HM Revenue & Customs

HM Treasury

DRAFT CLAUSES & EXPLANATORY NOTES

for

FINANCE BILL 2015

10 December 2014

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Introduction

This document contains draft clauses and explanatory notes to be included in Finance Bill 2015. Accompanying draft secondary legislation is provided alongside the relevant clause, where available.

The consultation on this legislation is open until 4 February 2015.

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

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

1 Personal allowances for 2015-16

(1) Section 2 of FA 2014 (basic rate limit for 2015-16 and personal allowances from 2015) is amended as set out in subsections (2) and (3)

(2) In subsection (1)(b) (amount specified for 2015-16 in section 35(1) of ITA 2007 (personal allowance for those born after 5 April 1938)), for "“£10,500”" substitute "“£10,600”".

(3) In subsection (8) (amendments of section 57 of ITA 2007), omit the "and" at the end of paragraph (a) and after that paragraph insert—

"(aa) in subsection (1)(h), omit "36(2),", and".

(4) In section 55B(4)(a) of ITA 2007 (transferable tax allowance for married couples and civil partners: entitlement to tax reduction), for "£1050" substitute "£1060".

(5) The amendments made by subsections (3) and (4) have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

PERSONAL ALLOWANCES FOR 2015-16

SUMMARY

1. This clause sets the income tax personal allowance for 2015-16 for those born after 5 April 1938 at £10,600 and the amount of the transferable allowance for married couples and civil partners at £1,060.

DETAILS OF THE CLAUSE

2. Subsection 2 sets the amount of the personal allowance for those born after 5 April 1938 at £10,600.

3. Subsection 3 makes an amendment to the indexation provisions on the omission of the personal allowance for those born after 5 April 1938 but before 6 April 1948 with effect from 2015-16.

4. Subsection 4 sets the amount of the transferable tax allowance for married couples and civil partners at £1,060

5. Subsection 5 provides that the amendments made by subsections 3 and 4 have effect for the 2015-16 tax year.

BACKGROUND NOTE

6. Finance Act 2014 provides that from 2015-16 there are two personal allowances available by reference to an individual's date of birth: one for those born after 5 April 1938 and one for those born before 6 April 1938. It also set the amount of the personal allowance for those born after 5 April 1938 at £10,500 for 2015-16, which this clause increases to £10,600.

7. Finance Act 2014 inserted sections 55A to 55E into the Income Tax Act 2007 which provide for the transferable tax allowance for married couples and civil partners, effective from 2015-16. These provisions set the transferable amount at £1,050 for 2015-16 and 10 per cent of the personal allowance for those born after 5 April 1938 thereafter. This clause substitutes £1,060 for £1,050 for the transferable amount for 2015-16.

8. If you have any questions about this change, or comments on the legislation, please contact Paul Thomas on 03000 586524 (email: paul.thomas@hmrc.gsi.gov.uk).

1 Charge and rates for 2015-16

(1) Income tax is charged for the year 2015-16.

(2) For that tax year—
(a) the basic rate is 20%,
(b) the higher rate is 40%, and
(c) the additional rate is 45%.

2 Limits and allowances for 2015-16

(1) For the tax year 2015-16—
(a) the amount specified in section 37(2) of ITA 2007 (income limit for personal allowance for those born before 6 April 1938) is replaced with "£27,700",
(b) the amount specified in section 38(1) (blind person's allowance) is replaced with "£2,290",
(c) the amount specified in section 43 ("minimum amount" for calculating tax reductions for married couples and civil partners) is replaced with "£3,220",
(d) the amount specified in section 45(3)(a) (amount for calculating allowance in relation to marriages before 5 December 2005 where spouse is over 75) is replaced with "£8,355",
(e) the amount specified in section 45(4) (income limit for calculating allowance in relation to marriages before 5 December 2005) is replaced with "£27,700",
(f) the amount specified in section 46(3)(a) (amount for calculating allowance in relation to marriages and civil partnerships on or after 5 December 2005 where spouse or civil partner is over 75) is replaced with "£8,355", and
(g) the amount specified in section 46(4) (income limit for calculating allowance in relation to marriages and civil partnerships on or after 5 December 2005) is replaced with "£27,700".

(2) Accordingly, for that tax year section 57 of that Act (indexation of allowances), so far as relating to the amounts specified in sections 37(2), 38(1), 43, 45(3)(a), 45(4), 46(3)(a) and 46(4), does not apply.

5

EXPLANATORY NOTE

INCOME TAX: CHARGE AND RATES FOR 2015-16

SUMMARY

1. Clause [X] provides for income tax and sets the main rates for 2015-16.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for income tax for 2015-16.

3. Subsection 2 sets the main rates of income tax for 2015-16.

BACKGROUND NOTE

4. Income tax is an annual tax. It is for Parliament to impose income tax for a year.

5. Clause [X] imposes the charge to income tax for 2015-16. It also sets the main rates of income tax for 2015-16: the 20% basic rate, the 40% higher rate and the 45 % additional rate.

6. If you have any questions about this change, or comments on the legislation, please contact Paul Thomas on 03000 586524 (email: paul.thomas@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

LIMITS AND ALLOWANCES FOR 2015-16

SUMMARY

1. This clause sets the amount of blind person's allowance, the minimum amount of married couple's allowance and married couple's allowance for 2015-16. It also sets the income limits, above which the higher personal allowance for those born before 6 April 1938 begin and the married couple's allowance begin to be withdrawn.

DETAILS OF THE CLAUSE

2. Subsection 1 sets the amount of the income limits, blind person's allowance, the minimum amount of married couple's allowance and married couple's allowance for 2015-16.

3. Subsection 2 disapplies the indexation provisions for the amounts in subsection 1.

BACKGROUND NOTE

4. From 2015-16, the basis of indexation for income tax allowances and rate limits is the consumer prices index (CPI). For 2015-16, this clause sets the amount of the income limits, blind person's allowance, minimum amount of married couple's allowance and married couple's allowance at the equivalent of indexation based on the retail prices index (RPI) instead of CPI.

5. If you have any questions about this change, or comments on the legislation, please contact Paul Thomas on 03000 586524 (email: paul.thomas@hmrc.gsi.gov.uk).

1 Zero-emission vans

(1) ITEPA 2003 is amended as follows.

(2) In section 155 (cash equivalent of the benefit of a van), for subsections (1) and (2) substitute—

"(1) The cash equivalent of the benefit of a van for a tax year is calculated as follows.

(1A) If the restricted private use condition is met in relation to the van for the tax year, the cash equivalent is nil.

(1B) If that condition is not met in relation to the van for the tax year—

(a) if the van cannot in any circumstances emit CO_2 by being driven and the tax year is any of the tax years 2015-16 to 2019-20, the cash equivalent is the appropriate percentage of £3,150 and

(b) in any other case, the cash equivalent is £3,150.

(1C) The appropriate percentage for the purposes of subsection (1B)(a) is—

(a) 20% for the tax year 2015-16,

(b) 40% for the tax year 2016-17,

(c) 60% for the tax year 2017-18,

(d) 80% for the tax year 2018-19, and

(e) 90% for the tax year 2019-20."

(3) In section 156(1) (reduction for periods when van unavailable), for "155(1)" substitute "155".

(4) In section 158(1) (reduction for payments for private use), for "155(1)" substitute "155".

(5) In section 160(1)(c) (benefit of fuel treated as earnings), for "section 155(1)(b)" substitute "section 155(1B)(b)".

(6) In section 170 (orders etc relating to Chapter 6 of Part 3), for subsection (1A) substitute—

"(1A) The Treasury may by order substitute a different amount for the amount for the time being specified in—

(a) section 155(1A) (cash equivalent where van subject only to restricted private use by employee),

(b) section 155(1B)(a) (cash equivalent for zero-emission van), and

(c) section 155(1B)(b) (cash equivalent in other cases)."

(7) Article 3 of the Van Benefit and Car and Van Fuel Benefit Order 2014 (S.I. 2014/2896) is revoked.

(8) The amendments and revocation made by this section have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

ZERO-EMISSION VANS

SUMMARY

1. With effect from 6 April 2015, this measure increases the van benefit charge (currently £nil) on a tapered basis for company vans which cannot in any circumstances emit CO_2 by being driven (zero-emission vans). This means that employees using zero-emission vans for more than insignificant private use will now be liable for the charge, although the full charge will not come into effect until 2020-21.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces changes to Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

3. Subsection (2) replaces sections 155(1) and 155(2) ITEPA and amends the method of calculating the cash equivalent of the benefit of a van. The charge is increased from £nil for zero-emission vans to a percentage of the charge applying to vans which emit CO_2. This percentage increases each tax year from 40% in 2016-17 to 100% in 2020-21. For vans which emit CO_2, the existing van benefit charge continues to apply. The cash equivalent of the van benefit charge remains £nil where the restricted private use condition is met.

4. Subsection (3) replaces section 155(1) with new section 155 in section 156(1). When calculating the reduction for periods when the van was unavailable, the calculation of the cash equivalent of the benefit of a van now includes reference to the charge for zero-emission vans.

5. Subsection (4) replaces section 155(1) with new section 155 in section 158(1). When calculating the reduction for payments for private use, the calculation of the cash equivalent of the benefit of a van now includes reference to the charge for zero-emissions vans.

6. Subsection (5) replaces section 155(1)(b) with section 155(1B)(b) in section 160(1)(c). When calculating the benefit of van fuel treated as earnings, the new reference to calculating the cash equivalent of a van in other cases is used.

7. Subsection (6) replaces 170(1A). Following the introduction of subsection (2) of the new clause, the references to the subsections on calculating the cash equivalent of a van are amended.

8. Subsection (7) revokes Article 3 of the Van Benefit and Car and Van Benefit Order 2014. Article 3, which sets the level of the full van benefit charge, is no longer necessary as a result of subsection (2) of this clause.

9. Subsection (8) provides that these changes and the revocation have effect for the tax year 2015-16 and subsequent tax years.

BACKGROUND NOTE

10. The measure will phase out the existing £nil van benefit charge for zero-emission vans between April 2015 and April 2020. From tax year 2015-16, a rate of 20% of the van benefit charge for vans which emit CO_2 will apply to zero-emission vans. This rate will increase each year as follows until it is equivalent to 100% of the van benefit charge for vans which emit CO_2:

- 40% in 2016-17;
- 60% in 2017-18;
- 80% in 2018-19;
- 90 % in 2019-20; and
- 100 % in 2020-21.

11. The 2009 Pre-Budget Report announced that the van benefit charge for zero-emission vans would be £nil from 6 April 2010 to 5 April 2015, to support the uptake of cleaner goods vehicles. By tapering the increase in the van benefit charge, there will still be an incentive to use zero-emission vans so their production will continue to be encouraged. At the same time, increasing the taxable benefit ensures the tax system continues to support the sustainability of the public finances.

12. If you have any questions about this change, or comments on the legislation, please contact Alastair Dougans on 03000 584745 (email: employmentincome.policy@hmrc.gsi.gov.uk).

1 Extension of benefits code except in relation to certain ministers of religion

(1) Omit Chapter 11 of Part 3 of ITEPA 2003 (taxable benefits: exclusion of lower-paid employments from parts of benefits code).

(2) In Part 4 of that Act (employment income: exemptions), after section 290B insert—

"290C Provisions of benefits code not applicable to lower-paid ministers of religion

(1) This section applies where a person is in employment which is lower-paid employment as a minister of religion in relation to a tax year.

(2) No liability to income tax arises in respect of the person in relation to the tax year by virtue of any of the following Chapters of the benefits code—

(a) Chapter 3 (taxable benefits: expenses payments);
(b) Chapter 6 (taxable benefits: cars, vans and related benefits);
(c) Chapter 7 (taxable benefits: loans);
(d) Chapter 10 (taxable benefits: residual liability to charge).

(3) Subsection (2)—

(a) means that in any of those Chapters a reference to an employee does not include an employee whose employment is within the exclusion in that subsection, if the context is such that the reference is to an employee in relation to whom the Chapter applies, but
(b) does not restrict the meaning of references to employees in other contexts.

(4) Subsection (2) has effect subject to—

(a) section 188(2) (discharge of loan: where employment becomes lower-paid), and
(b) section 290G (employment in two or more related employments).

290D Meaning of "lower-paid employment as a minister of religion"

(1) For the purposes of this Part an employment is "lower-paid employment as a minister of religion" in relation to a tax year if—

(a) the employment is direct employment as a minister of a religious denomination, and
(b) the earnings rate for the employment for the year (calculated under section 290E) is less than £8,500.

(2) An employment is not "direct employment" for the purposes of subsection (1)(a) if it is an employment which is treated as existing under—

(a) section 56(2) (deemed employment of worker by intermediary),
(b) section 61G(2) (deemed employment of worker by managed service company), or
(c) section 554Z2(1) (deemed employment in case of relevant step for purposes of Chapter 2 of Part 7A (employment income provided through third parties)).

(3) Subsection (1) is subject to section 290G.

290E Calculation of earnings rate for a tax year

(1) For any tax year the earnings rate for an employment is to be calculated as follows—

Step 1

Find the total of the following amounts—
(a) the total amount of the earnings from the employment for the year within Chapter 1 of Part 3 (earnings),
(b) the total of any amounts that are treated as earnings from the employment for the year under the benefits code (see subsections (2) and (3)), and
(c) the total of any amounts that are treated as earnings from the employment for the year under Chapter 12 of Part 3 (other amounts treated as earnings),

excluding any exempt income, other than any attributable to section 290A or 290B (accommodation outgoings of ministers of religion).

Step 2

Add to that total any extra amount required to be added for the year by section 290F (extra amount to be added in connection with a car).

Step 3

Subtract the total amount of any authorised deductions (see subsection (4)) from the result of step 2.

Step 4

The earnings rate for the employment for the year is given by the formula—

$$R \times \frac{Y}{E}$$

where—

R is the result of step 3,
Y is the number of days in the year, and
E is the number of days in the year when the employment is held.

(2) Section 290C(2) (provisions of benefits code not applicable to lower-paid ministers of religion) is to be disregarded for the purpose of determining any amount under step 1.

(3) If the benefit of living accommodation is to be taken into account under step 1, the cash equivalent is to be calculated in accordance with section 105 (even if the cost of providing the accommodation exceeds £75,000).

(4) For the purposes of step 3 "authorised deduction" means any deduction that would (assuming it was an amount of taxable earnings) be allowed from any amount within step 1 under—

section 346 (employee liabilities),

section 370 (travel costs and expenses where duties performed abroad: employee's travel),

section 371 (travel costs and expenses where duties performed abroad: visiting spouse's, civil partner's or child's travel),

section 373 (non-domiciled employee's travel costs and expenses where duties performed in UK),

section 374 (non-domiciled employee's spouse's, civil partner's or child's travel costs and expenses where duties performed in UK),

section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)),

section 713 (payroll giving to charities),

sections 188 to 194 of FA 2004 (contributions to registered pension schemes), or

section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions).

290F Extra amounts to be added in connection with a car

(1) The provisions of this section apply for the purposes of section 290E in the case of a tax year in which a car is made available as mentioned in section 114(1) (cars, vans and related benefits) by reason of the employment.

(2) Subsection (3) applies if in the tax year—

(a) an alternative to the benefit of the car is offered, and

(b) the amount that would be earnings within Chapter 1 of Part 3 if the benefit of the car were to be determined by reference to the alternative offered exceeds the benefit code earnings (see subsection (4)).

(3) The amount of the excess is an extra amount to be added under step 2 in section 290E(1).

(4) For the purposes of subsection (2) "the benefit code earnings" is the total for the year of—

(a) the cash equivalent of the benefit of the car (calculated in accordance with Chapter 6 of Part 3 (taxable benefits: cars, vans etc)), and

(b) the cash equivalent (calculated in accordance with that Chapter) of the benefit of any fuel provided for the car by reason of the employment.

(5) Section 290C(2) (provisions of benefits code not applicable to lower-paid ministers of religion) is to be disregarded for the purpose of determining any amount under this section.

290G Related employments

(1) This section applies if a person is employed in two or more related employments.

(2) None of the employments is to be regarded as lower-paid employment as a minister of religion in relation to a tax year if—

(a) the total of the earnings rates for the employments for the year (calculated in each case under section 290E) is £8,500 or more, or

(b) any of them is an employment falling outside the exclusion contained in section 290C(2) (provisions of benefits code not applicable to lower-paid ministers of religion).

(3) For the purposes of this section two employments are "related" if—

(a) both are with the same employer, or

(b) one is with a body or partnership ("A") and the other is either—

(i) with an individual, partnership or body that controls A ("B"), or

(ii) with another partnership or body also controlled by B.

(4) Section 69 (extended meaning of "control") applies for the purposes of this section as it applies for the purposes of the benefits code."

(3) Schedule 1 contains amendments relating to subsections (1) and (2).

(4) The amendments made by this section and Schedule 1 have effect for the tax year 2016-17 and subsequent tax years.

2 Exemption from income tax for board or lodging provided to carers

(1) Part 4 of ITEPA 2003 (employment income: exemptions) is amended as follows.

(2) In Chapter 8 (exemptions: special kinds of employees), after section 306 insert—

"Carers

306A Carers: board and lodging

(1) For the purposes of this section an individual is employed as a home care worker if the duties of the employment consist wholly or mainly of the provision of personal care to another individual ("the recipient") at the recipient's home, in a case where the recipient is in need of personal care because of—

(a) old age,

(b) mental or physical disability,

(c) past or present dependence on alcohol or drugs,

(d) past or present illness, or

(e) past or present mental disorder.

(2) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision of board or lodging (or both) to an individual employed as a home care worker if the provision is—

(a) on a reasonable scale,

(b) at the recipient's home, and

(c) by reason of the individual's employment as a home care worker."

(3) In section 228 (effect of exemptions on liability under provisions outside Part 2), in subsection (2)(d), after "291" insert "and 306A".

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

SCHEDULE 1

Section 1

EXTENSION OF BENEFITS CODE EXCEPT IN RELATION TO CERTAIN MINISTERS OF RELIGION

PART 1

AMENDMENTS OF ITEPA 2003

1 ITEPA 2003 is amended as follows.

2 In section 7 (meaning of "employment income", "general earnings" and "specific employment income"), in subsection (5)(b), for "11" substitute "10".

3 In section 17 (UK resident employees: treatment of earnings for year in which employment not held), in subsection (4), for "11" substitute "10".

4 In section 30 (remittance basis and non-UK resident employees: treatment of earnings for year in which employment not held), in subsection (4), for "11" substitute "10".

5 (1) Section 63 (the benefits code) is amended as follows.

(2) In subsection (1)—

(a) at the end of the entry relating to Chapter 7 insert "and", and

(b) omit the entry relating to Chapter 11 and the "and" before it.

(3) Omit subsections (2) to (4).

6 In section 66 (meaning of "employment" and related expressions), after subsection (4) insert—

"(5) In the benefits code "lower-paid employment as a minister of religion" has the same meaning as in Part 4 (see section 290D)."

7 In section 148 (reduction of cash equivalent where car is shared), omit subsection (3).

8 In section 157 (reduction of cash equivalent where van is shared), omit subsection (3).

9 (1) Section 169 (car available to more than one family member etc employed by same employer) is amended as follows.

(2) For subsection (2)(b) substitute—

"(b) M's employment is lower-paid employment as a minister of religion."

(3) Omit subsections (3) and (4).

10 (1) Section 169A (van available to more than one family member etc employed by same employer) is amended as follows.

(2) For subsection (2)(b) substitute—

"(b) M's employment is lower-paid employment as a minister of religion."

(3) Omit subsections (3) and (4).

11 In section 184 (interest treated as paid), in subsection (3), for the words following "any of" substitute "the following Chapters of this Part—
Chapter 3 (taxable benefits: expenses payments);
Chapter 6 (taxable benefits: cars, vans and related benefits);
Chapter 10 (taxable benefits: residual liability to charge)."

12 (1) Section 188 (loan released or written off: amount treated as earnings) is amended as follows.

(2) In subsection (2), for "an excluded employment", in each place where it occurs, substitute "lower-paid employment as a minister of religion".

(3) In subsection (3)(a), for "excluded employment" substitute "lower-paid employment as a minister of religion".

13 In section 228 (effect of exemptions in Part 4 on liability under provisions outside Part 2), in subsection (2)(d), for "290 and" substitute "290, 290C to".

14 (1) Section 239 (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles) is amended as follows.

(2) In subsection (8), for "excluded employment" substitute "lower-paid employment as a minister of religion (see section 290D)".

(3) Omit subsection (9).

15 In section 266 (exemption of non-cash vouchers for exempt benefits), in subsection (5), for "excluded employment" substitute "lower-paid employment as a minister of religion".

16 In section 267 (exemption of credit-tokens used for exempt benefits), in subsection (1)(b), for "excluded employment" substitute "lower-paid employment as a minister of religion".

17 In section 269 (exemption where benefits or money obtained in connection with taxable car or van or exempt heavy goods vehicle), in subsection (4)(b), for "excluded employment" substitute "lower-paid employment as a minister of religion".

18 In section 290 (accommodation benefits of ministers of religion), in subsection (2), for "excluded employment" substitute "lower-paid employment as a minister of religion (see section 290D)".

19 In section 290A (accommodation outgoings of ministers of religion)—
(a) in subsection (1), for "a religious denomination" substitute "religion",
(b) in subsection (3), omit the definition of "lower-paid employment", and
(c) in the heading of the section, after "outgoings of" insert "lower-paid".

20 In section 290B (allowances paid to ministers of religion in respect of accommodation outgoings)—

(a) in subsection (1), for "a religious denomination" substitute "religion",

(b) in subsection (3), for "and "lower-paid employment" have the same meanings" substitute "has the same meaning", and

(c) in the heading of the section, after "to" insert "lower-paid".

21 (1) Part 2 of Schedule 1 (index of defined expressions) is amended as follows.

(2) Omit both entries relating to "excluded employment" and the entry relating to "lower-paid employment".

(3) At the appropriate place insert—

"lower-paid employment as a minister of religion (in the benefits code)	section 66(5)
lower-paid employment as a minister of religion (in Part 4)	section 290D".

22 (1) Paragraph 17 of Schedule 7 (transitionals and savings: benefits code) is amended as follows.

(2) In sub-paragraph (2), for "the Chapters" to "lower-paid employments)" substitute "Chapters 3, 6, 7 and 10 of the benefits code (provisions not applicable before the tax year 2016-17 to lower-paid employments)".

(3) Omit sub-paragraph (4).

PART 2

AMENDMENTS OF OTHER ENACTMENTS

23 (1) The Social Security Contributions and Benefits Act 1992 is amended as follows.

(2) In section 10 (Class 1A contributions: benefits in kind etc), in subsection (1)(b)(ii), for "an excluded employment" substitute "lower-paid employment as a minister of religion".

(3) In section 10ZB (non-cash vouchers provided by third parties), in subsection (2)—

(a) in paragraph (a), for "an excluded employment for the purposes of the benefits code" substitute "lower-paid employment as a minister of religion", and

(b) in paragraph (b) and in the words following that paragraph, for "an excluded employment" substitute "lower-paid employment as a minister of religion", in both places.

(4) In section 122 (interpretation of Parts 1 to 6), in subsection (1)—

(a) omit the entry relating to "excluded employment", and

(b) at the appropriate place insert—

""lower-paid employment as a minister of religion" has the meaning given by section 290D of ITEPA 2003;".

24 (1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended as follows.

(2) In section 10 (Class 1A contributions: benefits in kind etc), in subsection (1)(b)(ii), for "an excluded employment" substitute "lower-paid employment as a minister of religion".

(3) In section 10ZB (non-cash vouchers provided by third parties), in subsection (2)—

(a) in paragraph (a), for "an excluded employment for the purposes of the benefits code" substitute "lower-paid employment as a minister of religion", and

(b) in paragraph (b) and in the words following that paragraph, for "an excluded employment" substitute "lower-paid employment as a minister of religion", in both places.

(4) In section 121 (interpretation of Parts 1 to 6), in subsection (1)—

(a) omit the entry relating to "excluded employment", and

(b) at the appropriate place insert—

""lower-paid employment as a minister of religion" has the meaning given by section 290D of ITEPA 2003;".

25 (1) Section 173 of FA 2004 (provision of benefits by registered pension scheme) is amended as follows.

(2) In subsection (2), for "an excluded employment" substitute "lower-paid employment as a minister of religion".

(3) In subsection (3)—

(a) in the opening words, for "an excluded employment" substitute "an employment which is lower-paid employment as a minister of religion", and

(b) in paragraph (a), for "an excluded employment" substitute "lower-paid employment as a minister of religion".

(4) In subsection (6), for "an excluded employment" substitute "lower-paid employment as a minister of religion".

(5) In subsection (7), for "an excluded employment" substitute "an employment which is lower-paid employment as a minister of religion".

(6) In subsection (10), for the definition of "excluded employment" substitute—

""lower-paid employment as a minister of religion" has the meaning given by section 290D of that Act,".

26 In CTA 2010, in section 1065 (exception for benefits treated as employment income etc), in the first column of the table, for the words from "in section 216" to "lower-paid employment)" substitute "in section 290C of that Act (provisions of benefits code not applicable to lower-paid ministers of religion)".

EXPLANATORY NOTE

EXTENSION OF THE BENFITS CODE EXCEPT IN RELATION TO CERTAIN MINISTERS OF RELIGION

SUMMARY

1. Clause [X] and Schedule [A] repeal Chapter 11 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) so that employees (other than a lower paid minister of religion) earning at a rate of less than £8,500 a year will, from 6 April 2016, pay income tax on their benefits in kind (BiKs) in the same way as other employees earning at a rate of £8,500 or more.

DETAILS OF THE CLAUSE

2. Subsection 1 repeals the whole of Chapter 11 of Part 3 of ITEPA (taxable benefits: exclusion of lower-paid employments from parts of the benefits code).

3. Subsection 2 inserts new sections 290C to 290G inclusive relating to lower paid minsters of religion into Chapter 8 of part 4 of ITEPA.

4. New Section 290C (1) applies the section to lower paid employment as a minister of religion for a tax year.

5. New Section 290C (2) sets out that lower paid ministers of religion have no liability to income tax on employer provided expenses payments, cars, vans and related benefits (such as fuel), loans and any other residual benefits taxable under Chapter 10 of the benefits code.

6. New Section 290C (3) sets out that references to an employee in Chapters 3, 6, 7 & 10 whose employment falls within subsection (2) does not include someone in lower paid employment as a minister of religion if the Chapter normally applies in preference to subsection (2) above.

7. New Section 290C (4) sets out that whether someone is treated as a lower paid minister of religion or not, is subject to income from related employments as set out in new Section 290G, and loans being written off that are treated as earnings under Section 188 ITEPA.

8. New Section 290D (1) sets out that for the exclusion to the benefits code to apply the person must be directly employed as a minister of a religious denomination and must be earning at a rate of less than £8,500 in the tax year.

9. New Section 290D (2) sets out that direct employment means that the minister of religion cannot be engaged through an employment intermediary, a managed service company nor be paid through a third party.

10. New Section 290D (3) provides that the meaning of lower paid employment as a minister of religion is subject to the rules for related employments set out in new Section 290G.

11. New Section 290E (1) to (4) contains a method statement that sets out how to calculate whether the minister of religion is earning at a rate of less than £8,500 in the tax year. In doing so, you have to assume that the employment is not lower paid employment as a minister of religion so that the cash equivalent of any BiKs specified in new section 290C are included in the calculation, as well as any BiKs attributable to Sections 290A and 290B. The calculation requires all earnings from the employment to be added (including amounts treated as earnings), and also BiKs that would be exempt if the minister of religion is in lower paid employment. A deduction to total income is then made for earnings which are specifically excluded (except for accommodation outgoings of ministers of religion), any extra amount to be added in connection with a car set out in new Section 290F, and finally authorised deductions (as set out in new subsection 290E(4) are subtracted. The total number of days in the year is then divided by the total number of days the minister of religion has worked in the year and this is multiplied by total income (after deductions and exclusions); and this then provides the earnings rate for a minister of religion.

12. New Section 290F (1) to (5) sets out the special rules for the method statement at new Section 290E of how to calculate the cash equivalent paid to a minister of religion in respect of cars, vans and related benefits to determine whether a minister of religion is in lower paid employment .

13. New Section 290G (1) to (4) sets out that where a ministers of religion has two or more related employments they must be added together when calculating whether a person is a lower paid minister of religion because they are earning at a rate of less £8,500 per year. If the total earnings from all of the related employments are more than £8,500 then the minister of religion will not benefit from the exemption for BiKs for lower paid ministers of religion. This section also provides that two or more employments are related if both employments are with the same employer or are controlled by the same person, with the extended meaning of ‘control’ in Section 69 ITEPA 2003 applying for the purposes of this section.

14. Subsection 3 introduces the Schedule.

15. Subsection 4 provides for the changes to take effect from the 2016-17 tax year onwards.

DETAILS OF THE SCHEDULE

Part 1

5. Part 1 makes amendments to ITEPA 2003 including those that are consequential to the repeal of Chapter 11.

6. Paragraph 1 introduces the changes.

7. Paragraphs 2 to 4 makes changes to Sections 7, 17 and 30 of ITEPA 2003 to remove references to Chapter 11 which is repealed and replaces them instead with references to Chapter 10.

8. Paragraph 5 makes changes to Section 63 ITEPA 2003 to remove references to Chapter 11 terms that are no longer relevant and subsections that are no longer relevant following the repeal of Chapter 11.

9. Paragraph 6 inserts a new definition to Section 66 ITEPA 2003 (meaning of 'employment' and related expressions) at subsection (5) saying that the meaning of 'lower paid employment as a minister of religion' has the same meaning as in new Section 290D.

10. Paragraphs 7 & 8 makes changes to Sections 148 and 157 ITEPA 2003 so that where a car, or a van is shared between two employees and one is in lower paid employment as a minister of religion, and one is not, the van will be treated in the same way as if it were shared between two employees, neither of whom are lower paid ministers of religion.

11. Paragraphs 9 & 10 makes changes to Section 169 and 169A ITEPA 2003 to change references from excluded employment to lower paid ministers of religion and removes the qualifying provisions where the car or van is shared with a family member who is a lower paid minister of religion.

12. Paragraph 11 makes changes to Section 184 ITEPA 2003 to remove the reference to Chapter 11 and substitutes instead the individual Chapters 3, 6 & 10 to which this section applies.

13. Paragraphs 12 to 18 make changes to Sections 188, 239, 266, 267 and 290 ITEPA 2003 to remove references to Chapter 11 and excluded employment, terms that are no longer relevant and substitutes 'lower paid employment as a minister of religion' so these exemptions will continue to apply in the same way to lower paid ministers of religion.

14. Paragraph 13 makes changes to Section 228 ITEPA 2003 and inserts references to Sections 290C to 290G (provisions of the benefits code not applicable to lower-paid ministers of religion).

15. Paragraph 14 subparagraph (3) makes changes to Section 239(9) ITEPA 2003 to remove references to Chapter 11 terms, and replaces the current text with references to 'In this part 'lower paid employment as a minister of religion' has the meaning given by Section 290D'.

16. Paragraphs 19 & 20 make changes to Section 290A and 290B ITEPA 2003 replacing the words ‘religious denomination’ with ‘religion’, removing the definition of ‘lower paid employment’ from Section 290A(3), changing the wording in Section 290B(3) so that it now reads as ‘accommodation outgoings’ has the same meaning as in Section 290A’, and inserting ‘lower paid’ before ministers of religion in the title of both sections.

17. Paragraph 21 make changes to Part 2 of Schedule 1 ITEPA 2003 to remove references to lower paid employment and excluded employment, consequential to the repeal of Chapter 11 and introduces references to ‘lower paid ministers of religion (in the benefits code)’ and ‘lower paid ministers of religion in Part 4’ in the appropriate places in the Schedule.

18. Paragraph 22 makes changes to paragraph 17 of Schedule 7 ITEPA 2003 to change references from lower paid employments to Chapter 3, 6, 7 and 10 of the benefits code such that the transitional arrangements are maintained and omits sub-paragraph 4 referring to Chapter 11 of Part 3..

19. Paragraph 23 subparagraph (1) introduces the amendments to the Social Security Contributions and Benefits Act 1992 (SSCBA 1992).

20. Paragraph 23 subparagraph (2) removes the reference to employees in an excluded employment at subsection 10(1)(b)(ii) of the SSCBA 1992 and substitutes ‘lower paid employment as a minister of religion’. Section 10 SSCBA 1992 determines whether Class 1A National Insurance contributions (NICs) are payable in respect of a BiK. This amendment ensures that no Class 1A NICs liability arises in respect of lower paid ministers of religion.

21. Paragraph 23 subparagraph (3) similarly amends section 10ZB of the SSCBA 1992

22. Paragraph 23 subparagraph (4) amends section 122 of the SSCBA 1992 to remove references to chapter 11 terms that are no longer relevant, and inserts an interpretation of ‘lower paid employment as a minister of religion’, stating that it has the meaning given by Section 290D of ITEPA.

23. Paragraph 24 subparagraph (1) introduces the amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCBA (NI) 1992).

24. Paragraph 24 subparagraph (2) removes the reference to employees in an excluded employment at subsection 10(1)(b)(ii) of the SSCBA (NI) 1992 and substitutes ‘lower paid employment as a minister of religion’. Section 10 SSCBA (NI) 1992 determines whether a Class 1A contribution is payable in respect of a BiK. This amendment ensures that no class 1A liability arises in respect of lower paid ministers of religion.

25. Paragraph 24 subparagraph (3) similarly amends section 10ZB of the SSCBA (NI) 1992

26. Paragraph 24 subparagraph (4) amends section 121 of the SSCBA (NI) 1992 to remove references to chapter 11 terms that are no longer relevant, and inserts an interpretation of ‘lower paid employment as a minister of religion’ stating that it has the meaning given by Section 290D of ITEPA.

27. Paragraph 25 makes changes to section 173 of the Finance Act 2004. It removes references to ‘excluded employments’, a term which, following the repeal of Chapter 11 is no longer relevant in determining whether a registered pension scheme has made an unauthorised payment, if an asset held for the purposes of the pension scheme is used to provide a benefit. Instead these references are replaced with ‘lower paid employment as a minister of religion’, and in subsection 10 replaces the definition of ‘excluded employment’ with ‘lower paid employment as a minister of religion’ further providing that the meaning of ‘lower paid employment as a minister of religion’ is that within given by section 290D ITEPA 2003. This means that the position with regard to registered pension schemes remains the same for lower paid ministers of religion.

28. Paragraph 26 amends Section 1065 of the Corporation Tax Act 2010 by removing the reference to section 216 ITEPA 2003 and ‘lower paid employment’ and substitutes ‘in section 290C of that Act (provisions not applicable to lower paid ministers of religion).

BACKGROUND NOTE

29. At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee BiKs and expenses. This followed the Office of Tax Simplification’s (OTS) review of employee BiKs and expenses.[1]

30. The package of four measures consisted of the following:

- Abolishing the threshold for the taxation of BiKs for employees who earn at a rate of less than £8,500 a year (‘lower paid’ employments), with action to mitigate the effects on vulnerable groups disadvantaged by the reforms;
- Introducing a statutory exemption for trivial BiKs;
- Introducing a system of collecting income tax in real time through ‘payrolling’ of BiKs; and
- Replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses.

31. Abolition of the £8,500 threshold is achieved by the removal of Chapter 11 ITEPA 2003. Chapter 11 sets the rules for employees in lower paid employment providing how they are taxed under the benefits code on their BiKs and expenses.

[1] https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report

32. The change to abolish the £8,500 threshold has been introduced to simplify administration for employers so they no longer need to monitor if employees are earning at a rate of less than £8,500, or £8,500 or more a year, including their BiKs.

33. All BiKs will be liable to income tax and National Insurance contributions, whatever the level of the employee's earnings and BiKs. Employers will no longer have two separate reporting requirements on either the P9D, or P11D dependent on the employee's level of earnings.

34. As a result of the abolition of the £8,500 threshold, new exemptions are introduced for employed carers on board and / or lodging being provided in the home of the person that they are caring for. This exemption is covered in a separate clause.

35. Another exemption will protect ministers of religion in a lower paid employment from the effects of the changes where the minister is earning at a rate of less than £8,500 a year. This exemption will mean that ministers of religion will see no change in the treatment of their benefits in kind for tax and NICs purposes, following the abolition of the £8,500 threshold.

36. These changes will be introduced for the 2016/17 and subsequent tax years.

37. If you have any questions about this change, or comments on the legislation, please contact Michael Adams on 03000 589313 (email: employmentincome.policy@hmrc.gsi.gov.uk)

EXPLANATORY NOTE

EXEMPTION FROM INCOME TAX FOR BOARD OR LODGING PROVIDED TO CARERS

SUMMARY

1. Clause [X] provides a new exemption from income tax where an employed home care worker is provided with board and/or lodging in the home of the person that they are caring for.

2. This exemption is being introduced as a result of the abolition the £8,500 threshold for benefits in kind and expenses that is taking effect at the same time.

DETAILS OF THE CLAUSE

3. Subsection 1 amends Part 4 of ITEPA 2003 (employment income: exemptions).

4. Subsection 2 inserts new section 306A into Chapter 8 (exemptions: special kinds of employees).

5. New subsection 306A(1) defines a home care worker as an individual employed wholly or mainly to provide personal care to another individual at the recipient's home, where the recipient is unable to care for themselves because of old age, mental or physical disability, past or present dependence on alcohol or drugs, or past or present illness or mental disorder.

6. New subsection 306A(2) provides that no liability to income tax arises where board and / or lodging is provided at the home of the person being cared for, on a reasonable scale, to a home care worker by reason of their employment.

7. Subsection 3 adds new section 306A to the list of exemptions in section 228 ITEPA 2003 for which there is no liability to tax under any enactment.

8. Subsection 4 provides that the exemption will have effect for the 2016/17 tax year onwards.

BACKGROUND NOTE

9. At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee BiKs and expenses. This followed the Office of Tax Simplification's (OTS) review of employee BiKs and expenses.[1]

10. The package of four measures consisted of the following:

- Abolishing the threshold for the taxation of BiKs for employees who earn at a rate of less than £8,500 a year ('lower paid' employments), with action to mitigate the effects on vulnerable groups disadvantaged by the reforms;
- Introducing a statutory exemption for trivial BiKs;
- Introducing a system of collecting income tax in real time through 'payrolling' of BiKs; and
- Replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses.

11. This new exemption is being introduced to mitigate for a particular group of people the effects of the abolition of the £8,500 threshold for BiKs and expenses that is being introduced at the same time.

12. This exemption applies to income tax for board and / or lodging provided on a reasonable scale to an employed carer in the home of the person that they are caring for.

13. The exemption will also apply to National Insurance contributions due on the value of the BiK of board and / or lodging, which the person providing the BiK of board and /or lodging (usually the person being cared for) would otherwise have to pay.

14. This is to ensure that those persons who are in need of care are not involved in additional employer related administration or costs that may arise from the abolition of the threshold.

15. These changes will be introduced for the 2016/17 and subsequent tax years.

16. If you have any questions about this change, or comments on the legislation, please contact Michael Adams on 03000 589313 (email: employmentincome.policy@hmrc.gsi.gov.uk)

[1] https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report

1 Abolition of dispensation regime

(1) ITEPA 2003 is amended as follows.

(2) Omit section 65 (dispensations relating to benefits for certain employees).

(3) Omit section 96 (dispensations relating to vouchers or credit-tokens).

(4) Accordingly, in section 95 (disregard for money, services or goods obtained), omit subsection (1)(b) and the "or" before it.

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

2 Exemption from income tax for amounts which would otherwise be deductible

(1) In Part 4 of ITEPA 2003 (employment income: exemptions) after Chapter 7 insert—

"CHAPTER 7A

EXEMPTION: AMOUNTS WHICH WOULD OTHERWISE BE DEDUCTIBLE

289A Exemption for paid or reimbursed expenses

(1) No liability to income tax arises by virtue of Chapter 3 of Part 3 (taxable benefits: expenses payments) in respect of an amount ("amount A") paid or reimbursed by a person to an employee (whether or not an employee of the person) in respect of expenses if—

(a) an amount equal to or exceeding amount A would (ignoring this section) be allowed as a deduction from the employee's earnings under Chapter 2 or 5 of Part 5 in respect of the expenses, and

(b) the payment or reimbursement is not provided pursuant to relevant salary sacrifice arrangements.

(2) No liability to income tax arises in respect of an amount paid or reimbursed by a person ("the payer") to an employee (whether or not an employee of the payer) in respect of expenses if—

(a) the amount has been calculated and paid or reimbursed in an approved way (see subsection (6)),

(b) the payment or reimbursement is not provided pursuant to relevant salary sacrifice arrangements, and

(c) conditions A and B are met.

(3) Condition A is that the payer or another person operates a system for checking—

(a) that the employee is, or employees are, in fact incurring and paying amounts in respect of expenses of the same kind, and

(b) that a deduction would (ignoring this section) be allowed under Chapter 2 or 5 of Part 5 in respect of those amounts.

(4) Condition B is that neither the payer nor any other person operating the system knows or suspects, or could reasonably be expected to know or suspect—

(a) that the employee has not incurred and paid an amount in respect of the expenses, or

(b) that a deduction from the employee's earnings would not be allowed under Chapter 2 or 5 of Part 5 in respect of the amount.

(5) "Relevant salary sacrifice arrangements", in relation to an employee to whom an amount is paid or reimbursed in respect of expenses, means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive an amount of general earnings or specific employment income in return for the payment or reimbursement.

(6) For the purposes of this section, a sum is calculated and paid or reimbursed in an approved way if—

(a) it is calculated and paid or reimbursed in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs, or

(b) it is calculated and paid or reimbursed in accordance with an approval given under section 289B.

(7) Regulations made under subsection (6)(a) may make different provision for different purposes.

289B Approval to pay or reimburse expenses at a flat rate

(1) A person ("the applicant") may apply to Her Majesty's Revenue and Customs for approval to pay or reimburse expenses of the applicant's employees, or employees of another person, at a rate set out in the application ("the proposed rate").

(2) An officer of Revenue and Customs may give the approval if satisfied that any calculation of a payment or reimbursement of expenses in accordance with the proposed rate, or such other rate as is agreed between the applicant and the officer, would be a reasonable estimate of the amount of expenses actually incurred.

(3) An approval under subsection (2) takes effect in accordance with a notice (an "approval notice") given to the applicant by an officer of Revenue and Customs.

(4) An approval notice must specify—

(a) the rate at which expenses may be paid or reimbursed,

(b) the day from which the approval takes effect, that day not being earlier than the day on which the approval notice is given,

(c) the day on which the approval ceases to have effect, that day not being later than the end of the period of 5 years beginning with the day on which the approval takes effect, and

(d) the type of expenses to which the approval relates.

(5) An approval notice may specify that the approval is subject to conditions specified or described in the notice.

(6) An application for an approval under this section must be in such form and manner, and contain such information, as is specified by Her Majesty's Revenue and Customs.

289C Revocation of approvals

(1) An officer of Revenue and Customs may, if in the officer's opinion there is reason to do so, revoke an approval given under section 289B by giving a further notice (a "revocation notice") to either or both of the following—

(a) the person who applied for the approval, and

(b) the person who is paying or reimbursing expenses in accordance with the approval.

(2) A revocation notice may revoke the approval from—

(a) the day on which the approval took effect, or

(b) a later day specified in the notice.

(3) A revocation under subsection (1) may be in relation to all expenses or expenses of a description specified in the revocation notice.

(4) If the revocation notice revokes the approval from the day on which the approval took effect—

(a) any liability to tax that would have arisen in respect of the payment or reimbursement of expenses if the approval had never been given in relation to such expenses is to be treated as having arisen, and

(b) any person who has made, and any employee who has received, a payment or reimbursement of expenses calculated in accordance with the approval must make all the returns which they would have had to make if the approval had never been given in relation to such expenses.

(5) If the revocation notice revokes the approval from a later day—

(a) any liability to tax that would have arisen in respect of the payment or reimbursement of expenses if the approval had ceased to have effect on that day in relation to such expenses is to be treated as having arisen, and

(b) any person who has made, and any employee who has received, a payment or reimbursement of expenses calculated in accordance with the approval must make all the returns which they would have had to make if the approval had ceased to have effect in relation to such expenses on that day.

289D Exemption for other benefits

(1) No liability to income tax arises by virtue of any provision of the benefits code in respect of an amount ("amount A") treated as earnings of an employee as a result of the provision of a benefit if—

(a) an amount equal to amount A would (ignoring this section) be allowed as a deduction from the employee's earnings under Chapter 3 of Part 5 in respect of the provision of the benefit, and

(b) the benefit is not provided pursuant to relevant salary sacrifice arrangements.

(2) "Relevant salary sacrifice arrangements", in relation to an employee to whom a benefit is provided, means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the benefit."

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

EXPLANATORY NOTE

EXEMPTION FROM INCOME TAX FOR AMOUNTS WHICH WOULD OTHERWISE BE DEDUCTIBLE

SUMMARY

1. Clause [X] introduces a new exemption for expenses which are paid or reimbursed by an employer where the employee would be due a deduction under Chapters 2 or 5 of Part 5 of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA). It also provides an exemption in respect of benefits treated as earnings under the benefits code for which there is a deductible amount under Chapter 3 of Part 5 ITEPA. The legislation will come into force on 6 April 2016.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces new Chapter 7A to Part 4 of ITEPA (Employment Income: Exemptions).

3. New section 289A(1) provides an exemption for the amount of paid or reimbursed expenses which would be treated as earnings under the benefits code under circumstances where a deduction would otherwise be due under Chapter 2 or 5 of Part 5 ITEPA. An example of a deductible expense relates to costs necessarily incurred in travel for the performance of an employee's duties. The exemption will not apply if the payment or reimbursement is offered in conjunction with a relevant salary sacrifice arrangement. Relevant salary sacrifice arrangements for paid or reimbursed expenses are defined in new section 289A(5).

4. New section 289A(2) provides an exemption for payments of amounts in respect of expenses that are calculated in an "approved way" (commonly known as 'scale rate or flat rate payments'). An "approved way" for these purposes is defined in new section 289A(6). This requires that sums are calculated and paid either in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs (HMRC) under that section, or in accordance with an agreement made under new section 289B. New section 289A(7) enables the power in new section 289A(6) to be used to make provision for different circumstances.

5. The exemption will only apply if the payment is not provided as part of a relevant salary sacrifice arrangement, and if conditions A and B are met, which are defined in new sections 289A(3) and 289(4) respectively. Condition A is that the employer, or a third party, must have a system in place to check that the employers' employees are actually incurring deductible expenses of the same kind, and that they are deductible. Condition B provides a level of protection for employers and third parties operating checking systems – as long as they do not know or suspect (or could not have reasonably been expected to know or suspect)

that the employee is either not incurring the deductible expense or that the expense is not deductible.

6. New section 289B introduces provisions for applying for a flat rate in respect of deductible expenses. This includes, in new section 289B(2) the employer's requirement to provide a reasonable estimate of the actual costs incurred. The flat rate may only be applied if an officer of HMRC approves the application and issues an approval notice as provided for in new section 289B(3). New sections 289B(4) and (5) specify what that notice should or may contain.

7. New section 289B(6) provides that HMRC may specify what information is required and how it is to be set out in an application.

8. New section 289C introduces provisions for revoking approvals and when HMRC may seek to do this. Under new section 289C(2) the revocation notice may revoke approval for the use of the flat rate from the date of the approval notice or from a later date, for example, if the original circumstances of the application had been correct for a period of time before changing. New section 289C(3) sets out that the revocation notice may apply to all expenses or only specified expenses. New sections 289C(4) and (5) set out the effect of the revocation in respect of any tax liability and reporting requirements which arise as a result.

9. New section 289D introduces an exemption for benefits in kind (including vouchers and credit tokens) which the employee would otherwise have been entitled to a deduction for under chapter 3 of Part 5 ITEPA. The exemption will not apply if the benefit is offered in conjunction with a relevant salary sacrifice arrangement, the definition of which is provided for in new section 289D(2).

BACKGROUND NOTE

16. Unless an employer holds a dispensation from HMRC, the value of deductible expenses and benefits which are paid or reimbursed by an employer have to be reported on form P11D – employees can then claim for tax relief on that expense and/or benefit. This leads to unnecessary administrative burdens for employers and employees, and processing costs for HMRC where there is no tax to collect.

17. In response to recommendations from the Office of Tax Simplification as part of their general review of employee benefits and expenses, Ministers have agreed to introduce an exemption with effect from 6 April 2016 for paid or reimbursed deductible expenses and benefits. The effect of this legislation will be that there is no longer any reporting requirement on employers, and employees will automatically receive the tax relief they are entitled to. In addition, there will be no need for dispensations once the exemption becomes effective.

18. This legislation introduces the necessary changes for income tax. Changes will be made to National Insurance contributions (NICs) legislation to mirror aspects of this change for payments that are subject to Class 1 NICs where necessary. For benefits which fall within a liability for Class 1A NICs, current Class 1A NICs legislation automatically mirrors the tax position.

19. If you have any comments about this change, or comments on the legislation, please contact Travis Woodward on 03000 03000 586435 (email: employmentincome.policy@hmrc.gsi.gov.uk).

