 23(3), (4) and (5) provide that the value of such supplies is the takings received, less the amount of the winnings paid out, excluding any winnings paid to the supplier or a person acting on their behalf.

67. Section 23(6), (7), (8) and (9) provide for the valuation of tokens inserted into a machine to play a relevant machine game or provided by way of winnings from such a game. Games played solely for prizes consisting of the opportunity to play the game again are not relevant machine games. However a token that enables the machine to be played again may be one of a number of prizes offered by a relevant machine game. Where that is the case, the value of the token is deducted in calculating the value of the relevant supply.

68. Section 23(10) provides that if it is not reasonably practicable for takings and winnings to be attributed to relevant machine games, or apportioned between relevant machine games and other games, the

attribution or apportionment is to be carried out on a just and reasonable basis.

69. New Section 23A(1) and (2) define a relevant machine game as a game played on a machine for a prize, unless it is liable to, or is excluded from, specified gambling duties. Relevant machine games may be games of skill, games of chance, or games that involve elements of both skill and chance.

70. Section 23A(3) includes relevant definitions. A “prize” does not include the opportunity to play the game again.

71. Paragraph 64 amends Group 4 (betting, gaming and lotteries) in Part 2 of Schedule 9 (exemptions) to VATA.

72. Paragraph 64 (2) inserts item 1A, which exempts the provision of facilities for playing dutiable machine games from VAT, but only insofar as the takings and payouts from those games are taken into account in determining the charge to MGD. Dutiable machine games may be games of skill, games of chance, or games that involve elements of both skill and chance.

73. Paragraph 64(3) removes Note (1)(d), which excludes gaming machines from exemption under item 1 (exemption of the supply of facilities for placing bets or for playing games of chance for a prize). The introduction of MGD means that it is necessary for the exclusion from item 1 to be framed in different terms.

74. Paragraph 64 (4) inserts Note (1A) which excludes the provision of facilities from item 1 to the extent that those facilities are used to play a relevant machine game.

75. The amendments to Group 4 mean that the provision of facilities for playing games of chance which are not relevant machine games will be exempt from VAT under item 1. The provision of facilities for playing dutiable machine games will be exempt from VAT under item 1A, insofar as the takings and payouts from those games are taken into account in determining the charge to MGD. Other machine games will not be exempt from VAT under Group 4.

76. Paragraph 65 amends paragraph 9 (power to require opening of gaming machines) of Schedule 11 (administration, collection and enforcement) to VATA by substituting a new paragraph (a) which entitles an authorised person to require that a machine on which relevant machine games are capable of being played be opened.

Part 4: Miscellaneous

77. Paragraph 66 provides that this Schedule has effect in relation to the playing of machine games, the provision of amusement machines and supplies made on or after 1 February 2013.

78. Paragraph 67 provides for the Treasury to make transitional or saving provisions for the removal of AMLD and introduction of MGD and prescribes the Parliamentary procedures that must be followed in respect of the statutory instruments containing the regulations.

BACKGROUND NOTE

79. This measure aims to put tax revenues from gaming machines on a more sustainable footing. The VAT treatment of gaming machines has been challenged in the Courts. Introducing MGD and exempting dutiable machine games from VAT will protect tax revenues going forward, and will ensure that operators of gaming machines continue to make a fair contribution to tax receipts.

80. MGD also supports the Government's objective of a fairer tax system by ensuring the taxation of dutiable machine games will be more closely linked to machine takings.

81. MGD will be charged on the net takings from games played on machines where those games offer the player the opportunity to win a cash prize whose value is greater than the cost to play the game once.

82. The rate of MGD that is charged will depend on the maximum cost to play a single game and the maximum cash prize offered for a single game.

83. The standard rate of MGD will be charged at X% on the takings of machine games where the maximum cost to play a single game is more than 10p or the maximum prize offered for a single game is more than £8. The lower rate of MGD will be charged at Y% on the takings from other machine games. If a single machine offers games in each category, all of the takings will be charged at the standard rate.

84. If a single machine offers a mixture of dutiable machine games and other services or facilities, only the takings from the machine games will be liable to MGD.

85. The introduction of MGD and the replacement of AMLD will apply to the playing of machine games from 1 February 2013 and Regulations will be made to allow people to register for MGD before then. The VAT changes will apply to supplies made on or after 1 February 2013.

86. If you have any questions about this change, or comments on the legislation, please contact Brian O'Kane on 0161 827 0325 (email: brian.okane@hmrc.gsi.gov.uk) about Parts 1 and 2, and Femi Olagundoye on 0207 147 0479 (email femi.olagundoye@hmrc.gsi.gov.uk) about Part 3.

Order made by the Treasury, laid before the House of Commons under [paragraph .. of Schedule...to the Finance Act 2012], for approval by resolution of that House within twenty-eight days beginning with the date on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2012 No.

MACHINE GAMES DUTY

The Machine Games Duty (Exemptions) Order 2012

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Order in exercise of the powers conferred by paragraphs 8(1)(b) and (2) and 39(2) of Schedule [...] to the Finance Act 2012(**a**).

Citation and commencement

1.—(1) This Order may be cited as the Machine Games Duty (Exemptions) Order 2012.

(2) This Order comes into force on 1st February 2013.

Interpretation

2. In this Order, "specified circumstance" means a circumstance that is specified for the purposes of paragraph 8(1)(b) of Schedule [...] to the Finance Act 2012.

Charitable events

3.—(1) Playing dutiable machine games at a charitable event is to be a specified circumstance.

(2) An event is a "charitable event" if—

(a) the event is promoted by or on behalf of a not-for-profit organisation,

(b) the whole of the net proceeds from the event will be devoted to purposes other than private gain, and

(c) the opportunity to win prizes by playing dutiable machine games at the event does not constitute the only, or the only substantial, inducement for people to attend the event.

(3) Proceeds of an event promoted by or on behalf of a not-for-profit organisation that are applied for a purpose calculated to benefit the organisation as a whole are not to be regarded as applied for purposes of private gain by reason only that their application for that purpose results in benefit to any person as an individual.

(**a**) 2012 c. […].

(4) “Net proceeds”, in relation to an event, means the proceeds from the event (including the proceeds from playing dutiable machine games at the event) after deducting the expenses of the event (including any expenses incurred in connection with making machines available there for playing dutiable machine games on them and with providing prizes to successful players of those games) so far as the expenses are reasonable.

(5) “Not-for-profit organisation” means an organisation (including any club, society, institution or association of persons and any separate branch or section of a club, society, institution or association of persons) that is established and conducted wholly for purposes other than purposes of any commercial undertaking.

Tournaments

4.—(1) Playing dutiable machine games in a tournament is to be a specified circumstance.

(2) A dutiable machine game is played “in a tournament” if—

(a) two or more real people participate in the game (or in a competition that involves a combination of machine games including the game),

(b) they are the only participants in the game (or competition), and

(c) they compete purely against each other for the prize for which the game (or competition) is being played.

(3) “Real” means non-virtual.

(4) A dutiable machine game is not to be regarded as being played in a tournament merely because the success or failure of the player, or the value of the prize, is or may be determined wholly or partly by reference to the success or failure of other players of dutiable machine games, or the value of other prizes won.

(5) A dutiable machine game is not to be regarded as being played in a tournament if the participants in the game (or competition) include—

(a) a person who is a registrable person in respect of the premises where the machine on which the game is played is located,

(b) a representative or employee of such a person at those premises, or

(c) a person acting for or at the direction of such a person.

Lottery machines

5.—(1) Participating in a lottery by means of a sub-category B3A machine is to be a specified circumstance.

(2) The reference to participating in a lottery is to be read in accordance with section 14 of the Gambling Act 2005(**a**).

(3) “Sub-category B3A machine” has the meaning given in regulation 5 of the Categories of Gaming Machine Regulations 2007(**b**).

Record-keeping and information provision

6.—(1) A person wishing to rely on an exemption conferred by this Order must—

(a) keep such records as are reasonably necessary to show that the requirements of the exemption are met in the person’s case, and

(b) provide HMRC with copies of those records if HMRC so request.

(**a**) 2005 c. 19.
(**b**) S.I. 2007/2158.

(2) The Commissioners may by notice in writing (either generally or in a particular case) specify the kinds of record that are likely to be necessary to show that the requirements of an exemption are met.

(3) Nothing in this article limits any power HMRC may otherwise have to require a person to keep records or provide information or documents.

Name
Name

Date — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

Schedule [...] to the Finance Act 2012 ("the Schedule") introduces a new duty of excise, known as machine games duty, to be charged on the playing of dutiable machine games in the United Kingdom.

By virtue of paragraphs 8(1)(b) and (2) of the Schedule, the Treasury may specify by order the circumstances in which amounts are to be left out of account in respect of the takings and payouts when calculating the duty payable. Each of these is referred to in the Order as a "specified circumstance".

Article 3 provides that playing a dutiable machine game at a charity event is to be a specified circumstance provided the conditions are met.

Article 4 provides that playing a dutiable machine game in a tournament is to be a specified circumstance provided the conditions are met.

Article 5 provides that participating in a lottery by means of a sub-category B3A machine is to be a specified circumstance. Sub-category B3A machines are defined in regulation 5 of the Categories of Gaming Machine Regulations 2007 (S.I. 2007/2158).

Article 6 imposes administrative and record keeping obligations on a person wishing to rely on an exemption conferred by the Order.

A Tax Information and Impact Note covering this instrument and the draft primary legislation for Machine Games Duty will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

EXPLANATORY MEMORANDUM TO

THE MACHINE GAMES DUTY (EXEMPTIONS) ORDER

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. This instrument exempts receipts from dutiable machine games from Machine Games Duty ("MGD") in specified circumstances. These circumstances are play at charitable events, tournament play and play on a "lottery machine" (a specific category of gaming machine).

3. Matters of special interest to Select Committee on Statutory Instruments

3.1. This is the first use of the Order making powers in paragraphs 8(1)(b), 8(2) and 39(2) of Schedule [X] to the Finance Act 2012. MGD is a new excise duty.

4. Legislative context

4.1. Section [Y] and Schedule [X] to the Finance Act 2012 provide for MGD to apply to the playing of dutiable machine games from 1 February 2013. These provisions also provide that, immediately before that point, the current Amusement Machine Licence Duty ("AMLD" – see sections 21 – 26 of the Betting and Gaming Duties Act 1981) is brought to an end. Part 3 of Schedule [X] exempts from VAT dutiable machine games which are taken into account for the purposes of determining liability to MGD.

4.2. This instrument is made under paragraphs 8 and 39(2) of the Schedule. These paragraphs provide that, in

calculating duty liability, receipts from dutiable machine games should be left out of account in any circumstances specified in a Treasury Order.

4.3. This instrument specifies three such circumstances: play at charitable events, tournament play and play on a lottery machine.

5. Territorial extent and application

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. Chloë Smith MP, the Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Machine Games Duty (Exemptions) Order 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1. The Government's reform of gaming machine taxation aims to put tax revenues from gaming machines on a more sustainable footing. The VAT treatment of gaming machines has been challenged in the Courts. Introducing MGD and exempting dutiable machine games from VAT will protect tax revenues going forward, and will ensure that operators of gaming machines continue to make a fair contribution to tax receipts.

7.2. MGD will also support the Government's objective of a fairer tax system by ensuring the taxation of machine games will be more closely linked to machine takings.

7.3. The effect of this instrument is to provide certain exemptions from MGD by leaving takings and payments out of account in the specified circumstances described below.

Circumstances	*Reasons*
Charitable events (with the provision that the event must be for a not-for-profit organisation with none of the proceeds going to private gain. The playing of machine games must not be the only or main reason for attending the event)	Takings from the playing of machine games can make a contribution to achieving the charitable objectives of not-for-profit organisations. Play at most such events is not currently VATable and there is no intention to extend VAT liability
Play in a tournament (with “tournament” defined as involving two or more real people (but not a person registrable for duty or his representative) competing against each other for a prize)	Tournament play is fundamentally different from “normal” play in that players compete against each other to win from a single prize-pot. The normal functionality is typically turned off and the outcome determined by the player’s relative scores.
Participating in a lottery on a B3A machine (B3A is the social law/ regulatory categorisation of so-called “lottery machines”). Social law restricts the location of such machines to certain private members clubs.	B3A machines are currently not subject to either AMLD or VAT. There is no intention to extend their liability to indirect tax.

7.4. The instrument also provides that those benefitting from exemption under these provisions must keep and allow HMRC access to records. This will ensure that HMRC has the means to look in detail, if appropriate, at the circumstances in which the dutiable machine games were played and whether these circumstances were as set out in legislation.

- ***Consolidation***

7.5. MGD is a new duty and so HMRC has no plans for consolidation at this time.

8. Consultation outcome

8.1. In a consultation document, “Implementing a Machine Games Duty: consultation on policy design”, published in May 2012, the Government published a draft of the Finance Bill provisions and sought views on the design characteristics of MGD. Comments received were considered in drafting this instrument.

8.2. In line with the Government’s Tax Policy Framework, this instrument, explanatory memorandum and a Tax Information and Impact Note were published for consultation in draft in advance (in December 2011) of laying before the House of Commons. The Tax Information and Impact Note remains accurate.

9. Guidance

9.1. Prior to the introduction of MGD on 1 February 2013, the Government will publicise and provide full guidance on the duty, including the exemptions provided for by this instrument.

10. Impact

10.1. The impact of this instrument on business, charities and voluntary bodies will be a reduction in the additional burden which will follow from the introduction of MGD. The provision of machine games for play for charitable purposes at events, in tournaments, or on a lottery machine will not be subject to MGD. Therefore, businesses which provide machine games for play in these circumstances will not be subject to the administrative burden resulting from the introduction of MGD. However, some record-keeping will be required from such businesses in order to ensure that HMRC has sufficient information for the purpose of protecting revenue. Although these record-keeping requirements will be relatively light, they will impose an increase in administrative burden to those operators who are currently exempt from AMLD and VAT.

10.2. This instrument will not result in any impact on the public sector.

10.3. A Tax Information and Impact Note covering both this instrument and the draft primary legislation for MGD will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm

11. Regulating small business

11.1. The legislation applies to businesses including small business.

11.2. The Government has considered whether it would be appropriate to make provision to ameliorate the effect of this instrument on small businesses. On balance, and despite the fact that there may some additional complexity notably for the limited number of small businesses who have machines capable of running both VATable tournaments and MGDable machine games, this measure relieves burden because it provides for an exemption from duty.

11.3. Small businesses were consulted during the consultation and comments received were considered in drafting this instrument.

12. Monitoring and review

12.1. HMRC will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

Katherine Mansfield, HMRC Gambling Tax Policy, Ralli Quays, Salford M60 9LA, telephone 0161 827 0308 email katherine.mansfield@hmrc.gsi.gov.uk can answer any queries regarding this instrument.

Double Taxation Relief on Gambling Duties

1 Remote gambling: double taxation relief

Schedule 1 contains provision for double taxation relief in respect of remote gambling.

SCHEDULE 1

Section 1

REMOTE GAMBLING: DOUBLE TAXATION RELIEF

Unilateral relief

1 BGDA 1981 is amended as follows.

2 After section 5D insert—

“5E Double taxation relief

(1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay general betting duty under a provision of sections 2 to 4 or section 5AB (“the relevant provision”).

(2) Bets in respect of which P is liable to pay both general betting duty under the relevant provision and the qualifying foreign tax are referred to as “eligible bets”.

(3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.

(4) Whether any credit is allowed is determined in accordance with Schedule A1.

(5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.

(6) Total repayments to P for that accounting period in respect of bets of the applicable class (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.

(7) “The applicable class” means the class of bets to which the relevant provision applies.

(8) “The duty actually paid” means the general betting duty paid by P for that accounting period in respect of bets of the applicable class.

(9) A bet does not count as an “eligible bet” if it was made by or on behalf of P.”

3 After section 8 insert—

“8ZA Double taxation relief

(1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay pool betting duty.

(2) Bets in respect of which P is liable to pay both pool betting duty and the qualifying foreign tax are referred to as “eligible bets”.

(3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.

(4) Whether any credit is allowed is determined in accordance with Schedule A1.

(5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.

(6) Total repayments to P for that accounting period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.

(7) "The duty actually paid" means the pool betting duty paid by P for that accounting period.

(8) A bet does not count as an "eligible bet" if it was made by or on behalf of P."

4 After section 10 insert—

"10A Definition of qualifying foreign tax

(1) For the purposes of general betting duty or pool betting duty, a "qualifying foreign tax" is a foreign tax specified by the Commissioners in relation to that duty ("the relevant duty").

(2) "Specified" means specified in a notice published by the Commissioners, as revised or replaced from time to time.

(3) The Commissioners must specify a foreign tax under this section if they are satisfied that—
   (a) it is a gambling tax,
   (b) the activities on which it is charged include betting,
   (c) the bets in respect of which it is charged include bets in respect of which the relevant duty is also charged, and
   (d) the charge in respect of such bets is based on betting by persons in or deemed to be in the country or territory where the tax is imposed.

(4) The following factors indicate that a tax is a gambling tax—
   (a) that it is charged on activities involving betting or gaming (rather than activities generally), and
   (b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).

(5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice."

5 After section 26I insert—

"26IA Double taxation relief

(1) This section applies if—
   (a) P is liable to pay remote gaming duty on the provision of facilities for remote gaming, and

(b) P is also liable to pay a qualifying foreign tax in respect of remote gaming using those facilities.

(2) The remote gaming using those facilities in respect of which the qualifying foreign tax is charged is referred to as "eligible gaming".

(3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.

(4) Whether any credit is allowed is determined in accordance with Schedule 4B.

(5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.

(6) Total repayments to P for that period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.

(7) "The duty actually paid" means the remote gaming duty paid by P for that accounting period.

(8) Remote gaming does not count as "eligible gaming" if one of the participants in the game in question is P or someone acting on P's behalf.

26IB Definition of qualifying foreign tax

(1) For the purposes of remote gaming duty, a "qualifying foreign tax" is a foreign tax specified by the Commissioners in relation to remote gaming duty.

(2) "Specified" means specified in a notice published by the Commissioners, as revised or replaced from time to time.

(3) The Commissioners must specify a foreign tax under this section if they are satisfied that—

(a) it is a gambling tax,

(b) the activities on which it is charged include remote gaming,

(c) the remote gaming on which it is charged includes remote gaming using facilities in respect of which remote gaming duty is also charged, and

(d) the charge is based on remote gaming by persons in or deemed to be in the country or territory where the tax is imposed.

(4) The following factors indicate that a tax is a gambling tax—

(a) that it is charged on activities involving betting or gaming (rather than activities generally), and

(b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).

(5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice.

26IC Regulations about claims for double taxation relief

(1) The Commissioners may make regulations about—
(a) claims for repayment under section 26IA, and
(b) the making of repayments under that section.

(2) Regulations under this section may in particular include provision about—
(a) the time within which claims may be made,
(b) the form, content and delivery of claims,
(c) the evidence required to satisfy the Commissioners of the validity of claims, and
(d) the investigation and processing of claims."

6 In section 33 (interpretation)—
(a) in subsection (1), after the definition of "the Commissioners" insert—
""foreign tax" means a tax, including any sort of duty or levy, imposed in a country or territory outside the United Kingdom (see also subsection (1B));", and
(b) after subsection (1A) insert—

"(1B) A reference in this Act to a foreign tax does not include any penalty, interest, surcharge or other such cost arising in connection with the tax (whether or not recoverable as if it were that tax)."

7 Before Schedule 1 insert—

"SCHEDULE A1

BETTING DUTIES: DOUBLE TAXATION RELIEF

Introduction

1 This Schedule sets out the rules for determining whether credit is allowed under section 5E or 8ZA for qualifying foreign tax paid by P.

Definitions

2 (1) This Schedule is to be read as follows.

(2) "The applicable class"—
(a) in the case of section 5E, has the meaning given in that section, and
(b) in the case of section 8ZA, means dutiable pool bets.

(3) A "reconciliation period" is—
(a) if P has monthly accounting periods, a period consisting of 12 consecutive accounting periods,
(b) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and
(c) if P has any other length of accounting period, a period consisting of such number of consecutive accounting

periods as would produce a period as near as possible to 365 days.

(4) In relation to an accounting period, a reference to "the reconciliation period" is to the reconciliation period in which that accounting period falls.

Credit allowed

3 (1) To determine whether credit is allowed for an accounting period—

(a) calculate the notional UK liability and the notional foreign liability for the accounting period, and

(b) compare the two figures.

(2) No credit is allowed if either figure is nil or both figures are nil.

(3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

Notional UK liability

4 The notional UK liability for an accounting period is calculated as follows—

Step 1

If the applicable class is a class to which a provision of sections 2 to 4 applies, calculate P's net stake receipts for the period in accordance with section 5 but by reference to eligible bets (rather than bets of the applicable class).

If the applicable class is the class to which section 5AB applies, calculate the commission charges in accordance with that section relating to eligible bets determined in the period (rather than bets to which that section applies).

If the applicable class is dutiable pool bets, calculate P's net pool betting receipts for the period in accordance with section 7A but by reference to eligible bets (rather than dutiable pool bets).

In calculating P's net stake receipts or net pool betting receipts for the purposes of this Step, do not carry forward to the period any losses in respect of eligible bets that arose in an accounting period before the start of the reconciliation period.

Step 2

If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.

Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.

"The appropriate rate" is the percentage specified in whichever of section 2(3), 3(3)(a), 3(3)(b), 4(3), 5AB(4) or 7(2) applies to the applicable class, as in force for the accounting period in question.

Notional foreign liability

5 The notional foreign liability for an accounting period is calculated as follows—

Step 1
Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged solely in respect of eligible bets and accounted for by reference to periods corresponding to P's accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible bets) that arose before the start of the reconciliation period.

Step 2
If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

Clawback

6 (1) This paragraph applies if in respect of the applicable class of bets—
(a) P receives a repayment under section 5E or 8ZA for one or more accounting periods in a reconciliation period, and
(b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.

(2) P is liable to repay all or part of the repayment or repayments received.

(3) The amount that P is liable to repay is the smallest of—
(a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible bets,

(b) the loss multiplied by the appropriate rate (as defined in paragraph 4) for the applicable class of bets, and

(c) the repayment (or the sum of the repayments) made to P for the reconciliation period.

(4) "The loss" means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.

(5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible bets, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).

(6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.

(7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid general betting duty or, as the case may be, pool betting duty.

Breach of return obligations

7 The Commissioners are not required to make a repayment under section 5E or 8ZA if P is in breach of any obligation to deliver a return with respect to—

(a) general betting duty,

(b) pool betting duty,

(c) bingo duty,

(d) remote gaming duty,

(e) gaming duty, or

(f) lottery duty.

Reduction etc in foreign tax paid

8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place—

(a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,

(b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or

(c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.

(2) P must notify the Commissioners of the event on becoming aware of it.

(3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 5E or 8ZA is to be recalculated in accordance with this Schedule.

(4) In any other case, the amount for which credit is allowed under section 5E or 8ZA is to be reduced by a just and reasonable sum to

reflect the amount of tax waived or refunded or the deduction or relief given.

(5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 5E or 8ZA should not have been made, P is liable for the amount that should not have been repaid, as if it were unpaid general betting duty or, as the case may be, pool betting duty.

(6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c)."

8 (1) Schedule 1 (betting duties) is amended as follows.

(2) In paragraph 2, after sub-paragraph (4) insert—

"(5) Regulations under this paragraph may also in particular include provision about claims for repayment under section 5E and about the making of any such repayment, including provision about—

(a) the time within which claims may be made,

(b) the form, content and delivery of claims,

(c) the evidence required to satisfy the Commissioners of the validity of claims, and

(d) the investigation and processing of claims."

(3) In paragraph 2A, after sub-paragraph (3) insert—

"(4) Regulations under sub-paragraph (2) may also include provision about claims for repayment under section 8ZA and about the making of any such repayment, including provision about anything mentioned in paragraph 2(5)(a) to (d)."

9 After Schedule 4A insert—

"SCHEDULE 4B

REMOTE GAMING DUTY: DOUBLE TAXATION RELIEF

Introduction

1 This Schedule sets out the rules for determining whether credit is allowed under section 26IA for qualifying foreign tax paid by P.

Reconciliation periods

2 (1) For the purposes of this Schedule, a "reconciliation period" is—

(a) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and

(b) if P has any other length of accounting period, a period consisting of such number of consecutive accounting periods as would produce a period as near as possible to 365 days.

(2) In relation to an accounting period, a reference to "the reconcilation period" is to the reconciliation period in which that accounting period falls.

Credit allowed

3 (1) To determine whether credit is allowed for an accounting period—
(a) calculate the notional UK liability and the notional foreign liability for the accounting period, and
(b) compare the two figures.

(2) No credit is allowed if either figure is nil or both figures are nil.

(3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

Notional UK liability

4 The notional UK liability for an accounting period is calculated as follows—

Step 1
Calculate P's remote gaming profits for the period in accordance with section 26C(2) but by reference to the use of the facilities provided by P for eligible gaming (rather than remote gaming generally).

In calculating P's remote gaming profits for the purposes of this Step, do not carry forward to the period any losses (in respect of the use of the facilities for eligible gaming) that arose in an accounting period before the start of the reconciliation period.

Step 2
If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.

Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.

"The appropriate rate" is the percentage specified in section 26C(1) as in force for the accounting period in question.

Notional foreign liability

5 The notional foreign liability for an accounting period is calculated as follows—

Step 1
Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged in respect of eligible gaming and were accounted for by reference to periods corresponding to P's accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible gaming) that arose before the start of the reconciliation period.

Step 2
If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

Clawback

6 (1) This paragraph applies if in respect of eligible gaming—
(a) P receives a repayment under section 26IA for one or more accounting periods in a reconciliation period, and
(b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.

(2) P is liable to repay all or part of the repayment or repayments received.

(3) The amount that P is liable to repay is the smallest of—
(a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible gaming,
(b) the loss multiplied by the appropriate rate (as defined in paragraph 4), and
(c) the repayment (or the sum of the repayments) made to P for the reconciliation period.

(4) "The loss" means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.

(5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible gaming, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).

(6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.

(7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid remote gaming duty.

Breach of return obligations

7 The Commissioners are not required to make a repayment under section 26IA if P is in breach of any obligation to deliver a return with respect to—
(a) general betting duty,
(b) pool betting duty,
(c) bingo duty,
(d) remote gaming duty,
(e) gaming duty, or
(f) lottery duty.

Reduction etc in foreign tax paid

8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place—
(a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,
(b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or
(c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.

(2) P must notify the Commissioners of the event on becoming aware of it.

(3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 26IA is to be recalculated in accordance with this Schedule.

(4) In any other case, the amount for which credit is allowed under that section is to be reduced by a just and reasonable sum to reflect the amount of tax waived or refunded or the deduction or relief given.

(5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 26IA should not have been made, P is liable for the amount that should not have been repaid, as if it were unpaid remote gaming duty.

(6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c)."

Consequential amendments

10 In section 13A(2) of FA 1994 (meaning of "relevant decision"), after paragraph (g) insert—
"(ga) any decision by HMRC as to whether or not any person is entitled to any repayment under section 5E, 8ZA or 26IA of the Betting and Gaming Duties Act 1981 (double taxation relief), or the amount of the repayment to which any person is so entitled;".

11 (1) The Table in paragraph 1 of Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing) is amended as follows.

(2) In the second column of the entry for general betting duty, for "paragraph 4(1) to (3) of Schedule 1 to BGDA 1981" substitute "paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraph 4(1) to (3) of Schedule 1 to that Act".

(3) In the second column of the entry for pool betting duty, for "paragraphs 4(2) and 5(1) of Schedule 1 to BGDA 1981" substitute "paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraphs 4(2) and 5(1) of Schedule 1 to that Act".

(4) In the second column of the entry for remote gaming duty, for "to register under regulations under section 26J of BGDA 1981" substitute "to notify under paragraph 8(2) of Schedule 4B to BGDA 1981 (reduction etc in qualifying foreign tax) and obligation to register under regulations under section 26J of that Act".

Commencement

12 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 1 April 2012 (and, accordingly, the first reconciliation period begins with the first accounting period in relation to which the amendments have effect).

EXPLANATORY NOTE

REMOTE GAMBLING: DOUBLE TAXATION RELIEF

SUMMARY

1. This Clause and Schedule amend the Betting and Gaming Duties Act 1981 (BGDA) to introduce a double taxation relief (DTR) for remote gambling operators who pay General Betting Duty (GBD), Remote Gaming Duty (RGD) or Pool Betting Duty (PBD) in the UK and also pay qualifying foreign taxes on the same transactions in other countries.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts into BGDA a new section 5E. This provides that an "eligible bet" is one of a class on which a person is liable to both general betting duty ("GBD") and a qualifying foreign tax where the bet was not made by or on behalf of that person. In the case of an eligible bet, the person may be allowed, as determined by Schedule A1, a credit for some or all of the qualifying foreign tax and may then claim a repayment of GBD which is equal to the amount of any credit. Total repayments to a person for a particular accounting period must not exceed GBD paid in respect of bets of that class.

3. Paragraph 3 inserts into BGDA a new section 8ZA. This provides that an "eligible bet" is one on which a person is liable to both pool betting duty ("PBD") and a qualifying foreign tax where the bet was not made by or on behalf of that person. In the case of an eligible bet, the person may be allowed, as determined by Schedule A1, a credit for some or all of the qualifying foreign tax and may then claim a repayment of PBD which is equal to the amount of any credit. Total repayments to a person for a particular accounting period must not exceed PBD paid.

4. Paragraph 4 inserts a new section 10A into BGDA.

5. New section 10A provides that a qualifying foreign tax is one specified as such in a notice published by the Commissioners (the notice may provide for it to be treated as specified earlier than the date of the notice). The Commissioners are required to specify a foreign tax if it is a gambling tax charged on activities involving betting or gaming the proceeds of which go towards meeting public expenditure.

6. Paragraph 5 inserts into BGDA new sections 26IA, 26IB and 26 IC.

7. New section 26IA provides that "eligible gaming" occurs where a person is liable to pay both remote gaming duty ("RGD") on the provision of remote gaming facilities and a qualifying foreign tax in respect of remote gaming on those same facilities. In the case of eligible gaming, the person may be allowed, as determined by Schedule 4B, a credit for some or all of the qualifying foreign tax and may then claim a repayment of RGD which is equal to the amount of any credit. Total repayments to a person for a particular accounting period must not exceed RGD paid.

8. New section 26IB provides that a qualifying foreign tax is one specified as such in a notice published by the Commissioners (the notice may provide for it to be treated as specified earlier than the date of the notice). The Commissioners are required to specify a foreign tax if it is a gambling tax charged on activities involving betting or gaming the proceeds of which go towards meeting public expenditure.

9. Paragraph 7 inserts a new Schedule A1 into BGDA 1981.

10. New Schedule A1 provides that credit is allowed where neither the notional liability for UK betting duties (calculated by reference to the UK betting duty liability on eligible receipts) nor the notional liability for foreign tax (calculated by reference to the liability to foreign tax in the same accounting period) are zero. Where a credit is allowed it is the lower of the notional UK liability and the notional foreign liability. HMRC are not required to make a repayment to anyone who has a return outstanding for any of the betting and gaming duties and there is a requirement to notify HMRC of any relevant refund of foreign tax with credit then being reduced accordingly. Provision is made for clawback, by means of a repayment to HMRC, in the event that someone who was entitled to a repayment in respect of eligible bets in earlier periods has made a loss in respect of eligible bets later in that same reconciliation period.

11. Paragraph 8 inserts in paragraphs 2 and 2A of Schedule 1 to BGDA powers to enable HMRC to make regulations on the making of claims including the timing and form of claims.

12. Paragraph 9 inserts a new schedule 4B into BGDA.

13. New Schedule 4B provides that credit is allowed where neither the notional liability to UK tax (calculated by reference to the RGD liability on remote gaming profits) nor the notional liability for foreign tax (calculated by reference to the liability to foreign tax in the same accounting period) are nil. Where a credit is allowed it is the lower of the notional UK liability and the notional foreign liability. HMRC are not required to make a repayment to anyone who has a return outstanding for any of the betting and gaming duties and

there is a requirement to notify HMRC of any relevant refund of foreign tax with credit then being reduced accordingly. Provision is made for clawback, by means of a repayment to HMRC, in the event that someone who was entitled to a repayment in respect of eligible gaming in earlier periods has made a loss in respect of eligible gaming later in the same reconciliation period.

14. Paragraph 10 amends section 13A(2) of the Finance Act 1994 so as to provide that HMRC decisions on whether to make a repayment or the amount of any repayment is subject to review and appeal.

15. Paragraph 11 amends Schedule 41 to the Finance Act 2008 so as to apply penalties to the failure to notify HMRC of a refund of a qualifying foreign tax.

16. Paragraph 12 provides for the amendments made by this Schedule to have effect for accounting periods ending on or after 1 April 2012.

BACKGROUND NOTE

17. Following the announcement on 18 July 2011 of a review of remote gambling taxation, the Government has decided to legislate for a DTR for GBD, RGD and PBD in Finance Bill 2012.

18. In respect of accounting periods ending on or after 1 April 2012, operators will be able to claim relief where GBD RGD, or PBD is paid in the UK and the operator has also paid a foreign gambling tax on the same transactions.

19. The measure will enhance the competitiveness of the UK tax system by ensuring that UK based operators do not suffer from double taxation as other countries introduce place of consumption based taxation regimes for remote gambling.

20. If you have any questions about this change, or comments on the legislation, please contact Andy Grimsley on 0161 827 0330 (email: andy.grimsley@hmrc.gsi.gov.uk)

STATUTORY INSTRUMENTS

2012 No.

EXCISE

The Remote Gambling (Double Taxation Relief) Regulations 2012

Made - - - -	*July 2012*
Laid before the House of Commons	*July 2012*
Coming into force - -	[X}

The Commissioners for Her Majesty's Revenue and Customs(**a**), in exercise of the powers conferred by section 26IC of and paragraphs 2(5) and 2A(4) of Schedule 1 to the Betting and Gaming Duties Act 1981(**b**), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Remote Gambling (Double Taxation Relief) Regulations 2012 and come into force on [X].

Interpretation

2. In these Regulations—

"the Act" means the Betting and Gaming Duties Act 1981;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"qualifying foreign tax" has the meaning given by section 10A or 26IB of the Act (definition of qualifying foreign tax)(**c**) as appropriate;

"relevant claim" means a claim under sections 5E, 8ZA or 26IA, (double taxation relief), of the Act; and "claimant" shall be construed accordingly(**d**).

(**a**) Section 33(1) of the Betting and Gaming Duties Act 1981 (c. 63) provides that in that Act "the Commissioners" means the Commissioners of Customs and Excise. Section 26IC of and paragraphs 2(5) and 2A(4) of Schedule 1 to that Act confer upon those Commissioners the power to make regulations. The functions of those Commissioners were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of the latter Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**b**) 1981 c. 63; amendments of and relating to Part 1 (betting duties) and Part 2 (gaming duties), providing for relief from double taxation of remote gambling, were made having effect in relation to accounting periods ending on or after 1st April 2012 by Schedule XX to the Finance Act 2012. Section 26IC was inserted by paragraph 5 of Schedule XX to the Finance Act 2012 (c. xx); paragraphs 2(5) and 2A(4) of Schedule 1 were inserted respectively by paragraphs 8(2) and 8(3) of Schedule XX to the Finance 2012 (c. xx).

(**c**) Section 10A was inserted by paragraph 4 of Schedule XX to the Finance Act 2012; section 26IB was inserted by paragraph 5 of Schedule XX to that Act.

(**d**) Sections 5E, 8ZA and 26IA were inserted respectively by paragraphs 2, 3 and 5 of Schedule XX to the Finance Act 2012.

Amount and form of relief

3.—(1) In relation to any relevant claim, the amount of relief shall be calculated in accordance with the provisions of Schedule A1 or Schedule 4B to the Act (rules for determining whether credit is allowed for qualifying foreign tax)(**a**).

(2) Relief claimed under these Regulations shall be in the form of a repayment by the Commissioners to the claimant.

Claim periods

4.—(1) A relevant claim can only be made in relation to—

(a) quarterly accounting periods,

(b) in the case of a person who accounts for duty under the Act on a monthly basis, periods of 3 months in which a relevant claim arises, or

(c) in the case of a person who accounts for duty under the Act on any other basis, periods of such number of accounting periods as would produce a claim period as near as possible to 91 days.

(2) In any case falling within paragraph (1), the first accounting period for which a claim can be made is the accounting period ending on or after 1st April 2012.

Application for relief

5.—(1) Any relevant claim must—

(a) by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated, and

(b) contain evidence of payment of the qualifying foreign tax giving rise to that claim.

(2) Any relevant claim must—

(a) be made on a form specified by the Commissioners for the purpose, and

(b) contain the information specified in that form.

(3) The claimant must sign and date the form and declare that the information provided on it is true and complete.

Time limit for claim

6. A relevant claim must be made within one year of the later of—

(a) the end of the accounting period in which the entitlement to make that claim arose, or

(b) the date on which the qualifying foreign tax was paid.

Payment of claim

7. A repayment under regulation 3(2) must be made—

(a) within 30 days of the later of —

(i) the receipt by the Commissioners of a relevant claim, or

(ii) the receipt of such evidence or information as may be required under regulation 8;

(b) by electronic means.

(**a**) Schedule A1 was inserted by paragraph 7 of Schedule XX to the Finance act 2012; Schedule 4B was inserted by paragraph 9 of Schedule XX to that Act.

Further evidence and information

8. Every claimant must furnish such certificates, documents, information and evidence in connection with the claim, or any question arising out of it, as may be required by the Commissioners and shall do so within 30 days of being required to do so or such longer period as the Commissioners may consider reasonable.

Name
Name
Date Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on XXX, provide for relief from double taxation in relation to general betting duty, pool betting duty and remote gaming duty. They provide a framework for making a claim under the provisions introduced by Schedule XX to the Finance Act 2012 ("the main Schedule") which inserts new provisions in the Betting and Gaming Duties Act 1981. The relief is available on a claim being made where a person is liable to pay a qualifying foreign tax in respect of bets and is also liable to pay general betting duty or pool betting duty in respect of the same bets; or where a person is liable to pay remote gaming duty and is also liable to pay a qualifying foreign tax in respect of remote gaming.

A qualifying foreign tax is a foreign tax which is specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs. The notice may be revised or replaced from time to time.

Regulation 2 defines expressions used in these Regulations. It defines "relevant claim" in terms of provisions in the main Schedule which introduce the relief.

Regulation 3 provides that the amount of relief shall be calculated in accordance with new Schedules A1 or 4B inserted by the main Schedule. It also states that the relief shall be in the form of a repayment by the Commissioners.

Regulation 4 provides that a relevant claim can only be made in relation to a prescribed accounting period.

Regulation 5 provides that a relevant claim must be made on a specified form, and that the claim must be made by reference to documentary evidence held by the claimant. The claim must also contain evidence that the qualifying foreign tax has been paid.

Regulation 6 provides that a relevant claim must be made within the later of one year of the end of the accounting period in which the entitlement to make that claim arose, or the date on which the qualifying foreign tax for that accounting period was paid.

Regulation 7 provides that the Commissioners must make a payment within 30 days of receipt of a claim, or the receipt of further documentary evidence requested by the Commissioners, whichever is later. The regulation also requires payment to be made by electronic means.

Regulation 8 provides that in certain cases, the Commissioners may request further documentary evidence to support claims. A claimant must provide this within one month or such other period as agreed by the Commissioners.

The commencement to the main Schedule provides for double taxation relief to have effect in relation to accounting periods ending on or after 1 April 2012 and to this extent these Regulations have retrospective effect.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

EXPLANATORY MEMORANDUM TO

REMOTE GAMBLING – DOUBLE TAXATION RELIEF (DTR)

2012 No

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Statutory Instrument

2.1 This instrument provides the regulations for making claims under the Double Taxation Relief (DTR) for gambling duties.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These Regulations, which come into force on [X], provide for relief from double taxation in relation to General Betting Duty (GBD), Remote Gaming Duty (RGD) and Pool Betting Duty (PBD).

4.2 The relief is available on a claim being made where a person is liable to pay a qualifying foreign tax in respect of gambling and is also liable to pay UK gambling duties on the same transactions.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding human rights: "*In my view the double taxation relief for GBD, RGD and PBD is compatible with the Convention rights.*"

7. Policy Background

What is being done and why

7.1 The Betting and Gaming Duties Act 1981 will be amended to introduce a DTR for operators that pay GBD, RGD and PBD in the UK and also pay qualifying foreign taxes on the same transactions in other countries.

7.2 The DTR measure will enhance the competitiveness of the UK tax system by ensuring that UK based operators do not suffer from double taxation as other countries introduce place of consumption based taxation regimes for remote gambling.

7.3 The DTR is therefore aimed at saving both exchequer revenues and jobs.

7.4 The relief will be implemented for accounting periods for UK gambling duties ending on or after 1 April 2012.

7.5 The level of public interest is likely to be low.

8. Consultation Outcome

8.1 An informal consultation was held with operators during the design stage of this measure. Their comments have been evaluated and taken into consideration in the design of the double taxation relief measure.

9. Guidance

9.1 A Notice on the double taxation relief will be available on www.hmrc.gov.uk as soon as the measure is passed by Parliament.

9.2 A Tax Information and Impact Note covering double taxation relief in relation to General Betting Duty, Remote Gaming Duty and Pool Betting Duty (PBD) will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

10. Impact

10.1 This Double Taxation Relief measure will benefit UK gambling companies offering gambling to overseas customers. It will provide relief against double taxation incurred in respect of GBD, RGD and PBD as other countries introduce place of consumption based taxation regimes for remote gambling.

10.2 This measure is not expected to have a significant impact on the economy.

10.3 A negligible compliance cost will be placed on the small number of businesses claiming this relief.

10.4 The measure has a negligible cost on the UK public sector.

10.5 The impact on individuals and households is expected to be negligible as this measure is not expected to have a significant impact on the availability, price and payouts of remote gambling.

11. Regulating small business

11.1 This measure is only expected to impact on large businesses. However smaller firms attracted to the scheme would also benefit.

12. Monitoring and Review

12.1 This measure will be subject to ongoing monitoring of the amount of relief claimed.

13. Contact

Ademola Adetosoye
Tel: 020 7147 0505
E-mail: ademola.adetosoye@hmrc.gsi.gov.uk

Repeal of the drawback of excise duty on rectified spirit and compounded spirit

1 Repeal of drawback on British compounds and spirits of wine

(1) Section 22 of ALDA 1979 (drawback on British compounds and spirits of wine) is repealed.

(2) In consequence of the provision made by subsection (1), omit the following provisions—

(a) in Schedule 1 to the Isle of Man Act 1979, paragraph 29;

(b) in Schedule 8 to FA 1981, paragraph 16;

(c) in Schedule 4 to FA 1994, paragraph 24;

(d) in Schedule 5 to that Act, paragraph 3(1)(ha).

EXPLANATORY NOTE

REPEAL OF DRAWBACK ON BRITISH COMPOUNDS AND SPIRITS OF WINE

SUMMARY

1. This clause repeals section 22 of the Alcoholic Liquor Duties Act 1979 (ALDA), which provides for the repayment (drawback) of excise duty on 'British compounds' and 'spirits of wine' when they are warehoused for certain purposes. The clause also makes consequential repeal of those primary law provisions which have amended section 22 in the past, and of the provision of the Finance Act 1994 which makes decisions taken under section 22 appealable in the Tribunal.

DETAILS OF THE CLAUSE

2. This clause repeals section 22 ALDA in its entirety, together with paragraph 29 of Schedule 1 to the Isle of Man Act 1979, paragraph 16 of Schedule 8 to the Finance Act 1981, paragraph 24 of the Schedule to the Finance Act 1994 (all of which amended section 22 ALDA) and paragraph 3(1)(ha) to Schedule 5 of the Finance Act 1994 (which makes decisions taken under section22 ALDA appealable in the Tribunal).

BACKGROUND NOTE

3. British compounds are spirits which have, in the United Kingdom, had any flavour communicated to them or ingredient or material mixed with them, not being denatured alcohol. Spirits of wine are plain spirits of a strength of not less than 80 per cent manufactured in the United Kingdom. Section 22 ALDA allows manufacturers of such products to reclaim the excise duty that they have paid on such products when they are exported from the manufacturer's premises or placed in a warehouse for certain approved purposes.

4. Insofar as section 22 permits drawback on export, it is unnecessary, since identical provision is made by the Excise Goods (Drawback) Regulations 1995 ("the EGDR"). To the extent that section 22 permits drawback in other circumstances (e.g. shipment as stores and warehousing for certain purposes, including export), it is undesirable, since there is no such provision for other spirits and there is no present policy justification for having different arrangements for British compounds and spirits of wine to those that apply to other

spirits. Further, it is doubtful whether section 22 is fully compliant with EU directive 2008/118, which concerns the general arrangements for excise duty.

5. It follows that the repeal of section 22 will remove redundant legislation from the tax code, produce greater consistency with the arrangements that apply to other spirits and avoid the minor risk of infraction proceedings.

6. If you have any questions about this change, or comments on the legislation, please contact Paul Manson on 0161 827 0357 (email: paul.manson@hmrc.gsi.gov.uk).

Air Passenger Duty

APD - Northern Ireland Rate

1 Air passenger duty

Schedule 1 makes provision about air passenger duty.

SCHEDULES

SCHEDULE 1

Section 1

AIR PASSENGER DUTY

PART 1

NORTHERN IRELAND RATES OF DUTY FOR PERIOD 1 NOVEMBER 2011 TO 31 MARCH 2012

1 In section 30 of FA 1994 (air passenger duty: rate of duty) after subsection (4A) insert—

"(4B) Subsection (4C) applies if the passenger's journey—
(a) is a relevant Northern Ireland journey, and
(b) apart from subsection (4C), subsection (2) would not apply to the journey.

(4C) The applicable rate in subsection (2) applies to the journey instead of the applicable rate in subsection (3), (4) or (4A) (as the case may be).

(4D) A passenger's journey is a "relevant Northern Ireland journey"—
(a) in the case of a journey which has only one flight, if the flight begins in Northern Ireland, and
(b) in any other case, if the first flight of the journey—
(i) begins in Northern Ireland, and
(ii) is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A."

2 In article 3 of the Air Passenger Duty (Connected Flights) Order 1994 (S.I. 1994/1821) for "section 30(6)" substitute "section 30(4D)(b)(ii) or (6)".

3 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 November 2011 but before 1 April 2012.

PART 2

RATES OF DUTY FROM 1 APRIL 2012

4 (1) Section 30 of FA 1994 (air passenger duty: rate of duty) is amended as follows.

(2) In subsection (2)—
(a) in paragraph (a) for "£12" substitute "£13", and
(b) in paragraph (b) for "£24" substitute "£26".

(3) In subsection (3)—
(a) in paragraph (a) for “£60” substitute “£65”, and
(b) in paragraph (b) for “£120” substitute “£130”.

(4) In subsection (4)—
(a) in paragraph (a) for “£75” substitute “£81”, and
(b) in paragraph (b) for “£150” substitute “£162”.

(5) In subsection (4A)—
(a) in paragraph (a) for “£85” substitute “£92”, and
(b) in paragraph (b) for “£170” substitute “£184”.

(6) After subsection (4A) insert—

“(4B) Subsection (4C) applies if the passenger’s journey—
(a) is a relevant Northern Ireland journey, and
(b) apart from subsection (4C), subsection (2) would not apply to the journey.

(4C) The applicable rate in subsection (2) applies to the journey instead of the applicable rate in subsection (3), (4) or (4A) (as the case may be).

(4D) A passenger’s journey is a “relevant Northern Ireland journey”—
(a) in the case of a journey which has only one flight, if the flight begins in Northern Ireland, and
(b) in any other case, if the first flight of the journey—
(i) begins in Northern Ireland, and
(ii) is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.”

5 In article 3 of the Air Passenger Duty (Connected Flights) Order 1994 (S.I. 1994/1821) for “section 30(6)” substitute “section 30(4D)(b)(ii) or (6)”.

6 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 April 2012.

PART 3

OTHER PROVISION

7 Chapter 4 of Part 1 of FA 1994 (air passenger duty) is amended as follows.

8 In section 28 (introduction to air passenger duty) for subsection (3) substitute—

“(3) Sections 29 and 29A below set out how to determine if an aircraft is a chargeable aircraft for the purposes of this Chapter.”

9 (1) Section 29 (chargeable aircraft) is amended as follows.

(2) For subsection (1) substitute—

“(1) For the purposes of this Chapter an aircraft is a chargeable aircraft if—
(a) it is a fixed-wing aircraft designed or adapted to carry persons in addition to the flight crew,

(b) its authorised take-off weight is not less than 5.7 tonnes, and
(c) it is fuelled by kerosene (as defined in section 1(8) of the Hydrocarbon Oil Duties Act 1979).”

(3) In subsection (2) for “ten” (wherever occurring) substitute “5.7”.

(4) Omit subsection (3).

10 After section 29 insert—

“29A Chargeable aircraft: exceptions

(1) This section applies for the purposes of this Chapter.

(2) An aircraft is not a chargeable aircraft whenever its operation falls within an exemption set out in sub-paragraph (b), (c), (f) or (g) under the category of activity “Aviation” in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 (as amended by Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008).

(3) Those exemptions are to be read in accordance with paragraphs 2.2 to 2.5 of the Annex to Commission Decision 2009/450/EC of 8 June 2009.

(4) An aircraft is not a chargeable aircraft whenever it is being operated under a public service obligation imposed under Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 (common rules for the operation of air services).”

11 In section 30 (rate of duty) before subsection (5) insert—

“(4E) In relation to the carriage of a chargeable passenger on an aircraft to which subsection (4F) applies—
(a) if the rate which (apart from this subsection) would apply is the rate in subsection (2)(a) or (b), a rate equal to twice the rate in subsection (2)(b) is to apply instead,
(b) if the rate which (apart from this subsection) would apply is the rate in subsection (3)(a) or (b), a rate equal to twice the rate in subsection (3)(b) is to apply instead,
(c) if the rate which (apart from this subsection) would apply is the rate in subsection (4)(a) or (b), a rate equal to twice the rate in subsection (4)(b) is to apply instead, and
(d) if the rate which (apart from this subsection) would apply is the rate in subsection (4A)(a) or (b), a rate equal to twice the rate in subsection (4A)(b) is to apply instead.