1 Exemption from income tax for trivial benefits provided by employers

(1) ITEPA 2003 is amended as follows.

(2) After section 323 insert—

"323A Trivial benefits provided by employers

(1) No liability to income tax arises in respect of a benefit provided by, or on behalf of, an employer to an employee or a member of the employee's family or household if conditions A to D are met.

(2) Condition A is that the benefit is not cash or a cash voucher within the meaning of section 75.

(3) Condition B is that—

(a) the cost of providing the benefit, or

(b) if subsection (6) applies, the average cost per person of providing the benefit,

does not exceed £50.

(4) Condition C is that the benefit is not provided pursuant to relevant salary sacrifice arrangements or any other contractual obligation.

(5) Condition D is that the benefit is not provided in recognition of particular services performed by the employee in the course of the employment or in anticipation of such services.

(6) This subsection applies if—

(a) a benefit is provided to more than one person, and

(b) the nature of the benefit or the scale of its provision means it is impracticable to calculate the cost of providing it to each person to whom it is provided.

(7) For the purposes of this section, the average cost per person of providing a benefit is found by dividing the total cost of providing the benefit by the number of persons to whom the benefit is provided.

(8) "Relevant salary sacrifice arrangements", in relation to the provision of a benefit to an employee or to a member of an employee's family or household, means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the benefit.

(9) The Treasury may by regulations amend this section so as to alter the conditions which must be met for the exemption conferred by subsection (1) to apply.

(10) The Treasury must not make regulations under subsection (9) unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons."

(3) In section 716 (alteration of amounts by Treasury order) in subsection (2), after paragraph (f) insert—

"(fa) section 323A(3) (trivial benefits provided by employers),".

(4) In section 717(4) (negative procedure not to apply to certain statutory instruments) after "other care: meaning of "eligible employee")," insert "section 323A(9) (exemption for trivial benefits provided by employers),".

(5) The amendments made by this section have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

EXEMPTION FROM INCOME TAX FOR TRIVIAL BENEFITS FROM EMPLOYERS

SUMMARY

1. Clause [X] introduces a statutory exemption from income tax for trivial benefits-in-kind (BiKs) provided by employers to employees. BiKs that qualify for the exemption will not incur a charge to income tax nor a liability to National Insurance contributions, and will not need to be reported to HMRC by employers. The exemption replaces concessionary arrangements whereby employers are required to agree with HMRC whether the provision of certain BiKs could be treated as trivial.

DETAILS OF THE CLAUSE

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

3. Subsection 2 inserts new section 323A into Chapter 11 of Part 4 of ITEPA 2003 (miscellaneous exemptions).

New section 323A Trivial benefits from employers ITEPA 2003

4. New Subsection 1 removes the liability from income tax for a BiK provided by, or on behalf of, an employer to an employee or their family and household, if all of the conditions A-D, as set out in subsection (2) – (5) are met. The definition of an “employee’s family or household” is set out in section 721 ITEPA 2003.

5. New Subsection 2 defines Condition A which provides that the exemption applies only if the BiK is not cash or a cash-voucher as defined in section 75 ITEPA 2003.

6. New Subsection 3 defines Condition B which provides that the exemption only applies if the cost of providing the BiK, or the average cost if subsection (6) applies, does not exceed £50 per person.

7. New Subsection 4 defines Condition C which provides that the exemption only applies if the BiK is not provided as part of a contractual obligation, including salary sacrifice arrangements.

8. New Subsection 5 defines Condition D which provides that the exemption only applies if the BiK is not provided in recognition of services performed by the employee in the course of their employment, or anticipation of such services.

9. New Subsection 6 sets out the circumstances in which average cost may be used for the purposes of determining whether Condition B is met.

10. New Subsection 7 sets out how the average cost per person of any BiK provided to more than one person should be calculated for the purposes of determining whether Condition B is met.

11. New Subsection 8 defines “relevant salary sacrifice arrangements” for the purposes of determining whether Condition C is met.

12. New Subsection 9 provides a power to enable the qualifying conditions, which must be met for the exemption to apply, to be amended by regulations.

13. New Subsection 10 provides that any regulations made using the power contained in new subsection 9 must be made by the affirmative resolution procedure.

14. Subsection 3 adds new section 323A to the provisions listed in section 716 ITEPA 2003. Section 716 provides that sums of money specified in those provisions may be increased by an order from the Treasury. This enables the £50 figure in new subsection (3) to be amended by Treasury order using the negative resolution procedure

15. Subsection 4 makes a consequential amendment to section 717(4) ITEPA, inserting a reference to the new regulation making power contained in new subsection 9. Section 717(4) contains a list of the powers in ITEPA 2003 that are subject to the affirmative resolution procedure.

16. Subsection 5 sets out when the exemption will take effect from.

BACKGROUND NOTE

17. Clause [X] has been introduced to provide an exemption from income tax for qualifying trivial benefits in kind (BiKs) where the cost of providing the BiK does not exceed £50.

18. At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee BiKs and expenses. This followed the Office of Tax Simplification’s (OTS) review of employee BiKs and expenses[1].

19. The package of four measures consisted of the following:

- Abolishing the threshold for the taxation of BiKs for employees who earn at a rate of less than £8,500 a year (‘lower paid’ employments), with action to mitigate the effects on vulnerable groups disadvantaged by the reforms;

- Introducing a statutory exemption for trivial BiKs;
- Introducing a system of collecting income tax in real time through ‘payrolling’ of BiKs; and
- Replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses.

20. The trivial BiKs exemption replaces a concessionary practice, whereby an employer is required to agree with HMRC whether a BiK can be treated as trivial and therefore not chargeable to income tax or liable for National Insurance contributions (NICs). A corresponding disregard will be introduced to remove any liability for Class 1 NICs for any qualifying non-cash vouchers provided under the exemption.

20. If you have any questions about this change, or comments on the legislation, please contact Yinka Oyesiku on 03000 585 497, via email at employmentincome.policy@hmrc.gsi.gov.uk, or in writing to Employment Income Policy Team, HM Revenue and Customs, Room 1E, 100 Parliament Street, London, SW1A 2BQ.

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[1] https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report

1 PAYE: benefits in kind

(1) Section 684 of ITEPA 2003 (PAYE regulations) is amended as follows.

(2) In the list in subsection (2), after item 1 insert—

"1ZA. Provision—

(a) for authorising a person ("P"), in a case where the PAYE income of an employee (whether an employee of P or of another person) includes an amount charged to tax under any of Chapters 3 and 5 to 10 of Part 3 in respect of the provision of a benefit of a specified kind—

(i) to make deductions of income tax in respect of the benefit from any payment or payments actually made of, or on account of, PAYE income of the employee, or

(ii) to make repayments of such income tax,

(b) for any such deductions or repayments to be made at a specified time,

(c) for the amount of any such deductions or repayments to be calculated in accordance with the regulations,

(d) for the provision of the benefit to be treated for specified purposes as a payment of PAYE income, and

(e) for making persons who make any such deductions or repayments accountable to or, as the case may be, entitled to repayment from the Commissioners."

(3) For subsection (3) substitute—

"(3) The deductions of income tax—

(a) required to be made by PAYE regulations under item 1 in the above list, or

(b) which a person is authorised to make by PAYE regulations under item 1ZA in that list,

may be required to be made at the basic rate or other rates in such cases or classes of case as may be provided by the regulations."

EXPLANATORY NOTE

PAYE: BENEFITS IN KIND

SUMMARY

1. This Clause amends the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), to provide powers to the Commissioners of HM Revenue & Customs (the Commissioners) to make regulations to collect income tax on specified benefits in kind through Pay As You Earn (PAYE).

DETAILS OF THE CLAUSE

2. Subsections 1 and 2 insert new section 1ZA into section 684 (PAYE regulations) of ITEPA 2003.

3. New provision 1ZA (a) provides that the Commissioners may make regulations to authorise an employer to deduct or repay income tax through PAYE where the employer provides an amount to an employee that is charged to tax under the benefits code in Part 3 of ITEPA 2003.

4. New provision 1ZA (b) provides for the regulations to specify the time at which any deduction or repayment are to be made.

5. New provision 1ZA (c) provides for the regulations to specify how any deduction or repayment is to be calculated.

6. New provision 1ZA (d) provides a power for the benefit to be treated as PAYE income for the purposes of the regulations.

7. New provision 1ZA (e) provides that regulations may be made to provide that employers who make a deduction or repayment must account for them to the Commissioners.

8. Subsection 3 adds new provision 1ZA to the list in subsection 684(3) ITEPA 2003, which provides for the rates of income tax that an employer will deduct to be set by PAYE regulations.

BACKGROUND NOTE

9. This clause introduces new powers for the Commissioners to make regulations to authorise employers to deduct or (repay) income tax through PAYE on the benefits that they provide to their employees (“payrolling”).

10. At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee benefits and expenses. This followed the Office of Tax Simplification's (OTS) review of employee benefits and expenses[1].

11. The package of four measures consisted of the following:

- Abolishing the threshold for the taxation of benefits for employees who earn at a rate of less than £8,500 a year ('lower paid' employments), with action to mitigate the effects on vulnerable groups disadvantaged by the reforms;
- Introducing a statutory exemption for trivial benefits;
- Introducing a system of collecting income tax in real time through 'payrolling' of benefits; and
- Replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses.

12. This dispensation to allow employers to payroll their employee's benefits and expenses voluntarily replaces an existing informal practice, where some employers operate payrolling but still have to comply with tax rules that require them to complete a form P11D (return of employee benefits and expenses) at the end of each tax year for each employee. The regulations will disapply that obligation for employers who payroll reducing their administrative burdens.

13. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 03000 586 474, via email at employmentincome.policy@hmrc.gsi.gov.uk, or in writing to Employment Income Policy Team, HM Revenue and Customs, Room 1E, 100 Parliament Street, London, SW1A 2BQ.

[1] https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report

1 Travel expenses of members of local authorities

(1) ITEPA 2003 is amended as follows.

(2) After section 235 insert—

"235A Qualifying journeys made by members of local authorities

(1) A qualifying journey made by a member of a local authority—

(a) is to be treated as business travel when calculating for the purposes of section 229 the mileage allowance payments paid to the member and the approved amount for such payments, but

(b) is not to be treated as business travel when making those calculations for the purposes of section 231.

(2) A journey is a "qualifying journey" for the purposes of this section if—

(a) it is a journey between the member's home and the offices of the local authority most frequently used by the member for the purposes of performing the member's duties,

(b) the member's home is situated in the area of the local authority or no more than 20 miles outside the boundary of the area, and

(c) a qualifying payment is made by the local authority to the member for expenses related to the member's use for the journey of a vehicle to which this Chapter applies.

(3) The Treasury may by regulations define what is meant by "local authority" and "qualifying payment" for the purposes of this section.

(4) Regulations made under subsection (3) may contain transitional provision and savings.

(5) The first regulations to be made under that subsection may contain provision having retrospective effect if they are made before the end of the tax year 2015-16."

(3) In section 236 (interpretation of Chapter 2 of Part 4), after subsection (1) insert—

"(1A) The definition of "business travel" in subsection (1) has effect subject to section 235A in the case of qualifying journeys (as defined in that section) made by members of local authorities."

(4) After section 295 insert—

"Members of local authorities

295A Travel expenses of members of local authorities

(1) No liability to income tax arises in respect of a qualifying payment made to a member of a local authority for travel expenses incurred by the member if—

(a) the payment is for expenses other than those related to the member's use of a vehicle to which Chapter 2 applies, and

(b) the expenses are not excluded by subsection (2).

(2) Expenses are excluded by this subsection if—

(a) they are incurred on a journey between the member's home and the offices of the local authority most frequently used by the member for the purposes of performing the member's duties, and

(b) the member's home is situated more than 20 miles outside the boundary of the area of the local authority.

(3) The Treasury may by regulations define what is meant by "local authority" and "qualifying payment" for the purposes of this section.

(4) Regulations made under subsection (3) may contain transitional provision and savings.

(5) The first regulations to be made under that subsection may contain provision having retrospective effect if they are made before the end of the tax year 2015-16."

(5) The amendments made by this section have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

TRAVEL EXPENSES OF MEMBERS OF LOCAL AUTHORITIES

SUMMARY

1. Clause [X] introduces a new exemption from income tax for qualifying payments made by a local authority in respect of travel expenses incurred by a member. This includes payments for journeys between the member's home and most frequently used local authority office, if the member's home is in the local authority area or within 20 miles of the boundary of the area. The exemption will be limited to the Approved Mileage Allowance Payment (AMAP) rates when applied to qualifying payments made to a member who uses their own vehicle for travel.

DETAILS OF THE CLAUSE

2. Subsection 1 amends Part 4 of the Income Tax (Earning and Pensions) Act 2003 (ITEPA) - Employment Income: Exemptions.

3. Subsection 2 inserts a new section 235A into Chapter 2 which deals with mileage allowance payments to an employee for the use of a vehicle.

4. New subsection 235A(1)(a) sets out that a qualifying journey made by a member of a local authority is to be treated as business travel for the purposes of calculating mileage allowance payments paid to the member and the approved amounts for such payments. New subsection 235A(1)(b) provides that a qualifying journey is not to be treated as business travel for the purposes of calculating mileage allowance relief.

5. New subsection 235A(2) defines a 'qualifying journey' for the purposes of this section. The journey must be between the member's home and the local authority office that they use most frequently to perform their duties as a member, and the home must be either in the local authority area or within 20 miles of the boundary of the area. A 'qualifying payment' must also be made by the local authority to the member for expenses related to the use of the member's own vehicle for the journey.

6. New subsection 235A(3) provides a power to make regulations that define 'local authority' and 'qualifying payment', and new subsection 235A(4) allows these regulations to contain transitional provision and savings.

7. New subsection 235A(5) provides that the first regulations made under new subsection 235A(3) may have retrospective effect for 2015-16 if they are made before the end of that tax year.

8. Subsection 3 inserts a new subsection (1A) to section 236 ITEPA to set out that the existing definition of 'business travel' is subject to new section 235A for qualifying journeys by members of local authorities.

9. Subsection 4 inserts new section 295A into Chapter 8 - Exemptions: Special Kinds of Employees.

10. New subsection 295A(1) provides an exemption from income tax for qualifying payments made to a member of a local authority for travel expenses incurred. For the purposes of this clause, 'travel expenses' include the costs of travel together with any subsistence expenditure and other associated costs that are incurred in making the journey.

11. New subsections 295A(1)(a) and (b) apply the exemption to payments of expenses other than those relating to the member's use of their own vehicle and covered by existing exemptions in Chapter 2 or expenses specifically excluded by new subsection 295A(2).

12. New subsection 295A(2) sets out that the exemption will not apply to expenses incurred on journeys between the member's home and most frequently used local authority office where the member's home is more than 20 miles outside the boundary of the local authority area.

13. New subsections 295A(3), (4) and (5) provide a power to make regulations in the same way as set out in paragraphs 6 and 7 above.

14. Subsection 5 provides that changes made to ITEPA by this clause have effect for payments made in the tax year 2015-16 and for subsequent tax years.

BACKGROUND NOTE

15. Travel expenses paid to members of a local authority are generally subject to the current rules that govern the tax treatment of all employees and office-holders. These rules will not be affected by this measure and travel undertaken in the performance of the duties of the employment, or travel for the employee's necessary attendance at a temporary workplace, will generally qualify for tax relief. Tax relief is not usually available for travel between an employee's home and a permanent workplace i.e. ordinary commuting.

16. To ensure that individuals are not discouraged from undertaking a role as a councillor by the tax treatment of their travel expenses, this legislation will provide an exemption from a charge to income tax where a local authority pays a member for travel expenses incurred. A corresponding disregard for Class 1 National Insurance contributions (NICs) will also be introduced.

17. Where a local authority makes mileage payments to a member for using their own vehicle for travel the exemption will be restricted to the Approved Mileage Allowance Payments (AMAP) rates. This will ensure that the exemption does not enable members of local authorities to benefit from unlimited tax relief on their travel expenses.

18. If you have any questions about this change, or comments on the legislation, please contact Lynn Meikle on 03000 586644 (email: employmentincome.policy@hmrc.gsi.gov.uk).

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

(1) In Part 2 of ITTOIA 2005 (trading income), Chapter 5A (trade profits: deductions allowable at a fixed rate) is amended as follows.

(2) Section 94H (use of home for business purposes) is amended as follows.

(3) In subsection (1), for the words from "in respect of" to the end substitute "in respect of—

(a) the use of the person's home for the purposes of the trade, or

(b) where the person is a firm, the use of a partner's home for those purposes."

(4) In subsection (4), for the words from "work done" to the end substitute "qualifying work.

(4A) "Qualifying work" means—

(a) work done by the person, or any employee of the person, in the person's home wholly and exclusively for the purposes of the trade, or

(b) where the person is a firm, work done by a partner, or any employee of the firm, in the partner's home wholly and exclusively for those purposes.

(4B) Where more than one person does qualifying work in the same home at the same time, any hour spent wholly and exclusively on that work is to be taken into account only once for the purposes of subsection (4)."

(5) In subsection (5), after "person" insert ", or, where the person is a firm, a partner of the firm,".

(6) After subsection (5) insert—

"(5A) Where a firm makes a deduction for a period under this section in respect of the use of a partner's home for the purposes of a trade, the only deduction which the firm may make for the period in respect of the use of any other partner's home for those purposes is a deduction under this section."

(7) Section 94I (premises used both as a home and as business premises) is amended as follows.

(8) In subsection (1)(b), for "used by the person as a home," substitute "used as a home by—

(i) the person carrying on the trade, or

(ii) where that person is a firm, a partner of the firm,".

(9) After subsection (6) insert—

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

(10) The amendments made by this section have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

FIXED RATE DEDUCTIONS FOR USE OF HOME FOR BUSINESS PURPOSES

SUMMARY

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

DETAILS OF THE CLAUSE

2. Clause [X] introduces amendments to Chapter 5A, Part 2 of the Income Tax (Trading and Other Income) Act 2005 - sections 94H and 94I.

3. Subsections (3) and (5) of Clause [X] amend subsections (1) and (5) of section 94H ITTOIA 2005 to ensure that when considering a home used for the purposes of a trade then the provision applies to a partner's home in the same way as it does to an individual's home.

4. Subsection (4) amends subsection (4) and introduces new subsections (4A) and (4B) to section 94H to define qualifying work and to ensure that where work is undertaken by more than one individual in the home then any hour spent wholly and exclusively for the purposes of the trade is counted only once.

5. Subsection (6) of the clause introduces a new subsection (5A) to section 94H to ensure that when a firm makes a claim to use a simplified expense deduction for a partner's home it must consistently use the same rules for deductions for any other partner's homes.

6. Subsection (8) amends section 94I(1)(b) to ensure that where premises are used both as a home and as business premises the provisions apply equally to situations where it is a partner that occupies the premises as a home.

7. Subsection (9) introduces a new subsection (6A) to section 94I. This is to ensure that where a partnership has more than one premises that are used both for business and as a home then any claim to use the simplified expense deduction in respect of the expenses of these premises must be applied to all such premises.

8 Subsection (10) confirms that the amendments introduced by this clause will apply for the tax year 2015/16 and subsequent years.

BACKGROUND NOTE

9. The government is committed to making tax easier, quicker and simpler for small

business. Simplified expenses was one of the measures introduced in 2013 as a consequence of a report by the Office of Tax Simplification (OTS) and a formal consultation. It was always intended that the provisions would apply equally to most partnerships and individuals and the purpose of these amendments is to clarify two of the provisions and thus ensure they are in line with the policy objectives.

10. These amendments have been introduced to ensure that partnerships can fully access the simplified expenses regime that was introduced by Finance Act 2013.

11. If you have any questions about this change, or comments on the legislation, please contact Steven Phillips on 03000 575485 (email: steven.phillips@hmrc.gsi.gov.uk).

1 Bereavement support payment: exemption from income tax

(1) ITEPA 2003 is amended as follows.

(2) In Part 1 of Table B in section 677(1) (UK social security benefits wholly exempt from tax), at the appropriate place insert—

"Bereavement support payment	PA 2014	Section 30
	Any provision made for Northern Ireland which corresponds to section 30 of PA 2014".	

(3) In Part 1 of Schedule 1 (abbreviations of Acts and instruments), at the appropriate place insert—

"PA 2014	The Pensions Act 2014".

(4) The amendments made by this section have effect in accordance with provision contained in regulations made by the Treasury.

(5) Regulations under subsection (4) may make different provision for different purposes.

(6) Section 1014(4) of ITA 2007 (regulations etc subject to annulment) does not apply in relation to regulations under subsection (4).

EXPLANATORY NOTE

BEREAVEMENT SUPPORT PAYMENT: EXEMPTION FROM INCOME TAX

SUMMARY

1. This measure adds the new Bereavement Support Payment to the table of social security benefits that are wholly exempt from income.

DETAILS OF THE CLAUSE

2. Subsection 2 adds the Bereavement Support Payment, and any equivalent in Northern Ireland, to Table B in Section 677 of the Income Tax (Earnings and Pensions) Act 2003. Table B sets out the social security benefits that are wholly exempt from income tax.

3. Subsection 3 adds The Pensions Act 2014 to the list of abbreviations of Acts of Parliament given in Part I of Schedule 1 of the Income Tax (Earnings and Pensions) Act 2003.

4. Subsection 4 sets out that the commencement date of the exemption from income tax, will be set out in regulations to be made by the Treasury.

BACKGROUND NOTE

5. The Department for Work and Pensions intend that the Bereavement Support Payment will replace the current Bereavement Allowance, Bereavement Payment and Widowed Parent's Allowance for bereaved people who lose their spouse or civil partner from the commencement date.

6. The Department for Work and Pensions are responsible for the Bereavement Support Payment, which was introduced in Part 5 of The Pensions Act 2014.

7. The Department for Work and Pensions will announce the commencement date and amount of the Bereavement Support Payment prior to commencement.

8. There will be no change to the tax status of any bereavement benefits already in payment at the date of this change.

9. If you have any questions about this change, or comments on the legislation, please contact Claire Ritchie on 03000 586813 (email: claire.ritchie@hmrc.gsi.gov.uk).

1 Lump sums provided under armed forces early departure scheme

(1) In section 640A of ITEPA 2003 (lump sums provided under armed forces early departure scheme), at the end insert "or the Armed Forces Early Departure Payments Scheme Regulations 2014 (S.I. 2014/2328)".

(2) Subsection (1) comes into force on 1 April 2015.

EXPLANATORY NOTE

LUMP SUMS PROVIDED UNDER ARMED FORCES EARLY DEPARTURE SCHEME

SUMMARY

1. This measure extends the existing income tax exemption for lump sum payments made to Armed Forces personnel under the Early Departure Payment 2005 (EDP 05) scheme to include lump sum payments made under the new Early Departure Payment 2015 (EDP 15) scheme.

DETAILS OF THE CLAUSE

2. Subsection (1) extends the income tax exemption for lump sum payments provided under the Early Departure Payments Scheme in section 640A of the Income Tax (Earnings and Pensions) Act 2003, to include lump sum payments made to Armed Forces personnel under the Armed Forces Early Departure Payments Scheme Regulations 2014 (SI 2014/2328).

3. Subsection (2) states that subsection (1) will apply to all lump sum payments made under the new EDP scheme from 1 April 2015.

BACKGROUND NOTE

4. Under the EDP 05 scheme, individuals leaving the armed forces before age 55 who are at least 40 years of age and have at least 18 years of service, are entitled to a lump sum and monthly payments until they reach 65, after which their preserved pension and pension lump sum are payable.

5. An existing tax exemption enables lump sum payments under the EDP 05 scheme to be made without deduction of income tax and there is a corresponding disregard for National Insurance contributions. The tax exemption was introduced in 2005 to ensure continuity of treatment with lump sum payments made under previous Ministry of Defence schemes. EDP scheme monthly payments are treated in the same way as regular pension payments and are subject to PAYE.

6. The Ministry of Defence will introduce a new EDP scheme (EDP 15) on 1 April 2015.

7. This change will extend the existing tax exemption for lump sum payments to include such payments made under the new EDP scheme, from 1 April 2015.

8. If you have any questions about this change, or comments on the legislation, please contact Paul Blakeley on 03000 559026 (email: employmentincome.policy@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2015 No. X

SOCIAL SECURITY

The Social Security (Contributions)(Amendment No. X) Regulations 2015

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Treasury, with the concurrence of the Secretary of State and the Department for Social Development(**a**), make the following Regulations in exercise of the powers conferred by section 3(2) and (3) of the Social Security Contributions and Benefits Act 1992(**b**) and section 3(2) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**c**) and now exercisable by them.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions)(Amendment No. X) Regulations 2015 and come into force on 1st April 2015.

Amendment of the Social Security (Contributions) Regulations 2001

2.—(1) The Social Security (Contributions) Regulations 2001(**d**) are amended as follows.

(2) In Part 6 (pensions and pension contributions) of Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions), at the end of paragraph 10A (armed forces early departure scheme payments)(**e**), insert "or by the Armed Forces Early Departure Payments Scheme Regulations 2014 (S.I. 2014/2328)".

abc
def
Date Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs with the making of the these Regulations
Signed by the authority of the Secretary of State for Work and Pensions

xyz

(**a**) 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).
(**b**) 1992 c. 4, Section 3(2) has been amended, and the power to make regulations transferred to the Treasury, by paragraph 3 of Schedule 3 to the Social Security (Transfer of Functions, etc.) Act 1999 (c. 2).
(**c**) 1992, c.7, Section 3(2) has been amended, and the power to make regulations transferred to the Treasury, by paragraph 4 of Schedule 3 to the Social Security (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671).
(**d**) S.I. 2001/1004, amended by S.I. 2013/622; there are other amending instruments but none is relevant.
(**e**) Paragraph 10A was inserted by regulation 40(b) of S.I. 2013/622.

Minister of State
Date Department for Work and Pensions

The Department for Social Development concurs with the making of these Regulations
Sealed with the Official Seal of the Department for Social Development

xyz
Date A senior officer of the Department for Social Development

L.S.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the principal Regulations").

Regulation 2 amends paragraph 10A of Part 6 of Schedule 3 to the principal Regulations to provide that payments made under the Armed Forces Early Departure Scheme Regulations 2014 (S.I. 2014/2328) are disregarded when calculating a person's earnings for the purposes of establishing liability for earnings-related national insurance contributions.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://hmrc.gov.uk/thelibrary/tiins.htm.

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. X) REGULATIONS 2015

2015 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 Part VI of Schedule 3 to the Social Security (Contributions) Regulations (S. I. 2001/1004) (the principal Regulations) to disregard payments made under the Armed Forces Early Departure Payment 2015 (EDP 15) Scheme in the calculation of earnings for the purpose of earnings related contributions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Regulation 2 of this instrument amends paragraph 10A of Schedule 3 to the principal Regulations by inserting a reference to the Armed Forces Early Departure Payments Scheme Regulations 2014 (S.I. 2014/2328), which established the Early Departure Payment Scheme 2014.

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 Early departure payments have been available since 6th April 2005 under the Armed Forces Early Departure Payment 2005 (EDP 05) Scheme, established by the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437); they are lump sum and periodical payments made to members of the armed forces who have left the forces and satisfy conditions relating to age and length of service.

7.2 Payments made under the EDP 05 scheme are disregarded in the calculation of a person's earnings for the purpose of earnings related contributions. This treatment is applied to payments under the current scheme (EDP 05) by virtue of SI 2013/622, for tax years from 2013/14. Section 16 of the National Insurance Contributions Act 2014 (c. 7) applied this treatment to payments made under the EDP 05 for tax years from 2005/06 to 2012/13 inclusive. A new scheme will be introduced from 1 April 2015 and this instrument ensures that this treatment will be applied to payments made under that Scheme.

- ***Consolidation***

7.3 There are currently no plans to consolidate the principal Regulations.

8. Consultation outcome

8.1 As this is an extension of an existing disregard and as it only applies to one employer (the Ministry of Defence) who is aware of the changes, we not consulting on the matter further.

9. Guidance

9.1 There were no requirements for guidance because this disregard mirrors the disregard for the EDP 05 scheme and does not impose any new obligations.

10. Impact

10.1 An impact assessment has not been prepared as there is expected to be no impact on business or charities.

10.2 There are no public sector implications.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside the draft Finance Bill 2015 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

Ativie Edebiri at HMRC, Tel: 03000 584748 or e-mail: ativie.edebiri@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Intermediaries and Gift Aid

(1) Chapter 2 of Part 8 of ITA 2007 (gift aid) is amended as follows.

(2) In section 416 (meaning of "qualifying donation" for the purpose of gift aid relief)—

(a) in subsection (1)(b)—

(i) after "the individual" insert ", or an intermediary representing the individual," and

(ii) after "the charity" insert ", or an intermediary representing the charity,".

(b) after subsection (1) insert—

"(1A) For the purpose of subsection (1)(b) an intermediary is—

(a) a person authorised by the individual to give a gift aid declaration on behalf of that individual to the charity,

(b) a person authorised by a charity to receive a gift aid declaration on behalf of that charity, or

(c) a person authorised to perform both of the roles described in paragraphs (a) and (b)."

(3) For section 428(3) (regulations in relation to gift aid declarations) substitute—

"(3) The regulations may also require—

(a) charities, or intermediaries within the meaning of section 416(1A), to keep records with respect to declarations received from individuals or from those intermediaries, and

(b) intermediaries to produce, for inspection by an officer of the Commissioners for Her Majesty's Revenue and Customs, any records required to be kept by those intermediaries by regulations made under paragraph (a).

(4) The regulations may also make different provision for different cases or circumstances, including—

(a) different provision for declarations made in a different manner or by different descriptions of persons, and

(b) different provision depending on whether or not an intermediary, within the meaning of section 416(1A), is involved in the giving or receiving of the declaration."

(4) The amendments made by this section have effect in relation to gifts made on or after a day appointed in regulations made by the Treasury.

(5) Section 1014(4) of ITA 2007 (regulations etc subject to annulment) does not apply to regulations under subsection (4).

EXPLANATORY NOTE

INTERMEDIARIES AND GIFT AID

SUMMARY

1. Clause [X] amends Chapter 2 of Part 8 of the Income Tax Act 2007 (ITA 2007). It will enable regulations to be made which make it easier for donors to give to charity through an intermediary, such as an independent fund raiser.

2. The regulations should ease the administrative burden on intermediaries by relieving them of the need to receive a Gift Aid declaration for each individual charity a donor gives to through them. The measure should similarly ease the process for donors giving to multiple charities via a single intermediary.

DETAILS OF THE CLAUSE

3. Chapter 2 of Part 8 of ITA 2007 (ITA) provides for and regulates Gift Aid. Gift Aid is a tax relief which, subject to certain conditions, charities and Community Amateur Sports Clubs, can claim on gifts of cash from donors who pay income tax at basic or higher rates. Such gifts are referred to as `qualifying donations`.

4. Section 416 of ITA gives the meaning of qualifying donation and sets out the conditions a donation must fulfil to be a qualifying donation. Amongst other things, a qualifying donation must be the subject of a declaration given by the donor to the charity. This is called a Gift Aid declaration (GAD).

5. Section 428 of ITA gives the meaning of GAD. In accordance with section 428 ITA, a GAD must contain information that is required under the regulations relating to GADs. There are other requirements in section 428, but these are not relevant to this measure and are not discussed further in this note.

6. The regulations which have been made under s.428 and which are currently in force are The Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000 and are set out in SI 2074 of 2000.

7. <u>Paragraph (2)(a)</u> of Clause [X] amends section 416 of ITA 2007 (the meaning of qualifying donation) by inserting provisions for Gift Aid Declarations (GADs) to be made by an intermediary acting on behalf of an individual making a gift and to be given to an intermediary acting on behalf of a charity.

8. <u>Paragraph (2)(b)</u> of the draft clause inserts a new section 416(1A) ITA which sets out what an intermediary is, and allows for the scenario where an intermediary acts on behalf of both the individual and the charity.

9. Subsection (3) of the draft clause inserts:

- new section 428(3) (a) of ITA which provides for the regulations which set out the requirements for GADs to require intermediaries to keep necessary records; and
- new section 428(3) (b) of ITA which provides for the regulations to require intermediaries to produce such records for inspection by an officer of HM Revenue & Customs.

10. Subsection (3) of the draft clause also inserts a new section 428(4) of ITA which enables the regulations to make differing provisions for different cases or circumstances, including, but not limited to, depending who makes and who receives the GAD.

11. The amendments will have effect in relation to gifts made on or after a day appointed by regulations made by the Treasury. It is expected that such day will coincide with the making of the new GAD regulations relating to intermediaries.

BACKGROUND NOTE

12. The Government's Gift Aid policy objective is to see Gift Aid claimed on as many eligible donations as possible.

13. The measure introduces primary legislation that formalises the roles of intermediaries in the Gift Aid. The measure will allow intermediaries to have a greater role in processing Gift Aid claims on behalf of charities. The regulations to implement the change will be brought forward next year.

14. The measure is specifically targeted at relieving the need to receive a Gift Aid Declaration from a donor for each donation an individual gives to charity through an intermediary. The process for donors of giving to multiple charities via a single intermediary will also be eased.

15. This measure was announced at Budget 2013. A consultation *Gift Aid and digital giving* ran from July to September 2013, this was followed by confirmation at Budget 2014 that the Government would legislate, in Finance Bill 2015, to allow a greater role for intermediaries.

16. If you have any questions about this change, or comments on the draft legislation, please contact David McDowell on 03000 585284 (email: david.mcdowell@hmrc.gsi.gov.uk).

1 Increased remittance basis charge

(1) Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.

(2) In 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)—

(a) in subsection (1)(b), after "meets" insert "the 17-year residence test,";

(b) after subsection (1) insert—

"(1ZA) An individual meets the 17-year residence test for a tax year if the individual has been UK resident in at least 17 of the 20 tax years immediately preceding that year.";

(c) in subsection (1A), after "the individual" insert—

"(a) does not meet the 17-year residence test for that year, but

(b) ";

(d) in subsection (1B)(a), after "meet" insert "the 17-year residence test or";

(e) in subsection (4)—

(i) before paragraph (a) insert—

"(za) for an individual who meets the 17-year residence test for that year, £90,000;";

(ii) in paragraph (a), for "£50,000" substitute "£60,000".

(3) In section 809H (claim for remittance basis by long-term UK resident: charge)—

(a) in subsection (1)(c), after "meets" insert "the 17-year residence test,";

(b) in subsection (1A)—

(i) for "809C(1A)" substitute "809C(1ZA), (1A)";

(ii) after "meets" insert "the 17-year residence test,";

(c) in subsection (5B)—

(i) before paragraph (a) insert—

"(za) if the individual meets the 17-year residence test for the relevant tax year, £90,000;";

(ii) in paragraph (a), for "£50,000" substitute "£60,000".

(4) The amendments made by this section have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

INCREASED REMITTANCE BASIS CHARGE

SUMMARY

1. This measure introduces changes to the remittance basis charge payable by individuals who are usually resident, but not domiciled, in the UK. The changes will apply from the start of the 2015-16 tax year.

DETAILS OF THE CLAUSE

2. Clause [X] introduces a new remittance basis charge of £90,000 payable by individuals who claim the remittance basis of taxation and who have met the "17-year residence test": that is, they have been resident in the UK in at least 17 of the 20 tax years preceding the tax year in which they make that claim.

3. Clause [X] also increases from £50,000 to £60,000 the remittance basis charge payable by individuals who claim the remittance basis of taxation and who have met the "12-year residence test": that is, that they 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.

4. Subsection (2) amends the existing section 809C of the Income Tax Act 2007 (ITA).

5. Paragraphs (a) to (d) of sub-section (2) define the 17-year residence test and ensure that if it applies then neither the 12-year residence test nor the 7-year residence test will apply.

6. Paragraph (e) of sub-section (2) provides that the maximum relevant tax increase will be:

- for the 17-year residence test, £90,000; and,
- for the 12-year residence test, £60,000.

7. Subsection (3) amends section 809H of ITA. It provides that an individual claiming the remittance basis will be liable to pay:

- an annual charge of £90,000 for any tax year in which they meet the 17-year residence test; and,
- an annual charge of £60,000 for any tax year in which they meet the 12-year residence test, but not the 17-year test.

8. Subsection (4) provides that the Clause has effect from the start of the 2015-16 tax year.

BACKGROUND NOTE

9. The remittance basis is an alternative basis of taxation which applies to foreign income and capital gains. It is available to UK resident individuals who are not domiciled in the UK. Such individuals have the option of electing to be taxed on the remittance basis. Those who do so 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.

10. The remittance basis rules were revised in Finance Act 2008 to introduce an annual remittance basis charge of £30,000 for those who met what is now the 7-year residence test. Finance Act 2012 introduced a higher annual charge of £50,000 payable by individuals who met the 12-year residence test.

11. The objective of the remittance basis charge is to ensure that non-domiciled but UK-resident individuals pay a fair tax contribution. The Government proposes to increase the charge for individuals who meet the 12-year residence test and introduce a new higher charge for individuals who meet the new 17-year residence test.

12. If you have any questions about this change, or comments on the legislation, please contact Tracy Gribble on 03000 585169 (email: tracy.gribble@hmrc.gsi.gov.uk).

1 Disguised investment management fees [j1012]

(1) In Part 13 of ITA 2007 (tax avoidance), after Chapter 5D insert—

“CHAPTER 5E

DISGUISED INVESTMENT MANAGEMENT FEES

809EZA Disguised investment management fees: charge to income tax

(1) Where one or more disguised fees arise to an individual in a tax year from one or more collective investment schemes (whether or not by virtue of the same arrangements), the individual is liable for income tax for the tax year in respect of the disguised fee or fees as if—

(a) the individual were carrying on a trade for the tax year,

(b) the disguised fee or fees were the profits of the trade of the tax year, and

(c) the individual were the person receiving or entitled to those profits.

(2) For the purposes of subsection (1)—

(a) if the investment management services by virtue of which the disguised fee or fees arise to the individual in the tax year are to any extent performed in the United Kingdom, the trade is treated as carried on wholly in the United Kingdom, and

(b) otherwise, the trade is treated as carried on wholly outside the United Kingdom.

(3) For the purposes of this Chapter a disguised fee arises to an individual in a tax year from a collective investment scheme if—

(a) the individual performs investment management services directly or indirectly in respect of the scheme under any arrangements,

(b) the arrangements involve at least one partnership,

(c) under the arrangements, a management fee arises to the individual in the tax year directly or indirectly from the scheme (whether in the form of a loan or advance, by way of allocation of profits or otherwise), and

(d) some or all of the management fee is untaxed for the tax year;

and the amount of the disguised fee is so much of the management fee as is untaxed for the tax year.

(4) For the purposes of subsection (3) the management fee is “untaxed” for the tax year if and to the extent that the fee would not (apart from this section)—

(a) be charged to tax under ITEPA 2003 as employment income of the individual for the tax year, or

(b) be brought into account in calculating the profits of a trade of the individual for the purposes of income tax for the tax year.

(5) In subsection (4) “trade” includes profession or vocation.

809EZB Disguised investment management fees: interpretation

(1) For the purposes of this Chapter a sum which arises to an individual directly or indirectly from a collective investment scheme under any arrangements is a "management fee" except so far as the sum—

(a) constitutes carried interest (see subsection (2)),

(b) arises by way of return or repayment of an investment made by the individual in the scheme, or

(c) constitutes a commercial return on an investment made by the individual in the scheme (see subsection (4)).

(2) For the purposes of subsection (1) a sum constitutes "carried interest" if it is a sum which, under the arrangements, is to, or may, arise to the individual—

(a) out of profits on the investments made for the purposes of the scheme, but only after—

(i) all, or substantially all, of the investments in the scheme made by the participants have been returned or repaid to the participants, and

(ii) each participant has received a preferred return on all, or substantially all, of the participant's investments in the scheme, or

(b) out of profits on a particular investment made for the purposes of the scheme, but only after—

(i) all, or substantially all, of the relevant investments made by participants have been returned or repaid to those participants, and

(ii) each of those participants has received a preferred return on all, or substantially all, of the participant's relevant investments;

and for this purpose "relevant investments" means those investments in the scheme to which the particular investment made for the purposes of the scheme is attributable.

(3) In subsection (2) "preferred return" means a return of not less than the amount that would be payable on the investment by way of interest if—

(a) compound interest were payable on the investment for the whole of the period during which it was invested in the scheme, and

(b) the interest were calculated at a rate of 6% per annum.

(4) For the purposes of subsection (1) a return is "commercial" if—

(a) the return is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and

(b) the other terms governing the return are reasonably comparable to the terms governing returns to external investors on comparable investments made by them in the scheme;

and for this purpose "external investor" means a participant in the scheme who does not perform investment management services directly or indirectly in respect of the scheme.

(5) In this Chapter—

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

"collective investment scheme" has the meaning given by section 235 of FISMA 2000;

"investment management services", in relation to a collective investment scheme, includes—

(a) seeking funds for the purposes of the scheme from participants or potential participants,

(b) researching potential investments to be made for the purposes of the scheme,

(c) acquiring, managing or disposing of property for the purposes of the scheme, and

(d) acting for the purposes of the scheme with a view to assisting a body in which the scheme has made an investment to raise funds;

"participant", in relation to a collective investment scheme, is construed in accordance with section 235 of FISMA 2000;

"sum" includes any money or money's worth (and "arise" is to be construed accordingly).

(6) For the purposes of this section—

(a) a reference to profits on an investment made for the purposes of a collective investment scheme is a reference to profits or income arising from the acquisition, holding, management or disposal of the investment, and

(b) a reference to an investment made by a person in a collective investment scheme is a reference to a contribution by the person (whether by way of capital, loan or otherwise) towards the property which is to be subject to the scheme (but does not include a sum committed but not yet invested).

809EZC Disguised investment management fees: anti-avoidance

In determining whether section 809EZA applies in relation to an individual, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that that section does not apply in relation to—

(a) the individual, or

(b) the individual and one or more other individuals.

809EZD Disguised investment management fees: avoidance of double taxation

(1) This section applies where—

(a) income tax is charged on an individual by virtue of section 809EZA in respect of a disguised fee, and

(b) at any time, a tax (whether income tax or another tax) is charged on the individual otherwise than by virtue of section 809EZA in relation to—

(i) the disguised fee, or

(ii) where the disguised fee arises to the individual by way of a loan or advance, an amount which arises to the individual under the relevant arrangements for the purpose of enabling the individual to discharge an obligation to repay the loan or advance;

and for this purpose, "the relevant arrangements" means the arrangements under which the disguised fee arises to the individual.

(2) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the tax charged otherwise than by virtue of section 809EZA.

(3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.

(4) The value of any consequential adjustments must not exceed the lesser of—

(a) the income tax charged on the individual by virtue of section 809EZA in respect of the disguised fee, and

(b) the tax charged on the individual otherwise than by virtue of section 809EZA in relation to the disguised fee or the amount mentioned in subsection (1)(b)(ii).

(5) Consequential adjustments may be made—

(a) in respect of any period,

(b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and

(c) despite any time limit imposed by or under any enactment."

(2) In section 2 of ITA 2007 (overview of Act), in subsection (13)—

(a) after paragraph (h) insert—

"(ha) disposals of assets through partnerships (Chapter 5D),";

(b) after paragraph (ha) insert—

"(hb) disguised investment management fees (Chapter 5E),".

(3) In Schedule 4 to ITA 2007 (index of defined expressions), at the appropriate places insert—

"arrangements (in Chapter 5E of Part 13)	section 809EZB(5)"
"collective investment scheme (in Chapter 5E of Part 13)	section 809EZB(5)"
"disguised fee (in Chapter 5E of Part 13)	section 809EZA(3)"
"investment management services (in Chapter 5E of Part 13)	section 809EZB(5)"
"management fee (in Chapter 5E of Part 13)	section 809EZB(1)"
"participant (in Chapter 5E of Part 13)	section 809EZB(5)"
"sum (in Chapter 5E of Part 13)	section 809EZB(5)".

(4) The amendments made by subsections (1), (2)(b) and (3) have effect in relation to sums arising on or after 6 April 2015 (whenever the arrangements under which the sums arise were made).

EXPLANATORY NOTE

DISGUISED INVESTMENT MANAGEMENT FEES

SUMMARY

1. Clause [X] applies to certain fees or other sums paid to investment managers, and provides that in some circumstances these sums will be charged to income tax. It applies to sums paid through structures involving partnerships, unless they are already charged to income tax as employment income or brought into account in calculating profits. Carried interest is excluded from the charge. Clause [X] will have effect in respect of amounts arising on or after 6 April 2015.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces a new Chapter 5E into Part 13 of the Income Tax Act 2007 (ITA 2007). Chapter 9 contains four new sections, 809EZA to 809EZD.

3. Section 809EZA (1) explains the consequences that follow when a disguised fee arises to an individual from a collective investment scheme. These are that the individual is treated as carrying on a trade, and the fees are the profits from the trade.

4. Section 809EZA (2) explains where the trade is treated as being carried on. If any of the investment management services giving rise to the fees are performed in the UK, then the trade is treated as carried on entirely in the UK, otherwise it is treated as carried on outside the UK.

5. Section 809EZA (3) sets out the circumstances when a disguised fee arises. These are that an individual carries out investment management services under any arrangements, a management fee arises in whatever form for those services, the arrangements include at least one partnership, and the management fee is untaxed to any extent.

6. Section 809EZA (4) sets out the circumstances where a management fee is regarded as being untaxed for the purposes of sub-section (3).

7. Section 809EZB (1) defines a management fee. The conditions for a sum to be a management fee are that it arises from a collective investment scheme, and is not carried interest, the return of capital invested by the individual, or a commercial return on that capital.

8. Section 809EZB (2) defines carried interest, providing that it is a sum paid to an individual from scheme profits, paid after all, or substantially all, of the investments and any

preferred return have been paid to participants in the scheme. Section 809EZB(2)(b) explains how this is applied where the scheme profits and preferred return are calculated on the basis of particular investments.

9. Section 809EZB (3) defines the preferred return, providing that it is a return equivalent to at least compound interest calculated at the rate of 6% per annum on the sum invested for the period during which it was invested in the scheme.

10. Section 809EZB(4) defines a commercial return for the purposes of subsection (1), as a return comparable to a commercial rate of interest, and earned on terms reasonably comparable with external investors on comparable investments in the scheme.

11. Sections 809EZB (5) and (6) define various terms used in the Chapter.

12. Section 809EZC provides that no regard is to be had to any arrangements which are intended to bring about the result that the section does not apply.

13. Section 809EZD provides for the avoidance of double taxation on sums charged under s809EZA.

14. Section 809EZD (1) sets out when the section applies. It applies when income tax is charged in respect of a disguised fee under s809EZA, and at any time income tax or another tax is charged under another section in respect of that disguised fee. Section 809EZD (1) (b) (ii) provides for circumstances where a disguised fee has arisen in respect of a loan, and tax arises under another section on an amount used to repay that loan.

15. Section 809EZD (2) provides that to avoid a double charge to tax, the individual may claim a consequential adjustment.

16. Section 809EZD (3) provides that an officer of HM Revenue & Customs must make any consequential adjustments which are just and reasonable.

17. Section 809EZD (4) sets a limit on the consequential adjustment, which may not exceed the lesser of the income tax charged under s809EZA and the other tax charged.

18. Section 809EZD (5) sets out how the adjustments may be made.

19. Subsections (2 and 3) of the clause make consequential amendments.

20. Subsection (4) of the clause provides that the amendment has effect in respect of amounts arising on or after 6 April 2015.

BACKGROUND NOTE

21. This clause has been introduced to ensure that fees or other sums for investment management paid to managers of funds are charged to income tax. Structures have

increasingly been used by private equity firms in which annual fees are paid as priority partnership shares to avoid an income tax charge on the fees.

22. Sums received by managers which represent returns linked to investment performance (carried interest) or investment by managers (co-investment) will not be affected by this measure.

23. If you have any questions about this change, or comments on the legislation, please contact Chris Murricane on 03000 585953 (email: chris.murricane@hmrc.gsi.gov.uk).

1 Investment reliefs: excluded activities

Schedule 1 makes provision about excluded activities for the purposes of the following provisions of ITA 2007—

(a) Part 5 (enterprise investment scheme) and, by virtue of section 257DA(9) of that Act, Part 5A (seed enterprise investment scheme),

(b) Part 5B (tax relief for social investments), and

(c) Part 6 (venture capital trusts).

SCHEDULE 1

Section 1

INVESTMENT RELIEFS: EXCLUDED ACTIVITIES

PART 1

PART 5B OF ITA 2007: AMENDMENT COMING INTO FORCE ON PASSING OF ACT

Tax relief for social investments: power to amend excluded activities

1 In Part 5B of ITA 2007 (tax relief for social investments), after section 257MV insert—

"257MW Excluded activities: power to amend

(1) The Treasury may by regulations make such amendments of sections 257MQ to 257MT as they consider appropriate.

(2) Regulations under this section may—

(a) make different provision for different cases or purposes, or

(b) include such transitional provision as the Treasury consider appropriate.

(3) So far as they cause an activity to cease to be an excluded activity, amendments made by regulations under this section may have effect in relation to times before they come into force, but not times before 6 April 2015.

(4) Any provision that may be made by regulations under this section may be made by order."

PART 2

PART 5 OF ITA 2007: EXCLUDED ACTIVITIES FROM 6 APRIL 2015

Introductory

2 The following provisions of Part 5 of ITA 2007 (enterprise investment scheme) are amended as set out in paragraphs 3 and 4—

(a) section 198A (excluded activities for purposes of Part 5 (and, by virtue of section 257DA(9), Part 5A): subsidised generation or export of electricity), and

(b) section 198B (excluded activities for those purposes: subsidised generation of heat and subsidised production of gas or fuel).

Generation of electricity involving contracts for difference

3 In section 198A—

(a) in subsection (3), omit "or" at the end of paragraph (b) and after paragraph (c) insert ", or

(d) a contract for difference has been entered into in connection with the generation of the electricity.", and

(b) in subsection (9), at the appropriate place insert—

"“contract for difference” means a contract for difference within the meaning of Chapter 2 of Part 2 of the Energy Act 2013 (see section 6(2) of that Act);".

Subsidised energy-related activities: anaerobic digestion and hydroelectric power

4 (1) In section 198A—

(a) in subsection (5), omit “, B or C” (exceptions for generation involving anaerobic digestion and hydroelectric power),

(b) omit subsections (7) and (8), and

(c) in subsection (9), omit the definition of “anaerobic digestion”.

(2) In section 198B—

(a) in subsection (3), omit “or B” (exception for generation or production involving anaerobic digestion), and

(b) omit subsection (5).

Application

5 The amendments made by this Part of this Schedule have effect in relation to shares issued on or after 6 April 2015.

PART 3

PART 6 OF ITA 2007: EXCLUDED ACTIVITIES FROM 6 APRIL 2015

Introductory

6 The following provisions of Part 6 of ITA 2007 (venture capital trusts) are amended as set out in paragraphs 7 and 8—

(a) section 309A (excluded activities for purposes of Part 6: subsidised generation or export of electricity), and

(b) section 309B (excluded activities for those purposes: subsidised generation of heat and subsidised production of gas or fuel).

Generation of electricity involving contracts for difference

7 In section 309A—

(a) in subsection (3), omit “or” at the end of paragraph (b) and after paragraph (c) insert “, or

(d) a contract for difference has been entered into in connection with the generation of the electricity.", and

(b) in subsection (9), at the appropriate place insert—

"“contract for difference” means a contract for difference within the meaning of Chapter 2 of Part 2 of the Energy Act 2013 (see section 6(2) of that Act);".

Subsidised energy-related activities: anaerobic digestion and hydroelectric power

8 (1) In section 309A—
(a) in subsection (5), omit ", B or C" (exceptions for generation involving anaerobic digestion and hydroelectric power),
(b) omit subsections (7) and (8), and
(c) in subsection (9), omit the definition of "anaerobic digestion".

(2) In section 309B—
(a) in subsection (3), omit "or B" (exception for generation or production involving anaerobic digestion), and
(b) omit subsection (5).

Application

9 The amendments made by this Part of this Schedule have effect in relation to relevant holdings issued on or after 6 April 2015.

PART 4

FURTHER AMENDMENTS OF PARTS 5 TO 6 OF ITA 2007

Parts 5 and 6: certain community-based activities to be excluded activities

10 (1) Part 5 of ITA 2007 is further amended as follows.

(2) In section 198A—
(a) omit subsections (5) and (6) (exception for community-based generation), and
(b) in subsection (9), omit the definitions of "community benefit society", "co-operative society" and "NI industrial and provident society".

(3) In section 198B—
(a) omit subsections (3) and (4) (exception for community-based generation or production), and
(b) omit subsection (6) (interpretation of section).

11 (1) Part 6 of ITA 2007 is further amended as follows.

(2) In section 309A—
(a) omit subsections (5) and (6) (exception for community-based generation), and
(b) in subsection (9), omit the definitions of "community benefit society", "co-operative society" and "NI industrial and provident society".

(3) In section 309B—
(a) omit subsections (3) and (4) (exception for community-based generation or production), and
(b) omit subsection (6) (interpretation of section).

12 In consequence of paragraphs 10 and 11—
(a) in FA 2014, omit section 56(3)(b) and (6)(b), and

(b) in the Co-operative and Community Benefit Societies Act 2014, omit paragraphs 106 and 107 of Schedule 4.

Part 5B: subsidised generation or export of electricity to cease to be excluded activity

13 (1) Part 5B of ITA 2007 is further amended as follows.

(2) In section 257MQ(1) (list of excluded activities) omit paragraph (f) (subsidised generation or export of electricity).

(3) Omit section 257MS (subsidised generation or export of electricity).

Application of Part

14 (1) The amendments made by this Part of this Schedule have effect in accordance with regulations made by the Treasury.

(2) Regulations under this paragraph may make different provision for different purposes.

(3) Section 1014(4) of ITA 2007 (regulations etc subject to annulment) does not apply in relation to regulations under this paragraph.

(4) Regulations under this paragraph may not provide for amendments of ITA 2007 to have effect—

(a) in the case of amendments of Part 5 of that Act, in relation to shares issued before 6 April 2015;

(b) in the case of amendments of Part 6 of that Act, in relation to relevant holdings issued before 6 April 2015.

EXPLANATORY NOTE

INVESTMENT RELIEFS: EXCLUDED ACTIVITIES

SUMMARY

1. This measure excludes all types of renewable energy generation activities subsidised by the government from the scope of the venture capital schemes – the Seed Enterprise Investment Scheme (SEIS), the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs). It makes provision for activities involving the generation of energy for which a Feed-in Tariff is receivable to be eligible for social investment tax relief (SITR), and provides a power to use secondary legislation to amend the activities that are not eligible for SITR. The legislation provides for different provisions to take effect at different times.

DETAILS OF THE SCHEDULE

Part 1

2. Paragraph 1 introduces new section 257MW of the Income Tax Act 2007 (ITA 2007). The power allows the list of activities that are excluded from qualifying for SITR to be amended by regulations. The new power allows regulations to take effect retrospectively (but no earlier than 6 April 2015) where the activities become newly eligible for the SITR, that is, where the regulations are wholly relieving.

3. Subsection (4) of new section 257MW provides for regulations made under this section to be combined in the same statutory instrument with orders made under other powers. For example, section 200 and section 311 of ITA 2007 allow the list of excluded activities for EIS (and SEIS by virtue of section 257DA of ITA 2007) and VCTs respectively, to be amended by order. It will be possible to use one statutory instrument to amend the excluded activities for all four schemes at the same time.

Parts 2 and 3

4. Parts 2 and 3 of the Schedule exclude from the EIS, SEIS (by virtue of section 257DA of ITA 2007) and VCTs companies generating power whose activities involve anaerobic digestion or hydroelectric power for which a government subsidy is obtained.

5. The provisions also exclude activities where the generation of the electricity is carried on under a Contract for Difference, a new government subsidy that will replace Renewables Obligations Certificates (ROCs) and Renewable Heat Incentives (RHIs) in due course. Activities involving ROCs and RHIs are already excluded activities for the purposes of the venture capital schemes.

6. The changes in Parts 2 and 3 will take effect from 6 April 2015.

Part 4

7. Part 4 of the Schedule makes further provision on excluded activities for the EIS (and the SEIS by virtue of section 257DA of ITA 2007) and VCTs. However, unlike the changes in Parts 2 and 3 of the Schedule, the changes in Part 4 will take effect on a date specified by Treasury regulations.

8. Paragraphs 10 and 11 of the Schedule make provision to remove the exception that currently allows all types of subsidised energy generation activities by certain types of community organisations to qualify for the venture capital schemes.

9. The effect of paragraphs 10 and 11, taken together with Parts 2 and 3 of the Schedule, will be to exclude all activities involving subsidised energy generation from the EIS, SEIS and VCTs.

10. Paragraph 13 of the Schedule makes provision to amend the list of excluded activities for SITR. The export or generation of electricity subsidised by way of a Feed-in Tariff will no longer be an excluded activity.

BACKGROUND NOTE

11. The purpose of these provisions is to:

- exclude from the venture capital schemes (EIS, SEIS and VCTs) companies that can currently benefit from government subsidies on activities involving the generation of energy; and,
- extend the activities allowed under SITR once State aid clearance for the enlargement of SITR is received.

12. Subsidised energy generation activities involving anaerobic digesters, hydroelectric power and Contracts for Difference will be excluded from the venture capital schemes with effect from 6 April 2015.

13. However it is the Government's intention that the special provisions for community groups involved in subsidised energy activities, to qualify under the venture capital schemes, will remain in place until State aid clearance is received for the enlargement of SITR.

14. When State aid clearance is received for the enlargement of SITR, the Government intends to introduce regulations to bring into effect the provisions of this Schedule to:

- exclude community energy activities from the venture capital schemes; and,
- allow community groups that would be eligible for SITR, but for the fact that they are carrying out excluded activities involving the generation of energy for which a Feed-in Tariff is due, to become eligible for SITR.

15. When State aid clearance for enlargement of SITR is received, it is the Government's intention to use the power in new section 257MW of ITA 2007 to allow community organisations carrying out small-scale agricultural and horticultural activities, which will not be eligible for direct payments under forthcoming Community Agricultural Policy reforms, to qualify for SITR. Organisations with land holdings of less than 5 hectares in England and Wales and less than 3 hectares in Scotland and Northern Ireland would become eligible for SITR.

16. If you have any questions about this change, or comments on the legislation, please contact Cathy Wilson on 03000 536678 (email: cathy.wilson@hmrc.gsi.gov.uk).

1 Arrangements offering a choice of capital or income return

(1) Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and tax credits etc in respect of certain distributions) is amended in accordance with subsections (2) to (6).

(2) After section 396 insert—

"Other amounts treated as distributions

396A Arrangements offering a choice of capital or income return

(1) Subsection (2) applies if a person ("S") has a choice either—
- (a) to receive what would (ignoring this section) be a distribution of a company, or
- (b) to receive from that company, or from a third party, anything else ("the alternative receipt") which—
  - (i) is of the same or substantially the same value, and
  - (ii) (ignoring this section) would not be charged to income tax.

(2) If S chooses the alternative receipt—
- (a) for income tax purposes it is treated as a distribution made to S by that company in the tax year in which it is received by S, and
- (b) for the purposes of the following provisions it is treated as a qualifying distribution so made—
  - (i) section 397 (tax credits for qualifying distributions of UK residence companies: UK residents and eligible non-UK residents);
  - (ii) section 399 (qualifying distributions received by persons not entitled to tax credits);
  - (iii) section 1100 of CTA 2010 (qualifying distributions: right to request a statement).

(3) For the purposes of this section—
- (a) it does not matter if the choice mentioned in subsection (1) is subject to any conditions being met or to the exercise of any power;
- (b) where S is offered one thing subject to a right, however expressed, to choose another instead, S is to be regarded as making a choice if S abandons or fails to exercise such a right.

(4) If at any time a tax other than income tax ("the other tax") is charged in relation to the alternative receipt, in order to avoid a double charge to tax in respect of that receipt, a person may make a claim for one or more consequential adjustments to be made in respect of the other tax.

(5) On a claim under subsection (4) an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.

(6) Consequential adjustments may be made—
- (a) in respect of any period,
- (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and

(c) despite any time limit imposed by or under an enactment."

(3) In section 382 (contents of Chapter 3), in subsection (1), omit the "and" at the end of paragraph (b) and after paragraph (c) insert ", and

(d) treats distributions as made in some circumstances (see section 396A)."

(4) In section 385 (person liable), in subsection (1)(a) for "and 389(3)" substitute ", 389(3) and 396A".

(5) In section 397 (tax credits for qualifying distributions of UK resident companies: UK residents and eligible non-UK residents), after subsection (5) insert—

"(5A) This section needs to be read with section 396A(2) (which treats certain receipts as "qualifying distributions" for the purposes of this section)."

(6) In section 399 (qualifying distributions received by persons not entitled to tax credits), after subsection (5) insert—

"(5A) This section needs to be read with section 396A(2) (which treats certain receipts as "qualifying distributions" for the purposes of this section)."

(7) In section 1100 of CTA 2010 (qualifying distributions: right to request a statement), after subsection (6) insert—

"(7) This section needs to be read with section 396A(2) of ITTOIA 2005 (which treats certain receipts as "qualifying distributions" for the purposes of this section)."

(8) The amendments made by subsections (2) to (4) have effect in relation to the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

ARRANGEMENTS OFFERING A CHOICE OF CAPITAL OR INCOME RETURN

SUMMARY

1. Clause [X] amends the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 05) to remove tax advantages given to shareholders by special purpose share schemes (commonly referred to as “B share schemes”), which offer shareholders a choice between income and capital returns on their shares, with effect from 6 April 2015.

DETAILS OF THE SCHEDULE

2. Subsection (1) provides for the amendment of Chapter 3 of Part 4 of ITTOIA 05.

3. Subsection (2) inserts new section 396A into ITTOIA 05.

New section396A: Arrangements offering a choice of capital or income return

4. New section 396A(1) explains that section 396A will apply where a person has a choice to receive either a distribution or something that is of essentially the same value but is not chargeable to income tax. This something else is defined as “the alternative receipt” and might include a receipt from the company, or a third party, that would otherwise give rise to a chargeable gain.

5. For example, where a shareholder has the choice to receive a dividend from a company of £10 that would provide a net return after tax of, say, £7.50, or an alternative receipt of £9 that would give a net return of, say, £7.40, this return will fall within section 396A(1) as the two amounts are substantially the same.

6. New section 396A(2)(a) treats alternative receipts from UK companies as a distribution.

7. New section 396A(2)(b) treats the alternative receipt as a qualifying distribution for the purposes of sections 397 or 399 ITTOIA05 (which provide dividend tax credits or treat tax as being paid at the basic rate), and for section 1100 Corporation Tax Act 2010 (CTA10) (which allows shareholders to request statements showing the value of a distribution).

8. New section 396A(3) explains that it does not matter whether the choice is subject to the exercise of any conditions or the exercise of any power, and also that the choice can include the failure to exercise a right. So, for example, where the shareholder will receive a bonus “B” share where an election is made and a bonus “C” share where no election is made, the failure to make an election is a choice to receive the “C” share.

9. New sections 396A(4) to (6) provide that a claim for relief can be made where, as a result of this charge on the alternative receipt, there is a “double charge”. For example, where a company issues bonus “B” shares to shareholders that so elect, and the “B” shares provide the right to be purchased by a third party, both the issue of the shares and the sale to the third party will create separate tax charges (the first under this section, the second as a capital gain).

10. Where such a claim is received, an officer of HM Revenue & Customs must make any just and reasonable consequential adjustment.

11. Subsections 4 to 7 make various consequential adjustments.

12. Subsection 8 provides that the amendments take effect from tax year 2015-16 onwards, regardless of when the arrangements were entered into.

BACKGROUND NOTE

13. This provision removes the choice between taxation as income or taxation as capital, which some companies offer their shareholders in certain circumstances when returning value to them. Returns where such a choice is offered will be taxed as income where they are received on or after 6 April 2015. This will support the government’s objectives of tackling unfair outcomes in the tax system by ensuring parity of treatment with other taxpayers who are not able to choose how they are taxed on their income.

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

1 Exceptions from duty to deduct tax: qualifying private placements

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

"888A Qualifying private placements

(1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on a qualifying private placement.

(2) "Qualifying private placement" means a security—
(a) which meets Conditions A, B and C, and
(b) in relation to which such other conditions as the Treasury may specify by regulations are met.

(3) Condition A is that the security—
(a) is issued by a company, and
(b) represents a loan relationship to which the company is a party as debtor.

(4) Condition B is that the terms of the loan relationship represented by the security do not provide for the loan relationship to terminate within 3 years of its coming into force.

(5) Condition C is that the security is not listed on a recognised stock exchange.

(6) The conditions which may be specified under subsection (2)(b) include conditions relating to—
(a) the security itself,
(b) the loan relationship represented by the security,
(c) the terms or circumstances of the issue of the security,
(d) the issuer of the security, or
(e) the holder of the security.

(7) Regulations under this section may make provision about the consequences of failing to make a deduction under section 874, in respect of a payment of interest on a security, in cases where—
(a) the person required to make the deduction had a reasonable, but mistaken, belief that the security was a qualifying private placement, or
(b) the loan relationship represented by the security terminates within 3 years of the loan relationship coming into force.

(8) Regulations under this section may—
(a) make different provision for different cases;
(b) contain incidental, supplemental, consequential and transitional provision and savings.

(9) In this section "loan relationship" has the same meaning as in Part 5 of CTA 2009."

(2) Any power conferred on the Treasury by virtue of subsection (1) to make regulations comes into force on the day on which this Act is passed.

(3) So far as not already brought into force by subsection (2), the amendment made by this section comes into force on such day as the Treasury may by regulations appoint.

(4) Section 1014(4) of ITA 2007 (regulations etc subject to annulment) does not apply to regulations under subsection (3).

EXPLANATORY NOTE

EXCEPTION FROM DUTY TO DEDUCT TAX: QUALIFYING PRIVATE PLACEMENTS

SUMMARY

1. Clause [X] amends the rules on the deduction of income tax from payments of yearly interest. It provides for an exception from the duty to deduct income tax for interest paid on qualifying private placements.

DETAILS OF THE CLAUSE

2. Subsection (1) of the clause inserts a new section 888A into Chapter 3 of Part 15 of the Income Tax Act 2007 (ITA).

3. Subsection (1) of new section 888A provides that the duty to deduct income tax from yearly interest does not apply to a ‘qualifying private placement’. This is defined in subsection (2) as a security which meets Conditions A to C, and such other conditions as are set in regulations. Conditions A to C are set out in subsections (3) to (5).

4. Condition A is that the security must be issued by a company and represent a debtor loan relationship of the company. Subsection (9) provides that ‘loan relationship’ takes its meaning from Part 5 of the Corporation Tax Act 2009.

5. Condition B is that the security must have a minimum term of three years.

6. Condition C is that the security is not listed on a recognised stock exchange.

7. Subsections (6) to (8) of new section 888A set out the provisions that apply to regulations made under this section. They provide, among other matters, that the regulations may set out conditions relating to the security itself, the issuer and the holder of the security, the consequences where a security ceases to be a qualifying private placement, and to transitional and similar cases.

8. Subsection (2) to (4) of the clause set out the commencement provisions. The power to make regulations under the new section 888A comes into force on the date of Royal Assent to Finance Bill 2015. The exemption from the duty to deduct income tax will apply from a date to be set in regulations.

BACKGROUND NOTE

9. Private placements are a form of unlisted debt instrument. The *Breedon Report* of March 2012 recommended increasing the number of UK-based private placements investors in order to unlock a new source of financing for mid-sized borrowers.

10. Where a UK company pays yearly interest on borrowings, tax rules require the company to deduct income tax from the payment. However, there are a number of exemptions from this requirement, and where the borrowing is from a non-UK lender, double taxation treaties commonly allow interest to be paid gross or at a reduced rate of withholding. This measure aims to remove an obstacle to the development of the UK private placement market by providing a specific exemption for private placements that meet certain qualifying conditions.

11. The power to make regulations provided in this measure allows detailed conditions to be set out in relation to private placements that qualify for the exemption from the duty to deduct income tax from interest payments. These regulations may allow the exemption to be targeted at particular types of company, and may contain safeguards to ensure the exemption is not abused.

12. If you have any questions about this change, or comments on the legislation, please contact Tony Sadler on 03000 585479 (email: tony.sadler@hmrc.gsi.gov.uk).

1 Zero-emission goods vehicles

(1) CAA 2001 is amended as follows.

(2) In section 45DA(1)(a) (period during which first-year qualifying expenditure may be incurred), for "5 years" substitute "8 years".

(3) Section 45DB (exclusions from allowances under section 45DA) is amended in accordance with subsections (4) to (7).

(4) In subsection (7), omit "notified" (in both places).

(5) In subsection (8), omit "to that extent".

(6) In subsection (11), omit the definition of "notified State aid".

(7) After that subsection insert—

"(11A) 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."

(8) The amendment made by subsection (2) comes into force on the day on which this Act is passed.

(9) The other amendments made by this section have effect—

(a) in relation to a relevant grant or relevant payment made at any time (whether before or on or after the specified day) towards expenditure incurred on or after that day, and

(b) in relation to a relevant grant or relevant payment made on or after the specified day towards expenditure incurred before that day.

(10) "The specified day" means—

(a) for income tax purposes, 6 April 2015, and

(b) for corporation tax purposes, 1 April 2015.

EXPLANATORY NOTE

ZERO-EMISSION GOODS VEHICLES

SUMMARY

1. Clause [X] extends the Enhanced Capital Allowances (ECA) scheme for expenditure on zero-emission goods vehicles to [5 April 2018]. It was due to end on 31 March 2015 for corporation tax and 5 April 2015 for income tax. It also provides that no allowances are to be made if another State aid is received towards qualifying expenditure.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that Sections 45DA and 45DB of the Capital Allowances Act 2001 are amended.

3. Subsections (2) and (8) amend section 45DA(1)(a) to extend the scheme to 2018, with effect from Royal Assent.

4. This ECA is a State aid designed to comply with the environmental protection section of the General Block Exemption Regulation no. 651/2014 (GBER). Section 45DB ensures that the rules set out in the GBER are met. The amendments made at subsections (3) to (10) ensure continued compliance with the GBER.

5. Subsections (4), (6) and (7) delete various words and phrases and add a new subsection 45DB(11A). The effect is to provide that any reference to State aid in the section is to be read widely to include all State aid, and not just aid notified to or approved by the European Commission.

6. Subsection (5), read with subsections (9) and (10), mean that by deleting "to that extent", the effect is to provide that the ECA is not available, or will be withdrawn, where

- qualifying expenditure has been incurred on or after 1 April 2015 for corporation tax or on or after 6 April 2015 for income tax and a grant that is a State aid is also received on or after 1/6 April 2015;
- qualifying expenditure has been incurred on or before 31 March 2015 for corporation tax and 5 April 2015 for income tax, and a grant that is a State aid is received on or after 1/6 April 2015;
- qualifying expenditure has been incurred on or after 1 or 6 April 2015, and a grant that is a State aid is received on or before 31 March/5 April 2015.

In essence a decision has to be made whether to claim ECA or receive a grant, or other payment, that is a State aid.

BACKGROUND NOTE

7. Capital allowances allow the cost of capital assets to be written off against taxable profits. They take the place of depreciation charged in the commercial accounts, which is not allowed for tax. The main rate of capital allowances is currently 18 per cent per year on a reducing balance basis.

8. ECAs (properly called first-year allowances) are available for expenditure on certain types of plant or machinery. ECAs accelerate the rate at which tax relief is available for capital spending and allow a greater proportion of the cost of an investment to qualify for tax relief against a business's taxable profits of the period in which the investment is made. ECAs provide business with a valuable tax-timing benefit.

9. 100 per cent ECAs for expenditure on zero-emission good vehicles were introduced in 2010. It is one of a number of measures designed to help businesses reduce their CO_2 emissions and to encourage a shift to cleaner goods vehicles. The government announced in Budget 2014 that the scheme would be extended for further three years to 2018 when the existing scheme ends in 2015.

10. The ECA for zero-emission goods vehicles is a State aid and has been designed to comply with the GBER. The GBER exempts certain State aid measures from prior notification to the European Commission if various conditions are met. This clause includes a provision designed to ensure that the ECA remains fully compliant with the GBER rules about the cumulation of State aid, i.e. ensure that the maximum amount of aid that can be received for purchases of qualifying goods vehicles cannot be exceeded. It does this by ensuring that businesses can only claim the ECA or another State aid but not both.

11. If you have any questions about this change, or comments on the legislation, please contact Nick Williams on 03000 585660 (email: nicholas.williams@hmrc.gsi.gov.uk).

1 Group relief

(1) In section 133 of CTA 2010 (claims for group relief: consortium conditions 2 and 3)—

(a) in subsection (1)—

(i) at the end of paragraph (e) insert “and”, and

(ii) omit paragraph (g) and the “and” before it,

(b) in subsection (2)—

(i) at the end of paragraph (e) insert “and”, and

(ii) omit paragraph (g) and the “and” before it, and

(c) omit subsections (5) to (8).

(2) Accordingly—

(a) in section 129(2) of CTA 2010 for “134A” substitute “134”,

(b) in section 130(2) of that Act—

(i) in paragraph (c), for “and (3) to (8)” substitute “, (3) and (4)”, and

(ii) in paragraph (d), for “(8)” substitute “(4)”,

(c) section 134A of that Act is repealed, and

(d) in Schedule 6 to the Finance (No. 3) Act 2010, omit paragraphs 4(4) and 5.

(3) The amendments made by this section have effect in relation to accounting periods beginning on or after 10 December 2014.

EXPLANATORY NOTE

GROUP RELIEF

SUMMARY

1. Clause [X] removes the requirements relating to the location of the link company in a consortium claim to group relief. The link company no longer needs to be in the UK or the European Economic Area (EEA), and there are no different requirements between a UK link company and one based in another jurisdiction. The changes will apply to accounting periods commencing on or after 10 December 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) omits the requirements relating to the location of the link company.

3. Subsection (2) makes consequential amendments to reflect the omissions made by subsection 1.

4. Subsection (3) sets out the commencement for the change, allowing claims under the new conditions for accounting periods beginning on or after 10 December 2014.

BACKGROUND NOTE

5. This measure takes effect for consortium claims to group relief in accounting periods beginning on or after 10 December 2014.

6. For group relief to flow between a company owned by a consortium and a company in the same group as a member of the consortium, the current rules require that the link company be in the UK or the EEA, and where in the EEA but not the UK all intermediate companies between the claimant and surrendering companies must also be in the EEA. This creates a difference of treatment between UK link companies and those in the EEA or in other jurisdictions.

7. This measure seeks to remove that difference in treatment and simplify claims to group relief between a consortium and a group owning a share in that consortium by omitting the additional conditions where the link company is based in a jurisdiction other than the UK.

8. If you have any questions about this change, or comments on the legislation, please contact James Konya on 03000 544525 (email: james.konya@hmrc.gsi.gov.uk).

1 Accelerated payments and group relief

Schedule 1 contains makes provision about the relationship between accelerated payments and group relief.

SCHEDULE 1

Section 1

ACCELERATED PAYMENTS: GROUP RELIEF

1 Part 4 of FA 2014 (accelerated payments etc) is amended as follows.

2 In section 199 (overview of Part 4), in paragraph (c) omit the "and" at the end of sub-paragraph (ii), and after sub-paragraph (iii) insert ", and

(iv) provision restricting the surrender of losses and other amounts for the purposes of group relief."

3 (1) Section 220 (content of notice given while a tax enquiry is in progress) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (b), after "the payment" insert "(if any)", and

(b) omit the "and" at the end of that paragraph, and after paragraph (c) insert ", and

(d) if the denied advantage consists of or includes an asserted surrenderable amount, specify that amount and any action which is required to be taken in respect of it under section 225A."

(3) After subsection (4) insert—

"(4A) "Asserted surrenderable amount" means so much of a surrenderable loss as a designated HMRC officer determines, to the best of that officer's information and belief, to be an amount—

(a) which would not be a surrenderable loss of P if the position were as stated in paragraphs (a) to (c) of subsection (4), and

(b) which is not the subject of a claim by P for relief from corporation tax reflected in the understated tax amount (and hence in the payment required to be made under section 223).

(4B) "Surrenderable loss" means a loss or other amount within section 99(1) of CTA 2010 (or part of such a loss or other amount)."

(4) In subsection (6), for "the payment specified under subsection (2)(b)" substitute "any payment specified under subsection (2)(b) or amount specified under subsection (2)(d)".

4 (1) Section 221 (content of notice given pending an appeal) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (b), after "the disputed tax" insert "(if any)", and

(b) omit the "and" at the end of paragraph (b) and after paragraph (c) insert ", and

(d) if the denied advantage consists of or includes an asserted surrenderable amount (within the meaning of section 220(4A)), specify that amount and any action which is required to be taken in respect of it under section 225A."

5 (1) Section 222 (representations about a notice) is amended as follows.

(2) In subsection (2) omit the "or" at the end of paragraph (a), and after paragraph (b) insert ", or

(c) objecting to the amount specified in the notice under section 220(2)(d) or section 221(2)(d)."

(3) In subsection (4)—

(a) omit the "and" at the end of paragraph (a),

(b) in paragraph (b), after "different amount" insert "(or no amount)", and

(c) omit the "or" after sub-paragraph (i) of that paragraph and after sub-paragraph (ii) insert ", or

(iii) remove from the notice the provision made under section 220(2)(b) or section 221(2)(b), and

(c) if representations were made under subsection (2)(c) (and the notice is not withdrawn under paragraph (a)), determine whether a different amount (or no amount) ought to have been specified under section 220(2)(d) or 221(2)(d), and then—

(i) confirm the amount specified in the notice,

(ii) amend the notice to specify a different amount, or

(iii) remove from the notice the provision made under section 220(2)(d) or section 221(2)(d),".

6 (1) Section 223 (effect of notice given while tax enquiry is in progress) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies where—

(a) an accelerated payment notice is given by virtue of section 219(2)(a) (notice given while a tax enquiry is in progress) (and not withdrawn), and

(b) an amount is stated in the notice in accordance with section 220(2)(b)."

(3) In subsection (2), for "the amount specified in the notice in accordance with section 220(2)(b)" substitute "that amount".

(4) Accordingly, in the heading for that section after "progress" insert ": accelerated payment".

7 After section 225 insert—

"Prevention of surrender of losses

225A Effect of notice: surrender of losses ineffective, etc

(1) This section applies where—

(a) an accelerated payment notice is given (and not withdrawn), and

(b) an amount is specified in the notice in accordance with section 220(2)(d) or 221(2)(d).

(2) P may not consent to any claim for group relief in respect of the amount so specified.

(3) Subject to subsection (2), paragraph 75 (other than sub-paragraphs (7) and (8)) of Schedule 18 to FA 1998 (reduction in amount available for surrender) has effect as if the amount so specified ceased to be an amount available for surrender at the time the notice was given to P.

(4) For the purposes of subsection (3), paragraph 75 of that Schedule has effect as if, in sub-paragraph (2) of that paragraph for "within 30 days" there were substituted "before the end of the payment period (within the meaning of section 223(5) of the Finance Act 2014)".

(5) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made in accordance with paragraph 75(6) of Schedule 18 to FA 1998 where, pursuant to subsection (3), a claimant company receives—

(a) notice of the withdrawal of consent under paragraph 75(3) of that Schedule, or

(b) a copy of a notice containing directions under paragraph 75(4) of that Schedule.

(6) Subsection (7) applies where—

(a) a company makes such an amendment to its company tax return at a time when an enquiry is in progress into the return, and

(b) paragraph 31(3) of that Schedule prevents the amendment from taking effect until the enquiry is completed.

(7) Section 219 (circumstances in which an accelerated payment notice may be given) has effect, in its application to that company in a case where section 219(2)(a) applies (tax enquiry in progress), as if—

(a) for the purposes of section 219(3), that amendment to the return had not been made, and

(b) in section 219(4), after paragraph (c) there were inserted—

"(d) P has amended its company tax return, in accordance with paragraph 75(6) of Schedule 18 to FA 1998, in circumstances where pursuant to section 225A(3), P has received—

(i) notice of the withdrawal of consent under paragraph 75(3) of that Schedule, or

(ii) a copy of a notice containing directions under paragraph 75(4) of that Schedule,

but paragraph 31(3) of that Schedule prevents that amendment having effect.",

(c) in section 220(4), after paragraph (c) there were inserted—

"(d) in the case of a notice given by virtue of section 219(4)(d) (cases involving withdrawal of consent for losses claimed), it were assumed that P had never made the claim to group relief to which the amendment to its company tax return relates.", and

(d) in section 227(10), for "or (c)" there were substituted ", (c) or (d)".

(8) Subsections (2) and (3) are subject to—

(a) section 227(14) to (16) (provision about claims for group relief, and consents to claims, following amendment or withdrawal of an accelerated payment notice), and

(b) section 227A (provision about claims for group relief, and consents to claims, once tax position finally determined)."

8 (1) Section 227 (withdrawal, modification or suspension of accelerated payment notice) is amended as follows.

(2) In subsection (2) omit the "or" after paragraph (b) and after paragraph (c) insert ", or

(d) reduce the amount specified in the accelerated payment notice under section 220(2)(d) or 221(2)(d)."

(3) In subsection (4), after "(2)(c)" insert "or (d)".

(4) In subsection (6)(b), after "advantage" insert "etc".

(5) In subsection (7), omit the "and" after paragraph (a) and after paragraph (b) insert ", and

(c) if the amount of the asserted surrenderable amount is less than the amount specified in the notice, amend the notice under subsection (2)(d) to substitute the lower amount."

(6) After subsection (12) insert—

"(12A) Where, as a result of an accelerated payment notice specifying an amount under section 220(2)(d) or 221(2)(d), a notice of consent by P to a claim for group relief in respect of the amount specified (or part of it) became ineffective by virtue of section 225A(3), nothing in subsection (12) operates to revive that notice."

(7) After subsection (13) insert—

"(14) If the accelerated payment notice is amended under subsection (2)(d) or withdrawn—

(a) section 225A(2) and (3) (which prevents consent being given to group relief claims) cease to apply in relation to the released amount, and

(b) a claim for group relief may be made in respect of any part of the released amount within the period of 30 days after the day on which the notice is amended or withdrawn.

(15) The time limits otherwise applicable to amendment of a company tax return do not apply to the extent that it makes a claim for group relief within the time allowed by subsection (14).

(16) "The released amount" means—

(a) in a case where the accelerated payment notice is amended under subsection (2)(d), the amount [represented by the reduction], and

(b) in a case where the accelerated payment notice is withdrawn, the amount specified under section 220(2)(d) or 221(2)(d).”

9 After section 227 insert—

“Group relief claims after accelerated payment notices

227A Group relief claims after accelerated payment notices

(1) This section applies where as a result of an accelerated payment notice given to P—

(a) P was prevented from consenting to a claim for group relief in respect of an amount under section 225A(2), or

(b) pursuant to section 225A(3), a consent given by P to a claim for group relief in respect of an amount was ineffective.

(2) If a final determination establishes that the amount P has available to surrender consists of or includes the amount referred to in subsection (1)(a) or (b) or a part of it (“the allowed amount”)—

(a) section 225A(2) and (3) (which prevents consent being given to group relief claims) ceases to apply in relation to the allowed amount, and

(b) a claim for group relief in respect of any part of the allowed amount may be made within the period of 30 days after the relevant time.

(3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes a claim for group relief in respect of any part of the allowed amount within the time limit allowed by subsection (2)(b).

(4) In this section—

“final determination” means—

(a) a conclusion stated in a closure notice under section 28A of TMA 1970 against which no appeal is made;

(b) the final determination of a tax appeal within paragraph (d) or (e) of section 203;

“relevant time” means—

(a) in a case within paragraph (a) above, the end of the period during which the appeal could have been made;

(b) in the case within paragraph (b) above, the end of the day on which the final determination occurs.”

10 (1) Schedule 32 (accelerated payments and partnerships) is amended as follows.

(2) In paragraph 4 (content of partner payment notice)—

(a) in sub-paragraph (1), in paragraph (b), after “the payment” insert “(if any)”,

(b) in that sub-paragraph omit the “and” at the end of paragraph (b) and after paragraph (c) insert “, and

(d) if the denied advantage consists of or includes an asserted surrenderable amount, specify that amount and any action which is required to be taken in respect of it under paragraph 6A.”,

(c) after sub-paragraph (4) insert—

"(4A) "Asserted surrenderable amount" means so much of a surrenderable loss which the relevant partner asserts to have as a designated HMRC officer determines, to the best of that officer's information and belief, to be an amount—

(a) which would not be a surrenderable loss of that partner if the position were as stated in paragraphs (a) to (c) of sub-paragraph (3), and

(b) which is not the subject of a claim by the relevant partner to relief from corporation tax which is reflected in the amount of the understated partner tax of that partner (and hence in the payment required to be made under paragraph 6).

(4B) "Surrenderable loss" means a loss or other amount within section 99(1) of CTA 2010 (or part of such a loss or other amount).", and

(d) in sub-paragraph (5), for "the payment specified under sub-paragraph (1)(b)" substitute "any payment specified under sub-paragraph (1)(b) or amount specified under sub-paragraph (1)(d)".

(3) In paragraph 5 (representations about a partner payment notice)—

(a) in sub-paragraph (2) omit the "or" at the end of paragraph (a), and after paragraph (b) insert ", or

(c) objecting to the amount specified in the notice under paragraph 4(1)(d).",

(b) in sub-paragraph (4), omit the "and" at the end of paragraph (a),

(c) in paragraph (b) of that sub-paragraph, after "different amount" insert "(or no amount)",

(d) in that paragraph, omit the "or" at the end of sub-paragraph (i) and after sub-paragraph (ii) insert ", or

(iii) remove from the notice the provision made under paragraph 4(1)(b),", and

(e) after that paragraph insert ", and

(c) if representations were made under sub-paragraph (2)(c) (and the notice is not withdrawn under paragraph (a)), determine whether a different amount (or no amount) ought to have been specified under paragraph 4(1)(d), and then—

(i) confirm the amount specified in the notice,

(ii) amend the notice to specify a different amount, or

(iii) remove from the notice the provision made under paragraph 4(1)(d),".

(4) In paragraph 6 (effect of partner payment notice)—

(a) for sub-paragraph (1) substitute—

"(1) This paragraph applies where—

(a) a partner payment notice has been given to a relevant partner (and not withdrawn), and

(b) an amount is stated in the notice in accordance with paragraph 4(1)(b).", and

(b) in sub-paragraph (2) for "the amount specified in the notice in accordance with paragraph 4(1)(b)" substitute "that amount".

(5) After paragraph 6 insert—

"6A (1) This paragraph applies where—

(a) an accelerated payment notice is given (and not withdrawn), and

(b) an amount is specified in the notice in accordance with paragraph 4(1)(d).

(2) The relevant partner may not at any time when the notice has effect consent to any claim for group relief in respect of the amount so specified.

(3) Subject to sub-paragraph (2), paragraph 75 (other than sub-paragraphs (7) and (8)) of Schedule 18 to FA 1998 (reduction in amount available for surrender) has effect at any time when the notice has effect as if that specified amount ceased to be an amount available for surrender at the time the notice was given to the relevant partner.

(4) For the purposes of subsection (3), paragraph 75 of that Schedule has effect as if, in sub-paragraph (2) of that paragraph for "within 30 days" there were substituted "before the end of the payment period (within the meaning of paragraph 6(5) of Schedule 32 to the Finance Act 2014)".

(5) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made in accordance with paragraph 75(6) of Schedule 18 to FA 1998 where the relevant partner withdraws consent by virtue of subsection (3)."

(6) In paragraph 8 (withdrawal, suspension or modification of partner payment notices), in sub-paragraph (2)—

(a) before paragraph (a) insert—

"(za) section 227(2)(d), (12A) and (16) has effect as if the references to section 220(2)(d) or 221(2)(d) were to paragraph 4(1)(d) of this Schedule,", and

(b) omit the "and" after paragraph (a) and after paragraph (b) insert ", and

(c) section 227(12A) has effect as if the reference to section 225A(3) were to paragraph 6A(3) of this Schedule."

11 (1) Section 225A(3) of FA 2014 (effect of notices: surrender of losses ineffective) (inserted by paragraph 7 of this Schedule) has effect in relation to an amount specified in a notice in accordance with section 220(2)(d) or 221(2)(d) of that Act (inserted by paragraphs 3(2) and 4(2) of this Schedule) whether the consent to a claim for group relief was given, or the claim itself was made, before or on or after the day on which this Act is passed.

(2) Paragraph 6A(3) of Schedule 32 to FA 2014 (partnerships: effect of notices: surrender of losses ineffective) (inserted by paragraph 10(5) of this Schedule) has effect in relation to an amount specified in a notice in accordance with paragraph 4(1)(d) of that Schedule (inserted by paragraph 10(2) of this

Schedule) whether the consent to a claim for group relief was given, or the claim itself was made, before or on or after the day on which this Act is passed.

EXPLANATORY NOTE

ACCELERATED PAYMENTS AND GROUP RELIEF

SUMMARY

1. This measure makes a change to the accelerated payment legislation in Part 4 of Finance Act 2014 (FA 2014) to ensure that those rules work effectively where avoidance arrangements give rise to losses or other amounts surrendered as group relief.

DETAILS OF THE SCHEDULE

2. Paragraphs 1 and 2 are introductory

3. Paragraph 3 introduces and defines the term 'asserted surrenderable amount'. This is the amount that would be available for surrender if the taxpayer's arrangements were to achieve their objective, taking into account any amount of relief claimed by the company itself against its own profits; but which an HM Revenue & Customs (HMRC) officer considers will not be so available if those arrangements fail to achieve their objective.

4. Paragraph 4 amends section 221 of FA 2014. If the denied advantage consists of or includes an 'asserted surrenderable amount', it adds a requirement for HMRC to specify in an Accelerated Payment Notice (APN) the amount of any group relief that HMRC considers should not be available for surrender.

5. Paragraph 5 amends section 222 of FA 2014. It extends the taxpayer's right to make representations to cover the amount that HMRC has specified which cannot be surrendered as group relief.

6. Paragraph 7 inserts section 225A of FA 2014. Section 225A sets out that where HMRC has given a notice to the effect that a specified amount may not be surrendered, the company may not consent to surrender that amount. As a result, this means that no company in the group may claim that amount as group relief. If any amount has been claimed, the claimant company or companies must amend their return(s) to reflect the new situation. The time limit for amending a company tax return is relaxed for this purpose.

7. Section 225A(6) and (7) of FA 2014 cover the situation where a claimant company is required to amend their return as a result of a notice under this legislation, but that amendment cannot take effect because there is an open enquiry into that return. In that particular situation, there would be no cash payment to the Exchequer so that the cashflow benefit would remain with the taxpayer while the dispute was in progress. Section 225A(6) and (7) allow HMRC to issue an APN to the claimant company (or companies) under the existing provision in section 219 of FA 2014 to ensure that the amount in dispute does sit with the Exchequer.

8. Paragraph 8 amends section 227 of FA 2014, which gives HMRC the power to amend or withdraw an APN. The amendment enables HMRC to reduce or cancel a specified amount that cannot be surrendered as group relief. Where such a reduction or cancellation takes place, the original surrender and claim(s) are not automatically reactivated (section 227(12A) of FA 2014). Instead the companies may make revised surrenders and claims. The relevant time limits are relaxed for this purpose.

9. Paragraph 9 inserts new Section 227A of FA 2014. This applies where the final result of a dispute, whether by agreement or by final decision of a court or tribunal, is to allow some or all of the amounts that had originally been surrendered (or which could have been surrendered but for the issue of an APN) as group relief. A company in the group (not necessarily the original group relief claimant) may make a claim within 30 days of the final determination of the amount available.

10. Paragraph 10 makes changes to Schedule 32 to FA 2014 to have the same effect for Partner Payment Notices (PPN) as for APNs, with necessary adaptations.

11. Paragraph 11 sets out that this change to the accelerated payment legislation applies to group relief surrenders whenever they were made, provided all the necessary requirements for an accelerated payment are met. This ensures that APNs or PPNs issued as a result of this change are on the same footing as any other APN or PPN issued under this legislation.

BACKGROUND NOTE

12. The Accelerated Payment Legislation was introduced in Part 4 of FA 2014. It permits HMRC to issue an Accelerated Payment Notice (APN) or Partner Payment Notice (PPN) requiring payment up front of the tax in dispute in certain specified circumstances.

13. Where a company has losses or certain other amounts that derive from arrangements that meet the criteria, an APN would not require it to pay over any amounts at that point because it may have no actual tax to pay when the dispute is resolved. However, it could surrender some or all of those amounts as group relief so that the cash timing benefit passes to other companies in the group.

14. This change therefore prevents those amounts being surrendered and claimed while the dispute is in progress, so that the relevant cash amount can be held by the Exchequer during the dispute.

15. Where a company is a member of a partnership that generates a loss through arrangements that meet the criteria, the issue of a PPN will prevent that company surrendering its share of those losses to another company in its group. This has no effect on other members of the partnership who may be claiming or using the losses in different ways. The final amount of any loss that can be surrendered will be determined through the partnership return, and any revision will then flow through to the partners in the normal way. When that happens HMRC will revise any PPN accordingly.

16. If you have any questions about this change, or comments on the legislation, please contact David Edney on 03000 585985 (email: david.edney1@hmrc.gsi.gov.uk).

Consultation draft

CONTENTS

PART 1

DIVERTED PROFITS TAX

Scope of the tax

PART 1

DIVERTED PROFITS TAX

Scope of the tax

1 Charge to tax

(1) A tax (to be known as "diverted profits tax") is charged in accordance with this Part on taxable diverted profits arising to a company.

(2) Taxable diverted profits arise to a company only if section 2 or section 3 applies in relation to the company.

(3) A charge to diverted profits tax is imposed for an accounting period by a designated HMRC officer issuing to the company a charging notice in accordance with section 16 or a supplementary charging notice in accordance with section 20(8).

(4) The amount of tax charged by a notice is the sum of—
   (a) 25% of the amount of taxable diverted profits specified in the notice, and
   (b) the interest (if any) on the amount within paragraph (a) determined under subsection (5).

(5) The interest mentioned in subsection (4)(b) is interest at the rate applicable under section 178 of FA 1989 for the period (if any) which—
   (a) begins 6 months after the end of the accounting period to which the charge relates, and
   (b) ends with the day the notice imposing the charge to tax is issued.

2 Avoidance of a UK taxable presence

(1) This section applies in relation to a company ("the foreign company") if—
   (a) the company is non-UK resident,
   (b) a person ("the avoided PE"), whether or not UK resident, is carrying on activity in the United Kingdom in connection with supplies of goods or services made by the foreign company to customers in the United Kingdom,
   (c) it is reasonable to assume that any of the activity of the avoided PE or the foreign company (or both) is designed so as to ensure that the foreign company is not carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom by reason of the avoided PE's activity (whether or not it is also designed to secure any commercial or other objective),

(d) it is also reasonable to assume that the mismatch condition (see subsection (3)) or the tax avoidance condition (see subsection (4)) is met or both those conditions are met, and

(e) the avoided PE and the foreign company are not both small or medium-sized enterprises.

(2) But this section does not apply in relation to the foreign company if—

(a) activity of the avoided PE is such that, as a result of section 1142 or 1144 of CTA 2010, the foreign company would not be treated as carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom by reason of that activity, and

(b) in a case where—

(i) section 1142(1) of that Act applies, but

(ii) the avoided PE is not regarded for the purposes of section 1142(1) of that Act as an agent of independent status by virtue of section 1145, 1146 or 1151 of that Act,

the foreign company and the avoided PE are not connected (within the meaning of section 1122 of that Act).

(3) "The mismatch condition" is that—

(a) in connection with the supplies of goods or services mentioned in subsection (1)(b) (or in connection with those supplies and other supplies), arrangements are in place as a result of which provision is made or imposed as between the foreign company and another person ("A") by means of a transaction or series of transactions ("the material provision"),

(b) the participation condition is met in relation to the foreign company and A (see section 5),

(c) the material provision results in an effective tax mismatch outcome as between the foreign company and A (see section 6),

(d) the insufficient economic substance condition is met (see section 7),

(e) the foreign company and A are not both small or medium-sized enterprises, and

(f) the material provision is not an excluded loan relationship (see subsection (6)).

(4) "The tax avoidance condition" is that, in connection with the supplies of goods or services mentioned in subsection (1)(b) (or in connection with those supplies and other supplies), arrangements are in place the main purpose or one of the main purposes of which is to avoid a charge to corporation tax.

(5) In subsection (1)(c) the reference to activity of the avoided PE or the foreign company includes any limitation which has been imposed or agreed in respect of activity of the avoided PE or the foreign company.

(6) For the purposes of subsection (3)(f), the material provision is an "excluded loan relationship" if it is made, or imposed, by means of a transaction or series of transactions that only give rise to one or more loan relationships, within the meaning of section 302 of CTA 2009, or are treated as only giving rise to such relationships by Part 6 of that Act.

(7) In subsections (3) and (4) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(8) In a case where this section applies—
  (a) taxable diverted profits are calculated in accordance with section 8, but
  (b) for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 16, the designated HMRC officer issuing the notice estimates those profits in accordance with section 9.

(9) See section 12 (exemption for companies with limited UK sales) for circumstances in which, although this section applies, there is no diverted profits tax.

3 Involvement of entities or transactions lacking economic substance

(1) This section applies in relation to a company ("C") if—
  (a) C is UK resident,
  (b) provision has been made or imposed as between C and another person ("P") (whether or not P is UK resident) by means of a transaction or series of transactions ("the material provision"),
  (c) the participation condition is met in relation to C and P (see section 5),
  (d) the material provision results in an effective tax mismatch outcome as between C and P (see section 6),
  (e) the insufficient economic substance condition is met (see section 7),
  (f) C and P are not both small or medium-sized enterprises, and
  (g) the material provision is not an excluded loan relationship (within the meaning of section 2(6)).