(4F) This subsection applies to an aircraft if—
(a) its authorised take-off weight is not less than 20 tonnes, but
(b) it is not authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants).

(4G) In subsection (4F)(a) “take-off weight” is to be read in accordance with section 29(2) but as if “20” were substituted for “5.7” wherever occurring.

(4H) For the purposes of subsection (4F)(b) an aircraft is authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants) if—

(a) there is a certificate of airworthiness (as defined in section 29(4)) in force in respect of the aircraft showing that the maximum number of persons who may be seated on the aircraft (excluding members of the flight crew and cabin attendants) is more than 18, or

(b) the Commissioners are satisfied that the aircraft is designed or adapted to seat more than 18 persons (excluding members of the flight crew and cabin attendants) or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied.

(4I) The cases covered by subsection (4E)(a) include cases in which subsection (2) applies by virtue of subsection (4C)."

12 (1) Section 43 (interpretation) is amended as follows.

(2) In subsection (1) for the definition of "passenger" substitute—

""passenger", in relation to any aircraft, means any person carried on the aircraft other than—

(a) a member of the flight crew,

(b) a cabin attendant, or

(c) a person who is not carried for reward and who satisfies such other requirements as may be prescribed."

(3) After subsection (1) insert—

"(1A) The agreements and arrangements covered by the definition of "agreement for carriage" in subsection (1) include informal agreements or arrangements between, for example, members of a family or friends."

13 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 April 2013.

EXPLANATORY NOTE

AIR PASSENGER DUTY

SUMMARY

1. Schedule 1 provides for APD rate increases. It also extends the scope of APD to private jets by reducing the de minimis weight limit below which aircraft were not subject to APD from 10 tonnes to 5.7 tonnes. In addition, it gives statutory effect to the rate reduction applied, since 1 November 2011, to certain flights departing from Northern Ireland.

DETAILS OF THE SCHEDULE

2. Part 1 gives statutory effect to the rate reduction applied to certain flights departing from Northern Ireland for the period 1 November 2011 to 31 March 2012.

3. Paragraph 1 inserts new subsections (4B) to (4D) into section 30 of the Finance Act 1994.

4. New subsection (4B) provides that new subsection 4C applies to certain 'relevant journeys' from Northern Ireland.

5. New subsection (4C) specifies the rate to be applied to these journeys.

6. New subsection (4D) defines a 'relevant journey' as one which departs from Northern Ireland and, in the case of a journey that involves more than one flight, provides that the second or onward flight must not begin within the UK or any territory in Part 1 of Schedule 5A .

7. Paragraph 2 makes consequential changes to the Air Passenger Duty (Connected Flights) Order 1994.

8. Paragraph 3 gives effect to this change to flights departing from Northern Ireland on or after 1 November 2011 but before 1 April 2012.

9. Part 2 of the Schedule provides for the increase in the APD rates to be applied to each destination band.

10. Paragraph 4 amends section 30. It sets out the rates for the destination bands and inserts new subsections (4B) to (4D). These new subsections provide for the new reduced rates for passengers on

flights from Northern Ireland that are 'relevant journeys' as defined in subsection (4D), with effect from 1 April 2012.

11. Paragraph 5 makes consequential changes to the Air Passenger Duty (Connected Flights) Order 1994.

12. Paragraph 6 provides for the changes in Part 2 of the Schedule to take effect in relation to the carriage of passengers beginning on or after 1 April 2012.

13. Part 3 of the schedule provides for the extension of APD to passengers in smaller aircraft by reducing the de minimis weight limit below which aircraft are not chargeable aircraft for APD from the current 10 tonnes to 5.7 tonnes. It also amends the definition of a chargeable passenger and provides for new rates for the carriage of chargeable passengers on certain aircraft.

14. Paragraph 7 introduces amendments to the Finance Act 1994.

15. Paragraph 8 substitutes section 28(3) to apply sections 29 and 29A for determining whether an aircraft is a chargeable aircraft for the purposes of APD.

16. Paragraph 9(1) to (4) amends section 29. It redefines a "chargeable aircraft" and extends the scope of APD to smaller aircraft by reducing the former 10 tonne de minimis weight limit to 5.7 tonnes. It also removes the reference to an authorised seating capacity and restricts the scope of APD to aircraft fuelled by kerosene (aviation turbine fuel) only.

17. Paragraph 10 inserts a new section 29A, which extends exceptions to APD to aircraft whose operation falls within the activities listed in sub-paragraphs (b), (c), (f) and (g) under Annex I to Directive 2003/97/EC (as amended by Directive 2008/101/EC) which establishes a scheme for greenhouse gas emission allowance trading. These activities (which are further defined in paragraphs 2.2 to 2.5 of the Annex to Commission Decision 2009/450/EC of 8 June) are military, police, customs, search and rescue operations humanitarian and research and training operations. It also extends the exception to flights operated under a public service obligation.

18. Paragraph 11 inserts new subsections (4E) to (4I) into section 30.

19. New subsection (4E) provides for new rates to be applied to the carriage of chargeable passengers on certain aircraft.

20. New subsection (4F) defines these aircraft as being of an authorised take-off weight of not less than 20 tonnes, and with an authorised

seating capacity of not more than 18 (excluding members of the flight crew and cabin attendants).

21. New subsection (4H) provides that an aircraft's authorised seating capacity is considered to be more than 18 (and consequently not liable to the rate set out in new subsection (4F)) if there is a certificate of airworthiness in effect showing this, or if the Commissioners are satisfied that the aircraft has been designed or adapted to seat more than 18 (excluding flight and cabin attendants).

22. New subsection (4I) provides for how the rates detailed in (4E) are to be applied to 'relevant journeys' from Northern Ireland made by these defined aircraft.

23. Paragraph 12 amends section 43(1). Previously this section placed outside the scope of APD passengers not carried for reward if the operator was not an air transport undertaking (i.e. an aircraft operator whose main business was not carrying passenger for hire or reward). The change now brings these passengers into the scope of APD, and brings the exclusions in line with those for air transport undertakings where these are restricted to flight and cabin crew. It also excludes certain passengers not carried for reward who perform specific services or duties. These specific services and duties are prescribed in regulation 12 of the Air Passenger Duty Regulations 1994. Furthermore it inserts new subsection (1A) which extends the term 'agreement for carriage' to also include informal arrangements and agreements, such as those between friends and family members.

BACKGROUND NOTE

Part 1 of Schedule 1 - Northern Ireland rate reduction from 1 November 2011 to 31 March 2012

24. The rate reduction was introduced in recognition of the unique circumstances facing Northern Ireland, which shares a land border with the Republic of Ireland, where aviation duty is significantly lower. As a result of the rate reduction, the carriage of passengers on certain flights taking off from an airport in Northern Ireland will attract the short haul rate of APD.

25. The flights affected are those where the journey is direct to long haul destinations or, in a case where there are one or more flights involved, the first connection is made in a long haul destination. For these purposes long haul destinations are those not listed in Part 1 of Schedule 5A.

26. Only these journeys will benefit from the rate reduction irrespective of the passenger's final destination. For example:

- Belfast - Newark - Reduction will apply
- Belfast - Newark - Chicago = Reduction will apply
- Belfast - Newark – Tokyo - Reduction will apply
- Belfast - Heathrow - Sydney = Reduction will not apply
- Heathrow - Belfast - Newark = Reduction will not apply.

27. This rate reduction applies to flights that take off from Northern Ireland for the period beginning on or after 1 November 2011 to 31 March 2012.

Part 2 of Schedule 1 - Rates of duty to be applied from 1 April 2012

28. As announced at Budget 2011, APD rates will be increased in line with inflation for 2012-13. These increases, which also take into account the increase deferred from April 2011, apply to the carriage of chargeable passengers on chargeable flights taking off from UK airports from 1 April 2012, irrespective of when the flight was actually booked or purchased.

29. Part 2 of Schedule 1 also includes changes to provide for the rate reduction to Northern Ireland for direct long haul flights that take off on or after 1 April 2012.

Part 3 of Schedule 1 - Extending APD to passengers in smaller aircraft.

30. At Budget 2011 the Chancellor announced thatthe Government would extend the scope of APD to include private jets and consult on how this reform should be delivered.

31. There is no ready definition of a private jet, so, in order to extend the scope of APD to private jets, changes to the de minimis weight limit for APD are needed in order to bring smaller aircraft (including private jets) within the scope of the tax.

32. In recognition of the fact that private jets may be customised to provide exceptional standards of luxury travel, new rates of APD will be introduced to apply to these aircraft. These aircraft are to be defined on the basis of weight and seating capacity, so that large aircraft with an authorised weight or more than 20 tonnes and authorised to seat fewer than 19 passengers will attract higher rates of APD.

33. Changes are also required to the definition of a passenger. Under the current APD structure, exemptions apply to passengers who are not carried for reward. As private jet passengers are often carried for no reward or fare (for example, an aircraft owner may be flown in their own private jet) changes to the definition of a passenger are required.

34. Equally private jet passengers are not always flown as part of a formal arrangement or agreement, but instead may be flown as part of an informal agreement such as the type that may exist between family members or friends. In order to ensure that these types of passengers are included in the scope of APD, the interpretation of 'agreement for carriage' will be amended.

35. Part 3 of Schedule 1 also includes changes to provide for the rate reduction to Northern Ireland for direct long haul flights.

36. These changes apply to flights that take off on or after 1 April 2013.

37. I you have any questions about this change, or comments on the draft legislation, please contact Wing Edmunson on 020 7147 0410 (email: wing.edmunson@hmrc.gsi.gov.uk).

Carbon Price Support Rates

1 Climate change levy: carbon price support rates

(1) Schedule 6 to FA 2000 (climate change levy) is amended as follows.

(2) In paragraph 42A(5) for "£0.01188 per kilogram" substitute "£[ ] per kilojoule".

(3) The amendment made by subsection (2) has effect in relation to supplies treated as taking place on or after 1 April 2013.

(4) In paragraph 42A(5) (as amended by subsection (2))—

(a) for "£0.00091 per kilowatt hour" substitute "£[ ] per kilowatt hour",

(b) for "£0.01460 per kilogram" substitute "£[ ] per kilogram", and

(c) for "£[ ] per kilojoule" substitute "£[ ] per kilojoule".

(5) The amendment made by subsection (4)(a) has effect in relation to a supply of gas to a person so far as the gas is actually supplied to the person on or after 1 April 2014.

(6) The amendments made by subsection (4)(b) and (c) have effect in relation to supplies treated as taking place on or after 1 April 2014.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: CARBON PRICE SUPPORT RATES

SUMMARY

1. This clause amends Schedule 6 to the Finance Act 2000 ("Schedule 6") in two ways. First, it changes the taxation base for certain fuels (notably coal and other solid fuels) under the carbon price support rates of climate change levy (CCL) from a weight basis (i.e.. per kilogram) to a heat basis (i.e. per kilojoule), with effect from 1 April 2013. Second, it introduces the carbon price support rates for gas, liquefied petroleum gas, and coal and other fuels with effect from 1 April 2014.

DETAILS OF THE CLAUSE

2. Sub-section (1) provides for the amendment of Schedule 6.

3. Sub-sections (2) and (3) amend paragraph 42A(5) of Schedule 6 so that the tax basis for "any other taxable commodity (apart from electricity)" is changed from "per kilogram" to "per kilojoule" with effect from 1 April 2013.

4. Sub-sections (4) to (6) amend paragraph 42A(5) of Schedule 6 by introducing revised carbon support rates for gas, liquefied petroleum gas and other taxable commodities (other than electricity) with effect from 1 April 2014.

BACKGROUND NOTE

5. In Budget 2011, the Chancellor announced that HM Treasury and HM Revenue and Customs (HMRC) would reform the CCL and fuel duty to provide more certainty and support to the carbon price and to encourage investment in low-carbon electricity. This built on the commitments made in the Coalition's programme for government, [1] to:

- introduce a floor price for carbon;
- increase the proportion of tax revenues from environmental taxes; and
- make the tax system more competitive, simpler, fairer and greener.

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[1] *The Coalition: our programme for government*, HM Government, 20 May 2010.

6. Legislation to implement this policy was included in Finance Bill 2011, and was enacted as section 78 of, and Schedule 20 to, the Finance Act 2011. At Budget 2011, the Chancellor also announced that carbon price support rates would be announced two years in advance, and that HM Treasury and HMRC would continue to consult business about the implementation of the carbon price support rates.

7. The Government will announce the carbon price support rates for the year 1 April 2014 to 31 March 2015 at Budget 2012. As a result of representations from UK coal mining businesses and a range of electricity generators, the Government has decided to change the tax base for solid fuels under the carbon price floor from a weight basis to a heat basis.

8. Oils are not subject to CCL but fuel duty is payable at a rebated rate at the point the oil leaves the refinery. The carbon price support rates for oil for the year 1 April 2014 to 31 March 2015 will also be announced at Budget 2012 and set out in secondary legislation.

9. If you have any questions about this change, or comments on the draft legislation, please contact Ian Moules on 020 7147 0653 (email: ian.moules@hmrc.gsi.gov.uk).

Change to the reduced rate of CCL on electricity

CCL rates

CCL: reform of climate change agreements

CCL: removal of the exemption for indirect supplies of CHP electricity

CCL: metal recycling processes

1 Climate change levy: supplies subject to the carbon price support rates

Schedule 1 makes—

(a) provision for and in connection with the charging of climate change levy on supplies of commodities to be used in combined heat and power stations,

(b) provision about the persons liable to account for climate change levy charged on taxable supplies subject to the carbon price support rates, and

(c) other provision about taxable supplies subject to the carbon price support rates.

SCHEDULES

SCHEDULE 1

Section 1

CLIMATE CHANGE LEVY: TAXABLE SUPPLIES SUBJECT TO THE CARBON PRICE SUPPORT RATES

1 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

2 In paragraph 4(2)(b) (definition of "taxable supply") after "24" insert ", 42D".

3 (1) Paragraph 6 (supplies of gas) is amended as follows.

(2) In sub-paragraph (1A) for "but not sub-paragraph" substitute "or".

(3) In sub-paragraph (2A) after "24" insert ", 42D".

4 (1) Paragraph 15 (exemption: supplies to CHP stations) is amended as follows.

(2) In sub-paragraph (1)—

(a) for "a taxable commodity" substitute "electricity", and

(b) in paragraph (a) for "commodity" substitute "electricity".

(3) In sub-paragraph (2)—

(a) in paragraph (a) for "a taxable commodity" substitute "electricity", and

(b) in paragraph (b) for "commodity" substitute "electricity".

(4) In sub-paragraph (3) for "a taxable commodity" substitute "electricity".

5 In paragraph 40(1) (person liable to account for levy) after "applies" insert "or as otherwise provided by paragraph 40A".

6 After paragraph 40 insert—

"40A(1) This paragraph applies to a taxable supply subject to the carbon price support rates (see paragraph 42A).

(2) If sub-paragraph (3), (4) or (5) applies, the person liable to account for the levy charged on the supply is the person to whom the supply is made.

(3) This sub-paragraph applies if the commodity supplied is to be used for producing electricity in a station—

(a) which is not a combined heat and power station,

(b) which is not operated by an auto-generator, and

(c) the capacity of which for producing electricity through the burning of taxable commodities is at least 50MW per hour.

(4) This sub-paragraph applies if the commodity supplied is to be used for producing electricity in a station which—

(a) is not a combined heat and power station,

(b) is not operated by an auto-generator, and

(c) is one of a number of stations situated in the United Kingdom—

(i) which are operated by the same person or by bodies corporate which are members of the same group, and

(ii) the capacity of which for producing electricity through the burning of taxable commodities is, taken together, at least 50MW per hour.

(5) This sub-paragraph applies if the commodity supplied is to be used for producing electricity in a combined heat and power station which—

(a) is not operated by an auto-generator, and

(b) is one of a number of stations situated in the United Kingdom—

(i) which are operated by the same person or by bodies corporate which are members of the same group,

(ii) at least one of which is not a combined heat and power station, and

(iii) the capacity of which for producing electricity through the burning of taxable commodities is, taken together, at least 50MW per hour,

and, when the supply is made, the person to whom the supply is made has elected for this sub-paragraph to apply to supplies to the station.

(6) An election for the purposes of sub-paragraph (5)—

(a) must be notified to the Commissioners,

(b) takes effect when it is notified or on a later date specified in the notification, and

(c) may be revoked by a further notification to the Commissioners with effect from a date specified in the notification, which must be no earlier than 3 months after the date on which the notification is given.

(7) A notification under sub-paragraph (6) must contain, or be accompanied by, any information or other particulars required by the Commissioners.

(8) The Commissioners may publish, as they think fit and by such means as they think fit, information relating to the operation of this paragraph, including (for example) the names of stations covered by any of sub-paragraphs (3) to (5).

(9) Information may be published notwithstanding any obligation not to disclose the information that would otherwise apply."

7 (1) Paragraph 42A (supplies subject to the carbon price support rates) is amended as follows.

(2) In sub-paragraph (2)—

(a) for the "and" after paragraph (a) substitute "or", and

(b) in paragraph (b) for "not" substitute "otherwise".

(3) In sub-paragraph (3) after “taxable commodity” insert “, apart from electricity,”.

(4) After sub-paragraph (5) insert—

“(5A) Sub-paragraph (4) needs to be read with paragraphs 42B and 42C.”

(5) In sub-paragraph (6) after “paragraph” insert “and paragraphs 42B and 42C”.

(6) For sub-paragraph (7) substitute—

“(7) Regulations under sub-paragraph (6) may, in particular, include provision—

(a) for determining whether or not a taxable supply is subject to the carbon price support rates,

(b) if the supply is subject to those rates, for determining whether or not paragraph 42B(2) or 42C(2) applies in relation to the supply, and

(c) if paragraph 42B(2) or 42C(2) applies in relation to the supply, for determining the reduction in the relevant carbon price support rate.”

8 After paragraph 42A insert—

“42B(1) Sub-paragraph (2) applies for the purposes of paragraph 42A(4) if the taxable supply is within paragraph 42A(3).

(2) In relation to the relevant fraction of the supply, only [...%] of the relevant carbon price support rate is to be applied (instead of the full rate).

(3) The “relevant fraction” of the supply is the fraction—

(a) whose numerator is the efficiency percentage for the combined heat and power station in question at the time the supply is made, and

(b) whose denominator is the threshhold efficiency percentage for that station at that time.

(4) For the purposes of sub-paragraph (3)—

(a) the “threshhold efficiency percentage” for a combined heat and power station is the percentage set as the threshhold efficiency percentage for the station by regulations made by the Treasury, and

(b) the “efficiency percentage” for a combined heat and power station is to be determined in accordance with regulations under paragraph 149.

(5) In paragraph 42(3) the reference to a reduced-rate supply includes a reference to a supply in relation to which sub-paragraph (2) above applies.

42C (1) Sub-paragraph (2) applies for the purposes of paragraph 42A(4) if—

(a) the taxable supply is a supply of a taxable commodity to be used for producing electricity in a station, and

(b) in the calendar year in which the supply is made, carbon capture and storage technology is operated in relation to

carbon dioxide generated by the station in producing electricity.

(2) In relation to the supply, only C% of the relevant carbon price support rate is to be applied (instead of the full rate).

(3) "C%" is 100% minus the station's carbon capture percentage for the calendar year.

(4) The station's "carbon capture percentage" for the calendar year is the percentage of the station's generated carbon dioxide for that year which, through the operation of the carbon capture and storage technology, is—

(a) captured, and

(b) then disposed of by way of permanent storage.

(5) The station's "generated carbon dioxide" for the calendar year is the amount of carbon dioxide generated in the year by the station in producing electricity through the burning of taxable commodities.

(6) In this paragraph "carbon capture and storage technology" has the meaning given by section 7(3) of the Energy Act 2010.

(7) Sub-paragraph (8) applies for the purposes of sub-paragraph (4) in relation to any carbon dioxide if—

(a) the carbon dioxide is captured but then leaks out and therefore is not disposed of by way of permanent storage, but

(b) the leak does not occur from—

(i) within the curtilage of the station, or

(ii) any pipeline or other facility or installation outside that curtilage which is operated by the station's operator or a person connected with the station's operator.

Section 1122 of the Corporation Tax Act 2010 applies for the purposes of paragraph (b)(ii).

(8) The carbon dioxide is to be treated as if it had been disposed of by way of permanent storage.

(9) If the percentage mentioned in sub-paragraph (4) is not a whole number, it is to be rounded to the nearest whole number (taking 0.5% as nearest to the next whole number).

42D (1) This paragraph applies if—

(a) a taxable supply ("the original supply") subject to the carbon price support rates has been made to any person ("the recipient"),

(b) the original supply was made on the basis that paragraph 42B(2) or 42C(2) applied in relation to the original supply, and

(c) it is later determined—

(i) that paragraph 42B(2) or 42C(2) did not apply in relation to the original supply, or

(ii) that the reduction given, by virtue of paragraph 42B(2) or 42C(2), in the amount payable by way of levy on the original supply was too much.

(2) For the purposes of this Schedule—

(a) the recipient is deemed to make a taxable supply to itself of the taxable commodity in question, and

(b) the amount payable by way of levy on that deemed supply is—

(i) the total amount payable on the original supply on the basis of the later determination mentioned in sub-paragraph (1)(c), less

(ii) the amount previously determined to be payable on the original supply."

9 After paragraph 62(1)(b) (tax credits) insert—

"(ba) after a taxable supply subject to the carbon price support rates (see paragraph 42A) is made on the basis that paragraph 42B(2) or 42C(2) does not apply in relation to the supply, it is determined that paragraph 42B(2) or 42C(2) does apply;

(bb) after a taxable supply subject to the carbon price support rates is made on the basis that paragraph 42B(2) or 42C(2) applies in relation to the supply, it is determined that the reduction given, by virtue of paragraph 42B(2) or 42C(2), in the amount payable by way of levy on the supply was too little;".

10 In paragraph 101(2)(a) (civil penalties: incorrect certificates)—

(a) omit the "or" after sub-paragraph (iv), and

(b) omit the "and" after sub-paragraph (v) and after that sub-paragraph insert—

"(vi) a taxable supply (or taxable supplies) in relation to which paragraph 42B(2) applies, or

(vii) a taxable supply (or taxable supplies) in relation to which paragraph 42C(2) applies, and".

11 In paragraph 146(3) (statutory instruments subject to affirmative procedure) before "52," insert "42B(4)(a),".

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: TAXABLE SUPPLIES SUBJECT TO THE CARBON PRICE SUPPORT RATES

SUMMARY

1. This schedule amends Schedule 6 to the Finance Act 2000 ("Schedule 6") in three ways. First, it removes the exemption from the carbon price support rates of climate change levy (CCL) for supplies of fossil fuels supplied to combined heat and power (CHP) stations and introduces a lower rate for such supplies. Second, it introduces an abated rate for supplies of fossil fuels to power generating stations equipped with carbon capture and storage (CCS) technology. Third, it requires certain power generators to self-account for the carbon price support rates of CCL.

2. The Schedule also provides for the Commissioners for HM Revenue and Customs (HMRC) to make regulations to give effect to the new provisions and makes some consequential changes to Schedule 6.

3. All these changes will have effect on and after 1 April 2013.

DETAILS OF THE SCHEDULE

4. Paragraph 1 provides for the amendment of Schedule 6.

5. Paragraph 2 amends paragraph 4(2)(b) of Schedule 6 so that deemed supplies under paragraph 42D are included in the definition of "taxable supply".

6. Paragraph 3 amends paragraphs 6(1A) and (2B) of Schedule 6 to make the supply of gas to CHP stations (including deemed supplies under paragraph 42D) liable to the carbon price support rates of CCL.

7. Paragraph 4 amends paragraph 15 of Schedule 6 so that the exemption in that paragraph applies only to the supply of electricity.

8. Paragraph 5 amends paragraph 40(1) of Schedule 6 to enable certain registered persons to self-account for the carbon price support rates of CCL.

9. Paragraph 6 inserts a new paragraph 40A into Schedule 6 to require electricity generators that are not auto-generators, CHP stations, or small-scale electricity generators to self-account for the carbon price support rates of CCL. It also provides for those generators to elect to

self-account for any supplies of fossil fuels made to any CHP station that they operate.

10. Paragraph 7 amends paragraph 42A of Schedule 6 to make supplies of fossil fuels to CHP stations liable to the carbon price support rates of CCL and to provide that the Commissioners for HMRC may make Regulations to give effect to these rates.

11. Paragraph 8 inserts three new paragraphs 42B, 42C and 42D into Schedule 6.

- New paragraph 42B(1) provides that new paragraph 42B(2) applies for the purposes of determining the amount of CCL payable at the carbon price support rates on supplies of fossil fuels to a CHP station.

- New paragraph 42B(2) states the percentage of the carbon price support rates of CCL that will apply to "the relevant fraction" of supplies of fossil fuels to a CHP station and new paragraph 42B(3) sets out the formula to be used to calculate that fraction.

- New paragraph 42B(4) states, for the purposes of new paragraph 42B(3), that the "threshold efficiency percentage" for a CHP station is 20 per cent.

- New paragraph 42B(5) provides that the reference to a reduced rate supply in paragraph 42(3) includes a supply in relation to which new paragraph 42B(2) applies for the purpose of citing the title and publication reference of Commission Regulation (EC) No 800/2008 (General block exemption Regulation).

- New paragraph 42C(1) provides for the new paragraph 42C(2) to apply for the purposes of determining the amount of CCL payable at the carbon price support rates where there is a supply of fossil fuels to an electricity generator who uses CCS technology in any calendar year.

- New paragraphs 42C(2) and (3) reduce the carbon price support rates of CCL by the carbon capture percentage.

- New paragraph 42C(4) specifies how a generating station's "carbon capture percentage" is to be calculated.

- New paragraph 42C(5) defines "generated carbon dioxide" for the purposes of new paragraph 42C(4).

- New paragraph 42C(6) defines "carbon capture and storage technology".

- New paragraph 42C(7) provides for carbon dioxide captured by a generating station using CCS technology that leaks before it is permanently stored not to affect the station's "carbon capture percentage" where the leak did not occur within the grounds of the station nor in any pipeline, facility or installation maintained by the operator of the station or a person connected to the operator.

- New paragraph 42C(8) provides for carbon dioxide captured that has not leaked in any of the situations set out in new paragraph 42C(6) to be treated as permanently stored.

- New paragraph 42C(9) provides for the "carbon capture percentage" where it is not a whole number to be rounded to the nearest whole number.

- New paragraph 42D(1) provides for new paragraph 42D(2) to apply where a taxable supply of fossil fuels to a generating station has been made on the basis that the lower carbon price support rates of CCL provided for in new paragraphs 42B(2) or 42C(2) applied but it is later determined that either a) it should have been subject to the full carbon price support rate; or b) the level of reduction applied was too much.

- New paragraph 42D(2) deems that where new paragraph 42D(1) applies, the recipient of the taxable supply makes a taxable supply to itself. The value of this self-supply is the difference between the amount calculated as now due and the amount originally paid.

12. Paragraph 9 amends paragraph 62(1) of Schedule 6 to provide for a recipient to reclaim the appropriate amount of carbon price support rate overpaid where a) a taxable supply was made on the basis that it was not subject to a lower carbon price support rate and it is later determined that it should have been or b) the amount of reduction originally given under new paragraphs 42B(2) or 42C(2) was too small.

13. Paragraph 10 amends paragraph 101(2)(a) of Schedule 6 to provide for the Commissioners for HMRC to levy civil penalties where a generator has issued an incorrect certificate in relation to the supplies of fossil fuels to either a CHP station or a power station fitted with CCS technology.

14. Paragraph 11 amends paragraph 146(3) of Schedule 6 to require regulations made by the Treasury under new paragraph 42B(4)(a) of Schedule 6 to be subject to the affirmative resolution procedure.

BACKGROUND NOTE

15. In Budget 2011, the Chancellor announced that the Government would reform the CCL and fuel duty to provide more certainty and support to the carbon price and to encourage investment in low-carbon electricity. This built on the commitments made in the Coalition's programme for government,[1] to:

    - introduce a floor price for carbon;
    - increase the proportion of tax revenues from environmental taxes; and
    - make the tax system more competitive, simpler, fairer and greener.

16. Legislation to implement this policy was enacted as section 78 of, and Schedule 20 to, the Finance Act 2011. At Budget 2011, the Chancellor also announced that further legislation on the carbon price floor would be included in Finance Bill 2012 to introduce reliefs for supplies to CHP stations and to those generating stations that use CCS technology.

17. The Government also committed HM Treasury and HMRC to consult business about the implementation of the carbon price support rates. In direct response to business representations, the Government has decided to require generators with a generating capacity of 50 mega watts per hour or more, whose primarily purpose is to generate electricity for sale to third parties, to self-account for the carbon price support rates of CCL. This will simplify the operation of the tax for both businesses and HMRC.

18. The clause and schedule contain the further legislation announced at Budget 2011 and that arising from further consultation with business. Secondary legislation provided for by the schedule and by Schedule 20 to the Finance Act 2011 is published alongside the draft Finance Bill 2012 to deal with changes to CCL of a more administrative nature.

19. The lower rate for supplies of fossil fuels to CHP stations is a State aid. However, in line with EC Directive 2003/96/EC the UK is permitted to use Commission Regulation (EC) No 800/2008, which simplifies the clearance process for State aid schemes. Article 3(1) of that Regulation requires the aid scheme to make express reference to the Regulation in the legislation.

20. Oils are not subject to CCL but fuel duty is payable at a rebated rate at the duty point the oil (for example, when the oil leaves the

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[1] *The Coalition: our programme for government*, HM Government, 20 May 2010.

refinery). Currently, the duty can be reclaimed in full by the electricity generator but, as part of the Government's proposals for a carbon price floor, the Government indicated that it would reduce the amount of fuel duty that can be reclaimed and to base the amount that can be reclaimed by taking account of the carbon content of the oils. The Statutory Instrument to implement this change was published for consultation on 6 December 2011 alongside the draft legislation for Finance Bill 2012 and the draft secondary legislation containing the CCL administrative provisions mentioned above.

21. If you have any questions about this change, or comments on the legislation, please contact Ian Moules on 020 7147 0653 (email: ian.moules@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2012 No.0000

CLIMATE CHANGE LEVY

The Climate Change Levy (General) (Amendment) Regulations 2012

Made - - - -	*[November 2012]*
Laid before the House of Commons	*[November 2012]*
Coming into force	
Regulation 15(b)	*1st January 2013*
Remainder	*1st April 2013*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 30 of, and paragraphs 22, 42A(6) and (7), 44(3) and (4), 62(1)(ba) and (bb), 125 and 146 of Schedule 6 to, the Finance Act 2000(**a**):

Citation and commencement

1.—(1) These Regulations may be cited as the Climate Change Levy (General) (Amendment) Regulations 2012.

(2) Apart from regulation 15(b), they come into force on 1st April 2013.

(3) Regulation 15(b) comes into force on 1st January 2013.

Amendments to the Climate Change Levy (General) Regulations 2001

2. Amend the Climate Change Levy (General) Regulations 2001(**b**) as follows.

3. In paragraph (1) of regulation 2 (general interpretation)—

(a) after the definition for "CCL" insert—

""CPS abated-rate supply" refers to a taxable supply subject to the carbon price support rates and in relation to which paragraph 42C(2)(**a**) of the Act applies (reduction in amount of CCL payable);

(**a**) 2000 c. 17; paragraph 42A was inserted by paragraph 6 of Schedule 20 to the Finance Act 2011(c. 11) and amended by paragraph [xx] of Schedule [xx] to the Finance Act 2012 (c.). Sub-paragraphs 62 (ba) and (bb) were inserted by paragraph [xx] of Schedule [xx] to the Finance Act 2012. Paragraph 125 has been amended by the Finance Act 2003 (c. 14), section 192(9), the Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), Schedule 1, paragraphs 20(1) and (5) and the Finance Act 2009 (c. 10), Schedule 50, paragraphs 18 and 19. Paragraph 146 has been amended by the Finance Act 2003, section 188(2)(c) and S.I. 2009/571, Schedule 1, paragraph 20(1) and (7). The regulations made under the powers cited are to be made by the Commissioners; paragraph 147 of Schedule 6 to the Finance Act 2000 defines "the Commissioners" as meaning the Commissioners of Customs and Excise. Section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**b**) S.I. 2001/838; relevant amending instruments are S.I. 2003/604, 2005/1716, 2007/2903, 2011/684.

“CPS lower-rate supply” refers to a taxable supply subject to the carbon price support rates and in relation to which paragraph 42B(2)(**b**) of the Act applies (lower rate of CCL payable);”;

(b) in the definition of “supplier”—

(i) omit the “and” before “paragraph 40(2)”; and

(ii) after “utilities” insert “and paragraph 40A(**c**) of the Act–certain taxable supplies subject to the carbon price support rates”.

4. For sub-paragraph (c)(ii) of regulation 8 (obligation to keep records) substitute—

“(ii) a CPS abated-rate supply, a CPS lower-rate supply or a reduced-rate supply;”.

5. In regulation 11 (other tax credits: entitlement)—

(a) in paragraph (1)—

(i) in sub-paragraph (c) after “a reduced-rate supply” (in both places) insert “, a CPS abated-rate supply or a CPS lower-rate supply”;

(ii) after sub-paragraph (c) insert—

“(ca) after a CPS lower-rate supply or a CPS abated-rate supply is made it is determined that the reduction given, by virtue of paragraph 42B(2) or 42C(2) of the Act, in the amount payable by way of levy on the supply was too little;”;

(b) in sub-paragraph (2)(a) after “(c),” insert “(ca),”.

6. In paragraph (1) of regulation 12 (tax credits: general) after “exempt” insert “, CPS abated-rate, CPS lower-rate”.

7. In regulation 33, (special rules for excluded, exempt and reduced-rate supplies), and the heading to that regulation, after “exempt (in both places) insert “, CPS abated-rate, CPS lower-rate”.

8. In the heading to Part III (Excluded, Exempt and Reduced–rate supplies) after “**EXEMPT**” insert “**, CPS ABATED-RATE, CPS LOWER-RATE**”.

9. In regulation 35 (delivery of supplier certificates)—

(a) in paragraphs (1) and (3), before “reduced-rate” insert “CPS abated-rate, CPS lower-rate or”;

(b) in sub-paragraph (2)(a), before “a reduced-rate” insert “a CPS abated-rate supply in paragraph 42C(1) of the Act (abated rate for supplies to stations operating carbon capture and storage technology), a CPS lower-rate supply in paragraph 42B(1) of the Act (lower rate for supplies to combined heat and power stations) or, as the case may be,”.

10. In regulation 37 (form and other requirements relating to supplier certificates) after subparagraph (4)(b) insert—

“(ba) a supplier certificate relating to a CPS abated-rate supply with a supplier certificate relating to any other supply;

(bb) a supplier certificate relating to a CPS lower-rate supply with a supplier certificate relating to any other supply;”.

11. In paragraph (2) of regulation 39 (special cases) after “utilities” insert “and paragraph 40A of the Act–certain taxable supplies subject to the carbon price support rates”.

12. In paragraph (1) of regulation 51A (interpretation of Part 4A) in the definition of “QPO electricity”—

(**a**) Paragraph 42C was inserted by paragraph [xx] of Schedule [xx] to the Finance Act 2012 (c.).
(**b**) Paragraph 42B was inserted by paragraph [xx] of Schedule [x] to the Finance Act 2012.
(**c**) Paragraph 40A was inserted by paragraph [xx] of Schedule [x] to the Finance Act 2012.

(a) at the end of sub-paragraph (b) insert “and”; and

(b) after that sub-paragraph insert—

“(c) in either case, has been produced before 1st April 2013;”.

13. In regulation 51H (giving effect to Schedule 2 and the CHP Relief Condition)—

(a) in paragraph (1)(a) for “taxable commodities” substitute “electricity”; and

(b) in paragraph (4) after “exempt” insert “, CPS abated-rate, CPS lower-rate”.

14. In Schedule 1—

(a) in the heading after “**EXEMPT**” insert “**, CPS ABATED-RATE, CPS LOWER-RATE**”;

(b) in paragraph 2—

(i) at the beginning insert “Except in the case of a supply to which paragraph 2A or 2B applies”;

(ii) in the formula, substitute “$(r \times R)$” for “R”;

(iii) after the definition of “M”, insert—

“r = 0.90 in the case of electricity, and in any other case 0.65.”;

(iv) for “0.65R = 65% of ”, substitute “R =”;

(c) after paragraph 2 insert—

“**2A.** In the case of a CPS abated-rate supply CCL at the relevant carbon price support rate (“the CPS rate”) is not due on the percentage of the supply properly determined in accordance with the following formula;

$$P = \frac{R}{S} \times 100$$

Where—

P = the percentage of the supply on which the CPS rate is not due (“the CPS abated–rate relief percentage”) which must not be more than 100 per cent.

R = the amount of carbon dioxide captured by the recipient of the supply in the calendar year and then disposed of by way of permanent storage.

S = the amount of carbon dioxide generated by the recipient of the supply in producing electricity through the burning of taxable commodities in the calendar year.

2B. In the case of a CPS lower-rate supply CCL at the relevant CPS rate is not due on the percentage of the supply properly determined in accordance with the following formula (“the CPS lower-rate relief formula”);

$$P = M \times (1 - T) \times 100$$

Where—

P = the percentage of the supply on which the CPS rate is not due (“the CPS lower-rate relief percentage”) which must not be more than 100 per cent.

M = the relevant fraction of the supply (for which see paragraph 42B(3) of the Act).

T = [x].”;

(d) in paragraph 3(1)—

(i) after “regulation 35(2)” insert “(CPS abated-rate, CPS lower-rate and reduced rate)”;

(ii) for "(reduced rates)" substitute "(reduced rate for certain supplies to a facility covered by a climate change agreement)";

(e) in paragraph 4, after "CCL relief percentage" insert ", the CPS abated–rate relief percentage or, as the case may be, the CPS lower-rate relief percentage";

(f) at the beginning of paragraph 5(1) for "The" substitute "Other than in the case of CPS abated-rate and CPS lower-rate supplies the";

(g) in paragraph 6—

(i) in sub-paragraph (1)(c) after "a reduced-rate supply"(in both places) insert ", a CPS abated-rate supply or a CPS lower-rate supply";

(ii) after paragraph (c) insert —

"(ca) after a CPS lower-rate supply or a CPS abated-rate supply is made it is determined that the reduction given, by virtue of paragraph 42B(2) or 42C(2) of the Act, in the amount payable by way of levy on the supply was too little;";

(h) after paragraph 9C insert—

"**9D.**—(1) In the case of CPS lower-rate supplies the recipient must review the correctness of the supplier certificate no later than a reconciliation date in paragraph 9B.

(2) That correctness must be reviewed in accordance with regulation 9C(2) and (3).

(3) Sub-paragraph (4) or (5) applies if the review demonstrates that the supplier certificate was incorrect.

(4) If the CPS lower-rate relief percentage was too low, the recipient may act in accordance with paragraphs 6 to 9 (recipient's tax credit where reduction in amount payable by way of levy on the supply was too little).

(5) If the CPS lower-rate relief percentage was too high, paragraphs 5(7) to 5(9F) apply as if —

(a) the reference in sub-paragraph (7) to "CCL relief percentage" is a reference to "CPS lower-rate relief percentage"; and

(b) sub-paragraphs (7), (8), (9) and (9C)(a) include a reference to paragraph 42D(2)(**a**) (deemed taxable self-supply: carbon price support rates).

(6) If the recipient does not review the accuracy of the supplier certificate in accordance with sub-paragraph (1), and the certificate was (or remains) incorrect, paragraph 101 of the Act shall apply accordingly (civil penalty for incorrect certification etc subject to reasonable excuse).

9E.—(1) This paragraph, and paragraph 9F, apply to CPS abated-rate supplies.

(2) For the purposes of the following sub-paragraphs, regard a completed calendar year as one for which 31st December is passed and an incompleted calendar year as one for which 31st December is not passed.

(3) The reconciliation day for a completed calendar year is the 60th day in the subsequent calendar year.

(4) The "reconciliation span" relating to this reconciliation day is the completed calendar year.

(5) A reconciliation day for an incompleted calendar year is the 60th day after the day in that calendar year on which the station ceases to operate or (other than on a temporary basis) ceases to operate carbon capture and storage technology.

(6) The "reconciliation span" relating to any such reconciliation day spans 1st January in that incompleted calendar year to the day before that reconciliation day, inclusive.

(**a**) Paragraph 42D was inserted by paragraph [x] of Schedule [x] to the Finance Act 2012.

(7) In sub-paragraph (5) and paragraph 9F(3) "carbon capture and storage technology" has the meaning given by section 7(3) of the Energy Act 2010(**a**).

9F.—(1) The recipient must review the correctness of the supplier certificate no later than the reconciliation day in paragraph 9E.

(2) That correctness must be reviewed in relation to the station's carbon capture percentage for the relevant reconciliation span.

(3) In the case of a reconciliation span for an incompleted calendar year treat the carbon capture percentage as one determined for the period starting on 1st January in that incompleted calendar year and ending on the day immediately preceding the day on which the station ceases to operate or ceases to operate carbon capture and storage technology.

(4) The review must properly take into account—

(a) each quantity of taxable commodity supplied on the basis of the supplier certificate or certificates in question and not previously the subject of a review under this paragraph, and

(b) the actual carbon capture percentage for the station in question in the calendar year in which that taxable commodity is supplied.

(5) If the CPS abated-rate relief percentage applied was too low, the recipient may act in accordance with paragraphs 6 to 9 (recipient's tax credit where reduction in amount payable by way of levy on the supply was too little).

(6) If the abated-rate relief percentage applied was too high, paragraphs 5(7) to 5(9F) apply as if—

(a) the reference in sub-paragraph (7) to "CCL relief percentage" is a reference to "CPS abated-rate relief percentage"; and

(b) sub-paragraphs (7), (8), (9) and (9C)(a) include a reference to paragraph 42D(2) (deemed taxable self-supply: carbon price support rates).

(7) If the recipient does not review the accuracy of the supplier certificate in accordance with sub-paragraph (1), and the certificate was (or remains) incorrect, paragraph 101 of the Act shall apply accordingly (civil penalty for incorrect certification etc subject to reasonable excuse).

(8) In this paragraph "carbon capture percentage" has the meaning given in paragraph 42C(4) of the Act.";

(i) in paragraph 12—

(i) at the end of sub-paragraph (1A), insert "or the CPS lower-rate relief formula";

(ii) for paragraph (1B) substitute—

"(1B) The further certificate referred to in sub-paragraph (1A) must be delivered to the supplier—

(a) in the case of a change to the CCL relief formula, no later than the date on which the recipient's first annual review following the change must be completed; or

(b) in the case of a change to the CPS-lower-rate relief formula, no later than the first reconciliation day following the change.";

(iii) in sub-paragraph (3) after "CCL relief percentage" insert ", the CPS abated–rate relief percentage or, as the case may be, the CPS lower-rate relief percentage".

15. In Schedule 2 (The CHP Relief Condition)—

(a) in paragraph 1, after "station" insert "which are produced before 1st April 2013".

(b) in paragraph 11—

(**a**) 2010 c. 27.

(i) at the end of sub-paragraph (3) insert "(but this is subject to sub-paragraphs (9) and (10))";

(ii) after sub-paragraph (8), insert—

"(9) Sub-paragraph (10) applies where a reconciliation span relating to a reconciliation day spans 1st January 2012 to the day before a reconciliation day that falls in the calendar year 2013.

(10) Where this sub-paragraph applies—

(a) sub-paragraphs (4) and (5) do not apply; and

(b) the relevant Authority need not take any action in respect of the excessive CHP LECs that have been issued and remain unrestricted.".

Commissioner
Commissioner
1st November 2012 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Climate Change Levy (General) Regulations 2001 (SI 2001/838) (the "General Regulations") and are made following the introduction of carbon price support (CPS) rates of Climate Change Levy (CCL) ("CPS rates") and the removal of the exemption for indirect supplies of electricity produced in a combined heat and power (CHP) station (both with effect from 1st April 2013).

CPS rates

A supply of fossil fuels to a generating station with Carbon Capture and Storage technology and to a CHP station is subject to a lower CPS rate. Regulation 3 amends regulation 2 of the General Regulations to define such supplies as a "CPS abated-rate supply" and a "CPS lower-rate supply" respectively. It also amends the definition of "supplier" to include a person who is liable to self-account for CCL at the CPS rates(**a**).

Regulation 4 amends regulation 8 of the General Regulations to require a registrable person to keep specified records to evidence that a supply made by or to that person was either a CPS abated-rate supply or a CPS lower-rate supply.

Regulations 5 and 6 amend regulations 11 and 12 of the General Regulations to entitle a registrable person who has overpaid either the CPS abated-rate or the CPS lower-rate to reclaim the overpayment.

Regulations 9 to 11 amend regulations 35, 37 and 39 of the General Regulations so that provisions about supplier certificates and supporting documents that apply to a reduced rate supply(**b**) also apply to a CPS abated-rate supply and a CPS lower-rate supply.

Regulation 14 amends Schedule 1 to the General Regulations.

The CCL relief formula in paragraph 2 of that Schedule is amended consequential on the change to the rate for reduced-rate supplies of electricity (but not for reduced-rate supplies of other taxable commodities) made by section [xx] of the Finance Act 2012 (c.).

(**a**) For self-accounting see paragraph 40A of Schedule 6 to the Finance Act 2000 (c. 17).
(**b**) For reduced rate supplies see paragraph 44 of Schedule 6 to the Finance Act 2000.

New paragraphs 2A, 2B and 9D to 9F are inserted, and other consequential amendments made, as a result of the introduction of CPS abated-rate and CPS lower-rate supplies.

Paragraphs 2A and 2B insert formulae for calculating the percentage of a supply on which CCL at the CPS abated-rate or the CPS lower-rate is not due.

Paragraphs 9D to 9F provide that the recipient of CPS lower-rate supplies or CPS abated-rate supplies must review the correctness of its supplier certificate in relation to its efficiency percentage or, as the case may be, its carbon capture percentage(**a**). They also provide for a credit where the CCL already paid was too high and for a deemed supply where the CCL already paid was too low and apply civil penalty provisions if a review is not carried out and the certificate was, or remains, incorrect.

CHP stations

Certified(**b**) electricity produced in a CHP station may be supplied exempt from CCL(**c**). Regulation 12 amends the definition of "QPO electricity" in regulation 51A of the General Regulations so that electricity produced in a CHP station can only be certified if it was produced before 1st April 2013.

Regulation 15 amends Schedule 2 to the General Regulations so that the obligations in it relate only to the outputs of a CHP station produced before 1st April 2013 .With effect from 1st January 2013, it also provides the relevant Authority with revised CHP Levy Exemption Certificate reconciliation arrangements in relation to CHP stations that have participated in the CHP Quality Assurance programme for the completed calendar year ending 31st December 2012.

A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside draft clauses of the Finance Bill 2012 and this instrument and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

(**a**) For the meaning of "carbon capture percentage" see paragraph 42C(4) of Schedule 6 to the Finance Act 2000 (c. 17) (inserted by paragraph [x] of Schedule [x] to the Finance Act 2012).

(**b**) Certification is by the Gas and Electricity Markets Authority or the Director General of Electricity Supply for Northern Ireland (now the Northern Ireland Authority for Utility Regulation), as appropriate. See regulations 51A and 51B of the General Regulations.

(**c**) See the Finance Act 2000, Schedule 6, paragraph 20A and Part 4A of the General Regulations.

EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE LEVY (GENERAL) (AMENDMENT) REGULATIONS 2012

2012 No.

1. Introduction

This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the Statutory Instrument

This Statutory Instrument amends the Climate Change Levy (General) Regulations 2001 (SI 2001/838) ("the principal Regulations") as a consequence of: the introduction of a carbon price floor, which involves the introduction of new carbon price support (CPS) rates of climate change levy (CCL) and fuel duty; the removal of the exemption from CCL for supplies of electricity generated in a combined heat and power (CHP) station that are made by an electricity utility to an energy consumer ("the CHP indirect supplies exemption"); and the change to the reduced rate of CCL to 10 per cent of the main rate for supplies of electricity for those businesses with climate change agreements. All three of these changes come into force on 1 April 2013 although, as explained in paragraph 7.3 below, there is a need to bring part of the instrument into effect on 1 January 2013.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The European Council Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity establishes the general arrangements for the taxation of energy products and electricity, including setting minimum tax rates for these products. This directive aims to improve the functioning of the internal market by reducing distortions in competition between energy products. In line with the objectives of the European Union (EU) it encourages more efficient use of energy so as to reduce dependence on imported energy products and limit greenhouse gas emissions. In addition, in the interests of protecting the environment, it authorises EU countries to grant tax advantages to businesses that take specific measures to reduce their emissions.

4.2 In relation to energy products other than oil, the UK complies with this Directive through the CCL, the primary legislation for which is contained in

Schedules 6 to the Finance Act 2000, as amended. Currently CCL levies a charge on supplies of energy products (other than oil) and electricity to businesses and the public sector, but exempts a range of supplies, including supplies of energy products to persons who will use them to generate electricity.

4.3 The carbon price floor will be achieved in part through the removal of this CCL exemption; Schedule 20 to the Finance Act 2011 removes it with effect from 1 April 2013 and introduces CPS rates of CCL. Schedule [x] to the Finance Act 2012 introduces lower CPS rates of CCL for supplies of fossil fuels to CHP generators and to generators with carbon capture and storage (CCS) technology. Section [x] of the Finance Act 2012 removes, with effect from 1 April 2013, the current exemption from CCL for electricity generated by a CHP station and supplied via a utility to a third party where such electricity is generated on or after that date.

4.4 These Regulations amend the principal Regulations as a result of the above changes and to give effect to the CPS rates of CCL.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- ***What is being done and why***

7.1 In order to encourage new and additional investment in low-carbon power generation, the Government announced at Budget 2011 that it would introduce a carbon price floor with effect from 1 April 2013. Supplies of fossil fuels used in electricity generation will become liable either to CCL or fuel duty from that date, charged at the relevant CPS rate, which is determined by the average carbon content of each fossil fuel. The Government believes a carbon price floor will build upon the EU Emissions Trading System, which to date has not delivered a high and stable enough carbon price to encourage the investment in low-carbon technology the UK needs to meet its legal obligations.