(2) In a case where this section applies—
  (a) taxable diverted profits are calculated in accordance with section 10, but
  (b) for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 16, the designated HMRC officer issuing the notice estimates those profits in accordance with section 11.

(3) See section 4 for circumstances in which this section applies in relation to a company which is non-UK resident but which has a permanent establishment in the United Kingdom.

4 Extension of section 3 to foreign companies with UKPE

(1) Section 3 also applies in relation to a company that is non-UK resident ("the foreign company") if the following conditions are met.

(2) The first condition is that by reason of the foreign company carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom ("UKPE"), Chapter 4 of Part 2 of CTA 2009 (non-UK resident companies: chargeable profits) applies to determine the chargeable profits of the foreign company.

(3) The second condition is that section 3 would apply to UKPE were it treated for the purposes of section 3 and sections 5 to 7—
  (a) as a distinct and separate person from the foreign company (whether or not it would otherwise be so treated),
  (b) as a UK resident company under the same control as the foreign company, and

(c) as having entered into any transaction or series of transactions entered into by the foreign company to the extent that the transaction or series is relevant to UKPE.

(4) A transaction or series of transactions is "relevant" to UKPE only if, and to the extent that, it is relevant, for corporation tax purposes, when determining the chargeable profits of the foreign company attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE.

5 The participation condition

(1) This section makes provision for the purposes of sections 2(3) and 3(1).

(2) In this section "the first party" and "the second party" means—
(a) where this section applies for the purposes of section 2(3), the foreign company and A (within the meaning of section 2) respectively, and
(b) where this section applies for the purposes of section 3(1), C and P (within the meaning of section 3) respectively.

(3) The participation condition is met in relation to the first party and the second party ("the relevant parties") if—
(a) condition A is met in relation to the material provision so far as the material provision is provision relating to financing arrangements, and
(b) condition B is met in relation to the material provision so far as the material provision is not provision relating to financing arrangements.

(4) Condition A is that, at the time of the making or imposition of the material provision or within the period of 6 months beginning with the day on which the material provision was made or imposed—
(a) one of the relevant parties was directly or indirectly participating in the management, control or capital of the other, or
(b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the relevant parties.

(5) Condition B is that, at the time of the making or imposition of the material provision—
(a) one of the relevant parties was directly or indirectly participating in the management, control or capital of the other, or
(b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the relevant parties.

(6) In this section "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

(7) For the purposes of this section—
(a) section 157(2) of TIOPA 2010 ("direct participation") applies, and
(b) sections 158 to 163 of that Act ("indirect participation" in management, control or capital of a person) apply as if in those sections—
(i) references to section 148(2) of that Act included references to subsection (4) of this section,

(ii) references to paragraph (a) or (b) of section 148(2) of that Act included (respectively) references to paragraph (a) or (b) of subsection (4) of this section,

(iii) references to section 148(3) of that Act included references to subsection (5) of this section, and

(iv) references to paragraph (a) or (b) of section 148(3) of that Act included (respectively) references to paragraph (a) or (b) of subsection (5) of this section.

6 Effective tax mismatch outcome

(1) This section makes provision for the purposes of sections 2(3) and 3(1).

(2) In this section "the first party" and "the second party" have the meaning given by section 5(2) (with references in that provision to section 5 read as references to this section).

(3) The material provision results in an effective tax mismatch outcome as between the first party and the second party if—

(a) it results in one or both of—

(i) an increase in the expenses of the first party for which a deduction has been taken into account by the first party in computing its liability for a relevant tax, or

(ii) a reduction in the income of the first party which would otherwise have been taken into account in computing its liability for a relevant tax,

(b) the amount of the resulting reduction in the first party's liability to the relevant tax exceeds the amount of any resulting increase in the second party's total liability to non-UK tax, corporation tax and income tax, and

(c) the second party does not meet the 80% payment test.

(4) In this Part, references to "the tax reduction" are to the amount of the excess mentioned in subsection (3)(b).

(5) It does not matter whether the tax reduction results from the application of different rates of tax, the operation of a relief, the exclusion of any amount from a charge to tax, or otherwise.

(6) For the purposes of subsection (3)(b), the resulting reduction in the first party's liability to a relevant tax is—

$$A \times TR$$

where—

"A" is the amount of the increase in expenses or reduction in income mentioned in subsection (3)(a), and

"TR" is the rate at which, assuming the first party has profits equal to A chargeable to the relevant tax for the accounting period, those profits would be chargeable to that tax.

(7) For the purposes of subsection (3)(b), the resulting increase in the second party's total liability to non-UK tax, corporation tax and income tax is the lower of—

(a) the total amount of non-UK tax, corporation tax and income tax which falls to be paid by the second party in consequence of the material provision (and is not refunded), and

(b) the total amount of non-UK tax, corporation tax and income tax that, on the assumption in subsection (8)(b), would be payable by the second party in consequence of the material provision.

(8) For the purposes of subsection (7)—

(a) any withholding tax which falls to be paid on payments made to the second party is (unless it is refunded) to be treated as tax which falls to be paid by the second party (and not the person making the payment);

(b) the assumption mentioned in paragraph (b) of that subsection is that all reasonable steps have been taken—

(i) under the law of any part of the United Kingdom or any country or territory outside the United Kingdom, and

(ii) under double taxation arrangements made in relation to any country or territory,

to minimise the amount of tax for which the second party is liable in the country or territory in question;

(c) the effect of any loss relief obtained by the second party is to be ignored.

(9) The steps mentioned in subsection (8)(b) include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and

(b) making elections for tax purposes.

(10) "The 80% payment test" is met by the second party if—

(a) there is a resulting increase in the second party's liability to tax (including any non-UK tax) as mentioned in subsection (3)(b),

(b) the whole or part of that increase is paid by the second party, and

(c) the amount paid by the second party (and not refunded) is at least 80% of the amount of the resulting reduction in the first party's liability to a relevant tax as mentioned in subsection (3)(b).

(11) For the purposes of subsection (10) an amount of tax is treated as paid if, and to the extent that, the liability for that tax has been reduced by means of loss relief obtained by the second party.

(12) For the purposes of subsections (7) and (10), an amount of tax paid by the second party is refunded if and to the extent that—

(a) any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and

(b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of tax paid by the second party,

but an amount refunded is to be ignored if and to the extent that it results from loss relief obtained by the second party.

(13) In this section—

"loss relief" means—

(a) any means by which a loss might be used for corporation tax purposes to reduce the amount in respect of which the company is liable to tax, and

(b) in the case of a non-UK resident company, any corresponding means by which a loss might be used for the purposes of a non-UK tax corresponding to corporation tax to reduce the amount in respect of which the company is liable to tax;

"relevant tax" means corporation tax, income tax or any non-UK tax.

7 Insufficient economic substance condition

(1) This section makes provision for the purposes of sections 2(3) and 3(1).

(2) In this section “the first party” and “the second party” have the meaning given by section 5(2) (with references in that provision to section 5 read as references to this section).

(3) The insufficient economic substance condition is that one or more of subsections (4) to (6) apply.

(4) This subsection applies where—

(a) the effective tax mismatch outcome is referable to a single transaction,

(b) for the first party and the second party (taken together), the financial benefit of the tax reduction is greater than any other financial benefit referable to the transaction, and

(c) it is reasonable to assume that the transaction was designed to secure the tax reduction.

(5) This subsection applies where—

(a) the effective tax mismatch outcome is referable to one or more of the transactions in a series of transactions,

(b) for the first party and the second party (taken together), the financial benefit of the tax reduction is greater than any other financial benefit referable to the transaction or transactions, and

(c) it is reasonable to assume that the transaction was, or the transactions were, designed to secure the tax reduction.

(6) This subsection applies where—

(a) a person is a party to the transaction, or to any one or more of the transactions in the series of transactions, to which section 2(3)(a) or section 3(1)(b) refers,

(b) the contribution of economic value to the transaction or series by that person, in terms of the functions or activities that the staff of that person perform, is less than the value of the financial benefit of the tax reduction, and

(c) it is reasonable to assume that the person’s involvement in the transaction or transactions was designed to secure the tax reduction.

(7) For the purposes of subsection (6)—

(a) a person’s staff include any director or other officer of the person, and

(b) the functions or activities of a person’s staff include those performed in engaging and directing externally provided workers in relation to that person, unless that person, the staff provider and (if different) the staff controller are all connected.

(8) For the purposes of this section a transaction is, or transactions are, designed to secure the tax reduction whether or not it or they are also designed to secure any commercial or other objective.

(9) In this section—

“connected” is to be construed in accordance with section 1122 of CTA 2010;

“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;

"externally provided worker" has the meaning given by section 1128 of CTA 2009, but as if in that section for "company" (in each place) there were substituted "person";

"staff controller" is to be construed in accordance with section 1128(7) of that Act;

"staff provider" is to be construed in accordance with section 1127(1) of that Act;

"tax" includes non-UK tax.

Taxable diverted profits

8 Taxable diverted profits in a section 2 case

(1) Where section 2 applies, this section applies to determine the taxable diverted profits that arise to the foreign company in an accounting period.

But see section 9 for how the taxable diverted profits are to be estimated for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 16.

(2) In this section—

(a) references to "the foreign company" and "the avoided PE" are to be construed in accordance with section 2, and

(b) references to "the material provision" are to be construed in accordance with subsection (3)(a) of that section.

(3) The taxable diverted profits arising in an accounting period to the foreign company are an amount equal to the profits which it is just and reasonable to assume would have been the chargeable profits of the foreign company for that period, attributable (in accordance with sections 20 to 32 of CTA 2009) to the avoided PE, had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the relevant trade.

(4) Subsection (3) is subject to subsections (5) to (8).

(5) Subsection (6) applies if—

(a) the mismatch condition in section 2(3) is met, and

(b) it is reasonable to assume that the material provision would not have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 2(3)(c).

(6) Where this subsection applies, when determining for the purposes of subsection (3) what would have been the chargeable profits of the foreign company, it is to be assumed that instead of the material provision such alternative provision was made or imposed as—

(a) it is just and reasonable to assume would have been made or imposed had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the relevant trade, and

(b) would not itself have resulted in an effective tax mismatch outcome.

This is subject to subsections (7) and (8).

(7) Subsection (6) does not apply if—

(a) the material provision results in expenses of the foreign company for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing what would have been the chargeable profits of the foreign company as mentioned in subsection (3) for the accounting period, and

(b) it is reasonable to assume that the alternative provision would have resulted in allowable expenses of the foreign company of the same type and for the same purposes as so much of the expenses mentioned in paragraph (a) as results in the effective mismatch outcome mentioned in section 2(3)(c).

But where paragraphs (a) and (b) apply subsection (8) also applies.

(8) If the alternative provision would have resulted in income of a company, and the company would have been within the charge to corporation tax in relation to the income, the amount of the foreign company's taxable diverted profits for the accounting period under subsection (3) includes an amount equal to the amount of that income.

(9) For the purposes of this section, making or imposing no provision is to be treated as an alternative provision to the material provision.

(10) For the purposes of subsection (6)(b), section 6 applies as if—

(a) references in that section to the first party and the second party were to any two persons, and

(b) any reference in that section to the material provision were to the alternative provision.

(11) In this section "the relevant trade" means the trade carried on by the foreign company in connection with which the avoided PE carries on the activity mentioned in section 2(1)(b).

9 Estimating profits for preliminary and charging notices: section 2 case

(1) Where taxable diverted profits of the foreign company for an accounting period fall to be determined under section 8, for the purposes of issuing a preliminary notice or a charging notice—

(a) the chargeable profits of the foreign company mentioned in subsection (3) of that section are to be determined in accordance with this section, and

(b) the taxable diverted profits specified in the notice are to be calculated accordingly.

(2) The taxable diverted profits are such amount as the designated HMRC officer issuing the notice determines, on the basis of the best estimate that can reasonably be made at that time, to be the amount calculated in accordance with section 8.

But this is subject to subsections (4) and (5).

(3) For the purposes of subsection (4), "the inflated expenses condition" is met if—

(a) the mismatch condition in section 2(3) is met,

(b) the material provision results in expenses of the foreign company for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing what would have been the chargeable profits of the foreign company as mentioned in section 8(3) for the accounting period,

(c) the expenses result, or a part of the expenses results, in the effective tax mismatch outcome mentioned in section 2(3)(c), and

(d) in consequence of paragraphs (a) to (c), the designated HMRC officer issuing the notice considers that the relevant expenses might be greater than they would have been if they had resulted from provision made or imposed as between independent persons dealing at arm's length.

(4) Subsection (5) applies where the designated HMRC officer issuing the notice considers that the inflated expenses condition is met and that it is reasonable to assume—

(a) that—

(i) the material provision would not have been made or imposed in the absence of that effective tax mismatch outcome, but

(ii) the notional alternative provision would have resulted in allowable expenses of the foreign company of the same type and for the same purposes as the relevant expenses, or

(b) that the material provision would still have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 2(3)(c).

(5) Where this subsection applies, the best estimate made by the officer in accordance with subsection (2) is to be made on the assumption that—

(a) so much of the deduction mentioned in subsection (3)(b) as relates to the relevant expenses is reduced by 30%, and

(b) in relation to the relevant expenses, Part 4 of TIOPA 2010 (transfer pricing) is ignored.

(6) The Treasury may by regulations, made by statutory instrument, substitute a different percentage for the percentage for the time being specified in subsection (5)(a).

(7) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.

(8) In this section—

"allowable expenses" means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes;

"the foreign company" and "the avoided PE" are to be construed in accordance with section 2;

"the material provision" is to be construed in accordance with section 2(3)(a);

"the notional alternative provision" means the alternative provision which meets the requirements of paragraphs (a) and (b) of section 8(6);

"the relevant expenses" means so much of the expenses mentioned in subsection (3)(b) as result in the effective tax mismatch outcome as mentioned in section 2(3)(c).

10 Taxable diverted profits in a section 3 case

(1) Where section 3 applies, this section applies to determine the taxable diverted profits that arise to C in an accounting period.

But see section 11 for how the taxable diverted profits are to be estimated for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 9.

(2) In this section references to "C" are to be construed in accordance with section 3.

(3) The taxable diverted profits arising to C in an accounting period are an amount equal to the additional profits of C chargeable to corporation tax in that period (if any) which—

(a) are not included in an assessment to corporation tax included, before the end of the review period (within the meaning of section 20), in C's company tax return for that period, and

(b) are chargeable to corporation tax for that period by reason of the application of Part 4 of TIOPA 2010 (transfer pricing) to the results of the material provision.

(4) Subsection (3) is subject to subsections (5) to (7).

(5) If it is reasonable to assume that the material provision would not have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 3(1)(d), taxable diverted profits arising to C in an accounting period are to be determined under subsection (3) on the assumption that instead of the material provision such alternative provision had been made or imposed as—

(a) it is just and reasonable to assume would have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 3(1)(d), and

(b) does not itself result in an effective tax mismatch outcome.

This is subject to subsections (6) and (7).

(6) Subsection (5) does not apply if—

(a) the material provision results in expenses of C for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing what would have been the additional profits of C chargeable to corporation tax for the accounting period, and

(b) it is reasonable to assume that the alternative provision would have resulted in allowable expenses of C of the same type and for the same purposes as so much of the expenses mentioned in paragraph (a) as results in the effective mismatch outcome mentioned in section 3(1)(d).

But where paragraphs (a) and (b) apply subsection (7) also applies.

(7) If the alternative provision would have resulted in income of a company, and the company would have been within the charge to corporation tax in relation to the income, the amount of C's taxable diverted profits for the accounting period under subsection (3) includes an amount equal to the amount of that income.

(8) For the purposes of this section making or imposing no provision is to be treated as an alternative provision to the material provision.

(9) In a case to which section 3 applies by virtue of section 4—

(a) any reference in this section to C is to be read as a reference to the foreign company (within the meaning of section 4),

(b) in subsections (3) and (6) a reference to additional profits chargeable to corporation tax are to additional profits chargeable to corporation tax which are attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE (within the meaning of section 4), and

(c) in subsection (5)(a) and (6)(b) a reference to section 3(1)(d) is to that provision as it operates in relation to UKPE by reason of section 4.

(10) For the purposes of subsection (5)(b), section 6 applies as if—

(a) references to the first party and the second party were to any two persons, and

(b) any reference in that section to the material provision were to the alternative provision.

11 Estimating profits for preliminary and charging notices: section 3 case

(1) Where taxable diverted profits of C for an accounting period fall to be determined under section 10, for the purposes of issuing a preliminary notice or a charging notice the taxable diverted profits specified in the notice are to be determined in accordance with this section.

(2) The taxable diverted profits are such amount as the designated HMRC officer issuing the notice determines, on the basis of the best estimate that can reasonably be made at that time, to be the amount calculated in accordance with section 10.

But this is subject to subsections (4) to (6).

(3) For the purposes of this section, "the inflated expenses condition" is met if—

(a) the material provision results in expenses of C for which a deduction has been taken into account by C in computing its liability for corporation tax for the accounting period,

(b) the expenses result, or a part of the expenses results, in the effective tax mismatch outcome mentioned in section 3(1)(d), and

(c) in consequence of paragraphs (a) and (b), the designated HMRC officer issuing the notice considers that the relevant expenses might be greater than they would have been if they had resulted from provision made or imposed as between independent persons dealing at arm's length.

(4) Subsection (5) applies where the designated HMRC officer issuing the notice considers that the inflated expenses condition is met and that it is reasonable to assume—

(a) that—

(i) the material provision would not have been made or imposed in the absence of that effective tax mismatch outcome, but

(ii) the notional alternative provision would have resulted in allowable expenses of C for the same purpose as the relevant expenses, or

(b) that the material provision would still have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 3(1)(d).

(5) Where this subsection applies, the best estimate made by the officer in accordance with subsection (2) is to be made on the assumption that—

(a) so much of the deduction mentioned in subsection (3)(a) as relates to the relevant expenses is reduced by 30%, and

(b) in relation to the relevant expenses, Part 4 of TIOPA 2010 (transfer pricing) is ignored.

(6) But—

(a) if the deduction for the expenses taken into account by C in computing its liability for corporation tax takes account of an adjustment required by Part 4 of TIOPA 2010 (transfer pricing) which is reflected in C's company tax return prior to the issue of the charging notice, and

(b) as a result that deduction is less than it would otherwise have been,

the reduction required by subsection (5)(a) is reduced (but not below nil) to take account of that adjustment.

(7) Section 10(3)(a) has effect for the purposes of this section as if in that provision the words "", before the end of the review period (within the meaning of section 20),"" were omitted.

(8) In a case to which section 3 applies by virtue of section 4—

(a) references in this section to C are to be read as references to the foreign company (within the meaning of section 4),

(b) subsection (3)(a) has effect as if it refers to the material provision resulting in expenses of the foreign company for which a deduction has been taken into account by the foreign company in calculating, for corporation tax purposes, its chargeable profits attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE, and

(c) a reference in subsection (3)(b) and (4)(a) to the effective tax mismatch outcome mentioned in section 3(1)(d) is to that effective tax mismatch outcome as it operates by reason of section 4(3).

(9) The Treasury may by regulations, made by statutory instrument, substitute a different percentage for the percentage for the time being specified in subsection (5)(a).

(10) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.

(11) In this section—

"allowable expenses" means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes;

"C" is to be construed in accordance with section 3;

"the notional alternative provision" means the alternative provision which meets the requirements of paragraphs (a) and (b) of section 10(5);

"the relevant expenses" means so much of the expenses mentioned in subsection (3)(a) as result in the effective tax mismatch outcome as mentioned in subsection (3)(b);

"UKPE" is to be construed in accordance with section 4.

Sales threshold exemption

12 Exemption for companies with limited UK sales

(1) No charge to diverted profits tax may be imposed on a company for an accounting period by reason of section 2 applying to the company if the UK sales threshold condition is met for that accounting period.

(2) "The UK sales threshold condition" is that the total sales revenues from all supplies of goods and services made by the company, or a company connected with that company, to customers in the United Kingdom in the accounting period does not exceed £10,000,000.

(3) But if the accounting period is a period of less than 12 months, the amount specified in subsection (2) is to be reduced proportionally.

(4) Section 1122 of CTA 2010 ("connected" persons) applies for the purposes of this section.

(5) The Treasury may by regulations, made by statutory instrument, substitute a different figure for the figure for the time being specified in subsection (2).

(6) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.

Duty to notify if within scope of tax

13 Duty to notify if potentially within scope of tax

(1) Where a company meets the requirements of subsection (2) or (3), it must notify an officer of Revenue and Customs of any accounting period of the company which is a period for which it is reasonable to assume taxable diverted profits might arise to the company.

(2) A company meets the requirements of this subsection if—
  (a) section 2 would apply to the company were the following paragraph substituted for subsection (1)(c) and (d) of that section—
    "(c) the foreign company is not carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom by reason of the avoided PE's activity,", and
  (b) the company does not meet the UK sales threshold condition (see section 12) for the accounting period.

(3) A company meets the requirements of this subsection if—
  (a) section 3 would apply to the company (including where it would apply by virtue of section 4) if sections 6 and 7 had effect subject to the modifications in subsection (4), and
  (b) the financial benefit of the tax reduction is significant relative to any other financial benefit of the material provision.

(4) The modifications are that—
  (a) section 6(3) has effect as if—
    (i) at the end of paragraph (a) there were inserted "and", and
    (ii) paragraph (c) (and the "and" before it) were omitted, and
  (b) section 7 has effect as if, in each of subsections (4), (5) and (6)—
    (i) at the end of paragraph (a) there were inserted "and", and
    (ii) paragraph (c) (and the "and" before it) were omitted.

(5) When determining under subsection (1) whether it is reasonable to assume taxable diverted profits might arise to the company for an accounting period, sections 2 and 3 have effect as modified by subsections (2)(a) and (3)(a).

(6) A notification under subsection (1) must be made—
  (a) in writing, and
  (b) within 3 months from the end of the accounting period to which it relates.

Process for imposing charge

14 Preliminary notice

(1) If a designated HMRC officer has reason to believe that section 2 or 3 applies (or both apply) to a company and, as a result, taxable diverted profits arise to the company in an accounting period, the officer must give the company a notice (a "preliminary notice") in respect of that period.

(2) Where a preliminary notice is issued to a company, the officer must give a copy of the notice—

(a) if the notice is issued on the basis that section 2 applies, to the avoided PE (within the meaning of that section), and

(b) if the notice is issued on the basis that section 3 applies by virtue of section 4, to UKPE (within the meaning of section 4).

(3) A preliminary notice must—

(a) set out the basis on which the officer has reason to believe that section 2 or 3 applies (or both apply) in relation to the company;

(b) state the accounting period of the company to which the notice applies;

(c) explain the basis on which the proposed charge is calculated, including—

(i) how the taxable diverted profits to which the proposed charge would relate have been determined, and

(ii) how the amount of interest comprised in that charge in accordance with section 1(4)(b) would be calculated,

(d) state who would be liable to pay the diverted profits tax;

(e) explain when the tax would be payable;

(f) explain how interest is applied in accordance with section 101 of FA 2009 (late payment interest on sums due to HMRC) if the diverted profits tax is not paid, the period for which interest is charged and the rate at which it is charged.

(4) Where the designated HMRC officer has insufficient information to determine or identify any of the matters set out in subsection (3), it is sufficient if the preliminary notice sets out those matters determined to the best of the officer's information and belief.

(5) A preliminary notice may be given to a company in respect of an accounting period whether or not any notification has been given under section 13.

(6) Subject to subsections (7) and (8), a preliminary notice may not be issued more than 24 months after the end of the accounting period to which it relates.

(7) Subsection (8) applies where—

(a) notification has not been received by an officer of Revenue and Customs under section 13 in respect of an accounting period of a company, and

(b) it is reasonable for a designated HMRC officer to believe, in relation to that accounting period, that an amount of diverted profits tax that ought to have been charged under this Part has not been charged.

(8) A designated HMRC officer may issue to the company a preliminary notice in respect of that tax within the period of 4 years after the end of the accounting period with a view to making good to the Crown the loss of tax.

15 Representations

(1) This section applies where a designated HMRC officer gives a preliminary notice, in respect of an accounting period, to a company under section 14 (and that notice is not withdrawn).

(2) The company has 30 days beginning with the day the notice is received to send written representations to the officer in respect of the notice.

(3) The officer may consider representations made in accordance with subsection (2) only if they are made on the following grounds—
   (a) that there is an arithmetical error in the calculation of the amount of the diverted profits tax or the taxable diverted profits or an error in a figure on which an assumption in the notice is based;
   (b) that the small or medium-sized enterprise requirement is not met;
   (c) that in a case where the preliminary notice states that section 2 applies—
      (i) that section does not apply by virtue of section 2(2),
      (ii) if it also states that the mismatch condition (within the meaning of section 2(3)) is met, the condition is not met because the participation condition is not met, the 80% payment test is met or the material provision is an excluded loan relationship (within the meaning of section 2(6)), or
      (iii) the company meets the UK sales threshold condition (see section 12) for the accounting period;
   (d) that in a case where the preliminary notice states that section 3 applies—
      (i) the participation condition is not met,
      (ii) the 80% payment test is met, or
      (iii) the material provision is an excluded loan relationship (within the meaning of section 2(6)).

(4) But nothing in subsection (3) requires the officer to consider any representations if, and to the extent that, they relate to—
   (a) any provision of Part 4 of TIOPA 2010 (transfer pricing), or
   (b) the attribution of profits of a company to a permanent establishment in the United Kingdom through which the company carries on a trade (including any notional attribution made for the purposes of section 8).

(5) "The small or medium-sized enterprise requirement" is—
   (a) where the notice was issued on the basis that section 2 applies to the company, the requirement in subsection (1)(e) or (3)(e) of that section,
   (b) where the notice was issued on the basis that section 3 applies by virtue of section 4, the requirement in section 3(1)(f) as it operates by reason of section 4(3), and
   (c) in any other case where the notice was issued on the basis that section 3 applies, the requirement in section 3(1)(f).

(6) "The participation condition" means—
   (a) where the notice was issued on the basis that section 2 applies to the company, the condition in subsection (3)(b) of that section,
   (b) where the notice was issued on the basis that section 3 applies by virtue of section 4, the condition in section 3(1)(c) as it operates by reason of section 4(3), and

(c) in any other case where the notice was issued on the basis that section 3 applies, the condition in section 3(1)(c).

(7) "80% payment test" means—

(a) where the notice was issued on the basis that section 2 applies and the mismatch condition in subsection (3) of that section is met, the requirement in section 6(3)(c) as it operates by reason of section 2(3)(c),

(b) where the notice was issued on the basis that section 3 applies by virtue of section 4, the requirement in section 6(3)(c) as it operates by reason of section 4(3), and

(c) in any other case where the notice was issued on the basis that section 3 applies, the requirement in section 6(3)(c) as it operates by reason of section 3(1)(d).

(8) See section 20 for provision about the power of a designated HMRC officer to review a charging notice.

16 Charging notice

(1) This section applies where a designated HMRC officer has given a company a preliminary notice under section 14 in relation to an accounting period.

(2) Having considered any representations in accordance with section 15, the officer must determine whether to—

(a) issue a notice under this section (a "charging notice") to the company for that accounting period, or

(b) notify the company that no charging notice will be issued for that accounting period pursuant to that preliminary notice,

and must take that action before the end of the period of 30 days immediately following the period of 30 days mentioned in section 15(2).

(3) A notification under subsection (2)(b) does not prevent a charging notice being issued for the same accounting period pursuant to any other preliminary notice the person may be given in respect of that period.

(4) Where a charging notice is issued to a company, the officer must give a copy of the notice—

(a) if the notice is issued by reason of section 2 applying, to the avoided PE (within the meaning of that section), and

(b) if the notice is issued by reason of section 3 applying by virtue of section 4, to UKPE (within the meaning of section 4).

(5) A charging notice must—

(a) state the amount of the charge to diverted profits tax imposed by the notice;

(b) set out the basis on which the officer considers that section 2 or 3 applies;

(c) state the accounting period of the company to which the notice applies;

(d) set out an explanation of the basis on which the charge is calculated, including—

(i) how the taxable diverted profits to which the charge relates have been determined, and

(ii) how the amount of interest comprised in the charge under section 1(4)(b) has been calculated;

(e) state who is liable to pay the tax;
(f) state when the tax is due and payable;
(g) explain how interest is applied in accordance with section 101 of FA 2009 (late payment interest on sums due to HMRC) if the diverted profits tax is not paid, the period for which interest is charged and the rate at which it is charged.

Payment and recovery of tax

17 Payment of tax

(1) This section applies where a charging notice is issued to a company.

(2) Diverted profits tax charged by the notice must be paid within 30 days after the day the notice is issued.

(3) The company is liable to pay the tax.

(4) The payment of the tax may not be postponed on any grounds, and so the diverted profits tax charged by the charging notice remains due and payable despite any review being conducted under section 20 or any appeal in respect of the notice.

(5) In Schedule 1—
(a) Part 1 contains provision treating a liability of a non-UK resident company to pay diverted profits tax as if it were also a liability of its UK representative;
(b) Part 2 contains provision enabling unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

18 Ignore diverted profits tax for purposes of income tax and corporation tax

(1) In calculating income, profits or losses for any tax purpose—
(a) no deduction, or other relief, is allowed in respect of diverted profits tax, and
(b) no account is to be taken of any amount which is paid (directly or indirectly) by a person for the purposes of meeting or reimbursing the cost of diverted profits tax.

(2) An amount paid as mentioned in subsection (1)(b) is not to be regarded for the purposes of the Corporation Tax Acts as a distribution (within the meaning of CTA 2010).

19 Credit for UK or foreign tax on same profits

(1) This section applies where a company has paid—
(a) corporation tax, or
(b) a tax under the law of a territory outside the United Kingdom which corresponds to corporation tax,

which is calculated by reference to profits of the company.

(2) Such credit as is just and reasonable is allowed in respect of that tax against any liability which the company has to diverted profits tax in respect of those same profits.

(3) For the purposes of subsection (1), any withholding tax paid on payments made to a person is (unless it is refunded) to be treated as tax paid by the person (and not the person making the payment).

(4) In subsection (3) the reference to tax being refunded is to be read in accordance with section 6(12) (reading references in that provision to the second party as references to the company).

Review and appeals

20 HMRC review of charging notice

(1) Where a charging notice is issued to a company for an accounting period, a designated HMRC officer, within the review period—
  (a) must carry out a review of the amount of diverted profits tax charged on the company for the accounting period, and
  (b) may carry out more than one such review.

(2) Subject to subsection (13), "the review period" means the period of 12 months beginning immediately after the period of 30 days mentioned in section 17(2).

(3) Subsection (4) applies if—
  (a) the company has paid (in full) the amount of diverted profits tax charged by the charging notice, and
  (b) the officer is satisfied that the total amount of diverted profits tax charged on the company for that period is excessive having regard to—
    (i) section 8 or 10 (calculation of taxable diverted profits), and
    (ii) section 19 (credit for UK or foreign tax on same profits).

(4) The officer may, during the review period, issue to the company an amending notice which amends the charging notice so as to—
  (a) reduce the amount of taxable diverted profits to which the notice relates, and
  (b) accordingly, reduce the charge to diverted profits tax imposed on the company in respect of the accounting period.

(5) More than one amending notice may be issued to the company in respect of the charging notice.

(6) Where an amending notice is issued, any tax overpaid must be repaid.

(7) Subsection (8) applies if a designated HMRC officer is satisfied that the total amount of diverted profits tax charged on the company for the accounting period is insufficient having regard to—
  (a) section 8 or 10 (calculation of taxable diverted profits), and
  (b) section 19 (credit for UK or foreign tax on same profits).

(8) The officer may, during the review period, issue a notice (a "supplementary charging notice") to the company imposing an additional charge to diverted profits tax on the company in respect of the accounting period on taxable diverted profits which—
  (a) arise to the company for that period, and
  (b) are not already charged to tax.

(9) Only one supplementary charging notice may be issued to the company in respect of a charging notice.

(10) No supplementary charging notice may be issued during the last 30 days of the review period.

(11) Subsections (3) to (6) (amending notices) apply in relation to a supplementary charging notice as they apply to the charging notice.

(12) Section 16(5) (content of charging notice) and section 17 (payment of tax) apply in relation to a supplementary charging notice as they apply in relation to a charging notice.

(13) If either of the following events occurs before the end of the period of 12 months referred to in subsection (2), the review period ends at the time of that event—

(a) following the issuing of a supplementary charging notice, the company notifies HMRC that it is terminating the review period, or

(b) a designated HMRC officer and the company agree (in writing) the review period is to terminate.

(14) When determining on a review whether the total amount of taxable diverted profits charged on the company for an accounting period is excessive or insufficient—

(a) the designated HMRC officer must not take any account of section 9 or (as the case may be) section 11 (which apply only for the purposes of the officer estimating the taxable diverted profits for the purposes of issuing a preliminary notice or charging notice), and

(b) nothing in section 15 applies to restrict the representations which the officer may consider.

(15) Where a supplementary charging notice or an amending notice is issued to a company, the officer must give a copy of the notice—

(a) if the charging notice was issued by reason of section 2 applying, to the avoided PE (within the meaning of that section), and

(b) if the charging notice was issued by reason of section 3 applying by virtue of section 4, to UKPE (within the meaning of section 4).

21 Appeal against charging notice or supplementary charging notice

(1) A company to which a charging notice or a supplementary charging notice is issued may appeal against the notice.

(2) Notice of an appeal must be given to HMRC, in writing, within 30 days after the end of the review period (see section 20(2) and (13)).

(3) The notice of appeal must specify the grounds of appeal.

(4) For the purposes of an appeal, sections 9 and 11 (which apply only for the purposes of the officer estimating the taxable diverted profits for the purposes of issuing a preliminary notice or charging notice) are to be ignored when determining whether the taxable diverted profits in respect of which a charge is imposed have been correctly calculated.

(5) On an appeal under this section the Tribunal may—

(a) confirm the charging notice or supplementary charging notice to which the appeal relates,

(b) amend that charging notice or supplementary charging notice, or
(c) cancel that charging notice or supplementary charging notice.

(6) For the purposes of Part 5 of TMA 1970 (appeals etc), an appeal under this section is to be treated as if it were an appeal under the Taxes Acts (within the meaning of that Act), and for that purpose references in that Part to an assessment includes a charging notice or supplementary charging notice under this Part.

(7) Subsection (6) is subject to section 17(4) (no postponement of payment of tax pending appeal etc).

Administration of tax

22 Responsibility for collection and management

The Commissioners for Her Majesty's Revenue and Customs are responsible for the collection and management of diverted profits tax.

23 Penalties etc

(1) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended as follows.

(2) In the Table at the end of paragraph 1, after item 6ZA insert—

"6ZB	Diverted profits tax	Amount of diverted profits tax payable under Part 1 of FA 2015	The date when, in accordance with section 17(2) the amount must be paid"

(3) In paragraph 3 (amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more), after sub-paragraph (1)(a) insert—
"(aa) a payment of tax falling within item 6ZB in the Table,".

(4) Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.

(5) In the Table in paragraph 1, after the entry for corporation tax insert—

"Diverted profits tax	Section 13 of FA 2015 (duty to notify if within scope of diverted profits tax)."

(6) In paragraph 7 (meaning of "potential lost revenue"), after sub-paragraph (4) insert—

"(4A) In the case of a relevant obligation relating to diverted profits tax, the potential lost revenue is the amount of diverted profits tax for which P would be liable at the end of the period of 6 months beginning immediately after the accounting period assuming—

(a) a charge to diverted profits tax had been imposed on P on the taxable diverted profits arising to P for the accounting period, and

(b) that tax was required to be paid before the end of that period of 6 months."

24 Information and inspection powers etc

(1) In Schedule 36 to FA 2008 (information and inspection powers), in paragraph 63(1) (taxes to which powers apply), after paragraph (c) insert—

"(ca) diverted profits tax,".

(2) In Schedule 23 to FA 2011 (data-gathering powers), in paragraph 45(1) (taxes to which powers apply), after paragraph (c) insert—

"(ca) diverted profits tax,".

Interpretation

25 "Transaction" and "series of transactions"

(1) In this Part "transaction" includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).

(2) References in this Part to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.

(3) A series of transactions is not prevented by reason only of one or more of the matters mentioned in subsection (4) from being regarded for the purposes of this Part as a series of transactions by means of which provision has been made or imposed as between any two persons.

(4) Those matters are—

(a) that there is no transaction in the series to which both those persons are parties,

(b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons, and

(c) that there is one or more transactions in the series to which neither of those persons is a party.

(5) In this section "arrangement" means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

26 Accounting periods

(1) In this Part references to an accounting period of a company are to an accounting period of the company for the purposes of corporation tax.

(2) For the purposes of this Part, a non-UK resident company in relation to which paragraphs (b) and (c) of section 2(1) are met, but which is not within the charge to corporation tax, is assumed to have such accounting periods for the purposes of corporation tax as it would have had if it had carried on a trade in the United Kingdom through a permanent establishment in the United

Kingdom by reason of the activity of the avoided PE mentioned in section 2(1)(c).

For this purpose "the avoided PE" has the meaning given in that section.

(3) Where the designated HMRC officer has insufficient information to identify, in accordance with subsection (2), the accounting periods of a non-UK resident company in relation to which paragraphs (b) and (c) of section 2(1) are met, for the purposes of this Part the officer is to determine those accounting periods to the best of the officer's information and belief.

27 Other defined terms in Part 1

(1) In this Part—

"company" has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010);

"designated HMRC officer" means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty's Revenue and Customs for the purposes of diverted profits tax;

"non-UK resident" has the same meaning as in the Corporation Tax Acts (see section 1119 of CTA 2010);

"non-UK tax" has the meaning given by section 187 of CTA 2010;

"permanent establishment", in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010 (and accordingly section 1141(1) of that Act has effect, for the purposes of this Part, as if the reference to the Corporation Tax Acts were a reference to this Part);

"small or medium-sized enterprise" means a small enterprise, or a medium-sized enterprise, within the meaning of section 172 of TIOPA 2010;

"the tax reduction" has the meaning given by section 6(4);

"UK resident" has the same meaning as in the Corporation Tax Acts (see section 1119 of CTA 2010).

(2) For the purposes of this Part a tax may correspond to corporation tax even though—

(a) it is payable under the law of a province, state or other part of a country, or

(b) it is levied by or on behalf of a municipality or other local body.

Final provisions

28 Application of other enactments to diverted profits tax

(1) In section 206(3) of FA 2013 (taxes to which the general anti-abuse rule applies), after paragraph (d) insert—

"(da) diverted profits tax,".

(2) In section 1139 of CTA 2010 (definition of "tax advantage" for the purposes of provisions of the Corporation Tax Acts which apply this section), in subsection (2), omit the "or" at the end of paragraph (da) and after paragraph (e) insert ", or

(f) the avoidance or reduction of a charge to diverted profits tax."

(3) In section 178 of FA 1989 (setting rates of interest), in subsection (2), omit the "and" before paragraph (u) and after that paragraph insert ", and

(v) section 1 of FA 2015."

(4) In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax, purchase tax or customs or excise duties), in subsection (1), after "the bank levy," insert "diverted profits tax,".

29 Commencement and transitional provision

(1) This Part has effect in relation to accounting periods beginning on or after 1 April 2015.

(2) For the purposes of this Part, if an accounting period of a company begins before and ends on or after 1 April 2015 ("the straddling period")—

(a) so much of that accounting period as falls before 1 April 2015 and so much of it as falls on or after that date are treated as separate accounting periods, and

(b) where it is necessary to apportion taxable diverted profits, or chargeable profits for corporation tax purposes, for the straddling period to the different parts of that period, that apportionment is to be made on a just and reasonable basis.

SCHEDULE 1

Section 17

RECOVERY OF UNPAID DIVERTED PROFITS TAX DUE FROM NON-UK RESIDENT COMPANY

PART 1

IMPOSING LIABILITY ON UK REPRESENTATIVE OF NON-UK RESIDENT COMPANY

1 (1) Chapter 6 of Part 22 of CTA 2010 (collection etc of tax from UK representatives of non-UK resident companies) has effect as if the enactments referred to in section 969(1) of that Act included enactments relating to diverted profits tax so far as they make provision for or in connection with the charging, collection and recovery of diverted profits tax or of interest on that tax.

(2) In its application in accordance with sub-paragraph (1), that Chapter has effect subject to the following modifications.

(3) In a case where section 2 applies in relation to company, that Chapter applies in relation to the avoided PE (within the meaning of that section) in relation to that company as it would apply to a permanent establishment in the United Kingdom through which the company carries on a trade.

(4) In section 969(3) of that Act references to "chargeable profits of the company attributable to that establishment" are to be read as references to "taxable diverted profits arising to the company".

(5) In section 971 of that Act references to the giving or service of a notice includes a reference to the issuing of a notice.

PART 2

RECOVERY OF DIVERTED PROFITS TAX FROM RELATED COMPANIES

Cases in which this Part applies

2 (1) This Part of this Schedule applies if—
(a) an amount of diverted profits tax has been charged on a company for an accounting period,
(b) the whole or any part of that amount is unpaid at the end of the due and payable date, and
(c) the company is non-UK resident.

(2) In this Part of this Schedule "the taxpayer company" means the company mentioned in sub-paragraph (1).

Meaning of "the relevant period"

3 In this Part of this Schedule "the relevant period", in relation to an amount of unpaid diverted profits tax for an accounting period of the taxpayer company, means the period—

(a) beginning 12 months before the start of the accounting period, and
(b) ending when the unpaid tax became payable.

Meaning of "related company"

4 (1) A company is a "related company", for the purposes of this Part of this Schedule, if, at any time in the relevant period, it was a member—
(a) of the same group as the taxpayer company,
(b) of a consortium which at that time owned the taxpayer company, or
(c) of the same group as a company which at that time was a member of a consortium owning the taxpayer company.

(2) For the purposes of sub-paragraph (1)(a) two companies are members of the same group if—
(a) one is the 51% subsidiary of the other, or
(b) both are 51% subsidiaries of a third company.

(3) For the purposes of sub-paragraph (1)(c), two companies are members of the same group if they are members of the same group of companies within the meaning of Part 5 of CTA 2010 (group relief).

(4) For the purposes of this Part of this Schedule—
(a) a company is a member of a consortium if it is a member of a consortium within the meaning of Part 5 of CTA 2010, and
(b) a company is owned by a consortium if it is owned by a consortium within the meaning of that Part.

(5) In this paragraph "51% subsidiary" has the meaning given by section 1154 of CTA 2010

Notice requiring payment of unpaid tax

5 (1) An officer of Revenue and Customs may serve a notice on a related company requiring it, within 30 days of the service of the notice, to pay—
(a) in a case which is not a consortium case, the amount of the unpaid tax, or
(b) in a consortium case, the proportion of that amount found under paragraph 7.

(2) The notice must state—
(a) the amount of diverted profits tax charged on the taxpayer company for the accounting period in question that remains unpaid,
(b) the date when it first became payable, and
(c) the amount which is to be paid by the company on which the notice is served.

(3) The notice has effect—
(a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and
(b) for the purposes of appeals,

as if it were a charging notice and that amount were an amount of diverted profits tax charged on that company.

(4) In this Part of this Schedule "consortium case" means a case where the related company is not within paragraph 4(1)(a).

Time limit for giving notice

6 A notice under this Part of this Schedule must be served before the end of the period of 3 years beginning with the date when the charging notice or supplementary charging notice imposing the charge to tax was issued.

Amount payable in consortium case

7 (1) In a consortium case, the amount that the related company may be required to pay by notice under this Part of this Schedule is the proportion of the unpaid tax corresponding—

(a) if the company is only within paragraph 4(1)(b), to the share which the company has had in the consortium for the relevant period,

(b) if the company is only within paragraph 4(1)(c), to the share which companies that have been members of the same group of companies as the company have had in the consortium for the relevant period, or

(c) if the company is within paragraph 4(1)(b) and (c), to whichever is the greater of the amounts given by paragraph (a) and (b).

(2) For the purposes of this paragraph, a member's share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the percentages specified in sub-paragraph (3).

(3) Those percentages are—

(a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by the member,

(b) the percentage to which the member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company, and

(c) the percentage to which the member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding up.

(4) If any of the percentages mentioned in sub-paragraph (3) has fluctuated in the relevant period, the average percentage over the period is to be taken.

(5) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of that Act.

Part 2: supplementary

8 (1) A company that has paid an amount in pursuance of a notice under this Part of this Schedule may recover that amount from the taxpayer company.

(2) A payment in pursuance of a notice under this Part of this Schedule is not allowed as a deduction in calculating income, profits or losses for any tax purposes.

EXPLANATORY NOTE

CLAUSE [1]: CHARGE TO TAX

SUMMARY

1. Clause [1] describes the new diverted profits tax which will be charged at a rate of 25%.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for a new tax to be charged on a company's taxable diverted profits.

3. Subsection 2 specifies that taxable diverted profits arise only if either of the two rules set out in the subsequent Clauses apply.

4. Subsection 3 specifies that a charge to the tax is imposed by a designated HMRC officer issuing a charging notice or supplementary notice to a company for an accounting period.

5. Subsection 4 provides for the tax charged to be at a rate of 25% of the amount of taxable diverted profits, and to include any interest in accordance with Subsection 5.

6. Subsection 5 describes how the interest charged under Subsection 1(4)(b) is to be calculated.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

8. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [2] AVOIDANCE OF A UK TAXABLE PRESENCE

SUMMARY

1. Clause [2] sets out the first of the two rules that can give rise to a charge on taxable diverted profits. In particular, it identifies arrangements through which companies exploit the permanent establishment (PE) rules.

DETAILS OF THE CLAUSE

2. Subsection 1 sets out the conditions for Clause [2] to apply in relation to a foreign (non-UK resident) company. It requires a person ("the avoided PE") to be carrying on activity in the UK as described at subsection 1(b). The condition at subsection 1(c) relates to the way in which the activity of the avoided PE or foreign company (or both) is designed. Further clarification on that is provided at subsection 5. Subsection 1(d) requires either or both of two further conditions to be met. Clause [2] does not apply if both the avoided PE and foreign company are small or medium-sized enterprises in accordance with the definition of the term at Clause [27].

3. Subsection 2 disapplies Clause [2] where the foreign company would not be treated as carrying on a trade in the UK through a PE in the UK as a result of section 1142 ("Agent of independent status") or 1144 ("Alternative finance arrangements") of CTA 2010, subject to subsection (2)(b). The further requirement of that subsection is that, where section 1142(1) CTA 2010 applies, the foreign company and avoided PE are not connected within the meaning of section 1122 CTA 2010. This further requirement does not apply if the avoided PE is regarded for the purposes of section 1142(1) CTA 2010 as an agent of independent status by virtue of section 1145, 1146 or 1151 CTA 2010 (in relation to brokers, investment managers and Lloyd's agents respectively).

4. Subsection 3 sets out the elements of the "the mismatch condition", the first of the two further conditions mentioned at subsection 1(d), in terms of provision ("the material provision") made or imposed as between the foreign company and another person ("A"). The use of the term "provision" here is consistent with the transfer pricing rules at Part 4 TIOPA 2010.

5. Subsection 4 sets out "the tax avoidance condition", the second of the two further conditions mentioned at subsection 1(d).

6. Subsection 5 provides clarification on a reference to activity of the avoided PE or the foreign company at subsection 1(c).

7. Subsection 6 defines "excluded loan relationship" for the purposes of subsection (3)(f) in the mismatch condition.

8. Subsection 7 provides a definition of "arrangements" for the purposes of subsections 3 and 4.

9. Subsection 8 cross-refers to Clauses [8] and [9] which deal with the calculation of taxable diverted profits where Clause [2] applies. Clause [9] deals specifically with the estimation of taxable diverted profits by the designated HMRC officer when issuing a preliminary or charging notice.

10. Subsection 9 cross-refers to Clause [12] which provides an exemption in relation to Clause [2] for companies with limited UK sales.

BACKGROUND NOTE

11. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

12. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [3]: INVOLVEMENT OF ENTITIES OR TRANSACTIONS LACKING ECONOMIC SUBSTANCE

SUMMARY

1. Clause [3] sets out the second of the two rules that can give rise to a charge on taxable diverted profits. As with Clause 2, there are exclusions in respect of small or medium-sized enterprises and excluded loan relationships.

DETAILS OF THE CLAUSE

2. Subsection 1 sets out the conditions that give rise to taxable diverted profits where a UK resident company enters into transactions that lack economic substance or involve entities that lack such substance.

3. Subsection 2 cross-refers to Clauses [10] and [11] which deal with the calculation of taxable diverted profits where Clause [3] applies. Clause [11] deals specifically with the estimation of taxable diverted profits by the designated HMRC officer when issuing a preliminary or charging notice.

4. Subsection 3 cross-refers to Clause [4] in relation to the application of the section to a non-UK resident company that has a permanent establishment in the UK.

BACKGROUND NOTE

5. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

6. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [4]: EXTENSION OF SECTION 3 TO FOREIGN COMPANIES WITH UKPE

SUMMARY

1. Clause [4] extends Clause [3] to non-UK resident companies with a UK permanent establishment (PE).

DETAILS OF THE CLAUSE

2. Subsection 1 applies Clause [3] to a company that is not UK resident, subject to two conditions.

3. Subsection 2 provides the first condition. Clause [3] applies where the foreign company is carrying on of a trade in the UK through a PE ("UKPE") so that Chapter 4 of Part 2 CTA 2009 applies to determine its chargeable profits for corporation tax.

4. Subsection 3 provides the second condition which is that Clause [3] would apply to UKPE if it were treated for the purposes of Clauses [3], [5], [6] and [7] as described at subsections 3(a) to (c) of Clause 4.

5. Subsection 4 explains the circumstances in which a transaction or series of transactions are "relevant" to UKPE for the purposes of subsections 3(c).

BACKGROUND NOTE

6. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

7. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [5]: THE PARTICIPATION CONDITION

SUMMARY

1. Clause [5] provides the test of connection between the "first party" and "the second party" for the purposes of Clauses [2] and [3].

DETAILS OF THE CLAUSE

2. Subsection 2 sets out the meaning of the "first party" and "the second party" for Clause [2] (the foreign company and "A", as at Clause [2]) and for Clause [3] ("C" and "P", as at Clause [3]).

3. Subsection 3 provides that the participation condition is met, with references to condition A, which applies so far as "the material condition" is provision relating to financing arrangements and condition B, which applies so far as the material condition is not provision relating to financing arrangements.

4. Subsection 4 sets out condition A, which considers the relationship between the parties at the time the material provision was made or imposed, or within the period of 6 months beginning with the day the material provision was made or imposed.

5. Subsection 5 sets out condition B which considers the relationship between the parties at the time the material provision was made or imposed.

6. Subsection 6 defines the term "financing arrangements".

7. Subsection 7 provides for section 157(2) of TIOPA 2010 to apply for the purposes of the Clause and for section 158 to 163 of that Act to apply in relation to subsections 4 and 5.

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

9. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [6]: EFFECTIVE TAX MISMATCH OUTCOME

SUMMARY

1. Clause [6] describes the effective tax mismatch outcome which is a condition at subsection 3 of Clause [2] and subsection 1 of Clause [3].

DETAILS OF THE CLAUSE

2. Subsection 2 cross-refers to subsection 2 of Clause [5] for the meaning of the "first party" and the "second party", with the necessary adaptation.

3. Subsection 3 sets out the conditions under which an effective tax rate mismatch occurs.

4. Subsection 4 defines references to "the tax reduction" as to the amount of the excess described in subsection 3(b).

5. Subsection 5 specifies that, for the purpose of the effective tax mismatch outcome, it does not matter whether the tax reduction results from the application of different tax rates, the operation of a relief, the exclusion of any amount from a charge to tax, or another reason.

6. Subsection 6 provides, for the purposes of 3(b), the calculation methodology for the resulting reduction in the first party's liability to a relevant tax (which is defined at subsection 13 as corporation tax, income tax or any non-UK tax).

7. Subsection 7 sets out, for the purposes of subsection 3(b), that the resulting increase in the second party's total liability to the taxes specified is the lower of (a) and (b). Subsection 7(a) is with reference to the total amount which falls to be paid and (b) to the total that would be payable on the basis of the assumption at subsection 8(b).

8. Subsection 8 provides that, for the purposes of subsection 7, withholding tax that falls to be paid in relation to payments made to the second party is treated as tax that falls to be paid by the second party and sets out the assumption mentioned at subsection 7. This assumption is in relation to the steps taken to minimise the amount of tax for which the second party is liable.

9. Subsection 9 identifies the steps that could be taken to minimise the tax liabilities as referred to in subsection 7(b), which are included in what is meant at subsection 8(b).

10. Subsection 10 describes the calculation of "the 80% payment test", for the purposes of subsection 3(c).

11. Subsection 11 sets out the way in which for the purposes of subsection 10, the reduction of a liability for tax by mean of loss relief is treated as payment of the tax.

12. Subsection 12 sets out, for the purposes of subsections 7 and 10, the conditions by which an amount of tax is considered to be refunded, excluding amounts resulting from loss relief obtained by the second party.

13. Subsection 13 defines "loss relief" and "relevant tax" for the purposes of the Clause.

BACKGROUND NOTE

14. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

15. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [7]: INSUFFICIENT ECONOMIC SUBSTANCE CONDITION

SUMMARY

1. Clause [7] provides for the insufficient economic substance condition, which is required to be met for the mismatch condition at subsection 3 of Clause [2] and for Clause [3] to apply.

DETAILS OF THE CLAUSE

2. Subsection 2 cross-refers to the definitions of "the first party" and "the second party" at subsection 2 of Clause [5], with the necessary adaptation.

3. Subsection 3 defines the "insufficient economic substance condition" in terms of where one of more of the conditions described in subsections 4 to 6 apply.

4. Subsection 4 may apply where the material provision that gives the effective tax mismatch outcome is made or imposed by means of a single transaction. It requires a comparison of the financial benefit of the tax reduction with any other financial benefit referable to the transaction, for the first and second parties taken together. The "tax reduction" has the meaning given by subsection 4 of Clause [6]. It must also be reasonable to assume that the transaction was designed to secure the tax reduction, subject to the clarification provided at subsection 8.

5. Subsection 5 may apply where the material provision is made or imposed by means of a series of transactions, one or more of which give the effective tax mismatch outcome. It requires a comparison of the financial benefit of the tax reduction with any other financial benefit referable to the transaction or transactions, for the first and second parties taken together. "The tax reduction" has the meaning given by subsection 4 of Clause [6]. It must also be reasonable to assume that the transaction was designed to secure the tax reduction, subject to the clarification provided at subsection 8.

6. Subsection 6 may apply by reference to the contribution of economic value by a person that is party to a transaction or to one or more transactions in a series, to which subsection 3(a) of Clause [2] or subsection 1(b) of Clause [3] refers. The person's contribution of economic value to the transaction or series is considered in terms of the functions or activities that its staff perform. This is compared to the value of the financial benefit of the tax reduction. It must also be reasonable to assume that the person's

involvement in the transaction or transactions was designed to secure the tax reduction, subject to the clarification provided at subsection 8.

7. Subsection 7 provides, for the purposes of subsection 6, some detail on the meaning of a person's staff and the functions or activities of that staff.

8. Subsection 8 provides for the purposes of the Clause that a transaction or transactions designed to secure a tax reduction may also be designed to secure a commercial or other objective.

9. Subsection 9 gives definitions or clarifications on some specific terms in Clause [7].

BACKGROUND NOTE

10. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

11. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [8]: TAXABLE DIVERTED PROFITS IN A SECTION 2 CASE

SUMMARY

1. Clause [8] provides for the calculation of the diverted profits tax for cases within Clause [2] ("Avoidance of a UK taxable presence").

DETAILS OF THE CLAUSE

2. Subsection 1 applies Clause [8] for the purpose of determining the taxable diverted profits in Clause [2] cases and provides a signpost to Clause [9], which sets out special rules for estimating the taxable diverted profits.

3. Subsection 2 cross-refers to Clause [2] for the meaning of "the foreign company", "the avoided PE" and "the material provision".

4. Subsection 3 sets out the basis on which the taxable diverted profits arising to the foreign company in an accounting period are calculated. They are an amount equal to the profits that it is just and reasonable to assume would have been calculated as the chargeable profits of the foreign company under CTA 2009, based on the assumption set out in the subsection.

5. Subsection 4 subjects subsection 3 to subsections 5 to 8.

6. Subsection 5 sets out the conditions under which subsection 6 applies. These are that the mismatch condition in subsection 3 of Clause [2] is met and it is reasonable to assume that, absent the effective tax mismatch outcome, the material provision would not have been made or imposed.

7. Subsection 6 sets out the further assumptions to be made where the condition in subsection 5 are met. In that case, when determining what the chargeable profits would have been for subsection 3 it is assumed that alternative provision was made or imposed. Subject to subsections 7 and 8, this is the provision that (a) it is just and reasonable to assume would have been made or imposed if the avoided PE had been a UK PE through which the foreign company carried on the relevant trade and (b) which would not have resulted in an effective tax mismatch outcome.

8. Subsection 7 disapplies subsection 6 (the assumption of the alternative provision) if both the conditions at subsection 7(a) and (b) in relation to expenses of the foreign

company are met. However, if they are met then the disapplication of subsection 6 is subject to subsection 8.

9. Subsection 8 provides for a situation where the alternative provision would have resulted in income of a company that would have been within the charge to corporation tax in relation to the income. This might occur, for example, if the material provision was a payment to a company lacking economic substance and the alternative provision on the basis of a just and reasonable assumption was that the payment was made to a UK resident company. In such a case, an amount equal to that income is added to the foreign company taxable diverted profits.

10. Subsection 9 clarifies that for the purposes of subsections 6 and 7 the meaning of the alternative provision can include no provision being made or imposed.

11. Subsection 10 describes how, for the purpose of subsection 6(b), Clause [6] applies in determining whether an alternative provision would have resulted in an effective tax mismatch.

12. Subsection 11 defines "the relevant trade" for the purposes of this Clause.

BACKGROUND NOTE

13. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

14. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [9]: ESTIMATING PROFITS FOR PRELIMINARY AND CHARGING NOTICES: SECTION 2 CASE

SUMMARY

1. Clause [9] provides the rules for estimating the taxable diverted profits in cases within Clause [2] for the purposes of issuing a preliminary or charging notice under Clauses 14 or 16.

DETAILS OF THE CLAUSE

2. Subsection 1 applies this section for the purposes of issuing a preliminary or charging notice where taxable diverted profits of a foreign company for an accounting period are to be determined under Clause [8].

3. Subsection 2 provides that, subject to subsections 4 and 5, the taxable diverted profits are the amount that the designated HMRC officer (as defined at Clause [27]) determines on the basis of the best estimate made in accordance with Clause [8].

4. Subsection 3 sets out the four criteria under which "the inflated expenses condition" is met. Subsection 3(d) provides that the designated HMRC officer may consider, in consequence of the other three criteria being met, that the relevant expenses might be greater than they would have been at arm's length. "The relevant expenses" are defined at subsection 11.

5. Subsection 4 provides for subsection 5 to apply if the designated HMRC officer issuing the notice considers that the "inflated expenses condition" at subsection 3 is met and that it is reasonable to assume either subsection 4(a) or 4(b) apply. Subsection 4(a) refers to the notional alternative provision and allowable expenses. These terms are defined at subsection 11.

6. Subsection 5 requires that the best estimate made in accordance with subsection 2 is to be made by reducing by 30% the relevant expenses included in the deduction mentioned in subsection 3(b) and ignoring the transfer pricing rules at Part 4 TIOPA 2010.

7. Subsections 6 and 7 provides for the Treasury to make regulations to substitute a different percentage in Subsection 5(a).

8. Subsection 8 defines or provides clarification on the meaning of the terms "allowable expenses", "the foreign company", "the material provision", "the notional alternative provision" and "the relevant expenses" in this Clause.

BACKGROUND NOTE

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

10. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [10]: TAXABLE DIVERTED PROFITS IN A SECTION 3 CASE

SUMMARY

1. Clause [10] provides for the calculation of the diverted profits tax for cases within Clause [3] ("Involvement of entities or transactions lacking economic substance").

DETAILS OF THE CLAUSE

2. Subsection 1 applies Clause [10] for the purposes of determining the taxable diverted profits in Clause [9] cases and provides a signpost to Clause [11], which sets out special rules for estimating the taxable diverted profits.

3. Subsection 2 provides that references to "C" are to be construed in accordance with Clause [3].

4. Subsection 3 provides for calculation of the diverted profits tax arising to C in an accounting period as an amount equal to any additional profits of C chargeable to corporation tax in the period as described in subsection 3(a) and (b).

5. Subsection 4 makes subsection 3 subject to subsections 5 to 7.

6. Subsection 5 provides, subject to subsections 6 and 7, for the reasonable assumption that alternative provision had been made or imposed instead of the material condition. This is the provision that (a) it is just and reasonable to assume would have been made or imposed in the absence of the effective tax mismatch outcome and (b) which does not result in an effective tax mismatch outcome.

7. Subsection 6 disapplies subsection 5 if both the conditions at subsection 6(a) and (b), in relation to expenses of the foreign company, are met. However, if they are met then the disapplication of subsection 5 is subject to subsection 7.

8. Subsection 7 provides for a situation where the alternative provision would have resulted in income of a company that would have been within the charge to corporation tax in relation to the income. This could occur, for example, if the material provision was a payment to a company lacking economic substance and the alternative provision was that the payment was made to a UK resident company. In such a case an amount equal to that income is added to the foreign company taxable diverted profits.

9. Subsection 8 clarifies that, for the purposes of subsections 4 and 5, the meaning of the alternative provision can include no provision being made or imposed.

10. Subsection 9 makes the necessary adaptations to the reading of this section where Clause [3] is applied by virtue of Clause [4] to a non-UK resident company carrying on a trade in the UK through a permanent establishment (PE).

11. Subsection 10 describes how, for the purpose of subsection 5(b), Clause [6] applies in determining whether an alternative provision would have resulted in an effective tax mismatch.

BACKGROUND NOTE

12. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

13. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [11]: ESTIMATING PROFITS FOR PRELIMINARY AND CHARGING NOTICES: SECTION 3 CASE

SUMMARY

1. Clause [11] provides the rules for calculating taxable diverted profits in cases within Clause [3] for the purposes of issuing a preliminary or charging notice under Clauses [14] or [16].

DETAILS OF THE CLAUSE

2. Subsection 1 applies this section for the purposes of issuing a preliminary or charging notice where taxable diverted profits of C for an accounting period fall to be determined under Clause [10].

3. Subsection 2 provides that, subject to subsections 4 to 6, the taxable diverted profits are the amount that the designated HMRC officer (as defined at Clause [27]) determines on the basis of the best estimate made in accordance with Clause [10].

4. Subsection 3 sets out the three criteria under which the "inflated expenses condition" is met. Subsection 3(c) provides that the designated HMRC officer may consider, in consequence of the other two criteria being met, that the relevant expenses might be greater than they would have been at arm's length. "The relevant expenses" are defined at subsection 11.

5. Subsection 4 provides for subsection 5 to apply if the designated HMRC officer issuing the notice considers that the "inflated expenses condition" at subsection 3 is met and that it is reasonable to assume either subsection 4(a) or 4(b) apply. Subsection 4(b) refers to the notional alternative provision and allowable expenses. These terms are defined at subsection 11.

6. Subsection 5 requires that the best estimate made in accordance with subsection 2 is to be made by reducing by 30% the relevant expenses included in the deduction mentioned in subsection 3(a) and ignoring the transfer pricing rules at Part 4 TIOPA 2010.

7. Subsection 6 allows for the adjustment required by subsection 5(a) to take into account a transfer pricing adjustment under part 4 TIOPA 2010 to the deduction for expenses if reflected in C's company tax return prior to the issue of the charging notice. The 30% adjustment is reduced accordingly, but not below nil.

8. Subsection 7 modifies the effect of subsection 3 of Clause [10] for the purposes of this Clause.

9. Subsection 8 makes the necessary adaptations to the reading of this section where Clause [3] is applied by virtue of Clause [4] to a non-UK resident company carrying on a trade in the UK through a permanent establishment (PE).

10. Subsections 9 and 10 provide for the Treasury to make regulations to substitute a different percentage in Subsection 4(a).

11. Subsection 11 defines or provides clarification on the meaning of the terms “allowable expenses”, “C”, “the notional alternative provision”, “the relevant expenses” and “UKPE” in this Clause.

BACKGROUND NOTE

12. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

13. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [12]: EXEMPTION FOR COMPANIES WITH LIMITED UK SALES

SUMMARY

1. Clause [12] describes an exemption from the application of section 2 ("Avoidance of a UK taxable presence") for companies that meet "the UK sales threshold condition".

DETAILS OF THE CLAUSE

2. Subsection 1 provides for an exemption from diverted profits tax in relation to section 2 for an accounting period if the UK sales threshold condition is met for that period.

3. Subsection 2 defines the UK sales threshold condition. A company meets this condition if the total sales revenues from all supplies of goods and services made by it or connected companies to customers in the UK in the accounting period, does not exceed £10,000,000.

4. Subsection 3 sets out the proportional reduction of the threshold where the accounting period is less than 12 months.

5. Subsection 4 applies section 1122 of CTA 2010 for the purposes of identifying connected companies in applying subsection 2.

6. Subsections 5 and 6 allow the Treasury, by regulations or statutory instrument, to amend the level of the threshold set out in subsection 2.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

8. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [13]: DUTY TO NOTIFY IF WITHIN SCOPE OF TAX

SUMMARY

1. Clause [13] places a duty upon a company to notify an officer of Revenue and Customs if they are within the scope of the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsection 1 obliges a company meeting the requirements of subsections 2 or 3 to notify an officer of Revenue and Customs if it has profits for an accounting period that might be within the scope of the diverted profits tax.

3. Subsection 2 sets out the first of the alternative requirements that give rise to an obligation to notify. These are that Clause [2] would apply to the company if the condition in subsection 1(c) of that Clause were modified in the way set out and the company does not meet the UK sales threshold condition in Clause [12].

4. Subsection 3 sets out the second of the alternative requirements that give rise to an obligation to notify. These are that Clause [3] would apply to the company if the modifications to Clauses [6] and [7] set out in subsection 4 were made and the financial benefit of the tax reduction (see Clause [6], subsection 4) is significant when compared to any other financial benefit of the material provision (see Clause [3], subsection 1(b)).

5. Subsection 4 sets out the modifications that are to be read in Clause [6], subsection 3 and Clause [7], subsections 4, 5 and 6 for the purposes of applying subsection 3.

6. Subsection 5 clarifies that the modifications at subsections 2(a) and 3(a) to the effect of Clause [2] and [3] are to be taken into account in determining if taxable diverted profits might arise to the company for an accounting period.

7. Subsection 6 requires that a notification should be made in writing and within 3 months from the end of the accounting period to which it relates.

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

9. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [14]: PRELIMINARY NOTICE

SUMMARY

1. Clause [14] provides for the issue of a preliminary notice to a company if the designated HMRC officer believes the company to be within the scope of the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsection 1 requires a designated HMRC officer to issue a preliminary notice to a company where the officer has reason to believe the company is within the scope of the diverted profits tax because either or both Clause [2] or Clause [3] apply.

3. Subsection 2 requires a copy of the notice to be sent to "the avoided PE", where Clause [2] applies, and to "UKPE", where Clause [3] applies by virtue of Clause [4]. The terms "the avoided PE" and "UKPE" take their meaning from Clauses [2] and [4].

4. Subsection 3 stipulates what information and explanations must be included in a preliminary notice.

5. Subsection 4 provides for the situation where the designated officer has insufficient information to determine any of the matters set out in subsection 3.

6. Subsection 5 makes clear that a designated HMRC officer may issue a preliminary notice to a company in respect of an accounting period, whether or not a notification has been given by the company under Clause [13].

7. Subsection 6 sets a time limit of 24 months from the end of the affected accounting period for the issue of a preliminary notice. But this is subject to subsections 7 and 8.

8. Subsection 7 describes when subsection 8 will apply. The requirements are that no notification has been received under Clause [13] in respect of an accounting period and it is reasonable for a designated HMRC officer to believe that an amount of diverted profits tax that should have been charged in relation to that accounting period has not been charged.

9. Subsection 8 allows a designated HMRC officer to issue a charging notice (see Clause [16]) within an extended time limit of four years from the end of the affected accounting period where the requirements of subsection 7 are met.

BACKGROUND NOTE

10. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

11. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [15]: REPRESENTATIONS

SUMMARY

1. Clause [15] allows a company receiving a preliminary notice to make representations to the designated HMRC officer in respect of that notice and governs the scope and handling of those representations.

DETAILS OF THE CLAUSE

2. Subsection 1 applies the clause where a designated HMRC officer has given a preliminary notice under Clause [14].

3. Subsection 2 sets a time limit of 30 days from the receipt of a preliminary notice in which a company can make written representations to the designated HMRC officer.

4. Subsection 3 provides that the designated HMRC officer may consider representations if they are made on the grounds listed in (a) to (d).

5. Subsection 4 provides that the designated HMRC officer is not required to consider representations that relate to either of the two matters listed in (a) and (b) (but see Clause [20], subsection 14).

6. Subsection 5 defines "the small or medium-sized enterprise requirement" for the purposes of subsection 3(b).

7. Subsection 6 defines "the participation condition" for the purposes of subsection 3(d)(i).

8. Subsection 7 defines the "80% payment test" for the purposes of subsection 3(c)(ii) and (d)(ii).

9. Subsection 8 refers the reader to the provisions of Clause [20], which provide for and govern a review process.

BACKGROUND NOTE

10. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

11. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [16]: CHARGING NOTICE

SUMMARY

1. Clause [16] provides for the issue of a charging notice to a company that has been given a preliminary notice and following consideration of any representations under Clause [15].

DETAILS OF THE CLAUSE

2. Subsection 1 provides that this Clause applies where a designated HMRC officer has given a company a preliminary notice under Clause [14].

3. Subsection 2 provides that, having considered any representations under Clause [15], a designated HMRC officer must either issue a charging notice to the company or notify the company that no charging notice will be issued for the accounting period covered by the preliminary notice. The designated HMRC officer must take this action within 30 days from the end of the 30 day period allowed for representations under Clause [15].

4. Subsection 3 allows a charging notice to be issued for an accounting period, notwithstanding that the company has been notified under subsection 2 that no charging notice will be issued for that accounting period, where that charging notice is pursuant to a different preliminary notice issued in respect of that same accounting period.

5. Subsection 4 provides that where a charging notice is issued to a company, a copy must also be given to "the avoided PE", where Clause [2] applies, and to "UKPE", where Clause [3] applies by virtue of Clause [4]. The terms "the avoided PE" and "UKPE" take their meaning from Clauses [2] and [4].

6. Subsection 5 stipulates what information and explanations must be included in the charging notice.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

8. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [17]: PAYMENT OF TAX

SUMMARY

1. Clause [17] and Schedule 1 govern the payment and recovery of tax payable under a charging notice.

DETAILS OF THE CLAUSE

2. Subsection 1 applies the clause when a charging notice is issued.

3. Subsection 2 requires the payment of diverted profits tax within 30 days after the day the charging notice is issued.

4. Subsection 3 makes the company to which the notice is issued liable for payment of the tax (but see also Schedule 1).

5. Subsection 4 prevents postponement of payment of the tax on any grounds. The subsection makes clear that this means the tax is due and payable regardless of whether it is subject to review under Clause [20], or appeal under Clause [21].

6. Subsection 5 introduces Schedule 1.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

8. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [18]: IGNORE DIVERTED PROFITS TAX FOR PURPOSES OF INCOME TAX AND CORPORATION TAX

SUMMARY

1. Clause [18] stipulates that diverted profits tax is not to be taken into account for the purposes of income tax or corporation tax.

DETAILS OF THE CLAUSE

2. Subsection 1 prevents diverted profits tax from giving rise to a deduction or other relief) when calculating income, profits, or losses for any tax purposes. It also prevents account being taken of any amount paid (directly or indirectly) by a person for the purposes of meeting, or reimbursing the cost of diverted profits tax.

3. Subsection 2 prevents any amount paid under subsection 1(b) from being treated as a distribution within the meaning of CTA 2010.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

5. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [19]: CREDIT FOR UK OR FOREIGN TAX ON SAME PROFITS IN SECTION 3 CASES

SUMMARY

1. Clause [19] makes provision for credit to be given against a liability to diverted profits tax for certain UK and foreign taxes in defined circumstances

DETAILS OF THE CLAUSE

2. Subsection 1 applies the clause where a company has paid corporation tax or equivalent foreign taxes by reference to its profits.

3. Subsection 2 permits a just and reasonable credit for the tax referred to in subsection 1 to be given against a liability to diverted profits tax, where both taxes are in respect of the same profits.

4. Subsection 3 treats any withholding tax deducted from payments made to a person as tax paid by that person (and not by the person making the payments), for the purposes of subsection 1, provided the withholding tax is not refunded.

5. Subsection 4 provides that the reference in subsection 3 to tax being refunded is to be read in accordance with Clause [6], subsection 12, with the modification that references to the second party are read as references to the company.

BACKGROUND NOTE

6. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

7. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [20]: HMRC REVIEW OF CHARGING NOTICE

SUMMARY

1. Clause [20] sets out and governs the process under which a designated HMRC officer must review a charge to diverted profits tax and may amend a charging notice or issue a supplementary charging notice.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that, where a charging notice has been issued to a company, a designated HMRC officer must carry out a review of the total amounted of taxable diverted profits included in that notice and may carry out more than one such review. The review(s) must be completed within the period defined in subsection 2.

3. Subsection 2 defines "the review period" as the 12 months starting after the period allowed for payment of the tax by Clause [17], subsection 2. This is subject to subsection 13.

4. Subsection 3 sets out the circumstances in which subsection 4 applies.

5. Subsection 4 describes the circumstances in which a designated HMRC officer may issue an amending notice to reduce the amount of diverted profits tax payable.

6. Subsections 5 and 6 set out that the designated HMRC officer may issue more than one amending notice and that where such a notice is issued any tax overpaid must be repaid.

7. Subsection 7 sets out the circumstances in which subsection 8 applies.

8. Subsection 8 describes the circumstances in which a designated HMRC officer may issue a notice, known as a "supplementary charging notice", to impose an additional charge where the diverted profits tax charged under an existing charging notice is lower than it should be.

9. Subsection 9 permits only one supplementary charging notice to be issued in respect of any existing charging notice.

10. Subsection 10 prevents the issuing of a supplementary charging notice during the last 30 days of the review period.

11. Subsection 11 extends the application of subsections 3 to 6, to allow a supplementary charging notice to be amended downwards.

12. Subsection 12 extends the application of Clause [16], subsection 5, and Clause [17], so that the rules governing the content of a charging notice and payment of tax charged by a charging notice apply in the same way to a supplementary charging notice.

13. Subsection 13 is a derogation from subsection 2 and permits the review period to be brought to an end before the expiry of the 12 months set out there, where either of the events described in (a) or (b) occur.

14. Subsection 14 provides that, when carrying out a review under Clause [20] to determine if the taxable diverted profits charged on a company for an accounting period are too high or low, the designated HMRC officer must disregard the special provisions in Clauses [9] and [11]. The subsection also makes clear that any representations that a designated HMRC may consider during the review are not limited by Clause [15].

15. Subsection 15 provides that where a supplementary charging notice or amending notice is issued to a company, a copy must also be given to "the avoided PE", where Clause [2] applies, and to "UKPE", where Clause [3] applies by virtue of Clause [4]. The terms "the avoided PE" and "UKPE" take their meaning from Clauses [2] and [4].

BACKGROUND NOTE

16. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

17. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [21]: APPEAL AGAINST DIVERTED PROFITS NOTICES

SUMMARY

1. Clause [21] governs appeals against charging notices and supplementary charging notices.

DETAILS OF THE CLAUSE

2. Subsection 1 gives a company to which a charging notice or supplementary charging notice is issued a right of appeal against the notice.

3. Subsection 2 provides that an appeal under subsection 1 must be made in writing and within 30 days after the end of the review period. The end of the review period is determined by reference to Clause [20], subsections 2 and 13.

4. Subsection 3 requires the grounds of appeal to be specified.

5. Subsection 4 stipulates that, when determining for the purposes of an appeal whether the taxable diverted profits have been correctly calculated, the special rules in Clause [9] and [11] must be disregarded.

6. Subsection 5 sets out that the Tribunal in deciding the appeal, may confirm, amend, or cancel the appealed notice or supplementary charging notice.

7. Subsection 6 sets out that an appeal under this Clause is to be treated as if it were an appeal under the Taxes Act.

8. Subsection 7 makes subsection 6 subject to Clause [17], subsection 4.

BACKGROUND NOTE

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

10. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [22]: RESPONSIBILITY FOR COLLECTION AND MANAGEMENT

SUMMARY

1. Clause [22] assigns responsibility for the collection and management of the diverted profits tax.

DETAILS OF THE CLAUSE

2. This clause makes the Commissioners for HM Revenue & Customs responsible for collection and management of the diverted profits tax.

BACKGROUND NOTE

3. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

4. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [23]: PENALTIES ETC

SUMMARY

1. Clause [23] amends other enactments to apply penalty provisions to the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsections 1 to 3 amend Schedule 56 of FA2009 to apply penalties for failure to make payments of the diverted profits tax on time.

3. Subsections 4 to 6 amend Schedule 41 of FA2008 to apply penalties for failure by a company to notify that it is within the scope of the diverted profits tax.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

5. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [24]: INFORMATION AND INSPECTION POWERS ETC

SUMMARY

1. Clause [24] amends other enactments to apply information and inspection powers provisions for the purposes of the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsection 1 amends Schedule 36 of FA2008 so that HMRC's information and inspection powers applies to the diverted profits tax.

3. Subsection 2 amends Schedule 23 of FA2011 so that HMRC's data-gathering powers applies to the diverted profits tax.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

5. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [25]: "TRANSACTION" AND "SERIES OF TRANSACTIONS"

SUMMARY

1. Clause [25] defines "transaction" and "series of transactions" as those terms are used in [this Part].

DETAILS OF THE CLAUSE

2. Subsection 1 defines "transaction".

3. Subsection 2 defines "series of transactions".

4. Subsection 3 provides that none of the matters set out in subsection 4 will prevent a series of transactions from being regarded as constituting the means by which provision has been made or imposed between any two persons.

5. Subsection 4 lists at (a) to (c) the matters referred to in subsection 3.

6. Subsection 5 defines "arrangement" for the purposes of Clause [25].

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

8. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [26]: ACCOUNTING PERIODS

SUMMARY

1. Clause [26] defines what is meant by an "accounting period" or "accounting periods".

DETAILS OF THE CLAUSE

2. Subsection 1 provides that an accounting period of a company for the purposes of the diverted profits tax is the same as an accounting period of the company for the purposes of corporation tax.

3. Subsection 2 deems that a non-UK resident company to which subsections 1(a) and (b) of Clause [2] apply and which is not within the scope of corporation tax to have such accounting periods for corporation tax purposes as it would have had if it carried on a trade in the UK through a permanent establishment by reason of the activity of the avoided PE, as that term is used in Clause [2], described in subsection 1(c) of Clause [2].

4. Subsection 3 allows a designated HMRC officer to determine the accounting periods of a non-UK resident company to the best of the officer's information and belief, where there is insufficient information to identify the accounting periods in accordance with subsection 2.

BACKGROUND NOTE

5. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

6. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [27]: OTHER DEFINED TERMS IN PART 1

SUMMARY

1. Clause [27] defines various terms used in [this Part].

DETAILS OF THE CLAUSE

2. Subsection 1 defines various terms by reference to other enactments.

3. Subsection 2 provides that, for the purposes of [this Part], a tax having the characteristics set out at (a) or (b) may be considered to correspond to corporation tax.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

5. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [28]: APPLICATION OF OTHER ENACTMENTS TO DIVERTED PROFITS TAX

SUMMARY

1. Clause [28] governs the application of other enactments to the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsection 1 amends section 206(3) of FA2013, to add the diverted profits tax to the taxes to which the general anti-abuse rule applies.

3. Subsection 2 amends section 1139 of CTA 2009 to add to the definition of "tax advantage" the avoidance or reduction of a charge to diverted profits tax.

4. Subsection 3 amends section 178 of FA1989, so that it applies for the purposes of Clause [1].

5. Subsection 4 amends section 1 of the Provisional Collection of Taxes Act 1968, so that it applies for the purposes of diverted profits tax.

BACKGROUND NOTE

6. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

7. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

CLAUSE [29]: COMMENCEMENT AND TRANSITIONAL PROVISION

SUMMARY

1. Clause [29] provides for the diverted profits tax to come into effect on 1 April 2015 and establishes transitional arrangements for accounting periods which straddle the effective date.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that the diverted profits tax will have effect for accounting periods starting on or after 1 April 2015.

3. Subsection 2 sets out transitional arrangements for accounting periods that start before but end on or after 1 April 2015. The subsection provides for the parts of the accounting period that fall before 1 April 2015 and the parts that fall on or after that date to be treated as separate accounting periods and for the profits of the whole accounting period to be apportioned between them on a just and reasonable basis.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

5. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

SCHEDULE 1: RECOVERY OF DIVERTED PROFIT TAX DUE FROM NON-UK RESIDENT COMPANY

SUMMARY

1. Schedule 1 sets out provisions for the recovery of diverted profits tax from the UK-representative of a non-UK resident company and from any company that is related to the non-resident company.

DETAILS OF THE SCHEDULE

Part 1

2. Part 1 of the Schedule applies, with some modifications, the provisions of Chapter 6 of Part 22 of CTA 2010 (collection, etc. of tax from UK representatives of non-UK resident companies) to the recovery of diverted profits tax.

Paragraph 1

3. This paragraph ensures that Chapter 6 of Part 22 of CTA 2010 has effect in relation to diverted profits tax and interest on diverted profits tax.

4. Subparagraph 2 introduces subparagraphs 3 to 5, which modify the application of Chapter 6 of Part 22 of CTA 2010 in relation to diverted profits tax.

5. Subparagraph 3 applies Chapter 6 of Part 22 "the avoided PE" (within the meaning of Clause [2]), as it would apply to a permanent establishment in the United Kingdom through which the company carries on a trade.

6. Subparagraph 4 allows for references to "chargeable profits of the company attributable to that establishment", within section 969(3) of the chapter, to be read as references to "taxable diverted profits arising to the company…" for the purposes of the application of the chapter to diverted profits tax.

7. Subparagraph 5 provides that references to the giving or service of a notice in section 971 of CTA 2010 include a reference to the giving of a notice.

Part 2

8. Part 2 of the Schedule enables unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

Paragraph 2

9. Subparagraph 1 applies the Schedule where an amount of diverted profits tax has been charged on a non-UK resident company for an accounting period and the whole or any part of that amount is unpaid at the end of the due and payable date.

10. Subparagraph 2 defines “the taxpayer company” for the purposes of Part 2 of the Schedule as the non-UK resident company described in subparagraph 1.

Paragraph 3

11. This paragraph defines what is meant by “the relevant period” for the purposes of Part 2 of the Schedule.

Paragraph 4

12. This paragraph defines what is meant by a “related company” for the purposes of Part 2 of the Schedule.

13. Subparagraph 1 defines a “related company” by reference to group and consortium relationships.

14. Subparagraph 2 defines when two companies are members of the same group, for the purposes of subparagraph 1(a).

15. Subparagraph 3 defines when two companies as members of the same group, for the purposes of subparagraph 1(c).

16. Subparagraph 4 defines when a company is a member of a consortium or owned by a consortium for the purposes of Part 2 of the Schedule.

17. Subparagraph 5 provides that “51% subsidiary” in paragraph 4 has the same meaning as in section 1154 CTA 2010.

Paragraph 5

18. This paragraph governs the serving of notices on related companies for the recovery of diverted profits tax.

19. Subparagraph 1 allows a notice to be served on a related company, requiring the payment of diverted profits tax (or in a consortium case the proportion of that tax provided for by paragraph 7) within 30 days of the service of the notice.

20. Subparagraph 2 stipulates what information must be included in the notice.

21. Subparagraph 3 gives effect to the notice as if it were a charging notice and as if the amount recoverable under the notice were diverted profits tax charged on the company on which the notice is served.

22. Subparagraph 4 defines "consortium case" for the purposes of Part 2 of the Schedule.

Paragraph 6

23. This paragraph sets a time limit for the serving of a notice under Part 2 of the Schedule of three years beginning with the date when the diverted profits tax charging notice or supplementary charging notice was issued.

Paragraph 7

24. This paragraph sets out rules for the calculation of the amount recoverable from a related company in a consortium case.

25. Subparagraph 1 establishes the amount that a related company may be required to pay by notice under Part 2 of the Schedule by reference to the group and consortium relationship categories in paragraph 4(1).

26. Subparagraph 2 provides that, for the purposes of paragraph 7, a member's share in a consortium is the lower of the percentages set out in subparagraph 3(a)-(c).

27. Subparagraph 3 sets out the three percentage measures referred to in subparagraph 2.

28. Subparagraph 4 requires the calculation of an average percentage where the percentages set out above have fluctuated during the relevant period.

29. Subparagraph 5 applies Chapter 6 of Part 5 of CTA 2010 for the purposes of subparagraph 3, as it is applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of CTA 2010.

Paragraph 8

30. Subparagraph 1 allows a company that has paid an amount in pursuance of a notice under Part 2 of the Schedule to recover that amount from the taxpayer company.

31. Subparagraph 2 prevents a payment made in pursuance of a notice under Part 2 of the Schedule from being allowed as a deduction in calculating income, profits, or losses, for any tax purpose.

BACKGROUND NOTE

32. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

33. If you have any questions about this change, or comments on the legislation, please email: divertedprofits.mailbox@hmrc.gsi.gov.uk.

1 Extension of ring fence expenditure supplement

Schedule 1 contains provision enabling the ring fence expenditure supplement to be claimed for an additional 4 accounting periods (and as a result repeals provision for the extended ring fence expenditure supplement for onshore activities).

SCHEDULE 1

Section 1

EXTENSION OF RING FENCE EXPENDITURE SUPPLEMENT

Amendments of Chapter 5 of Part 8 of CTA 2010

1 Chapter 5 of Part 8 of CTA 2010 (ring fence expenditure supplement) is amended as follows.

2 In section 307 (overview of Chapter), in subsection (5) for "6" substitute "10".

3 In section 309 (accounting periods), in subsection (4), for the words from "Chapter" to the end substitute "Chapter—

(a) in relation to straddling periods (see sections 311, 324 and 327(4) to (7)), and

(b) in relation to accounting periods which begin before, but end on or after, 5 December 2013 (see sections 311(1C), 318A and 328A)."

4 (1) Section 311 (limit on number of accounting periods for which supplement may be claimed) is amended as follows.

(2) In subsection (1) for "6" substitute "10".

(3) After subsection (1) insert—

"(1A) In this Chapter—

"the initial 6 periods" means the first 6 accounting periods (in chronological order) for which the company claims supplement under this Chapter;

"the additional 4 periods" means the 4 accounting periods after the initial 6 periods for which the company claims supplement under this Chapter.

(1B) None of the additional 4 periods may be accounting periods beginning before 5 December 2013.

(1C) But, where—

(a) a company has an accounting period which begins before 5 December 2013 and ends on or after that date, and

(b) that accounting period falls after the initial 6 accounting periods,

so much of that accounting period as falls before 5 December 2013 and so much of it as falls on or after that date are treated as separate accounting periods for the purposes of this Chapter."

(4) In the heading of the section after "Limit on number" insert "etc".

5 In section 316 (the mixed pool of qualifying pre-commencement expenditure and supplement previously allowed), after subsection (5) insert—

“(6) This section is subject to section 318A (adjustment of pool to remove pre-2013 expenditure after the initial 6 periods).”

6 In section 317 (reduction in respect of disposal receipts under CAA 2001), at the end insert—

“(4) This section is subject to section 318A(5) (exclusion of deductible amounts in respect of pre-2013 expenditure when determining pre-commencement supplement for additional 4 periods).”

7 After section 318 insert—

“318A Adjustment of pool to remove pre-2013 expenditure after the initial 6 periods

(1) This section applies for the purposes of determining the amount of any pre-commencement supplement on any claim made by a company for supplement under this Chapter in respect of an accounting period which is one of the additional 4 periods.

(2) The pool which (under section 316) the company is to be taken to have had, at all times in the pre-commencement periods of the company, is to be taken to have been reduced at the time specified in subsection (4).

(3) The amount of the reduction is the sum of—

(a) the relevant amount (if any) which the company carries forward under Schedule 19B to ICTA,

(b) the total amount of qualifying pre-commencement expenditure allocated to the pool for pre-commencement periods beginning before 5 December 2013, and

(c) the total amount of the company’s pre-commencement supplement allocated to the pool for pre-commencement periods beginning before that date.

(4) The time is—

(a) immediately after the last of the initial 6 periods, or

(b) if later, 5 December 2013.

(5) Subsection (3) of section 317 (reduction in respect of disposal receipts under CAA 2001) has effect as if the reference in paragraph (a) of that subsection to “all such events” did not include events occurring in relation to an asset representing expenditure incurred before 5 December 2013.

(6) Where a company has a pre-commencement period (“the straddling 2013 period”) which begins before 5 December 2013 and ends on or after that date, for the purposes of making a reduction under this section—

(a) so much of the straddling 2013 period as falls before 5 December 2013 (“the pre-2013 period”), and

(b) so much of that period as fall on or after that date (“the post-2013 period”)

are to be treated as separate pre-commencement periods.

(7) Accordingly, any amount of qualifying pre-commencement expenditure, and any amount of the company’s pre-commencement

supplement, allocated to the pool for the straddling 2013 period is to be—

(a) apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each, and

(b) treated as allocated to the pool in question for the period in question (rather than the straddling 2013 period).

(8) If the basis of the apportionment in subsection (7) would work unjustly or unreasonably in the company's case, the company may elect for the apportionment to be made on another basis that is just and reasonable and specified in the election."

8 (1) Section 326 (the ring fence pool) is amended as follows.

(2) In subsection (3), for "the following provisions of this Chapter" substitute "sections 327 and 328".

(3) In subsection (4), after "made" insert "under section 327 or 328".

(4) After subsection (5) insert—

"(6) This section is subject to section 328A (adjustment of pool to remove pre-2013 losses after the initial 6 periods)."

9 In section 327 (reductions in respect of utilised ring fence losses), after subsection (3) insert—

"(3A) Subsection (3) is subject to section 328A(11)."

10 After section 328 insert—

"328A Adjustment of pool to remove pre-2013 losses after the initial 6 periods

(1) This section applies for the purposes of determining the amount of any post-commencement supplement on any claim in respect of any of the additional 4 periods.

(2) The ring fence pool is to be taken to have been reduced at the time specified in subsection (6).

(3) The amount of the reduction is the amount of the total pre-2013 pool reduced (but not below nil) by the amount of the total pre-2013 reduction.

(4) "The amount of the total pre-2013 pool" means the sum of—

(a) the carried forward qualifying Schedule 19B amount (within the meaning of section 326(5)) which is in the pool at the time specified in subsection (6) (if any),

(b) the total amount of the company's ring fence losses added to the pool in post-commencement periods beginning before 5 December 2013,

(c) if the commencement period begins on or after 5 December 2013, so much of any ring fence loss added to the pool in that period as does not exceed the sum of—

(i) any pre-commencement expenditure added to the pool in a pre-commencement period ending before 5 December 2013, and

(ii) any pre-commencement supplement allowed in respect of such a pre-commencement period, and

(d) the total amount of the company's post-commencement supplement added to the pool in post-commencement periods beginning before that date.

(5) "The amount of the total pre-2013 reduction" means the total amount of the reductions in the ring fence pool falling to be made under section 327 or 328 in post-commencement periods beginning before the time specified in subsection (6).

(6) The time is—

(a) immediately after the last of the 6 initial periods, or

(b) if later, 5 December 2013.

(7) The amount (if any) in the non-qualifying pool under section 325(3) is reduced to nil (and so ceases to exist under section 325(4)).

(8) Section 318A(6) ("the straddling 2013 period") applies for the purposes of making a reduction under this section as it applies for the purposes of making a reduction under section 318A.

(9) Accordingly—

(a) any ring fence loss of the company added to the pool in the straddling 2013 period is to be apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each and treated as allocated to the pool for the period in question;

(b) any amount of the company's post-commencement supplement allocated to the pool for the straddling period is to be apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each and treated as allocated to the pool for the period in question,

(c) the total amount of reductions in the ring fence pool falling to be made in the straddling period is apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each and treated as deduction falling to be made in the period in question.

(10) If the basis of the apportionment in subsection (9)(a), (b) or (c) would work unjustly or unreasonably in the company's case, the company may elect for the apportionment to be made on another basis that is just and reasonable and specified in the election.

(11) Once a reduction in the pool has been made under this section—

(a) nothing in section 327 applies to require a reduction in the pool in respect of the use under section 45 of a loss if and to the extent that the loss is represented by the reduction made under this section, and

(b) if and to the extent that losses are represented by the reduction they are to be used under section 45 to reduce any profits of a post-commencement period before ring fence losses of the company the use of which would trigger a reduction of the ring fence pool under section 327."

Abolition of extended ring fence expenditure supplement for onshore activities

11 In section 270 of CTA 2010 (overview of Part 8) omit subsection (5A).

12 (1) Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.

(2) The following definitions are inserted at the appropriate places—

"the initial 6 periods (in Chapter 5 of Part 8)	section 311(1A)";
"the additional 4 periods (in Chapter 5 of Part 8)	section 311(1A)".

(3) The following definitions are omitted—

"the commencement period (in Chapter 5A of Part 8)	section 329D(1)";
"offshore oil-related activities (in Chapter 5A of Part 8)	section 329C(3)";
"onshore oil-related activities (in Chapter 5A of Part 8)	section 329C(2)";
"onshore ring fence loss (in Chapter 5A of Part 8)	section 329P";
"the onshore ring fence pool (in Chapter 5A of Part 8)	section 329Q";
"the period of the loss (in Chapter 5A of Part 8)	section 329P";
"post-commencement additional supplement (in Chapter 5A of Part 8)	section 329N(1)";
"the post-commencement additional supplement provisions (in Chapter 5A of Part 8)	section 329N(4)";
"post-commencement period (in Chapter 5A of Part 8)	section 329D(1)";
"pre-commencement additional supplement (in Chapter 5A of Part 8)	section 329I(1)";
"pre-commencement period (in Chapter 5A of Part 8)	section 329D(1)";
"qualifying company (in Chapter 5A of Part 8)	section 329B";

"qualifying pre-commencement onshore expenditure (in Chapter 5A of Part 8)	section 329G";
"the relevant percentage (in Chapter 5A of Part 8)	section 329E";
"straddling period (in Chapter 5A of Part 8)	section 329D(3)";
"unrelieved group ring fence profits (in Chapter 5A of Part 8)	section 329H".

13 (1) In Part 8 of CTA 2010, Chapter 5A (extended ring fence expenditure supplement for onshore activities) is repealed.

(2) Accordingly, section 69 of and Schedule 14 to FA 2014 are also repealed.

Commencement

14 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 5 December 2013.

EXPLANATORY NOTE

EXTENSION OF RING FENCE EXPENDITURE SUPPLEMENT

SUMMARY

1. Clause [X] and Schedule [A] increase the number of accounting periods in which a company can claim ring fence expenditure supplement (RFES) from 6 to 10. Losses, expenditure and supplement generated before 5 December 2013 will be excluded from supplement claimed under the additional 4 periods. This removes the need for the existing Extended Ring Fence Supplement and Schedule [A] abolishes this. This clause and schedule will allow companies to maintain the value of their expenditure and losses for longer. These supplemented losses can then be carried forward to offset profits for corporation tax purposes. This will have effect in relation to accounting periods ending on or after 5 December 2013.

DETAILS OF THE SCHEDULE

2. Schedule [A] amends Chapter 5 of Part 8 of the Corporation Tax Act (CTA) 2010 and removes Chapter 5A of the same Part.

3. Paragraph 2 alters the Chapter overview to increase the number of accounting periods in which RFES can be claimed from 6 to 10.

4. Paragraph 3 provides in section 309 where the rules on accounting periods are subject to new and existing special provisions. New special provisions relate to accounting periods straddling 5 December 2013.

5. Paragraph 4; subparagraph 2 increases the number of accounting periods in which RFES can be claimed from 6 to 10.

6. Paragraph 4; subparagraph 3 provides for the concept of initial and additional periods. This distinguishes between the first 6 periods for which a company makes a claim, ‘the initial 6 periods’ and further claims under the amended legislation, ‘the additional 4 periods’. The latter must not begin before 5 December 2013. If the accounting period which straddles 5 December 2013 falls after a company’s initial 6 periods, then that accounting period is dealt with as two separate periods.

7. Paragraph 5 sets out that the calculation of the mixed pool must take into account the new adjustments detailed in the new section 318A.

8. Paragraph 6 provides that reductions to the mixed pool due to the disposal of capital assets must be made subject to the adjustment in new section 318A.

9. Paragraph 7 introduces new section 318A. This prevents the additional 4 claims from being made in respect of pre-commencement expenditure incurred and supplement generated before 5 December 2013. Subsections 2 to 4 provide that following a company's 6 initial claims (or if later, 5 December 2013), the mixed pool is reduced by the value of pre-commencement expenditure incurred and supplement generated before 5 December 2013.

10. New section 318A, subsection 5 provides that for the purposes of calculating the mixed pool for the additional 4 claims, any reduction under section 317 should not include the value of disposals which relate to expenditure incurred before 5 December 2013.

11. New section 318A, subsections 6 to 8 set out how expenditure incurred and supplement generated in a pre-commencement period which straddles 5 December 2013 is apportioned for the purposes of making the adjustment. The period is to be treated as two separate pre-commencement periods: one falling before 5 December 2013 and one falling on and after that date. Expenditure incurred and supplement generated in this period are apportioned between the two in proportion to the number of days in each. If this works unreasonably or unjustly, the company may elect a different basis for apportionment if this is just and reasonable.