7.2 The changes made by the instrument will allow the Commissioners for HMRC to administer the CPS rates of CCL being introduced from 1 April 2013 as part of the carbon price floor, including reliefs from the CPS rates for supplies of fossil fuels made to CHP stations and to stations with CCS technology.

7.3 The changes made to the principal Regulations will also mean that electricity produced in a CHP on or after 1 April 2013 will no longer be the subject of CHP levy exemption certificates (CHP LECs). However, in order to

facilitate the transition to a non-certification system, regulation 15(b) of the instrument comes into effect on 1 January 2013.

7.4 The objective of removing the CHP indirect supplies exemption and replacing it with a partial relief from the CPS rates for supplies of fossil fuels made to CHP stations is to ensure that Government support for CHP through the tax system is more direct, provides greater certainty over the long term, and offers better value for money for both taxpayers and the operators of CHP stations.

7.5 This instrument also amends the CCL relief formula in Schedule 1 of the principal Regulations to reflect the reduced rate of CCL in respect of a supply of electricity being set at 10 per cent of the main rate from 1 April 2013.

- ***Consolidation***

7.6 There is no present intention to consolidate the amendments that have been made to the principal Regulations.

8. Consultation Outcome

8.1 A consultation on introducing a carbon price floor was released on 16 December 2010 and the Government's response to the consultation published on 30 March 2011. The key points of the response were: the carbon price floor would come into effect on 1 April 2013; the floor would start at £16 per tonne of carbon dioxide and increase to £30 per tonne of carbon dioxide by 2020; there would be a lower rate for supplies of fossil fuels to CHPs; and those generators that install CCS technology would be entitled to a one percentage point reduction in the appropriate CPS rate for every one percentage point of carbon dioxide it captured rather than emitted.

8.2 The draft legislative proposals introducing the partial reliefs from the CPS rates for supplies to CHPs and those generators with CCS technology, and the removal of the CCL CHP indirect supplies exemption, were published for consultation on 6 December 2011.

9. Guidance

9.1 Six public notices covering CCL are available at www.hmrc.gov.uk.

9.2 Guidance was published on 6 December 2011 to accompany the publication of the draft legislation on the carbon price floor. This is also available from the HMRC website.

10. Impact

10.1 Around 150 fossil fuel electricity generators embedded into the National Grid and around 1,000 CHP plants and a large number of small electricity generators will incur the CPS rates upon their fuel input. The total

one-off familiarisation and IT costs and continuing administration burdens for the affected businesses are negligible.

10.2 The impacts in terms of one-off and continuing costs on the CHP sector as a result of the removal of the CHP indirect supplies exemption are also negligible.

10.3 There is no impact on the public sector.

10.4 A Tax Information and Impact Note (TIIN) covering this instrument was published on 6 December 2011 alongside draft clauses of the Finance Bill 2012 and this instrument and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. [It remains an accurate summary of the impacts that apply to this instrument.]

11. Regulating Small Business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is a general tax provision and the same for all firms.

11.3 The basis for the final decision on what action to take to assist small business is described in paragraphs 7.1 to 7.5, so no such action is taken for this general tax provision.

12. Monitoring and Review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Customs, Stamps and Money Directorate of HMRC.

13. Contact

Ian Moules at HM Revenue and Customs Tel: 020 7147 0653 or e-mail: ian.moules@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

STATUTORY INSTRUMENTS

2013 No. 0000

EXCISE

The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendment) Regulations 2013

Made - - - -	*February 2013*
Laid before Parliament	*February 2013*
Coming into force - -	*1st April 2013*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 20AA(1)(a), (2)(a) to (g) and (h) of the Hydrocarbon Oil Duties Act 1979(**a**):

Citation and commencement

1. These Regulations may be cited as the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendment) Regulations 2013 and come into force on 1st April 2013.

Amendments to the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005

2. Amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005(**b**) as follows.

3. In regulation 2 (interpretation), in the definitions of "qualifying oil" and "relevant duty" after "11(1)" insert ", 13ZA".

4. In regulation 3 (relief)—

(a) in paragraph (2), omit "paragraph (3) or"; and

(b) omit paragraph (3).

(**a**) 1979 c. 5; section 20AA was inserted by the Finance Act 1989 (c. 26), section 2(1) and has been amended by the Finance Act 1993 (c. 34), Schedule 23, Part 1 (4); the Finance Act 1994 (c. 9), Schedule 4, Part 3, paragraphs 49 and 54; the Finance Act 2000 (c. 17), section 10(3); and the Finance Act 2008 (c. 9), Schedule 5, paragraph 17 and Schedule 6, paragraphs 24 and 30; section 20AA provides that the Commissioners may make regulations allowing reliefs as regards any duty of excise which has been charged in respect of "hydrocarbon oil"; section 6AC (inserted by the Finance Act 2002 (c. 23), section 5(4)) provides that the Commissioners may by regulations provide for references in the Act to hydrocarbon oil to be construed as including references to biodiesel and bioblend and for references to duty on hydrocarbon oil to be construed as including references to duty under sections 6AA and 6AB. Regulation 3(1), (2) and (4) of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065) (as amended by S.I. 2008/753) provides that references to hydrocarbon oil and to the duty on hydrocarbon oil in section 20AA(1)(a) are to be construed as including references to biodiesel and bioblend and to the duty on biodiesel and bioblend. The power to make Regulations under section 20AA is conferred on "the Commissioners" and, by virtue of section 27(3), "the Commissioners" has the same meaning as given in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of that Act (as amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 22 (b)) defines "the Commissioners" as "the Commissioners for Her Majesty's Revenue and Customs".

(**b**) S.I. 2005/3320; relevant amending instruments are 2007/2191 and 2008/753.

5. At the end of regulation 6 (amount of relief on qualifying oil or bioblend used to produce electricity in a generating station) after "paid" insert "less the relevant amount specified in regulation 6A ("the Carbon Price Support rates")".

6. After regulation 6 insert—

"**6A.** The Carbon Price Support rates are—

(a) £0.01568 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(a) of the Hydrocarbon Oil Duties Act 1979 (fuel oil);

(b) £0.01365 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(b) of that Act (gas oil);

(c) £0.01568 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 13ZA(**a**)of that Act (certain heavy oil used for heating etc.);

(d) £0.01568 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 14(1) of that Act (light oil for use as furnace fuel); and

(e) £0.01365 per litre in the case of qualifying bioblend.".

7. In paragraph (1) of regulation 10 (amount of relief on qualifying oil or bioblend used to produce electricity in a combined heat and power station)—

(a) after "relates" insert "less the relevant amount specified in regulation 10A ("the CHP Carbon Price Support rates")"; and

(b) at the end, after "paid" insert "less the relevant fraction of the relevant CHP Carbon Price Support rate".

8. After regulation 10 insert —

"**10A.** The CHP Carbon Price Support rates are—

(a) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(a) of the Hydrocarbon Oil Duties Act 1979 (fuel oil);

(b) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(b) of that Act (gas oil);

(c) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 13ZA of that Act (certain heavy oil used for heating etc.);

(d) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 14(1) of that Act (light oil for use as furnace fuel); and

(e) £[xx.xx] per litre in the case of qualifying bioblend.".

name
name
February 2013 Two of the Commissioners for Her Majesty's Revenue and Customs

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(**a**) Section 13ZA was inserted by the Finance Act 2008 (c. 9), Schedule 6, paragraph 28.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320) which introduced a relief from excise duty for rebated oils used to produce electricity.

Regulation 3 amends the definition of "qualifying oil" to include heavy oil on which a rebate has been allowed under section 13ZA of the Hydrocarbon Oil Duties Act 1979. A consequential amendment is also made to the definition of "qualifying duty".

Regulation 4 withdraws relief on supplies of electricity to electricity utilities by generators who produce electricity primarily for the producer's own consumption and generators who are suppliers exempt from requiring a supply licence, aligning the excise rules with those for climate change levy.

Regulations 5 and 7 reduce the amount of relief that is allowed to take account of the Carbon Price Support rates on qualifying oil used to generate electricity in generating stations and combined heat and power stations. The applicable rates are specified in regulations 6 and 8 respectively.

A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside draft clauses of the Finance Bill 2012 and this instrument and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE HYDROCARBON OIL DUTIES (RELIEFS FOR ELECTRICITY GENERATION) (AMENDMENT) REGULATIONS 2013

2013 No.

1. Introduction

This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Statutory Instrument

This Statutory Instrument, which comes into force on 1 April 2013, amends the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 ("the principal Regulations") which introduced a relief from excise duty for rebated oils used to produce electricity. The purpose of this instrument is to reduce the amount of relief that is currently allowed on oils used to generate electricity in a generating station or combined heat and power (CHP) station so that such oils are subject to carbon price support (CPS) rates of fuel duty from 1 April 2013.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 Council Directive 2003/96/EC is the Community framework for the taxation of energy products and electricity ("the Directive"). Article 14 (1)(a) of the Directive exempts energy products used to produce electricity, and the principal Regulations gives effect to this in respect of oils by granting relief on rebated heavy and light oils used to generate electricity.

4.2 Article 14(1) of the Directive also allows Member States to subject these products to tax for reasons of environmental policy and the UK has decided to take up this option to introduce the carbon price floor from April 2013. The floor will be achieved by taxing fossils fuels used in electricity generation through new CPS rates of climate change levy (CCL) and fuel duty. In relation to the fossil fuels covered by this instrument this is achieved by reducing the amount of relief from excise duty currently available to reflect the CPS rates of fuel duty being introduced from April 2013.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- ***What is being done and why***

7.1 In order to encourage additional investment in low-carbon power generation, the Government announced at Budget 2011 it would introduce a carbon price floor with effect from 1 April 2013. Supplies of fossil fuels used in electricity generation will become liable either to CCL or fuel duty from that date, charged at the relevant CPS rate, which is determined by the average carbon content of each fossil fuel. The Government believes a carbon price floor will build upon the EU Emissions Trading System.

7.2 This instrument amends the existing excise relief for rebated oils used to generate electricity which was introduced with effect from 1 January 2006. The relief was introduced to avoid double taxation and ensure consistency of treatment with other energy products used for the same purpose. In particular, the amount of relief allowed will be reduced, the effect of which will be that oils used to generate electricity in an electricity generating station or CHP station will become subject to CPS rates of fuel duty.

- ***Consolidation***

7.3 There is no intention to consolidate.

8. Consultation Outcome

A consultation on the introduction of a carbon price floor was published on 16 December 2010 and the results of the consultation were published on 30 March 2011.

9. Guidance

Public Notice 175, available on www.hmrc.gov.uk, will be updated to take account of the changes being introduced by this instrument. Guidance was published on 6 December 2011 to accompany the publication of the draft legislation on the carbon price floor. This is also available from the HMRC website.

10. Impact

10.1 Around 40 electricity generators, including CHP stations, who use oil in electricity generation will incur carbon price support rates upon their fuel input. The total one-off familiarisation and IT costs and continuing administration burdens for the affected businesses are negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note (TIIN) covering this instrument was published on 6th December 2011 alongside draft clauses for the Finance Bill 2012 and this instrument and is available on the HMRC website at www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating Small Business

The legislation applies to small business.

12. Monitoring and Review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Customs, Stamps and Money Directorate of HMRC.

13. Contact

Ann Little at HM Revenue and Customs, Tel: 020 7147 0655, e-mail: Ann.Little@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Climate change levy

Schedule 1 makes provision about—

(a) the amount payable by way of climate change levy on deemed supplies treated as taking place on or after 1 April 2011,

(b) the application of the climate change levy to taxable supplies intended for use as fuel in recycling processes, and

(c) the rates of climate change levy applicable to supplies treated as taking place on or after 1 April 2013.

SCHEDULE 1

Section 1

CLIMATE CHANGE LEVY

PART 1

REDUCED-RATE SUPPLIES ON OR AFTER 1 APRIL 2011: DEEMED SUPPLY

1 (1) In paragraph 45A(2)(b) of Schedule 6 to FA 2000 (reduced-rate supplies: deemed supply) for "80" substitute "65".

(2) The amendment made by this paragraph has effect in relation to a deemed supply if the actual supply in question was treated as taking place on or after 1 April 2011.

PART 2

TAXABLE SUPPLIES ON OR AFTER 1 APRIL 2012 FOR USE IN RECYCLING PROCESSES

2 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

3 In paragraph 4(2)(b) (definition of taxable supply) for "45A" substitute "43B".

4 In paragraph 5(3) (taxable supplies: deemed supplies of electricity) for "45A" substitute "43B".

5 In paragraph 6(2A) (taxable supplies: deemed supplies of gas) for "45A" substitute "43B".

6 In paragraph 14(3A)(a) (use of electricity in an "exemption-retaining" way) for ", 18 and 18A" substitute "and 18".

7 Omit paragraph 18A (exemption: supply for use in recycling process).

8 In paragraph 34 (time of supply of commodities other than gas and electricity: deemed supplies)—

(a) in sub-paragraph (1)(b), for "45A" substitute "43B", and

(b) in sub-paragraph (4), for "45A" substitute "43B".

9 In paragraph 39(1)(c) (regulations as to time of supply) for "45A" substitute "43B".

10 In paragraph 42 (amount payable by way of levy)—

(a) in sub-paragraph (1)—

(i) in paragraph (a) after "supply" (in the second place it occurs) insert "or a supply for use in scrap metal recycling",

(ii) in paragraph (c) for "were not a reduced-rate supply." substitute "were a supply to which paragraph (a) applies;", and

(iii) after paragraph (c) insert—

“(d) if the supply is a supply for use in scrap metal recycling, 20 per cent of the amount that would be payable if the supply were a supply to which paragraph (a) applies.”, and

(b) after that sub-paragraph insert—

“(1ZA) If a taxable supply is both a reduced-rate supply and a supply for use in scrap metal recycling, the amount payable by way of levy on the supply under sub-paragraph (1) is the lower of the two amounts provided for that supply under that sub-paragraph.”

11 Before the cross-heading before paragraph 44 insert—

“Supplies for use in scrap metal recycling

43A (1) For the purposes of this Schedule, a taxable supply is a supply for use in scrap metal recycling if—

(a) the person to whom the taxable commodity is supplied intends to cause the commodity to be used as fuel in a process (“the recycling process”) to be carried out by that person which is the shredding (or fragmentation), pre-treatment and melting of scrap metal for recycling, and

(b) the condition in sub-paragraph (2) is satisfied.

(2) The condition is that there is another process (“the competing process”) that—

(a) uses taxable commodities otherwise than as fuel,

(b) produces a product of the same kind as one produced by the recycling process,

(c) uses a greater amount of energy than the recycling process to produce a given quantity of that product, and

(d) involves a lesser charge to levy for a given quantity of that product than would, but for paragraph 42(1)(d), be the case for the recycling process.

(3) For the purposes of sub-paragraph (2)(a), taxable commodities are used “otherwise than as fuel” only if the supplies of those commodities to the person using them are exempted from the levy by virtue of paragraph 18.

(4) Sub-paragraphs (5) and (6) apply where the recycling process or the competing process, as well as producing a product of the same kind as one produced by the other process (“the corresponding product”), also produces one or more products that are not (“different products”).

(5) If the production of the different products is merely incidental to the production of the corresponding product, the different products are to be treated for the purposes of sub-paragraph (2)(c) and (d) as being of the same kind as the corresponding product.

(6) If the production of the different products is not merely incidental to the production of the corresponding product—

(a) the amounts of energy referred to in sub-paragraph (2)(c), and the amounts of the charge to levy referred to in sub-

paragraph (2)(d), are to be determined on a just and reasonable apportionment, and

(b) in calculating the amount payable by way of levy on the taxable supply, only the proportion of the supply that is the same as the proportion of the energy used by the recycling process to produce the corresponding product (as determined for the purposes of paragraph (a)) is to be treated as being a supply for use in scrap metal recycling.

(7) In this paragraph—

"melting" means—

(a) the pre-heating and first melting of scrap metal before casting into items ("intermediates") for further processing or re-melting, or

(b) the heating of scrap metal as part of the recycling process before any solidification and re-melting,

but excluding the melting of any metal which is not scrap but which is added at any stage to improve the quality or adjust the composition of the recycled metal or intermediates, and

"metal" means aluminium or steel.

(8) The Commissioners may by regulations make provision for giving effect to this paragraph.

(9) Regulations under this paragraph may, in particular, include provision for determining whether or not a taxable supply is a supply for use in scrap metal recycling (to any extent).

Supplies for use in scrap metal recycling and reduced-rate supplies: deemed supply

43B (1) This paragraph applies where—

(a) a taxable supply ("the original supply") has been made to any person ("the recipient"),

(b) the original supply was made on the basis that it was, to any extent, a supply for use in scrap metal recycling or a reduced-rate supply,

(c) it is later determined that the original supply was (or was to some extent) a different kind of supply, and

(d) the amount payable on the supply on the basis mentioned in paragraph (b) is less than the amount payable on the supply on the basis of the later determination.

(2) For the purposes of this Schedule—

(a) the recipient is deemed to make a taxable supply to itself of the taxable commodity, and

(b) the amount payable by way of levy on that deemed supply is—

(i) the amount payable on the original supply on the basis of the later determination mentioned in sub-paragraph (1)(c), less

(ii) the amount payable on the original supply on the basis mentioned in sub-paragraph (1)(b).

(3) This paragraph does not apply where a supply is treated as not being a reduced-rate supply by virtue of paragraph 45B."

12 Omit paragraph 45A (reduced-rate supplies: deemed supply).

13 After paragraph 62(1)(c) (tax credits) insert—

"(ca) after a taxable supply has been made on the basis that it was not a supply for use in scrap metal recycling, it is determined that the supply was (to any extent) a supply for use in scrap metal recycling;

(cb) after a taxable supply has been made on the basis that it was (to an extent) a supply for use in scrap metal recycling, it is determined that the supply was such a supply to a greater extent than previously determined;".

14 In paragraph 101(2)(a) (penalty for incorrect notification)—

(a) in sub-paragraph (ii) omit ", 18A", and

(b) before sub-paragraph (iv) insert—

"(iiia) a supply (or supplies) for use in scrap metal recycling,".

15 In paragraph 146(3) (regulations subject to affirmative resolution procedure) omit ", 18A".

16 In paragraph 147 (interpretation)—

(a) in the definition of "prescribed", omit ", 18A", and

(b) insert at the appropriate place—

""supply for use in scrap metal recycling" has the meaning given by paragraph 43A(1);".

17 Omit section 188 of FA 2003 (climate change levy: exemption for fuel used in recycling process).

18 (1) FA 2011 is amended as follows.

(2) In section 79 (which provides for a lower rate of CCL for Northern Ireland gas supplies treated as taking place before 1 November 2013), in subsection (2)—

(a) omit the "and" after paragraph (b), and

(b) after that paragraph insert—

"(ba) the supply is not a supply for use in scrap metal recycling (within the meaning of that Schedule (see paragraph 147)), and".

(3) Omit section 80 (power to suspend exemption for supplies used in recycling process).

19 The amendments made by paragraphs 2 to 18 have effect in relation to supplies of taxable commodities so far as the commodities are actually supplied on or after 1 April 2012.

PART 3

RATES OF CLIMATE CHANGE LEVY FOR SUPPLIES ON OR AFTER 1 APRIL 2013

20 In paragraph 42(1) of Schedule 6 to FA 2000 (amount payable by way of levy) (as amended by paragraph 10(a) above)—

(a) before paragraph (c) insert—

“(ba) if the supply is a reduced-rate supply of electricity, 10 per cent of the amount that would be payable if the supply were a supply to which paragraph (a) applies;”,

(b) in paragraph (c), for “a” (in the first place it occurs) substitute “any other”, and

(c) for the table substitute—

“TABLE

Taxable commodity supplied	*Rate at which levy payable if supply is not a reduced-rate supply or a supply for use in scrap metal recycling*
Electricity	£[ ] per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£[ ] per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£[ ] per kilogram
Any other taxable commodity	£[ ] per kilogram”.

21 In paragraph 43B(1) of Schedule 6 to FA 2000 (supplies for use in scrap metal recycling and reduced-rate supplies: deemed supply) (as inserted by paragraph 11 above), for paragraph (b) substitute—

“(b) the original supply was made on the basis that it was, to any extent—

(i) a supply for use in scrap metal recycling,

(ii) a reduced-rate supply of electricity, or

(iii) a reduced-rate supply of any other taxable commodity,”.

22 In section 79 of FA 2011 (which provides for a lower rate of CCL for Northern Ireland gas supplies treated as taking place before 1 November 2013), in subsection (3)(a), for “£0.00062” substitute “£[ ]”.

23 The amendments made by paragraphs 20 to 22 have effect in relation to supplies treated as taking place on or after 1 April 2013.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY

SUMMARY

1. This Schedule is split into three parts.

2. Part 1 retrospectively amends Schedule 6 to the Finance Act (FA) 2000 ("Schedule 6") to provide that the amount of climate change levy (CCL) payable on a supply that has been treated as a reduced rate supply, but which it is later determined should not have been, is 65 per cent with effect from 1 April 2011.

3. Part 2 amends Schedule 6 by replacing the suspended exemption from the CCL for taxable commodities used in metal recycling processes with a 20 per cent lower rate from 1 April 2012.

4. Part 3 amends the rates of levy set out in Schedule 6, including the reduced rate on supplies of electricity and the lower rate for Northern Ireland gas supplies, with effect from 1 April 2013.

DETAILS OF THE SCHEDULE

5. <u>Paragraph 1</u> amends the figure set out in paragraph 45A(2)(b) of Schedule 6 (which deals with circumstances in which a supply has been treated as a reduced rate supply but which it is later determined should not have been) from "80" to "65" with retrospective effect from 1 April 2011. The effect is that the amount payable by way of levy on such supplies is 65 per cent from that date.

6. <u>Paragraph 2</u> provides for the amendment of Schedule 6.

7. <u>Paragraphs 3, 4, 5, 8 and 9</u> make consequential amendments to paragraphs 4, 5, 6, 34 and 39 of Schedule 6 respectively as a result of the omission of paragraph 45A from, and the addition of new paragraph 43A to, Schedule 6.

8. <u>Paragraph 6</u> amends paragraph 14(3A)(a) of Schedule 6 to remove the reference to the exemption for supplies used in recycling processes.

9. <u>Paragraph 7</u> removes paragraph 18A of Schedule 6 to repeal the exemption for supplies used in recycling processes.

10. <u>Paragraph 10</u> amends paragraph 42 of Schedule 6 to clarify that the full rates of levy will not apply to supplies for use in scrap metal

recycling. It also inserts new subparagraph (1ZA) into the same paragraph to provide that where supplies are both reduced rate supplies and eligible for the new lower rate by virtue of being for use in scrap metal recycling, the amount of levy payable is the lower of the two rates.

11. Paragraph 11 inserts new paragraphs 43A and 43B into Schedule 6.

    a. New paragraph 43A specifies the conditions for determining whether a supply is for use in scrap metal recycling, including the requirement for a competing process that is eligible for exemption under paragraph 18 of Schedule 6, the limitation that "metal" means only aluminium and steel, and the limitation that recycling includes only the preparation, pre-heating and first melting of the metal.

    b. New paragraph 43B provides that where an excess of relief has been received the recipient is deemed to have made a taxable supply to itself and must account for the levy due on that supply.

12. Paragraph 12 omits paragraph 45A of Schedule 6 (reduced-rate supplies: deemed supply) because the deemed supply provisions in new paragraph 43B apply to both reduced-rate supplies and supplies used in scrap metal recycling.

13. Paragraph 13 inserts new paragraphs (ca) and (cb) into paragraph 62(1)(c) of Schedule 6 providing that a relief recipient may claim a tax credit where too little levy relief was received.

14. Paragraph 14 removes the reference to paragraph "18A" in paragraph 101(2)(a) of Schedule 6 as a consequence of the repeal of the exemption, and adds new subparagraph (iiia) to that paragraph to provide that the recipient of the supply will be liable to a penalty where the certificate given to their supplier claiming the lower rate was, or becomes, incorrect.

15. Paragraph 15 removes the reference to paragraph "18A" in paragraph 146(3) of Schedule 6, which deals with the making of regulations, as a consequence of the repeal of the exemption for supplies for use in recycling processes.

16. Paragraph 16 removes the reference to paragraph "18A" in paragraph 147 of Schedule 6, which deals with interpretation, and inserts a reference to new paragraph 43A(1).

17. Paragraph 17 repeals section 188 of FA 2003, which introduced the exemption for supplies for use in recycling processes.

18. Paragraph 18 inserts a reference to metal recycling in section 79(2) of FA 2011 to provide that, where the supply takes place in Northern Ireland, the lower rate for supplies for use in recycling processes takes precedence over the lower rate for supplies of gas. It also repeals section 80 of FA 2011, which suspended the exemption.

19. Paragraph 19 provides for the amendments made by paragraphs 2 to 18 of this Schedule to come into effect for supplies of taxable commodities made on or after 1 April 2012.

20. Paragraph 20 amends paragraph 42 of Schedule 6 (amount payable by way of climate change levy). It inserts a new subparagraph (ba) into subparagraph (1) to provide for the level of CCL payable on reduced-rate supplies of electricity only to be 10 per cent. It also replaces the table of rates and makes consequential amendments.

21. Paragraph 21 amends the deemed supply provisions in paragraph 43B of Schedule 6 in consequence of the introduction of the new reduced rate for supplies of electricity.

22. Paragraph 22 amends section 79(3)(a) of FA 2011 to revise the rate of CCL applying to gas supplies in Northern Ireland before 1 November 2013 from £0.00062 to £[x.xxxxx] per kilowatt hour.

23. Paragraph 23 provides for the changes in paragraphs 20 to 22 of this Schedule to have effect for supplies treated as taking place on or after 1 April 2013.

BACKGROUND NOTE

24. 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 and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

Rates, including the reduced rate

25. Since the CCL rates were increased in 2007 they have kept pace with inflation so that the levy maintains its environmental effect. On each occasion that the rates have increased the changes have been legislated for in the previous year's FA.

26. Climate Change Agreements (CCAs) were introduced alongside the levy in recognition of the levy's impact on the competitiveness of energy-intensive sectors of industry. They are voluntary agreements made between the Department of Energy and Climate Change and sector associations and their members. The agreements entitle

participating facilities to pay a reduced rate of levy in return for meeting challenging targets for improving energy efficiency or reducing emissions.

27. The reduced rate of CCL, which is currently 35 per cent for supplies of all taxable commodities, is claimed by facilities in the CCA scheme. This Schedule provides for the level of CCL payable on reduced-rate supplies of electricity to be amended to 10 per cent from 1 April 2013. This amendment to the reduced rate will help mitigate the impacts of the carbon price floor (an extension of CCL and fuel duty to fossil fuels used to generate electricity from April 2013) on energy-intensive industry.

28. FA 2011 introduced a new lower rate of CCL on supplies of gas in Northern Ireland between 1 April 2011 and 31 October 2013, set at 35 per cent of the full rate of CCL on gas. The amendment introduced by this Schedule to the main CCL rate for gas from 1 April 2013 necessitates an increase to the lower rate on gas in Northern Ireland from the same date in order to maintain the differential.

Retrospective change to paragraph 45A of Schedule 6

29. Until 1 April 2011, paragraph 42 of Schedule 6 provided that, if a supply was a reduced rate supply, the amount payable by way of levy was 20 per cent of the amount that would be payable if it was not a reduced rate supply. This figure was amended from 20 to 35 per cent by section 18 of FA 2010.

30. Paragraph 45A of Schedule 6 deals with circumstances in which a supply has been treated as a reduced rate supply but it is later determined that it should not have been. Under this paragraph a relief recipient that has claimed too much relief is deemed to have made a taxable supply to himself. When the reduced rate was amended from 20 to 35 per cent from 1 April 2011 the figure of 80 per cent in paragraph 45A should have been amended to 65 per cent. Paragraph 1 of this Schedule corrects that omission with retrospective effect to ensure that affected relief recipients are not required by law to pay more levy from 1 April 2011 than was intended when the reduced rate change was originally made.

Metal recycling processes

31. Certain supplies of taxable commodities used in the primary production of aluminium and steel have benefited from exemption since the levy's introduction because they are not being used as fuels or there is a dual use. In order that the exemption did not distort trade with competing recycling processes, an exemption was also granted for the use of taxable commodities in certain aluminium and steel

recycling processes. The exemptions applied only to processes up to the production of crude metal. Taxable commodities used thereafter in all forms of production are subject to the levy.

32. The exemption for taxable commodities used in recycling processes was a State aid which required the approval of the European Commission. This approval expired on 31 March 2011 and the Government suspended the exemption by Treasury Order while it continued discussions with the Commission to secure State aid approval for a further period of exemption. Owing to concerns the Commission expressed about the possible impact on European competition, the UK agreed to a 20 per cent lower rate rather than a full exemption. It is intended that the lower rate will be introduced on 1 April 2012.

33. If you have any questions about this change or comments on the legislation please contact Cathy Smith on 020 7147 0668 (email: cathy.smith2@hmrc.gsi.gov.uk).

1 Climate change levy: climate change agreements

Schedule 1 makes provision about climate change agreements for the purposes of climate change levy.

SCHEDULES

SCHEDULE 1

Section 1

CLIMATE CHANGE LEVY: CLIMATE CHANGE AGREEMENTS

1 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

2 In paragraph 44(1)(a), (2A) and (2C) for "Secretary of State" substitute "Administrator".

3 In paragraph 45(1) for "Secretary of State" substitute "Administrator".

4 In paragraph 45B(2) and (6) for "Secretary of State" (wherever occurring) substitute "Administrator".

5 In the cross-heading before paragraph 47 omit "with Secretary of State".

6 In paragraph 47(1)—
- (a) in paragraph (a) for "Secretary of State" substitute "Administrator",
- (b) omit the "and" after paragraph (f),
- (c) in paragraph (g)—
  - (i) for "five-yearly" substitute "seven-yearly", and
  - (ii) after "Secretary of State" insert "or the Administrator", and
- (d) after paragraph (g) insert ", and
  - (h) containing any terms required by regulations falling within paragraph 52E".

7 (1) Paragraph 48 is amended as follows.

(2) In sub-paragraph (3)(c)—
- (a) for "five-yearly" substitute "seven-yearly", and
- (b) after "Secretary of State" insert "or the Administrator".

(3) In sub-paragraph (4)—
- (a) in paragraph (a) for "Secretary of State" substitute "Administrator",
- (b) omit the "and" after paragraph (c), and
- (c) after paragraph (d) insert ", and
  - (e) containing any terms required by regulations falling within paragraph 52E".

(4) In sub-paragraph (5)—
- (a) for paragraph (b) substitute—
  - "(b) entered into with the Administrator,",
- (b) omit paragraph (c),
- (c) omit the "and" after paragraph (d), and

(d) after paragraph (e) insert “, and

(f) containing any terms required by regulations falling within paragraph 52E”.

8 (1) Paragraph 49 is amended as follows.

(2) In sub-paragraph (3) for “Secretary of State” (wherever occurring) substitute “Administrator”.

(3) In sub-paragraph (7) for “paragraphs 47 and 48 and this paragraph” substitute “this Part of this Schedule”.

(4) In sub-paragraph (8)—

(a) for “Secretary of State” substitute “Administrator”,

(b) after paragraph (a) insert “or”, and

(c) omit paragraph (c) and the “or” before it.

9 After paragraph 52 insert—

“The Administrator etc

52A (1) In this Part of this Schedule references to “the Administrator” are to the body appointed as such by regulations made by the Secretary of State.

(2) The body appointed must be a body established by an enactment (as defined in section 97 of the Climate Change Act 2008).

(3) Different bodies may be appointed in relation to facilities in different parts of the United Kingdom.

52B (1) The Administrator is responsible for administering the scheme set out in paragraphs 44 to 52.

(2) This covers (in particular) the administration of climate change agreements.

(3) In this Part of this Schedule “administrative function” means—

(a) the Administrator’s function imposed by sub-paragraph (1), or

(b) any other function of the Administrator conferred or imposed by or under a provision of this Part of this Schedule.

52C (1) The Administrator may require persons falling within sub-paragraph (2) to pay to the Administrator such charges as may from time to time be specified to cover any costs incurred by the Administator in carrying out any administrative function.

(2) The persons falling within this sub-paragraph are parties or potential or former parties to agreements falling within paragraph 47 or to umbrella or underlying agreements within the meaning of paragraph 48.

(3) In sub-paragraph (1) “specified” means specified in, or determined in accordance with, a scheme made by the Administrator for the purposes of this paragraph.

(4) A scheme may provide for the times at which, and the manner in which, charges are to be paid.

(5) Paragraph 146(7) applies in relation to the Administrator's power to make a scheme under this paragraph as it applies in relation to a power to make regulations under this Schedule.

(6) A scheme may revoke or vary any previous scheme.

(7) A scheme may be made only with the consent of the Secretary of State.

(8) Charges received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.

(9) Sub-paragraph (8) does not apply if the Administrator is the Environment Agency.

52D (1) The Secretary of State may by regulations make provision about the administration of the scheme set out in paragraphs 44 to 52.

(2) Sub-paragraph (1) covers (in particular)—

(a) provision about climate change agreements, and

(b) provision about how the Administrator is to carry out any administrative function.

(3) Without prejudice to the generality of the sub-paragraphs above, regulations may contain any provision falling within any of paragraphs 52E to 52F.

(4) Regulations may—

(a) require the Administrator to obtain the Secretary of State's consent to any course of action,

(b) confer or impose other functions on the Secretary of State or the Administrator, or

(c) confer or impose functions on other persons.

(5) The Secretary of State may give directions to the Administrator about how the Administrator is to carry out any administrative function (and this power to give directions includes power to vary or revoke directions previously given).

(6) The Secretary of State may issue guidance to the Administrator about how the Administrator is to carry out any administrative function; and the Administrator must have regard to any guidance issued.

52E (1) Regulations may—

(a) specify terms which must be included in agreements falling within paragraph 47 or in umbrella or underlying agreements within the meaning of paragraph 48, and

(b) confer power on the Administrator to vary such agreements to take account of any changes in the terms specified under paragraph (a) from time to time.

(2) The terms which may be specified under sub-paragraph (1)(a) include (in particular) terms falling within paragraph 49(4) under which the absence (or partial absence) of any progress towards

meeting any targets for a facility may be made up for by the payment to the Administrator of a sum specified in, or determined in accordance with, the regulations.

(3) Sums received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.

52F (1) Regulations may confer power on the Administrator—

(a) to impose a financial penalty of a specified amount on a person who, as a representative of a facility to which a climate change agreement applies, contravenes a term of the agreement, and

(b) to terminate, with effect from a specified date, the agreement so far as it applies to the facility if—

(i) the financial penalty is not paid to the Administrator within a specified period, or

(ii) the contravention is not remedied to the Administrator's satisfaction within a specified period.

(2) Regulations may also confer power on the Administrator to terminate, with effect from a specified date and without first imposing a financial penalty, a climate change agreement so far as it applies to a facility if there is a contravention of the agreement by a person who is a representative of the facility.

(3) Neither sub-paragraph (1)(a) nor sub-paragraph (2) covers a failure to meet, or to make progress towards meeting, any targets set for a facility under a climate change agreement.

(5) If regulations falling within sub-paragraph (1) or (2) are made, the regulations must also—

(a) confer rights of appeal against a decision taken by the Administrator to impose a financial penalty or to terminate a climate change agreement (as the case may be), and

(b) specify the court, tribunal or person who is to hear and determine the appeal.

(6) The Secretary of State may be specified for the purposes of sub-paragraph (5)(b).

(7) Penalties received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.

(8) Regulations may confer power on the Administrator to terminate, with effect from a specified date, a climate change agreement so far as it applies to a facility in specified circumstances not involving a contravention of the agreement.

(9) In this paragraph—

"representative" has the meaning given by paragraph 47(2), and

"specified" means specified in, or determined in accordance with, the regulations.

(10) If a climate change agreement is terminated in respect of a facility before the start of, or during, a period specified for the facility in

such a certificate as is mentioned in paragraph 44(1), the Administrator must, in respect of the facility, give a variation certificate in relation to the specified period—

(a) within paragraph 45(1)(a), or (as the case may be)

(b) within paragraph 45(1)(b) specifying the day on which the agreement is terminated."

10 The amendments made by this Schedule have no effect in relation to climate change agreements entered into with the Secretary of State before the day on which this Act is passed.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: CLIMATE CHANGE AGREEMENTS

SUMMARY

1. This clause and Schedule amend Schedule 6 to the Finance Act 2000 ("Schedule 6") to make changes to the administration of the climate change agreement (CCA) scheme from 1 April 2013. Participants of the scheme are entitled to a discount from the climate change levy (CCL) in return for meeting energy efficiency or emission reduction targets.

DETAILS OF THE SCHEDULE

2. Paragraph 2 substitutes "Administrator" for "Secretary of State" in paragraphs 44(1)(a), (2A) and (2C) of Schedule 6 to ensure that the reduced rate of levy applies where the Administrator issues and varies certificates.

3. Paragraph 3 substitutes "Administrator" for "Secretary of State" in paragraph 45(1) of Schedule 6 to provide for the issue of variation certificates by the Administrator.

4. Paragraph 4 substitutes "Administrator" for "Secretary of State" in paragraphs 45B(2) and (6) of Schedule 6 to provide for the Administrator to certify unsatisfactory progress towards meeting targets.

5. Paragraph 5 removes the words "with Secretary of State" in the heading before paragraph 47 of Schedule 6.

6. Paragraph 6 amends paragraph 47(1) of Schedule 6 to provide that direct agreements will be made with the Administrator rather than the Secretary of State, and contain any terms required by regulations, and to provide that the Administrator will review targets seven-yearly or more frequently.

7. Paragraph 7 amends paragraph 48 of Schedule 6 to provide that where there is a combination of umbrella and underlying agreements under the CCA scheme, both kinds of agreements will be entered into with the Administrator, who will also review targets seven-yearly or more frequently. It also provides that the agreements must contain any terms required by regulations.

8. Paragraph 8 makes a number of consequential amendments to paragraph 49 of Schedule 6.

9. Paragraph 9 inserts the following new paragraphs into Schedule 6:

- Paragraph 52A provides for one or more bodies to be appointed as the Administrator(s) of the scheme by regulations made by the Secretary of State.

- Paragraph 52B provides for the Administrator to administer the scheme in accordance with paragraphs 44 to 52 of Schedule 6.

- Paragraph 52C provides for the Administrator to charge fees, with the consent of the Secretary of State, to recover costs incurred in carrying out its administrative function.

- Paragraph 52D provides for the Secretary of State to make regulations, give directions and issue guidance concerning the administration of the scheme.

- Paragraph 52E provides for the regulations to specify the terms of the umbrella and underlying agreements under the CCA scheme, and to provide for a buy-out fee to be paid to the Administrator to make up for a lack of satisfactory progress towards meeting targets.

- Paragraph 52F provides for the regulations to give the Administrator the power to impose financial penalties for contravening a term of an agreement, and to terminate agreements if the financial penalty is not paid or the contravention is not remedied. Any regulations made must also confer the right of appeal against decisions to impose penalties, or to terminate agreements for failing to pay a penalty or failing to remedy a contravention. The paragraph also provides for regulations to give the Administrator the power to terminate an agreement in specified circumstances not involving a contravention of it.

10. Paragraph 10 provides for the changes contained in this Schedule to have no impact on CCAs entered into before the Finance Bill receives Royal Assent.

BACKGROUND NOTE

11. CCL is a tax on electricity, natural gas, liquefied petroleum gas and solid fuels when supplied for use by the business and public sectors. The levy is designed to encourage energy efficiency and the take up of electricity from renewable sources in order to reduce carbon emissions. It was introduced on 1 April 2001.

12. The CCA scheme was introduced at the same time as the levy. Specified energy intensive businesses were allowed to enter into agreements with the Department of Energy and Climate Change (DECC) to meet energy efficiency or emission reduction targets and, as a result, would be entitled to pay a reduced rate of CCL on all taxable commodities. Since 1 April 2011 the reduced rate has been 35 per cent of the full rates of levy for all taxable commodities but, as announced in the Autumn Statement on 29 November 2011, it is due to be amended to 10 per cent for electricity only from 1 April 2013.

13. The existing CCA scheme is due to come to an end on 31 March 2013. The Government intends to extend the scheme to 2023 and make changes to simplify its administration to reduce burdens on business, and allow a more flexible approach to the administration of the scheme.

14. CCAs are currently administered by DECC. It is the Government's intention that the future scheme will be administered by a Scheme Administrator to align with the EU Emissions Trading System (ETS) and the Carbon Reduction Commitment. The administrative costs to Government of delivering CCAs will be recovered via a charging regime, in line with the Government's general policy of seeking cost recovery.

15. Under the existing CCA scheme, if a business fails to meet its milestone target, it must purchase carbon credits via the UK ETS in order to be regarded as having made up for that lack of satisfactory progress. The UK ETS has largely been supplanted by the EU ETS. In addition to the overheads associated with a trading scheme, the small market outside of EU ETS is expected to make UK ETS highly volatile. The Government therefore intends to close the UK ETS. Under the new CCA scheme, a simple buy-out mechanism, operated by the Administrator, will be the means by which participants make up for any lack of satisfactory progress towards meeting their CCA targets.

16. If you have any questions about this change, or comments on the legislation, please contact Andy Jameson on 020 7147 2379 (email: andy.jameson@hmrc.gsi.gov.uk).

1 Climate change levy: electricity produced in combined heat and power stations

(1) Paragraph 20A of Schedule 6 to FA 2000 (electricity produced in combined heat and power stations) is amended as follows.

(2) In sub-paragraph (1)—
   (a) omit the "and" after paragraph (c), and
   (b) after paragraph (d) insert ", and
      (e) the electricity is actually supplied before [...]."

(3) In sub-paragraph (4)(a)—
   (a) in sub-paragraph (i), after "station" insert "before 1 April 2013", and
   (b) in sub-paragraph (ii), after "station", in the first place it occurs, insert "before 1 April 2013".

(4) The following repeals are made in consequence of subsections (1) to (3).

(5) Omit paragraphs 20A and 20B of Schedule 6 to FA 2000.

(6) In paragraph 24(2) of that Schedule—
   (a) omit "or 20A",
   (b) omit "or in combined heat and power stations", and
   (c) omit "or 20B".

(7) Omit paragraph 149A of that Schedule.

(8) Omit sections 123 and 124 of FA 2002.

(9) Omit section 193(3) and (5) of FA 2003.

(10) The repeals made by subsections (4) to (9) come into force on the day appointed by the Treasury by order made by statutory instrument.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: ELECTRICITY PRODUCED IN COMBINED HEAT AND POWER STATIONS

SUMMARY

1. This clause provides for the ending of the exemption from climate change levy (CCL) for electricity produced in either a fully exempt or a partly exempt combined heat and power (CHP) station that is supplied by an electricity utility to an energy consumer, with effect from 1 April 2013. As a result of this clause and regulations to be laid later in 2012, any electricity acquired by an electricity utility from a generator after that date will not be eligible for the exemption. However, if the electricity was generated in an eligible CHP station before that date and equivalent amounts of electricity are supplied to a final energy consumer, an electricity utility will be able to exempt the supply up to a date to be announced at Budget 2012.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for the amendment of paragraph 20A of Schedule 6 to the Finance Act 2000 ("Schedule 6").

3. Subsection (2) amends paragraph 20A(1) to insert new sub-paragraph (e) to provide that the exemption relates only to electricity actually supplied before [date to be announced at Budget 2012].

4. Subsection (3) amends paragraph 20A(4)(a) to provide that for the purposes of paragraphs 20A and 20B of Schedule 6, only electricity produced in either a fully exempt or a partly exempt CHP before 1 April 2013 is considered CHP electricity for the purposes of this exemption.

5. Subsection (4) provides for consequential repeals needed as a result of the amendments made by subsections (1) to (3). These are set out in subsections (5) to (9).

6. Subsection (10) makes provision for the repeals made by subsections (4) to (9) to come into force on the day appointed by HM Treasury in a statutory instrument.

BACKGROUND NOTE

7. When the CCL was introduced in 2001 CHP-produced electricity supplied directly from the station that produced it to a final energy consumer (including self-supplies) was exempt. In April 2003, to encourage greater CHP electricity generation, this exemption was extended to include CHP electricity supplied to an energy consumer other than by the station that produced it (indirect supplies). CHP-produced electricity is electricity that has been produced in a CHP station that meets criteria set out in the CHP Quality Assurance (CHPQA) Standard run by the Department of Energy and Climate Change. Under that Standard (which is the methodology used in the UK to define high efficiency co-generation) a CHP station is certified as being either fully- or partly exempt for the purposes of CCL.

8. Once electricity enters the national grid, the technology used to generate that electricity is no longer distinguishable. As a result of the extension of the CCL exemption to indirect supplies in 2003, paragraph 149A of Schedule 6 made provision for the CHP certification regime. CHP levy exemption certificates (CHP LECs) were introduced to provide evidence that CHP electricity had been produced.

9. CHP LECs are issued by the regulators of the regime, the Office of the Gas and Electricity Markets and the Northern Ireland Authority for Utility Regulation. Electricity suppliers buy LECs from CHP generators in the expectation that they will recover that outlay by applying the CCL exemption when they make onward supplies of electricity to final energy consumers. When such supplies are made the electricity utilities notify the regulator of the associated LEC identifiers and redeem them.

10. To cater for variations in supply and demand, paragraph 20B of Schedule 6 enables electricity suppliers to match the acquisition of CHP electricity with supplies that are exempt from CCL because they were made under the terms of a contract that contains a CHP declaration. The matching is carried out over quarterly periods with the facility to carry forward credit and debit balances to subsequent periods.

11. A credit occurs when acquisition in a period exceeds supply. A debit occurs where supply exceeds acquisition. A credit can be carried forward continuously until the electricity supplier stops making supplies under the terms of CHP source contracts. A continuous debit can be carried forward for a maximum of two years at which point the electricity supplier must account to HM Revenue and Customs for the CCL shortfall.

12. Following a consultation in 2010-11, the Government confirmed at Budget 2011 that a carbon price floor would be introduced on 1 April 2013. This will be achieved by taxing fossil fuels used in electricity generation under the existing CCL and fuel duty regimes. Supplies of fossil fuels (apart from oils) used in most forms of electricity generation will become liable to CCL, while oils used in electricity generation will no longer be fully relieved of fuel duty. They will be charged at new carbon price support rates of CCL or fuel duty, as appropriate.

13. The Government reviewed its support for CHP under the tax system in the light of the proposed introduction of the carbon price floor and the expiry on 31 March 2013 of State aid approval for the CCL CHP indirect supplies exemption. At Budget 2011, it announced that from 1 April 2013:

    - the indirect supply exemption would end, meaning that no new LECs will be issued for CHP electricity generated after that date; and

    - fossil fuels used to generate electricity in a CHP plant registered under the CHPQA programme as either fully or partly exempt would, subject to State aid approval, be liable to lower carbon price support rates of CCL and fuel duty.

14. The Government will also, in circumstances where electricity utilities have a credit balance relative to the provisions of paragraph 20B of Schedule 6, continue to allow CCL-exempt supplies to be made in order to use up that credit balance but only for a limited number of years.

15. CHP LECs are necessary for the administration of the CCL exemption for indirect supplies made by utilities only; there is no change to the levy exempt status of supplies of CHP electricity that are made direct from the station that produced it to the final consumer (including self-supplies).

16. If you have any questions about this change, or comments on the draft legislation, please contact David Godfrey on 0161 827 0335 (email (dave.godfrey@hmrc.gsi.gov.uk).

Draft Regulations laid before Parliament under paragraph 146(3) of Schedule 6 to the Finance Act 2000, for approval by resolution of the House of Commons.

STATUTORY INSTRUMENTS

2013 No.

CLIMATE CHANGE LEVY

The Climate Change Levy (Combined Heat and Power Stations) (Amendment) Regulations 2013

Laid before Parliament in draft

The Treasury, in exercise of the powers conferred by section 30 of, and paragraphs 16(2) and (3), 42B(4)(**a**) and 149 of Schedule 6 to, the Finance Act 2000(**b**), make the following Regulations, a draft of which has, in accordance with paragraph 146(3) of that Schedule, been laid before Parliament and approved by a resolution of the House of Commons:

1. These Regulations may be cited as the Climate Change Levy (Combined Heat and Power Stations) (Amendment) Regulations 2013 and come into force on 1st April 2013.

2. Amend the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005(**c**) as follows.

3. In the heading to regulation 3 before "for" insert "and reduced carbon price support rates".

4.In regulation 3 (supplies to combined heat and power stations: exemption for inputs)—

(a) in paragraph (1) for "and 15(4)(a)" substitute ", 15(4)(a) and 42B(4)(a)";

(b) in paragraph (2) before "149(1)" insert "42B(4)(b),".

5.—(1) Renumber regulation 4 (supplies from partly exempt combined heat and power stations: exemptions for outputs) as regulation 4(1);

(2) Insert as regulation 4(2) and (3)—

"(2) For the purposes of that limit—

(a) any supplies made by a station to a utility or for domestic or non-business charity use shall be disregarded; but

(b) the electrical equivalent of any mechanical output of a station produced otherwise than for the purpose of electricity generation shall be included.

(3) For the purposes of paragraph 2(b), the electrical equivalent of any mechanical output of a station is derived by multiplying that output by 1.05.".

6. Omit regulation 7.

(**a**) Paragraph 42B(4) was inserted by paragraph 7 of Schedule [ ] to the Finance Act 2012 (c.).
(**b**) 2000 c.17.
(**c**) S.I. 2005/1714.

name
name

xx.xx 2013 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1 April 2013, amend the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 (SI 2005/1714) ("the principal Regulations").

Regulations 3 and 4 amend regulation 3 of the principal Regulations so that a combined heat and power station's(**a**) threshold efficiency percentage and efficiency percentage stated in that regulation apply for the purposes of determining the fraction of a supply on which the reduced carbon price support rate of climate change levy is applied (see paragraph 42B of Schedule 6 to the Finance Act 2000).

Electricity up to a specified, quantitative limit produced in a partly exempt combined heat and power station may be supplied exempt from climate change levy. Regulation 5 provides, for the purposes of calculating that quantitative limit, for supplies to a utility(**b**)or for a domestic or non-business use of a charity to be disregarded, but requires the electrical equivalent of any mechanical output of the station produced otherwise than for the purpose of generating electricity to be included.

Regulation 6 revokes a transitional provision which is no longer necessary.