12. Paragraph 8 sets out that section 326 is read subject to section 327 and 328 for the initial 6 claims but is also read subject to new section 328A for the additional claims.

13. Paragraph 9 sets out that if the ring fence pool is reduced under section 327, this is done subject to provisions of section 328A.

14. Paragraph 10 introduces new section 328A. This prevents the additional 4 claims from being made in respect of losses incurred and supplement generated before 5 December 2013. This adjusts the ring fence pool following the initial 6 claims, or if later, 5 December 2013.

15. New section 328A, subsections 1 to 6 set out that at this time, the ring fence pool is to be reduced. The value of this reduction is to be the value of the amount carried into the pool under the Exploration Expenditure Supplement, ring fence losses and supplement generated before 5 December 2013 and if the company commences business after that date, the value detailed in subsection 4, paragraph (c), minus any previous reductions made to the pool under sections 327 or 328.

16. New section 328A, subsection 4, paragraph (c) prevents the value of any pre-commencement expenditure and pre-commencement supplement from remaining in the adjusted pool due to this amount being treated as commencement year expenditure. The paragraph sets out that if a company commences trading on or after 5 December 2013, then any commencement year loss is also included in the reduction but only up to an amount equal to the value of pre-commencement expenditure or pre-commencement supplement generated before 5 December 2013.

17. New section 328A, subsection 7 removes any amount generated under Exploration Expenditure Supplement from the pool of non-qualifying losses.

18. New section 328A, subsection 8 to 10 operate for section 328A in the same way that subsections 6 to 8 of section 318A operate for that section. (See Para [11]). These subsections provide for the apportionment of losses incurred, supplement generated and reductions to be made in an accounting period which straddles 5 December 2013.

19. New section 328A, subsection 11 sets out that if a loss is removed from the Ring Fence Pool under section 328A and that loss is subsequently carried forward under section 45, this does not require the pool to be reduced under section 327 in respect of that loss.

20. New section 328A, subsection 12 sets out that if a company has losses which are removed from the pool under this section then these are to be carried forward under section 45 before any losses that remain in the pool.

21. Paragraphs 11 to 13 abolish Extended Ring Fence Supplement by repealing Chapter 5A of Part 8 CTA 10 and remove all statutory references to that Chapter.

BACKGROUND NOTE

22. In addition to corporation tax (CT), oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. For the oil and gas industry, CT is set at 30 per cent for profits of more than £1.5m and 19 per cent (the small profits rate) for profits of more than £300k. The SC is set at 32 per cent.

23. Companies are allowed to set qualifying expenditure against profits for CT purposes. For companies engaged in a trade where it may take some years to show a profit, the value of the expenditure will be reduced by the time they come to be utilised.

24. The oil and gas trade is subject to high start-up costs and a relatively lengthy period of likely unprofitability. RFES currently allows companies inside the oil and gas ring fence to uplift their ring fence losses or, in the period before they are trading, their 'qualifying pre-commencement expenditure', by 10% for up to 6 accounting periods to maintain their time value until they can be offset against future profits.

25. Presently, companies may claim further supplement under Extended Ring Fence Expenditure Supplement against expenditure, losses and supplement relating to onshore oil and gas related activities which were generated after 5 December 2013. This supplement may be claimed in respect of 4 periods at a rate of 10%.

26. A call for evidence entitled *Review of the Oil and Gas Fiscal Regime* was launched on 14 July 2014 and closed on 3 October 2014. The initial findings including a summary of responses were published on 4 December 2014, entitled *Driving Investment – a plan to reform the oil and gas fiscal regime*.

27. Clause [X] and Schedule [A] extend the number of accounting periods for which companies can claim RFES from 6 to 10 for expenditure incurred and losses and supplement generated after 5 December 2013. This recognises the extended period before they are able to utilise those amounts and will allow companies to maintain the value of their expenditure for longer.

28. If you have any questions about this change, or comments on the legislation, please contact Lloyd Hopkin on 03000 532634 (email: lloyd.hopkin@hmrc.gsi.gov.uk).

1 Relief for expenditure on research and development: expenditure on consumable items

(1) CTA 2009 is amended as follows.

(2) In Part 13 (additional relief for expenditure on research and development), in section 1126 (software or consumable items: attributable expenditure), after subsection (6) insert—

“(7) This section is subject to sections 1126A and 1126B.”

(3) After section 1126 insert—

“1126A Attributable expenditure: special rules

(1) Expenditure on consumable items is not to be treated as attributable to relevant research and development if—

(a) the relevant research and development relates to an item that is produced in the course of the research and development,

(b) the consumable items form part of the item produced, and

(c) that item is transferred by a relevant person in the ordinary course of the relevant person’s business.

(2) Expenditure on consumable items is not to be treated as attributable to relevant research and development if—

(a) the relevant research and development relates to a process of producing an item,

(b) the consumable items form part of an item produced in the course of that research and development, and

(c) that item is transferred by a relevant person in the ordinary course of the relevant person’s business.

(3) If—

(a) the item produced as described in subsection (1) or (2) may be divided, and

(b) only a proportion (“the appropriate proportion”) of that item is transferred by a relevant person in the ordinary course of the relevant person’s business,

the appropriate proportion of the expenditure on the consumable items is not to be treated as attributable to the relevant research and development.

(4) If—

(a) a number of items are produced in the course of the relevant research and development described in subsection (2), and

(b) only a proportion (“the appropriate proportion”) of those items is transferred by a relevant person in the ordinary course of the relevant person’s business,

the appropriate proportion of the expenditure on the consumable items is not to be treated as attributable to the relevant research and development.

(5) A reference in this section to producing an item includes a reference to preparing an item for transfer.

(6) For the purposes of this section a consumable item forms part of an item produced if—

(a) it is incorporated into the item produced, or
(b) it is turned into, or it and other materials are turned into, the item produced or a part of the item produced.

(7) A reference in this section to the transfer of an item is a reference to—
(a) the transfer of ownership of an item to another person (whether by sale or otherwise), or
(b) the transfer of possession of an item to another person (whether by letting on hire or otherwise),

and a reference to the transfer of an item includes, where the item is incorporated into another item, the transfer of that other item.

(8) In this section—
"item" includes any substance;
"relevant person", in relation to relevant research and development, means—
(a) the company that incurs the cost of the research and development, whether it is undertaken by itself or contracted out,
(b) the company to which the research and development is contracted out, whether it is undertaken by itself or contracted out,
(c) the person (other than a company) who contracts out the research and development to a company and incurs the cost of the research and development,
(d) the person (other than a company) to which the research and development is contracted out, or
(e) a person who is connected to a company or person described in paragraph (a), (b), (c) or (d).

1126B Attributable expenditure: further provision

(1) The Treasury may by regulations make provision for the purpose of identifying when expenditure on consumable items is attributable to relevant research and development, including provision modifying the effect of section 1126 or 1126A.

(2) Regulations under this section may include provision about—
(a) the circumstances in which expenditure on consumable items employed directly in relevant research and development is, or is not, to be treated as attributable to that relevant research and development;
(b) the circumstances in which consumable items are, or are not, to be treated as employed directly in relevant research and development.

(3) Regulations under this section may—
(a) make different provision for different purposes;
(b) make incidental, consequential, supplementary or transitional provision or savings.

(4) Regulations under this section may amend—
(a) section 1126;
(b) section 1126A;

(c) any other provision of this Act, if that is appropriate in consequence of provision made under paragraph (a) or (b).

(5) Regulations under this section may make provision that has effect in relation to expenditure incurred before the making of the regulations, provided that it does not increase any person's liability to tax."

(4) In each of the following, after "1126" insert "to 1126B"—

(a) section 104D(5);
(b) section 104E(5);
(c) section 104G(6);
(d) section 104H(7);
(e) section 104J(6);
(f) section 104K(7);
(g) section 1052(7);
(h) section 1053(6);
(i) section 1066(5);
(j) section 1067(5);
(k) section 1071(7);
(l) section 1072(8);
(m) section 1077(6);
(n) section 1078(7);
(o) section 1101(7);
(p) section 1102(6).

(5) In section 104Y(2), for "and 1126" substitute "to 1126B".

(6) In section 1310(4) (orders and regulations subject to affirmative procedure), after paragraph (za) insert—

"(zb) section 1126B (provision about when expenditure on consumable items is attributable to relevant research and development),".

(7) The amendments made by this section have effect in relation to expenditure incurred on or after 1 April 2015.

EXPLANATORY NOTE

RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT: EXPENDITURE ON CONSUMABLE ITEMS

SUMMARY

1. Clause [X] restricts the expenditure in respect of consumable items that qualifies for research and development ('R&D') tax credits. In the circumstances where a company sells or otherwise transfers ownership of the products of its R&D activity as part of its ordinary business then the cost of materials that go to make up those products is excluded from expenditure qualifying for relief. This restriction will apply to expenditure incurred on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Sections (1) and (2) amend section 1126 Corporation Tax Act 2009 (CTA 2009) so that the expenditure defined by that section as attributable to relevant research and development is further qualified by new sections 1126A and 1126B.

3. Section (3) sets out the additional rules that define attributable expenditure.

New section 1126A

4. The new section 1126A adds to the attribution rules in section 1126.

5. Subsection (1) excludes certain expenditure on items such as materials, components or machine parts making up a finished product. Where such items are both used in the development of a product and are part of the product that is then transferred the cost of the items included in the transferred product will not be qualifying expenditure.

6. Subsection (2) excludes expenditure on certain items which are used in a production process that itself involves some element of research and development. Where this process results in those items being available for transfer then the cost of those items transferred will not be qualifying expenditure.

7. Subsections (3) and (4) require an apportionment to be made between non-qualifying and qualifying expenditure on consumable item where not all of the product referred to in subsections (1) and (2) is sold or transferred. The effect is that if some of the product is retained for additional trials, or discarded as sub-standard, the costs of the consumable items in the retained or discarded products will remain qualifying expenditure and will not be excluded by subsections (1) or (2). This applies whether the product is a single item measured in terms of volume or weight (subsection (3)), or is made as discrete units (subsection (4))

8. Subsection (5) ensures that reference to producing an item refers to the entire process, including the use of ancillaries, such as packaging, that might be required before it is transferred.

9. Subsection (6) ensures that reference to a consumable item forming part of a product includes situations where that item has been physically or chemically changed in some way during the production process.

10. Subsection (7) defines ‘transfer of an item’.

11. Subsection (8) defines ‘item’ and ‘relevant person’.

New section 1126B

12. The new section 1126B confers powers on the Treasury to amend the attribution rules by regulation.

13. Subsection (1) allows the rules attributing expenditure on consumable items to relevant research and development to be amended by regulations. This enables the Treasury to take into account various ways in which R&D might be undertaken and consequently the manner in which relevant expenditure on consumable items may be incurred

14. Subsections (2), (3), (4) and (5) set out what the regulations may amend and how.

15. Sections (4) and (5) make consequential amendments to other sections in CTA 09 that refer to the definition of consumable items in sections 1126 and now sections 1126A and B.

16. Section (6) makes a consequential amendment to section 1310(4) to reference the regulatory powers described in paragraph 13 above.

17. Section (7) applies these provisions to expenditure incurred on or after 1 April 2015

BACKGROUND NOTE

18. Additional relief for R&D costs is an incentive for R&D activity and investment in innovation. R&D tax credits provide an enhanced deduction for expenditure on R&D, including the cost of materials and other items, such as water, fuel and power transformed or consumed in the R&D activity.

19. As laid out in guidelines issued by the Department for Business, Innovation and Skills (‘BIS’), production costs are not expenditure on R&D. In practice, where R&D activity takes place in conjunction with commercial production the attribution of the cost of consumable items, as previously defined, can be uncertain. This has led to claims for relief for costs in respect of materials and other items used in the production of goods effectively indistinguishable from normal commercial products.

20. This measure makes the relief more targeted on innovative research and development activities, rather than activities related to production. This makes it fairer for those companies that already adhere closely to the BIS guidelines.

21. If you have any questions about this change, or comments on the legislation, please contact Martin Trott on 03000 585619 (email: martin.trott@hmrc.gsi.gov.uk).

1 Reliefs for makers of children's television programmes

(1) Part 15A of CTA 2009 (television production reliefs) is amended as follows.

(2) In section 1216AB(2) (programmes that are not animation can be relevant programmes only if conditions C and D are met in addition to conditions A and B) for "not animation" substitute "neither animation nor a children's programme".

(3) In section 1216AB(3) (condition A: types of programme that can be relevant programmes)—

(a) omit the "or" after paragraph (b), and

(b) after paragraph (c) insert ", or

(d) a children's programme."

(4) In section 1216AC (types of programme: definitions) after subsection (2) insert—

"(2A) A programme is a children's programme if, when television production activities begin, it is reasonable to expect that the persons who will make up the programme's primary audience will be under the age of 15."

(5) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2015.

(6) Subsections (7) and (8) apply where—

(a) a company has an accounting period beginning before, and ending on or after, 1 April 2015 ("the straddling period"),

(b) in the part of the straddling period beginning with 1 April 2015 and ending with the end of the straddling period, the company carries on activities in relation to a television programme that—

(i) is within the definition of "children's programme" given by the new section 1216AC(2A), but

(ii) is not a relevant programme for the purposes of Part 15A of CTA 2009, and

(c) if that part of the straddling period were a separate accounting period, in that separate accounting period—

(i) the programme would be a relevant programme for the purposes of Part 15A of CTA 2009,

(ii) the company would for those purposes be the television production company in relation to the programme, and

(iii) the conditions for television tax relief (see section 1216C(2) of CTA 2009) would be met in relation to the programme.

(7) For the purposes of calculating for corporation tax purposes the company's profits or losses for the straddling period of its activities in relation to the programme—

(a) so much of the straddling period as falls before 1 April 2015, and

(b) so much of that period as falls on or after that date,

are to be treated as separate accounting periods.

(8) Any amounts brought into account for the purposes of calculating for corporation tax purposes the company's profits or losses for the straddling period of its activities in relation to the programme are to be apportioned to the two separate accounting periods on such basis as is just and reasonable.

EXPLANATORY NOTE

RELIEFS FOR MAKERS OF CHILDREN'S TELEVISION PROGRAMMES

SUMMARY

1. Clause [X] introduces a new tax relief for producers of children's television programmes.

DETAILS OF THE CLAUSE

2. Clause [X] amends Part 15A of Corporation Tax Act (CTA) 2009 which:
   - Introduces a new relief for the producers of children's television programmes,
   - Provides for the commencement of the new relief.

3. Section 1216AC is amended to include a new category of qualifying television programme to Part 15A

4. New subsection 1216AC(2A) defines what is meant by a children's television programme. A children's television programme is one where the primary audience consists of persons under the age of 15.

5. The commencement date for the new relief is for accounting periods beginning on or after 1 April 2015. Where a company has an accounting period starting before the1 April 2015 and ending after that day i.e. it straddles the date of commencement, for the purposes of the relief there will be a deemed accounting period ending on 31 March 2015 and another commencing on 1 April 2015.

BACKGROUND NOTE

6. The television production tax relief was introduced by Finance Act 2013. Part 15A provides the rules for claiming tax credits on qualifying expenditure for high-end television or animation productions.

7. This tax relief allows qualifying companies engaged in the production of animation, high-end television, and now children's television, intended for release to the general public to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender that loss for a payable tax credit.

8. This measures adds a new category of qualifying television productions to Part 15A.

9. If you have any questions about this change, or comments on the legislation, please contact Kerry Pope on 03000 585 740 (email: kerry.pope@hmrc.gsi.gov.uk).

1 Relief for contributions to flood and coastal erosion risk management projects

Schedule 1 makes provision about relief for contributions to flood and coastal erosion risk management projects.

SCHEDULE 1

Section 1

RELIEF FOR CONTRIBUTIONS TO FLOOD AND COASTAL EROSION RISK MANAGEMENT PROJECTS

Income tax: trade profits

1 In Chapter 5 of Part 2 of ITTOIA 2005 (trade profits: rules allowing deductions), after section 86 insert—

"Contributions to flood and coastal erosion risk management projects

86A Contributions to flood and coastal erosion risk management projects

(1) This section applies if—

(a) a person carrying on a trade ("the contributor") incurs expenses in making a qualifying contribution to a qualifying flood or coastal erosion risk management project, and

(b) a deduction would not otherwise be allowable for the expenses in calculating the profits of the trade.

(2) In subsection (1)(b) "deduction" does not include a deduction giving effect to a capital allowance.

(3) In calculating the profits of the trade, a deduction is allowed under this section for the expenses.

(4) But if, in connection with the making of the contribution, the contributor or a connected person—

(a) receives a disqualifying benefit, or

(b) is entitled to receive such a benefit,

no deduction is allowed.

(5) For the purposes of subsection (4) it does not matter whether a person receives, or is entitled to receive, the benefit—

(a) from the carrying out of the project, or

(b) from any person.

(6) Subsection (7) applies if—

(a) a deduction has been made under this section in relation to the contribution, and

(b) the contributor or a connected person receives—

(i) a refund of any part of the contribution, if the contribution is a sum of money, or

(ii) compensation for any part of the contribution, if the contribution is the provision of services,

in money or money's worth.

(7) The amount of, or an amount equal to the value of, the refund or compensation (so far as not otherwise brought into account in

calculating the profits of the trade or treated as a post-cessation receipt)—

(a) is brought into account in calculating the profits of the trade, as a receipt arising on the date on which the refund or compensation is received, or

(b) if the contributor has permanently ceased to carry on the trade before that date, is treated as a post-cessation receipt (see Chapter 18).

(8) In this section "disqualifying benefit" means a benefit consisting of money or other property, but it does not include—

(a) a refund of the contribution, if the contribution is a sum of money;

(b) compensation for the contribution, if the contribution is the provision of services.

86B Interpretation of section 86A

(1) This section applies for the purposes of section 86A.

(2) A flood or coastal erosion risk management project is a qualifying project if—

(a) an English risk management authority has applied to the Environment Agency for a grant under section 16 of the Flood and Water Management Act 2010 in order to fund the project, or

(b) the Environment Agency has determined that it will carry out the project,

and the Environment Agency has allocated funding by way of grant-in-aid to the project.

(3) A contribution to a flood or coastal erosion risk management project is a qualifying contribution if the contribution is made under an agreement between—

(a) the person making the contribution, and

(b) the applicant authority or (as the case may be) the Environment Agency,

or between those two persons and other persons.

(4) References to a flood risk management project or a coastal erosion risk management project are to be interpreted in accordance with section 3 of the Flood and Water Management Act 2010.

(5) In section 86A and this section—

"contribution", in relation to a period of account, means—

(a) a sum of money paid in that period of account, or

(b) any services provided in that period of account;

"English risk management authority" has the meaning given by section 6(14) of the Flood and Water Management Act 2010."

Income tax: profits of a property business

2 In section 272 of ITTOIA 2005 (application of trading income rules), in the table in subsection (2), after the entry for sections 82 to 86 insert—

"sections 86A and 86B	contributions to flood and coastal erosion risk management projects"

Corporation tax: trading income and trade profits

3 In Chapter 5 of Part 3 of CTA 2009 (trading income and trade profits: rules allowing deductions), after section 86 insert—

"Contributions to flood and coastal erosion risk management projects

86A Contributions to flood and coastal erosion risk management projects

(1) This section applies if—

(a) a company carrying on a trade ("the contributor") incurs expenses in making a qualifying contribution to a qualifying flood or coastal erosion risk management project, and

(b) a deduction would not otherwise be allowable for the expenses in calculating the profits of the trade.

(2) In subsection (1)(b) "deduction" does not include a deduction giving effect to a capital allowance.

(3) In calculating the profits of the trade, a deduction is allowed under this section for the expenses.

(4) But if, in connection with the making of the contribution, the contributor or a connected person—

(a) receives a disqualifying benefit, or

(b) is entitled to receive such a benefit,

no deduction is allowed.

(5) For the purposes of subsection (4) it does not matter whether a person receives, or is entitled to receive, the benefit—

(a) from the carrying out of the project, or

(b) from any person.

(6) Subsection (7) applies if—

(a) a deduction has been made under this section in relation to the contribution, and

(b) the contributor or a connected person receives—

(i) a refund of any part of the contribution, if the contribution is a sum of money, or

(ii) compensation for any part of the contribution, if the contribution is the provision of services,

in money or money's worth.

(7) The amount of, or an amount equal to the value of, the refund or compensation (so far as not otherwise brought into account in calculating the profits of the trade or treated as a post-cessation receipt)—

(a) is brought into account in calculating the profits of the trade, as a receipt arising in the accounting period in which the refund or compensation is received, or

(b) if the contributor has permanently ceased to carry on the trade before the refund or compensation is received, is treated as a post-cessation receipt (see Chapter 15).

(8) In this section "disqualifying benefit" means a benefit consisting of money or other property, but it does not include—

(a) a refund of the contribution, if the contribution is a sum of money;

(b) compensation for the contribution, if the contribution is the provision of services.

86B Interpretation of section 86A

(1) This section applies for the purposes of section 86A.

(2) A flood or coastal erosion risk management project is a qualifying project if—

(a) an English risk management authority has applied to the Environment Agency for a grant under section 16 of the Flood and Water Management Act 2010 in order to fund the project, or

(b) the Environment Agency has determined that it will carry out the project,

and the Environment Agency has allocated funding by way of grant-in-aid to the project.

(3) A contribution to a flood or coastal erosion risk management project is a qualifying contribution if the contribution is made under an agreement between—

(a) the company making the contribution, and

(b) the applicant authority or (as the case may be) the Environment Agency,

or between those two bodies and other persons.

(4) References to a flood risk management project or a coastal erosion risk management project are to be interpreted in accordance with section 3 of the Flood and Water Management Act 2010.

(5) In section 86A and this section—

"contribution", in relation to an accounting period, means—

(a) a sum of money paid in that accounting period, or

(b) any services provided in that accounting period;

"English risk management authority" has the meaning given by section 6(14) of the Flood and Water Management Act 2010."

Corporation tax: profits of a property business

4 In section 210 of CTA 2009 (application of trading income rules), in the table in subsection (2), after the entry for sections 82 to 86 insert—

"sections 86A and 86B	contributions to flood and coastal erosion risk management projects"

Corporation tax: investment business

5 In Chapter 2 of Part 16 of CTA 2009 (investment business: management expenses), in section 1221 (amounts treated as expenses of management), in subsection (3), after paragraph (i) insert—

“(ia) section 1244A (contributions to flood and coastal erosion risk management projects),”.

6 In Chapter 3 of Part 16 of CTA 2009 (investment business: amounts treated as expenses of management), after section 1244 insert—

“Contributions to flood and coastal erosion risk management projects

1244A Contributions to flood and coastal erosion risk management projects

(1) This section applies if a company with investment business (“the contributor”) incurs expenses in making a qualifying contribution to a qualifying flood or coastal erosion risk management project.

(2) The expenses are treated for the purposes of Chapter 2 as expenses of management.

(3) But if, in connection with the making of the contribution, the contributor or a connected person—

(a) receives a disqualifying benefit, or

(b) is entitled to receive such a benefit,

no deduction is allowed under section 1219.

(4) For the purposes of subsection (3) it does not matter whether a person receives, or is entitled to receive, the benefit—

(a) from the carrying out of the project, or

(b) from any person.

(5) In this section “disqualifying benefit” means a benefit consisting of money or other property, but it does not include—

(a) a refund of the contribution, if the contribution is a sum of money;

(b) compensation for the contribution, if the contribution is the provision of services.

(6) Section 86B applies for the purposes of this section as it applies for the purposes of section 86A.”

7 In Chapter 5 of Part 16 of CTA 2009 (investment business: receipts), after section 1253 insert—

“1253A Contributions to flood and coastal erosion risk management projects: refunds etc

(1) This section applies if—

(a) a deduction has been made under section 1219 by virtue of section 1244A (contributions to flood and coastal erosion risk management projects: expenses of management), and

(b) the contributor or a connected person receives—

(i) a refund of any part of the contribution, if the contribution is a sum of money, or

(ii) compensation for any part of the contribution, if the contribution is the provision of services,

in money or money's worth.

(2) The contributor is to be treated as receiving, when the refund or compensation is received, an amount—

(a) which is equal to so much of the refund or compensation, or so much of the value of the refund or compensation, as is not otherwise taken into account for corporation tax purposes, and

(b) to which the charge to corporation tax on income applies."

8 In section 253 of CAA 2001 (companies with investment business), in subsection (6), after "1233" insert "or 1244A".

Commencement

9 The amendments made by this Schedule have effect in relation to contributions paid or provided on or after 1 January 2015.

EXPLANATORY NOTE

RELIEF FOR CONTRIBUTIONS TO FLOOD AND COASTAL EROSION RISK MANAGEMENT PROJECTS

SUMMARY

1. Clause [X] and Schedule [Y] introduce deductions for income tax and corporation tax purposes for business contributions to partnership funding schemes for flood defence projects. The legislation will have effect for contributions made on or after 1 January 2015.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new sections 86A and 86B into Chapter 5 of Part 2 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 86A sets out the conditions for new section 86A to apply.

4. Subsection (2) of new section 86A ensures that this section has priority over a deduction provided for in the Capital Allowances Act 2001 (CAA 2001).

5. Subsection (3) of new section 86A provides for a deduction in calculating the profits of the trade where the conditions are met unless a deduction is denied by subsection (4) of new section 86A.

6. Subsection (5) of new section 86A clarifies the application of subsection (4) of new section 86A.

7. Subsection (6) of new section 86A sets out the conditions for subsection (7)of new section 86A to apply.

8. Subsection (7) of new section 86A ensures that a refund of, or compensation for, a contribution, will be taxable as profits of the trade or as a post-cessation receipt, where it would not otherwise be taken into account.

9. Subsection (8) of new section 86A defines “disqualifying benefit” for the purposes of new section 86A.

10. New section 86B details the circumstances in which a flood or coastal erosion risk management project is a “qualifying project”, and the meaning of a “qualifying contribution”, for the purposes of new section 86A, and provides other interpretative provisions.

11. Paragraph 2 applies new sections 86A and 86B of ITTOIA 2005 to property businesses.

12. Paragraph 3 inserts new sections 86A and 86B into Chapter 5 of Part 3 of Corporation Tax Act 2009 (CTA 2009).

13. Subsection (1) of new section 86A sets out the conditions for new section 86A to apply.

14. Subsection (2) of new section 86A ensures that this section has priority over a deduction provided for in CAA 2001.

15. Subsection (3) of new section 86A provides for a deduction in calculating the profits of the trade where the conditions are met unless a deduction is denied by subsection (4) of new section 86A.

16. Subsection (5) of new section 86A clarifies the application of subsection (4) of new section 86A.

17. Subsection (6) of new section 86A sets out the conditions for subsection (7) of new section 86A to apply.

18. Subsection (7) of new section 86A ensures that a refund of, or compensation for, a contribution, will be taxable as profits of the trade or as a post-cessation receipt, where it would not otherwise be taken into account.

19. Subsection (8) of new section 86A defines “disqualifying benefit” for the purposes of new section 86A.

20. New section 86B details the circumstances in which a flood or coastal erosion risk management project is a “qualifying project”, and the meaning of a “qualifying contribution”, for the purposes of new section 86A, and provides other interpretative provisions.

21. Paragraph 4 applies new sections 86A and 86B of CTA 2009 to property businesses.

22. Paragraph 5 amends section 1221(3) of CTA 2009 to include new section 1244A.

23. Paragraph 6 inserts new section 1244A into Chapter 3 of Part 16 of CTA 2009.

24. Subsection (1) of new section 1244A sets out the conditions under which the section applies.

25. Subsection (2) of new section 1244A provides that expenses in making a qualifying contribution are treated as management expenses of a company with investment business unless this treatment is denied by subsection (3) of new section 1244A.

26. Subsection (4) of new section 1244A provides clarification on the operation of subsection (3).

27. Subsection (5) of new section 1244A defines "disqualifying benefit" for the purposes of new section 1244A.

28. Paragraph 7 inserts new section 1253A into Chapter 5 of Part 16 of CTA 2009.

29. New section 1253A ensures that a refund of a contribution or compensation for a contribution of services, will be chargeable to corporation tax if it would not otherwise be taken into account in calculating profits for corporation tax purposes.

30. Paragraph 8 amends section 253 of CAA 2001 to include new section 1244A.

31. Paragraph 9 provides commencement rules.

BACKGROUND NOTE

32. This measure forms part of the Government's wider package of measures to maintain and strengthen flood defences across the country.

33. If you have any questions about this change, or comments on the legislation, please contact James Ewington on 03000 553788 (email: james.ewington@hmrc.gsi.gov.uk)

1 Corporation tax: loan relationships and derivative contracts

Schedule 1 contains provisions relating to loan relationships and derivative contracts.

2 Election of designated currency by UK resident investment company

(1) Chapter 4 of Part 2 of CTA 2010 (currency) is amended as follows.

(2) Section 9A (designated currency of a UK resident investment company) is amended as follows.

(3) For subsection (2) substitute—

"(2) An election under this section by a company ("X") takes effect only if, at the time when it is to take effect (see section 9B(1))—

(a) X is a UK resident investment company, and

(b) Condition A or Condition B is met."

(4) Omit subsection (3).

(5) After subsection (8) insert—

"(9) In relation to any period of account for which a currency is X's designated currency as a result of an election under this section, profits or losses of X that fall to be calculated in accordance with generally accepted accounting practice for corporation tax purposes must be calculated as if—

(a) the designated currency were the functional currency of the company, and

(b) no part of X's business could, in accordance with generally accepted accounting practice, be regarded as having another currency as its functional currency."

(6) Section 9B (period for which election under section 9A has effect) is amended as follows.

(7) In subsection (1), for "section 9A(2)(a)" substitute "section 9A".

(8) Omit subsection (2).

(9) In subsection (3), for "section 9A(2)(a)" substitute "section 9A".

(10) In subsection (6), for the words from the beginning to "only" substitute "A revocation event occurs in the period of account in which X's first accounting period begins".

(11) After subsection (6) insert—

"(6A) A revocation event also occurs in a period of account (whether or not a period to which subsection (6) applies) if, at any time during that period, X ceases to be a UK resident investment company."

(12) In subsection (7)(a), for "section 9A(2)(a)" substitute "section 9A".

(13) In section 17 (interpretation of Chapter), for subsection (4) substitute—

"(4) References in this Chapter to the functional currency of a company or part of a company are references to the currency of the primary economic environment in which the company or part operates."

(14) This section has effect in relation to periods of account beginning on or after 1 January 2016.

(15) Subsections (16) and (17) apply if a period of account of a company ("the straddling period of account) begins before, and ends on or after, 1 January 2016.

(16) It is to be assumed, for the purposes of this section, that the straddling period of account consists of two separate periods of account—

(a) the first beginning with the straddling period of account and ending immediately before 1 January 2016, and

(b) the second beginning with that day and ending with the straddling period of account.

(17) For the purposes of this section, it is to be assumed—

(a) that the company prepares its accounts for each of the two periods in the same currency, and otherwise on the same basis, as it prepares its accounts for the straddling period of account, and

(b) that if the accounts for the straddling period of account, in accordance with generally accepted accounting practice, identify a currency as the company's functional currency, the accounts for each of the two periods do likewise.

SCHEDULES

SCHEDULE 1

Section 1

LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS

PART 1

LOAN RELATIONSHIPS: AMENDMENTS OF PARTS 5 AND 6 OF CTA 2009

1 Part 5 of CTA 2009 (loan relationships) is amended as follows.

2 In section 306 (overview of Chapter 3), in subsection (2)—

(a) before paragraph (a) insert—

"(za) makes provision about the matters in respect of which amounts are to be brought into account (see section 306A),",

(b) for paragraph (g) substitute—

"(g) makes provision about cases where amounts are recognised even though companies are not, or have ceased to be, parties to loan relationships (see section 330A),".

3 After section 306 insert—

"Matters in respect of which amounts are to be brought into account

306A Matters in respect of which amounts to be brought into account

(1) The matters in respect of which amounts are to be brought into account for the purposes of this Part in respect of a company's loan relationships are—

(a) profits and losses of the company that arise to it from its loan relationships and related transactions (excluding interest or expenses),

(b) interest under those relationships, and

(c) expenses incurred by the company under or for the purposes of those relationships and transactions.

(2) Expenses are only treated as incurred as mentioned in subsection (1)(c) if they are incurred directly—

(a) in bringing any of the loan relationships into existence,

(b) in entering into or giving effect to any of the related transactions,

(c) in making payments under any of those relationships or as a result of any of those transactions, or

(d) in taking steps to ensure the receipt of payments under any of those relationships or in accordance with any of those transactions.

(3) For the treatment of pre-loan relationship and abortive expenses, see section 329."

4 (1) Section 307 (general principles about the bringing into accounts of credits and debits) is amended as follows.

(2) In subsection (2), after "this Part" insert "in respect of the matters mentioned in section 306A(1)".

(3) After subsection (2) insert—

"(2A) Subsections (2B) and (2C) apply if an accounting period of a company does not coincide with one or more of its periods of account.

(2B) The amounts referred to in subsection (2) are to be determined by apportionment in accordance with section 1172 of CTA 2010 (time basis).

(2C) But if it appears that apportionment in accordance with that section would work unreasonably or unjustly for an accounting period, subsection (2) is to be read as referring to amounts that would have been recognised in determining the company's profit or loss for that period in accordance with generally accepted accounting practice if accounts had been drawn up for that period."

(4) Omit subsections (3) to (5).

(5) For subsection (6) substitute—

"(6) This section is subject to the following provisions of this Part."

5 (1) Section 308 (amounts recognised in determining a company's profit or loss) is amended as follows.

(2) In subsection (1), for the words from "recognised", in the second place, onwards substitute "that is recognised in the company's accounts for the period as an item of profit or loss".

(3) After subsection (1) insert—

"(1A) The reference in subsection (1) to an amount recognised in the company's accounts for the period as an item of profit or loss includes a reference to an amount that—

(a) was previously recognised as an item of other comprehensive income, and

(b) is transferred to become an item of profit or loss in determining the company's profit or loss for the period.

(1B) In subsections (1) and (1A) "item of profit or loss" and "item of other comprehensive income" each has the meaning that it has for accounting purposes."

(4) Omit subsections (2) and (3).

6 In section 310 (power to make regulations about recognised amounts), in subsections (1)(a) and (b) and (2), omit "or (2)".

7 (1) Section 313 (basis of accounting) is amended as follows.

(2) In subsection (1), omit the words from "and, in particular," onwards.

(3) In subsection (2)—

(a) omit "sections 307(3) and (4) and",

(b) omit paragraphs (e) and (f),

(c) at the end of paragraph (g) insert "and", and

(d) omit paragraph (i) and the "and" immediately before it.

(4) Omit subsection (3).

(5) In subsection (4), for the words from "shown" onwards substitute "measured in the company's balance sheet at its amortised cost using the effective interest method, but with that amortised cost being adjusted as necessary where the loan relationship is the hedged item under a designated fair value hedge".

(6) After subsection (4) insert—

"(4A) In subsection (4) each of the following expressions has the meaning that it has for accounting purposes—

"amortised cost", in relation to assets or liabilities;

"the effective interest method", in relation to the measurement of assets or liabilities."

(7) For subsection (5) substitute—

"(5) In this Part "fair value accounting" means a basis of accounting under which—

(a) assets and liabilities are measured in the company's balance sheet at their fair value, and

(b) changes in the fair value of assets and liabilities are recognised as items of profit or loss."

(8) For subsection (6) substitute—

"(6) For the meaning of "fair value", see section 476(1).

(7) In this Part each of the following has the meaning that it has for accounting purposes—

"designated fair value hedge";

"hedged item".

8 Omit section 314 (power to make regulations about changes from amortised cost basis).

9 (1) Section 315 (introduction to sections 316 to 319) is amended as follows.

(2) For subsection (1) substitute—

"(1) Sections 316 and 318 (adjustments on change of accounting policy) apply if—

(a) a company changes, from one period of account or accounting period to the next, the basis of accounting on which credits and debits relating to its loan relationships or any of them are calculated for the purposes of this Part,

(b) the change falls within subsection (1A) and is not excluded by subsection (1B),

(c) the old basis accorded with the law or practice applicable in relation to the period before the change, and

(d) the new basis accords with the law and practice applicable to the period after the change.

(1A) A change falls within this subsection if it results from—

(a) a change of the company's accounting policy, or

(b) any provision made by or under this Part (such as section 349 (application of amortised cost basis to connected companies relationships)) requiring a change in the basis of accounting.

(1B) A change is excluded by this subsection if the company makes the change in order to comply with amending legislation not applicable to the previous period."

(3) In subsection (2)—

(a) for "to 319" substitute "and 318", and

(b) in paragraph (a), for "those periods of account" substitute "the periods mentioned in subsection (1)".

(4) Omit subsections (3) and (4).

(5) In the heading, for "to 319" substitute "and 318".

10 For section 316 substitute—

"316 Change of basis of accounting involving change of value

(1) If there is a difference between—

(a) the tax-adjusted carrying value of an asset or liability at the end of the earlier period, and

(b) the tax-adjusted carrying value of that asset or liability at the beginning of the later period,

a credit or debit (as the case may be) of an amount equal to the difference must be brought into account for the purposes of this Part for the later period in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

(2) This section does not apply so far as the credit or debit falls to be brought into account apart from this section."

11 Omit section 317 (carrying value).

12 (1) Section 318 (change of accounting policy following cessation of loan relationship) is amended as follows.

(2) In subsection (1), for paragraph (b) substitute—

"(b) section 330A (company is not, or has ceased to be, party to loan relationship) applied to the cessation, and".

(3) For subsections (2) and (3) substitute—

"(2) A credit or debit (as the case may be) of an amount equal to the difference must be brought into account for the purposes of this Part for the later period in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice."

(4) In subsection (4), for "Subsections (2) and (3) do" substitute "Subsection (2) does".

(5) For subsection (5) substitute—

"(5) In this section "the amount outstanding in respect of the loan relationship" means—

(a) so much of the recognised deferred income or recognised deferred loss from the loan relationship as has not been represented by credits or debits brought into account under this Part in respect of the relationship, and

(b) any amounts relating to the matters mentioned in section 306A(1) in respect of the loan relationship that have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income and not transferred to become items of profit or loss."

(6) After subsection (6) insert—

"(7) In determining what amounts fall within subsection (5)(b) at the beginning or end of a period, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous periods.

(8) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous periods which differs from that mentioned in subsection (7), that different assumption applies in determining what amounts fall within subsection (5)(b) at the beginning or end of the period."

13 (1) Section 320 (credits and debits treated as relating to capital expenditure) is amended as follows.

(2) For subsections (1) to (3) substitute—

"(1) This section applies if—

(a) an amount for an accounting period in respect of a company's loan relationship relates to any of the matters in section 306A(1),

(b) generally accepted accounting practice allows the amount to be treated in the company's accounts as an amount recognised in determining the carrying value of an asset or liability, and

(c) any profit or loss for corporation tax purposes in relation to that asset or liability will not fall to be calculated in accordance with generally accepted accounting practice.

(2) Despite that treatment, the amount is to be brought into account as a credit or debit for the purposes of this Part, for the accounting period for which it is recognised, in the same way as an amount which is brought into account as a credit or debit in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

(3) But subsection (2) does not apply to an amount which relates to an intangible fixed asset to which an election under section 730 (writing down at fixed rate: election for fixed-rate basis) applies."

(3) Omit subsection (4).

(4) For subsections (5) and (6) substitute—

"(5) If an amount relating to an asset or liability is brought into account as mentioned in subsection (2) as a debit, no debit may be brought into account for the purposes of this Part in respect of—

(a) the writing down of so much of the value of the asset or liability as is attributable to that debit, or

(b) so much of any amortisation or depreciation representing a writing-off of that value as is attributable to that debit."

14 After section 320 insert—

"320A Amounts recognised in other comprehensive income and not transferred to profit or loss

(1) This section applies if—

(a) in a period of account an asset or liability representing a loan relationship of a company ceases in accordance with generally accepted accounting practice to be recognised in the company's accounts,

(b) amounts relating to the matters mentioned in section 306A(1) in respect of that loan relationship have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income and have not subsequently been transferred to become items of profit or loss, and

(c) condition A or B is met.

(2) Condition A is that, at the time when the asset or liability ceases to be recognised, it is not expected that the amounts mentioned in subsection (1)(b) will in future be transferred to become items of profit or loss.

(3) Condition B is that, at any later time, it is no longer expected that the amounts mentioned in subsection (1)(b) will in future be transferred to become items of profit or loss.

(4) The amounts mentioned in subsection (1)(b)—

(a) must be brought into account for the purposes of this Part as credits or debits for the period of account in which the time mentioned in subsection (2) or (3) falls, in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice, and

(b) must not be brought into account for a later period of account even if they are subsequently transferred to become items of profit or loss for the later period.

(5) This section applies in a case where part of an asset or liability representing a loan relationship of a company ceases to be recognised in the company's accounts as it applies in a case where the whole of an asset or liability representing a loan relationship ceases to be recognised, but as if the reference in subsection (1)(b) to amounts in respect of the loan relationship were a reference to so much of those amounts as are attributable to that part of the asset or liability.

(6) In determining what amounts fall within subsection (1)(b) at any time in an accounting period, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous accounting periods.

(7) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous accounting periods which differs from that mentioned in subsection (6), that different assumption applies in determining what amounts fall within subsection (1)(b) at the time in question.

(8) In this section "item of profit or loss" and "item of other comprehensive income" each has the meaning that it has for accounting purposes."

15 Omit section 321 (credits and debits recognised in equity).

16 (1) Section 322 (credits not required to be brought into account in respect of release of debt in certain cases) is amended as follows.

(2) In subsection (2), for "D" substitute "E".

(3) After subsection (5A) of that section insert—

"(5B) Condition E is that, immediately before the release, it is reasonable to assume that, without the release and any arrangements of which the release forms part, there would be a material risk that at some time within the next 12 months the company would be unable to pay its debts."

(4) In subsection (7) of that section, after "Section" insert "323(A1) applies for the interpretation of subsection (5B); and the rest of section".

17 In section 323 (meaning of expressions relating to insolvency etc.), before subsection (1) insert—

"(A1) For the purposes of sections 322(5B) and 323A(1)(b) a company is unable to pay its debts if—

(a) it is unable to pay its debts as they fall due, or

(b) the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities."

18 After section 323 insert—

"323A Substantial modification: cases where credits not required to be brought into account

(1) Subsection (2) applies if—

(a) a debtor relationship of a company is modified or replaced by another,

(b) immediately before the modification or replacement it is reasonable to assume that, without the modification or replacement and any arrangements of which the modification or replacement forms part, there would be a material risk that at some time within the next 12 months the company would be unable to pay its debts, and

(c) the modification or replacement is treated for accounting purposes as a substantial modification of the terms of a loan relationship of the company.

(2) The company is not required to bring into account for the purposes of this Part a credit in respect of any change in the carrying value of the liability representing the modified or replacement debtor relationship.

(3) If as a result of subsection (2) no credit was brought into account in respect of a change in the carrying value of a liability representing a debtor relationship, the company may not bring into account a debit for the purposes of this Part in respect of a change in the carrying value of that liability, to the extent that the change represents a reversal of the change in carrying value to which subsection (2) applied.

(4) Section 323(A1) applies for the interpretation of subsection (1)(b)."

19 In section 324 (restriction on debts resulting from revaluation), after subsection (3) insert—

"(3A) Where a company has a hedging relationship between a relevant contract ("the hedging instrument") and the asset or liability representing the loan relationship, this section does not prevent credits or debits being brought into account in respect of changes in the fair value of the asset or liability which are attributable to any of the risks in respect of which the hedging instrument was intended to act as a hedge."

20 (1) Section 328 (exchange gains and losses) is amended as follows.

(2) In subsection (1), for "section 307(3)" substitute "section 306A(1)".

(3) After subsection (2A) insert—

"(2B) But subsection (2A) does not exclude the application of subsection (1) in respect of an exchange gain or loss arising at a time when an election under section 9A of CTA 2010 (designated currency of UK resident investment company) has effect in relation to the company."

(4) For subsection (3) substitute—

"(3) Subsection (1) does not apply to an exchange gain or loss of a company so far as it—

(a) arises as a result of the translation of the assets, liabilities, income and expenses of all or part of the company's business from the functional currency of the business, or that part of the business, into another currency, and

(b) has been recognised as an item of other comprehensive income.

(3A) In subsection (3)—

(a) the reference to the functional currency of a business or part of a business is a reference to the currency of the primary economic environment in which the business or part operates, and

(b) "assets, liabilities, income and expenses" and "item of other comprehensive income" each has the meaning that it has for accounting purposes."

(5) For subsection (4) substitute—

"(4) The Treasury may by regulations make provision—

(a) excluding exchange gains or losses of a specified description from subsection (1),

(b) requiring exchange gains or losses of a specified description to which subsection (1) does not apply to be brought into account in specified circumstances,

(c) as to the way in which, including the currency by reference to which, any exchange gains or losses to be brought into account as a result of provision made under paragraph (b) are to be calculated, and

(d) as to the way in which any such exchange gains or losses are to be brought into account.

(4ZA) For the purposes of subsection (4)(b), it does not matter whether the application of subsection (1) in relation to the exchange gains or losses is excluded by regulations under subsection (4)(a) or otherwise."

(6) Omit subsections (4A) and (5).

(7) For subsection (6) substitute—

"(6) The reference in subsection (4) to bringing exchange gains or losses into account is a reference to bringing them into account—

(a) for the purposes of this Part as credits or debits arising to a company from its loan relationships, or

(b) for the purposes of corporation tax on chargeable gains."

21 Omit sections 328A to 328H (loan relationships: arrangements that have a "one-way exchange effect") (which are superseded by the amendment made by paragraph 45).

22 (1) Section 329 (pre-loan relationship and abortive expenses) is amended as follows.

(2) In subsection (1)(c), for "section 307(3)(c)" substitute "section 306A(1)(c)".

(3) In subsection (2), for "section 307(3)" substitute "section 307(2)".

23 After section 330 insert—

"Company is not, or has ceased to be, party to loan relationship

330A Company is not, or has ceased to be, party to loan relationship

(1) This section applies if—

(a) amounts in respect of a qualifying relationship are recognised in a company's accounts for an accounting period ("the current period") as an item of profit or loss even though during all or part of the period the company is not a party to the qualifying relationship,

(b) any of conditions A to D is met, and

(c) in the absence of this section, the credits and debits brought into account by the company for the purposes of this Part or Part 7 for the current period would not include credits or debits representing the whole of those amounts.

(2) In this section "qualifying relationship" means—

(a) a loan relationship, or

(b) a relationship that would be a loan relationship if references in section 302(1) to a company were references to any person.

References in this section to a company being a party to a qualifying relationship are to be read accordingly.

(3) Condition A is that—

(a) the company was a party to the qualifying relationship,

(b) amounts in respect of the qualifying relationship were recognised in the company's accounts as an item of profit or loss when it was a party to the relationship, and

(c) any amounts in respect of the relationship continue to be recognised in those accounts as an item of profit or loss.

(4) Condition B is that the amounts recognised as mentioned in subsection (1)(a) are recognised as a result of a transaction which has the effect of transferring to the company all or part of the risk or reward relating to the qualifying relationship without a corresponding transfer of rights or obligations under the relationship.

(5) Condition C is that the amounts recognised as mentioned in subsection (1)(a) are recognised as a result of a related transaction in relation to a qualifying relationship to which the company was, but has ceased to be, a party.

(6) Condition D is that—

(a) the amounts recognised as mentioned in subsection (1)(a) are recognised because the company may enter into a qualifying relationship or related transaction but has not yet done so, and

(b) the amounts are not expenses to which section 329 applies.

(7) The company must bring credits and debits into account for the purposes of this Part for the accounting period as if the company

were a party to the qualifying relationship for the whole of the accounting period.

(8) The amounts that must be brought into account are those amounts in respect of the qualifying relationship that are recognised in the company's accounts for the accounting period as an item of profit or loss (but subject to the provisions of this Part).

(9) This section is subject to sections 330B and 330C.

(10) In this section—

"item of profit or loss" has the meaning it has for accounting purposes;

"recognised" means recognised in accordance with generally accepted accounting practice;

"related transaction", in relation to a qualifying relationship, is to be read as if the reference in section 304(1) and (2) to a loan relationship were to a qualifying relationship.

330B Exclusion of debit where relief allowed to another

A company is not to bring into account as a debit for the purposes of this Part as a result of section 330A an amount which—

(a) is brought into account as a debit for those purposes by another company,

(b) is brought into account so as to reduce the assumed taxable total profits of another company for the purposes of Part 9A of TIOPA 2010 (controlled foreign companies), or

(c) is allowable as a deduction by a person for the purposes income tax.

330C Avoidance of double charge

(1) This section applies if at any time a company ("the relevant company") is required by section 330A to bring into account as a credit for the purposes of this Part an amount—

(a) which is brought into account as a credit for those purposes by another company,

(b) which is brought into account in determining the assumed taxable total profits of another company for the purposes of Part 9A of TIOPA 2010 (controlled foreign companies), or

(c) on which a person is charged to income tax.

(2) In order to avoid a double charge to tax in respect of the amount, the relevant company may make a claim for one or more consequential adjustments to be made in respect of the amount to be brought into account as a credit.

(3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.

(4) Consequential adjustments may be made—

(a) in respect of any period,

(b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and

(c) despite any time limit imposed by or under any enactment."

24 Omit section 331 (company ceasing to be a party to loan relationship) and section 332 (repo, stock lending and other transactions).

25 In section 340 (group transfers and transfers of insurance business: transfer at notional carrying value), in subsection (6)—

(a) omit paragraph (a), and

(b) in paragraph (c), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

26 (1) Section 342 (issue of new securities on reorganisations: disposal at notional carrying value) is amended as follows.

(2) In subsection (3), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

(3) In subsection (4), omit the definition of "carrying value".

27 Omit section 347 (disapplication of Chapter 4 of Part 5 where transferor party to avoidance) (which is superseded by the amendment made by paragraph 45).

28 (1) Section 349 (application of amortised cost basis to connected companies relationships) is amended as follows.

(2) After subsection (2) insert—

"(2A) Where—

(a) a company has a hedging relationship between a relevant contract ("the hedging instrument") and the asset or liability representing the loan relationship, and

(b) the loan relationship is dealt with in the company's accounts on the basis of fair value accounting,

it is to be assumed in applying an amortised cost basis of accounting for the purpose of subsection (2) that the hedging instrument has where possible been designated for accounting purposes as a fair value hedge of the loan relationship."

(3) Omit subsections (3) and (4).

29 Omit section 350 (companies beginning to be connected) and section 351 (companies ceasing to be connected).

30 In section 352 (disregard of related transactions), after subsection (3) insert—

"(3A) Subsections (2) and (3) do not affect the credits or debits to be brought into account for the purposes of this Part in respect of changes in the fair value of the asset that are attributable to subsequent changes in the corresponding market rate.

(3B) Subsection (3A) is subject to section 354 (exclusion of debits for impaired or released connected companies debts).

(3C) In relation to a debt, "the corresponding market rate" at any time is the lowest rate at which a company of good financial standing might at that time expect to be able to borrow money at arm's length in the currency applicable to the debt, for repayment at the same time as the debt and otherwise on similar terms."

31 After section 352 insert—

"352A Exclusion of credits on reversal of disregarded loss

(1) If as a result of section 352 the debits brought into account by a company in respect of a loan relationship are reduced, no credit is to be brought into account for the purposes of this Part to the extent that it represents the reversal of so much of the loss as was not brought into account as a debit.

(2) Nothing in this section affects the credits to be brought into account for the purposes of this Part in respect of exchange gains or losses resulting from a debt."

32 In section 354 (exclusion of debits for impaired or released connected companies debts), after subsection (2) insert—

"(2A) Where the carrying value of an asset representing the creditor relationship has at any time been adjusted as a result of being the hedged item under a designated fair value hedge, the rule in subsection (1) does not prevent a credit or debit being brought into account for the purposes of this Part in respect of any reversal of that adjustment."

33 (1) Section 358 (exclusion of credits on release of connected companies debts: general) is amended as follows.

(2) After subsection (6) insert—

"(7) Where the carrying value of a liability representing the debtor relationship has at any time been adjusted as a result of being the hedged item under a designated fair value hedge, this section does not prevent a credit or debit being brought into account for the purposes of this Part in respect of any reversal of that adjustment.

(8) Nothing in this section affects the credits or debits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt."

34 (1) Section 359 (exclusion of credits on release of connected companies debts during creditor's insolvency) is amended as follows.

(2) In subsection (1)(d), for "the condition in question" substitute "any of those conditions".

(3) After subsection (2) insert—

"(3) Where the carrying value of a liability representing the debtor relationship has at any time been adjusted as a result of being the hedged item under a designated fair value hedge, this section does not prevent a credit being brought into account for the purposes of this Part in respect of any reversal of that adjustment."

35 Omit section 363A (arrangements for avoiding section 361 or 362) (which is superseded by the amendment made by paragraph 45).

36 In section 422 (transfer of loan relationship at notional carrying value), in subsection (3)—

(a) omit paragraph (a) (including the "and" at the end), and

(b) in paragraph (b), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

37 (1) Section 424 (reorganisations involving loan relationships) is amended as follows.

(2) In subsection (3), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

(3) In subsection (4), omit the definition of "carrying value".

38 In section 433 (transfer of loan relationship at notional carrying value), in subsection (3)—

(a) omit paragraph (a) and the "and" immediately following it, and

(b) in paragraph (b), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

39 (1) Section 435 (reorganisations involving loan relationships) is amended as follows.

(2) In subsection (3), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

(3) In subsection (4), omit the definition of "carrying value".

40 In section 440 (overview of Chapter 15 of Part 5), in subsection (2)—

(a) in paragraph (a)—

(i) omit "and tax relief schemes and arrangements", and

(ii) for "to 443" substitute "and 442",

(b) omit paragraph (f) (including the "and" at the end), and

(c) at the end of paragraph (g) insert "and

(h) for rules dealing with tax avoidance arrangements, see section 455B to 455D.".

41 In section 441 (loan relationships for unallowable purposes), after subsection (3) insert—

"(3A) If—

(a) a credit brought into account for that period for the purposes of this Part by the company would (in the absence of this section) be reduced, and

(b) the reduction represents an amount which, if it did not reduce a credit, would be brought into account as a debit in respect of that relationship,

subsection (3) applies to the amount of the reduction as if it were an amount that would (in the absence of this section) be brought into account as a debit."

42 In section 442 (meaning of "unallowable purpose"), after subsection (1) insert—

"(1A) In subsection (1)(b) "related transaction", in relation to a loan relationship, includes anything which equates in substance to a disposal or acquisition of the kind mentioned in section 304(1) (as read with section 304(2))."

43 Omit section 443 (restriction of relief for interest where tax relief schemes involved) (which is superseded by the amendment made by paragraph 45).

44 Omit section 454 (application of fair value accounting: reset bonds etc) and section 455 (loan relationships: disposal for consideration not fully recognised by accounting practice) (which are superseded by the amendment made by paragraph 45).

45 In Chapter 15 of Part 5, after section 455A insert—

"Counteracting avoidance arrangements

455B Counteracting effect of avoidance arrangements

(1) Any loan-related tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to credits and debits to be brought into account for the purposes of this Part.

(2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(3) For the meaning of "relevant avoidance arrangements" and "loan-related tax advantage", see section 455C.

455C Interpretation of section 455B

(1) This section applies for the interpretation of section 455B (and this section).

(2) "Arrangements" include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(3) Arrangements are "relevant avoidance arrangements" if their main purpose, or one of their main purposes, is to enable a company to obtain a loan-related tax advantage.

(4) But arrangements are not "relevant avoidance arrangements" if the obtaining of any loan-related tax advantages that would (in the absence of section 455B) arise from them can reasonably be regarded as consistent with any principles on which the provisions of this Part that are relevant to the arrangements are based (whether expressed or implied) and the policy objectives of those provisions.

(5) A company obtains a "loan-related tax advantage" if—
- (a) it brings into account a debit to which it would not otherwise be entitled,
- (b) it brings into account a debit which exceeds that to which it would otherwise be entitled,
- (c) it avoids having to bring a credit into account,
- (d) the amount of any credit brought into account by the company is less than it would otherwise be, or
- (e) it brings a debit or credit into account earlier or later than it otherwise would.

(6) In subsection (5), references to bringing a debit or credit into account are references to bringing a debit or credit into account for the purposes of this Part.

455D Examples of results that may indicate exclusion not applicable

(1) Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is to enable a company to obtain a loan-related tax advantage are not excluded by section 455C(4) from being "relevant avoidance arrangements" for the purposes of section 455B—

(a) the elimination or reduction, for purposes of corporation tax, of profits of a company arising from any of its loan relationships, where for economic purposes profits, or greater profits, arise to the company from that relationship;

(b) the creation or increase, for purposes of corporation tax, of a loss or expense arising from a loan relationship, where for economic purposes no loss or expense, or a smaller loss or expense, arises from that relationship;

(c) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company's accounts as an item of profit or loss or be so recognised earlier;

(d) ensuring that a loan relationship is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements;

(e) enabling a company to bring into account for the purposes of this Part a debit in respect of an exchange loss, in circumstances where a corresponding exchange gain would not give rise to a credit or would give rise to a credit of a smaller amount;

(f) enabling a company to bring into account for the purposes of this Part a debit in respect of a fair value loss in circumstances where a corresponding fair value gain would not give rise to a credit or would give rise to a credit of a smaller amount;

(g) ensuring that the effect of the provisions of Chapter 4 is to produce an overall reduction in the credits brought into account for the purposes this Part or an overall increase in the debits brought into account for those purposes;

(h) bringing into account for the purposes of this Part a debit in respect of an impairment loss or release debit in a case where the provisions of Chapter 6 would but for the arrangements have prevented this.

(2) But in each case the result concerned is only capable of indicating that section 455C(4) is not available if it is reasonable to assume that such a result was not the anticipated result when the provisions of this Part that are relevant to the arrangements were enacted.

(3) In subsection (1)(f) references to a fair value gain or a fair value loss, in relation to a company, are references respectively to—

(a) a profit to be brought into account in relation to an asset or liability representing a loan relationship where fair value accounting is used for the period in question, or

(b) a loss to be brought into account in relation to such an asset or liability where fair value accounting is used for the period in question.

(4) "Arrangements" and "loan-related tax advantage" have the same meaning as in section 455C."

46 In Chapter 17 of Part 5, after section 465A insert—

"Tax-adjusted carrying value

465B "Tax-adjusted carrying value"

(1) This section applies for the purposes of this Part.

(2) "Tax-adjusted carrying value", in relation to the asset or liability representing a loan relationship, means the carrying value of the asset or liability recognised for accounting purposes, except as provided by subsection (7).

(3) For the purposes of this section the "carrying value" of the asset or liability includes amounts recognised for accounting purposes in relation to the loan relationship in respect of—
(a) accrued amounts,
(b) amounts paid or received in advance, or
(c) impairment losses (including provisions for bad or doubtful debts).

(4) For the meaning of "impairment loss" see section 476(1).

(5) In determining the tax-adjusted carrying value of an asset or liability in a period of account of a company, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous periods of account.

(6) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous periods of account which differs from that mentioned in subsection (5), that different assumption applies in determining the tax-adjusted carrying value of the asset or liability in the period.

(7) In determining the tax-adjusted carrying value of the asset or liability, the provisions specified in subsection (8) apply as they apply for the purposes of determining the credits and debits to be brought into account under this Part.

(8) Those provisions are—
(a) section 308(1A) (amounts recognised in other comprehensive income and transferred to profit and loss),
(b) sections 311 and 312 (amounts not fully recognised for accounting purposes),
(c) section 320A (amounts recognised in other comprehensive income and not transferred to profit and loss),
(d) section 323A (substantial modification: cases where credits not required to be brought into account),
(e) section 324 (restriction on debits resulting from revaluation),

(f) section 325 (restriction on credits resulting from reversal of disallowed debits),

(g) sections 333 and 334 (company ceasing to be UK resident and non-UK company ceasing to hold loan relationship for UK permanent establishment),

(h) Chapter 4 (continuity of treatment on transfers within groups or organisations),

(i) section 349(2) (application of amortised cost basis of accounting to connected companies relationships),

(j) section 352 (disregard of related transactions),

(k) section 352A (exclusion of credits on reversal of disregarded loss),

(l) section 354 (exclusion of debits for impaired or released connected companies debts),

(m) section 360 (exclusion of credits on reversal of impairments of connected companies debts),

(n) sections 361 to 363 (deemed debt releases on impaired debts becoming held by connected company),

(o) Chapter 8 (connected parties relationships: late interest),

(p) section 382 (company partners using fair value accounting),

(q) sections 399 to 400C (treatment of index-linked gilt-edged securities),

(r) section 404 (restriction on deductions etc relating to FOTRA securities),

(s) sections 407 and 408 (deeply discounted securities and connected companies),

(t) sections 409 to 412 (deeply discounted securities and close companies),

(u) section 415(2) (loan relationships with embedded derivatives),

(v) Chapter 13 (European cross-border transfers of business), and

(w) Chapter 14 (European cross-border mergers)."

47 In section 475 (meaning of expressions relating to exchange gains and losses), in subsection (3), omit "in a case where fair value accounting is used by the company".

48 After section 475 insert—

"475A "Hedging relationship"

(1) This section applies for the purposes of this Part.

(2) A company has a "hedging relationship" between a relevant contract ("the hedging instrument") and an asset or liability ("the hedged item") so far as condition A or B is met.

(3) Condition A is that the hedging instrument and the hedged item are designated as a hedge by the company.

(4) Condition B is that—

(a) the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of the hedged item which is attributable to a particular risk and could affect the profit or loss of the company, and

(b) the hedged item is an asset or liability recognised for accounting purposes or is an identified portion of such an asset or liability.

(5) For the purposes of subsections (2) and (4), the liabilities of a company include its own share capital."

49 In section 476 (other definitions), in subsection (1)—

(a) before the definition of "alternative finance arrangements" insert—

""accounting policy", in relation to a company, means the principles, bases, conventions, rules and practices that the company applies in preparing and presenting its financial statements,",

(b) after the definition of "equity instrument" insert—

""fair value" has the meaning it has for accounting purposes,",

(c) after the definition of "release debit" insert—

""relevant contract" has the same meaning as in Part 7 (see section 577),",

(d) in the definition of "tax advantage", for "has" substitute ", except in the expression "loan-related tax advantage", has".

50 Part 6 of CTA 2009 (relationships treated as loan relationships etc) is amended as follows.

51 In section 521F (shares becoming or ceasing to be shares to which section 521B applies)—

(a) in subsection (3), for "its carrying value" substitute "its tax-adjusted carrying value", and

(b) omit subsection (4).

52 In section 540 (manufactured interest treated as interest under loan relationship), in subsection (3), omit ", including, in particular, section 307(3)".

PART 2

DERIVATIVE CONTRACTS: AMENDMENTS OF PART 7 OF CTA 2009

53 Part 7 of CTA 2009 (derivative contracts) is amended as follows.

54 In section 594 (overview of Chapter), in subsection (2)—

(a) before paragraph (a) insert—

"(za) makes provision about the matters in respect of which amounts are to be brought into account (see section 594A),", and

(b) for paragraph (g) substitute—

"(g) makes provision about cases where amounts are recognised even though companies are not, or have ceased to be, parties to derivative contracts (see section 607A),

(ga) makes provision about companies moving abroad (see sections 609 and 610),".

55 After section 594 insert—

"Matters in respect of which amounts are to be brought into account

594A Matters in respect of which amounts are to be brought into account

(1) The matters in respect of which amounts are to be brought into account for the purposes of this Part in respect of a company's derivative contracts are—

(a) profits and losses of the company which arise to it from its derivative contracts and related transactions (including expenses), and

(b) expenses incurred by the company under or for the purposes of those contracts and transactions.

(2) Expenses are only treated as incurred as mentioned in subsection (1)(b) if they are incurred directly—

(a) in bringing any of the derivative contracts into existence,

(b) in entering into or giving effect to any of the related transactions,

(c) in making payments under any of those contracts or as a result of any of those transactions, or

(d) in taking steps to secure the receipt of payments under any of those contracts or in accordance with any of those transactions.

(3) For the treatment of pre-contract or abortive expenses, see section 607.

(4) In subsection (1) "profits and losses" include profits and losses of a capital nature.

(5) For the meaning of "related transaction" see section 596."

56 (1) Section 595 (general principles about the bringing into account of credits and debits) is amended as follows.

(2) In subsection (2)—

(a) after "this Part" insert "in respect of the matters mentioned in section 594A(1)", and

(b) omit "(but this is subject to subsections (3) and (4))".

(3) After subsection (2) insert—

"(2A) Subsections (2B) and (2C) apply if an accounting period of a company does not coincide with one or more of its periods of account.

(2B) The amounts referred to in subsection (2) are to be determined by apportionment in accordance with section 1172 of CTA 2010 (time basis).

(2C) But if it appears that apportionment in accordance with that section would work unreasonably or unjustly for an accounting period, subsection (2) is to be read as referring to amounts that would have been recognised in determining the company's profit or loss for that period in accordance with generally accepted accounting practice if accounts had been drawn up for that period."

(4) Omit subsections (3) to (6) and (8).

57 (1) Section 597 (amounts recognised in determining a company's profit or loss) is amended as follows.

(2) In subsection (1), for the words from "recognised", in the second place, onwards substitute "that is recognised in the company's accounts for the period as an item of profit or loss".

(3) After subsection (1) insert—

"(1A) The reference in subsection (1) to an amount recognised in the company's accounts for the period as an item of profit or loss includes a reference to an amount that—

(a) was previously recognised as an item of other comprehensive income, and

(b) is transferred to become an item of profit or loss in determining the company's profit or loss for the period.

(1B) In subsections (1) and (1A) "item of profit or loss" and "item of other comprehensive income" each has the meaning that it has for accounting purposes."

(4) Omit subsections (2) and (3).

58 In section 599B (determination of credits and debits where amounts not fully recognised), in subsection (4)(b), for "carrying value" substitute "tax-adjusted carrying value".

59 (1) Section 604 (credits and debits treated as relating to capital expenditure) is amended as follows.

(2) For subsections (1) to (3) substitute—

"(1) This section applies if—

(a) an amount for an accounting period in respect of a company's derivative contract relates to any of the matters in section 594A(1),

(b) generally accepted accounting practice allows the amount to be treated in the company's accounts as an amount recognised in determining the carrying value of an asset or liability, and

(c) any profit or loss for corporation tax purposes in relation to that asset or liability will not fall to be calculated in accordance with generally accepted accounting practice.

(2) Despite that treatment, the amount must be brought into account as a credit or debit in accordance with this Part, for the accounting period in which it is recognised, in the same way as an amount which is brought into account as a credit or debit in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

(3) But subsection (2) does not apply to an amount which relates to an intangible fixed asset to which an election under section 730 (writing down at fixed rate: election for fixed-rate basis) applies."

(3) Omit subsection (4).

(4) For subsection (5) substitute—

"(5) If an amount is brought into account as mentioned in subsection (2) as a debit, no debit may be brought into account in accordance with this Part in respect of—

(a) the writing down of so much of the value of the asset or liability as is attributable to that debit, or

(b) so much of any amortisation or depreciation representing a writing-off of that value as is attributable to that debit."

60 After section 604 insert—

"604A Amounts recognised in other comprehensive income and not transferred to profit or loss

(1) This section applies if—

(a) in a period of account a derivative contract of a company ceases in accordance with generally accepted accounting practice to be recognised in the company's accounts,

(b) amounts relating to the matters mentioned in section 594A(1) in respect of that derivative contract have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income and have not subsequently been transferred to become items of profit or loss, and

(c) condition A or B is met.

(2) Condition A is that, at the time when the derivative contract ceases to be recognised, it is not expected that the amounts mentioned in subsection (1)(b) will in future be transferred to become items of profit or loss.

(3) Condition B is that, at any later time, it is no longer expected that the amounts mentioned in subsection (1)(b) will in future be transferred to become items of profit or loss.

(4) The amounts mentioned in subsection (1)(b)—

(a) must be brought into account for the purposes of this Part as credits or debits for the period of account in which the time mentioned in subsection (2) or (3) falls, in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice, and

(b) must not be brought into account for a later period of account even if they are subsequently transferred to become items of profit or loss for the later period.

(5) This section applies in a case where part of a derivative contract of a company ceases to be recognised in the company's accounts as it applies in a case where the whole of a derivative contract ceases to be recognised, but as if the reference in subsection (1)(b) to amounts in respect of a derivative contract were a reference to so much of those amounts as are attributable to that part of the derivative contract.

(6) In determining what amounts fall within subsection (1)(b) at any time in an accounting period, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous accounting periods.

(7) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous accounting periods which differs from that mentioned in subsection (6), that different assumption applies in determining what amounts fall within subsection (1)(b) at the time in question.

(8) In this section "item of profit or loss" and "item of other comprehensive income" each has the meaning that it has for accounting purposes."

61 Omit section 605 (credits and debits recognised in equity).

62 (1) Section 606 (exchange gains and losses) is amended as follows.

(2) In subsection (1), for "section 595(3)" substitute "section 594A(1)".

(3) After subsection (2A) insert—

"(2B) But subsection (2A) does not exclude the application of subsection (1) in respect of an exchange gain or loss arising at a time when an election under section 9A of CTA 2010 (designated currency of UK resident investment company) has effect in relation to the company."

(4) For subsection (3) substitute—

"(3) Subsection (1) does not apply to an exchange gain or loss of a company so far as it—
(a) arises as a result of the translation of the assets, liabilities, income and expenses of all or part of the company's business from the functional currency of the business, or that part of the business, into another currency, and
(b) has been recognised as an item of other comprehensive income.

(3A) In subsection (3)—
(a) the reference to the functional currency of a business or part of a business is a reference to the currency of the primary economic environment in which the business or part operates, and
(b) "assets, liabilities, income and expenses" and "item of other comprehensive income" each has the meaning that it has for accounting purposes."

(5) For subsection (4) substitute—

"(4) The Treasury may by regulations make provision—
(a) excluding exchange gains or losses of a specified description from subsection (1),
(b) requiring exchange gains or losses of a specified description to which subsection (1) does not apply to be brought into account in specified circumstances,

(c) as to the way in which, including the currency by reference to which, any exchange gains or losses to be brought into account as a result of provision made under paragraph (b) are to be calculated, and

(d) as to the way in which any such exchange gains or losses are to be brought into account.

(4ZA) For the purposes of subsection (4)(b), it does not matter whether the application of subsection (1) in relation to the exchange gains or losses is excluded by regulations under subsection (4)(a) or otherwise."

(6) Omit subsections (4A) to (5).

(7) In subsection (6)—

(a) for "The reference in subsection (5)" substitute "References in subsection (4)", and

(b) for "is a reference" substitute "are references".

63 Omit sections 606A to 606H (derivative contracts: arrangements that have "one-way exchange effect") (which are superseded by the amendments made by paragraph 86).

64 (1) Section 607 (pre-contract or abortive expenses) is amended as follows.

(2) In subsection (1)(c), for "section 595(3)(b)" substitute "section 594A(1)(b)".

(3) In subsection (2), for "section 595(3)" substitute "section 595(2)".

65 After section 607 insert—

"607A Company is not, or has ceased to be, party to derivative contract

(1) This section applies if—

(a) amounts in respect of a qualifying contract are recognised in a company's accounts for an accounting period ("the current period") as an item of profit or loss even though during all or part of the period the company is not a party to the qualifying contract,

(b) any of conditions A to D is met, and

(c) in the absence of this section, the credits and debits brought into account by the company for the purposes of this Part for the current period would not include credits or debits representing the whole of those amounts.

(2) In this section "qualifying contract" means—

(a) a derivative contract, or

(b) a contract that would be a derivative contract if references in section 576(1) to a company were references to any person.

(3) Condition A is that—

(a) the company was a party to the qualifying contract,

(b) amounts in respect of the qualifying contract were recognised in the company's accounts as an item of profit or loss when it was a party to the contract, and

(c) any amounts in respect of the contract continue to be recognised in those accounts as an item of profit or loss.

(4) Condition B is that the amounts recognised as mentioned in subsection (1)(a) are recognised as a result of a transaction which has the effect of transferring to the company all or part of the risk or reward relating to the qualifying contract without a corresponding transfer of rights or obligations under the contract.

(5) Condition C is that the amounts recognised as mentioned in subsection (1)(a) are recognised as a result of a related transaction in relation to a qualifying contract to which the company was, but has ceased to be, a party.

(6) Condition D is that—

(a) the amounts recognised as mentioned in subsection (1)(a) are recognised because the company may enter into a qualifying contract or related transaction but has not yet done so, and

(b) the amounts are not expenses to which section 607 applies.

(7) The company must bring credits and debits into account for the purposes of this Part for the accounting period as if the company were a party to the qualifying contract for the whole of the accounting period.

(8) The amounts that must be brought into account are those amounts in respect of the qualifying contract that are recognised in the company's accounts for the accounting period as an item of profit or loss (but subject to the provisions of this Part).

(9) This section is subject to sections 607B and 607C.

(10) In this section—

"item of profit or loss" has the meaning it has for accounting purposes;

"recognised" means recognised in accordance with generally accepted accounting practice;

"related transaction", in relation to a qualifying contract, is to be read as if the reference in section 596(1) and (2) to a derivative contract were to a qualifying contract.

607B Exclusion of debit where relief allowed to another

A company is not to bring into account as a debit for the purposes of this Part as a result of section 607A any amount which—

(a) is brought into account as a debit for those purposes by another company,

(b) is brought into account so as to reduce the assumed taxable total profits of another company for the purposes of Part 9A of TIOPA 2010 (controlled foreign companies), or

(c) is allowable as a deduction by a person for the purposes of income tax.

607C Avoidance of double charge

(1) This section applies if at any time a company ("the relevant company") is required by section 607A to bring into account as a credit for the purposes of this Part an amount—

(a) which is brought into account as a credit for those purposes by another company,

(b) which is brought into account in determining the assumed taxable total profits of another company for the purposes of Part 9A of TIOPA 2010 (controlled foreign companies), or

(c) on which a person is charged to income tax.

(2) In order to avoid a double charge to tax in respect of the amount, the relevant company may make a claim for one or more consequential adjustments to be made in respect of the amount brought into account as a credit.

(3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.

(4) Consequential adjustments may be made—

(a) in respect of any period,

(b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and

(c) despite any time limit imposed by or under any enactment."

66 Omit section 608 (company ceasing to be party to derivative contract).

67 (1) Section 613 (introduction to sections 614 and 615) is amended as follows.

(2) For subsection (1) substitute—

"(1) Sections 614 and 615 (adjustments on change of accounting policy) apply if—

(a) a company changes, from one period of account or accounting period to the next, the basis of accounting on which credits and debits relating to its derivative contracts or any of them are calculated for the purposes of this Part,

(b) the change falls within subsection (1A) and is not excluded by subsection (1B),

(c) the old basis accorded with the law or practice applicable in relation to the period before the change, and

(d) the new basis accords with the law and practice applicable to the period after the change.

(1A) A change falls within this subsection if it results from—

(a) a change of the company's accounting policy, or

(b) any provision made by or under this Part requiring a change in the basis of accounting.

(1B) A change is excluded by this subsection if the company makes the change in order to comply with amending legislation not applicable to the previous period."

(3) In subsection (2), for "those periods of account" substitute "the periods mentioned in subsection (1)".

(4) Omit subsections (3) and (4).

68 For section 614 substitute—

"614 Change of basis of accounting involving change of value

(1) If there is a difference between—

(a) the tax-adjusted carrying value of a derivative contract at the end of the earlier period, and

(b) the tax-adjusted carrying value of that derivative contract at the beginning of the later period,

a credit or debit (as the case may be) of an amount equal to the difference must be brought into account for the purposes of this Part for the later period in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

(2) This section does not apply so far as the credit or debit falls to be brought into account apart from this section."

69 (1) Section 615 (change of accounting policy after ceasing to be party to derivative contract) is amended as follows.

(2) In subsection (1), for paragraph (b) substitute—

"(b) section 607A (company is not, or has ceased to be, party to derivative contract) applied to the cessation, and".

(3) For subsections (2) and (3) substitute—

"(2) A credit or debit (as the case may be) of an amount equal to the difference must be brought into account for the purposes of this Part for the later period in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice."

(4) In subsection (4), for "Subsections (2) and (3) do" substitute "Subsection (2) does".

(5) For subsection (5) substitute—

"(5) In this section "the amount outstanding in respect of the derivative contract" means—

(a) so much of the recognised deferred income or recognised deferred loss from the derivative contract as has not been represented by credits or debits brought into account in accordance with this Part in respect of the contract, and

(b) any amounts relating to the matters mentioned in section 594A(1) in respect of the derivative contract that have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income and not transferred to become items of profit or loss."

(6) After subsection (6) insert—

"(7) In determining what amounts fall within subsection (5)(b) at the beginning or end of a period, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous periods.

(8) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous periods which differs from

that mentioned in subsection (7), that different assumption applies in determining what amounts fall within subsection (5)(b) at the beginning or end of the period."

70 In section 622 (contracts ceasing to be derivative contracts), in subsection (4), for "the carrying value in" substitute "the tax-adjusted carrying value based on".

71 In section 625 (group member replacing another as party to derivative contract), in subsection (6)(b), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

72 Omit section 629 (disapplication of section 625 where transferor party to avoidance) (which is superseded by the amendment made by paragraph 86).

73 In section 653 (shares issued or deferred as a result of exercise of deemed option), in subsection (2), for "carrying value" substitute "tax-adjusted carrying value".

74 In section 654 (payment instead of disposal on exercise of deemed option), in subsection (3), in the definition of "CV", in paragraphs (a) and (b), for "carrying value" substitute "tax-adjusted carrying value".

75 In section 658 (chargeable gain or allowable loss treated as accruing), in subsection (5)(b), for "carrying value" substitute "tax-adjusted carrying value".

76 In section 666 (allowable loss treated as accruing), in subsection (2), in the definition of "B", for "carrying value" substitute "tax-adjusted carrying value".

77 In section 671 (meaning of G, L and CV in section 670), in subsection (4), for "carrying value", in each place, substitute "tax-adjusted carrying value".

78 In section 673 (meaning of G, L and CV in section 672), in subsection (4), for "carrying value", in each place, substitute "tax-adjusted carrying value".

79 In section 675 (transfer of derivative contract at notional carrying value), in subsection (3), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

80 In section 684 (transfer of derivative contract at notional carrying value), in subsection (3), for "its carrying value in" substitute "its tax-adjusted carrying value based on".

81 In section 689 (overview of Chapter 11 of Part 7), in subsection (2)—

(a) omit paragraph (d) (including the "and" at the end), and

(b) at the end of paragraph (e) insert "and

(f) for rules dealing with tax avoidance arrangements, see sections 698B to 698D."

82 (1) Section 690 (derivative contracts for unallowable purposes) is amended as follows.

(2) After subsection (3) insert—

"(3A) If—

(a) a credit brought into account for that period for the purposes of this Part by the company would (in the absence of this section) be reduced, and

(b) the reduction represents an amount which, if it did not reduce a credit, would be brought into account as a debit in respect of that contract,

subsection (3) applies to the amount of the reduction as if it were an amount that would (in the absence of this section) be brought into account as a debit."

(3) In subsection (6), for "595(3)" substitute "594A(1)".

83 In section 691 (meaning of "unallowable purpose"), after subsection (1) insert—

"(1A) In subsection (1)(b) "related transaction", in relation to a loan relationship, includes anything which equates in substance to a disposal or acquisition of the kind mentioned in section 596(1) (as read with section 596(2))."

84 In section 692 (allowance of accumulated net losses), in Step 3 in subsection (5)—

(a) for "the amount" substitute "so much", and

(b) at the end insert "as are referable to the unallowable purpose mentioned in subsection (1)(a) on a just and reasonable apportionment".

85 Omit section 698 (derivative contracts: disposals for consideration not fully recognised by accounting practice) (which is superseded by the amendment made by paragraph 86).

86 In Chapter 11 of Part 7 of CTA 2009, after section 698A insert—

"Counteracting avoidance arrangements

698B Counteracting effect of avoidance arrangements

(1) Any derivative-related tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to credits and debits to be brought into account for the purposes of this Part.

(2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(3) For the meaning of "tax avoidance arrangements" and "derivative-related tax advantage", see section 698C.

698C Interpretation of section 698B

(1) This section applies for the interpretation of section 698B (and this section).

(2) “Arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(3) Arrangements are “relevant avoidance arrangements” if their main purpose, or one of their main purposes, is to enable a company to obtain a derivative-related tax advantage.

(4) But arrangements are not “relevant avoidance arrangements” if the obtaining of any derivative-related tax advantages that would (in the absence of section 698B) arise from them can reasonably be regarded as consistent with any principles on which the provisions of this Part that are relevant to the arrangements are based (whether expressed or implied) and the policy objectives of those provisions.

(5) A company obtains a “derivative-related tax advantage” if—

(a) it brings into account a debit to which it would not otherwise be entitled,

(b) it brings into account a debit which exceeds that to which it would otherwise be entitled,

(c) it avoids having to bring a credit into account,

(d) the amount of any credit brought into account by the company is less than it would otherwise be, or

(e) it brings a debit or credit into account earlier or later than it otherwise would.

(6) In subsection (5), references to bringing a debit or credit into account are references to bringing a debit or credit into account for the purposes of this Part.

698D Examples of results that may indicate exclusion not applicable

(1) Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is enable a company to obtain a derivative-related tax advantage are not excluded by section 698C(4) from being “relevant avoidance arrangements” for the purposes of section 698B—

(a) the elimination or reduction, for purposes of corporation tax, of profits of a company arising from any of its derivative contracts, where for economic purposes profits, or greater profits, arise to the company from that contract;

(b) the creation or increase, for purposes of corporation tax, of a loss or expense arising from a derivative contract, where for economic purposes no loss or expense, or a smaller loss or expense, arises from that contract;

(c) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company’s accounts as an item of profit or loss or be so recognised earlier;

(d) ensuring that a derivative contract is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements;

(e) enabling a company to bring into account a debit in respect of an exchange loss, in circumstances where a corresponding exchange gain would not give rise to a credit or would give rise to a credit of a smaller amount;

(f) enabling a company to bring into account a debit in respect of a fair value loss in circumstances where a corresponding fair value gain would not give rise to a credit or would give rise to a credit of a smaller amount.

(2) But in each case the result concerned is only capable of indicating that section 698C(4) is not available if it is reasonable to assume that such a result was not the anticipated result when the provisions of this Part that are relevant to the arrangements were enacted

(3) In subsection (1)(f) references to a fair value gain or a fair value loss are references respectively to—

(a) a profit to be brought into account in relation to a derivative contract where fair value accounting is used for the period in question, or

(b) a loss to be brought into account in relation to a derivative contract where fair value accounting is used for the period in question.

(4) "Arrangements" and "derivative-related tax advantage" have the same meaning as in section 698C."

87 For section 702 substitute—

"702 "Tax-adjusted carrying value"

(1) This section applies for the purposes of this Part.

(2) "Tax-adjusted carrying value", in relation to a contract, means the carrying value of the contract recognised for accounting purposes, except as provided by subsection (6).

(3) For the purposes of this section the "carrying value" of the contract includes amounts recognised for accounting purposes in relation to the contract in respect of—

(a) accrued amounts,

(b) amounts paid or received in advance, or

(c) impairment losses (including provisions for bad or doubtful debts).

(4) In determining the tax-adjusted carrying value of a contract in a period of account of a company, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous periods of account.

(5) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous periods of account which differs from that mentioned in subsection (4), that different assumption applies in determining the tax-adjusted carrying value of the contract in the period.

(6) In determining the profits and losses to be recognised in determining the tax-adjusted carrying value of the contract, the provisions

specified in subsection (7) apply as they apply for the purposes of determining the credits and debits to be brought into account in accordance with this Part.

(7) Those provisions are—
(a) section 584 (hybrid derivatives with embedded derivatives),
(b) section 585 (loan relationships with embedded derivatives),
(c) section 586 (other contracts with embedded derivatives),
(d) section 597 (amounts recognised in determining profit or loss),
(e) sections 599A and 599B (amounts not fully recognised for accounting purposes),
(f) section 604A (amounts recognised in other comprehensive income and not transferred to profit and loss),
(g) Chapter 5 (transactions within groups),
(h) Chapter 9 (European cross-border transfers of business), and
(i) Chapter 10 (European cross-border mergers).

(8) In this section "impairment loss" means a debit in respect of the impairment of a financial asset and "impairment" includes uncollectability."

88 In section 705 (expressions relating to exchange gains and losses), in subsection (3), omit "in a case where fair value accounting is used by the company".

89 In section 710 (other definitions)—
(a) for the definition of "fair value accounting" substitute—
""fair value accounting" means a basis of accounting under which—
(a) assets and liabilities are measured in the company's balance sheet at their fair value, and
(b) changes in the fair value of assets and liabilities are recognised as items of profit or loss,", and
(b) omit the definition of "statement of comprehensive income".

PART 3

AMENDMENTS OF TCGA 1992 RELATING TO LOAN RELATIONSHIPS

90 (1) Section 151E of TCGA 1992 (exchange gains and losses from loan relationships: regulations) is amended as follows.

(2) In subsection (1)—
(a) for "amounts" substitute "exchange gains or losses (as defined by section 475 of CTA 2009)", and
(b) for "or (4) of that Act" substitute "of that Act or because of regulations under section 328(4) of that Act".

(3) After that subsection insert—

"(1A) The regulations may make provision as to the way in which, including the currency by reference to which, the amounts to be brought into account are to be calculated."

PART 4

CONSEQUENTIAL AMENDMENTS

91 (1) Schedule 4 to CTA 2009 (index of defined expressions) is amended as follows.

(2) Before the entry beginning "accounting value" insert—

"accounting policy (in Parts 5 and 6)	section 476".

(3) Omit the entry beginning "carrying value (in Part 7)".

(4) Before the entry beginning "designated (in Part 7)" insert—

"designated fair value hedge (in Parts 5 and 6)	section 313(7)".

(5) In the entry relating to "fair value (in Parts 5 and 6)", for "313(6)" substitute "476(1)".

(6) Before the entry beginning "hedging relationship (in Part 7)" insert—

"hedged item (in Parts 5 and 6)	section 313(7).
hedging relationship (in Parts 5 and 6)	section 475A".

(7) Before the entry beginning "relevant contract (in Part 7)" insert—

"relevant contract (in Parts 5 and 6)	section 476(1)".

(8) Omit the entries relating to "statement of comprehensive income (in Parts 5 and 6)" and "statement of comprehensive income (in Part 7)".

(9) After the entry beginning "surrender" insert—

"tax-adjusted carrying value (in Parts 5 and 6)	section 465A
tax-adjusted carrying value (in Part 7)	section 702".

(10) Omit the entries relating to "the Part 5 one-way exchange provisions" and "the Part 7 one-way exchange provisions".

92 In Schedule 21 to FA 2009, omit paragraphs 1 to 3, 7 and 9.

PART 5

COMMENCEMENT AND TRANSITIONAL PROVISIONS

Introductory

93 This Part of this Schedule contains provision about the coming into force of the amendments in Parts 1 to 4 of this Schedule.

Commencement: the general rule

94 The general rule is that the amendments made by Parts 1 to 4 of this Schedule have effect in relation to accounting periods beginning on or after 1 January 2016.

95 This general rule—
(a) does not apply in relation to the provisions dealt with by paragraphs 96 to 101, and
(b) has effect subject to the transitional provisions in paragraphs 102 to 116.

Commencement: sections 321, 349 and 605 of CTA 2009

96 (1) Paragraphs 15, 28 and 61 have effect in relation to loan relationships entered into by a company in an accounting period beginning on or after 1 January 2016.

(2) In relation to loan relationships entered into in by a company in an accounting period beginning before that date, the reference in section 349 of CTA 2009 to an amortised cost basis of accounting is to be read in relation to the company without regard to the amendment of section 313(4) of that Act made by paragraph 7(5).

Commencement: insolvency, corporate rescue etc

97 Paragraphs 16 to 18 have effect in relation to the release, modification or replacement of a debtor relationship of a company on or after 1 January 2015.

Commencement: anti-avoidance provisions etc

98 The following provisions have effect in relation to arrangements entered into on or after 1 April 2015—
paragraph 20, so far as relating to the repeal of section 328(4A) of CTA 2009,
paragraph 21,
paragraph 27,
paragraph 35,
paragraph 40(a) and (c),
paragraph 45,
paragraph 49(d),
paragraph 62, so far as relating to the repeal of section 606(4C) and (4D) of CTA 2009,
paragraph 63,
paragraph 72,

paragraph 81(b),
paragraph 86, and
paragraph 91(10).

99 The following provisions—
paragraph 28, so far as relating to the repeal of section 349(3) of CTA 2009,
paragraph 44, so far as relating to the repeal of section 454 of CTA 2009,
have effect where conditions A and B in section 454 of CTA 2009 were first met in relation to the asset on or after 1 April 2015.

100 The following provisions—
paragraph 40(b),
paragraph 44, so far as relating to the repeal of section 455 of CTA 2009,
paragraph 81(a) and
paragraph 85,
have effect in relation to disposals on or after 1 April 2015.

101 Paragraph 43 has effect where the scheme was effected, or the arrangements were made, on or after 1 April 2015.

Transitional adjustments relating to loan relationships

102 (1) This paragraph applies to a loan relationship of a company if—
(a) amounts relating to the matters mentioned in section 306A(1) of CTA 2009 (as inserted by paragraph 3) in respect of the loan relationship have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income,
(b) those amounts have not subsequently been transferred to become items of profit or loss in an accounting period beginning before 1 January 2016, and
(c) those amounts have been brought into account as credits or debits for the purposes of Part 5 of CTA 2009 in an accounting period beginning before 1 January 2016.

(2) There is to be made an overall transitional adjustment of such amount as is just and reasonable in the circumstances having regard to the amounts which would otherwise be brought into account twice by the company for those purposes as credits or debits.

(3) The overall transitional adjustment must be made by making transitional adjustments in accordance with paragraph 103.

(4) In determining what amounts fall within sub-paragraph (1), it is to be assumed that the accounting policy applied in drawing up the company's accounts for the last accounting period of the company beginning before 1 January 2016 ("the pre-commencement period") was also applied in previous accounting periods.

(5) But if the company's accounts for the pre-commencement period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous accounting periods which differs from that mentioned in sub-paragraph (4), that different

assumption applies in determining what amounts fall within sub-paragraph (1).

103 (1) If paragraph 102 applies in relation to a loan relationship of a company, then for each relevant accounting period a credit or debit of an amount equal to the transitional adjustment for the period must be brought into account for the purposes of Part 5 of CTA 2009 in the same way as a credit or debit which is brought into account in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

(2) The relevant accounting periods are—

(a) the first accounting period of the company beginning on or after 1 January 2016, and

(b) each subsequent accounting period all or part of which falls within the transitional years.

(3) The transitional years are the 5 years beginning with the first day of the first accounting period of the company beginning on or after 1 January 2016.

(4) The transitional adjustment for each relevant accounting period is calculated as follows.

(5) Allocate a percentage of the overall transitional adjustment (determined under paragraph 102) to each of the 5 transitional years as follows—

1st year	40%
2nd year	25%
3rd year	15%
4th year	10%
5th year	10%

(6) If a transitional year coincides with an accounting period, the transitional adjustment for the accounting period is the amount allocated to that year.

(7) In any other case—

(a) apportion the amount allocated to each transitional year between accounting periods according to the number of days in the transitional year which fall within each period, and

(b) the transitional adjustment for an accounting period is the total of the amounts apportioned to that period.

104 Paragraphs 102 and 103 do not require an amount to be brought into account if it has already been brought into account under regulations under section 328 of CTA 2009 (exchange gains and losses).

105 Where section 316 of CTA 2009 (change of accounting policy involving change of value), as substituted by paragraph 10, applies in relation to the first accounting period of a company beginning on or after 1 January 2016, the overall transitional adjustment required by paragraphs 102 and 103 is to be calculated and applied before calculating any credit or debit required by that section.

106 (1) This paragraph applies if—

(a) an overall transitional adjustment is required by paragraph 102 in respect of a loan relationship of a company, and

(b) before the end of the 5 years mentioned in paragraph 103(3), the company—

(i) ceases to be within the charge to corporation tax, or

(ii) starts to be wound up.

(2) The company must bring into account for the purposes of Part 5 of CTA 2009 in the accounting period ending with the event within sub-paragraph (1)(b) a credit or debit of an amount equal to so much of the overall transitional adjustment as has not previously been brought into account.

(3) For the purposes of this paragraph a company starts to be wound up—

(a) when the company passes a resolution for the winding up of the company,

(b) when a petition for the winding up of the company is presented, if the company has not already passed such a resolution and a winding up order is made on the petition, or

(c) when an act is done in relation to the company for a similar purpose, if the winding up is not under the Insolvency Act 1986.

Transitional adjustments relating to derivative contracts

107 (1) This paragraph applies to a derivative contract of a company if—

(a) amounts relating to the matters mentioned in section 594A(1) of CTA 2009 (as inserted by paragraph 55) in respect of the derivative contract have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income,

(b) those amounts have not subsequently been transferred to become items of profit or loss in an accounting period beginning before 1 January 2016, and

(c) those amounts have been brought into account as credits or debits for the purposes of Part 7 of CTA 2009 in an accounting period beginning before 1 January 2016.

(2) There is to be made an overall transitional adjustment of such amount as is just and reasonable in the circumstances having regard to the amounts which would otherwise be brought into account twice by the company for those purposes as credits or debits.

(3) The overall transitional adjustment must be made by making transitional adjustments in accordance with paragraph 108.

(4) In determining what amounts fall within sub-paragraph (1), it is to be assumed that the accounting policy applied in drawing up the company's accounts for the last accounting period of the company beginning before 1 January 2016 ("the pre-commencement period") was also applied in previous accounting periods.

(5) But if the company's accounts for the pre-commencement period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous accounting periods which differs from that mentioned in sub-paragraph (4), that different assumption applies in determining what amounts fall within sub-paragraph (1).

108 (1) If paragraph 107 applies in relation to a derivative contract of a company, then for each relevant accounting period a credit or debit of an amount equal to the transitional adjustment for the period must be brought into account for the purposes of Part 7 of CTA 2009 in the same way as a credit or debit which is brought into account in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

(2) The relevant accounting periods are—

(a) the first accounting period of the company beginning on or after 1 January 2016, and

(b) each subsequent accounting period all or part of which falls within the transitional years.

(3) The transitional years are the 5 years beginning with the first day of the first accounting period of the company beginning on or after 1 January 2016.

(4) The transitional adjustment for each relevant accounting period is calculated as follows.

(5) Allocate a percentage of the overall transitional adjustment (determined under paragraph 107) to each of the 5 transitional years as follows—

1st year	40%
2nd year	25%
3rd year	15%
4th year	10%
5th year	10%

(6) If a transitional year coincides with an accounting period, the transitional adjustment for the accounting period is the amount allocated to that year.

(7) In any other case—

(a) apportion the amount allocated to each transitional year between accounting periods according to the number of days in the transitional year which fall within each period, and

(b) the transitional adjustment for an accounting period is the total of the amounts apportioned to that period.

109 Paragraphs 107 and 108 do not require an amount to be brought into account if it has already been brought into account under regulations under section 606 of CTA 2009 (exchange gains and losses).

110 Where section 614 of CTA 2009 (change of accounting policy involving change of value), as substituted by paragraph 68, applies in relation to the first accounting period of a company beginning on or after 1 January 2016, the overall transitional adjustment required by paragraphs 107 and 108 is to be calculated and applied before calculating any credit or debit required by that section.

111 (1) This paragraph applies if—

(a) an overall transitional adjustment is required by paragraph 107 in respect of a loan relationship of a company, and

(b) before the end of the 5 years mentioned in paragraph 108(3), the company—
(i) ceases to be within the charge to corporation tax, or
(ii) starts to be wound up.

(2) The company must bring into account for the purposes of Part 5 of CTA 2009 in the accounting period ending with the event within sub-paragraph (1)(b) a credit or debit of an amount equal to so much of the overall transitional adjustment as has not previously been brought into account.

(3) For the purposes of this paragraph a company starts to be wound up—
(a) when the company passes a resolution for the winding up of the company,
(b) when a petition for the winding up of the company is presented, if the company has not already passed such a resolution and a winding up order is made on the petition, or
(c) when an act is done in relation to the company for a similar purpose, if the winding up is not under the Insolvency Act 1986.

Straddling accounting periods treated as split for certain purposes

112 If a company has an accounting period which begins before and ends on or after 1 January 2016 ("the straddling period"), so much of the straddling period as falls before that date, and so much of that period as falls on or after that date, are treated for the purposes of each of the following provisions as separate accounting periods—
paragraph 20(3), and
paragraph 62(3).

Transitional provision relating to abolition of "fairly represents" test

113 If in an accounting period beginning before 1 January 2016, subsection (3) of section 307 of CTA 2009 prevents a company from bringing into account for the purposes of Part 5 of that Act a credit or debit that it would otherwise bring into account, no debit or credit is to be brought into account for those purposes under section 307 as amended by paragraph 4 in an accounting period beginning on or after 1 January 2016 to the extent that the debit or credit represents a reversal (in whole or part) of the debit or credit previously excluded.

114 If in an accounting period beginning before 1 January 2016, subsection (3) of section 595 of CTA 2009 prevents a company from bringing into account for the purposes of Part 7 of that Act a credit or debit that it would otherwise bring into account, no debit or credit is to be brought into account for those purposes under section 595 as amended by paragraph 56 in an accounting period beginning on or after 1 January 2016 to the extent that the debit or credit represents a reversal (in whole or part) of the debit or credit previously excluded.

Transitional provision relating to fixed capital asset or project

115 If in an accounting period of a company beginning before 1 January 2016 credits or debits relating to a fixed capital asset or project were as a result of section 320 of CTA 2009 brought into account for the purposes of Part 5 of that Act, the condition in subsection (1)(c) of section 320 as amended by

paragraph 13 is to be taken to be met in relation to that fixed capital asset or project in subsequent accounting periods.