[Tax Information and Impact Notes covering this instrument were published on 6th December 2011 alongside a draft of the Finance Act 2012 and this instrument and are available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. They remain an accurate summary of the impacts that apply to this instrument.]

(**a**) For the meaning of which see paragraph 148(3) of Schedule 6 to the Finance Act 2000 (c. 17).
(**b**) For the meaning of which see paragraph 150 of Schedule 6 to the Finance Act 2000.

EXPLANATORY MEMORANDUM TO

THE DRAFT CLIMATE CHANGE LEVY (COMBINED HEAT AND POWER STATIONS) (AMENDMENT) REGULATIONS 2013

2013 No.

1. This explanatory memorandum has been prepared by HM Revenue & Customs on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 (SI 2005/1714) ("the principal Regulations") and comes into force on 1 April 2013.

2.2 The principal Regulations are amended so that the threshold efficiency percentage for a combined heat and power (CHP) station set in those Regulations and a station's efficiency percentage determined in accordance with those Regulations apply for determining the extent that reduced carbon price support (CPS) rates of climate change levy (CCL) can apply.

2.3 This instrument also re-introduces certain categories of supplies that may be disregarded when calculating the limit on the quantity of electricity that may be produced in, and supplied from, a partly exempt[1] CHP station exempt from CCL for a given Annual Operation, and makes provision to include in that calculation the electrical equivalent of any mechanical output of the station produced otherwise than for electricity generation.

2.4 This instrument also revokes spent transitional provisions that could apply in determining the limit on the quantity of electricity that may be produced in, and supplied from, a partly exempt station exempt from CCL for the calendar year 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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[1] This terms is explained in paragraph 7.6

4. Legislative Context

4.1 The primary legislation containing provisions for CCL is Schedules 6 and 7 to the Finance Act 2000. An exemption from the levy for supplies of fossils fuels and electricity used by a CHP station is contained in paragraph 15 of Schedule 6. An exemption from the levy for electricity produced in a CHP station that is supplied by an electricity utility indirectly to an energy consumer is contained in paragraph 20A of Schedule 6.

4.2 The principal Regulations determine, among other things, the extent to which supplies to a certified CHP station can be exempt from CCL. They apply to both the exemption for supplies of leviable fuel to such stations; and in relation to the output electricity of a station, the circumstances in which a full CHP exemption certificate will be issued; and where a part exemption certificate is issued, they also set the limit of the electricity that may be supplied exempt from CCL.

4.3 Section 78 of, and Schedule 20 to, the Finance Act 2011 amends Schedule 6 from 1 April 2013 to remove the exemption from CCL for supplies of solid fuels, liquefied petroleum gas and gas used for the generation of electricity and introduces new CPS rates of CCL for such supplies. Section [ ] of, and Schedule [ ] to, the Finance Act 2012 further amends Schedule 6 so that such supplies to CHP stations are also charged with CCL, but at lower CPS rates (compared with the main CPS rates) relative to an objective threshold efficiency percentage under the CHPQA Standard[2].

4.4 Under paragraph 16(2) of Schedule 6 and regulation 4 of the principal Regulations, a supply of electricity from a partly exempt CHP is currently exempt from CCL if the quantity of electricity supplied does not exceed the specified limit set out in regulations made by the Treasury. This instrument allows any supplies made to a utility or for domestic or non-business charity use by a partly exempt CHP to be disregarded when calculating that limit, but requires the electrical equivalent of any mechanical output of the station produced otherwise than for electricity generation to be included.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

[2] The Department of Energy and Climate Change Combined Heat and Power Quality Assurance (CHPQA) Standard provides the methodology in the UK for assessing the quality of a CHP station in terms of energy efficiency and environmental performance. The Threshold Efficiency Percentage is one of two key parameters; the other being the Quality Index and both can be determined from three sets of data: fuel used, power generated and heat supplied.

The Economic Secretary, Chloe Smith MP, has made the following statement regarding Human Rights:

In my view the provisions of the Climate Change Levy (Combined Heat and Power Stations) (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The CCL is an important part of the UK's strategy for meeting the UK's legally binding target under the Kyoto Protocol of a 12.5 per cent reduction in greenhouse gas emissions below 1990 levels over the period 2008 to 2012. To help meet these targets, CCL encourages the efficient use of energy by business and the public sector. Domestic supplies of energy are not subject to the tax.

7.2 In the Budget 2011, the Government announced it would introduce a carbon price floor from 1 April 2013 to support investment in low-carbon generation. Supplies of fossil fuels used in most forms of electricity generation will become liable either to fuel duty or CCL from that date. Such supplies will be charged at newly created CPS rates of fuel duty (oils) or CCL (other fossils fuels), with the rate for each type of fuel determined by its average carbon content. The CPS rates will reflect the differential between the futures market price of carbon and the floor price determined by the Government.

7.3 As part of that announcement the Government outlined its intention to withdraw the exemption from CCL for supplies of electricity generated in a CHP station that are made by an electricity utility to an energy consumer, ("the CHP indirect supplies exemption"), and introduce lower CPS rates for supplies of fossil fuels made to good-quality CHP stations. These changes will also come into effect on 1 April 2013.

7.4 Regulation 4 of this instrument amends the principal Regulations so that the threshold efficiency percentage of a CHP set in those Regulations and a station's efficiency percentage determined in accordance with those Regulations applies for the purposes of determining the extent that reduced CPS rates can apply from 1 April 2013.

7.5 The CCL legislation provides for exemptions for environmentally friendly forms of electricity generation, including one to encourage CHP generation. The extent to which electricity qualifies for the exemption depends on the efficiency and environmental performance of a CHP station as assessed under the CHPQA Standard.

7.6 Where a CHP station achieves the Quality Index under the CHPQA Standard (see footnote 2) it is certified as being fully exempt and all the electricity supplied is exempt from CCL. Where a CHP station only partly meets that test, it is certified as being partly exempt in recognition of its

reduced environmental benefits and only a proportion of the electricity produced (its qualifying limit) can be supplied exempt from CCL. Such stations are known as partly exempt CHP stations.

7.7 At the introduction of CCL in April 2001, CHP-generated electricity was exempt from the levy only where the supply of electricity was made direct by the CHP operator to the end consumer. However, when calculating the limit on the quantity of electricity that may be produced in and supplied from a partly exempt CHP station exempt from the levy, any supplies from the station to a utility or for domestic or non-business charity use could be disregarded. But the calculation had to include the electrical equivalent of any mechanical output of the station produced otherwise than for electricity generation.

7.8 In April 2003, to encourage greater CHP electricity generation, the original exemption for CHP electricity was extended to "indirect supplies", that is to say supplies made via an electricity utility to an energy consumer. To cater for the fact that all qualifying CHP-generated electricity could be supplied exempt, all qualifying electricity, known as qualifying power output (QPO), is subject to levy exemption certificates (CHP LECs) when it is produced. As a consequence of the introduction of CHP LECs it was necessary to require all categories of supply to be taken into account for the purposes of determining the QPO limit of a partly exempt CHP station and so the supply category restrictions for the purposes of reckoning contribution towards QPO was removed.

7.10 The QPO produced in a CHP station after 31 March 2013 will no longer be the subject CHP LECs. Amendments to the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) are being made by [S.I. 2012/…..]

7.11 Regulation 5 of this instrument therefore re-introduces from 1 April 2013 the provisions that previously applied before the introduction of the CHP LEC system in respect of partly exempt CHP stations.

8. Consultation outcome

8.1 In line with the Government's framework for making tax policy a draft of this instrument was published for consultation on 6 December 2012.

9. Guidance

9.1 The details of this change were explained in a Tax Information and Impact Note published on 6 December 2012. Six public notices covering CCL are available at www.hmrc.gov.uk.

10. Impact

10.1 [Tax Information and Impact Notes covering this instrument were published on 6 December 2011 alongside a draft of the Finance Act 2012 and this instrument. They are available on the HMRC website at

http://www.hmrc.gov.uk/thelibrary/tiins.htm. They remain an accurate summary of the impacts that apply to this instrument.]

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is a general tax provision and the same for all operators of CHP stations within the CHPQA programme.

11.3 The basis for the final decision on what action to take to assist small business is described in paragraphs 7.1 to 7.11, so no such action is taken for this general tax provision.

12. Monitoring & review

12.1 Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Customs, Stamps and Money Directorate of HMRC.

13. Contact

David Godfrey at HM Revenue & Customs Tel: 0161 827 0335 or email: dave.godfrey@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

VAT: Low Value Consignment Relief (LVCR)

1 Relief from VAT on low value goods: restriction relating to Channel Islands

(1) In Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984 (S.I. 1984/746) (reliefs for goods of certain descriptions), Group 8 (articles sent for miscellaneous purposes) is amended as follows.

(2) The existing Note becomes Note (1) (and accordingly "*Note*" in Group 8 becomes "*Notes*").

(3) After that Note insert—

"(2) Item 8 does not apply in relation to any goods sent from the Channel Islands under a distance selling arrangement.

(3) For the purposes of Note (2)—

"distance selling arrangement", in relation to any goods, means any transaction, or series of transactions, under which the person to whom the goods are sent receives them from a supplier without the simultaneous physical presence of the person and the supplier at any time during the transaction or series of transactions, and

"supplier" means any person who is acting in a commercial or professional capacity."

(4) The amendment of that Schedule by this section is without prejudice to any power to amend that Schedule by subordinate legislation.

(5) The amendments made by this section have effect in relation to goods imported on or after 1 April 2012.

EXPLANATORY NOTE

RELIEF FROM VAT ON LOW VALUE GOODS: RESTRICTION RELATING TO CHANNEL ISLANDS

SUMMARY

1. This clause will remove Low Value Consignment Relief (LVCR) from mail order goods imported into the UK from the Channel Islands.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that Group 8 of Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984 (S.I. 1984/746) (articles sent for miscellaneous purposes) is amended.

3. Subsection (3) inserts two new Notes into Group 8 which together provide that LVCR will not apply to any goods sent from the Channel Islands under a distance selling arrangement.

4. Subsection (4) provides that the amendment of Schedule 2 by primary legislation does not prevent amendment of that Schedule in future by subordinate legislation.

5. Subsection (5) provides that the amendments have effect in relation to mail order goods imported on or after 1 April 2012.

BACKGROUND NOTE

6. Article 23 of Council Directive 2009/132 provides for Member States to exempt from VAT goods of negligible value imported into the European Union. Member States may set the threshold for exemption at between €10 and €22 (between £9 and £20). The relief is implemented in the UK by Item 8 of Group 8 of Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984 (SI 1984/746). Recital 5 of Council Directive 2009/132 makes granting of the relief (at any level) subject to the condition that it is not liable to affect the conditions of competition on the market. Article 23 of the Directive also allows member states to exclude from the relief goods which have been imported by mail order.

7. In Budget 2011, the Chancellor of the Exchequer announced a reduction in the threshold for LVCR from £18 to £15 with effect from 1 November 2011. He also announced his intention to explore further

measures to prevent exploitation of LVCR as it was never intended that LVCR should be used in this way.

8. Most LVCR trade is from the Channel Islands. The Government therefore concluded that the supply of mail order goods to UK customers from the Channel Islands was affecting the conditions of competition on the UK market. The Chancellor therefore announced on 9 November that LVCR would be withdrawn completely for all goods imported on or after 1 April from the Channel Islands.

9. If you have any questions about this change, or comments on the legislation, please contact Anne Treadaway on 020 7147 0337 or 07798 677515 (email: anne.treadaway@hmrc.gsi.gov.uk).

VAT: Low Value Consignment Relief (LVCR)

VAT: Cost Sharing Exemption

EXPLANATORY NOTE

EXEMPT SUPPLIES

SUMMARY

1. This clause implements Article 132(1) (f) of Council Directive 2006/112/EC, the Principle VAT Directive ("PVD"). It adds a new Group 16 (supplies of services by groups involving cost sharing) to Schedule 9 ("Schedule 9") of the Value Added Tax Act 1994 ("VATA") which exempts from VAT the supply of services by a group which consists of persons engaged in exempt or non-taxable activities so long as the services are supplied to group members at cost and for the purposes of those activities.

2. This clause also introduces a power, allowing the Treasury to impose conditions in connection with the application of the exemption.

DETAILS OF THE CLAUSE

3. Section 31 of VATA provides that supplies described in Schedule 9 are to be treated as exempt from VAT. The exempt supplies are itemised in a number of different groups in Part II of that Schedule in accordance with their subject matter (for example exempt supplies relating to land are itemised in Group 1). There is an index to the groups in Part 1 of Schedule 9. There is currently no provision in VATA for the exemption contained in Article 132(1)(f) of the PVD.

4. Subsection (1) inserts a reference to a new Group 16 into the Schedule 9 index.

5. Subsection (2) inserts a new Group 16 (supplies of services by groups involving cost sharing) into Part II of Schedule 9 which describes the exempt supply as a supply of services by an independent group of persons subject to four conditions namely:

   - the members of the group are each engaged in exempt or non-taxable activities;
   - the supply is made for and directly necessary for those activities;
   - the group merely claims exact reimbursement for those services; and
   - relief from taxation is not likely to cause distortion of competition.

1 Exempt supplies

(1) In Part 1 of Schedule 9 to VATA 1994 (index to exempt supplies of goods and services), at the appropriate place in the table insert—

"Supplies of services by groups involving cost sharing	Group 16"

(2) In Part 2 of that Schedule (the groups), at the end insert—

"GROUP 16 – SUPPLIES OF SERVICES BY GROUPS INVOLVING COST SHARING

Item No

1 The supply of services by an independent group of persons where each of the following conditions is satisfied—

(a) each of those persons is a person who is carrying on an activity ("the relevant activity") which is exempt from VAT or in relation to which the person is not a taxable person within the meaning of Article 9 of Council Directive 2006/112/EC,

(b) the supply of services is made for the purpose of rendering the members of the group the services directly necessary for the exercise of the relevant activity,

(c) the group merely claims from its members exact reimbursement of their share of the joint expenses, and

(d) the exemption of the supply is not likely to cause distortion of competition."

(3) In section 31 of that Act (exempt supplies and acquisitions), after subsection (2) insert—

"(3) The Treasury may by regulations make an exemption of a group 16 supply of a description specified in the regulations subject to conditions.

(4) Regulations under subsection (3) may—

(a) make different provision for different cases, and

(b) make consequential or transitional provision (including provision amending this Act)."

(5) In subsection (3) "group 16 supply" means a supply falling within Group 16 of Schedule 9."

6. Subsection (3) inserts new subsection 31(3) to (5) into VATA, allowing the Treasury to make regulations imposing conditions in connection with the operation of the exemption in the new group 16 and to make consequential and transitional provisions in that connection (including amendment to primary legislation).

BACKGROUND NOTE

7. The exemption reduces a barrier that might prevent businesses and organisations that have exempt and/or non-business activities for VAT purposes from joining with others to share costs...

8. Businesses and organisations that have exempt and/or non-business supplies are not able to reclaim the VAT they incur on their purchases that relate to such supplies (irrecoverable VAT). If they co-operate by forming a group to provide them with services necessary to their exempt/non-business activity they would normally pay VAT on the supply of those services. This exemption relieves such supplies from VAT but only where the services are supplied by the group to group members at cost and only if relief from VAT does not itself distort competition.

9. The exemption is defined in broad and general terms in the PVD and this is reflected in the clause. HMRC will develop detailed guidance in consultation with taxpayers in order to provide a clear framework within which the exemption can operate effectively and to the benefit of taxpayers whilst ensuring the scope for avoidance or abuse is limited.

10. The exemption will benefit all sectors undertaking exempt and/or non-business activities including charities, universities, further education colleges, banks, housing associations and insurance businesses.

11. If you have any questions about this change, or comments on the legislation, please contact David Bond on 020 7147 0058 (email: david.bond2@hmrc.gsi.gov.uk).

Tackling VAT fraud on imported road vehicles

1 VAT: notification of arrival of means of transport in UK

In Schedule 11 to VATA 1994 (administration, collection and enforcement), in paragraph 2 (accounting for VAT and payment of VAT), after sub-paragraph (5) insert—

"(5A) Regulations under this paragraph may make provision—

(a) for requiring the relevant person to give to the Commissioners such notification of the arrival in the United Kingdom of goods consisting of a means of transport, at such time and in such form and manner, as may be specified in the regulations or determined by the Commissioners in accordance with powers conferred by the regulations, and

(b) where notification of the arrival of a means of transport acquired from another member State, or imported from a place outside the member States, is required by virtue of paragraph (a), for requiring any VAT on the acquisition or importation to be paid at such time and in such manner as may be so specified or determined.

(5B) The provision that may be made by regulations made by virtue of sub-paragraph (5A) includes—

(a) provision for a notification required by virtue of that sub-paragraph to contain such particulars relating to the notified arrival of the means of transport and any VAT chargeable on its acquisition or importation as may be specified in the regulations,

(b) provision for such a notification to be given by a person who is not the relevant person and is specified, or is of a description specified, in the regulations,

(c) provision for such a notification to contain a declaration, given in such form and by such person as may be specified in the regulations, as to the information contained in the notification, and

(d) supplementary, incidental, consequential or transitional provision (including provision amending any provision made by or under this Act or any other enactment).

(5C) Subsection (3) of section 97 (orders subject to Commons approval) applies to a statutory instrument containing any regulations made by virtue of sub-paragraph (5A) which amend an enactment as it applies to an order within subsection (4) of that section.

(5D) For the purposes of sub-paragraph (5A)—

"means of transport" has the same meaning as it has in this Act in the expression "new means of transport" (see section 95);

"relevant person", in relation to the arrival of a means of transport in the United Kingdom, means—

(a) where the means of transport has been acquired in the United Kingdom from another member State, the person who so acquires it,

(b) where it has been imported from a place outside the member States, the person liable to pay VAT on the importation, and

(c) in any other case—

(i) the owner of the means of transport at the time of its arrival in the United Kingdom, or

(ii) where it is subject to a lease or hire agreement, the lessee or hirer of the means of transport at that time.”

EXPLANATORY NOTE

VAT: TACKLING VAT EVASION ON ROAD VEHICLES BROUGHT INTO THE UK

SUMMARY

1. This clause provides for the introduction in 2013 of a new notification system for arrivals of means of transport in the United Kingdom, and payment of VAT due.

DETAILS OF THE CLAUSE

2. Sub-paragraph (5A) provides that provision may be made by regulations for requiring a relevant person to notify, and make payment of any VAT due in respect of, the arrival in the UK of a means of transport from another member State, or from outside of the member States, to the Commissioners at such time and in such form and manner as they may specify.

3. Sub-paragraph (5B) provides that provision may be made by regulations made under sub-paragraph (5A):

    - to specify the particulars to be notified to the Commissioners in relation to the arrival of a means of transport in the UK (including details of any VAT chargeable);
    - for a person specified or of a description specified in the regulations who is not the relevant person to make the notification on behalf of a relevant person;
    - for the notification to contain a declaration given in such form and by such person as may be specified in the regulations in relation to the information contained in the notification, and;
    - to make supplementary, incidental and consequential changes to other parts of the legislation and introduce transitional provisions if need be.

4. Sub-paragraph (5C) provides that section 97(3) Value Added Tax Act 1994 (“VATA”) (i.e. the affirmative resolution procedure) applies to regulations made under sub-paragraph (5A) which amend an enactment.

5. Sub-paragraph (5D) introduces definitions for the terms “means of transport” and “relevant person”.

BACKGROUND NOTE

6. At Budget 2011, the Government announced a joint initiative between HM Revenue & Customs (HMRC) and the Driver and Vehicle Licensing Agence (DVLA) to combat VAT fraud on road vehicles brought into the UK.

7. From 2013, a person bringing a new or used road vehicle into the UK for permanent use on UK roads will have to notify HMRC within 14 days of the arrival of the road vehicle in the UK. In the case of an acquisition of a new road vehicle from within the EU, private individuals and non-VAT registered businesses will be required to pay any VAT due at the time of notification. VAT registered customers will continue to make payment via their VAT returns. In the case of a road vehicle imported from outside the EU, VAT will continue to be collected under existing arrangements.

8. Until HMRC is notified and any VAT due has been paid or, in the case of VAT registered businesses, is assessed as "secure", it will not be possible to licence and register a road vehicle with the DVLA. Online notification is expected to be the preferred method of communication, although a paper channel will also be available.

9. If you have any questions about this change, or comments on the legislation, please contact Richard Bysouth (email: Richard.bysouth@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No. 0000

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. X) Regulations 2013

Made - - - -	*2013*
Laid before the House of Commons	*2013*
Coming into force - -	*2013*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sub-paragraphs (4) to (5D) of paragraph 2 of Schedule 11 to the Value Added Tax Act 1994(**a**), sections 132 and 133 of the Finance Act 1999(**b**) and section 204 of the Finance Act 2003(**c**).

Citation, commencement and effect

1. These Regulations may be cited as the Value Added Tax (Amendment) (No. X) Regulations 2013.

2. These Regulations come into force on [DATE] 2013.

Amendment of the Value Added Tax Regulations 1995

3. Part XVII of the Value Added Tax Regulations 1995(**d**) (new means of transport) is amended as follows.

4. For the heading to Part XVII substitute "MEANS OF TRANSPORT".

5. For regulation 146 (interpretation of Part XVII), substitute—

"**146.** In this Part—

"acquisition" means an acquisition of goods from another member State within the meaning of section 11(1) of the Act and "acquired" shall be construed accordingly;

"arrival" means the arrival of a land vehicle in the United Kingdom;

"claim" means a claim for a refund of VAT made pursuant to section 40 of the Act and "claimant" shall be construed accordingly;

(**a**) 1994 (c.23); section 96(1) defines "the Commissioners" as meaning the Commissioners of Customs and Excise and "regulations2 as meaning regulations made by the Commissioners under the Act; sub-paragraphs (5A) to (5D) of paragraph 2 of Schedule 11 were inserted by section X of the Finance 2010 (c. X). The functions of the Commissioners of customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners For Revenue and Customs Act 2005 (c. 11); section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for her Majesty's Revenue and Customs.

(**b**) 1999 (c. 16); section 132 was amended by section 406 of, and paragraph 156 of Schedule 17 to, the Communications Act 2003 (c. 21).

(**c**) 2003 c. 14; section 204 was amended by sections 94 and 95 of the Finance Act 2007 (c. 11).

(**d**) SI 1995/2518.

"competent authority" means an authority having powers under the laws in force in any member State to register a vehicle for road use in that member State;

"Customs legislation" means the enactments referred to in section 16(1)(a) and (b) of the Act;

"DVLA" means the United Kingdom Driver and Vehicle Licensing Agency;

"first entry into service" in relation to a new means of transport means the time determined in relation to that means of transport under regulation 147;

"importation" means an importation from a place outside the member States and "import" and "importing" shall be construed accordingly;

"land vehicle" means a motorised land vehicle falling within section 95(1)(c) of the Act(**a**);

"notice published by the Commissioners" means such a notice as revised or replaced from time to time;

"registration" means registration for road use in a member State corresponding in relation to that member State to registration in accordance with the Vehicles Excise and Registration Act 1994(**b**);

a reference to a "taxable person" is limited to a reference to a taxable person acting as such in relation to an arrival.".

6.—(1) In the heading to regulation 148 (notification of acquisition of new means of transport by non-taxable persons and payment of VAT) substitute "ships and new aircraft" for "means of transport".

(2) In regulation 148—

(a) wherever it appears, for "means of transport" substitute "ships or new aircraft"; and

(b) in paragraph (2)(d) omit "registration mark allocated to it by any competent authority in another member State prior to its arrival in the United Kingdom and any chassis,".

(3) The changes made by this regulation do not have effect in relation to the arrival on or before [DAY BEFORE THE COMING INTO FORCE DATE] 2013 in the United Kingdom of a new means of transport that is a land vehicle(**c**).

7. After regulation 148, insert—

"Notification of the arrival in the United Kingdom of land vehicles and payment of VAT

148A.—(1) In this regulation—

"relevant person" has the same meaning as in sub-paragraph (5D) of paragraph 2 of Schedule 11 to the Act(**d**);

"excepted relevant person" means a relevant person who is—

(a) bringing a land vehicle into the United Kingdom in circumstances where that person is entitled to register that vehicle in the United Kingdom using the DVLA's secure Automated First Registration and Licensing system;

(b) importing a land vehicle into the United Kingdom and who is not a taxable person at the time of the arrival;

(**a**) Section 95(3) was amended by SI 1994/3128.

(**b**) 1994 (c. 22).

(**c**) Regulation 148 provides for notification of an acquisition of a new means of transport (including a land vehicle) and payment of any acquisition VAT due within specified time periods; these provisions will need to remain in force after these Regulations come into force in relation to earlier arrivals of new land vehicles that are acquisitions.

(**d**) Sub-paragraph (5D) was inserted by section X of the Finance Act 2012 (c. X).

(c) bringing a land vehicle into the United Kingdom in circumstances where the vehicle is not required to be registered for road use in the United Kingdom in accordance with the Vehicle Excise and Registration Act 1994; or

(d) returning to the United Kingdom in a land vehicle which has remained registered for road use in the United Kingdom in accordance with the Vehicle Excise and Registration Act 1994 during the period when it has been outside the United Kingdom.

(2) Where a land vehicle arrives in the United Kingdom, a relevant person other than an excepted relevant person must notify the Commissioners of the arrival within 14 days of the date of the arrival.

(3) A person required to notify under paragraph (2) may authorise a third party to notify on that person's behalf.

(4) The notification shall be made in the English language—

(a) using an electronic communications system; or

(b) in writing in paper form.

(5) Where an electronic communications system is used, it must take the form approved by the Commissioners in a general direction.

(6) An electronic communications system shall incorporate an electronic validation process.

(7) Subject to paragraph (8) and unless the contrary is proved—

(a) the use of the electronic communications system shall be presumed to have resulted in the making of the notification to the Commissioners only if this has been successfully recorded as having been made by the electronic validation process;

(b) the time of making the notification using the electronic communications system shall be presumed to be the time recorded as such by the electronic communications system; and

(c) the person making the notification shall be presumed to be the person identified as such by any relevant feature of the electronic communications system.

(8) No notification shall be treated as having been made using an electronic communications system unless it is in the form required by paragraph (5).

(9) A notification made under paragraph (4)(a) carries the same consequences as a notification made under paragraph (4)(b) except in relation to any matter for which alternative or additional provision is made by or under this regulation.

(10) A notification under paragraph (2) must—

(a) contain the particulars listed in paragraph (11);

(b) include a declaration by the person required to notify the arrival or a person authorised on that person's behalf that all the information entered in it is true and complete; and

(c) when made under paragraph (4)(b), be made at or sent to any office designated by the Commissioners for the receipt of such notifications.

(11) The particulars referred to in paragraph (10) are—

(a) the name and current address of the person bringing the land vehicle into the United Kingdom;

(b) the date of the arrival;

(c) a full description of the land vehicle which shall include any registration mark allocated to it by any competent authority in another member State prior to its arrival and any chassis identification number and engine number;

(d) in the case of an acquisition arising from a deemed supply under paragraph 6 of Schedule 4 to the Act, the value of the transaction determined in accordance with paragraph 3 of Schedule 7 to the Act;

(e) in the case of any other acquisition—

(i) the consideration for the transaction in pursuance of which the land vehicle was acquired, and

(ii) the name and address of the supplier in the member State from which the land vehicle was acquired;

(f) in the case of an import—

(i) the price paid for the land vehicle including deposit, commission and fees, and

(ii) the country in which the person bringing the land vehicle into the United Kingdom obtained it;

(g) the place where the land vehicle can be inspected;

(h) the date of notification; and

(i) any other particulars specified in a notice published by the Commissioners.

(12) Any person required under paragraph (2) to notify the Commissioners of an arrival which is an acquisition must pay any VAT due on the acquisition at the time and in the manner prescribed in regulations 148B to 148F as appropriate.

(13) In the case of an import of a land vehicle, any requirements to notify the importation and pay any tax, duty of customs or duty of excise due as may be prescribed in Customs legislation shall apply in addition to any requirements imposed by or under this regulation.

148B. Where—

(a) the arrival is a taxable acquisition which takes place in the United Kingdom, and

(b) the person acquiring the land vehicle is not a taxable person at the time of the acquisition,

payment shall be made at the time of notification.

148C. Where—

(a) the arrival is a taxable acquisition which takes place in the United Kingdom, and

(b) the person acquiring the land vehicle is a taxable person at the time of the acquisition,

payment shall be made in accordance with regulation 148E.

148D. Where the arrival is an acquisition arising from a deemed supply under paragraph 6 of Schedule 4 to the Act, payment shall be made in accordance with regulation 148E.

148E. Where this regulation applies, payment shall be made in accordance with regulation 40 having been accounted for in the appropriate return required by regulation 25.

148F. In any case where—

(a) VAT due is required to be paid at the time of notification under regulation 148B, and

(b) notification is made under regulation 148A(4)(a),

the relevant payment shall be made solely by means of electronic communications that are acceptable to the Commissioners."

Name
Name
Date — Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part XVII (new means of transport) of the Value Added Tax Regulations 1995 (S.I. 1995/2518).

Regulation 4 inserts a new heading to Part XVII.

Regulation 5 substitutes a new regulation 146 (interpretation of Part XVII) to add a number of new definitions.

Regulation 6 amends regulation 148 to limit it to the notification of acquisition of new ships and aircraft and make the necessary consequential amendments. As regulation 148 makes provision as to time limits for notification and payment of acquisition VAT due subsequent to an acquisition, regulation 6(3) makes it clear that, although the amendments to regulation 148 will apply to arrivals of any means of transport in the United Kingdom on or after [DATE OF COMING INTO FORCE] 2013, arrivals of new land vehicles in the United Kingdom on or before [DAY BEFORE DATE OF COMING INTO FORCE] 2013 will be covered by the old rules.

Regulation 7 inserts new regulations 148A to 148F to provide for a new notification system for the arrival of land vehicles in the United Kingdom and to make provision as to how and when any acquisition VAT due on an arrival is to be paid to the Commissioners.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/the library/tiins/htm.

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (AMENDMENT) (No. X) REGULATIONS 2013
2013 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty. It contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument amends Part XVII (new means of transport) of the Value Added Tax Regulations 1995 (S.I. 1995/2518) ("the Principal Regulations") to implement a new notification scheme in relation to the arrival in the United Kingdom of land vehicles[1]. This scheme applies to both new and used land vehicles and requires their arrival in the United Kingdom to be notified to the Commissioners in the manner prescribed in the regulations and for any VAT due in the case of an arrival which is an acquisition to be paid at the time and in the manner prescribed in the regulations.

2.2 The previous notification scheme for acquisitions of new means of transport (ships, aircraft and land vehicles) contained in regulation 148 of the Principal Regulations is amended so that it is limited to new ships and new aircraft. However, as regulation 148 makes provision in relation to time limits for the notification of an acquisition and the payment of any acquisition VAT due subsequent to the date of the acquisition, it will still apply as if un-amended in relation to an acquisition of a new land vehicle that takes place in the United Kingdom on or before the day before this instrument comes into force.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

None.

4. **Legislative Context**

This instrument amends the Principal Regulations.

5. **Territorial Extent and Application**

This instrument applies to the whole of the United Kingdom.

6. **European Convention on Human Rights**

As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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[1] The definition of a land vehicle can be found in section 95(1)(c) VATA 1994.

7. Policy background

7.1 At Budget 2011, the Government announced a joint HMRC-DVLA initiative to combat VAT fraud on land vehicles brought into the UK.

7.2 From [DATE] 2013, a person bringing a land vehicle into the UK from within the EU or outside of the EU for permanent use on UK roads will have to make a notification to HMRC within 14 days of the arrival of the land vehicle in the United Kingdom.

7.3 In the case of the acquisition of a land vehicle from within the EU, private individuals and non VAT registered businesses will be required to pay any acquisition VAT due at the time of notification. VAT registered customers will continue to make payment through their VAT returns.

7.4 A key change to the system is that HMRC must be notified of the arrival of land vehicle in the UK prior to any application to license and register it with the DVLA. Until such a notification is made to HMRC, it will not be possible to license and register a land vehicle with the DVLA.

7.5 A consultation document was published on 31 May 2011 and a summary of responses document was published on 6 December 2011. The legislation covering this scheme has been introduced in Finance Bill 2012 and provides the vires for this instrument.

Consolidation

7.6 There are no projects presently on hand to consolidate the Principal Regulations.

8. Consultation outcome

These changes have been consulted upon and are generally supported. Changes have been made to address specific concerns.

9. Guidance

Guidance will be published before the changes take effect.

10. Impact

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/the library/tiins/htm.

11. Regulating small business

The changes will have no specific impact on small businesses

12. Monitoring & review

The new system will produce management information reports which will be used to assess its effectiveness. It will be subject to a programme of on-going review which will address market trends and associated compliance issues.

13. Contact

For further advice please contact Richard Bysouth at HMRC either by telephone on 0207 147 0328 or by email richard.bysouth@hmrc.gsi.gov.uk.

VAT: Online Registration and Tranche 2 of Online filing of VAT Returns

1 Non-established taxable persons

Schedule 1 contains provision about non-established taxable persons.

SCHEDULE 1

Section 1

NON-ESTABLISHED TAXABLE PERSONS

New Schedule 1A

1 In VATA 1994, after Schedule 1 insert—

"SCHEDULE 1A

REGISTRATION IN RESPECT OF TAXABLE SUPPLIES: NON-UK ESTABLISHMENT

Liability to be registered

1 (1) A person becomes liable to be registered under this Schedule at any time if conditions A to D are met.

(2) Condition A is that—

(a) the person makes taxable supplies, or

(b) there are reasonable grounds for believing that the person will make taxable supplies in the period of 30 days then beginning.

(3) Condition B is that those supplies (or any of them) are or will be made in the course or furtherance of a business carried on by the person.

(4) Condition C is that the person has no business establishment, or other fixed establishment, in the United Kingdom in relation to any business carried on by the person.

(5) Condition D is that the person is not registered under this Act.

2 (1) A person does not become liable to be registered by virtue of paragraph 1(2)(b) if the reason for believing that taxable supplies will be made in the 30-day period mentioned there is that a business, or part of a business, carried on by a taxable person is to be transferred to the person as a going concern in that period.

(2) But if the transfer takes place, the transferee becomes liable to be registered under this Schedule at the time of the transfer if conditions A to D in paragraph 1 are met in relation to the transferee at that time.

(3) In determining for the purposes of sub-paragraph (2) whether condition B is met, the reference in paragraph 1(3) to a business is to be read as a reference to the business, or part of the business, that is transferred to the transferee.

3 A person is treated as having become liable to be registered under this Schedule at any time when the person would have become so liable under paragraph 1 or 2 but for any registration that is subsequently cancelled under—

(a) paragraph 11,
(b) paragraph 13(3) of Schedule 1,
(c) paragraph 6(2) of Schedule 2,
(d) paragraph 6(3) of Schedule 3, or
(e) paragraph 6(2) of Schedule 3A.

4 (1) A person does not cease to be liable to be registered under this Schedule except in accordance with sub-paragraph (2).

(2) A person who has become liable to be registered under this Schedule ceases to be so liable at any time if the Commissioners are satisfied that—

(a) the person has ceased to make taxable supplies in the course or furtherance of a business carried on by the person, or
(b) the person is no longer a person in relation to whom condition C in paragraph 1 is met.

Notification of liability and registration

5 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(a) or 2(2) must notify the Commissioners of the liability before the end of the period of 30 days beginning with the day on which the liability arises.

(2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the day on which the liability arises.

6 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(b) must notify the Commissioners of the liability before the end of the period by reference to which the liability arises.

(2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the period by reference to which the liability arises.

Notification of end of liability

7 (1) A person registered under paragraph 5 or 6 who, on any day, ceases to make or have the intention of making taxable supplies in the course or furtherance of a business carried on by that person must notify the Commissioners of that fact within 30 days beginning with that day.

(2) But the person need not notify the Commissioners if on that day the person would otherwise be liable or entitled to be registered under this Act (disregarding for this purpose the person's registration under this Schedule and any enactment that prevents a person from being liable to be registered under different provisions at the same time).

Cancellation of registration

8 (1) The Commissioners must cancel a person's registration under this Schedule if—

(a) the person satisfies them that the person is not liable to be registered under this Schedule, and

(b) the person requests the cancellation.

(2) The cancellation is to be made with effect from—

(a) the day on which the request is made, or

(b) such later day as may be agreed between the Commissioners and the person.

(3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement to be registered under this Act.

9 (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person has ceased to be liable to be registered under this Schedule.

(2) The cancellation is to be made with effect from—

(a) the day on which the person ceased to be so liable, or

(b) such later day as may be agreed between the Commissioners and the person.

(3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement, or entitled, to be registered under this Act.

10 In determining for the purposes of paragraphs 8 and 9 whether a time is a time when a person would be subject to a requirement, or entitled, to be registered under this Act, so much of any provision of this Act as prevents a person from becoming liable or entitled to be registered when the person is already registered or when the person is so liable under any other provision must be disregarded.

11 (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person was not liable to be registered under this Schedule on the day on which the person was registered.

(2) The cancellation is to be made with effect from the day on which the person was registered.

12 Paragraphs 8 to 11 are subject to paragraph 18 of Schedule 3B (cancellation of registration under this Schedule of persons seeking to be registered under that Schedule etc).

Exemption from registration

13 (1) The Commissioners may exempt a person from registration under this Schedule if the person satisfies them that the taxable supplies that the person makes or intends to make—

(a) are all zero-rated, or

(b) would all be zero-rated if the person were a taxable person.

(2) The power in sub-paragraph (1) is exercisable only if the person so requests and the Commissioners think fit.

(3) If there is a material change in the nature of the supplies made by a person exempted under this paragraph, the person must notify the Commissioners of the change—

(a) within 30 days beginning with the day on which the change occurred, or

(b) if no particular day is identifiable as that day, within 30 days of the end of the quarter in which the change occurred.

(4) If it appears to the Commissioners that a request under this paragraph should no longer be acted upon on or after any day or has been withdrawn on any day, they must register the person who made the request with effect from that day.

(5) A reference in this paragraph to supplies is to supplies made in the course or furtherance of a business carried on by the person.

Supplementary

14 Any notification required under this Schedule must be made in such form and must contain such particulars as the Commissioners may by regulations prescribe."

Other amendments of VATA 1994

2 VATA 1994 is amended as follows.

3 In section 7 (place of supply of goods), in subsection (4)(c)(ii), after "Schedule 1" insert "or 1A".

4 In section 54 (farmers etc), in subsection (2), after "Schedule 1" insert "or is, has become or has ceased to be liable to be registered under Schedule 1A".

5 In section 55 (customers to account for tax on supplies of gold etc), in subsection (1)—

(a) for "Schedule 1" substitute "Schedules 1 and 1A", and

(b) for "that Schedule" substitute "Schedule 1".

6 In section 55A (customers to account for tax on supplies of goods or services of a kind used in missing trader intra-community fraud), in subsection (3), for "Schedule 1" substitute "Schedules 1 and 1A".

7 In section 69 (breaches of regulatory provisions), in subsection (1)(a), after "Schedule 1," insert "paragraph 7 of Schedule 1A,".

8 In section 73 (failure to make returns etc), in subsection (3)(b), after "Schedule 1," insert "paragraph 9 or 11 of Schedule 1A,".

9 In section 74 (interest on VAT recovered or recoverable by assessment), in subsection (1)(c), after "Schedule 1," insert "paragraph 13 of Schedule 1A,".

10 In section 77 (assessments: time limits and supplementary assessments), in subsection (4C), after paragraph (a) insert—

"(aa) paragraph 5, 6 or 13(3) of Schedule 1A,".

11 (1) Paragraph 1 of Schedule 1 (registration in respect of taxable supplies) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (a), after "if" insert "the person is UK-established and", and

(b) in paragraph (b), after "if" insert "the person is UK-established and".

(3) In sub-paragraph (2), for "and the transferee is not registered under this Act at the time of the transfer" substitute ", the transferee is UK-established at the time of the transfer and the transferee is not registered under this Act at that time".

(4) After sub-paragraph (2) insert—

"(2A) In determining the value of a person's supplies for the purposes of sub-paragraph (1)(a) or (2)(a), supplies are to be taken into account (subject to sub-paragraphs (3) to (7)) whether or not the person was UK-established when they were made."

(5) In sub-paragraph (4)(a), after "below," insert "paragraph 11 of Schedule 1A,".

(6) In sub-paragraph (5), after "below," insert "paragraph 11 of Schedule 1A,".

(7) At the end insert—

"(10) A person is "UK-established" if the person has a business establishment, or some other fixed establishment, in the United Kingdom in relation to a business carried on by the person."

12 In paragraph 3 of that Schedule, at the end of paragraph (b) insert "; or

(c) is not at that time UK-established (see paragraph 1(10))."

13 Accordingly, in the heading of that Schedule, at the end insert ": UK ESTABLISHMENT".

14 In paragraph 1 of Schedule 2 (registration in respect of supplies from other member states)—

(a) in sub-paragraph (1)(b), after "Schedule 1" insert "or 1A", and

(b) in sub-paragraph (4), after "Schedule 1," insert "paragraph 11 of Schedule 1A,".

15 In paragraph 1 of Schedule 3 (registration in respect of acquisitions from other member states)—

(a) in sub-paragraph (1)(b), after "Schedule 1" insert ", 1A", and

(b) in sub-paragraph (3), after "Schedule 1," insert "paragraph 11 of Schedule 1A,".

16 In paragraph 1 of Schedule 3A (registration in respect of disposals of assets for which a VAT repayment is claimed)—

(a) in sub-paragraph (1), after "Schedule 1" insert ", 1A,", and

(b) in sub-paragraph (2), after "Schedule 1," insert "paragraph 11 of Schedule 1A,".

17 In paragraph 18 of Schedule 3B (supply of electronic services in member States: special accounting scheme)—

(a) after "Schedule 1", in the first place it appears, insert "or 1A", and
(b) after "Schedule 1", in the second place it appears, insert "or, as the case may be, 1A".

Amendments of other Acts

18 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry for the obligations under Schedule 1 to VATA 1994 insert the following entry—

"Value added tax	Obligations under paragraphs 5, 6 and 13(3) of Schedule 1A to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration)."

Application

19 The amendments made by this Schedule have effect in relation to supplies made or to be made on or after 1 December 2012.

EXPLANATORY NOTE

VALUE ADDED TAX - NON-ESTABLISHED PERSONS

SUMMARY

1. This clause amends the Value Added Tax Act 1994 (‘VATA’) to insert a new Schedule 1A. New Schedule 1A changes the rules for determining when a business which makes taxable supplies in the UK but has no establishment here has to register for VAT. Non-UK established businesses will no longer be able to benefit from the UK VAT Registration threshold. The clause also makes consequential changes to other parts of VATA and the Finance Act 2008.

DETAILS OF THE CLAUSE

Details of the new Schedule 1A to VATA

2. New Schedule 1A applies to any person who makes taxable supplies in the UK but has no establishment here and requires that person to register and account for VAT on those supplies irrespective of their value.

3. New paragraphs 1 and 2 provide that the liability to register arises when a person reasonably anticipates making taxable supplies within the next 30 days, does in fact make such supplies or a business is transferred to that person as a going concern.

4. New paragraphs 5 and 6 provide that the person must notify liability to register within 30 days of the liability arising and the Commissioners must register that person with effect from the date when the liability arises.

5. New Schedule 1A also specifies when a person will cease to be liable to be registered under the new schedule (new paragraph 4) and makes provision for various matters that may arise in connection with registration such as wrongful registration under another Schedule (new paragraph 3), cancellation of registration (both compulsory and by election) and the effective date of such cancellation, (new paragraphs 7 to 12). These provisions also specify the timescales for the notification and execution of various matters relating to cancellation of registration.

6. New Schedule 1A makes particular provision for the possibility that a person may be liable to be registered under the new Schedule and also entitled to be registered under Schedule 3B to VATA (special

accounting scheme for the supply of electronic services in member States) (new paragraph 12).

7. New Paragraph 13 provides that a person liable to registration under the new Schedule may, on request and subject to HMRC's approval, be exempted from registration if that person intends to or makes only zero-rated supplies (and so would, if registered, be entitled to a VAT refund but not liable to pay VAT).

Other amendments of VATA 1994

8. Paragraphs 2 to 17 of this Schedule make amendments that are consequential on the inclusion of the new Schedule 1A.

9. Paragraphs 3 to 17 ensure that VATA applies to Schedule 1A as it applies to Schedule 1 for the following contexts:

- place of supply of goods rules (paragraph 3);
- schemes for farmers (paragraph 4),
- accounting for gold (paragraph 5);
- reverse charge provisions for missing trader intra-community (MTIC) trading activities (paragraph 6);
- regulatory breaches (paragraph 7);
- powers of assessment and related matters (paragraphs 8 to 10); and
- interaction with other registration schedules (paragraphs 14 to 17).

10. Paragraphs 11 to 13 ensure that the relevant parts of Schedule 1 apply only to persons established in the UK.

11. Paragraph 11(4) provides that the value of the taxable supplies of a person established in the UK for the purposes of determining that person's liability to register under Schedule 1 shall include supplies made prior to that person becoming established.

12. Paragraph 18 provides that Schedule 41 to Finance Act 2008 applies to New Schedule 1A as it applies to Schedule 1 for the context of obligations to notify a liability to register and for material changes in the nature of supplies made by exempt persons.

BACKGROUND NOTE

13. These amendments to VATA bring UK law into line with the judgement of the Court of Justice of the European Union in Schmelz C-97/09. The judgement confirmed a business without an establishment in a member State is prohibited from benefiting from that State's VAT registration threshold.

14. Member States are permitted to apply VAT registration thresholds by the provisions of Chapter 1 of Title XII of Council Directive 2006/112/EU, the Principle VAT Directive ('PVD'). The provisions enable member States to relieve small businesses from the burden of VAT registration. Article 283 (1)(c) of the PVD prohibits a threshold being applied to '*a taxable person who is not established in the Member State in which the VAT is due*'.

15. There is an establishment in the UK if:

    - The place where essential management decisions are made and the business's central administration is carried out is the UK and/or
    - The business has a permanent physical presence with the human and technical resources to make or receive taxable supplies in the UK.

16. The Court in *Schmelz* confirmed that although the restriction of the application of a threshold to domestically established businesses was discriminatory (in that it interfered with the freedom to provide services under article 49 of the EC treaty) it was justified by the need for effective fiscal supervision of the threshold and proportionate to that need. It was therefore a lawful restriction on the application of the threshold.

17. If you have any questions about this change, or comments on the legislation, please contact Craig Benn on 0151 703 8302 (email: craig.benn@hmrc.gsi.gov.uk).

VAT Grouping Extra Statutory Concession 3.2.2

1 Group supplies using an overseas member

(1) VATA 1994 is amended as follows.

(2) In section 43 (groups of companies), in subsection (2C)(c), after “above” insert “and paragraph 8A of Schedule 6”.

(3) In section 83 (appeals), in subsection (1)(v) for “or 2” substitute “, 2 or 8A”.

(4) In section 97(4) (orders requiring Parliamentary approval within 28 days of being made), in paragraph (f), after “1A(7)” insert “or “8A(7)”.

(5) Schedule 6 (valuation: special cases) is amended as follows.

(6) In paragraph 1 (cases where Commissioners may direct value is open market value), in sub-paragraph (5), after “paragraph”, in the second place it occurs, insert “8A or”.

(7) After paragraph 8 (value of supplies of services treated as made by person by whom they are received) insert—

“8A (1) This paragraph applies where—

(a) a supply (“the intra-group supply”) made by a member of a group (“the supplier”) to another member of the group is, by virtue of section 43(2A), excluded from the supplies disregarded under section 43(1)(a), and

(b) the representative member of the group satisfies the Commissioners as to the value of each bought-in supply.

(2) “Bought-in supply”, in relation to the intra-group supply, means a supply of services to the supplier to which section 43(2A)(c) to (e) refers, so far as that supply is used by the supplier for making the intra-group supply.

(3) The value of the intra-group supply shall be taken to be the total of the relevant amounts in relation to the bought-in supplies.

(4) The relevant amount in relation to a bought-in supply is the value of the bought-in supply, unless a direction is made under subsection (5).

(5) If the value of a bought-in supply is less than its open market value, the Commissioners may direct that the relevant amount in relation to that supply is its open market value.

(6) A direction under this paragraph must be given by notice in writing to the representative member, but no direction may be given more than 3 years after the time of the intra-group supply.

(7) The Treasury may by order vary the provision made by this Schedule about the value of supplies of the kind mentioned in sub-paragraph (1)(a).

(8) An order under subsection (7) may include incidental, supplemental, consequential and transitional provision (including provision amending section 43 or 83).”

(8) The amendments made by this section have effect in relation to supplies made on or after the day on which this Act is passed.

EXPLANATORY NOTE

GROUP SUPPLIES USING AN OVERSEAS MEMBER

SUMMARY

1. This clause puts on a statutory footing a long standing concession on how the reverse charge on an intra-group supply (which arises when a partly exempt VAT group buys in services through an overseas group member) should be valued. It applies where the representative member of the group satisfies the Commissioners as to the value of the bought in services. It sets out how the charge is to be calculated and allows HMRC to direct that the value of the bought in services is to be an open market value. It also provides a power for subsequent amendments to be made to the valuation provision.

DETAILS OF THE CLAUSE

2. Subsection (2) inserts a provision into section 43(2C)(c) of the Value Added Tax Act 1994 (VATA). Section 43(2C)(c) provides that the value of intra-group supplies falling within section 43(2A) are to be treated as a reverse charge in accordance with section 8 of VATA. The inserted provision provides that the supplies may be subject to the valuation provisions in new paragraph 8A of Schedule 6.

3. Subsection (3) provides for a right of appeal for the taxpayer against an open market valuation direction.

4. Subsection (4) provides for any subsequent order varying the valuation provisions to be subject to the affirmative resolution procedure.

5. Subsection (6) provides that paragraph 1 of Schedule 6 does not apply to supplies valued in accordance with new paragraph 8A of that schedule.

6. Subsection (7) inserts new paragraph 8A into Schedule 6

7. New paragraph 8A applies where two conditions (set out in new paragraph 8A(1)) are met. Firstly a supply giving rise to the reverse charge is made and secondly the representative member of the VAT group satisfies the Commissioners as to the value of bought in supplies.

8. New paragraphs 8A(3) to (5) make provisions as to how the intra-group supplies shall be valued. Where the value of the bought-in supply or supplies is at least open market value, the value of the intra-

group supply is the value of the bought-in supply or supplies (or the element thereof that is a cost component of the intra-group supply in question). Where the value of any bought-in supply is less than its open market value, the Commissioners may direct that the intra-group supply be valued taking an open market value for that bought-in supply (or the element thereof that is a cost component of the intra-group supply in question).

9. New paragraph 8A(6) provides that any direction must be given by notice in writing and must be within 3 years from the date of the intra-group supply.

10. New paragraphs 8A(7) and (8) allow the Treasury by order to amend the valuation provision and make any consequential provisions necessary.

11. Sub-section (8) provides that the changes will have effect from Royal Assent. The current concession will continue to apply until that point.

BACKGROUND NOTE

12. A reverse charge is a mechanism for taxing supplies of services bought by businesses from outside the UK but consumed within the UK.

13. Supplies made by one member of a VAT group to another are disregarded (section 43(1) of VATA). Therefore no VAT would be chargeable when supplies from outside the UK are brought into a UK VAT group by a member belonging overseas. Sections 43(2A) to 43(2E) of VATA are anti-avoidance provisions preventing reverse charges from being avoided by buying in services, ultimately for consumption within the UK, via a VAT group member belonging overseas.

14. This valuation provision is necessary (as was the concession it replaces) to restrict the impact of sections 43(2A) to 43(2E), in appropriate circumstances, to the bought–in services introduced into the UK via an intra-group charge. Without this provision the charge would apply to the use of the overseas group member’s own resources included in the intra-group charges as well as the bought in services.

15. If you have any questions about this change, or comments on the legislation, please contact Phil Mattacks on 020 7147 0538 (email: phil.mattacks@hmrc.gsi.gov.uk).

VAT: Treatment of Public Bodies

1 Supply of goods or services by public bodies

(1) VATA 1994 is amended as follows.

(2) In section 41 (application to the Crown)—
  (a) omit subsection (2), and
  (b) in subsection (3)(b) for "a direction under subsection (2) above," substitute "section 41A,".

(3) After that section insert—

"41A Supply of goods or services by public bodies

(1) This section applies where goods or services are supplied by a body mentioned in Article 13(1) of the VAT Directive (status of public bodies as taxable persons) in the course of activities or transactions in which it is engaged as a public authority.

(2) If the supply is in respect of an activity listed in Annex I to the VAT Directive (activities in respect of which public bodies are to be taxable persons), it is to be treated for the purposes of this Act as a supply in the course or furtherance of a business unless it is on such a small scale as to be negligible.

(3) If the supply is not in respect of such an activity, it is to be treated for the purposes of this Act as a supply in the course or furtherance of a business if (and only if) not charging VAT on the supply would lead to a significant distortion of competition.

(4) In this section "the VAT Directive" means Council Directive 2006/112/EC on the common system of value added tax."

EXPLANATORY NOTE

VAT: SUPPLIES OF GOODS OR SERVICES BY PUBLIC BODIES

SUMMARY

1. This clause implements Article 13(1) of the Principal VAT Directive (2006/112/EC)("the PVD") by inserting a new section, 41A, into the Value Added Tax Act 1994 (VATA).

2. It applies to Government departments, local authorities and analogous public bodies who supply goods and services when acting within a legal framework, such as a statute, which applies only to them and not to private individuals.

3. Such bodies are not to be treated as taxable persons unless their exemption would lead to distortion of competition.

4. The exemption does not however apply to their engagement in activities described in Annex 1 of the PVD ("Annex 1") unless those activities are carried out on such a small scale as to be negligible.

DETAILS OF THE CLAUSE

5. Section (2) amends section 41 VATA ("section 41"). Section 41 applies VATA to the Crown. Section 41(2)(2) provides for the taxation of goods and services supplied by Government departments in certain circumstances where such supplies are not taxed under general VATA provisions. Sub section (2)(a) deletes section 41(2) and makes a consequential amendment to section 41(3)(b) so that reference is made to the new section 41A of VATA which will determine when supplies by Government departments are taxed.

6. Section (3) inserts a new section 41A which provides as follows:

   - New section 41A(1) provides that the section will apply to supplies of goods and services made by a public body (being a body within the ambit of Article 13(1) PVD) which is acting in its capacity as a public authority;

   - New section 41A(2) provides that (where the new section 41 applies) a supply in respect of an activity listed in Annex 1 of the PVD is to be treated as a supply in the course or furtherance of business (and therefore taxable in accordance with section 4 of VATA) unless the activity is on such a small scale as to be negligible;

- New section 41A(4) provides that (where the new section 41 applies) a supply which is not in respect of an Annex 1 activity is only to be treated as a supply in the course or furtherance of a business if relieving it from VAT would lead to a significant distortion of competition

BACKGROUND NOTE

7. Article 13(1) provides that public bodies (Government departments, local authorities and analogous institutions) should not be taxed when making supplies of goods and services unless those supplies arise out of Annex 1 activities (which are not negligible) or relief from VAT would cause significant distortions of competition.

8. There is no explicit transposition of Article 13(1) into UK legislation. HMRC has given effect to the Article by interpreting existing legislation in a way that achieves the correct result for the Article's purposes. However recent litigation has cast significant doubt on whether this approach amounts to an effective implementation of Article 13(1).

9. This provision puts the effective implementation of the article beyond doubt and therefore precludes the possibility of infraction proceedings being taken against the UK. In practice public bodies should see no change to their existing tax treatment as a result of the legislative changes. It also provides a clear legislative base for applying the appropriate test to determine whether a particular supply is taxable in an environment where public and private sector provision is constantly evolving.

10. If you have any questions about this change, or comments on the legislation, please contact Alec Tasker on 020 7147 0651 (email alec.tasker@hmrc.gsi.gov.uk).

SDLT relief for NHS trusts - technical measure

1 Health service bodies

(1) In Part 4 of FA 2003 (stamp duty land tax), after section 67 insert—

"67A Acquisitions by certain health service bodies

(1) A land transaction is exempt from charge if the purchaser is any of the following—

(a) the National Health Service Commissioning Board;

(b) a clinical commissioning group established under section 14D of the National Health Service Act 2006;

(c) an NHS foundation trust;

(d) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;

(e) a National Health Service trust established under section 18 of that Act;

(f) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.

(2) Any relief under this section must be claimed in a land transaction return or an amendment of such a return."

(2) The following provisions are repealed—

(a) section 61(3) to (3C) of the National Health Service and Community Care Act 1990 (stamp duty and stamp duty land tax reliefs for health service bodies);

(b) section 58 of the National Health Service Act 2006 (which applies those stamp duty and stamp duty land tax reliefs to NHS foundation trusts);

(c) paragraphs 132 and 133 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006.

(3) The repeals in subsection (2), to the extent that they relate to stamp duty, have effect in relation to any instrument executed on or after the day on which this Act is passed.

(4) Subject to that, the amendments made by this section have effect in relation to any land transaction of which the effective date is, or is after, the day on which this Act is passed.

(5) Until such time as bodies of a kind mentioned in subsection (6) are abolished under the Health and Social Care Act 2011, section 67A of FA 2003 has effect as if the list in that section included bodies of that kind.

(6) Those bodies are—

(a) a National Health Service trust established under section 25 of the National Health Service Act 2006, and

(b) a Primary Care Trust.

EXPLANATORY NOTE

HEALTH SERVICE BODIES

SUMMARY

1. This clause re-enacts an existing stamp duty land tax (SDLT) relief for acquisitions of interests in land by certain National Health Service bodies. It updates the list of bodies to which the relief applies and repeals the existing SDLT relief and its equivalent stamp duty relief, which is obsolete.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces a new section 67A Finance Act 2003, which provides relief from SDLT for acquisitions by certain health service bodies listed in that subsection.

3. Subsection (2) provides for repeal of existing provisions which are now superseded by the new section 67A.

4. Subsection (3) provides for commencement of the repeal provisions in respect of stamp duty.

5. Subsection (4) provides for commencement of the remaining provisions.

6. Subsection (5) provides for the relief to apply to certain bodies until bodies of that kind are abolished under the Health and Social Care Act 2011.

7. Subsection (6) sets out the bodies to which subsection (5) applies.

BACKGROUND NOTE

8. Section 61(3) to (3C) National Health Service and Community Care Act 1990 (as amended by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2005 (S.I. 2005/82)) provides SDLT and stamp duty reliefs for acquisitions by National Health Service Trusts, Primary Care Trusts, Local Health Boards in Wales and Health and Social Services Trusts in Northern Ireland. Section 58 National Health Service Act 2006 extends the reliefs to NHS Foundation Trusts.

9. Paragraphs 132-133 of Schedule 1 National Health Service (Consequential Provisions) Act 2006 amend section 61(3) to refer to

NHS Trusts constituted under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006. This amendment applies to section 61(3) as it stood before it was amended by S.I. 2005/82. It is therefore defective and the provision still refers to Trusts constituted under the 1990 Act.

10. This clause therefore re-enacts the SDLT relief, in the main SDLT legislation in Part 4 Finance Act 2003, and repeals the existing SDLT and Stamp duty reliefs (the latter is obsolete).

11. The clause extends relief to the National Health Service Commissioning Board and clinical commissioning groups established under provisions of the Health and Social Care Act [2011]. It provides for relief to apply to National Health Service Trusts in England and to Primary Care Trusts only until those bodies are abolished under other provisions of that Act.

12. If you have any questions about this change, or comments on the legislation, please contact Keith Brown on 0207 147 2790 (email: keith.brown@hmrc.gsi.gov.uk).

Anti avoidance

Capital allowances: anti-avoidance rules for plant and machinery

1 Capital allowances: restricting exception for manufacturers and suppliers

(1) In section 230 of CAA 2001 (exception for manufacturers and suppliers), in subsection (1), for "restrictions in sections 217 and 218 do" substitute "restriction in section 218 does".

(2) The amendment made by this section has effect in relation to expenditure of B's that is incurred on or after 12 August 2011 (regardless of when the relevant transaction was entered into).

2 Capital allowances for plant and machinery: anti-avoidance

Schedule 1 contains provision to counter abuse of Part 2 of CAA 2001.

SCHEDULE 1

Section 2

CAPITAL ALLOWANCES FOR PLANT AND MACHINERY: ANTI-AVOIDANCE

Transactions to obtain allowances

1 For section 215 of CAA 2001 substitute—

“215 Transactions to obtain tax advantages

(1) Allowances under this Part are restricted under the applicable sections if B enters into a relevant transaction with S that either—
(a) has an avoidance purpose, or
(b) is part of, or occurs as a result of, a scheme or arrangement that has an avoidance purpose.

(2) Subsection (1)(b) may be satisfied—
(a) whether the scheme or arrangement was made before or after the relevant transaction was entered into, and
(b) whether or not the scheme or arrangement is legally enforceable.

(3) A transaction, scheme or arrangement has an “avoidance purpose” if the main purpose, or one of the main purposes, of a party in entering into the transaction, scheme or arrangement is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.

(4) The reference in subsection (3) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.

(5) If the tax advantage is of a kind described in subsection (7), “the applicable sections” are sections 217 and 218ZA(5).

(6) Otherwise, “the applicable sections” are sections 217 and 218ZA(1) or, as the case may be, 218ZA(3).

(7) The kinds of tax advantage are—
(a) that an allowance to which B is entitled for a chargeable period is calculated using a percentage rate that is higher than the one that would otherwise be used, or
(b) that B is entitled to an allowance in respect of an amount of capital expenditure sooner than B would otherwise be entitled to it.

(8) If a transaction, scheme or arrangement involves—
(a) a tax advantage of a kind described in subsection (7), and
(b) a tax advantage not of such a kind,

subsections (5) and (6) have effect separately in relation to each tax advantage."

Restrictions on writing-down allowances

2 In section 57(3) of CAA 2001 (available qualifying expenditure), after "section 218(1)," insert "218ZA(1) or (3),".

3 In section 214 of that Act (connected persons), after "218" insert "(or, as the case may be, 218ZA(3))".

4 In section 216 of that Act (sale and leaseback, etc), in subsection (1), after "218" insert "(or, as the case may be, 218ZA(3))".

5 (1) Section 218 of that Act (restriction on B's qualifying expenditure) is amended as follows.

(2) In subsection (1), for "section 214, 215 or 216" substitute "section 214 or 216".

(3) At the end insert—

"(5) This section is subject to section 218ZA(3)."

(4) Accordingly, in the heading of that section, insert at the end "**: section 214 or 216**".

6 After section 218 of that Act insert—

"218ZA Restrictions on writing-down allowances: section 215

(1) If this subsection applies as a result of section 215, all or part of B's expenditure under the relevant transaction is to be left out of account in determining B's available qualifying expenditure.

(2) The amount of expenditure to be left out of account is—

(a) such amount as would or would in effect cancel out the tax advantage mentioned in section 215 (whether that advantage is obtained by B or another person and whether it relates to the relevant transaction or something else), or

(b) if the amount found under paragraph (a) exceeds the whole of B's expenditure under the relevant transaction, the whole of that expenditure.

(3) But if subsection (1) applies as a result of section 215 and—

(a) section 218 also applies as a result of section 214 or 216, or

(b) section 228 also applies by virtue of an election under section 70I(11) or 227,

the amount of expenditure to be left out of account is the greater of X and Y.

(4) For the purposes of subsection (3)—

"X" is the amount found under subsection (2), and

"Y" is the amount by which B's expenditure under the relevant transaction exceeds D (as defined in section 218 or, as the case may be, section 228).

(5) If this subsection applies as a result of section 215—

(a) the allowance mentioned in subsection (7)(a) of that section is to be calculated using the rate that would be used without the tax advantage, or (as the case may be)

(b) the entitlement mentioned in subsection (7)(b) of that section is to be available as and when it would be available without the tax advantage.

(6) Subsection (5) applies whether or not section 218 also applies as a result of section 214 or 216, or section 228 also applies by virtue of an election under section 70I(11) or 227."

Restriction of exception for manufacturers and suppliers

7 (1) Section 230 of CAA 2001 (exception for manufacturers and suppliers), as amended by section 1 of this Act, is amended as follows.

(2) For subsection (1) substitute—

"(1) The restrictions in sections 217 and 218 do not apply in relation to any plant or machinery if—

(a) the relevant transaction is within section 213(1)(a) or (b),

(b) the case does not fall within section 215, and

(c) the conditions in subsection (3) are met."

(3) Omit subsection (2).

Relevant transactions

8 After section 268D of CAA 2001 insert—

"268E Meaning of "assigns"

(1) For the purposes of this Part—

(a) a person ("A") is taken to assign the benefit of a contract, or rights under a contract, to another person ("B") whenever B becomes entitled, and A ceases to be entitled, to the benefit or rights (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise), and

(b) references to an assignment are to be read accordingly.

(2) Any reference in this Part to the benefit of a contract or to rights under a contract includes a reference to part of the benefit of a contract or to part of the rights under a contract."

Commencement

9 (1) The amendments made by paragraphs 1 to 7 of this Schedule have effect in relation to expenditure of B's that is incurred on or after the start date (regardless of when the relevant transaction was entered into).

(2) The amendment made by paragraph 8 of this Schedule has effect in relation to expenditure that is incurred on or after the start date.

(3) The start date is—

(a) 1 April 2012, for corporation tax purposes, and

(b) 6 April 2012, for income tax purposes.

EXPLANATORY NOTE

CAPITAL ALLOWANCES: RESTRICTING THE EXCEPTION FOR MANUFACTURERS AND SUPPLIERS

SUMMARY

1. This clause removes an exception from the capital allowances anti-avoidance rules that exists for certain transactions where unused plant or machinery is bought or hire purchased from the manufacturer or supplier in the normal course of business. This change will apply for expenditure incurred on or after 12 August 2011. However, the legislation is further amended by clause [686] for expenditure incurred on or after 1 April 2012 (for corporation tax purposes) or 6 April 2012 (for income tax purposes).

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 230 of the Capital Allowances Act 2001 (CAA) so that transactions with manufacturers or suppliers are no longer exempted from any restriction on the buyer's allowances made by section 217 of CAA (which denies annual investment allowance or first-year allowances).

3. Subsection (2) provides that the change applies to expenditure incurred on or after 12 August 2011.

BACKGROUND NOTE

4. Chapter 17 of CAA contains anti-avoidance rules that restrict the capital allowances that may be claimed where person B buys, or acquires under a hire-purchase (or similar) contract, plant or machinery from person S.

5. Allowances may be restricted where B and S are connected, where there is a sale and leaseback between B and S or where the capital allowances were the sole or main benefit which might have been expected to accrue from the transaction between B and S. In these circumstances B's allowances may be restricted in two ways. Firstly, B will be prevented from claiming annual investment allowance (AIA) or first-year allowance (FYA) (by section 217 CAA). Secondly, B's qualifying expenditure (the amount on which capital allowances may be claimed) will be restricted (by section 218 CAA).

6. However, where B buys, or hire-purchases, unused plant or machinery from S and S's business is the manufacture or supply of such plant or machinery then section 230 CAA provides an exception

from the anti-avoidance rules. For expenditure incurred before 12 August 2011, the exception was from both section 217 and section 218 so that B was able to claim AIA and FYA and there was no restriction of B's qualifying expenditure.

7. However, in light of evidence that the manufacturers and suppliers exception was being used to facilitate avoidance, on 12 August 2011 the Government announced that legislation would be introduced in the 2012 Finance Bill to repeal the exception from section 217 for expenditure incurred on or after 12 August 2011.

8. As a result, although the amount of B's qualifying expenditure is not restricted, the anti-avoidance rules can prevent B claiming AIA or FYA in respect of expenditure incurred on or after 12 August 2011 even where the plant or machinery is acquired from the manufacturer or supplier.

9. This amended anti-avoidance rule is further amended by clause [686] for expenditure incurred on or after 1 April 2012 (for corporation tax purposes) or 6 April 2012 (for income tax purposes), so the particular change described above only applies for expenditure incurred for a limited period. For expenditure incurred on or after 1 or 6 April 2012, section 230 will provide an exception from the restrictions in both section 217 and section 218 unless the transaction has an avoidance purpose.

10. If you have any questions about these changes, or comments on the legislation, please contact Sue Pennicott on 020 7147 2610 (email: sue.pennicott@hmrc.gsi.gov.uk) or Malcolm Smith also on 020 7147 2610 (email:malcolm.smith3@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

CAPITAL ALLOWANCES FOR PLANT AND MACHINERY: ANTI-AVOIDANCE

SUMMARY

1. This Schedule amends the legislation that counters abuse of the rules for plant and machinery allowances, to make it more effective at preventing Exchequer loss. The changes will apply to expenditure incurred on or after 1 April 2012 (for businesses within the charge to corporation tax) and on or after 6 April 2012 (for businesses within the charge to income tax).

2. The legislation is also amended to confirm the meaning of the word 'assigns' for the purposes of the Capital Allowances Act 2001.

DETAILS OF THE SCHEDULE

3. Paragraph (1) replaces section 215 of the Capital Allowances Act 2001 (CAA): *Transactions to obtain allowances,* with new section 215 of CAA: *Transactions to obtain tax advantages*.

4. Subsection (1) of new section 215 provides that plant and machinery allowances will be restricted if a relevant transaction between B and S has an avoidance purpose, is part of a scheme or arrangement that has an avoidance purpose or occurs as a result of a scheme or arrangement with an avoidance purpose.

5. New subsection (2) provides that a relevant transaction can be treated as part of, or occurring as a result of, a scheme or arrangement regardless of when the scheme or arrangement is entered into or whether it is legally enforceable.

6. New subsection (3) defines an 'avoidance purpose': if the main purpose, or one of the main purposes, of a party in entering into a transaction, scheme or arrangement is to enable any person to obtain a tax advantage that would not otherwise have been obtained then that transaction, scheme or arrangement has an avoidance purpose.

7. New subsection (4) provides that a 'tax advantage that would not otherwise have been obtained' in subsection (3) includes an allowance that is in any way more favourable to any person – for example an allowance at a higher rate, claimed sooner or on a greater amount of qualifying expenditure – than the one that would otherwise have been obtained.

8. New subsections (5) and (6) provide that allowances may be restricted in different ways depending on the kind of tax advantage. Section 217 of CAA denies annual investment allowance or first-year allowance where the transaction has an avoidance purpose. The way in which writing down allowances may be restricted by new section 218ZA is determined by the nature of the tax advantage.

9. New subsection (7) describes two particular kinds of tax advantage: (a) the allowance is calculated using a higher rate than the one that would otherwise be used, or (b) the allowance in respect of an amount of expenditure is available sooner than it would otherwise be. These particular kinds of tax advantage are specified to enable allowances to be restricted in an appropriate way, by new section 218ZA (5).

10. New subsection (8) provides that if a transaction, scheme or arrangement involves more than one tax advantage (for example, allowances at a higher rate on a greater amount of expenditure) then allowances may be restricted in more than one way.

11. Paragraph (2) amends section 57 (3) of CAA to ensure that expenditure excluded by new section 218ZA is not included in the amount of a person's available qualifying expenditure.

12. Paragraphs (3) and (4) amend sections 214 and 216 respectively to reflect the introduction of new section 218ZA. Allowances may be restricted under section 218 where there is a transaction between connected persons (within section 214) or where there is a sale and leaseback transaction (within section 216). If a connected person transaction or a sale and leaseback also has an avoidance purpose, or is part of a scheme or arrangement with an avoidance purpose, then allowances may be further restricted under new section 218ZA(3).

13. Paragraph (5) makes various amendments to section 218 so that section 218 will no longer restrict allowances where there is a transaction to obtain tax advantages within section 215, unless the transaction falls within section 215 *and* section 214 (connected persons transactions) or section 215 *and* section 216 (sale and leasebacks).

14. Paragraph (6) inserts new section 218ZA of CAA which determines how writing-down allowances are to be restricted where there is a transaction to which section 215 applies. New section 218ZA applies even if the transaction also falls within section 214 (because it is a connected person transaction) or within section 216 (sale and leasebacks). New section 218ZA operates by restricting the allowances that B can claim following the transaction (B is the person who has incurred, or is treated as having incurred capital expenditure on the provision of plant and machinery). Allowances can be

restricted by reducing the amount of expenditure on which B can claim allowances, by reducing the rate at which allowances are given or by reversing any timing advantage sought (or any combination of restrictions).

15. New section 218ZA subsection (1) provides that where there is an avoidance purpose the amount of expenditure on which B can claim capital allowances is restricted. The restriction of allowances is made under this subsection *unless* the tax advantage is within section 215(7), that is, either that B's allowances are calculated at a higher rate or B is entitled to an allowance sooner than it would otherwise be.

16. New subsection (2) explains that, if new subsection (1) applies, B's qualifying expenditure is restricted by the amount that would in effect cancel out the tax advantage whether or not the tax advantage arises to B. However, the restriction can never be more than B's expenditure under the relevant transaction.

17. New subsections (3) and (4) provide that if B's writing-down allowances could be restricted both under subsection (1) (because there is an avoidance purpose) and also under section 218 or section 228, then B's allowances are restricted by the amount that is the larger of the two restrictions.

18. New subsection (5) provides that if the tax advantage is within section 215(7) – where B's allowances have been calculated at a higher rate or claimed sooner than they would otherwise have been - then the restriction is that B's writing-down allowances are calculated using the rate that would have been used or the entitlement is delayed to when it would have been available without the tax advantage.

19. New subsection (6) provides that a restriction calculated under subsection (5), by reference to the rate or timing of B's allowances, can be made in addition to a restriction under section 218 or section 228.

20. Paragraph (7) provides that section 230 of CAA, as amended by section [686a], is further amended.

21. Subparagraph (2) amends subsection (1) of section 230 so that the 'exception for manufacturers and suppliers' from the restrictions in sections 218 and 217 will not apply if there is a transaction with an avoidance purpose, or which is part of or occurs as a result of a scheme or arrangement with an avoidance purpose, within section 215.

22. Paragraph (8) inserts new section 268E of CAA which confirms the definition of the terms 'assigns' and 'assignments' which apply for Part 2 of CAA.

23. Paragraph (9) provides that the amendments made by this clause will apply from 1 April 2012 (for corporation tax purposes) and 6 April 2012 (for income tax purposes).

BACKGROUND NOTE

24. Depreciation of fixed assets charged in the commercial accounts of a business is not allowed as a deduction in computing the taxable profits. Instead capital allowances may be given at prescribed rates on certain assets, including plant and machinery. The Annual Investment Allowance (AIA) provides an annual 100 per cent allowance for the first £25,000 (this is the maximum annual allowance from April 2012) of investment in plant and machinery to all businesses. There are also 100 per cent first-year allowances (FYA) available for expenditure on certain types of plant or machinery. Otherwise expenditure on plant and machinery attracts writing down allowance (WDA) at the main rate of 18 per cent per annum or the special rate of 8 per cent per annum (these are the rates that apply from April 2012).

25. Chapter 17 CAA contains anti-avoidance rules that restrict the plant and machinery allowances that may be claimed following certain relevant transactions. A relevant transaction is one in which:

- S sells plant or machinery to B, or
- B enters into a hire-purchase or similar contract for plant or machinery with S, or
- S assigns the benefit of a hire purchase or similar contract for plant or machinery to B

26. Allowances may be restricted where the relevant transaction is

- between connected persons (defined in section 214), or
- a transaction to obtain allowances (defined in section 215), or
- a sale and leaseback (defined in section 216).

27. The anti-avoidance rules are being amended to make them more effective.

28. The 'sole or main benefit' test currently in section 215 is being replaced by a new 'purpose' test that will apply where the main, or

one of the main, purposes of a party in entering into a transaction (or a scheme or arrangement of which the relevant transaction is part) is to enable any person to obtain a tax advantage that would not otherwise have been obtained. The tax advantage may arise to a party to the transaction or any other person.

29. A 'tax advantage' is defined in section 577(4) of CAA. The term includes allowances that are 'greater' or more favourable because the amount of qualifying expenditure has been artificially increased, because the allowances have been a claimed at a rate that is too high or because they have been claimed sooner than they should have been.

30. Where a transaction, scheme or arrangement has an avoidance purpose then B's allowances are restricted to, in effect, cancel the tax advantage. To this end, the restriction may be to reduce the rate at which B's allowances are calculated (if the tax advantage B would otherwise obtain is allowances at a rate that is too high) or to reverse any timing advantage sought by B so that B is, in both cases, in the position that B would have been in without the tax advantage. In other situations B's qualifying expenditure is restricted to an amount that has the effect of negating the tax advantage. If appropriate more than one restriction may be made to B's allowances.

31. It is possible that a transaction with an avoidance purpose is also a connected person transaction or a sale and leaseback, in which case the application of the existing rules in section 218 or section 228 must also be considered and the largest applicable restriction made.

32. The 'purpose' test and the consequences of entering into a transaction, scheme or arrangement with an avoidance purpose are consistent with the approach used in other purpose tests elsewhere in the Taxes Acts.

33. If you have any questions about these changes, or comments on the legislation, please contact Sue Pennicott on 020 7147 2610 (email: sue.pennicott@hmrc.gsi.gov.uk) or Malcolm Smith also on 020 7147 2610 (email:malcolm.smith3@hmrc.gsi.gov.uk).

SDLT: Disclosure of Tax Avoidance Schemes (DOTAS)

1 Disclosure of stamp duty land tax avoidance schemes

In section 308 of FA 2004 (duties of promoter), after subsection (5) insert—

"(6) The Treasury may by regulations provide for this section to apply with modifications in relation to proposals or arrangements that—

(a) enable, or might be expected to enable, a person to obtain an advantage in relation to stamp duty land tax, and

(b) are of a description specified in the regulations."

EXPLANATORY NOTE

STAMP DUTY LAND TAX: DISCLOSURE OF TAX AVOIDANCE SCHEMES

SUMMARY

1. This clause amends section 308 of Finance Act (FA) 2004, inserting a new regulation-making power. Regulations made under the new power may modify the way section 308 applies in relation to stamp duty land tax (SDLT) avoidance schemes.

DETAILS OF THE CLAUSE

2. Section 308 of FA 2004 sets out the obligations of a promoter of a tax avoidance scheme to provide HM Revenue & Customs (HMRC) with information about that scheme.

3. The clause inserts a new subsection (6) into section 308. The new subsection (6) gives HM Treasury the power to make regulations which modify the application of section 308 in circumstances to be described in the regulations.

BACKGROUND NOTE

4. The SDLT Disclosure of Tax Avoidance Schemes (DOTAS) regime was extended from April 2010. From that date, HMRC has been able to issue a scheme reference number (SRN) to promoters when they disclose a scheme. The SRN has to be passed on to any users of the scheme who then in turn have to provide HMRC with the SRN, allowing HMRC to identify the users of the scheme.

5. However, SDLT avoidance schemes that were first disclosed before April 2010 were left out of the SRN regime by "grandfathering" rules. The Government intends to remove these grandfathering rules for certain schemes so that they will fall within the SRN regime. However, in order for this removal to be effective, section 308 of FA 2004 will have to modified in respect of those schemes so that they have to be disclosed by a promoter one further time. The clause gives HM Treasury the power to make regulations to make such modifications to the effect of section 308.

6. If you have any questions about this change, or comments on the legislation, please contact Jeremy Schryber on 020 7147 2788 (email: jeremy.schryber@hmrc.gsi.gov.uk).

Manufactured Overseas Dividends (MODs): Anti-Avoidance

1 Treatment of the receipt of manufactured overseas dividends

(1) Part 17 of CTA 2010 (manufactured payments and repos) is amended as follows.

(2) In section 793 (company receiving manufactured overseas dividend from UK resident etc: amount treated as withheld on account of overseas tax), after subsection (7) insert—

"(8) If, in accordance with this section, the amount mentioned in section 792(3)(b) is not the amount deducted under section 922(2) of ITA 2007, nothing in the Tax Acts is to be read as having the effect that, in relation to the persons mentioned in section 792(2) for the purposes mentioned there, the difference between those amounts is to be regarded as an amount on account of income tax."

(3) In section 812 (deemed manufactured payments: stock lending arrangements), after subsection (5) insert—

"(5A) Where section 792 or 794 has effect in accordance with subsection (4) or (5), nothing in the Tax Acts is to be read as having the effect that, in relation to the persons mentioned in section 792(2) or 794(2) for the purposes mentioned there, the amount that would otherwise have been treated as an amount withheld on account of overseas tax is to be regarded as an amount on account of income tax."

(4) The amendments made by this section have effect in relation to overseas dividends (within the meaning of Part 17 of CTA 2010) paid on or after 15 September 2011.

15 September 2011

EXPLANATORY NOTE

TREATMENT OF THE RECEIPT OF MANUFACTURED OVERSEAS DIVIDENDS

SUMMARY

1. This clause clarifies the legislation on manufactured overseas dividends (MODs). That legislation provides that where a MOD is received under deduction of tax, some or all of that tax may be treated as overseas tax. The change makes it clear that where there is a difference between the tax deducted, and the tax treated as overseas tax, the difference is not treated as income tax. This clause also makes a similar change for deemed manufactured payments under some stock lending arrangements. The amendments have effect in relation to overseas dividends paid on or after 15 September 2011.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces amendments to the provisions in Part 17 of the Corporation Tax Act 2010 (CTA 2010) which cover the treatment of companies receiving MODs.

3. Where a company receives a MOD, and tax has been deducted under section 922(2) of the Income Tax Act 2007 (ITA 2007), then sections 792 and 793 of CTA 2010 provide that some or all of the tax deducted may be treated as overseas tax.

4. Subsection (2) inserts a new subsection (8) into section 793 of CTA 2010. The new subsection provides that if the amount mentioned in section 792(3)(b) (that is, the amount treated as withheld on account of overseas tax) is not the amount deducted under section 922(2) of ITA 2007, then nothing in the Tax Acts has the effect that the difference between the amounts is to be regarded as an amount on account of income tax.

5. Section 812 of CTA 2010 provides that where there is a stock lending arrangement, dividend or interest income is received by someone other than the lender of the security, and the arrangement does not provide for the lender to receive payments representing the dividend or interest, then the borrower is deemed to have paid a manufactured payment to the lender on the date when the real dividend or interest was paid. Sub-sections 812 (4) and (5) have the effect that tax withheld from these deemed manufactured payments is not treated as overseas tax.

6. Subsection (3) inserts new subsection (5A) into section 812 which provides that any amount, that would otherwise have been treated as an amount withheld on account of overseas tax from the dividends arising in the circumstances covered by section 812, is not an amount on account of income tax.

7. Subsection (4) provides that the amendments made by this clause have effect in relation to overseas dividends paid on or after 15 September 2011.

BACKGROUND NOTE

8. Financial traders and other participants in the financial markets commonly transfer shares on a temporary basis from one party to another as a form of secured loan or to gain access to specific securities. Payments known as MODs are often made by the temporary holder of shares to the original owner as compensation for the dividends arising on the shares which are received by the temporary holder.

9. Where a MOD is paid, the payer must deduct a sum representing income tax equal to the relevant withholding tax on the MOD. A company receiving a MOD from which tax has been deducted is treated as if it had received an overseas dividend paid after withholding a certain amount of overseas tax. The amount of overseas tax treated as withheld can vary between nil and a maximum of the amount deducted.

10. Where the amount treated as overseas tax is less than the amount deducted, it has been suggested that the difference between the two amounts should be treated as income tax, available for set-off or repayment. HM Revenue and Customs does not agree that this is the effect of the legislation but subsection (2) of the amendment introduced by this clause puts it beyond doubt that it is not treated as income tax.

11. Subsection (3) applies to certain deemed manufactured overseas dividends under stocklending arrangements, and has a similar effect to subsection (2), clarifying that withheld tax is not to be treated as income tax.

12. If you have any questions about this change, or comments on the legislation, please contact Geoff Heaton 020 7147 2577 (email: geoff.heaton@hmrc.gsi.gov.uk).

Tax administration

UK/Switzerland agreement

1 UK/Switzerland agreement

(1) Schedule 1 contains provision giving effect to an agreement signed on 6 October 2011 between the United Kingdom and the Swiss Confederation on co-operation in the area of taxation.

(2) That Schedule comes into force on the day on which the agreement enters into force.

(3) In section 23 of the Constitutional Reform and Governance Act 2010, after subsection (2A) insert—

"(2B) Section 20 does not apply to the treaty referred to in section 1(1) of the Finance Act 2012."

SCHEDULE 1

Section 1

AGREEMENT BETWEEN UK AND SWITZERLAND

PART 1

INTRODUCTION

The Agreement

1 In this Schedule—
(a) "the Agreement" means the agreement signed on 6 October 2011 between the United Kingdom and the Swiss Confederation on co-operation in the area of taxation,
(b) "the start date" is the date on which the Agreement enters into force in accordance with its terms (see Article 43), and
(c) references to a numbered Article are to the Article of that number in the Agreement.

PART 2

THE PAST

Taxes affected

2 (1) The taxes affected by this Part are—
(a) income tax,
(b) capital gains tax,
(c) inheritance tax, and
(d) VAT.

(2) Accordingly, this Part affects—
(a) amounts of income on which income tax is charged,
(b) chargeable gains,
(c) the value transferred by chargeable transfers, and
(d) the value of supplies on which VAT is charged.

(3) An amount falling within one (or more) of those descriptions is referred to as a "taxable amount" and, in relation to such an amount, "tax" means whichever of the taxes mentioned in sub-paragraph (1) is (or are) charged on it.

Application of this Part

3 (1) This Part applies if—
(a) a one-off payment is levied in accordance with Part 2 of the Agreement,

(b) a certificate is issued under Article 9(4) to a person ("P") in respect of that payment, and

(c) the certificate is approved by P or considered approved by virtue of that Article.

(2) The certificate is referred to in this Part as "the Part 2 certificate".

Qualifying amounts

4 (1) The Part 2 certificate applies to taxable amounts in respect of which the conditions in sub-paragraph (2) are met.

(2) The conditions are—

(a) P is liable to tax on the amount,

(b) the amount is untaxed,

(c) the taxable event took place before the start date, and

(d) the necessary link with the certificate can be demonstrated.

(3) The necessary link is—

(a) in a case falling within Article 9(3) (non-UK domiciled individuals opting for self-assessment method), that the amount is included in the omitted taxable base by reference to which the one-off payment was calculated, and

(b) in any other case, that the amount forms part of or is represented by the assets comprised in the relevant capital by reference to which the one-off payment was calculated (referred to in the Agreement as C_r).

(4) For the purposes of sub-paragraph (3)(b), amounts are assumed to be attributed to assets in the way that produces the most beneficial outcome for P.

(5) Paragraph 11 makes further provision about the interpretation of sub-paragraph (2).

(6) Amounts to which the Part 2 certificate applies in accordance with this paragraph are referred to in this Part as "qualifying amounts".

Eligibility for clearance

5 (1) The effect of the Part 2 certificate depends on whether P is eligible for clearance.

(2) P is "eligible for clearance" if—

(a) none of the circumstances listed in Article 9(13)(a) to (e) apply (tax investigations etc), and

(b) Article 12(1) does not apply (wrongful behaviour in relation to non-UK domiciled status).

(3) Otherwise, P is "not eligible for clearance".

Effect if P eligible for clearance

6 (1) This paragraph sets out the effect of the Part 2 certificate if P is eligible for clearance.

(2) P ceases to be liable to tax on qualifying amounts.

(3) Sub-paragraph (2) does not apply to a qualifying amount if—

(a) the amount was held in the United Kingdom,

(b) at some point during the period beginning with 6 October 2011 and ending immediately before the start date, it ceased to be held in the United Kingdom, and

(c) after that point (but before the start date) it began to be held in Switzerland.

(4) Instead, such part of the one-off payment as is attributable (on a just and reasonable basis) to the qualifying amount is to be treated as if it were a credit allowable against the tax due from P taking account of that amount.

(5) The form in which a qualifying amount was held in the United Kingdom is irrelevant (so references in sub-paragraph (3) to the amount include an asset representing the amount).

(6) The total qualifying amounts to which sub-paragraphs (2) and (4) can apply as a result of the Part 2 certificate is limited to X.

(7) If the total exceeds X, the particular qualifying amounts to which those sub-paragraphs apply are assumed to be those that would produce the most beneficial outcome for P.

(8) X is—

(a) in a case falling within Article 9(3), the value of the omitted taxable base by reference to which the one-off payment was calculated, and

(b) in any other case, the value shown in the Part 2 certificate as the value of the relevant capital (C_r).

Ceasing to be liable to tax

7 (1) The result of "ceasing to be liable" to tax on a qualifying amount depends on the tax (or taxes) in respect of which the amount is untaxed.

(2) For income tax or capital gains tax, the result is that the amount is no longer liable to be brought into account in assessing the income tax or capital gains tax due from P for the tax year in which the amount would otherwise be liable to be brought into account.

(3) For inheritance tax, the result is that any inheritance tax due from P on the amount is no longer due from P.

(4) For VAT, the result is that P is no longer required to account for output tax on the amount in determining the VAT payable by P for the prescribed accounting period in which P would otherwise be required to account for output tax on the amount.

(5) But—

(a) ceasing to be liable to tax on a qualifying amount does not affect P's liability to tax on any other amount, and

(b) P's liability to tax on any other amount remains what it would have been, had the qualifying amount been brought into account in calculating that liability.

(6) Accordingly, if the qualifying amount were ever to be brought into account and it were found that the tax assessed on any other amount should have

been higher as a result, P would remain liable for the extra tax due on that other amount and for any associated ancillary charge.

(7) For the purposes of sub-paragraphs (5) and (6), the qualifying amount is assumed to form the top slice of the total sum on which P is liable to tax.

Effect if P not eligible for clearance

8 (1) This paragraph sets out the effect of the Part 2 certificate if P is not eligible for clearance.

(2) The one-off payment is to be treated as if it were a credit allowable against the tax due from P taking account of qualifying amounts.

(3) The one-off payment is to be applied for the purposes of sub-paragraph (2)—
   (a) in the order specified in sub-paragraph (4), and
   (b) subject to that, in the way that produces the most beneficial outcome for P.

(4) The order is—
   (a) first, for VAT,
   (b) then, for income tax,
   (c) then, for capital gains tax, and
   (d) finally, for inheritance tax.

Interest, penalties etc

9 (1) Where, by virtue of this Part, P ceases to be liable to tax on a qualifying amount, P also ceases to be liable to any ancillary charge directly connected with that amount.

(2) Where, by virtue of this Part, all or part of a one-off payment is treated as if it were a credit allowable against the tax due from P taking account of a qualifying amount, the credit may also be used to offset any ancillary charge directly connected with that amount.

(3) Sub-paragraph (4) applies in the case of a qualifying amount that is part only of—
   (a) an amount of income on which income tax is charged,
   (b) a chargeable gain,
   (c) the value transferred by a chargeable transfer, or
   (d) the value of a supply on which VAT is charged.

(4) The amount of any ancillary charge directly connected with that qualifying amount is determined by apportioning the ancillary charge directly connected with the income, gain or value on a just and reasonable basis.

Repayments

10 Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment or refund to which P may be entitled by virtue of paragraph 6(4) or 8(2) if the credit allowable under that paragraph exceeds the total amount of tax against which the credit is allowable.

Paragraph 4: supplementary provision

11 (1) This paragraph explains how paragraph 4(2) is to be read for each description of taxable amount.

(2) For income and chargeable gains—

(a) the reference to P being "liable to tax" includes a case where P would be so liable if the income or gain were to be remitted to the United Kingdom,

(b) "the taxable event" takes place when the income arises or the gain accrues (whether or not, in a remittance basis case, it is remitted to the United Kingdom), and

(c) the income or gain is "untaxed" if it has not been brought into account in an assessment to income tax or, as the case may be, capital gains tax for the tax year in which it is required to be brought into account.

(3) For the value transferred by chargeable transfers—

(a) "the taxable event" takes place when the chargeable transfer is made (or, in the case of a potentially exempt transfer, when death occurs), and

(b) the value transferred is "untaxed" if the inheritance tax due on it has not been paid.

(4) For the value of supplies on which VAT is charged—

(a) "the taxable event" takes place when P makes the supply, and

(b) the value of the supply is "untaxed" if output tax on the supply has not been accounted for in determining the VAT payable by P for the prescribed accounting period in which P is required to account for output tax on the supply.

(5) Paragraph 4(2)(a) is not satisfied in a case where P is liable to tax only because the liability has been transferred to P as a result of action taken by HMRC (for example, as a result of a notice given under section 77A of VATA 1994 or a direction given under regulation 81 of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)).

Refund of one-off payment

12 If a one-off payment is refunded by HMRC in accordance with Article 15(3), this Part ceases to apply with respect to that payment.

PART 3

THE FUTURE

Taxes affected

13 The taxes affected by this Part are—

(a) income tax, and

(b) capital gains tax.

Application of this Part

14 (1) This Part applies if—

(a) amounts are levied under Article 19 on income or gains of a person ("P"), and

(b) a certificate is issued to P under Article 30(1) in respect of the levying of those amounts.

(2) The certificate is referred to in this Part as "the Part 3 certificate".

(3) The income and gains on which those amounts are levied are referred to as "the cleared income and gains".

Effect of Part 3 certificate

15 (1) P ceases to be liable to income tax and capital gains tax on the cleared income and gains.

(2) Sub-paragraph (1) is to be read in accordance with paragraph 7.

(3) Where P ceases to be liable to tax on the cleared income and gains, P also ceases to be liable to any ancillary charge directly connected with them.

Election

16 (1) This paragraph applies if the cleared income and gains are included in full in a return or amended return made by P under Part 2 of TMA 1970 (returns of income and gains) for the tax year in which they should be brought into account.

(2) P may elect to disapply paragraph 15.

(3) An election under this paragraph must be made in the return or amended return in which the cleared income and gains are included.

(4) An election may only be made under this paragraph if it is accompanied by the Part 3 certificate.

(5) If an election is made under this paragraph—

(a) paragraph 15 does not apply to the cleared income and gains, and

(b) the amounts levied under Article 19 are instead to be treated as if they were credits allowable against the income tax or, as the case may be, capital gains tax due from P for the tax year in question.

(6) Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment to which P may be entitled as a result of an election under this paragraph if the credits allowable exceed the income tax or, as the case may be, capital gains tax due from P for the tax year in question.

PART 4

GENERAL PROVISIONS

Information exchange

17 No obligation of secrecy (whether imposed by statute or otherwise) prevents HMRC from disclosing information pursuant to a request made by virtue of Article 35 (reciprocity measures of the United Kingdom).

Amounts recoverable as if they were VAT

18 (1) Part 2 of this Schedule applies to amounts otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 as a debt due to the Crown (amounts shown on invoices as VAT etc) in the same way as it applies to VAT.

(2) But in the application of Part 2 to such amounts—

(a) a reference to the value of a supply on which VAT is charged is a reference to the value of the supply shown in the invoice mentioned in paragraph 5(2) of that Schedule,

(b) "the taxable event" takes place when the invoice is issued,

(c) the value of the supply shown in the invoice is "untaxed" if the amount otherwise recoverable under paragraph 5(3) of that Schedule has not been recovered, and

(d) "ceasing to be liable" to tax on the value of that supply means that the amount otherwise recoverable is no longer recoverable.

General interpretation

19 (1) In this Schedule—

"ancillary charge" means any interest, penalty, surcharge or other ancillary charge;

"assessment", in relation to a tax, includes a determination and also includes an amended assessment or determination (and "assess" is to be read accordingly);

"chargeable gain" means a gain that is a chargeable gain for the purposes of TCGA 1992;

"chargeable transfer" has the meaning given in section 2 of IHTA 1984;

"HMRC" means Her Majesty's Revenue and Customs;

"qualifying amount" is defined in paragraph 4;

"remitted to the United Kingdom" means remitted to the United Kingdom within the meaning of Chapter A1 of Part 14 of ITA 2007;

"the value transferred", in relation to a chargeable transfer, has the meaning given in section 3 of IHTA 1984;

"taxable amount" is defined in paragraph 2;

"VAT" means value added tax charged in accordance with VATA 1994.

(2) An expression used in relation to a tax has the same meaning as in enactments relating to that tax.

(3) A reference to a person being "liable" includes being liable jointly with others.

(4) A reference to the most beneficial outcome for P is a reference to the most beneficial outcome for P with respect to P's liability to tax.

(5) A reference to the tax due "taking account of" a qualifying amount is—

(a) if the amount is an amount of income or a chargeable gain, a reference to the income tax or capital gains tax due for the tax year in which the amount is required to be brought into account (calculated with that amount brought into account),

(b) if the amount is the value transferred by a chargeable transfer, a reference to the inheritance tax due on that amount,

(c) if the amount is the value of a supply on which VAT is charged, a reference to the VAT payable for the prescribed accounting period in which output tax on the supply is required to be brought into account (calculated with that output tax brought into account), and

(d) if the amount is the value of a supply to which Part 2 applies by virtue of paragraph 18, a reference to the amount otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 in respect of that supply.

EXPLANATORY NOTE

AGREEMENT BETWEEN UK AND SWITZERLAND

SUMMARY

1. This clause and Schedule give effect to the agreement signed on 6 October 2011 between the UK and the Swiss Confederation on co-operation in tax matters. The agreement provides for a one-off levy on financial assets in Switzerland and for a withholding tax to be deducted from income and gains arising in Switzerland. The Schedule makes clear which UK tax liabilities are satisfied on payment of the one-off levy and sets out the effect of the withholding tax on UK liability for the future.

2. The agreement also provides for enhanced exchange of information.

DETAILS OF THE CLAUSE

3. Subsection (1) is the enabling provision for the UK/Switzerland agreement signed on 6 October 2011.

4. Subsection (2) provides that the Schedule comes into force when the agreement enters into force. The agreement will enter into force on 1 January following the exchange of diplomatic notes confirming that the appropriate legal procedures in both countries have been completed. It is assumed for the purposes of these explanatory notes that the agreement will take effect on 1 January 2013. The clause itself will take effect on Royal Assent to this Bill.

5. Subsection (3), in common with the approach for other international tax measures, disapplies the normal procedure for laying treaties before Parliament as part of the ratification process set out in section 20 of the Constitutional Reform and Governance Act 2010. Instead, the agreement will receive scrutiny as part of the Finance Bill process.

DETAILS OF THE SCHEDULE

Part 1: Introduction

6. Paragraph 1 contains introductory material.

Part 2: The Past

7. Paragraph 2 sets out the four UK taxes with which this Part of the Schedule is concerned. They are the same four taxes for which the liability for periods up to 31 December 2012 on funds in Switzerland is affected (and may be extinguished) by the payment of the one-off levy under Part 2 of the agreement.

8. The paragraph explains what is meant in the Schedule by the term ‘taxable amount’ in relation to each of the four taxes.

9. Paragraph 3 explains that this Part of the Schedule sets out the effect on the liability of a person to whom a certificate is given by a Swiss paying agent evidencing that the one-off levy has been applied to the funds in that person’s account. That person, who under the agreement must be the beneficial owner of the funds, is called ‘P’ and the certificate is called a ‘Part 2 certificate’. The certificate is used as the basis for determining whether and to what extent UK tax liability on untaxed monies in Switzerland is affected by the payment of the levy.

10. Paragraph 4 sets out whether a taxable amount is a ‘qualifying amount’ the tax liability on which may be affected by the production of a Part 2 certificate. A qualifying amount is a taxable amount on which P has not paid tax and for which a necessary link with the certificate can be demonstrated.

11. In a case where P is domiciled in the UK or is non-domiciled but has opted for the levy to be calculated using the capital method set out in the agreement, the necessary link is that the taxable amount – for example the amount of income or gain – can be regarded as forming part of the capital by reference to which the levy was applied. This is the amount of cleared capital calculated under Article 9(12) of the agreement and depends on the balance or value of the account at 31 December 2010 and 31 December 2012. It is given the label C_r.

12. To be a qualifying amount it is important that the taxable amount can properly be regarded as being part of $C_{r.}$ In practice, with movements on accounts, this may not be clear. So paragraph 4 contains a rule that taxable amounts are attributed to assets in the way that produces the most beneficial outcome for P.

13. In a case where P is not domiciled in the UK and has opted for the levy to be calculated using the self-assessment method set out in the agreement, the necessary link is that the taxable amount is included in the omitted taxable base by reference to which the levy was calculated.

14. Further provisions about the interpretation of the conditions for a taxable amount to be a qualifying amount are in paragraph 11.

15. Paragraph 5 explains that a Part 2 certificate is only eligible to give tax clearance to P in a case where none of the exclusions set out in Article 9(13) and Article 12(1) of the agreement applies. If so eligible then paragraph 6 applies. If not so eligible then paragraph 8 applies with the levy being a credit against UK liabilities.

16. Paragraph 6 explains the effect on UK liabilities where P is eligible for clearance on qualifying amounts. In the normal case P gets full tax clearance – 'ceasing to be liable to tax' – (in respect of the four taxes to which the agreement applies) on qualifying amounts. But in a case where funds have directly or indirectly moved from the UK to Switzerland between 6 October 2011 and 31 December 2012 and form part of C_r then the tax liability on qualifying amounts relating to those funds remains in place and instead the appropriate part of the levy is a credit against that liability. The phrase 'the tax due taking account of that amount' is used to indicate all the tax liabilities in respect of a qualifying amount as set out in paragraph 19. Furthermore, as explained in paragraph 9 the phrase also includes associated liabilities to interest and penalties etc.

17. Sub-paragraphs (6) to (8) of paragraph 6 contain a cap on the total qualifying amounts that are wholly or partially relieved under this paragraph. Where the levy is calculated on C_r the cap is the value of C_r. Where the levy is calculated on the non-domiciled self assessment basis, it is the value of the omitted taxable base. The cap is necessary because there is no direct link between a qualifying amount that has been paid into an account and the capital sum by reference to which the levy is applied. If the cap applies then the qualifying amounts are relieved in the order which is most beneficial to P.

18. Paragraph 7 clarifies what is meant by P ceasing to be liable to tax on a qualifying amount in relation to each of the four taxes covered by this Part.

19. Sub-paragraphs (5) to (7) of paragraph 7 recognise that qualifying amounts (which are, by definition, previously untaxed) should have been returned and that the failure to do so may have resulted in too little tax being paid on items that were returned. The provisions ensure that despite the qualifying amounts being cleared, the liability on other items is what it would have been had the qualifying amounts been properly taken into account. To avoid having to recalculate settled liabilities as far as possible, the qualifying amounts are treated as the top slice of income, gains etc of the relevant period. But where there is additional tax to pay there is also liability to associated interest and penalties.

20. Paragraph 8 explains the treatment of the levy, on production of a Part 2 certificate, in a case where P is not eligible for clearance because one or more of the exclusions set out in Article 9(13) or

Article 12(1) apply. The tax liabilities on all qualifying amounts remain in place and instead the levy is a credit against those liabilities, including interest, penalties etc. The credit is applied first to tax in the order set out in sub-paragraph (4), but subject to that, in the way that minimises P's overall liability.

21. Paragraph 9 provides that clearance for tax liabilities or credit against tax liabilities includes clearance for or credit against associated ancillary charges to interest, penalties etc. Where a qualifying amount is part only of a larger taxable amount subject to ancillary charges, then an appropriate apportionment of those charges is made.

22. Paragraph 10 ensures that a repayment of tax previously paid is only due in the limited circumstances where any part of the levy is treated as a payment on account under the terms of the agreement. This provision is about repayment of tax, not about repayment of the levy (with which Article 15 of the agreement is concerned).

23. Paragraph 11 explains the meaning of terms used in paragraph 4 in determining whether an amount liable to tax is a qualifying amount potentially eligible for clearance. Sub-paragraph (2) defines terms for income tax and capital gains tax, sub-paragraph (3) for inheritance tax and sub-paragraph (4) for VAT.

24. Sub-paragraph (5) of paragraph 11 makes explicit that tax clearance for P does not apply to liabilities that are in substance tax liabilities of another person but which have been transferred to P by HM Revenue & Customs (HMRC) under a specific statutory authority.

25. Paragraph 12 provides that if any part of a levy is repaid under Article 15(3) (by HMRC refunding the Swiss authorities) then to the extent that a certificate evidences initial payment of the amount repaid it is disregarded.

Part 3: The Future

26. Paragraph 13 sets out the two UK taxes with which this Part of the Schedule is concerned. They are the same two taxes for which the liability for periods from 1 January 2013 on income and gains arising in Switzerland is extinguished by the payment of the withholding tax under Part 3 of the agreement.

27. Paragraph 14 explains that this Part of the Schedule sets out the effect on the liability of a person to whom a certificate is given by a Swiss paying agent evidencing that withholding tax has been applied. That person, who under the agreement must be the beneficial owner of the income or gains, is called 'P' and the certificate is called a 'Part 3 certificate'. The certificate is used as the basis for demonstrating that UK tax liability on income and gains arising in Switzerland is

extinguished by the withholding tax. If withholding tax is applied, the income and gains are called ‘cleared income and gains’.

28. Paragraph 15 provides that a person to whom a Part 3 certificate is issued ceases to be liable to tax on the income and gains to which withholding is applied together with any associated interest and penalties. The withholding tax satisfies the UK liability on the cleared income and gains.

29. Sub-paragraph (2) of paragraph 15 attracts the rules in paragraph 7 to the extent that they relate to income tax and capital gains tax. A failure to include items taxed under Part 3 of the agreement in a return may result in too little tax being paid on items that are returned. Attracting those rules ensures that the liability on other items is what it would have been had the cleared income and gains been properly taken into account. To avoid having to recalculate settled liabilities as far as possible, the cleared income and gains are treated as the top slice of income and gains of the relevant period.

30. Paragraph 16 gives effect to Article 23 of the agreement. It provides that P may elect that the withholding tax that has been applied is not treated as final if all the items subject to the withholding tax are included in a return or amended return. This allows P the option to calculate tax liability on the normal basis with the withholding tax as a credit against that liability. An election must be made in the return or amended return and accompanied by the Part 3 certificate.

31. Sub-paragraph (6) of paragraph 16 makes it explicit that the only circumstance in which the provision of a Part 3 certificate to HMRC entitles P to a repayment of any tax paid is as a result of an election under this paragraph.

Part 4: General provisions

32. Paragraph 17 ensures that there is no impediment to the passing of information to the Swiss authorities under Article 35 of the agreement. There is a similar provision in section 173(4) of Finance Act 2006 in relation to other international tax arrangements.

33. Paragraph 18 explains that references to VAT include amounts invoiced as if they were VAT, recoverable as a debt due to the Crown under paragraph 5(2) and (3) of Schedule 11 to VATA 1994.

34. Paragraph 19 defines the meaning of various terms in this Schedule.

BACKGROUND NOTE

35. The UK and Swiss governments signed an agreement on 6 October 2011 providing for co-operation in tax matters. This clause and Schedule give effect to that agreement for UK tax purposes. It is expected that the agreement will take effect on 1 January 2013, but that is subject to the passing of enabling legislation and ratification of the agreement in Switzerland.

36. The agreement provides for a one-off levy on financial assets in Switzerland and for a withholding tax to be deducted from income and gains arising in Switzerland. The Schedule makes clear which UK tax liabilities are satisfied on payment of the one-off levy and sets out the effect of the withholding tax for the future.

37. The agreement also provides for enhanced exchange of information by the Swiss authorities to the UK and allows the Swiss authorities to request that a further agreement is made for the provision of information by the UK to Switzerland on similar lines to the approach adopted by the UK with other territories.

38. If you have any questions about this change or comments on the legislation contact Richard Davey on 020 7147 2391 or send via email to powers.review-of-hmrc@hmrc.gsi.gov.uk.

1 Penalties: offshore income etc

In paragraph 21A of Schedule 24 to FA 2007 (classification of territories), in sub-paragraph (4)—

(a) omit “and” at the end of paragraph (b), and

(b) at the end of paragraph (c) insert—

“(d) the existence of any other arrangements between the UK and that territory for co-operation in the area of taxation, and

(e) the quality of any such other arrangements (in particular, the extent to which the co-operation provided for in them assists or is likely to assist in the protection of revenue raised from taxation in the UK).”

EXPLANATORY NOTE

PENALTIES: OFFSHORE INCOME ETC

SUMMARY

1. This clause adds to the list of factors in paragraph 21A of Schedule 24 to FA 2007 that the Treasury must have regard to in classifying a territory into one of the three categories set out in that provision. The classification of the territory determines the range within which a penalty falls in respect of under-declaration, failure to notify or late return of income and gains relating to that territory.

DETAILS OF THE CLAUSE

2. This clause inserts two new sub-paragraphs (d) and (e) into paragraph 21A(4) of Schedule 24. In classifying a territory they require the Treasury to have regard to the existence and quality of arrangements between the UK and that territory that provide for co-operation in the area of taxation.

BACKGROUND NOTE

3. The extension to the range of factors recognises that agreements are being reached which, while not offering automatic exchange of information, deliver an outcome for the UK that is much better than that which can be delivered through exchange on request. In particular, they enable HMRC to regularise the tax position of UK taxpayers with accounts in those territories. Such agreements, if fully implemented, justify inclusion of territories in category 1, alongside territories that do exchange information automatically.

4. If you have any questions about this change, or comments on the legislation please contact Richard Davey on 020 7147 2391 or (email: powers.review-of-hmrc@hmrc.gsi.gov.uk)

Information Powers

1 Information powers

(1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.

(2) After paragraph 5 insert—

"Power to obtain information about persons whose identity can be ascertained

5A (1) An authorised officer of Revenue and Customs may by notice in writing require a person to provide relevant information about another person ("the taxpayer") if conditions A to D are met.

(2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

(3) Condition B is that—

(a) the taxpayer's identity is not known to the officer, but

(b) the officer holds information from which the taxpayer's identity can be ascertained.

(4) Condition C is that the officer has reason to believe that—

(a) the person will be able to ascertain the taxpayer's identity from the information held by the officer, and

(b) the person obtained relevant information about the taxpayer in the course of carrying on a business.

(5) Condition D is that the taxpayer's identity cannot readily be ascertained by other means from the information held by the officer.

(6) "Relevant information" means all or any of the following—

(a) name,

(b) last known address, and

(c) date of birth (in the case of an individual).

(7) This paragraph applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to "the taxpayer" are to be read accordingly)."

(3) In paragraph 6 (notices), in sub-paragraph (1), for "or 5" substitute ", 5 or 5A".

(4) In paragraph 31 (right to appeal against notice given under paragraph 5), after "paragraph 5" insert "or 5A".

(5) Accordingly, in the heading immediately before paragraph 31, at the end insert "*or 5A*".

(6) In section 18D of TMA 1970 (savings income: content of regulations under section 18B), in subsection (1), for "sections 17 and 18" substitute "paragraph 1 of Schedule 23 to the Finance Act 2011 (data-gathering powers)".

(7) The amendments made by subsections (1) to (5) apply for the purpose of checking the tax position of a taxpayer as regards periods or tax liabilities whenever arising (whether before, on or after the day on which this Act is passed).

(8) The amendment made by subsection (6) is treated as having come into force on 1 April 2012.

EXPLANATORY NOTE

INFORMATION POWERS

SUMMARY

1. This clause inserts a new paragraph 5A into Schedule 36 to Finance Act (FA) 2008. It provides a power for HM Revenue & Customs (HMRC) to require a third party to provide the name, address and date of birth (if known) of a person for whom HMRC has information from which that person's identity can be ascertained. A notice will only be issued to a person who can be expected to be able to identify the taxpayer from the information provided by HMRC in the notice.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for amendments to Schedule 36 FA 2008.

3. Subsection (2) inserts the new power into Schedule 36.

4. New paragraph 5A(1) provides that an authorised officer of HMRC may issue a notice requiring a third party to provide relevant information about a person, subject to conditions the conditions set out in new paragraphs 5A(2) to (5)

5. New paragraph 5A(7) ensures that the identity details of all persons must be provided where the identifying information provided relates to more than one person, for example in relation to a joint bank account.

6. Subsections (3) to (5) make consequential amendments to Schedule 36 including ensuring that the same rights of appeal apply as for a notice under paragraph 5 of Schedule 36.

7. Subsection (6) updates the reference in section 18D Taxes Management Act ("TMA") 1970 to sections 17 and 18 of that Act which are repealed by Schedule 23 FA 2011 from 1 April 2012.

8. Subsection (7) provides that the new power, which will come into force on Royal Assent, will apply to tax whenever due.

9. Subsection (8) provides for the amendment in subsection (6) to take effect from 1 April 2012.

BACKGROUND NOTE

10. This new power is added to the range of information powers in Schedule 36 FA 2008 which may be used in carrying out a check of a person's tax position. In a case where the full identity of the taxpayer is not known but information is required from a third party, the existing powers can only be used where a serious loss of tax is suspected. The new power allows HMRC to issue an information notice in a case where identifying information is held (for example a bank branch and account number) in order to find out relevant information.

11. Relevant information is narrowly defined and only consists of the name, address and date of birth (if known) of the person to whom the identifying information relates. Once the taxpayer is fully identified in this way any further enquiries that are necessary will be made using the existing powers in Schedule 36.

12. This new power is necessary in order to bring the UK's powers into line with latest international standards as determined by the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

13. Subsections (6) and (8) update a reference in TMA 1970 that was overlooked in Schedule 23 to FA 2011.

14. If you have any questions about this change, or comments on the legislation, please contact Richard Davey on 020 7147 2391 (email: powers.review-of-hmrc@hmrc.gsi.gov.uk).

Working with tax agents: dishonest conduct

1 Tax agents: dishonest conduct

(1) Schedule 1 contains provision about tax agents who engage in dishonest conduct.

(2) That Schedule comes into force on such day as the Treasury may by order appoint.

(3) An order under subsection (2)—
  (a) may make different provision for different purposes, and
  (b) may include transitional provisions and savings.

(4) The Treasury may by order make any incidental, supplemental, consequential, transitional or saving provision in consequence of Schedule 1.

(5) An order under subsection (4) may—
  (a) make different provision for different purposes, and
  (b) make provision amending, repealing or revoking any provision made by or under an Act (whenever passed or made).

(6) An order under this section is to be made by statutory instrument.

(7) A statutory instrument containing an order under subsection (4) is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 1

Section 1

TAX AGENTS: DISHONEST CONDUCT

PART 1

INTRODUCTION

Overview

1 This Schedule is arranged as follows—
(a) this Part explains who is a tax agent and what it means to engage in dishonest conduct,
(b) Part 2 sets out the process for establishing whether someone is engaging in or has engaged in dishonest conduct,
(c) Part 3 confers power on HMRC to obtain relevant documents,
(d) Part 4 sets out sanctions for engaging in dishonest conduct,
(e) Part 5 provides for assessment of and appeals against penalties, and
(f) Parts 6 and 7 contain miscellaneous provisions and consequential amendments.

Tax agent

2 (1) A "tax agent" is an individual who, in the course of business, assists other persons ("clients") with their tax affairs.

(2) Individuals can be tax agents even if they (or the organisations for which they work) are appointed—
(a) indirectly, or
(b) at the request of someone other than the client.

(3) Assistance with a client's tax affairs includes—
(a) advising a client in relation to tax, and
(b) acting or purporting to act as agent on behalf of a client in relation to tax.

(4) Assistance with a client's tax affairs also includes assistance with any document that is likely to be relied on by HMRC to determine a client's tax position.

(5) Assistance given for non-tax purposes counts as assistance with a client's tax affairs if it is given in the knowledge that it will be, or is likely to be, used by a client in connection with the client's tax affairs.

Dishonest conduct

3 (1) An individual "engages in dishonest conduct" if, in the course of acting as a tax agent, the individual does something dishonest with a view to bringing about a loss of tax revenue.

(2) It does not matter whether a loss is actually brought about.

(3) Nor does it matter whether the individual is acting on the instruction of clients.

(4) A loss of tax revenue would be brought about for these purposes if clients were to—
   (a) account for less tax than they are required to account for by law,
   (b) obtain more tax relief than they are entitled to obtain by law,
   (c) account for tax later than they are required to account for it by law, or
   (d) obtain tax relief earlier than they are entitled to obtain it by law.

(5) "Tax" is defined in Part 6 of this Schedule.

(6) "Tax relief" includes—
   (a) any exemption from or deduction or credit against or in respect of tax, and
   (b) any repayment of tax.

(7) A reference in this paragraph to doing something dishonest includes—
   (a) dishonestly omitting to do something, and
   (b) advising or assisting a client to do something that the individual knows to be dishonest.

PART 2

ESTABLISHING DISHONEST CONDUCT

Conduct notice

4 (1) This paragraph applies if HMRC determine that an individual is engaging in or has engaged in dishonest conduct.

(2) An authorised officer (or an officer of Revenue and Customs with the approval of an authorised officer) may notify the individual of that determination.

(3) The notice must state the grounds on which the determination was made.

(4) For the effect of notifying the individual, see paragraphs 7(2) and 29(2).

(5) A notice under this paragraph is referred to as a "conduct notice".

(6) In relation to a conduct notice, a reference to "the determination" is to the determination forming the subject of the notice.

Appeal against determination

5 (1) An individual to whom a conduct notice is given may appeal against the determination.

(2) Notice of appeal must be given—
   (a) in writing to the officer who gave the conduct notice, and
   (b) within the period of 30 days beginning with the day on which the conduct notice was given.

(3) It must state the grounds of appeal.

(4) On an appeal that is notified to the tribunal, the tribunal may confirm or set aside the determination.

(5) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

(6) Setting aside a determination does not prevent a further conduct notice being given in respect of the same conduct if further evidence emerges.

Offence of concealment etc in connection with conduct notice

6 (1) A person ("P") commits an offence if, after a relevant event has occurred, P—
(a) conceals, destroys or otherwise disposes of a material document, or
(b) arranges for the concealment, destruction or disposal of a material document.

(2) A "relevant event" occurs if—
(a) a conduct notice is given to an individual, or
(b) an individual is informed by an officer of Revenue and Customs that a conduct notice will be or is likely to be given to the individual.

(3) A "material document" is any document that could be sought under paragraph 8 as a result of the giving of the conduct notice.

(4) If P acts after the event described in sub-paragraph (2)(a), no offence is committed if P acts—
(a) after the determination has been set aside,
(b) more than 4 years after the conduct notice was given, or
(c) without knowledge of that event.

(5) If P acts before that event but after the event described in sub-paragraph (2)(b), no offence is committed if P acts—
(a) more than 2 years after the individual was, or was last, so informed, or
(b) without knowledge of the event described in sub-paragraph (2)(b).

(6) P acts without knowledge of an event if P—
(a) is not the individual with respect to whom the event has occurred, and
(b) does not know, and could not reasonably be expected to know, that the event has occurred.

(7) A person guilty of an offence under this paragraph is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum, and
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

PART 3

POWER TO OBTAIN TAX AGENT'S FILES ETC

Circumstances in which power is exercisable

7 (1) The power in paragraph 8 is exercisable only in case A or case B and only with the approval of the tribunal.

(2) Case A is where a conduct notice has been given to an individual and either—

(a) the time allowed for giving notice of appeal against the determination has expired without any such notice being given, or

(b) notice of appeal against the determination was given within that time, but the appeal has been withdrawn or the determination confirmed.

(3) Case B is where—

(a) an individual has been convicted of an offence relating to tax that involves fraud or dishonesty,

(b) the offence was committed after the individual became a tax agent (whether or not the individual was still a tax agent when it was committed and regardless of the capacity in which it was committed),

(c) either—

(i) the time allowed for appealing against the conviction has expired without any such appeal being brought, or

(ii) an appeal against the conviction was brought within that time, but the appeal has been withdrawn or the conviction upheld, and

(d) no more than 12 months have elapsed since the date on which paragraph (c) was satisfied.

(4) For the purposes of this paragraph, a determination or conviction that is appealed is not considered to have been confirmed or upheld until—

(a) the time allowed for bringing any further appeal has expired, or

(b) if a further appeal is brought within that time, that further appeal has been withdrawn or determined.

(5) In this Schedule, a reference to "the tax agent" is—

(a) in a case falling within case A, a reference to the individual mentioned in sub-paragraph (2), and

(b) in a case falling within case B, a reference to the individual mentioned in sub-paragraph (3).

(6) It does not matter whether the individual is still a tax agent when the power in paragraph 8 is to be exercised.

File access notice

8 (1) Subject to paragraph 7, an officer of Revenue and Customs may by notice in writing require any person mentioned in sub-paragraph (2) to provide relevant documents.

(2) The persons are—

(a) the tax agent, and
(b) any other person the officer believes may hold relevant documents.

(3) "Relevant documents" is defined in paragraph 9.

(4) A notice under this paragraph is referred to as a "file access notice".

(5) The person to whom a file access notice is given is referred to as "the document-holder".

Relevant documents

9 (1) "Relevant documents" means the tax agent's working papers (whenever acting as a tax agent) and any other documents received, created, prepared or used by the tax agent for the purposes of or in the course of assisting clients with their tax affairs.

(2) It does not matter who owns the papers or other documents.

(3) The reference in sub-paragraph (1) to clients—
(a) includes former clients, and
(b) is not limited to the clients with respect to whom the tax agent is engaging in or has engaged in dishonest conduct.

Content of notice

10 (1) A file access notice may require the provision of—
(a) particular relevant documents specified in the notice, or
(b) all relevant documents in the document-holder's possession or power.

(2) A file access notice does not need to identify the clients of the tax agent.

(3) A file access notice addressed to anyone other than the tax agent must name the tax agent.

Compliance

11 A file access notice may require documents to be provided—
(a) within such period,
(b) by such means and in such form, and
(c) to such person and at such place,
as is reasonably specified in the notice or in a document referred to in the notice.

12 Unless otherwise specified in the notice, a file access notice may be complied with by providing copies of the relevant documents.

Approval by tribunal

13 (1) The tribunal may not approve the giving of a file access notice unless—
(a) the application for approval is made by or with the agreement of an authorised officer,
(b) the tribunal is satisfied that the case falls within case A or case B (see paragraph 7),

(c) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,

(d) the document-holder and (where different) the tax agent have been told that relevant documents are to be required and given a reasonable opportunity to make representations to an officer of Revenue and Customs, and

(e) the tribunal has been given a summary of any representations so made.

(2) Nothing in sub-paragraph (1) requires the tribunal to determine whether an individual is engaging in or has engaged in dishonest conduct.

(3) A decision by the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).

Documents not in person's possession or power

14 A file access notice only requires the document-holder to provide a document if it is in the document-holder's possession or power.

Types of information

15 (1) A file access notice does not require the document-holder to provide—

(a) parts of a document that contain information relating to the conduct of a pending appeal relating to tax, or

(b) journalistic material (as defined in section 13 of the Police and Criminal Evidence Act 1984).

(2) A file access notice does not require the document-holder to provide personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984).

(3) But a file access notice may require the document-holder to provide documents that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records.

Old documents

16 (1) A file access notice does not require the document-holder to provide a relevant document if—

(a) the whole of the document originated before the back-stop day, and

(b) no part of it has a bearing on tax periods ending on or after that day.

(2) "The back-stop day" is the first day of the period of 20 years ending with the day on which the file access notice is given.

Privileged communications between professional legal advisers and clients

17 (1) A file access notice does not require the document-holder to provide any part of a document that is privileged.

(2) For the purposes of this paragraph a document is privileged if it is a document in respect of which a claim to legal professional privilege, or (in

Scotland) to confidentiality of communications between client and professional legal adviser, could be maintained in legal proceedings.

(3) Regulations under paragraph 23 of Schedule 36 to FA 2008 (information powers: privileged communications) apply (with any necessary modifications) to disputes under this paragraph as to whether a document is privileged.

Power to copy documents

18 If a document is provided pursuant to a file access notice, an officer of Revenue and Customs may take copies of or make extracts from the document.

Power to retain documents

19 (1) If a document is provided pursuant to a file access notice, HMRC may retain the document for a reasonable period if an officer of Revenue and Customs thinks it necessary to do so.

(2) While a document is retained—

(a) the document-holder may, if the document is reasonably required for any purpose, request a copy of it, and

(b) an officer of Revenue and Customs must comply with such a request without charge.

(3) The retention of a document under this paragraph is not to be regarded as breaking any lien claimed on the document.

(4) If a document retained under this paragraph is lost or damaged, the Commissioners are liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

Appeal against file access notice

20 (1) If the document-holder is a person other than the tax agent, the document-holder may appeal against the file access notice, or any requirement in it, on the ground that it would be unduly onerous to comply with the notice or requirement.

(2) Notice of appeal must be given—

(a) in writing to the officer by whom the file access notice was given, and

(b) within the period of 30 days beginning with the day on which the file access notice was given.

(3) It must state the grounds of appeal.

(4) On an appeal that is notified to the tribunal, the tribunal may confirm, vary or set aside the file access notice or a requirement in it.

(5) If the tribunal confirms or varies the notice or a requirement in it, the document-holder must comply with the notice or requirement—

(a) within such period as is specified by the tribunal, or

(b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.

(6) A decision by the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).

(7) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

Offence of concealment etc in connection with file access notice

21 (1) A person ("P") commits an offence if P—
   (a) conceals, destroys or otherwise disposes of a required document, or
   (b) arranges for the concealment, destruction or disposal of a required document.

(2) A "required document" is a document within sub-paragraph (3) or sub-paragraph (4).

(3) A document is within this sub-paragraph if at the time when P acts—
   (a) P is required to provide the document by a file access notice, and
   (b) either—
      (i) the notice has not been complied with, or
      (ii) it has been complied with, but P has been notified in writing by an officer of Revenue and Customs that P must continue to preserve the document (and the notification has not been withdrawn).

(4) A document is within this sub-paragraph if at the time when P acts—
   (a) P is not required to provide the document by a file access notice,
   (b) P has been informed by an officer of Revenue and Customs that P will be or is likely to be so required, and
   (c) no more than 6 months have elapsed since P was, or was last, so informed.

(5) A person guilty of an offence under this paragraph is liable—
   (a) on summary conviction to a fine not exceeding the statutory maximum, and
   (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Penalty for failure to comply

22 (1) A person who fails to comply with a file access notice is liable to a penalty of £300.

(2) Failing to comply with a file access notice also includes—
   (a) concealing, destroying or otherwise disposing of a required document, or
   (b) arranging for any such concealment, destruction or disposal.

(3) "Required document" has the same meaning as in paragraph 21.

Daily penalty for failure to comply

23 If the failure continues after notification of a penalty under paragraph 22 has been issued, the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

Failure to comply with time limit

24 A failure to do anything required to be done within a limited period of time does not give rise to liability to a penalty under paragraph 22 or 23 if the thing was done within such further time (if any) as an officer of Revenue and Customs may have allowed.

Reasonable excuse

25 (1) Liability to a penalty under paragraph 22 or 23 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
- (b) if the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure,
- (c) if the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

PART 4

SANCTIONS FOR DISHONEST CONDUCT

Penalty for dishonest conduct

26 (1) An individual who engages in dishonest conduct is liable to a penalty.

(2) Subject to paragraph 27, the penalty to which the individual is liable is to be—
- (a) no less than £5,000, and
- (b) no more than £50,000.

(3) In assessing the amount of the penalty, regard must be had to—
- (a) whether the individual disclosed the dishonest conduct,
- (b) whether that disclosure was prompted or unprompted,
- (c) the quality of that disclosure, and
- (d) the quality of the individual's compliance with any file access notice in connection with the dishonest conduct.

(4) An individual "discloses" dishonest conduct by—
- (a) telling HMRC about it,

(b) giving HMRC reasonable help in identifying the client or clients concerned and in quantifying the loss of tax revenue (if any) brought about by it, and

(c) allowing HMRC access to records for the purpose of ensuring that any such loss is recovered or otherwise properly accounted for.

(5) A disclosure is "unprompted" if it is made at a time when the individual has no reason to believe that HMRC have discovered or are about to discover the dishonest conduct.

(6) Otherwise, a disclosure is "prompted".

(7) In relation to disclosure or compliance, "quality" includes timing, nature and extent.

Special reduction

27 (1) This paragraph applies if HMRC propose to assess an individual to a penalty under paragraph 26 of £5,000.

(2) If they think it right because of special circumstances, HMRC may take one or more of the following steps—

(a) reduce the penalty to an amount below £5,000 (which may be nil),

(b) stay the penalty, or

(c) agree a compromise in relation to proceedings for the penalty.

(3) "Special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a loss of tax revenue from a client is balanced by an over-payment by another person (whether or not a client).

Power to publish details

28 (1) The Commissioners may publish information about an individual if the individual incurs a penalty under paragraph 26.

(2) The information that may be published is—

(a) the individual's name (including any trading name, previous name or pseudonym),

(b) the individual's address,

(c) the nature of any business carried on by the individual,

(d) the amount of the penalty,

(e) the periods or times to which the dishonest conduct relates,

(f) any other information the Commissioners consider it appropriate to publish in order to make clear the individual's identity, and

(g) the link (if there is one) between the dishonest conduct and any inaccuracy, failure or action as a result of which information is published under section 94 of FA 2009 (which relates to deliberate tax defaulters).

(3) No information may be published under this paragraph if the penalty incurred by the individual is £5,000 or less.

(4) Subsections (5) to (9) and (11) of section 94 of FA 2009 apply to publishing information about an individual under this paragraph as they apply to publishing information about a person under that section.

(5) If, in acting as a tax agent, the individual works or worked for an organisation, sub-paragraph (2)(f) includes power to publish such information about that organisation as the Commissioners consider appropriate in order to make clear the individual's identity.

PART 5

PENALTIES UNDER THIS SCHEDULE: ASSESSMENT ETC

Assessment of penalties

29 (1) If a person becomes liable to a penalty under Part 3 or 4 of this Schedule, HMRC may assess the penalty.

(2) But, in the case of a penalty under Part 4, they may only do so if a conduct notice has been given to the person and either—
- (a) the time allowed for giving notice of appeal against the determination has expired without notice of appeal being given, or
- (b) notice of appeal against the determination was given within the time allowed, but the appeal has been withdrawn or the determination confirmed.

(3) Paragraph 7(4) applies for the purposes of sub-paragraph (2)(b).

(4) If HMRC assess a penalty, they must notify the person.

30 (1) HMRC may not assess a penalty under this Schedule after the applicable deadline.

(2) For a penalty under Part 3, the applicable deadline is the end of the period of 12 months beginning with the day on which the person became liable to the penalty.

(3) For a penalty under Part 4, the applicable deadline is the end of the period of 12 months beginning with the later of—
- (a) the first day on which HMRC may assess the penalty (see paragraph 29(2)) and
- (b) day X.

(4) If a loss of tax revenue is brought about by the dishonest conduct, day X is—
- (a) the day immediately following the end of the appeal period for the assessment or determination of the tax revenue lost (or, if more than one client is involved, the end of the last such period), or
- (b) if there is no such assessment or determination, the day on which the amount of tax revenue lost is ascertained.

(5) Otherwise, day X is the day on which HMRC ascertain that no loss of tax revenue has been brought about by the dishonest conduct.

(6) In sub-paragraph (4), "appeal period" means the period during which—
- (a) an appeal could be brought, or
- (b) an appeal that has been brought has not been withdrawn or determined.

Appeal against penalty

31 (1) A person may appeal against a decision of HMRC—

(a) that a penalty is payable under Part 3 of this Schedule, or
(b) as to the amount of a penalty payable under Part 3 or 4 of this Schedule.

(2) Notice of appeal must be given—
(a) in writing to HMRC, and
(b) before the end of the period of 30 days beginning with the day on which notification of the penalty was issued.

(3) It must state the grounds of appeal.

(4) On an appeal under sub-paragraph (1)(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.

(5) On an appeal under sub-paragraph (1)(b) that is notified to the tribunal, the tribunal may—
(a) confirm the decision, or
(b) substitute for the decision another decision that HMRC had power to make.

(6) If, in the case of an appeal against a penalty under Part 4, the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 27 (special reduction)—
(a) to the same extent as HMRC (which may mean applying the same reduction as HMRC to a different starting point), or
(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of that paragraph was flawed (when considered in the light of the principles applicable in proceedings for judicial review).

(7) Subject to this paragraph and paragraph 32, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

Enforcement of penalty

32 (1) A penalty under this Schedule must be paid—
(a) before the end of the period of 30 days beginning with the day on which notification of the penalty was issued, or
(b) if a notice of appeal under paragraph 31 is given, before the end of the period of 30 days beginning with the day on which the appeal is withdrawn or determined.

(2) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable.

Double jeopardy

33 A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person has been convicted of an offence.

34 (1) A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person is personally liable to a penalty under—
(a) Schedule 24 to FA 2007 (penalties for errors),
(b) Schedule 41 to FA 2008 (penalties for failure to notify etc), or

(c) Schedule 55 to FA 2009 (penalties for failure to make a return etc).

(2) Sub-paragraph (1) applies where, for example, the person is personally liable by virtue of section 48(3) of VATA 1994 (VAT representatives).

Power to change amount of penalties

35 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant day, they may by regulations substitute for the sums for the time being specified in paragraphs 22(1), 23, 26(2), 27(1) and (2)(a) and 28(3) such other sums as appear to them to be justified by the change.

(2) "Relevant day", in relation to a specified sum, means—

(a) the day on which this Act is passed, and

(b) each day on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.

(3) Regulations under this paragraph do not apply to a failure or conduct that began before the day on which they come into force.

(4) The power to make regulations under this paragraph is exercisable by statutory instrument.

(5) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

PART 6

MISCELLANEOUS PROVISION AND INTERPRETATION

Application of provisions of TMA 1970

36 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—

(a) section 108 (responsibility of company officers),

(b) section 114 (want of form), and

(c) section 115 (delivery and service of documents).

Tax

37 (1) "Tax" means—

(a) income tax,

(b) capital gains tax,

(c) corporation tax,

(d) construction industry deductions,

(e) VAT,

(f) insurance premium tax,

(g) inheritance tax,

(h) stamp duty land tax,

(i) stamp duty reserve tax,

(j) petroleum revenue tax,

(k) aggregates levy,

(l) climate change levy,
(m) landfill tax, and
(n) any duty of excise other than vehicle excise duty.

(2) "Construction industry deductions" means construction industry deductions under Chapter 3 of Part 3 of FA 2004.

(3) "Corporation tax" includes an amount assessable or chargeable as if it were corporation tax.

(4) "VAT" means—
(a) value added tax charged in accordance with VATA 1994,
(b) amounts recoverable under paragraph 5(2) of Schedule 11 to that Act (amounts shown on invoices as VAT), and
(c) amounts treated as VAT by virtue of regulations under section 54 of that Act (farmers etc).

General interpretation

38 In this Schedule—
"appointed" includes engaged;
"client" (except in paragraph 17)—
(a) has the meaning given in paragraph 2(1), and
(b) in relation to a particular tax agent, means a client of that tax agent;
"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;
"conduct notice" has the meaning given in paragraph 4;
"the document-holder" has the meaning given in paragraph 8;
"document" includes a copy of a document (see also section 114 of FA 2008);
"file access notice" has the meaning given in paragraph 8;
"HMRC" means Her Majesty's Revenue and Customs;
"organisation" includes any person or firm carrying on a business;
"specify" includes describe;
"tax period" means a tax year, accounting period or other period in respect of which tax is charged;
"the tribunal" means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.

39 (1) A reference in this Schedule to clients of a tax agent (or to a tax agent's clients) is a reference to the persons whom the agent assists with their tax affairs.

(2) Sub-paragraph (1) applies even if—
(a) the agent works for an organisation, and
(b) it is the organisation that is appointed to give the assistance.

40 A loss of tax revenue is taken for the purposes of this Schedule to be (or to be capable of being) brought about by dishonest conduct despite the fact that the loss can be recovered or properly accounted for (following discovery of the conduct or otherwise).

41 A reference in this Schedule to working for an organisation includes being a partner or member of an organisation.

42 A reference in a provision of this Schedule to an authorised officer is to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purposes of that provision.

Relationship with other enactments

43 Nothing in this Schedule limits—
 (a) any liability a person may have under any other enactment in respect of conduct in respect of which a person is liable to a penalty under this Schedule, or
 (b) any power a person may have under any other enactment to obtain relevant documents.

PART 7

CONSEQUENTIAL PROVISIONS

TMA 1970

44 TMA 1970 is amended as follows.

45 Omit—
 (a) section 20A (power to call for papers of tax accountant),
 (b) section 20B (restrictions on powers under section 20A), and
 (c) section 99 (assisting in preparation of incorrect return etc).

46 (1) Section 20BB (falsification etc of documents) is amended as follows.

(2) In subsection (1)—
 (a) for “subsections (2) to (4)” substitute “subsections (2) and (3)”,
 (b) in paragraph (a), omit “a notice under section 20A above or”,
 (c) at the end of that paragraph, omit “or”, and
 (d) omit paragraph (b).

(3) In subsection (2)—
 (a) in paragraph (a), omit “, the inspector”,
 (b) at the end of that paragraph, insert “or”,
 (c) at the end of paragraph (b), omit “or”, and
 (d) omit paragraph (c).

(4) In subsection (3), for the words from “the notice is given” to the end substitute “the order is made, unless before the end of that period an officer of Revenue and Customs has notified the person in writing that the order has not been complied with to the officer’s satisfaction”.

(5) Omit subsection (4).

47 In section 20D (interpretation of sections 20 to 20CC)—
 (a) in subsection (1), for “sections 20A and 20BA” substitute “section 20BA”, and
 (b) omit subsection (2).

48 In section 103 (time limits for penalties)—
(a) omit subsection (3), and
(b) in subsection (4), for "neither subsection (1) nor subsection (3) applies" substitute "subsection (1) does not apply".

49 In section 103ZA (disapplication of sections 100 to 103)—
(a) omit "or" at the end of paragraph (e),
(b) at the end of paragraph (f) insert ", or
(g) Schedule 1 to FA 2012 (tax agents: dishonest conduct)."

50 In section 118 (interpretation), in the definition of "tax", omit the words from "except that" to the end.

OTA 1975

51 In Schedule 2 to OTA 1975 (management and collection of petroleum revenue tax), in the Table in paragraph 1(1), omit the entry relating to section 99 of TMA 1970.

IHTA 1984

52 In section 247 of IHTA 1984 (provision of incorrect information), omit subsection (4).

FA 2003

53 (1) FA 2003 is amended as follows.

(2) In section 93 (information powers)—
(a) in subsection (2), omit the entries relating to Parts 3 and 4 of Schedule 13, and
(b) omit subsections (3) to (6).

(3) Omit section 96 (penalty for assisting in preparation of incorrect return etc).

(4) In Schedule 13 (stamp duty land tax: information powers)—
(a) omit Parts 3 and 4, and
(b) for paragraph 53 substitute—

"53 (1) A person commits an offence if the person intentionally—
(a) falsifies, conceals, destroys or otherwise disposes of a relevant document, or
(b) causes or permits the falsification, concealment, destruction or disposal of a relevant document.

(2) A relevant document is a document that the person has been required by an order under Part 6 of this Schedule to deliver.

(3) A person does not commit an offence under this paragraph if the person acts—
(a) with the written permission of the tribunal or an officer of Revenue and Customs, or
(b) after the document has been delivered.

(4) A person does not commit an offence under this paragraph if the person acts after the end of the period of 2 years beginning with the date on which the order is made, unless before the end of that period an officer of Revenue and Customs has notified the person in writing that the order has not been complied with to the officer's satisfaction.

(5) A person guilty of an offence under this paragraph is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term of years not exceeding 2 years or a fine or to both."

EXPLANATORY NOTE

TAX AGENTS: DISHONEST CONDUCT

SUMMARY

1. This clause and Schedule make provision about powers to obtain working papers from tax agents who engage in dishonest conduct; impose penalties on them and allow the Commissioners of HM Revenue and Customs (HMRC) to publish their details. The Schedule will come into force by means of a Treasury order, made by statutory instrument.

DETAILS OF THE CLAUSE

2. Subsection (3) provides that an order to bring the Schedule into force may make different provision for different purposes, and may include transitional provisions and savings.

3. Subsections (4)-(6) cover other orders that may be used to make incidental, supplemental, consequential, transitional and saving provisions but only if they are consequential on the draft Schedule.

4. Subsection (7) provides that a statutory instrument, which contains an order under subsection (4), is subject to the negative procedure.

DETAILS OF THE SCHEDULE

Part 1: Introduction

5. Paragraph 1 provides an overview of the Schedule.

6. Paragraph 2 defines a "tax agent" as an individual who assists others with their tax affairs. The assistance must be in the course of business, so that, for example, general advice by friends, family or volunteer advisers, or broadcasts and lectures is not caught.

7. Under sub-paragraph (2) an individual can be a tax agent even if appointed indirectly.

8. Under sub-paragraph (3) assistance includes providing advice to or acting for a client in relation to tax. Sub-paragraphs (4) to (5) further clarify the meaning of assistance.

9. Sub-paragraph (1) of paragraph 3 defines engaging in "dishonest conduct" as doing something dishonest with a view to bringing about a loss of tax revenue and sub-paragraph (7) provides more detail.

10. Sub-paragraphs (2) and (3) provide that it does not matter whether or not there is an actual loss of tax revenue, or whether the agent was acting on a client's instructions.

11. Sub-paragraph (4) together with sub-paragraph (6) defines a loss of tax revenue.

12. Sub-paragraph (5) cross refers to Part 6 for the definition of the taxes covered by the Schedule.

Part 2: Establishing dishonest conduct

13. Paragraph 4 applies if HMRC determine that a person has engaged in dishonest conduct.

14. Sub-paragraph (2) and (3) provide that an authorised HMRC officer may notify the person of that determination, stating the grounds (a conduct notice).

15. Sub-paragraph (4) sets out the implications of a conduct notice by reference to later paragraphs of the Schedule (tribunal authorisation of a file access notice and a penalty for dishonest conduct).

16. Paragraph 5 provides a right of appeal for the tax agent against HMRC's determination of dishonest conduct, setting out the procedure and what the tribunal may do.

17. Paragraph 6 provides for a criminal offence if a person disposes of a material document which could otherwise be sought under a file access notice.

Part 3: Power to obtain tax agent's files etc

18. Paragraph 7 sets out two cases in which relevant documents may be required by a file access notice. Case A is where a conduct notice has been given without an appeal being made or once the appeal has been resolved. Case B is where an individual has been convicted of a tax related offence of dishonesty but only if it occurred after they became a tax agent. The capacity in which the offence was committed does not matter. In both Cases A and B the tribunal must approve the file access notice.

19. Paragraph 8 allows an officer to require relevant documents by a file access notice to the agent or anyone else who holds the documents.

20. Paragraph 9 describes "relevant documents". These are any documents used by a tax agent in assisting clients with their tax affairs and can be required even if the agent does not own them.

21. Paragraph 10 describes the documents which can be required under a file access notice.

22. Paragraphs 11 and 12 describe how a tax agent may comply with the contents of a file access notice.

23. Sub-paragraph (1) of paragraph 13 sets out the conditions for approval by the tribunal of the file access notice.

24. Sub-paragraphs (1)(b) and (c) set out that before approving the file access notice the tribunal must be satisfied that there has been dishonest conduct or a relevant conviction, and that the notice is justified in the circumstances.

25. Sub-paragraphs (1)(d) and (e) put conditions on HMRC (in addition to any other requirements deriving from tribunal rules).

26. Sub-paragraph (3) provides that the tribunal's decision is final. But there is a further right of appeal for a document-holder who is not the tax agent under paragraph 20 below.

27. Paragraphs 14 and 15 set out restrictions on documents that can be required by a file access notice: documents not in the document-holder's possession or power, material that relates to a pending tax appeal, or which is journalistic or personal.

28. Paragraph 16 provides that a file access notice cannot require production of documents which are more than 20 years old unless the document is of continuing relevance to tax.

29. Paragraph 17 concerns privileged material. Under sub-paragraph (1), a document-holder is not required to provide such material. Sub-paragraph (2) defines privileged material, and sub-paragraph (3) applies regulations made under Schedule 36 to the Finance Act (FA) 2008, covering disputes about whether a document is privileged.

30. Paragraphs 18 and 19 allow HMRC to copy and retain the documents provided and describe the conditions that apply to retention.

31. Paragraph 20 provides a right of appeal against the file access notice on the grounds of onerousness for a document-holder (a third party) who is not the tax agent. It sets out the procedure and the tribunal's powers.

32. Paragraph 21 provides for a criminal offence where a person disposes of a document required by a file access notice (a required document).

33. Paragraph 22 provides for a civil penalty for failure to comply with a file access notice.

34. Paragraph 23 provides for a daily civil penalty for a continuing failure to comply with a file access notice. This does not apply if a person cannot comply with the notice because the document in question has been destroyed, since it is no longer in the person's possession or power.

35. Paragraph 24 says that where an officer of HMRC allows extra time for a requirement to be complied with, which is then met, there is no liability to a penalty.

36. Paragraph 25 provides that if a person has a reasonable excuse there is no liability to a penalty. Sub-paragraph (2) sets out circumstances which do not count as a reasonable excuse.

Part 4: Sanctions for dishonest conduct

37. Paragraph 26 says that a tax agent who engages in dishonest conduct is liable to a penalty.

38. Sub-paragraph (2) sets out the minimum and maximum amount of this penalty.

39. Sub-paragraphs (3)-(7) set out the factors to be taken into account in assessing the penalty, including whether the dishonest conduct was disclosed and the quality of that disclosure.

40. Paragraph 27 provides that where HMRC propose to assess the minimum penalty for dishonest conduct, and there are special circumstances, HMRC may reduce a penalty, stay (desist from) proceedings, or agree a compromise in those proceedings.

41. Sub-paragraph (3) explains what does not constitute special circumstances.

42. Sub-paragraph (1) of paragraph 28 provides that HMRC may publish information about a tax agent who has incurred a penalty for dishonest conduct.

43. Sub-paragraph (2) sets out what information may be published.

44. Sub-paragraph (3) provides that no information may be published if a penalty has been reduced to or below the minimum.

45. Sub-paragraph (4) applies certain provisions of section 94 of FA 2009 to publishing information about a tax agent (time limits and the ability to make representations to HMRC).

46. Sub-paragraph (5) provides that information about an organisation (including a firm or business) may be published in order to make clear the identity of a tax agent who works for that organisation.

Part 5: Penalties under this Schedule: Assessment etc

47. Paragraphs 29 and 30 provide machinery provisions for HMRC to assess penalties due under this Schedule.

48. Paragraph 31 provides a right of appeal against a decision to impose a penalty or against the amount of any penalty and describes the procedures for appealing.

49. Paragraph 32 describes the means by which collection of a penalty charged under this Schedule may be enforced.

50. Paragraphs 33 and 34 provide that a person is not liable to a penalty under this Schedule for anything in respect of which they have either been convicted of an offence, or are liable to a penalty under specified penalty enactments.

51. Paragraph 35 provides for penalty amounts in this Schedule to be re-valorised by means of a Treasury order if there has been a change in the value of money.

Part 6: Miscellaneous provision and interpretation

52. Paragraph 36 specifies parts of the Taxes Management Act 1970 (TMA) which apply to this Schedule.

53. Paragraph 37 sets out which taxes are covered by this Schedule.

54. Paragraphs 38, 39, 41 and 42 cover how certain terms should be interpreted for the purposes of this Schedule.

55. Paragraph 40 provides that a loss of tax is taken to have been brought about even if subsequently recovered or properly accounted for.

56. Paragraph 43 describes the relationship between this Schedule and other enactments.

Part 7: Consequential provisions

57. Paragraphs 44 to 53 describe other legislation which is omitted or amended as a consequence of this Schedule.

BACKGROUND NOTE

58. Tax agents play a crucial role in the delivery of the UK tax system. HMRC is able to accept the majority of returns without checking their accuracy individually because of the work done by taxpayers and their agents to ensure those returns are correct.

59. But there are a small number of tax agents who are prepared to act dishonestly and whose actions can affect a larger group of taxpayers. HMRC needs to be able to deter and penalise this behaviour. It also needs to identify the scale of the dishonesty in order to be able to put matters right. This requires HMRC to be able to access the working papers of the dishonest agent to check and correct their clients' returns as appropriate.

60. HMRC has existing powers in respect of agents in sections 99 and 20A of TMA, but these apply only to direct tax and do not work as intended. This provision modernises the existing law, extends it to other taxes and duties and allows HMRC to publish details on its website of dishonest tax agents who are penalised and fail to fully disclose their dishonesty.

61. HMRC has consulted three times on how it should engage with tax agents to raise professional standards. *Working with Tax Agents* was published in April 2009. *Working with Tax Agents: the next stage* was published in December 2009 together with draft legislation in February 2010. Revised legislation was published with a discussion document *Working with Tax Agents: Dishonest Conduct* on 14 July 2011.

62. The draft legislation for inclusion in Finance Bill 2012 published today reflects the comments received during those consultations. A response document is also published today.

63. The measure will be brought into effect by Treasury Order, not expected to be before 1 April 2013.

64. If you have any questions about this change, or comments on the legislation, please contact Madeleine O'Brien on 020 7147 2466 or Maria Richards on 020 7147 3223 (email: powers.review-of-hmrc@hmrc.gsi.gov.uk).

Incapacitated persons – a new approach

1 Removal of special provision for incapacitated persons and minors

(1) In TMA 1970 omit—

(a) section 42(8) (procedure for making claims etc on behalf of incapacitated persons),

(b) section 72 (trustees, guardians, etc of incapacitated persons), and

(c) section 73 (further provision as to infants).

(2) In Part 4 of FA 2003 (stamp duty land tax), omit section 106(1) and (2) (persons acting in a representative capacity on behalf of incapacitated persons and minors).

(3) Accordingly, incapacitated persons are (and minors remain) assessable and chargeable to the taxes in question.

(4) In consequence of the amendments made by subsections (1) and (2)—

(a) in section 118(1) of TMA 1970, omit the definitions of "incapacitated person" and "infant",

(b) omit paragraphs 33 and 34 of Schedule 1 to the Age of Legal Capacity (Scotland) Act 1991,

(c) in paragraph 5 of Schedule 2 to the Social Security Contributions and Benefits Act 1992—

(i) omit paragraph (a) (together with the "or" after it), and

(ii) in paragraph (b), for "such" substitute "Class 4",

(d) in paragraph 5 of Schedule 2 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992—

(i) omit paragraph (a) (together with the "or" after it), and

(ii) in paragraph (b), for "such" substitute "Class 4", and

(e) in section 81B(4) of FA 2003, omit paragraph (b) (together with the "or" before it).

(5) The amendments made by subsections (1) and (4)(a) to (d) have effect for the tax year 2012-13 and subsequent tax years.

(6) The amendments made by subsections (2) and (4)(e) have effect in relation to land transactions with an effective date on or after the day on which this Act is passed.

EXPLANATORY NOTE

REMOVAL OF SPECIAL PROVISION FOR INCAPACITATED PERSONS AND MINORS

SUMMARY

1. This clause removes the current definition of "incapacitated person" from the Taxes Management Act 1970. This clause also removes linked provisions in the Taxes Management Act (and other similar legislation) that confer certain rights and obligations on the person that represents an incapacitated person. The general legal framework for appointing people to assist those who lack capacity will continue to operate in relation to tax.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) remove provisions of the Taxes Management Act 1970 and the Finance Act 2003 which relate to income tax and stamp duty land tax and confer different rights and obligations on the representatives of incapacitated persons (including minors), and on parents and guardians of minors generally.

3. Subsection (4)(a) removes the definitions of an "incapacitated person" and an "infant" from the Taxes Management Act 1970.

4. Paragraphs (b) to (e) of subsection (4) make further consequential amendments to other legislation.

5. Subsections (5) and (6) make provision as to when the changes have effect.

BACKGROUND NOTE

6. In 2010 the Exchequer Secretary to the Treasury gave a commitment to consult, with an intention to update the current definition for tax purposes of an incapacitated person. A consultation document was published on 24 May 2011, and a summary of responses has now been published.

7. The approach taken here removes both the terminology, which is seen as offensive, of the current definition and the linked provisions. As a result of the changes there will no longer be a tax-specific legal framework for incapacitated persons. The general legal framework

for appointing people to assist those who lack capacity will continue to operate in relation to tax.

8. The provisions that this clause removes from the Taxes Management Act 1970 are applied for different purposes, and with modifications, by three statutory instruments: the Stamp Duty Reserve Tax Regulations 1986 (S.I. 1986/1711); the Child Trust Fund Regulations 2004 (SI 2004/1450); the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). It is intended that secondary legislation will be made to remove from those instruments the provisions that are linked to the sections of the Taxes Management Act that are removed by this clause.

9. The Registered Pension Schemes (Discharge of Liabilities under Sections 267 and 268 of the Finance Act 2004) Regulations 2005 (S.I. 2005/3452), makes provision in regulation 4 for applications made on behalf of incapacitated persons. The intention is to revoke regulation 4 by statutory instrument.

10. If you have any questions about this change, or comments on the legislation, please email Tax Administration Policy at: TAP@hmrc.gsi.gov.uk.

Real Time Information (RTI)

1 PAYE regulations: information

(1) Section 684 of ITEPA 2003 (PAYE regulations) is amended as follows.

(2) In the list in subsection (2)—

(a) after item 4 insert—

"4ZA Provision—

(a) for authorising or requiring a person who provides with respect to payments of or on account of PAYE income a service that is specified or of a specified description ("a relevant payment service") to supply to Her Majesty's Revenue and Customs information about payments with respect to which the service is provided, or any information the Commissioners may request about features of the service provided or to be provided with respect to particular payments;

(b) for conferring power on the Commissioners to specify by directions circumstances in which provision made by virtue of paragraph (a) or subsection (4ZB) is not to apply in relation to a payment;

(c) for securing that a supply of information that is authorised by regulations under paragraph (a) is not treated as breaching any obligation of confidence owed in respect of the information by the person supplying it;

(d) for prohibiting or restricting the disclosure, otherwise than to Her Majesty's Revenue and Customs, of information by a person to whom it was supplied pursuant to a requirement imposed by virtue of subsection (4ZB);

(e) for requiring a person who provides, or is to provide, a relevant payment service to take steps (including any steps that may be specified, or further specified, in accordance with item 8A(b)) for facilitating the meeting by persons making payments of obligations imposed virtue of subsection (4ZB).", and

(b) after item 8 insert—

"8A Provision requiring compliance with any directions the Commissioners may give—

(a) about the form and manner in which any information is to be provided under the regulations;

(b) specifying, or further specifying, steps for the purposes of item 4ZA(e);

(c) specifying information that a person making payments of or on account of PAYE income must provide about the method by which the payments are made."

(3) After subsection (3B) insert—

"(3C) References in items 4ZA and 8A of the above list to directions include directions making different provision for different cases."

(4) After subsection (4) insert—

"(4ZA) Item 8A in the above list does not prejudice the power of the Commissioners under subsection (1) to make provision in PAYE regulations about the matters mentioned in that item.

(4ZB) The persons to whom PAYE information regulations may require information to be supplied include, in the case of information about a payment, a person who provides, or is to provide, with respect to the payment a service such as is mentioned in item 4ZA(a) in the above list.

(4ZC) In subsection (4ZB) "PAYE information regulations" means PAYE regulations that require information to be supplied for any purpose authorised by subsections (1) and (2)."

EXPLANATORY NOTE

PAYE REGULATIONS: INFORMATION

SUMMARY

1. This clause provides HM Revenue & Customs (HMRC) with additional powers to require by regulations that certain persons who make payments that are subject to the Pay As You Earn system (PAYE) by electronic means must insert a cross-reference into the information provided to HMRC about that payment and the instruction to the payment service provider to make the payment. The regulations and directions which HMRC intends to make under them will detail who, and which payment services, are affected.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for the amendment of section 684 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Section 684 requires the Commissioners for HMRC (the Commissioners) to make regulations governing the operation of PAYE (PAYE Regulations). Section 684(2) of ITEPA contains a list of items which may be included in the regulations.

3. Subsection (2)(a) inserts into section 684(2) a new item 4ZA. This allows for PAYE Regulations to authorise or require anyone who provides a payment service to supply information to HMRC about payments of PAYE income made by means of that payment service. PAYE Regulations may also include provision authorising or requiring the provision of information about the payment service provided with respect to particular payments. The Commissioners are provided with a power to specify, by means of directions, circumstances in which the above obligations do not apply.

4. New item 4ZA also allows PAYE Regulations to provide that where anyone provides information to HMRC in accordance with one of the above authorisations the supply of that information will not be treated as breaching any obligation of confidence.

5. Subsection (2)(b) inserts new item 8A into the list in section 684(2). It allows PAYE Regulations to require compliance with any directions the Commissioners may give about the form and manner in which information must be provided under the Regulations. It also allows PAYE Regulations to require compliance with directions specifying the information that a person who makes a payment of

PAYE income must provide to HMRC about the method by which the payment is made.

6. New subsection (3C) provides that directions made under new items 4ZA and 8A in section 684(2) may make different provision for different cases.

7. Subsection (4) inserts new subsections (4ZA), (4ZB) and (4ZC) after section 684(4).

8. New subsection (4ZA) confirms that new item 8A in subsection (2) of that section, which allows PAYE Regulations to require compliance with certain directions, does not prejudice the power of the Commissioners under section 684 to make provision in PAYE Regulations dealing with the same subject matter as the directions.

9. New subsection (4ZB) provides that PAYE Regulations may provide for information required under the Regulations to be provided to persons who provide payment services covered by regulations made under new item 4ZA in section 684(2). Item 4ZA provides that PAYE Regulations may require the provider of that service to ensure that means are put in place to allow this to happen, including by directions under new item 8A in section 684(2), and prohibiting the service provider from disclosing that information other than to HMRC.

10. New subsection (4ZC) sets out the meaning of "PAYE information regulations" for the purposes of new subsection (4ZB).

BACKGROUND NOTE

11. PAYE Regulations set out the basic rules governing PAYE and tax deductions to be made from payments to employees. They also set out how employers should report certain information in connection with those payments to HMRC. Section 684 of ITEPA requires the Commissioners to make PAYE Regulations and sets out what types of provision PAYE Regulations may include.

12. The amendments provided by this clause will give HMRC additional powers that will facilitate the introduction of the Real Time Information (RTI) programme. They will allow PAYE Regulations to authorise or require certain persons who make payments that are subject to PAYE by electronic means to insert a cross reference into the information provided to HMRC about that payment and the instruction to the payment service provider to make the payment. This cross reference will enable HMRC to link and check the information submitted to HMRC against payments actually made.

The regulations and directions which HMRC intends to make under this power will detail who, and which payment services, are affected.

13. RTI will improve the operation PAYE by making the system easier to administer and more accurate. Under RTI, information about tax and other deductions will be collected and transmitted to HMRC every time an employee is paid.

14. HMRC has engaged extensively with employers and other interested parties about the design and introduction of RTI. A discussion paper 'Improving the operation of Pay As You Earn (PAYE)' was published on 27 July 2010. A second stage of consultation 'Improving the operation of Pay As You Earn (PAYE): Collecting Real Time Information' began on 3 December 2010, and a summary of responses to this consultation was published on 30 September 2011. These documents can be found on the HMRC website at: 'http://www.hmrc.gov.uk/rti/index.htm'.

15. HMRC is currently consulting on draft amendments to the regulations dealing with PAYE, National Insurance Contributions and the Construction Industry Scheme, which will provide for the introduction of RTI. The draft regulations were released for consultation on Monday 14th November 2011 together with a technical note. They can be found on the HMRC website at: 'http://www.hmrc.gov.uk/drafts/paye-rti-tech-note.htm'.

16. If you have any questions about this change, or comments on the draft legislation, please contact Paul Harris on 020 7147 2528 (email paul.harris@hmrc.gsi.gov.uk).

Mineral royalties – relief on royalties

1 Abolition of tax relief in relation to mineral royalties

Schedule 1 contains provision abolishing relief in relation to mineral royalties.

SCHEDULE 1

Section 1

MINERAL LEASES OR AGREEMENTS

Income tax

1 (1) The following provisions of ITTOIA 2005 (which provide for income tax relief in relation to mineral royalties) are repealed—

(a) section 157 (mineral royalties included as receipts of a trade),

(b) section 319 (mineral royalties included as receipts of a UK property business), and

(c) sections 340 to 343 (mineral royalties receivable in connection with mines, quarries and other concerns).

(2) In consequence of the amendments made by sub-paragraph (1)—

(a) in ITTOIA 2005—

(i) in section 337, omit the entry relating to section 340 (together with the "and" before that entry), and

(ii) in section 339, omit subsection (3), and

(b) in the Commissioners for Revenue and Customs Act 2005, in Schedule 4, omit paragraph 132(3)(a).

(3) The amendments made by this paragraph have effect in relation to mineral royalties which a person is entitled to receive on or after 6 April 2013.

Corporation tax on income

2 (1) The following provisions of CTA 2009 (which provide for corporation tax relief on income in relation to mineral royalties) are repealed—

(a) section 135 (mineral royalties included as receipts of a trade),

(b) section 258 (mineral royalties included as receipts of a UK property business), and

(c) sections 273 to 276 (mineral royalties receivable in connection with mines, quarries and other concerns).

(2) In consequence of the amendment made by sub-paragraph (1)(c), in section 272 of CTA 2009, omit subsection (3).

(3) The amendments made by this paragraph have effect in relation to mineral royalties which a company is entitled to receive on or after 1 April 2013.

Chargeable gains

3 (1) Section 201 of TCGA 1992 (mineral leases: royalties) is repealed.

(2) In consequence of that amendment, in section 203 of TCGA 1992—

(a) in subsection (1), for "sections 201 and 202" substitute "section 202", and

(b) in the title, for "**sections 201 and 202**" substitute "**section 202**".

(3) The amendments made by this paragraph have effect—

(a) for the purposes of capital gains tax, in relation to mineral royalties which a person is entitled to receive on or after 6 April 2013, and

(b) for the purposes of corporation tax in respect of chargeable gains, in relation to mineral royalties which a company is entitled to receive on or after 1 April 2013.

4 (1) Section 202 of TCGA 1992 (mineral leases: capital losses) is amended as follows.

(2) In subsection (1)—

(a) after "currency of a mineral lease or agreement" insert "entered into before the relevant date", and

(b) after "in relation to a mineral lease or agreement" insert "entered into before that date".

(3) After that subsection insert—

"(1A) For the purposes of this section "the relevant date" means—

(a) for the purposes of capital gains tax, 6 April 2013; and

(b) for the purposes of corporation tax in respect of chargeable gains, 1 April 2013."

(4) In subsection (3), after "termination of a mineral lease or agreement" insert "entered into before the relevant date".

5 In section 203 of TCGA 1992 (provisions supplementary to ss. 201 and 202), in subsection (1) for "as they apply for the interpretation of Chapter 7 of Part 4 of CTA 2009" substitute "(despite their repeal by paragraph 2(1)(c) of Schedule 1 to the Finance Act 2012)".

EXPLANATORY NOTE

MINERAL LEASES OR AGREEMENTS

SUMMARY

1. This Schedule simplifies the tax code by repealing mineral royalties relief.

DETAILS OF THE SCHEDULE

Income tax

2. Paragraph 1 repeals sections 157, 319 and 340 to 343 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005). Those sections treat half of the mineral royalties that a person may receive under a mineral royalty agreement or lease as subject to income tax. Paragraph 1 also makes other, consequential amendments. These changes, have effect for mineral royalties receivable on or after 6 April 2013.

Corporation tax on income

3. Paragraph 2 repeals sections 135, 258 and 273 to 276 of the Corporation Tax Act 2009 (CTA 2009). Those sections treat half of the mineral royalties that a person may receive under a mineral royalty agreement or lease as subject to corporation tax as income. Paragraph 2 also makes a consequential amendment. These changes have effect for mineral royalties receivable on or after 1 April 2013.

Chargeable gains

4. Paragraph 3 repeals section 201 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Section 201 treats half of the mineral royalties that a person receives as a chargeable gain. Paragraph 3 also makes various consequential amendments to TCGA 1992. These changes have effect for mineral royalties which a person is entitled to receive on or after 1 April 2013 for the purposes of corporation tax on chargeable gains, and on or after 6 April 2013 for the purposes of capital gains tax (CGT).

5. Paragraph 4 amends section 202 TCGA 1992 to limit the loss relief that the section provides in respect of mineral royalties leases or agreements to cases where the lease or agreement is entered into before 1 April 2013, for corporation tax purposes, or 6 April 2013, for CGT purposes.

6. Paragraph 5 makes a consequential amendment to section 203 TCGA 1992, which supplements sections 201 and 202.

BACKGROUND NOTE

7. Mineral royalties relief applies to certain "royalties" received by the owners (individuals, companies and others) of land in the UK in respect of leases or agreements etc to extract certain minerals from their land. The relief was introduced in 1970 when income and corporation tax rates were very high.

8. The relief provides (in its current form) that 50 per cent of the total amounts of royalties receivable are to be treated as a chargeable gain and liable to tax at the generally lower rates of tax on gains, leaving the remaining 50 per cent subject to income tax or corporation tax on income.

9. The Government considers that with much lower rates of income and corporation tax this relief is no longer necessary. Consequently the relief will be withdrawn in respect of mineral royalties receivable on or after 1 April 2013 in respect of businesses subject to corporation tax and 6 April 2013 in respect of businesses subject to income tax.

10. This means that any mineral royalties which a person is entitled to receive on or after the operative dates will be fully subject to either income tax or corporation tax, depending on the recipient. This applies both to mineral royalties received under existing agreements or leases, as well as to leases or agreements entered into on or after the operative dates.

11. Section 202 TCGA 1992 provides special loss relief where land subject to a mineral lease or agreement reduces in value. Where the landowner realises a loss on disposing of their interest in the land at or before the end of the period for which lease etc runs, they may carry back the loss on the disposal and set it off against the chargeable gains on the royalties payments for up to 15 years. Alternatively, a landowner may claim to be treated as having disposed of their interest in the land at the end of the lease etc, in order to crystallise a capital loss, which may then be similarly carried back for up to 15 years, or else set off against gains in the normal way. Where leases or agreements were entered into before the date of withdrawal of mineral royalties relief, the ability to crystallize losses and the entitlement to carry back losses for up to 15 years is preserved.

12. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of this relief.

13. If you have any questions about this change, or comments on the legislation, please contact Nick Williams on 020 7147 2541 (email: nicholas.williams@hmrc.gsi.gov.uk).

Stamp duty land tax (SDLT): disadvantaged areas relief – SDLT relief

1 Stamp duty land tax: abolition of disadvantaged areas relief

Schedule 1 contains provision abolishing relief from stamp duty land tax in the case of transactions relating to land in disadvantaged areas.

SCHEDULE 1

Section 1

SDLT: ABOLITION OF DISADVANTAGED AREAS RELIEF

Disadvantaged areas relief

1 (1) Section 57 of, and Schedule 6 to, FA 2003 (disadvantaged areas relief) are repealed.

(2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—

(a) in section 360C of CAA 2001, subsection (2)(b) (and the "or" before it);

(b) in FA 2003—

(i) section 112(2),

(ii) in Schedule 15, paragraph 26, and

(iii) in paragraph 18A of Schedule 17A, sub-paragraph (5)(b) (and the "or" before it);

(c) in FA 2004, section 298(5);

(d) in FA 2005—

(i) section 96, and

(ii) in Schedule 9, paragraphs 1 and 4;

(e) in FA 2008—

(i) section 95(6),

(ii) in Schedule 30, paragraph 6, and

(iii) in Schedule 31, paragraphs 4 and 9;

(f) in Schedule 22 to FA 2011, paragraph 4.

(3) In Schedule 15 to FA 2003, in paragraph 25(2), for "paragraphs 26 to 28" substitute "paragraphs 27 and 28".

Application and transitional provision

2 (1) The amendments made by this Schedule have effect in relation to transactions with an effective date on or after 6 April 2013.

(2) This paragraph is subject to paragraph 3.

3 (1) The amendments made by this Schedule do not have effect in relation to—

(a) any transaction that is effected in pursuance of a contract entered into and substantially performed on or before 16 March 2005, or

(b) (subject to sub-paragraph (2)) any other transaction that is effected in pursuance of a contract entered into on or before that date.

(2) The exclusion by sub-paragraph (1)(b) of transactions effected in pursuance of any contract entered into on or before 16 March 2005 does not apply if—

(a) there is any variation of the contract or assignment of rights under the contract after that date,

(b) the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or

(c) after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

(3) Expressions used in this paragraph and in Part 4 of FA 2003 have the same meaning in this paragraph as they have in that Part.

4 (1) Any claim for relief under Schedule 6 to FA 2003 (disadvantaged areas relief) which is made in respect of a transaction with an effective date on or before 5 April 2013 must be made before 6 May 2014.

(2) Sub-paragraph (1) applies—

(a) whether or not the claim is made in a land transaction return or an amendment of such a return, and

(b) whether the effective date of the transaction is before or after the day on which this Act comes into force.

(3) Expressions used in this paragraph and in Part 4 of FA 2003 have the same meaning in this paragraph as they have in that Part.

EXPLANATORY NOTE

REPEAL OF STAMP DUTY LAND TAX RELIEF FOR PURCHASES OF LAND IN DISADVANTAGED AREAS

SUMMARY

1. This clause and Schedule repeal the stamp duty land tax relief for purchases of land in disadvantaged areas.

DETAILS OF THE SCHEDULE

2. Paragraph 1(1) repeals section 57 of, and Schedule 6 to, Finance Act (FA) 2003 which provide relief from stamp duty land tax for purchases of residential property in areas designated as disadvantaged. Paragraphs 1(2) and (3) make consequential amendments.

3. Paragraph 2 sets out the commencement provisions that apply to the amendments made by paragraph 1.

4. Paragraph 3 provides that, subject to certain exclusions, the relief will continue to apply to the completion or substantial performance of contracts entered into on or before 16 March 2005, when the relief for transfers of commercial land was withdrawn. The exclusions include the variation or the assignment of the contract or the subsale of the property after 16 March 2005.

5. Paragraph 4 provides that claims for relief for transactions with an effective date on or before 5 April 2013 must be made before 6 May 2014.

BACKGROUND NOTE

6. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of this relief.

7. If you have any questions about this change or comments on the legislation, please contact Jane Ewart on 020 7147 3794 (email: jane.ewart1@hmrc.gsi.gov.uk).

Grants for giving up agricultural land – relief from CGT

1 Grants for giving up agricultural land

(1) Section 249 of TCGA 1992 (grants for giving up agricultural land) is repealed.

(2) Accordingly, the italic heading before that section becomes "*Woodlands*".

(3) The amendments made by this section have effect in relation to disposals made on or after 6 April 2013.

EXPLANATORY NOTE

GRANTS FOR GIVING UP AGRICULTRURAL LAND

SUMMARY

1. This clause withdraws from capital gains tax the relief for grants received under section 27 of the Agriculture Act 1967 for giving up occupation of agricultural land.

DETAILS OF THE CLAUSE

2. Subsection (1) repeals section 249 of the Taxation of Chargeable Gains Act 1992 (grants for giving up occupation of agricultural land).

3. Subsection (2) amends the heading which section 249 comes under from "Agricultural Land and Woodlands" to "Woodlands".

4. Subsection (3) provides that the repeal in subsection (1) has effect in relation to disposals made on or after 6 April 2013.

BACKGROUND NOTE

5. Grants under section 27 of the Agriculture Act 1967 were used to encourage farmers to give up uncommercial holdings of agricultural land.

6. No grants have been made under section 27 for some considerable time. The last known scheme under which payments were made came into effect in 1976 and has since lapsed. There are no plans for future grant schemes.

7. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of this relief.

8. If you have any questions about this change, or comments on the legislation, please contact Craig Griffith on 020 7147 3395 (email capitalgains.taxteam@hmrc.gsi.gov.uk).

Angostura bitters - exemption from excise duty

1 Angostura bitters

(1) In ALDA 1979, omit—
- (a) section 1(7) (angostura bitters deemed not to be spirits), and
- (b) section 6 (power to exempt angostura bitters from duty).

(2) In Schedule 5 to FA 1994 (decisions subject to review and appeal), omit paragraph 3(1)(a).

(3) The amendments made by this section come into force on 1 April 2013.

EXPLANATORY NOTE

ANGOSTURA BITTERS

SUMMARY

1. This clause provides for the repeal of the excise duty exemption covering the flavouring essence known as angostura bitters with effect from 1 April 2013. It also makes consequential amendments to the Finance Act 1994.

DETAILS OF THE CLAUSE

2. Paragraph (1) repeals sections 1(7) and section 6 of the Alcoholic Liquor Duties Act 1979 (ALDA). The former deems angostura bitters not to be spirits for certain duty purposes, while the latter provides power for the Commissioners of HM Revenue and Customs to direct that angostura bitters are to be treated on importation as not being spirits.

3. Paragraph (2) of the clause repeals the provision in Schedule 5 to the Finance Act 1994. Schedule 5 makes decisions relating to whether or not to give a direction under section 6 of the ALDA appealable at Tribunal.

BACKGROUND NOTE

4. The excise duty exemption covering angostura bitters was introduced in 1970 to support Trinidad's economy at the time.

5. Angostura bitters will remain eligible for Alcoholic Ingredients Relief, subject to compliance with the conditions set out in section 4 of the Finance Act 1995.

6. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of this relief.

7. If you have any questions about this change, or comments on the legislation, please contact Paul Manson on 0161 827 0357 (email paul.manson@hmrc.gsi.gov.uk

Black Beer - exemption from excise duty

1 Black beer

(1) ALDA 1979 is amended as follows.

(2) In section 1 (alcoholic liquors dutiable under ALDA 1979)—

(a) in subsection (3), omit from ", but" to the end of the subsection, and

(b) in subsection (5), omit "black beer,".

(3) In section 4(1) (interpretation), omit the definition of "black beer".

(4) In section 55(5)(b) (made-wine: exception to requirement for excise licence), omit "or black beer".

(5) The amendments made by subsections (2) and (3) come into force on 1 April 2013.

(6) The amendment made by subsection (4) has effect in relation to the use on or after 1 April 2013 of ingredients that include black beer.

EXPLANATORY NOTE

BLACK BEER

SUMMARY

1. This clause provides for the repeal of the excise duty exemption covering black beer with effect from 1 April 2013. It also makes consequential amendments to the Alcoholic Liquor Duties Act 1979 (ALDA).

DETAILS OF THE CLAUSE

2. Subsection (2)(a) amends the definition of beer in section 1(3) of ALDA to include black beer, making it liable to excise duty.

3. Subsections (2)(b) to(4) make consequential amendments to ALDA.

BACKGROUND NOTE

4. The excise duty exemption for black beer was introduced in 1931 to help its continued production at a time of substantial beer duty increases.

5. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of this relief.

6. If you have any questions about this change, or comments on the legislation, please contact Paul Manson on 0161 827 0357 (email: paul.manson@hmrc.gsi.gov.uk).

Luncheon vouchers – exemption from income tax

2 Reduction for meal vouchers

(1) Section 89 of ITEPA 2003 (reduction for meal vouches) is repealed.

(2) Accordingly, in that Act—

(a) in section 87 (benefit of non-cash voucher treated as earnings), omit subsection (6), and

(b) in Schedule 7 (transitionals and savings), omit paragraph 18.

(3) The amendments made by this section have effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

REDUCTION FOR MEAL VOUCHERS

SUMMARY

1. This clause repeals the exemption from income tax on the first 15pence per working day of meal voucher provided by an employer to an employee with effect from 6 April 2013.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for the repeal of section 89 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").

3. Subsection 2 provides for consequential omission of section 87(6) (benefit of non-cash voucher treated as earnings) ITEPA and paragraph 18 in Schedule 7 (transitionals and savings) to ITEPA.

4. Subsection 3 provides that the repeal will take effect from 6 April 2013.

BACKGROUND NOTE

5. Currently where employers provide employees with meal vouchers there is an income tax exemption, and National Insurance Contributions (NICs) disregard, on the first 15 pence per working day. However, any benefit provided above 15 pence is liable to income tax and NICs.

6. The relief was originally introduced in 1946 when food rationing was in place with the objective of helping individuals afford healthy meals. It was targeted at employees working for companies without workplace canteens.

7. The benefit of the relief has largely been eroded by inflation. The relief is therefore very low in value and no longer achieves a clear objective.

8. The current availability of the relief and disregard actually creates an administrative burden to the employer in calculating the taxable benefit to be reported to Her Majesty's Revenue and Customs because the employer has to account for income tax and NICs on any value above 15 pence.

9. The clause therefore repeals the income tax exemption for the first 15 pence per working day of a meal voucher provided by an employer to an employee. The amendments to the NICs legislation will be made in regulations with effect from 6 April 2013 to remove the related NICs disregard.

10. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of this relief.

11. If you have any questions about this change, or comments on the legislation please contact Su McLean-Tooke on 020 7147 2665 (email: susan.mclean-tooke@hmrc.gsi.gov.uk).

Relief on certain payments arising from a reduction in pool betting duty

1 Payments relating to reductions in pool betting duty

Schedule 1 contains repeals of provision about payments relating to reductions in pool betting duty.

SCHEDULE 1

Section 1

PAYMENTS RELATING TO REDUCTIONS IN POOL BETTING DUTY

1 (1) Section 126 of FA 1990 (capital allowances and IHT: pools payments for football ground improvements) is repealed.

(2) Accordingly, the following are also repealed—
  (a) paragraph 72 of Schedule 2 to CAA 2001;
  (b) paragraph 416 of Schedule 1 to ITTOIA 2005.

(3) The repeals made by this paragraph—
  (a) for corporation tax purposes, have effect in relation to payments made on or after 1 April 2013,
  (b) for income tax purposes, have effect in relation to payments made on or after 6 April 2013, and
  (c) for inheritance tax purposes, come into force on 6 April 2013 (and have effect in relation to payments whenever made).

2 (1) Section 121 of FA 1991 (inheritance tax: pools payments to support games etc) is repealed.

(2) The repeal made by this paragraph comes into force on 6 April 2013 (and has effect in relation to payments whenever made).

3 (1) In ITTOIA 2005, the following provisions are repealed—
  (a) section 162 (deductions in respect of payments by persons liable to pool betting duty);
  (b) section 748 (exemption for payments by persons liable to pool betting duty).

(2) Accordingly, section 683(4)(g) of that Act is also repealed.

(3) The repeals made by this paragraph have effect in relation to payments made on or after 6 April 2013.

4 (1) In CTA 2009, the following provisions are repealed—
  (a) section 138 (deductions in respect of payments by companies liable to pool betting duty);
  (b) section 978 (exemption for payments by persons liable to pool betting duty).

(2) Accordingly, section 976(1)(b) of that Act, and the "and" before it, are also repealed.

(3) The repeals made by this paragraph have effect in relation to payments made on or after 1 April 2013.

EXPLANATORY NOTE

PAYMENTS RELATING TO REDUCTIONS IN POOL BETTING DUTY

SUMMARY

1. This schedule withdraws a number of redundant reliefs for income, corporation and inheritance taxes, for various payments which, in consequence of a reduction in pool betting duty, are made by the person liable to pay pool betting duty for the purpose of improving football ground safety and comfort or supporting sports and the arts.

DETAILS OF THE SCHEDULE

2. Paragraph 1(1) withdraws reliefs from corporation tax and income tax, for capital expenditure funded by grants made for the purpose of improving football ground safety and comfort, and withdraws relief from inheritance tax for trustees responsible for administering those grants, both of which were provided for by section 126 of the Finance Act 1990. Subparagraph (2) makes minor consequential amendments to the Capital Allowances Act 2001 and the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). Subparagraph (3) provides that these changes shall have effect from 1 April 2013 for corporation tax purposes and from 6 April 2013 for income tax and inheritance tax purposes.

3. Paragraph 2(1) withdraws relief from inheritance tax for trustees administering funds held for the purpose of supporting sports and the arts provided for by section 121 of the Finance Act 1991. Subparagraph (2) provides that this change shall have effect from 6 April 2013.

4. Paragraph 3(1) withdraws reliefs from income tax in respect of payments for the purpose of improving football ground safety and comfort or supporting sports and the arts provided for by sections 162 and 748 of ITTOIA. Subparagraph (2) makes a minor consequential amendment. Subparagraph (3) states that these repeals shall have effect from 6 April 2013.

5. Paragraph 4(1) withdraws relief from corporation tax in respect of payments for the purpose of improving football ground safety and comfort or supporting sports and the arts provided for by sections 138 and 978 of the Corporation Tax Act 2009. Subparagraph (2) makes a minor consequential amendment. Subparagraph (3) states that these repeals shall have effect from 1 April 2013.

BACKGROUND NOTE

6. Pool betting duty was reduced from 42.5 per cent to 40 per cent with effect from 6 April 1990 with further reductions in 1991 and 1995. The intention was that these reductions in duty would be passed on by pools operators in the form of payments to a trust established to help meet the cost of capital works designed to improve the safety and comfort of spectators at football grounds in accordance with Lord Justice Taylor's recommendations following the Hillsborough Stadium disaster, and, as additionally provided for from 1991, to support sport and the arts generally.

7. To ensure that the full benefit of the pool betting duty reduction flowed through to their intended recipients certain tax liabilities that would otherwise arise were removed, however the arrangements by which these reductions were passed on expired in 2004 and since it has been several years since any qualifying payment was made it is considered that these reliefs are now redundant.

8. If you have any questions about this change, or comments on the legislation, please contact Craig Griffith on 020 7147 3395 (email: craig.griffith@hmrc.gsi.gov.uk).

Stamp duty: relief on certain transactions in shares

1 Repeals relating to stamp duty

Schedule 1 contains provision repealing certain provisions relating to stamp duty.

SCHEDULE 1

Section 1

REPEALS RELATING TO STAMP DUTY

Nationalisation schemes

1 (1) Section 52 of FA 1946 (exemption from stamp duty of documents connected with nationalisation schemes) is repealed.

(2) In consequence of the provision made by sub-paragraph (1)—

(a) section 67 of that Act (short title, construction, etc) is repealed;

(b) in section 41(1) of the Transport Act 1962 (exemptions from stamp duty), omit the words from ", or in section fifty-two" to "schemes),";

(c) in section 160(1) of the Transport Act 1968 (stamp duty), omit the words from "or in section 52" to "schemes)".

Instruments subject to duty of fixed amount

2 (1) Section 87 of FA 1985 (certificates) is amended as follows.

(2) Omit subsection (2) (power to exempt instruments chargeable to stamp duty of a fixed amount).

(3) In subsection (5), omit "or Treasury (as the case may be)".

Acquisitions

3 (1) The following provisions are repealed—

(a) section 76 of FA 1986 (rate of stamp duty payable on acquisitions), and

(b) section 113 of, and Schedule 35 to, FA 2002 (withdrawal of relief for company acquisitions).

(2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—

(a) in section 98(5) of the Taxes Management Act 1970, in the Table—

(i) in the first column, the entry relating to paragraph 11 of Schedule 35 to FA 2002, and

(ii) in the second column, the entry relating to paragraph 7 of that Schedule;

(b) in Schedule 14 to FA 1999, paragraph 15;

(c) in section 127 of FA 2000, subsection (4);

(d) in FA 2002, section 112;

(e) in FA 2003—

(i) section 127, and

(ii) in Schedule 19, paragraph 6(3);

(f) in Schedule 21 to the Legal Services Act 2007, paragraph 136;

(g) in Schedule 1 to CTA 2010, paragraphs 196, 372 and 376.

Application

4 The amendments made by this Schedule have effect in relation to instruments executed on or after 6 April 2013.

EXPLANATORY NOTE

REPEAL OF STAMP DUTY RELIEFS AND EXEMPTIONS

SUMMARY

1. This clause and Schedule repeal certain stamp duty reliefs and exemptions which are no longer necessary, do not meet their policy objective or are distortive.

DETAILS OF THE SCHEDULE

2. Paragraph 1(1) repeals section 52 of Finance Act (FA) 1946 which provides for exemption from stamp duty for instruments connected with nationalisation schemes. Paragraph 1(2) makes consequential amendments.

3. Paragraph 2 amends section 87 of FA 1985, removing the power conferred by subsection (2) for HM Treasury to make regulations specifying that certain instruments are exempt from stamp duty of a fixed amount.

4. Paragraph 3(1) repeals section 76 of FA 1986 and section 113 of, and Schedule 35 to, FA 2002 which provide for a reduced rate of stamp duty for certain company acquisitions and for the withdrawal of the relief in specified circumstances. Paragraph 3(2) makes consequential amendments.

5. Paragraphs 4 sets out the commencement provisions that apply to the amendments made by paragraphs 1 to 3.

BACKGROUND NOTE

6. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of these reliefs.

7. If you have any questions about these changes or comments on the legislation, please contact Jane Ewart on 020 7147 3794 (email: jane.ewart1@hmrc.gsi.gov.uk).

Tax reserve certificates (TRCs) issued by HM Treasury – exemption from income tax and corporation tax respectively for interest earned

1 Tax reserve certificates

(1) The following provisions are repealed—

(a) section 750 of ITTOIA 2005 (interest from tax reserve certificates);

(b) section 1283 of CTA 2009 (interest from tax reserve certificates).

(2) In consequence, in section 369 of ITTOIA 2005 (charge to tax on interest), in subsection (3)(e), omit "tax reserve certificates,".

(3) The repeals made by subsections (1)(a) and (2) have effect in relation to tax reserve certificates redeemed on or after 6 April 2013.

(4) The repeal made by subsection (1)(b) has effect in relation to tax reserve certificates redeemed on or after 1 April 2013.

EXPLANATORY NOTE

TAX RESERVE CERTIFICATES

SUMMARY

1. This clause repeals the relief for corporation tax and income tax on interest paid in respect of tax reserve certificates.

DETAILS OF THE CLAUSE

2. Subsection (1)(a) repeals section 750 of Income Tax (Trading and Other Income) Act 2005 (ITTOIA). That section provides that no liability to income tax arises in respect of interest from tax reserve certificates issued by the Treasury.

3. Subsection (1)(b) repeals section 1283 of Corporation Tax Act 2009. That section provides that no liability to corporation tax arises in respect of interest from tax reserve certificates issued by the Treasury.

4. Subsection (2) makes a consequential amendment to section 369 of ITTOIA 2005.

5. Subsection (3) provides that the repeal made by subsections (1)(a) and (2) will have effect in relation to any tax reserve certificates redeemed on or after 6 April 2013. Taxpayers who redeem tax reserve certificates before this date will continue to get relief for income tax.

6. Subsection (4) provides that the repeal made in subsection (1)(b) will have effect in relation to tax reserve certificates redeemed on or after 1 April 2013. Taxpayers who redeem tax reserve certificates before this date will continue to get relief for corporation tax.

BACKGROUND NOTE

7. Tax reserve certificates were introduced in 1941 as a mechanism for making payments of tax on account. Interest on tax reserve certificates is paid when the certificates are redeemed to settle a tax liability. Tax reserve certificates have not been issued since the mid-1970s.

8. The repeal of tax relief for tax reserve certificates was recommended by the Office of Tax Simplification in its Review of Tax Reliefs published on 3 March 2011.

9. If you have any questions about this change, or comments on the legislation, please contact Angela Roach on 020 7147 0002 (email: angela.roach@hmrc.gsi.gov.uk).

Payments for the benefit of family members – relief to income tax

1 Abolition of income tax relief relating to certain payments made for benefit of family members etc

(1) In Chapter 6 of Part 8 of ITA 2007 omit section 459 (which provides income tax relief in relation to certain payments made by individuals for the benefit of family members).

(2) In ITA 2007—
   (a) in sections 26(1)(a) and 27(5) omit "section 459 of this Act or section 273 of ICTA (payments for benefit of family members)",
   (b) in section 423(5)—
      (i) after paragraph (b) insert "and", and
      (ii) omit paragraph (d) and the "and" immediately before it,
   (c) in section 460—
      (i) omit subsection (1)(b) and the "or" immediately before it, and
      (ii) in subsection (4) for ", 458 or 459" substitute "or 458",
   (d) in section 809G(2)(c) for ", 458 or 459" substitute "or 458", and
   (e) omit section 811(6)(d).

(3) Section 609 of ITEPA 2003 (annuities for the benefit of dependents) is amended as follows.

(4) In subsection (1) for the words from the second "which" to the end substitute "—
   (a) which, in the tax year 2012-13 or an earlier tax year, satisfied the conditions for relief under section 273 of ICTA or section 459 of ITA 2007 (obligatory contributions to secure an annuity for the benefit of dependents), or
   (b) which fall within subsection (3)".

(5) After subsection (2) insert—

"(3) A sum falls within this subsection if—
   (a) in the tax year 2013-14 or a later tax year, the sum is paid by an individual, or is deducted from an individual's earnings, under an Act or the individual's terms and conditions of employment,
   (b) the sum is for the purpose of—
      (i) securing a deferred annuity after the individual's death for the individual's surviving spouse or civil partner, or
      (ii) making provision after the individual's death for the individual's children, and
   (c) the individual—
      (i) is UK resident for the tax year in which the sum is paid or deducted, or

(ii) at any time in that tax year, falls within any of paragraphs (a) to (f) of section 460(3) of ITA 2007 (matters relating to residence).

(4) Subsection (3)(a) does not cover contributions paid by a person under—

(a) Part 1 of the Social Security Contributions and Benefits Act 1992, or

(b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(5) In subsection (3)(a) "earnings" has the meaning given by section 62."

(6) The amendments made by this section have effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

ABOLITION OF INCOME TAX RELIEF RELATING TO CERTAIN PAYMENTS MADE FOR BENEFIT OF FAMILY MEMBERS

SUMMARY

1. This clause removes a tax relief for certain individuals who are required to pay an amount or amounts (including deductions from earnings) to secure an annuity for a surviving spouse or civil partner, or to provide for the individual's surviving children.

DETAILS OF THE CLAUSE

2. Subsection (1) removes entitlement to this relief by omitting section 459 Chapter 6 of Part 8 Income Tax Act 2007 (ITA).

3. Subsection (2) amends and removes several other supporting provisions in ITA and the Income and Corporation and Taxes Act 1988 , as a direct consequence of removing the relief.

4. Subsections (3) to (5) amend section 609 Income Tax (Earnings and Pensions) Act 2003 (ITEPA) which determines the amount of annuity payments that are treated as pension income, and the person liable to tax on this income. The amendment ensures that section 609 ITEPA continues to apply to the type of annuity for which relief was available under section 459 ITA, despite the removal of the relief.

5. Subsection (4) provides for section 609 ITEPA to continue to apply to annuities for the benefit of dependants where all or part of sums paid to acquire these annuities satisfied the conditions for relief in tax years up to and including 2012-13.

6. Subsection (5) imports the parts of section 459 ITA that identify the type of annuities to which section 609 ITEPA applies. These new parts of section 609 ITEPA will apply to sums paid in the tax year 2013-14 or later years, in order to acquire annuities for the benefit of dependants.

7. Subsection (6) provides that the various amendments described above will have effect for 2013-14 and subsequent years, so the last year for which the relief is available will be 2012-13.

BACKGROUND NOTE

8. Following the Office of Tax Simplification review of reliefs, the Government announced at Budget 2011 that it would repeal seven reliefs in Finance Act 2011 and confirmed its intention to abolish a further 36 reliefs in Finance Bill 2012 and beyond, subject to a period of consultation.

9. "Consultation on the abolition of 36 tax reliefs" was published on 27 May 2011 and views were requested on the Government's proposal to repeal this relief. The Government response was published on 6 December 2011. All documents are available via both the HM Treasury and HM Revenue & Customs websites.

10. This relief was introduced in Finance Act 1853 with the aim of encouraging social provision. The relief has been consolidated in various Tax Acts since it was first introduced but is now limited to a maximum of £20 each year and has been superseded by reliefs available under the pensions code.

11. If you have any questions about this change or comments on the legislation, please contact Jon Prothero on 0207 147 2785 (email: insurancequeries.ct&vat@hmrc.gsi.gov.uk).

Capital allowances: safety at sports grounds – relief in relation to capital expenditure

Capital allowances: flat conversion allowances – allowances for expenditure incurred

SCHEDULE 1

OTS RELIEFS

PART 1

CAPITAL ALLOWANCES

Safety at sports grounds

1 The following provisions of Part 2 of CAA 2001 (plant and machinery allowances) are repealed—
(a) section 30 (safety at designated sports grounds),
(b) section 31 (safety at regulated stands at sports grounds), and
(c) section 32 (safety at other sports grounds).

2 (1) In consequence of the provision made by paragraph 1, CAA 2001 is amended as follows.

(2) In section 23(2) (expenditure unaffected by ss.21 and 22), omit—
(a) the entry relating to section 30,
(b) the entry relating to section 31, and
(c) the entry relating to section 32.

(3) In section 27 (application of Part 2 to thermal insulation, safety measures, etc)—
(a) in subsection (1)(a), for "any of sections 28 to 33" substitute "section 28 or 33", and
(b) in the heading, for "**, safety measures, etc**" substitute "**and personal security**",

and, in the italic heading before that section, for "*, safety measures, etc*" substitute "*and personal security*".

3 The amendments made by paragraphs 1 and 2 have effect—
(a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2013, and
(b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2013.

Flat conversion allowances

4 Part 4A of CAA 2001 (flat conversion allowances) does not apply—
(a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2013, and
(b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2013.

5 Part 4A of CAA 2001 is repealed.

6 (1) In consequence of the provision made by paragraph 5, CAA 2001 is amended as follows.

(2) In section 1(2) (allowances for which Act provides), omit paragraph (ca).

(3) In section 2(3) (giving effect to capital allowances), omit the entry relating to section 393T.

(4) In section 567(1) (sales treated as being for alternative amount: introductory), omit “4A,”.

(5) In section 570(1) (elections under s.569: supplementary), omit “or 4A”.

(6) In section 570A(1) (avoidance affecting proceeds of balancing event), omit “4A,”.

(7) In section 573(1) (transfers treated as sales), omit “, 4A”.

(8) In Part 2 of Schedule 1 (list of defined expressions), omit the entries for the following defined expressions—

“balancing adjustment (in Part 4A)”,
“balancing event (in Part 4A)”,
“dwelling (in Part 4A)”,
“flat (in Part 4A)”,
“lease and related expressions (in Part 4A)”,
“proceeds from a balancing event (in Part 4A)”,
“qualifying building (in Part 4A)”,
“qualifying flat (in Part 4A)”,
“relevant interest (in Part 4A)”, and
“residue of qualifying expenditure (in Part 4A)”.

(9) In Part 2 of that Schedule, in the entry for “sale, transfers under Parts 3A, 4A and 10 treated as”, omit “, 4A”.

7 In consequence of the provision made by paragraphs 5 and 6, the following provisions are repealed—

(a) in FA 2001, section 67 and Schedule 19,
(b) in ITTOIA 2005, paragraphs 559 and 560 of Schedule 1, and
(c) in CTA 2009, paragraphs 505 to 507 of Schedule 1.

8 (1) The amendments made by paragraphs 5 to 7 have effect—

(a) for corporation tax purposes, in relation to chargeable periods beginning on or after 1 April 2013, and
(b) for income tax purposes, in relation to chargeable periods beginning on or after 6 April 2013.

(2) But see also—

(a) paragraph 9 (which deals with the case of a company’s chargeable period for corporation tax purposes straddling 1 April 2013), and
(b) paragraph 10 (which saves the continued operation of certain provisions).

9 (1) This paragraph applies if, for corporation tax purposes, the chargeable period of a company begins before, and ends on or after, 1 April 2013.

(2) The company is entitled only to the relevant proportion of any writing-down allowance for that chargeable period to which it would, but for this paragraph, have been entitled under section 393J of CAA 2001.

(3) The relevant proportion is—

$$\frac{A}{B}$$

where—

A is the number of days in the chargeable period falling before 1 April 2013, and

B is the number of days in the chargeable period.

10 (1) Nothing in paragraph 5 or 8(1) is to affect the operation of—

(a) section 393I of CAA 2001 (withdrawal of allowance if flat not qualifying flat or if relevant interest sold before flat first let), or

(b) sections 393M to 393P of CAA 2001 (balancing adjustments),

for chargeable periods beginning on or after the relevant date in relation to expenditure incurred before that date.

(2) The relevant date is—

(a) for corporation tax purposes, 1 April 2013, and

(b) for income tax purposes, 6 April 2013.

EXPLANATORY NOTE

CAPITAL ALLOWANCES OTS RELIEFS

SUMMARY

1. This Schedule simplifies the tax code by repealing redundant and underused legislation relating to expenditure on safety at sports grounds and flat conversions.

DETAILS OF THE CLAUSE

2. This Schedule introduces the amendments to the Capital Allowances Act 2001 (CAA 2001).

Safety at sports grounds

3. Paragraph (1) repeals sections 30 to 32 of CAA 2001 (the sections which specifically enacted the safety at sports grounds reliefs) and makes consequential changes.

4. Paragraph (2) makes consequential amendments to sections 23(2) and 27 of CAA 2001.

5. Paragraph (3) provides that the repeal has effect in respect of expenditure incurred on or after 1 April 2013 for corporation tax purposes and on or after 6 April 2013 for income tax purposes.

Flat conversion allowances

6. Paragraph (4) provides that Part 4A of CAA 2001 (the section which specifically enacted flat conversion allowances) does not apply in respect of expenditure incurred on or after 1 April 2013 for corporation tax purposes and on or after 6 April 2013 for income tax purposes.

7. Paragraph (5) repeals Part 4A of CAA 2001.

8. Paragraphs (6) and (7) make a number of consequential amendments.

9. Paragraph (8)(1) provides that the amendments at paragraphs (5) to (7) have effect on or after 1 April 2013 for Corporation Tax purposes and on or after 6 April 2013 for income tax purposes. But this is subject to paragraphs (9) and (10).

10. Paragraph (9) determines how a company's entitlement to writing-down allowances (WDAs), for the purposes of s393J CAA, should be calculated where its chargeable period spans 1 April 2013.

11. It requires that the WDA be calculated as normal for the chargeable period, and time apportioned between the chargeable period falling before and after 1 April 2013 in accordance with this method:

$$\frac{A}{B}$$

Where A is the number of days in the chargeable period falling before 1 April 2013 and B is the number of days in the chargeable period.

12. Paragraph (10) is a saving provision. It provides that paragraphs 5 and 8(1) do not affect the operation of sections 393I, 393M to 393P of CAA, in respect of expenditure incurred before 1 April 2013 for Corporation tax purposes and 6 April 2013 for Income Tax purposes.

BACKGROUND NOTE

Safety at sports grounds

13. Capital allowances are not generally available for capital expenditure incurred on the fabric of buildings. Sections 30 to 32 CAA, were introduced between 1975 and 1988, specifically to mitigate some of the capital costs sports ground operators were incurring as a result of having to upgrade existing sports grounds to comply with revised safety standards, and which otherwise would not have qualified for capital allowances.

14. Section 30 applies to safety expenditure incurred at sports grounds designated under the Safety at Sports Grounds Act 1975. Capital allowances are only available if a person carrying on a qualifying activity takes required safety precautions at a designated sports ground for the purposes of the Safety of Sports Grounds Act 1975. Section 31 is similar but it applies to safety expenditure incurred under the Fire Safety and Safety of Places of Sport Act 1987. Section 32 covers safety expenditure at grounds not specifically covered by the Safety at Sports Grounds Act 1975 but are capable of designation.

15. As the majority of existing stadia and stands have now had the necessary safety improvements made, the reliefs are considered to have met their purpose. Consequently they are being withdrawn in respect of expenditure incurred on or after 1 April 2013 for businesses within the charge to Corporation Tax and on or after 6 April 2013 for businesses within the charge to Income Tax.

Flat conversion allowances

16. Capital allowances are not generally available for capital expenditure incurred on the fabric of, or plant and machinery, installed in, dwellings.

17. Part 4A CAA Flat Conversion Allowances (FCA) provides a 100 per cent initial allowance to encourage the conversion, renovation or repair of empty or under-used space above shops and other commercial premises into dwellings available for letting. FCA was intended to increase housing supply and reduce the need for new housing developments on green field sites. However, evidence suggests that take-up is much lower than had been anticipated, suggesting that the relief has been unsuccessful in achieving its policy objectives.

18. The relatively marginal role of the scheme does not justify continuing to operate the regime and abolition consequently supports the Government's objective of simplifying the tax system and eliminating complex or under used reliefs. Consequently this relief is being withdrawn in respect of expenditure incurred on or after 1 April 2013 for businesses within the charge to Corporation Tax and on or after 6 April 2013 for businesses within the charge to Income Tax.

19. The entitlement to claim writing-down allowance on any outstanding residue of qualifying expenditure will also be withdrawn from these dates. However, where the chargeable period of a company falls in more than one financial or tax year, a rule requires that the writing down allowance (WDA) should be apportioned on a time basis between the financial or tax years in order to determine the amount of the writing-down allowance that may be set-off against profits.

20. For example:

(i) A company has a 12 month chargeable period of 1 January 2013 to 31 December 2013 (365 days).

(ii) It incurred £10,000 of FCA qualifying expenditure and has residual FCA expenditure of £5,000.

(iii) For the period 1 January 2013 to 31 December 2013, a maximum writing down allowance of £2,500 (£10,000 x25%) could have been claimed.

(iv) As a result of abolition, only the period 1 January 2013 to 31 March 2013 (90 days) qualifies for FCA relief.

(v) Therefore for its 2013 chargeable period the company would be entitled to a maximum WDA of: 90/365x£2,500 = £616.44.

21. Abolition also preserves a potential balancing charge in the event of a balancing event arising within seven years of first use.

22. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of these reliefs.

23. If you have any questions about this change, or comments on the legislation, please contact Nick Williams on 020 7147 2541 (email: nicholas.williams@hmrc.gsi.gov.uk).

Stamp Duty: reliefs for certain transactions in land

1 Repeals relating to stamp duty

Schedule 1 contains provision repealing certain provisions relating to stamp duty.

SCHEDULE 1

Section 1

REPEALS RELATING TO STAMP DUTY

Visiting forces and allied headquarters

1 Section 74 of FA 1960 (visiting forces and allied headquarters: stamp duty exemptions) is repealed.

Shared ownership transactions

2 (1) The following provisions are repealed—
(a) section 97 of FA 1980,
(b) section 108 of FA 1981, and
(c) section 54 of FA 1987.

(2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—
(a) in Schedule 2 to the Housing (Consequential Provisions) Act 1985, paragraph 43;
(b) in FA 1988, section 142(1);
(c) in Schedule 14 to FA 1999, paragraph 6.

Transfers to registered social landlords

3 (1) Section 130 of FA 2000 (transfers to registered social landlords etc) is repealed.

(2) In consequence of the provision made by sub-paragraph (1), in section 131 of that Act (relief for certain instruments executed before 28 July 2000), omit subsection (1)(b).

Land in disadvantaged areas

4 (1) Sections 92 to 92B of, and Schedule 30 to, FA 2001 (exemption for land in disadvantaged areas) are repealed.

(2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—
(a) in FA 2002, section 110;
(b) in Schedule 9 to FA 2005, paragraphs 2, 3 and 5;
(c) in Schedule 1 to CTA 2010, paragraph 366.

(3) Despite the repeal of section 92 of FA 2001, any regulations made under subsection (4) of that section continue to have effect for the purposes of section 72DA of the Insolvency Act 1986 (exception from prohibition of appointment of administrative receiver in respect of urban regeneration projects).

Leases granted by registered social landlords

5 (1) In Part 5 of FA 2003 (stamp duty), the following provisions are repealed—
(a) section 128 (exemption of certain leases granted by registered social landlords),
(b) section 129 (relief for certain leases granted before section 128 had effect), and
(c) in section 130 (registered social landlords: treatment of certain leases granted between 1 January 1990 and 27 March 2000), subsections (3) to (6) and (9).

(2) In consequence of the provision made by sub-paragraph (1), in Schedule 4 to the Commissioners for Revenue and Customs Act 2005, omit paragraphs 125 to 127.

Application and transitional provision

6 (1) The amendments made by paragraphs 1, 2, 3(1), 4 and 5(1)(a) of this Schedule have effect in relation to instruments executed on or after 6 April 2013.

(2) The amendments made by—
(a) paragraphs 3(2) and 5(1)(b) of this Schedule, and
(b) paragraph 5(1)(c) and (2) of this Schedule, so far as relating to the repeal of section 129 of FA 2003,

have effect in relation to instruments stamped on or after 6 April 2013.

(3) The amendments made by paragraph 5(1)(c) and (2), so far as not relating to that repeal, come into force on 6 April 2013.

(4) This paragraph is subject to paragraph 7.

7 The amendments made by paragraph 4 do not have effect in relation to an instrument giving effect to a contract entered into on or before 16 March 2005, unless—
(a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
(b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or, in Scotland, assignation) or further contract made after that date.

EXPLANATORY NOTE

REPEAL OF STAMP DUTY RELIEFS AND EXEMPTIONS

SUMMARY

1. This clause and Schedule repeal certain stamp duty reliefs and exemptions which are no longer necessary, do not meet their policy objective or are distortive.

DETAILS OF THE SCHEDULE

2. Paragraph 1 repeals section 74 of Finance Act (FA) 1960 which provides exemption from stamp duty for transfers of land made in connection with the provision of facilities for visiting forces and allied headquarters.

3. Paragraph 2(1) repeals section 97 of FA 1980, section 108 of FA 1981 and section 54 of FA 1987. Those provisions provide relief from stamp duty for purchases of residential property under shared ownership schemes. Paragraph 2(2) makes consequential amendments.

4. Paragraph 3 repeals section 130 of FA 2000 as well as references to that paragraph elsewhere in the Act. That provision provides relief from stamp duty for transfers of land to registered social landlords.

5. Paragraph 4(1) repeals sections 92 to 92B of, and Schedule 30 to, FA 2001. Those provisions provide relief from stamp duty for purchases of residential property in areas designated as disadvantaged. Paragraph 4(2) makes consequential amendments.

6. Paragraph 4(3) provides for any regulations made under section 92 of FA 2001 to continue to have effect for the purposes of section 72DA of the Insolvency Act 1986.

7. Paragraph 5(1) repeals sections 128, 129 and subsections (3) to (6) and (9) of section 130 of FA 2003. Those provisions provide exemption from stamp duty for certain leases granted by registered social landlords. Paragraph 5(2) makes consequential amendments.

8. Paragraphs 6 sets out the commencement provisions that apply to the amendments made by paragraphs 1 to 5.

9. Paragraph 7 provides that, subject to certain conditions, stamp duty disadvantaged areas relief will continue to apply to the completion of contracts entered into on or before 16 March 2005, when the relief for transfers of commercial land was withdrawn.

BACKGROUND NOTE

10. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of these reliefs.

11. If you have any questions about these changes or comments on the legislation, please contact Jane Ewart on 020 7147 3794 (email: jane.ewart1@hmrc.gsi.gov.uk).

Harbour reorganisation schemes - reliefs for corporation tax and from stamp duty

1 Abolition of harbour reorganisation scheme reliefs

(1) Section 45 of FA 1966 (stamp duty) is repealed.

(2) Section 221 of TCGA 1992 (chargeable gains) is repealed.

(3) Sections 991 to 995 of CTA 2010 (corporation tax, capital allowances and chargeable gains) are repealed.

(4) In consequence of the provision made by subsection (2)—
  (a) in section 288(3A)(a) of TCGA 1992, for "221" substitute "220", and
  (b) in Schedule 1 to CTA 2010, paragraph 251 is repealed.

(5) Subsection (1) has effect in relation to instruments executed on or after 1 April 2013.

(6) Subsections (2) to (4) have effect in relation to any transfer occurring on or after 1 April 2013.

EXPLANATORY NOTE

REPEAL OF HARBOUR REORGANISATION SCHEME RELIEFS

SUMMARY

1. This clause implements the repeal of a set of related corporation tax and stamp duty reliefs that can apply where the trade or assets of a company is transferred to a Harbour Authority under a certified harbour reorganisation scheme.

DETAILS OF THE CLAUSE

2. Subsection 1 repeals section 45 of the Finance Act 1966 which provides exemption from stamp duty for the transfer of stock or marketable securities to a Harbour Authority in connection with a certified harbour reorganisation scheme.

3. Subsection 2 repeals section 221 of the Taxation of Chargeable Gains Act 1992 (TCGA). That section provides that chargeable assets transferred from a company to a statutory Harbour Authority under a certified harbour reorganisation scheme are treated for tax purposes as transferred at the value which creates neither a gain nor a loss for the transferor.

4. The effect of the repeal on such a transfer occurring after the commencement date is that the assets will be treated as passing at market value.

5. Subsection 3 repeals sections 991 to 995 of the Corporation Tax Act 2010. These sections provide a number of corporation tax reliefs applying where the trade and assets of a company are transferred to a statutory Harbour Authority under a certified harbour reorganisation scheme. The effects of repealing these sections on such a transfer occurring after the commencement date are that:

- the trade of the transferor will be treated as discontinued at the date of the transfer for all the purposes of the Corporation Taxes Acts, and the transferee will be treated a starting to carry on the trade at that date;

- the transferee will not be entitled to any surplus losses of the trade incurred by the transferor

- the transferor will be treated as having disposed of any assets used in the trade which are sold or transferred under the scheme, and

will be subject to any allowances or charges arising in accordance with the Capital Allowances Act 2001.

- the transferee will not be entitled to corporation tax relief for any allowable capital losses that the transferor would have been entitled to claim if it had continued to carry on the trade.

6. Subsection 4 makes a number of consequential changes, removing references to section 221 of the TCGA.

7. Subsection 5 provides for the amendments made by subsection 1 to have effect in relation to instruments executed on or after 1 April 2013.

8. Subsection 6 provides for the amendments made by subsections 2 to 4 to be effective in relation to transfers of trade and assets under certified harbour reorganisation schemes occurring on or after 1 April 2013.

BACKGROUND NOTE

9. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of these reliefs.

10. If you have any questions about this change, or comments on the legislation, for stamp duty please contact Jane Ewart on 020 7147 3794 (email: jane.ewart1 @hmrc.gsi.gov.uk) or for corporation tax contact Philip Donlan on 020 7147 2633 (email: philip.donlan@hmrc.gsi.gov.uk).

Pensions for 1947 redundancies

1 Tax assessors

(1) Section 62(2) and (3) of FA 1946 (compensation for former land tax assessors and income tax assessors, etc) is repealed.

(2) In consequence of the provision made by subsection (1), in Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), in paragraph 34, omit "or section 62 of the Finance Act 1946".

(3) The amendments made by this section come into force on 6 April 2013.

EXPLANATORY NOTE

REPEAL OF PROVISIONS RELATING TO TAX ASSESSORS

SUMMARY

1. This clause repeals provisions that provide for compensation for former land tax assessors and income tax assessors.

DETAILS OF THE CLAUSE

2. Subsection 1 repeals section 62(2) and 62(3) of Finance Act 1946 which make provision for compensation to be paid to land tax assessors and income tax assessors made redundant as a result of the Act.

3. Subsection 2 makes consequential amendments and subsection 3 provides for the commencement of the repeal.

BACKGROUND NOTE

4. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, confirmed the abolition of these reliefs. The provisions for compensation to be paid to land tax assessors and income tax assessors were identified as being redundant during the course of consultation although no specific consultation was done for this repeal.

5. If you have any questions about this change or comments on the legislation, please contact Jane Ewart on 020 7147 3794 (email: jane.ewart1@hmrc.gsi.gov.uk).

Deeply discounted securities – relief on incidental costs

1 Deeply discounted securities: incidental expenses

(1) In section 455 of ITTOIA 2005 (listed securities held since 26 March 2003: calculating the profit or loss on disposals)—

(a) in subsection (1), after "incurred" insert "before 6 April 2015", and

(b) in subsection (3)(b), after "incurred" insert "before 6 April 2015".

(2) The amendments made by this section have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

DEEPLY DISCOUNTED SECURITIES: INCIDENTAL EXPENSES

SUMMARY

1. This clause withdraws relief for incidental expenses incurred in connection with the disposal of deeply discounted securities (DDS).

DETAILS OF THE CLAUSE

2. Section 1 provides for the rules for the calculation of the profit or loss on disposal of DDS in Chapter 8 of Part 4 of the Income Tax (Trading and Other Income Act) (ITTOIA) 2005 to be amended.

3. Section 1(1) amends section 455 ITTOIA 2005 to limit the provision for the deduction of incidental expenses incurred in connection with the disposal of DDS which are listed securities and which have been held since 26 March 2003. The deduction is limited to expenses incurred before 6 April 2015.

4. Section 1(2) provides the commencement provision.

BACKGROUND NOTE

5. DDS are certain government securities and commercial bonds and loan stock for which the amount paid on redemption may be higher than the price at which they were issued.

6. Paragraph 6 of Schedule 39 of Finance Act 2003 abolished relief for incidental expenses in respect of 'relevant discounted securities' (the predecessor description of DDS) incurred on or after 27 March 2003, except for those expenses incurred on the acquisition or disposal of listed securities held since at least 26 March 2003. These expenses can be deducted from a profit or loss on disposal but cannot create a loss.

7. The Office of Tax Simplification was commissioned by the Chancellor to undertake a review of the reliefs and allowances available in the tax system. Following their review, the Government announced at Budget 2011 that it would repeal seven reliefs immediately and abolish a further 36 reliefs, subject to a period of consultation over the summer. The Government response to the consultation, published on 6 December 2011, outlined the extent of the withdrawal of the provision for the deduction of these expenses.

8. If you have any questions about this change, or comments on the draft legislation, please contact Judith Diamond on 020 7147 3422 (email: judith.diamond@hmrc.gsi.gov.uk).

Life Assurance Premium Relief

1 Abolition of income tax relief on certain life assurance premiums etc

Schedule 1 makes provision for the abolition of income tax relief on life assurance premiums under section 266 of ICTA etc.

SCHEDULES

SCHEDULE 1

Section 1

INCOME TAX RELIEF FOR LIFE ASSURANCE PREMIUMS

Abolition of income tax relief for life assurance premiums under section 266 of ICTA

1 Section 266 of ICTA (income tax relief for life assurance premiums paid by eligible individuals) applies in relation to a premium or part of a premium only if the premium or part of a premium—
(a) becomes due and payable before 6 April 2015, and
(b) is actually paid before that date.

2 No claim for relief may be made under paragraph 6 of Schedule 14 to ICTA (provisions ancillary to section 266) after 5 April 2016.

3 (1) The Income Tax (Life Assurance Premium Relief) Regulations 1978 (S.I. 1978/1159) have effect in accordance with this paragraph.

(2) Subject to sub-paragraph (3), an annual claim for the financial year of a life office must be made no later than—
(a) the end of the six year period allowed by regulation 9(1), or
(b) if earlier, the end of the relevant 6-month period,
and regulation 9(8) has effect accordingly.

(3) An annual claim which a life office is required to make under regulation 9(2) must be made no later than—
(a) the end of the one year period specified in regulation 9(2), or
(b) if earlier, the end of the relevant 6-month period,
and regulation 9(6) has effect accordingly.

(4) In sub-paragraphs (2) and (3) "the relevant 6-month period" means the period of 6 months after the end of the life office's first financial year to end after 5 April 2015.

(5) The Board must decide all claims made under the 1978 Regulations no later than 5 April 2017.

(6) Terms used in this paragraph have the same meaning as they have in the 1978 Regulations.

4 (1) In this paragraph—
(a) "the 1980 Regulations" means the Friendly Societies (Life Assurance Premium Relief) (Change of Rate) Regulations 1980 (S.I. 1980/1947), and
(b) terms have the same meaning as they have in the 1980 Regulations.

(2) This paragraph applies in relation to a friendly society which has adopted the prescribed scheme or an approved scheme in accordance with the provisions of the 1977 Regulations.

(3) The prescribed scheme or the approved scheme, and the 1977 Regulations and the 1980 Regulations, have effect in relation to the friendly society on the following basis.

(4) That basis is—

(a) paragraph 1 above does not remove any person's entitlement to relief under section 266 of ICTA but does change the authorised percentage to 0%,

(b) the effective date in relation to that change is 6 April 2015,

(c) as well as having effect in relation to gross premiums due and payable on or after 6 April 2015, that change has effect in relation to gross premiums due and payable before that date so far as they are actually paid on or after that date (and, in particular, regulations 3(1) and 4(1) of the 1980 Regulations are to be read accordingly), and

(d) in relation to that change—

(i) a resolution under regulation 3(1) of the 1980 Regulations may be passed at any time before 6 April 2015, and

(ii) if relevant, an approval under regulation 8 of the 1980 Regulations may be given at any time before that date.

5 (1) In this paragraph—

(a) "the 1980 Regulations" means the Industrial Assurance (Life Assurance Premium Relief) (Change of Rate) Regulations 1980 (S.I. 1980/1948), and

(b) terms have the same meaning as they have in the 1980 Regulations.

(2) This paragraph applies in relation to an industrial assurance company or collecting society which has adopted the prescribed scheme or an approved scheme in accordance with the provisions of the 1977 Regulations.

(3) The prescribed scheme or the approved scheme, and the 1977 Regulations and the 1980 Regulations, have effect in relation to the industrial assurance company or collecting society on the following basis.

(4) That basis is—

(a) paragraph 1 above does not remove any person's entitlement to relief under section 266 of ICTA but does change the authorised percentage to 0%,

(b) the effective date in relation to that change is 6 April 2015,

(c) as well as having effect in relation to gross premiums due and payable on or after 6 April 2015, that change has effect in relation to gross premiums due and payable before that date so far as they are actually paid on or after that date (and, in particular, regulations 3(1) and 4(1) of the 1980 Regulations are to be read accordingly), and

(d) in relation to that change—

(i) a resolution under regulation 3(1) of the 1980 Regulations may be passed at any time before 6 April 2015, and

(ii) if relevant, an approval under regulation 8 of the 1980 Regulations may be given at any time before that date.

6 (1) The following repeals are made in consequence of paragraph 1 above.

Act	*Provision repealed*
ICTA	Sections 266, 266A and 274. Section 824(2D)(b) and (3)(ad). Schedule 14. In paragraph 8 of Schedule 15, the words from "but" (in the second place it occurs) to the end.
FA 1988	Section 29. Paragraph 9 of Schedule 3.
FA 1996	Section 167(5) and (6). Paragraph 11 of Schedule 18. Paragraph 20 of Schedule 20.
ITEPA 2003	Paragraphs 36 and 119 of Schedule 6.
FA 2004	Paragraphs 9 and 10 of Schedule 35.
ITA 2007	Section 811(6)(e) and the "and" before it. Paragraph 232 of Schedule 1.
FA 2009	Paragraphs 3 to 5 of Schedule 1. Paragraph 9D of Schedule 54.

(2) In section 989 of ITA 2007 (definitions for the purposes of the Income Tax Acts) for the definition of "qualifying policy" substitute—

""qualifying policy" is to be read in accordance with Schedule 15 to ICTA,".

(3) The amendments made by sub-paragraphs (1) and (2) come into force on the day appointed by the Treasury by order made by statutory instrument.

(4) An order under sub-paragraph (3) may make transitional provision and savings.

(5) A statutory instrument containing an order under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the House of Commons.

7 (1) This paragraph applies if—

(a) a policy which is a qualifying policy (within the meaning of the Income Tax Acts) is varied or another policy is substituted for such a policy, and

(b) the variation or substitution is made for the sole purpose of dealing with the consequences of the restrictions placed on relief under section 266 of ICTA by virtue of paragraph 1 above.

(2) In the case of a variation, the variation does not itself affect the policy's status as a qualifying policy.

(3) In the case of a substitution, the new policy is to be a qualifying policy.

8 (1) In this paragraph "relevant variation" means a variation made for the sole purpose of dealing with the consequences of the restrictions placed on relief under section 266 of ICTA by virtue of paragraph 1 above.

(2) A relevant variation of a policy is not to be treated as a variation for the purposes of—

(a) paragraph 8(1) or (4) of Schedule 14 to ICTA, or

(b) section 485(6) of ITTOIA 2005 (disregard of certain events in relation to qualifying policies).

(3) A relevant variation of a policy or contract does not itself cause a limit set out in [section 460(2)(c)(iii) or 464 of ICTA] to be breached.

Removal of claw-backs on relief given under section 266 of ICTA

9 (1) In ICTA omit sections 268 to 272 (which provide for the "claw-back" of income tax relief given under section 266 of ICTA).

(2) In consequence of the amendment made by sub-paragraph (1), omit—

(a) section 824(2D)(a) of ICTA,

(b) paragraph 11 of Schedule 35 to FA 2004,

(c) paragraph 123 of Schedule 1 to ITTOIA 2005, and

(d) paragraph 21 of Schedule 39 to FA 2008.

(3) The amendments made by this paragraph have effect in relation to events occurring in relation to policies on or after 6 April 2015.

EXPLANATORY NOTE

INCOME TAX RELIEF FOR LIFE ASSURANCE PREMIUMS

SUMMARY

1. This clause and Schedule repeals the income tax relief available at 12.5 per cent of life assurance premiums paid under policies issued on or before 13 March 1984.

2. Individuals will no longer have entitlement to life assurance premium relief (LAPR) for premiums under these policies that are either due and payable, or that are paid, on or after 6 April 2015.

3. Provisions are included to ensure that existing regulations will facilitate the transition for smaller value friendly society and industrial assurance policies.

4. Provisions will also ensure that changes to policies as a consequence of the repeal of LAPR will not affect the wider tax advantaged status of these policies.

DETAILS OF THE SCHEDULE

5. Paragraph (1) restricts individuals' entitlement to LAPR under section 266 Income Corporation and Taxes Act 1988 (ICTA) so that relief will only be due for premiums that are due and payable before 6 April 2015 and for premiums are actually paid before that date. This restriction also applies to premiums paid by employers in respect of employees for whom entitlement to LAPR was provided through section 266A ICTA.

6. Paragraph (2) provides that claims for relief under paragraph 6 of Schedule 14 ICTA may not be made after 5 April 2016. Paragraph 6 of Schedule 14 ICTA entitles individuals to make claims and applies where they have not received relief in full by paying premiums to insurers or friendly societies 'net' of the relief.

7. Paragraph (3) restricts the time by which insurers and friendly societies must make all outstanding reconciliations and claims for payment from HM Revenue & Customs (HMRC) under the Income Tax (Life Assurance Premium Relief) Regulations 1978 (S.I. 1978/1159) ("1978 Regulations"). These must be made by the earliest of;

    - 6 months from the end of the first accounting period to end after 5 April 2015, and either

- o 6 years from the end of the accounting period for which the claim relates, or

- o 12 months from the end of the accounting period in which insurance companies or friendly societies have received and retained one or more interim payments of "LAPR" from HMRC.

For these purposes, 'accounting period' means the period for which the insurance company or friendly society makes up its accounts.

8. Paragraph 3(5) requires HMRC to decide all claims for LAPR made under the 1978 Regulations no later than 5 April 2017.

9. Paragraphs (4) and (5) apply to friendly societies and industrial assurance companies who adopted special schemes to cater for paying very small value premiums 'net' of LAPR and to cater for changes to the rate of the relief. The paragraphs ensure that the existing framework for dealing with changes to the rate of relief also applies to the repeal of the relief.

10. Paragraphs (4)(a) and (b) of paragraphs 4 and 5 apply the 'change of rate' framework on the basis that the rate of relief is reduced from 12.5 per cent to nil with effect from 6 April 2015, and ensure that entitlement to the zero rate relief is maintained only for the purpose of giving effect to this framework.

11. Paragraphs (4)(c) and (d) of paragraphs 4 and 5 allow friendly societies and industrial assurance companies to pass resolutions no later than 6 April 2015 to adopt consequential changes to the special schemes and receive approval from appropriate Registrars and Commissioners if appropriate. Scope to make such resolutions is extended so that they may also apply for premiums that are due and payable before 6 April 2015 but that are actually paid after this date.

12. Paragraph (6) provides that legislation providing for LAPR will be repealed from a date to be appointed by the Treasury, under a statutory instrument subject to the negative resolution procedure.

13. Paragraphs (7) and (8) provide that variations or substitutions of qualifying policies (within the meaning of the Income Tax Acts) are ignored for certain tax purposes where the variations or substitutions are made for the sole purpose of dealing with the consequences of the abolition of the relief. The effect of these paragraphs is that such changes will not;

- o affect the qualifying policy status of these policies;

- o re-set the period for which a qualifying policy must be held before gains are exempt from income tax; or
- o be treated as exceeding the corporation tax exemption limit for friendly society tax exempt savings plans.

14. Paragraph (9) removes requirements for insurers to ‘claw-back’ amounts of LAPR from proceeds payable by an insurer on a second or subsequent surrender of some or all rights under a policy. These requirements will no longer apply to such events arising on or after 6 April 2015.

BACKGROUND NOTE

15. Following the Office of Tax Simplification review of reliefs, the Government announced at Budget 2011 that it would repeal seven reliefs in Finance Act 2011 and confirmed its intention to abolish a further 36 reliefs in Finance Bill 2012 and beyond, subject to a period of consultation.

16. “Consultation on the abolition of 36 tax reliefs" was published on 27 May 2011 and views were requested on the Government's proposal to repeal this relief. The Government response was published on 6 December 2011. All documents are available via both the HM Treasury and HM Revenue & Customs websites.

17. Income tax relief of 12.5 per cent is available on regular premiums paid into qualifying life insurance policies issued on or before 13 March 1984. The relief was removed for policies issued on or after 14 March 1984 but continues for premiums payable under policies taken out before this date. The relief is therefore obsolescent but still requires long and complex legislation although the average value of the relief per policy is minimal.

18. Accordingly, the relief will no longer apply for premiums that are either due and payable or that are actually paid on or after 6 April 2015.

19. To facilitate the transition, certain arrangements put in place by Friendly Societies and Industrial Assurance Companies will again apply to the repeal of the relief from very small value policies, and legislation will ensure that other tax reliefs for Qualifying Policies are not affected by changes to policies made solely for the purpose of dealing with the repeal of the relief.

20. To repeal LAPR in a reasonable timescale, this legislation shortens the period for individuals, insurers, friendly societies and HMRC to

finalise outstanding claims. The existing legislative framework for LAPR will be removed when these claims have been finalised.

21. If you have any questions about this change, or comments on the legislation, please contact Jon Prothero on 020 7147 2785 (email: insurancequeries.ct&vat@hmrc.gsi.gov.uk).

NICs exemption for certain apprentices and students coming to the UK

Certain payments to mariners to be disregarded for Class 1 NICs

Class 1A NICs: exemption for prescribed general earnings

STATUTORY INSTRUMENTS

2011 No. XXXX

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. X) Regulations 2011

Made - - - -	*****
Laid before Parliament	*****
Coming into force - -	*6th April 2012*

The Treasury, in exercise of the powers conferred by sections 1(6) and (7), 3(2) and (3), 10(9), 122(1) and 175(3) of the Social Security Contributions and Benefits Act 1992(**a**) with the concurrence of the Secretary of State insofar as required and sections 1(6) and (7), 3(2) and (3), 10(9), 121(1) and 171(3) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**) with the concurrence of the Department for Social Development(**c**) insofar as required, make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. X) Regulations 2011 and come into force on 6th April 2012.

Amendment of the Social Security (Contributions) Regulations 2001

2.—(1) The Social Security (Contributions) Regulations 2001(**d**) are amended as follows.

(2) In regulation 40 (prescribed general earnings in respect of which Class 1A contributions not payable) omit paragraph (4).

(3) Omit regulation 123 (payments to mariners to be disregarded).

(**a**) 1992 c. 4. Section 1 has been amended. The relevant amendment is that made by paragraph 56(3) of Schedule 7 to the Social Security Act 1998 (c. 14). Subsection (7) was inserted by paragraph 1(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2: "the Transfer Act"). Section 3 has been amended. The relevant amendment is that made by paragraph 3 of Schedule 3 to the Transfer Act. Section 10 was substituted by section 74(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19: "the 2000 Act") and subsection (9) was amended by paragraph 174 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1: "ITEPA 2003"). Section 122 is cited because of the meaning it ascribes to "prescribe".

(**b**) 1992 c. 7. Section 1 has been amended. The relevant amendment is that made by paragraph 38(3) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)). Subsection (7) was inserted by paragraph 2 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671: "the Transfer Order"). Section 3 has been amended. The relevant amendment is that made by paragraph 4 of Schedule 3 to the Transfer Order. Section 10 was substituted by section 78(2) of the 2000 Act and subsection (9) was amended by paragraph 195 of Schedule 6 to ITEPA 2003. Section 121 is cited because of the meaning it ascribes to "prescribe". Section 171(10) was substituted by paragraph 28 of Schedule 3 to the Transfer Order.

(**c**) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) were transferred to the Department for Social Development by Article 8(b) of, and Part 2 of Schedule 6 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No. 481).

(**d**) S.I. 2001/1004, amended by S.I. 2003/2085; there are other amending instruments but none is relevant.

(4) In regulation 145 (condition as to residence or presence in Great Britain or Northern Ireland)—

(a) in paragraph (1) for “paragraphs (2) and (3)” substitute “paragraph (2)”; and

(b) omit paragraph (3).

(5) In paragraph 2 of Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances of the employment) omit—

(a) sub-paragraph (2)(b) and the “or” before it; and

(b) sub-paragraph (6).

Amendment of the Social Security (Contributions) (Amendment No. 5) Regulations 2003

3. Omit paragraph (4) of regulation 6 of the Social Security (Contributions) (Amendment No. 5) Regulations 2003(**a**).

Name
Name
Date Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State concurs
Signed by authority of the Secretary of State for Work and Pensions

Name
Minister of State
Date Department for Work and Pensions

The Department for Social Development concurs
Sealed with the Official Seal of the Department for Social Development on **

Name
Date A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the 2001 Regulations”).

The 2001 Regulations provide for certain payments to be disregarded in the calculation of earnings for National Insurance purposes. Regulation 2 removes from the 2001 Regulations three disregards which, following a review by the Office of Tax Simplification, are no longer necessary.

Firstly, it removes the disregard from liability to pay Class 1A National Insurance contributions (NICs) on relocation expenses other than removal expenses where the employee started work in a new location before 6th April 1998.

Secondly, it removes from the computation of a person’s Class 1 NICs any payments in respect of employment as a mariner which is an interim payment in respect of earnings by way of an

(**a**) S.I. 2003/2085.

advance, a payment to some other person of any part of a mariner's earnings as allocated by the mariner to that person or a payment of a special payment while sick abroad.

Thirdly, it removes the disregard from paying Class 1 NICs for certain apprentices and students coming to the UK who are not resident in the UK. The disregard is available where the UK employment occurs during a vacation from a course of full-time studies outside the UK and the temporary employment is of a nature similar or related to the course of study. It is also available where the UK employment is related to an apprenticeship which the individual is serving outside the UK and the employment in the UK began before the person was 25 and is of a nature similar or related to the apprenticeship outside the UK.

The provisions of the 2001 Regulations removed by regulation 2 of these Regulations were amended by a later statutory instrument. Regulation 3 makes a corresponding amendment to that later instrument in order to make sure that redundant legislation is removed from the statute book.

Tax Information and Impact Notes covering this instrument were published on 6th December 2011 alongside the autumn statement and are available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. They remain an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. X) REGULATIONS 2011

2011 No. [xxx]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (the Principal Regulations) to remove three National Insurance contributions (NICs) disregards. It removes the disregard from:

(i) liability to pay Class 1A NICs on relocation expenses other than removal expenses where the employee started work in a new location before 6th April 1998;

(ii) paying Class 1 NICs on specified payments in respect of employment as a mariner; and

(iii) paying Class 1 NICs for certain apprentices and students coming to the UK who are not resident in the UK, where certain conditions are met.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These Regulations amend the Principal Regulations to remove three NICs disregards which are no longer considered necessary as a result of a review of tax reliefs by the Office of Tax Simplification (OTS).

4.2 Regulation 2 removes:

- the disregard from paying Class 1A NICs on prescribed general earnings for relocation expenses other than removal expenses where the employee started work in a new location before 6th April 1998;
- the disregard from paying Class 1 NICs in respect of employment as a mariner by way of an advance, a payment to some other person of part of a mariner's earnings as allocated by the mariner to that person and payment of a special payment whilst sick abroad; and
- the disregard from paying Class 1 NICs for certain apprentices and students coming to the UK who are not resident in the UK, where certain conditions are met. The disregard is available where the UK employment occurs during a vacation from a course of full-time studies outside the UK and the temporary employment is of a nature similar or related to the course of study. It is also available where the UK employment is related to an apprenticeship which the individual is serving outside the UK and the employment in the UK began before the person was 25 and is of a nature similar or related to the apprenticeship outside the UK.

4.3 Regulation 3 amends the Social Security (Contributions) (Amendment No. 5) Regulations 2003) (S. I. 2003/2085) to remove redundant legislation from the statute book.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The OTS, an independent body set up in July 2010, was asked by the Government to consider whether tax reliefs contained within the taxes legislation still served any purpose. The OTS identified a number of reliefs where the policy rationale had weakened over time, were otiose or little used, created distortions in the tax system or were complex for business and/or HMRC to administer which they thought could be abolished.

7.2 Following the OTS's recommendations to the Chancellor, the Treasury consulted on the abolition of 36 reliefs, including the Class 1A NICs disregards for prescribed general earnings, the disregard for Class 1 NICs in respect of payments to mariners and the Class 1 NICs disregard for certain apprentices and students coming to the UK. As no compelling reasons were given to keep the disregards, it was decided they should be abolished from 6th April 2012.

7.3 The Government announced the changes on 6th December 2011. These Regulations give effect to that announcement.

The Class 1A NICs disregard for prescribed general earnings

7.4 No liability to pay Class 1A NICs arises on specified payments that are disregarded in the calculation of an employee's earnings. The specified payments are relocation expenses other than removal expenses. The exemption only applies if the employee started work in a new location before 6th April 1998 and the relocation expenses were agreed before that date.

7.5 As the exemption only applies to expenses incurred before April 1998, which is more than 13 years ago, there is no ongoing need to retain this disregard.

Certain payments to mariners to be disregarded for the purposes of Class 1 NICs

7.6 This is a long standing exemption that provides for a NICs disregard for payments to or in respect of mariners in the following circumstances:

  - o Interim payments to mariners by way of an advance;

- Payment to some other person of any part of such a mariner's earnings as allocated by him to that person; and
- A payment of a special payment whilst sick abroad (as defined by the National Maritime Board).

7.7 The interim payment of earnings referred to an advance of earnings typically paid at the end of the voyage (when the liability to NICs would arise), and the original rationale was to deal with circumstances where mariners would be paid in cash whilst at sea on account of wages. Before electronic communications it may not have always been practical to have accounted for NICs on such advances.

7.8 The reference to payments to some other person is understood to refer to situations where mariners used their own wages to make disbursements to others on a vessel; this practice is understood to have disappeared from the industry.

7.9 The reference to special payments whilst sick relates to an industry wide employment condition administered by the National Maritime Board. The National Maritime Board, and the payments that it defined, was abolished in 1990.

7.10 The circumstances in which the exemption would have applied all relate to situations which are now no longer current practice. Therefore the ongoing policy rationale for retaining the disregard has expired.

The Class 1 NICs disregard for payments made to certain apprentices and students coming to the UK

7.11 Generally, Class 1 NICs are payable by all employees if present, resident (but for temporary absence) or ordinarily resident at the time of their employment in the UK. However, an individual who is not ordinarily resident in the UK, and meets one of the following criteria, is not liable for Class 1 NIC:

- the UK employment occurs during a vacation from a course of full time studies outside the UK, and the temporary employment is of a nature similar or related to the course of studies; or
- the UK employment is related to an apprenticeship which the individual is serving under a person outside the UK and it began before he was 25.

The exemption runs for a continuous period of 52 contribution weeks from after the date of the person's last entry into the UK.

7.12 The policy objectives behind the exemption were twofold. It allowed the UK to benefit from the work provided by these groups and for the individuals to acquire new skills to benefit their home country.

7.13 The exemption dates from a time when the UK suffered from a shortage of labour and wished to encourage students from the Commonwealth to come to the UK to do vocational work and acquire skills to help build the economies of those countries.

7.14 The exemption does not apply to individuals from within the EEA or from countries with which the UK has a Reciprocal Agreement or Double Contribution Convention.

7.15 The rationale of supporting those from outside the EEA to come to work temporarily in the UK is less relevant now, given immigration rules prioritising EEA nationals. The Government therefore considers that the disregard has only limited use.

- ***Consolidation***

7.16 There are currently no plans to consolidate the Principal Regulations.

8. Consultation outcome

8.1 The Treasury consulted on the impact of removing 36 reliefs identified by the OTS in May 2011.

8.2 A total of 78 consultation responses were received from individuals, businesses and representative bodies. In general, interested parties were fully supportive of the OTS work in simplifying the complexities of the UK tax code; and agreed in removing reliefs where the policy rationale is no longer relevant.

8.3 Respondents to the consultation supported the repeal of the Class 1A NICs disregard for prescribed general earnings. There was a limited response to the proposal to remove the disregard for Class 1 NICs in respect of certain payments to mariners, although one response suggested that the exemption should be retained. However, industry representatives confirmed that the disregard was no longer needed.

8.4 Limited responses were received on the Class 1 NICs disregard for certain apprentices and students coming to the UK, respondents considered that the disregard provides encouragement to some individuals to pursue an apprenticeship or career in the UK. However, the rationale for supporting those from outsider the EEA is less relevant now that immigration rules prioritise EEA nationals.

8.5 The Government published a detailed response to the consultation which can be viewed in the Consultation Response Document on the HMRC website.

8.6 In accordance with the Government's Tax Consultation Framework (http://www.hmrc.gov.uk/consultations/tax-consultation-framework.pdf), HMRC has published this instrument in draft.

9. Guidance

9.1 These Regulations do not impose any new obligations.

9.2 The Treasury has published a response to the consultation confirming which reliefs are to be abolished and those that are to be retained. The relevant HMRC guidance in the "CWG 2 Employer Further Guide to PAYE and NICs" and on HMRC's website will be amended to reflect these Regulations.

10. Impact

10.1 In respect of the provisions in this instrument relating to repeal of the Class 1A NICs disregard for prescribed general earnings and the disregard for Class 1 NICs in respect of certain payments to mariners, there is no impact on business, charities or voluntary bodies since these provisions refer to matters that are no longer current practice. However, there may be an impact in respect of the provision relating to the Class 1 NICs disregard for payments made to certain apprentices and students coming to the UK where it is still in use.

10.2 There is no impact on the public sector.

10.3 Tax Information and Impact Notes covering this instrument were published on 6th December 2011 alongside the autumn statement and are available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. They remain an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business. Small businesses may be affected by the proposal in this instrument that relates to the Class 1 NICs disregard for payments made to certain apprentices and students coming to the UK. In respect of the other provisions that are being repealed, there will be no impact since they refer to matters that are no longer current practice.

11.2 Operating the Class 1 NICs disregard for payments made to certain apprentices and students coming to the UK would have had an impact on small firms (those with fewer than 20 employees) when it was available but the consultation clearly suggests that it is of limited use and that there will, therefore, be no significant impact on small firms from its abolition. Abolishing the disregard will remove complexity for almost all employers affected by it, since they will almost certainly be operating a payroll and reporting to HMRC. These employers will no longer have to apply different procedures to different employees.

11.3 All businesses were able to respond to the Treasury consultation on the impact of removing 36 reliefs identified by the OTS in May 2011.

12. Monitoring & review

12.1 HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

13. Contact

Raj Nayyar at HMRC, Tel: 0207 147 2521 or e-mail: raj.nayyar@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Cycle to Work Days: provision of meals – exemption from income tax

STATUTORY INSTRUMENTS

2011 No. XXXX

INCOME TAX

The Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2011

Made - - - -	*****
Laid before the House of Commons	*****
Coming into force - -	*6th April 2013*

The Treasury, in exercise of the power conferred by section 210 of the Income Tax (Earnings and Pensions) Act 2003(**a**), make the following Regulations.

Citation, commencement and effect

1. These Regulations may be cited as the Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2011, come into force on 6th April 2013 and have effect for the tax year 2013-14 and subsequent tax years.

Amendment of the Income Tax (Exemption of Minor Benefits) Regulations 2002

2. The Income Tax (Exemption of Minor Benefits) Regulations 2002(**b**) are amended as follows—

(a) in regulation 2, omit the definition of "cycle"; and

(b) omit regulation 3.

Amendment of the Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2003

3. Omit regulation 3 of the Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2003(**c**).

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) 2003 c. 1.
(**b**) S.I. 2002/205, amended by S.I. 2003/1434; there are other amending instruments but none is relevant.
(**c**) S.I. 2003/1434.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Exemption of Minor Benefits) Regulations 2002 (S.I. 2002/205) ("the principle Regulations") to remove as an exempt minor benefit food or drink provided by an employer to an employee in recognition of the employee having cycled from home to the workplace on designated days. The exemption is removed with effect from 6th April 2013.

The provisions of the principle Regulations were amended by a later statutory instrument. Regulation 3 makes a corresponding amendment to the Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2003 (S.I. 2003/1434) in order to remove redundant legislation from the statute book.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

EXPLANATORY MEMORANDUM TO

THE INCOME TAX (EXEMPTION OF MINOR BENEFITS) (AMENDMENT) REGULATIONS 2011

2011 No. XXX

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Income Tax (Exemption of Minor Benefits) Regulations 2002 (S.I. 2002/205) with effect from 6th April 2013 to remove the tax exemption on food or drink provided by an employer to an employee in recognition of the employee having cycled to work on designated days.

2.2 This instrument also amends the Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2003 (S.I. 2003/1434).

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These Regulations are made by the Treasury under section 210 of the Income Tax (Earnings and Pensions) Act 2003.

4.2 Where an employer provided food or drink to an employee who cycled into work on a designated day, this was exempt from income tax.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Office of Tax Simplification (OTS), an independent body set up in July 2010, was asked by the Government to consider whether tax reliefs contained within the taxes legislation still served any purpose. The OTS identified a number of tax reliefs where the evidence was that they were either otiose or little used and which they thought could be abolished.

7.2 Following the OTS's recommendations to the Chancellor, the Treasury consulted on the abolition of 36 reliefs, including the tax relief on the minor benefit of what were commonly known as cyclists' breakfasts. As no compelling reasons were given to keep this particular tax relief, it was decided that it should be abolished with effect from 6th April 2013.

7.3 The Government announced the changes on 6 December 2011. These Regulations give effect to that announcement.

8. Consultation outcome

8.1 HM Treasury carried out a consultation exercise which was completed on 31st August 2011. The result of that consultation was that there was no reason to keep this particular tax relief.

9. Guidance

9.1 The relevant HMRC guidance will be amended in line with these Regulations.

10. Impact

10.1 The impact on business, charities and the voluntary sector is negligible. Our evidence is that the relief was little used.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The removal of the exemption by this instrument is designed to help small businesses by reducing complexity in the tax system. The time and cost involved in providing the cyclists' breakfasts were disproportionate to the benefit gained, which was negligible.

11.3 Nevertheless, to minimise the impact of the requirements of removing the exemption on firms employing up to 20 people, the approach taken is for HMRC to amend their external guidance to support employers and employees. HMRC has regular contact with industry groups which include representatives of small business, such as the Benefits and Expenses sub-group. Moreover,

there is no indication that employers would have any difficulty in implementing the change.

12. Monitoring and Review

12.1 This policy will be monitored and assessed alongside other measures in the Government's package of personal tax and benefits changes.

13. Contact

Mrs Su McLean-Tooke at HMRC Tel: 020 7147 2665 or email: susan.mclean-tooke@hmrc.gsi.gov.uk can answer any queries regarding this instrument.

Luncheon Vouchers – exemption from National Insurance Contributions (NICs)

STATUTORY INSTRUMENTS

2012 No. XXXX

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. X) Regulations 2012

Made - - - -	*****
Laid before Parliament	*****
Coming into force - -	*6th April 2013*

The Treasury, in exercise of the powers conferred by sections 3(2), (3) and 10(9) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 3(2), (3) and 10(9) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**), make the following Regulations.

The Secretary of State and the Department for Social Development(**c**) concur in the making of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. X) Regulations 2012 and come into force on 6th April 2013.

Amendment of the Social Security (Contributions) Regulations 2001

2.—(1) The Social Security (Contributions) Regulations 2001(**d**) are amended as follows.

(2) In regulation 40 (prescribed general earnings in respect of which Class 1A contributions not payable) omit paragraph (2)(za).

(3) For paragraph 14(3) (valuation of non-cash meal vouchers) to Schedule 2 (calculation of earnings for the purposes of earnings-related contributions in particular cases) substitute—

> "(3) For the purposes of sub-paragraph (2) the chargeable expense shall be reduced by any part of that which the employed earner makes good to the person incurring it.".

(**a**) 1992 c. 4. Section 3 has been amended. The relevant amendment is that made by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 10 was substituted by section 74(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19: "the 2000 Act") and subsection (9) was amended by paragraph 174 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1: "ITEPA 2003").

(**b**) 1992 c. 7. Section 3 has been amended. The relevant amendment is that made by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671). Section 10 was substituted by section 78(2) of the 2000 Act and subsection (9) was amended by paragraph 195 of Schedule 6 to ITEPA 2003.

(**c**) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) were transferred to the Department for Social Development by Article 8(b) of, and Part 2 of Schedule 6 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No. 481).

(**d**) S.I. 2001/1004, amended by S.I. 2001/2412 and 2003/2085; there are other amending instruments but none is relevant.

(4) In Part 5 of Schedule 3 (certain non-cash vouchers to be disregarded as payments in kind for the purposes of earning-related contributions) omit paragraph 6A (meal vouchers).

Amendment of the Social Security (Contributions) (Amendment No. 5) Regulations 2001

3. In the Social Security (Contributions) (Amendment No. 5) Regulations 2001(**a**) omit—

(a) regulation 3(2)(a);

(b) regulation 4; and

(c) regulation 5(2)(b).

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs
Signed by authority of the Secretary of State for Work and Pensions

Name
Minister of State
Date Department for Work and Pensions

The Department for Social Development concurs
Sealed with the Official Seal of the Department for Social Development on **

Name
Date A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the 2001 Regulations").

The 2001 Regulations provide for certain payments to be disregarded in the calculation of earnings for National Insurance purposes. Regulation 2 removes from the 2001 Regulations the disregard from Class 1 National Insurance contributions on the first 15 pence per working day of a meal voucher provided by an employer to an employee.

The provisions of the 2001 Regulations removed by regulation 2 of these Regulations were inserted by, or amended by, a later statutory instrument. Regulation 3 makes a corresponding amendment to that later instrument in order to make sure that redundant legislation is removed from the statute book.

A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside the autumn statement and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

(**a**) S.I. 2001/2412.

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. X) REGULATIONS 2012

2012 No. [xxx]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Social Security (Contributions) Regulations (S. I. 2001/1004) (the Principal Regulations) to remove the National Insurance contributions (NICs) disregard from Class 1 NICs on the first 15 pence per working day of a meal voucher provided by an employer to an employee.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These Regulations amend the Principal Regulations to remove a NICs disregard which is no longer considered necessary as a result of a review of tax reliefs by the Office of Tax Simplification (OTS).

4.2 Regulation 2 removes the disregard from Class 1 NICs on the first 15 pence per working day of a meal voucher provided by an employer to an employee.

4.3 Regulation 3 amends the Social Security (Contributions) (Amendment No. 5) Regulations 2001 (S. I. 2001/2412) to make sure that redundant legislation is removed from the statute book.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The OTS, an independent body set up in July 2010, was asked by the Government to consider whether tax reliefs contained within the taxes legislation still served any purpose. The OTS identified a number of reliefs where the policy rationale had weakened over time, were otiose or little used, created distortions in the

tax system or were complex for business and/or HMRC to administer which they thought could be abolished.

7.2 Following the OTS's recommendations to the Chancellor, the Treasury consulted on the abolition of 36 reliefs, including the relief for luncheon vouchers.

7.3 There is a tax exemption and a mirroring NICs disregard on the first 15p per working day of a meal voucher provided by an employer to an employee. However, any benefit provided above 15p per working day is liable to tax and NICs. The relief was introduced in 1946 when food rationing was in place with the objective of helping individuals afford healthy meals. It was targeted at employees working for companies without workplace canteens.

7.4 The benefit of the relief has been almost entirely eroded by inflation. The relief is therefore very low in value and no longer achieves a clear objective. It also causes an additional administrative burden to the employer in calculating the taxable benefit to be reported to HMRC because the employer has to account for tax and NICs on any value above 15p.

7.5 Responses to the consultation provided no compelling reason for continuing the relief and associated NICs disregard. The Government's view is that the evidence provided by respondents suggests that employers are still willing to issue luncheon vouchers despite the relief being worth only 15p. Therefore, the relief is a deadweight cost and should be abolished. It was therefore confirmed it should be abolished from 6th April 2013.

7.6 The Government announced the changes on 6th December 2011. These Regulations give effect to that announcement.

- ***Consolidation***

7.7 There are currently no plans to consolidate the Principal Regulations.

8. Consultation outcome

8.1 The Treasury consulted on the impact of removing 36 reliefs identified by the OTS in May 2011.

8.2 A total of 78 consultation responses were received from individuals, businesses and representative bodies. In general, interested parties were fully supportive of the OTS work in simplifying the complexities of the UK tax code; and agreed in removing reliefs where the policy rationale is no longer relevant.

8.3 Respondents to the relief for Luncheon Vouchers argued that employers still continued to use luncheon vouchers with total issuance being between £7-£8m a year; and that 75 per cent of this amount is subject to the 15p tax relief. It was further argued that repeal of this relief will impact upon luncheon voucher suppliers as well as the hospitality industry.

8.4 The Government has considered the arguments made. On the basis that employers are still willing to issue luncheon vouchers despite the relief being worth as little as 15p, the Government maintains the view that this relief has no practical

application. The Government published a detailed response to the consultation which can be viewed in the Consultation Response Document on the HMRC website.

8.5 In accordance with the Government's Tax Consultation Framework (http://www.hmrc.gov.uk/consultations/tax-consultation-framework.pdf), HMRC has published this instrument in draft.

9. Guidance

9.1 These Regulations do not impose any new obligations.

9.2 The Treasury has published a response to the consultation confirming which reliefs are to be abolished and those that are to be retained. The relevant HMRC guidance in the "CWG 2 Employer Further Guide to PAYE and NICs" and on HMRC's website will be amended to reflect these Regulations.

10. Impact

10.1 There will be an impact on business, charities or voluntary bodies that provide luncheon vouchers to their employees.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside the autumn statement and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Some small businesses (those with fewer than 20 employees) will be affected by the proposals if they provide luncheon vouchers because they will have to record the value of the benefit if they continue to provide it.

11.3 All businesses were able to respond to the Treasury consultation on the impact of removing the relief. However, there is no evidence from the consultation to suggest that the abolition of the relief will have a significant impact on small business.

12. Monitoring & review

12.1 HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

13. Contact

Raj Nayyar at HMRC, Tel: 0207 147 2521 or e-mail: raj.nayyar@hmrc.gsi.gov.uk can answer any queries regarding the instrument.