116 If in an accounting period of a company beginning before 1 January 2016 credits or debits relating to a fixed capital asset or project were as a result of section 604 of CTA 2009 brought into account for the purposes of Part 7 of that Act, the condition in subsection (1)(c) of section 604 as amended by paragraph 59 is to be taken to be met in relation to that fixed capital asset or project in subsequent accounting periods.

EXPLANATORY NOTE

CORPORATION TAX: LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS

SUMMARY

1. Clause [X] introduces Schedule [A], which implements a package of proposals to modernise the corporation tax rules governing the taxation of corporate debt ('loan relationships') and derivative contracts. The main areas of change are:

- clarifying the relationship between tax and accounting;
- basing taxable loan relationship profits on accounting profit and loss entries;
- a new 'corporate rescue' rule to provide tax relief where loans are released or modified in cases of debtor companies in financial distress;
- new regime-wide anti-avoidance rules for both loan relationships and derivative contracts.

2. The changes will generally take effect for accounting periods commencing on or after 1 January 2016. However, the corporate rescue rule will apply from 1 January 2015, and the new regime anti-avoidance rules will apply from 1 April 2015.

DETAILS OF THE SCHEDULE

Part 1: Loan Relationships: Amendments of Parts 5 and 6 of Corporation Tax Act 2009 (CTA 2009)

3. Part 1 of the Schedule makes changes to Part 5 of CTA 2009, which sets out rules governing the treatment of loan relationships. Paragraph 1 introduces the changes.

4. Paragraph 2 makes changes to the overview in section 306 to reflect the amendments now being made.

5. Paragraph 3 inserts new section 306A, which sets out the matters in respect of which amounts are to be brought into account for the purposes of Part 5. These were previously contained in section 307, and are unchanged. The matters are profits, losses, interest and expenses arising to a company on its loan relationships.

6. Paragraph 4 makes various changes to section 307, which sets out general principles about the bringing into account of credits and debits. In particular it removes the requirement that credits and debits brought into account should 'fairly represent' profits and gains arising from loan relationships. It provides a new rule for apportionment of amounts where an accounting period of a company does not coincide with a period of accounts.

7. Paragraph 5 sets out amendments to section 308 concerning amounts recognised in determining a company's profit or loss. It establishes that this is now to be based on amounts recognised in the accounts as items of profit or loss. New subsection (1A) makes clear that this includes amounts that were previously recognised in other comprehensive income and which are subsequently transferred to profit or loss.

8. Paragraph 6 makes consequential amendments section 310 which contains a regulation-making power to allow certain amounts to be excluded from being brought into account.

9. Paragraph 7 makes various amendments to section 313 concerning the bases of accounting in accordance with which amounts may be brought into account for tax purposes. The definition of an amortised cost basis of accounting is aligned with accountancy, and adjustments under a designated fair value hedge are permitted. The definition of 'fair value accounting' is aligned with accounting treatment where an instrument is measured at fair value through profit or loss.

10. Paragraph 8 removes a regulation-making power relating to the amortised cost basis of accounting.

11. Paragraphs 9 to 12 are concerned with changes of companies' accounting policies. Paragraph 9 makes a series of amendments to section 315, extending the scope of sections 316 and 318 to apply where a company alters its basis of accounting to comply with tax rules.

12. Paragraph 10 substitutes a new section 316, clarifying rules for determining the credit or debit to be brought into account in cases where there is a change in the tax-adjusted carrying value of a loan relationship, and aligning the rules with equivalent provisions in Part 7 of CTA 2009.

13. Paragraph 11 omits section 317 concerning carrying values. This is now replaced by the new section 465B.

14. Paragraph 12 amends section 318 concerning changes of accounting policy following cessation of a loan relationship, clarifying credits or debits to be brought into account and aligning the rules with equivalent provisions in Part 7 of CTA 2009. Subsection (5) updates the definition of 'the amount outstanding in respect of the loan relationship' to take account of the changes to section 308 introduced by paragraph 5; the definition now includes amounts recognised in other comprehensive income. New subsections (7) and (8) require that, in assessing any such amounts at the end of the 'earlier period' or the beginning of the 'later period' (as defined in section 315), it is necessary to follow the accounting treatment in assuming that the accounting policy applied in that period was also applied in earlier periods. But if the accounting treatment was based on some other GAAP-compliant assumption regarding accounting policies followed in earlier periods, that assumption should be followed for tax purposes instead.

15. Paragraph 13 amends section 320, concerning credits and debits that are capitalised in the carrying value of an asset or liability. The changes clarify that the provisions only apply where amounts would not otherwise be brought into account.

16. Paragraph 14 inserts new section 320A, setting out the treatment of amounts recognised in other comprehensive income but not transferred to profit or loss at the time when a loan relationship, or part of a loan relationship, ceases to be recognised in a company's accounts. Together with new subsection 308(1A), inserted by paragraph 5, this ensures that all amounts recognised as items of other comprehensive income will be brought into account at some point. Subsection (4) provides that these amounts are to be brought into account in the same way as amounts recognised in determining the company's profit or loss for the period, making clear that the amounts are subject to all the provisions of Part 5. Subsections (6) and (7) require that, in assessing amounts recognised in other comprehensive income, it is necessary to follow the accounting treatment in assuming that the accounting policy applied when the loan relationship ceased to be recognised was also applied in earlier periods. But if the accounting treatment applied at that time was based on some other GAAP-compliant assumption regarding accounting policies followed in earlier periods, that assumption should be followed for tax purposes instead.

17. Paragraph 15 omits section 321 concerning credits and debits recognised in equity. Amounts recognised in equity will no longer normally be brought into account under Part 5.

18. Paragraph 16 amends section 322, which exempts credits arising in certain cases where a debt is released. It inserts a new subsection (5B) which exempts credits arising on releases where there is a material risk that within 12 months of the release the company will be unable to pay its debts. Paragraph 17 amends section 323 to explain what is meant by 'unable to pay its debts'. Broadly, the exemption is intended to apply where a debtor company is in significant financial distress.

19. Paragraph 18 inserts new section 323A. This applies where a company's debt is substantially modified or replaced, and there is a material risk that the company will within 12 months be unable to pay its debts. In these circumstances, it is not required to bring credits into account in respect of the modification or replacement. Any subsequent reversal is not brought into account as a debit. Like new subsection 322(5B), the exemption is intended to apply where a debtor company is in significant financial distress.

20. Paragraph 19 inserts new subsection 324(3A) to clarify that credits and debits in respect of valuation changes in respect of hedged assets and liabilities are not excluded.

21. Paragraph 20 makes a series of changes to section 328 concerning exchange gains and losses. It clarifies that amounts arising on the retranslation of a business from its functional currency into a different currency are not profits or losses within Part 5. It provides a power to make regulations concerning the exclusion or inclusion of exchange gains and losses from or in the Part 5 rules.

22. Paragraph 21 omits sections 328A to 328H, which are superseded by the anti-avoidance provisions introduced by paragraph 45.

23. Paragraph 23 inserts new sections 330A, 330B and 330C.

24. New section 330A provides that where a company recognises amounts in its accounts in respect of a loan relationship to which it is not legally a party, it is treated as if it were a party. The section applies where a company has ceased to be, or has yet to become, party to a loan, or where the risks and rewards of a loan have been transferred.

25. New sections 330B and 330C ensure that the rule in section 330A will not lead to, respectively, double relief or double taxation where another company also brings into account debits or credits in respect of the same loan.

26. Paragraph 24 omits sections 331 and 332 concerned with companies ceasing to be a party to loan relationship. These provisions are superseded by new section 330A.

27. Paragraphs 25 and 26 make minor adjustments to sections 340 and 342, concerning transfers of loan relationships within groups, to reflect changes elsewhere.

28. Paragraph 27 omits section 347, which is superseded by the anti-avoidance provisions introduced by paragraph 45.

29. Paragraph 28 amends section 349, concerning the application of amortised cost basis to connected companies relationships. It inserts a new subsection (2A) which provides rules for cases involving certain hedging instruments where the company adopts fair value accounting.

30. Paragraph 29 omits sections 350 (companies beginning to be connected) and 351 (companies ceasing to be connected). These are now obsolete following the changes to section 315.

31. Paragraph 30 amends section 352, which excludes credits and debits from tax where there is a related transaction involving a connected company loan relationship. It ensures that credits and debits are not prevented from being brought into account by the operation of section 352 where those amounts are attributable to interest rate movements on an arm’s length borrowing.

32. Paragraph 31 inserts new section 352A, which provides that where debits brought into account are reduced as a result of section 352, no credit is subsequently brought into account to the extent that it represents a reversal of a loss which gave rise to the reduction of debits.

33. Paragraphs 32 and 33 amend sections 354 (exclusion of debits for impaired or released connected company debts) and 358 (exclusion of credits on release of connected company debts). They provide rules for clawing back amounts previously recognised by the company in respect of a designated fair value hedge in cases where the debt is released.

34. Paragraphs 34 and 36 to 39 make minor amendments to sections 359 (exclusion of credits on release of connected companies debts during creditor's insolvency), 422 (transfer of loan relationship at notional carrying value), 424 (reorganisations involving loan

relationships), 433 (transfer of loan relationship at notional carrying value) and 435 (reorganisations involving loan relationships).

35. Paragraph 35 omits section 363A, which is superseded by the anti-avoidance provisions introduced by paragraph 45.

36. Paragraph 40 makes consequential amendments to section 440.

37. Paragraph 41 amends section 441 concerning loan relationships held for unallowable purposes. It provides clarification on the scope of the debits that a company may not bring into account in cases where a debit is incorporated within a credit.

38. Paragraph 42 amends section 442 concerning the meaning of ‘unallowable purpose’. It ensures that the meaning of ‘related transaction’ includes, for the purposes of this section, anything which in substance equates to a related transaction.

39. Paragraph 43 omits section 443, which is superseded by the anti-avoidance provisions introduced by paragraph 45.

40. Paragraph 44 omits sections 454 and 455, which are superseded by the anti-avoidance provisions introduced by paragraph 45.

41. Paragraph 45 inserts new sections 455B, 455C and 455D, which counter tax avoidance.

42. New section 455B provides a new anti-avoidance rule to counteract ‘loan-related tax advantages’ arising from ‘relevant avoidance arrangements’, by way of just and reasonable adjustments to credits and debits under Part 5.

43. New section 455C defines ‘relevant avoidance arrangements’. Subsection (4) excludes from that definition arrangements aimed at obtaining tax advantages which can reasonably be assumed to have been intended under the loan relationships legislation. Subsection (6) defines a ‘loan-related tax advantage’ in terms of credits and debits under Part 5.

44. New section 455D gives, in subsection (1), non-exhaustive examples of results which might indicate that the exclusion from the definition of ‘relevant avoidance arrangements’ in section 455C(4) should not apply. Subsection (2) ensures that the examples in subsection (1) are only relevant to the availability of the section 455C(4) exclusion if it is reasonable to assume that the result in question was not the anticipated outcome when any provisions of Part 5 engaged by the arrangements were enacted.

45. Paragraph 46 inserts new section 465B concerning ‘tax adjusted carrying value’. This replaces the previous section 317 and explains the meaning of this term in the context of loan relationships. It is based on the carrying value in the company’s accounts, adjusted as a result of particular statutory provisions. The reference in subsection (8) to section 308(1A) and section 320A ensure that the carrying value is adjusted for amounts that have been recognised as items of other comprehensive income, and which represent amounts that will in

the future be brought into account. Subsections (5) and (6) require that, in determining the tax-adjusted carrying value of an asset, it is necessary to follow the accounting treatment in assuming that the accounting policy applied at the relevant time was also applied in earlier periods. But if the accounting treatment applied at that time was based on some other GAAP-compliant assumption regarding accounting policies followed in earlier periods, that assumption should be followed for tax purposes instead.

46. Paragraph 47 amends section 475 to broaden the circumstances in which regulations may be made concerning the calculation of exchange gains and losses, by removing their restriction to cases where fair value accounting is used. This follows the change made by paragraph 7 to the definition of fair value accounting in section 313.

47. Paragraph 48 inserts new section 475A concerning hedging relationships. This explains the circumstances in which a company has a 'hedging relationship'.

48. Paragraph 49 amends section 476, to introduce definitions of several terms used in the Schedule.

49. Paragraph 50 introduces amendments to Part 6 of CTA 2009, which sets out rules governing the treatment of matters to be treated as though they were loan relationships.

50. Paragraphs 51 and 52 make consequential adjustments to sections 521F (shares becoming or ceasing to be shares to which section 521B applies) and 540 (manufactured interest treated as interest under loan relationship).

Part 2: Derivative Contracts: Amendments of Part 7 of CTA 2009

51. Paragraph 53 introduces amendments to Part 7 of CTA 2009, which sets out rules governing the treatment of derivative contracts.

52. Paragraph 54 amends the overview in section 594 to reflect the changes now being made.

53. Paragraph 55 inserts new section 594A, which sets out the matters in respect of which amounts are to be brought into account for the purposes of Part 7. These were previously contained in section 595, and remain unchanged. The matters are the profits, losses, interest and expenses arising to a company on its derivative contracts.

54. Paragraph 56 makes various changes to section 595, which sets out general principles about the bringing into account of credits and debits. In particular it removes the requirement that credits and debits brought into account should 'fairly represent' profits and gains arising from derivative contracts. It provides a new rule for apportionment of amounts where an accounting period of a company does not coincide with a period of accounts.

55. Paragraph 57 sets out amendments to section 597 concerning amounts recognised in determining a company's profit or loss. It establishes that this is now to be based on amounts recognised in the accounts as items of profit or loss. New subsection (1A) makes clear that

this includes amounts that were previously recognised in other comprehensive income and which are subsequently transferred to profit or loss.

56. Paragraph 59 makes various amendments to section 604, concerning credits and debits that are capitalised in the carrying value of an asset or liability. These serve to clarify that the scope of the provisions is restricted to cases where amounts would not otherwise be brought into account.

Paragraph 60 inserts new section 604A concerning amounts recognised in other comprehensive income and not transferred to profit or loss. This determines the treatment when a derivative contract, or part of a derivative contract, ceases to be recognised in company accounts. Together with new subsection 597(1A) inserted by paragraph 57, this ensures that all amounts recognised as items of other comprehensive income will be brought into account at some point. Subsection (4) provides that these amounts are to be brought into account in the same way as amounts recognised in determining the company's profit or loss for the period, making clear that the amounts are subject to all the provisions of Part 7. Subsections (6) and (7) require that, in assessing amounts recognised in other comprehensive income, it is necessary to follow the accounting treatment in assuming that the accounting policy applied when the derivative contract ceased to be recognised was also applied in earlier periods. But if the accounting treatment applied at that time was based on some other GAAP-compliant assumption regarding accounting policies followed in earlier periods, that assumption should be followed for tax purposes instead.

57. Paragraph 61 omits section 605 concerning credits and debits recognised in equity. Amounts recognised directly in equity will no longer normally be brought into account under Part 7.

58. Paragraph 62 makes a series of changes to section 606 concerning exchange gains and losses. It clarifies that amounts arising on the retranslation of a business from its functional currency into a different currency are not profits or losses within Part 7. It provides a power to make regulations concerning the exclusion or inclusion of exchange gains and losses with respect to the Part 7 rules.

59. Paragraph 63 omits sections 606A to 606H, which are superseded by the anti-avoidance provisions introduced by paragraph 86.

60. Paragraph 65 inserts new sections 607A, 607B and 607C.

61. New section 607A provides that where, in certain circumstances, a company recognises amounts in its accounts in respect of a derivative contract to which it is not legally a party, it is treated as if it were a party. The section applies where a company has ceased to be, or has yet to become, party to a derivative contract, or where the risks and rewards of a derivative contract have been transferred.

62. New sections 607B and 607C ensure that the rule in section 607A will not lead to, respectively, double relief or double taxation where another company also brings into account debits or credits in respect of the same derivative contract.

63. Paragraph 66 omits section 608 concerning companies ceasing to be party to derivative contracts. These provisions are superseded by new section 607A.

64. Paragraph 67 makes a series of amendments to section 613 concerning adjustments on change of accounting policy. These changes extend the scope of sections 614 and 615 to apply where a company's basis of accounting is altered as a result of the application of tax statute.

65. Paragraph 68 substitutes a new section 614, clarifying rules for determining credits or debits to be brought into account in cases where there is a change of accounting practice involving changes in the tax-adjusted carrying value of a derivative contract.

66. Paragraph 69 amends section 615 concerning changes of accounting policy after a company ceases to be party to a derivative contract. It clarifies the credits or debits to be brought into account and aligns the rules with their equivalents in Part 5. Subsection (5) updates the definition of 'the amount outstanding in respect of the derivative contract' to take account of the changes to section 597 introduced by paragraph 57; the definition now includes amounts recognised in other comprehensive income. New subsections (7) and (8) require that, in assessing any such amounts at the end of the 'earlier period' or the beginning of the 'later period' (as defined in section 613), it is necessary to follow the accounting treatment in assuming that the accounting policy applied in that period was also applied in earlier periods. But if the accounting treatment was based on some other GAAP-compliant assumption regarding accounting policies followed in earlier periods, that assumption should be followed for tax purposes instead.

67. Paragraphs 70 to 71 and 73 to 80 make a series of consequential amendments to sections 622, 625, 653, 654, 658, 666, 671, 673, 675 and 684. In each case these amendments substitute 'tax-adjusted carrying value' (now defined in section 702) for 'carrying value'.

68. Paragraph 72 omits section 629, which is superseded by the anti-avoidance provisions introduced by paragraph 86.

69. Paragraph 82 amends section 690 concerning derivative contracts held for unallowable purposes. It provides clarification on the scope of the debits that a company may not bring into account in cases where a debit is incorporated within a credit.

70. Paragraph 83 amends section 691 concerning the meaning of 'unallowable purpose'. It ensures that the meaning of 'related transaction' includes, for the purposes of this section, anything which in substance equates to a related transaction.

71. Paragraph 84 makes amendments to section 692, concerning allowance of accumulated net losses, to ensure that debits with an unallowable purpose restricted under section 690 can only be utilised against credits attributable to the same unallowable purpose.

72. Paragraph 85 omits section 698, which is superseded by the anti-avoidance provisions introduced by paragraph 86.

73. Paragraph 86 inserts new sections 698B, 698C and 698D, which counter tax avoidance.

74. New section 698B provides a new anti-avoidance rule to counteract ‘derivative-related tax advantages’ arising from ‘relevant avoidance arrangements’, by way of just and reasonable adjustments to credits and debits under Part 7.

75. New section 698C defines ‘relevant avoidance arrangements’. Subsection (4) excludes from that definition arrangements aimed at obtaining tax advantages which can reasonably be assumed to have been intended under the derivative contracts legislation. Subsection (5) defines a ‘derivative-related tax advantage’ in terms of credits and debits under Part 7.

76. New section 698D gives, in subsection (1), non-exhaustive examples of results which might indicate that the exclusion from the definition of relevant avoidance arrangements in section 698C(4) should not apply. Subsection (2) ensures that the examples in subsection (1) are only relevant to the availability of the section 698C(4) exclusion if it is reasonable to assume that the result in question was not the anticipated outcome when any provisions of Part 7 engaged by the arrangements were enacted.

77. Paragraph 87 substitutes a new section 702, defining ‘tax-adjusted carrying value’. The definition is based on the carrying value in the company’s accounts, adjusted as a result of particular statutory provisions. The references in subsection (6) to section 597 and section 604A ensure that the carrying value is adjusted for amounts recognised as items of other comprehensive income, representing amounts that will be brought into account in the future. Subsections (4) and (5) require that, in determining the tax-adjusted carrying value of a contract, it is necessary to follow the accounting treatment in assuming that the accounting policy applied at the relevant time was also applied in earlier periods. But if the accounting treatment applied at that time was based on some other GAAP-compliant assumption regarding accounting policies followed in earlier periods, that assumption should be followed for tax purposes instead.

Part 3: Amendments to TCGA 1992 relating to loan relationships

78. Paragraph 90 introduces minor amendments to section 151E of Taxation of Chargeable Gains Act 1992 (TCGA), which provides for the Treasury to make regulations concerning exchange gains and losses from loan relationships.

Part 4: Consequential Amendments

79. Part 4 makes a number of consequential changes to CTA 2009 and to FA 2009

Part 5: Commencement and transitional provisions

80. Part 5, introduced by Paragraph 93, contains commencement and transitional provisions.

81. Paragraph 94 sets out the general commencement rule for the amendments made by Parts 1 to 4 of the Schedule.

82. Paragraph 95 disapplies the general rule from the provisions from the exceptions dealt with by paragraphs 96 to 101, and subjects it to the transitional provisions introduced by paragraphs 102 to 114.

83. Paragraphs 96 to 101 set out commencement arrangements for a number of specific provisions, including the substitution of new anti-avoidance rules by paragraphs 45 and 86, which apply to arrangements entered into on or after 1 April 2015.

84. Paragraphs 102 to 105 make transitional provisions concerned with the changes made to section 308 by paragraph 5. They ensure that amounts recognised in other comprehensive income and taxed or relieved in a pre-transition period will not be taxed or relieved again in a post-transition period.

85. Paragraph 102 sets out, in subsection (1), the circumstances in which these transitional provisions apply – that is, where amounts were, in a pre-transition period, recognised in other comprehensive income and brought into account, and would be brought into account again under the amended rules when subsequently transferred into profit or loss in a post-transition period (see paragraph 5) or under the new section 320A (see paragraph 14). Where the provisions do apply, subsection (2) requires an overall transitional adjustment to be made on a just and reasonable basis in accordance with paragraph 103.

86. Paragraph 103 requires credits or debits amounting to the overall transitional adjustment to be brought into account for the relevant accounting periods. The relevant accounting periods are the first accounting period commencing on or after 1 January 2016 and each subsequent period falling wholly or partly within the subsequent five years, referred to as the transitional years. Subsections (5) to (8) specify how the overall transitional adjustment is to be allocated between the transitional years.

87. Paragraph 104 excludes from the transitional arrangements any amounts brought into account in accordance with regulations made under section 328 CTA 2009, concerned with exchange gains and losses.

88. Paragraph 105 requires any transitional adjustment under paragraphs 102 and 103 to be applied before calculating any credits or debits arising in accordance with section 316 CTA 2009.

89. Paragraph 106 provides that, where a company ceases to be within the scope of corporation tax or starts to be wound up during the five transitional years, any remaining transitional amounts are to be brought into account at that time.

90. Paragraphs 107 to 111 apply to derivative contracts and mirror the provisions introduced by Paragraphs 102 to 106.

91. Paragraph 112 requires accounting periods straddling 1 January 2016 to be split for the purposes of new subsection 328(2B), inserted by paragraph 20(3), and new subsection 606(2B), inserted by paragraph 62(3).

92. Paragraph 113 is concerned with a situation where credits or debits were not brought into account in a pre-transition period in compliance with the requirements of subsection 307(3) CTA 2009, now repealed by paragraph 4(4). Subsection 307(3) requires that amounts brought into account should 'fairly represent' the profits, losses, interest and expenses arising from a company's loan relationships. Where the paragraph applies, no credit or debit is to be brought into account in a post-transition period in the event of a reversal of the excluded amount.

93. Paragraph 114 replicates the rule introduced by paragraph 113 in the case of derivative contracts and amounts excluded under section 595(3), now repealed by paragraph 56(4).

94. Paragraph 115 is concerned with a situation where credits or debits relating to a fixed capital asset or project were brought into account in a pre-transition period in accordance with section 320 CTA 2009. In such a case, the paragraph ensures that credits and debits in respect of that asset or project will continue to be taken into account in future periods by deeming the condition in subsection 320(1)(c) to be met.

95. Paragraph 116 replicates the rule introduced by paragraph 115 in the case of derivative contracts and amounts brought into account under section 604 CTA 2009.

BACKGROUND NOTE

96. At Budget 2013, the Government announced a review of the corporation tax rules governing corporate debt (or 'loan relationships') and derivative contracts, with a view to including the bulk of the resulting legislation in Finance Bill 2015. There was consultation on a wide-ranging package of measures to update and simplify these regimes and to reduce their susceptibility to tax avoidance.

97. The rules for the taxation of loan relationships, now contained in Part 5 of CTA 2009, date from 1996. A similar but standalone regime for derivative contracts, contained in Part 7, was introduced in 2002. Parts 5 and 7 are based on the concept of deriving taxable profits and losses on these instruments from accounting entries. They do however incorporate some highly complex features, particularly around debt held between connected companies and within groups. The Government has in the past received frequent adverse comment on the complexity of the current rules. The regimes for both loan relationships and derivative contracts have developed significantly over time, evolving in response to emerging avoidance risks and to changes in commercial and accounting practice.

98. Accountancy standards, on which the tax rules are based, have not remained static. Standard setters for both UK GAAP and International Financial Reporting Standards (IFRS) have made significant changes to the accounting treatment of financial instruments. New UK

GAAP and IFRS standards have recently been issued (including IFRS 9 in 2014) which will be adopted over coming years, and which should cement the accounting treatment of financial instruments for some time to come.

99. Historically, the complexity in the loan relationships and derivative contracts regimes has provided repeated opportunities for attempts to avoid tax. Reactive measures to counter this avoidance have contributed to further complexity and to some loss of structural clarity in the regime, tending to leave further potential loopholes. This growing complexity has increased compliance costs for some businesses and has made it difficult in some cases for compliant groups and companies to be certain about tax treatments.

100. The changes now being made address areas which have given difficulty in the past, reduce complexity and provide enhanced protection against tax avoidance, while retaining the fundamental structure and principles of the regimes.

101. If you have any questions about this change, or comments on the legislation, please contact Andy Stewardson on 03000 586085 (email: andy.stewardson@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

ELECTION OF DESIGNATED CURRENCY BY UK INVESTMENT COMPANY

SUMMARY

1. Clause [X] makes amendments to Chapter 4 of Part 2 of Corporation Tax Act 2010 (CTA 2010), concerned with the currency to be used in tax calculations. The changes will take effect for accounting periods commencing on or after 1 January 2016.

DETAILS OF THE CLAUSE

2. Subsection (2) introduces amendments to section 9A CTA 2010.

3. Subsection (3) substitutes new subsection 9A(2). This provides that an election for a particular designated currency only takes effect if the company is a UK resident investment company and the relevant conditions are satisfied at the time when the election is to take effect.

4. Subsection (4) omits subsection 9A(3) as a consequential change.

5. Subsection (5) inserts a new subsection 9A(9). This clarifies that the effect of a designated currency election is that profits and losses are calculated as if the designated currency of the company were its functional currency.

6. Subsections (6) to (10) make a number of consequential changes to section 9B.

7. Subsection (11) inserts a new subsection 9B(6A). This provides that ceasing to be a UK resident investment company constitutes a revocation event. The designated currency election will cease to have effect from the date of the revocation event.

8. Subsections (14) to (17) provide that the changes made by the clause have effect for periods of account beginning on or after 1 January 2016. Where a period of account period straddles 1 January 2016, it is to be split, with a new period of account being deemed to commence on that date for the purposes of the clause. Accounts for the two deemed periods are assumed to have been prepared on the same basis as the actual accounts for the straddling period.

BACKGROUND NOTE

9. At Budget 2013, the Government announced a review of the corporation tax rules in Parts 5 and 7 of Corporation Tax Act 2009 (CTA 2009) governing corporate debt (or ‘loan relationships’) and derivative contracts, with a view to including the bulk of the resulting

legislation in Finance Bill 2015. There was consultation on a wide-ranging package of measures to update and simplify these regimes and to reduce their susceptibility to tax avoidance. The changes made by this clause arise out of that review.

10. The rules in Parts 5 and 7 include provisions for the treatment of exchange gains and losses arising from loan relationships, money debts and derivative contracts. However, these depend on rules in chapter 4 of Part 2 CTA 2010 for determining the currency in which a company's profits are calculated for the purposes of corporation tax. These currency rules are therefore being updated alongside changes to Parts 5 and 7 of CTA 2009.

11. If you have any questions about this change, or comments on the legislation, please contact Richard Daniel on 03000 569408 (email: richard.daniel@hmrc.gsi.gov.uk).

1 Air passenger duty: exemption for children in standard class

(1) In section 31 of FA 1994 (passengers: exceptions), after subsection (4) insert—

"(4ZA) A child who has not attained the age of 16 years is not a chargeable passenger in relation to a flight if the child's agreement for carriage—

(a) is evidenced by a ticket, and

(b) provides for standard class travel in relation to every flight on the child's journey.

(4ZB) Subsections (10) to (12) of section 30 (meaning of "standard class travel") apply for the purposes of subsection (4ZA) as they apply for the purposes of that section."

(2) The amendment made by this section has effect in relation to any carriage of a passenger which begins on or after 1 May 2015.

But, in relation to any carriage of a passenger which begins before 1 March 2016, section 31(4ZA) of FA 1994 has effect as if for "16 years" there were substituted "12 years".

EXPLANATORY NOTE

AIR PASSENGER DUTY (APD): EXEMPTION FOR CHILDREN IN STANDARD CLASS

SUMMARY

1. This measure extends the air passenger duty child exemption to children under the age of 12 travelling in standard class of travel from 1 May 2015, with a further extension to children under the age of 16 from 1 March 2016.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces new subsections (4ZA) and (4ZB) to section 31 of Finance Act 1994.

3. New subsection (4ZA) extends the passenger exceptions to children under the age of 16 in standard class of travel.

4. New subsection (4ZB) applies the existing definition of standard class of travel for the purposes of new subsection (4ZA).

5. Subsection 2 provides that this amendment commences on 1 May 2015 but, specifies that in relation to the carriage of a passenger which begins before 1 March 2016, subsection (4ZA) applies only to children under the age of 12.

BACKGROUND NOTE

6. This measure, which was announced at the Autumn Statement, helps families by lowering the cost of air travel for children in standard class of travel.

7. The existing exemption for children under the age of 2 without their own seat continues to apply to children travelling in all classes.

8. If you have any questions about this change, or comments on the legislation, please contact Ann Little on 03000 586 096 (email: ann.little@hmrc.gsi.gov.uk).

1 VAT: power to provide for refunds to certain persons

(1) In Part 2 of VATA 1994 (reliefs, exemptions and repayments), after section 33D insert—

"33E Power to extend refunds of VAT to other persons

(1) This section applies where—

(a) VAT is chargeable on—

(i) the supply of goods or services to a specified person,

(ii) the acquisition of any goods from another member State by a specified person, or

(iii) the importation of any goods from a place outside the member States by a specified person, and

(b) the supply, acquisition or importation is not for the purpose of—

(i) any business carried on by the person, or

(ii) a supply by the person which, by virtue of section 41A, is treated as a supply in the course or furtherance of a business.

(2) If and to the extent that the Treasury so direct, the Commissioners shall, on a claim made by the specified person at such time and in such form and manner as the Commissioners may determine, refund to the person the amount of the VAT so chargeable.

This is subject to subsection (3) below.

(3) A specified person may not make a claim under subsection (2) above unless it has been agreed with the Treasury that, in the circumstances specified in the agreement, the amount of the person's funding is to be reduced by all or part of the amount of the VAT so chargeable.

(4) A claim under subsection (2) above in respect of a supply, acquisition or importation must be made on or before the relevant day.

(5) The "relevant day" is—

(a) in the case of a person who is registered, the last day on which the person may make a return under this Act for the prescribed accounting period containing the last day of the financial year in which the supply is made or the acquisition or importation takes place;

(b) in the case of a person who is not registered, the last day of the period of 3 months beginning immediately after the end of the financial year in which the supply is made or the acquisition or importation takes place.

(6) Subsection (7) applies where goods or services supplied to, or acquired or imported by, a specified person cannot be conveniently distinguished from goods or services supplied to, or acquired or imported by, the person for the purpose of—

(a) any business carried on by the person, or

(b) a supply falling within subsection (1)(b)(ii) above.

(7) The amount to be refunded under this section is such amount as remains after deducting from the whole of the VAT chargeable on any supply to, or acquisition or importation by, the specified person such

proportion of that VAT as appears to the Commissioners to be attributable to the carrying on of the business or (as the case may be) the making of the supply.

(8) In this section "specified person" means a person specified in an order made by the Treasury.

(9) An order under subsection (8) may make transitional provision or savings.

(10) References in this section to VAT do not include any VAT which, by virtue of an order under section 25(7), is excluded from credit under section 25."

(2) In section 79 of VATA 1994 (repayment supplement in respect of certain delayed payments or refunds)—

(a) in subsection (1), after paragraph (e) insert "or

(f) a person who is registered is entitled to a refund under section 33E,";

(b) in subsection (5), after paragraph (e) insert ", and

(f) a supplement paid to a person under subsection (1)(f) shall be treated as an amount due to the person by way of refund under section 33E.";

(c) in subsection (6)(b), after "33C" insert "or 33E".

(3) In section 90 of VATA 1994 (failure of resolution under PCTA 1968), in subsection (3), before "35" insert "33E,".

(4) In Schedule 9 to VATA 1994 (exemptions), in Group 14 (supplies of goods where input tax cannot be recovered), in Note (9), before "39" insert "33E,".

EXPLANATORY NOTE

VAT: POWER TO PROVIDE REFUNDS TO CERTAIN PERSONS

SUMMARY

1. This clause allows Non-Departmental Public Bodies, and similar arms-length bodies, to recover the VAT they incur when they enter into cost-sharing arrangements. Refunds of VAT are subject to certain funding agreements with the Treasury. This will commence from the date of Royal Assent to Finance Bill 2015.

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

BACKGROUND NOTE

10. The Government wishes to encourage public bodies to enter into cost-sharing arrangements where these result in greater efficiencies. Government departments already benefit from refunds of VAT under a provision in section 41(3) of the Value Added Tax Act 1994, provided that the purchase is of a type listed in a Treasury direction. The purpose of this measure is to afford the same benefit to bodies such as Non-Departmental Public Bodies, which may enter into cost-sharing arrangements between themselves or with government departments. It will not, however, be confined to cost-sharing arrangements and consequently it will also extend refunds of VAT to purchases from third parties, in so far as the Treasury directs.

11. As the recipients of the refunds are all publicly funded bodies, their overall funding is intended to cover any VAT they incur which cannot be recovered.

12. In order to prevent double-funding, it will be a requirement that – where necessary – the original funding is adjusted to take into account the VAT now recoverable. Because of this requirement, and the fact that not all bodies may choose to enter into such an agreement, it will be necessary to name those bodies which will benefit from refunds of VAT. The measure will therefore allow the Treasury to do this in an order.

13. Refunds of VAT will be as the Treasury directs, which is also the case for refunds of VAT to government departments and NHS bodies. This is presently done through a direction which is published in the Government Gazettes, and it is intended that the same direction will apply to persons specified under this measure.

14. Government departments and NHS bodies have shorter time limits in which to make their claims than apply elsewhere in VAT legislation. This is because of public expenditure requirements. Similar shorter claim timescales will apply to claims made by bodies covered by this measure.

15. If you have any questions about this change, or comments on the legislation, please contact Graham Spencer on 03000 585822 (email: Graham.Spencer@hmrc.gsi.gov.uk).

1 VAT: refunds to search and rescue charities

(1) In Part 2 of VATA 1994 (reliefs, exemptions and repayments), after section 33B insert—

"33C Refunds of VAT to search and rescue charities

(1) This section applies where—

(a) VAT is chargeable on—

(i) the supply of goods or services to a search and rescue charity,

(ii) the acquisition of any goods from another member State by a search and rescue charity, or

(iii) the importation of any goods from a place outside the member States by a search and rescue charity, and

(b) the supply, acquisition or importation is not for the purpose of any business carried on by the charity.

For the meaning of "search and rescue charity", see section 33D.

(2) The Commissioners shall, on a claim made by the search and rescue charity at such time and in such form and manner as the Commissioners may determine, refund to the charity the amount of the VAT so chargeable.

(3) A claim under subsection (2) above in respect of a supply, acquisition or importation must be made before the end of the period of 4 years beginning with the day on which the supply is made or the acquisition or importation takes place.

(4) Subsection (5) applies where goods or services supplied to, or acquired or imported by, a search and rescue charity otherwise than for the purpose of any business carried on by the charity cannot be conveniently distinguished from goods or services supplied to, or acquired or imported by, the charity for such a purpose.

(5) The amount to be refunded under this section is such amount as remains after deducting from the whole of the VAT chargeable on any supply to, or acquisition or importation by, the search and rescue charity such proportion of that VAT as appears to the Commissioners to be attributable to the carrying on of the business.

(6) References in this section to VAT do not include any VAT which, by virtue of an order under section 25(7), is excluded from credit under section 25.

33D Section 33C: meaning of "search and rescue charity"

(1) A charity is a search and rescue charity for the purposes of section 33C if it meets condition A, B or C.

(2) Condition A is that—

(a) the main purpose of the charity is to carry out search and rescue activities in the United Kingdom or the UK marine area, and

(b) the search and rescue activities carried out by the charity are co-ordinated by a relevant authority.

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

"relevant authority" means—

(a) the Maritime and Coastguard Agency;
(b) the Ministry of Defence;
(c) a police force;
(d) any other person or body specified for the purposes of subsection (2) by an order made by the Treasury;

"search and rescue activities" means searching for, and rescuing, persons who are, or may be, at risk of death or serious injury;

"UK marine area" has the meaning given by section 42(1) of the Marine and Coastal Access Act 2009.

(4) Condition B is that the main purpose of the charity is to support, develop and promote the activities of a charity which meets condition A.

(5) Condition C is that the main purpose of the charity is to provide an air ambulance service in pursuance of arrangements—
(a) made by, or at the request of, a relevant NHS body, or
(b) made with the Secretary of State or with the Welsh Ministers.

(6) In subsection (5) "relevant NHS body" means—
(a) a Special Health Authority or NHS foundation trust in England;
(b) a Local Health Board, NHS trust or Special Health Authority in Wales;
(c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
(d) the Common Services Agency for the Scottish Health Service;
(e) the Regional Health and Social Care Board in Northern Ireland;
(f) a Health and Social Care trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.

(7) In this section "police force" means—
(a) a police force within the meaning of the Police Act 1996;
(b) the Police Service of Scotland;
(c) the Police Service of Northern Ireland;
(d) the Police Service of Northern Ireland Reserve;
(e) the British Transport Police Force;
(f) the Civil Nuclear Constabulary;
(g) the Ministry of Defence Police."

(2) In section 79 of VATA 1994 (repayment supplement in respect of certain delayed payments or refunds)—
(a) in subsection (1), after paragraph (d) insert "or
(e) a charity which is registered is entitled to a refund under section 33C,";
(b) in subsection (5), after paragraph (d) insert ", and
(e) a supplement paid to a charity under subsection (1)(e) shall be treated as an amount due to the charity by way of refund under section 33C.";
(c) in subsection (6)(b), for "or 33B" substitute ", 33B or 33C".

(3) In section 90 of VATA 1994 (failure of resolution under PCTA 1968), in subsection (3), after "33B," insert "33C,".

(4) In Schedule 9 to VATA 1994 (exemptions), in Group 14 (supplies of goods where input tax cannot be recovered), in Note (9), after "33B," insert "33C,".

(5) The amendments made by this section have effect in relation to supplies made on or after 1 April 2015.

(6) Until section 179 of the Health and Social Care Act 2012 (which abolishes NHS trusts in England) is fully brought into force, references to a relevant NHS body in section 33D of VATA 1994 (as inserted by this section) include an NHS trust in England.

EXPLANATORY NOTE

VAT: REFUNDS TO SEARCH AND RESCUE CHARITIES

SUMMARY

1. Clause [X] inserts two new sections in to the Value Added Tax Act 1994, the purpose of which is to allow search and rescue charities to recover the VAT they pay on the goods and services they purchase otherwise than for the purpose of any business carried on by the charity. This will take effect from 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) of the clause inserts two new sections to the Value Added Tax Act 1994: sections 33C and 33D.

3. Subsections (1) and (2) of section 33C refunds to a search and rescue charity the VAT it incurs on purchases made, and goods imported and acquired, for non-business purposes (in practice, activities funded through donations or public funding). A search and rescue charity is defined in section 33D.

4. Subsections (2) to (6) of section 33C contain certain procedural requirements concerning time limits for claims, apportioning VAT where goods or services are used for business and non-business purposes, and items excluded from credit.

5. Section 33D defines a search and rescue charity. These charities fall into three categories.

6. The first category is charities whose main purpose is to carry out co-ordinated search and rescue activities in the United Kingdom. Subsection (2) of section 33D will provide for this, and subsections (3) and (7) will list the authorities which co-ordinate search and rescue in the UK. The Treasury will have the power to add any new co-ordinating authorities to this list through secondary legislation to keep it up to date.

7. The second category is charities whose main purpose is to support, develop and promote the activities of the first category of charities. In many cases search and rescue activities are undertaken by networks of local teams, supported by these central charities. These central charities do not themselves carry out search and rescue activities, but they are integral to them. Subsection (4) of section 33D will provide for this.

8. Subsection (5) of section 33D will add the third category of search and rescue charity, namely charities which provide an air ambulance service under arrangements with an NHS body (as defined in subsection (6)) or a relevant Minister.

9. Subsections 2 to 4 of the clause will make consequential amendments, and subsection (5) gives it effect from 1 April 2015.

BACKGROUND NOTE

10. This measure has been introduced to give search and rescue charities comparable VAT treatment to that already afforded to many of the established emergency services. To varying degrees established emergency services are refunded VAT on some or all of the goods and services they purchase under existing measures in VAT legislation.

11. If you have any questions about this change, or comments on the legislation, please contact Graham Spencer on 03000 585822 (email: Graham.Spencer@hmrc.gsi.gov.uk).

1 VAT: refunds to strategic highways companies

(1) In section 41 of VATA 1994 (application of Act to the Crown), in subsection (7)—

(a) after "subsection (6)" insert "each of the following is to be regarded as a body of persons exercising functions on behalf of a Minister of the Crown",

(b) omit the "and" after paragraph (j), and

(c) for the words after paragraph (k) substitute—

"(l) a strategic highways company appointed under section 1 of the Infrastructure Act 2015."

(2) The amendments made by this section come into force on 1 April 2015.

EXPLANATORY NOTE

VAT: REFUNDS TO STRATEGIC HIGHWAYS COMPANIES

SUMMARY

1. Clause [X] adds strategic highways companies to the list of bodies which qualify for refunds of VAT under section 41(3) of the Value Added Tax Act 1994. This will take effect from 1 April 2015.

DETAILS OF THE CLAUSE

2. Section 41(7) of the Value Added Tax Act 1994 lists certain bodies which are entitled to refunds of VAT under section 41(3). Subsection 1 of the clause adds strategic highways companies, which are intended to replace the Highways Agency, to that list.

BACKGROUND NOTE

3. Section 1 of the Infrastructure Bill is intended to establish strategic highways companies to take over the functions of the Highways Agency. As an executive agency of the Department of Transport, the Highways Agency is entitled to recover the VAT it pays when purchasing certain services. This measure will ensure that strategic highways companies will similarly be entitled to recover VAT.

4. If you have any questions about this change, or comments on the legislation, please contact Graham Spencer on 03000 585822 (email: Graham.Spencer@hmrc.gsi.gov.uk).

1 Wholesaling of controlled liquor

(1) ALDA 1979 is amended as set out in subsections (2) to (5).

(2) In section 4 (interpretation)—

(a) in subsection (1), in the definition of "wholesale", after ""wholesale"" insert "(except in Part 6A)",

(b) in the Table in subsection (3), at the appropriate place insert—

""excise duty point"", and

(c) in subsection (4), after "Act" insert "(except in Part 6A)".

(3) After Part 6 insert—

"PART 6A

WHOLESALING OF CONTROLLED LIQUOR

88A Definitions

(1) This section defines certain expressions used in this Part.

(2) Controlled liquor is sold "wholesale" if—

(a) the sale is of any quantity of the liquor,

(b) the seller is carrying on a trade or business and the sale is made in the course of that trade or business,

(c) the sale is to a buyer carrying on a trade or business, for sale or supply in the course of that trade or business, and

(d) the sale is not an incidental sale, a group sale or an excluded sale.

(3) A sale is of "controlled liquor" if—

(a) it is a sale of dutiable alcoholic liquor on which duty is charged under this Act at a rate greater than nil, and

(b) the excise duty point for the liquor falls at or before the time of the sale.

(4) A sale is an "incidental sale" if—

(a) the seller makes authorised retail sales of alcoholic liquor of any description, and

(b) the sale is incidental to those sales.

(5) A sale is an "authorised retail sale" if it is made by retail under and in accordance with a licence or other authorisation under an enactment regulating the sale and supply of alcohol.

(6) A sale is a "group sale" if the seller and the buyer are both bodies corporate which are members of the same group (see section 88J).

(7) A sale is an "excluded sale" if it is of a description prescribed in or under regulations made by the Commissioners.

(8) "Controlled activity" means—
(a) selling controlled liquor wholesale,
(b) offering controlled liquor for sale in circumstances in which the sale (if made) would be a wholesale sale, or
(c) arranging in the course of a trade or business for controlled liquor to be sold, or offered for sale, wholesale.

(9) "UK person" means a person who is UK-established for the purposes of value added tax (see paragraph 1(10) of Schedule 1 to the Value Added Tax Act 1994).

(10) "Enactment" includes an enactment contained in—
(a) an Act of the Scottish Parliament;
(b) an Act or Measure of the National Assembly for Wales;
(c) Northern Ireland legislation.

88B Further provision relating to definitions

(1) The Commissioners may by regulations make provision as to the cases in which sales are, or are not, to be treated for the purposes of this Part as—
(a) wholesale sales,
(b) sales of controlled liquor,
(c) incidental sales,
(d) authorised retail sales, or
(e) group sales.

(2) The Commissioners may by regulations make provision as to the cases in which a person is, or is not, to be treated for the purposes of this Part as carrying on a controlled activity by virtue of section 88A(8)(b) or (c) (offering controlled liquor for sale and arranging for controlled liquor to be sold, or offered for sale, wholesale).

88C Approved persons

(1) A UK person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.

(2) The Commissioners may approve a person under this section to carry on a controlled activity only if they are satisfied that the person is a fit and proper person to carry on the activity.

(3) The Commissioners may approve a person under this section to carry on a controlled activity for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under regulations made by them prescribe.

(4) The conditions or restrictions may include conditions or restrictions requiring the controlled activity to be carried out only at or from premises specified or approved by the Commissioners.

(5) The Commissioners may at any time for reasonable cause revoke or vary the terms of an approval under this section.

(6) In this Part "approved person" means a person approved under this section to carry on a controlled activity.

88D The register of approved persons

(1) The Commissioners must maintain a register of approved persons.

(2) The register is to contain such information relating to approved persons as the Commissioners consider appropriate.

(3) The Commissioners may make publicly available such information contained in the register as they consider necessary to enable those who deal with a person who carries on a controlled activity to determine whether the person in question is an approved person in relation to that activity.

(4) The information may be made available—
   (a) on the internet, and
   (b) by such other means as the Commissioners consider appropriate.

88E Regulations relating to approved persons and controlled activities

(1) The Commissioners may by regulations make provision—
   (a) regulating the approval and registration of persons under this Part,
   (b) regulating the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject,
   (c) about the register maintained under section 88D,
   (d) regulating the carrying on of controlled activities, and
   (e) imposing obligations on approved persons.

(2) The regulations may, in particular, make provision—
   (a) requiring applications, and other communications with the Commissioners, to be made electronically,
   (b) as to the procedure for the approval and registration of bodies corporate which are members of the same group and for the members of such a group to be jointly and severally liable for any penalties imposed under Schedule 2B or the regulations,
   (c) requiring approved persons to keep and make available for inspection such records relating to controlled activities as may be prescribed in or under the regulations,
   (d) imposing a penalty not exceeding £1,000 for a contravention of—
      (i) the regulations, or
      (ii) any condition or restriction imposed under this Part, and
   (e) for dutiable alcoholic liquor (whether or not charged with any duty and whether or not that duty has been paid) to be subject to forfeiture for a contravention of—
      (i) this Part or the regulations, or
      (ii) any condition or restriction imposed under this Part.

88F Restriction on buying controlled liquor wholesale

A person may not buy controlled liquor wholesale from a UK person unless the UK person is an approved person in relation to the sale.

88G Offences

(1) A person who contravenes section 88C(1) by selling controlled liquor wholesale is guilty of an offence if the person knows or has reasonable grounds to suspect that—
   (a) the buyer is carrying on a trade or business, and
   (b) the liquor is for sale or supply in the course of that trade or business.

(2) A person who contravenes section 88C(1) by offering controlled liquor for sale in circumstances in which the sale (if made) would be a wholesale sale is guilty of an offence if the person intends to make a wholesale sale of the liquor.

(3) A person who contravenes section 88C(1) by arranging in the course of a trade or business for controlled liquor to be sold, or offered for sale, wholesale is guilty of an offence if the person intends to arrange for the liquor to be sold, or offered for sale, wholesale.

(4) A person who contravenes section 88F is guilty of an offence if the person knows or has reasonable grounds to suspect that the UK person from whom the controlled liquor is bought is not an approved person in relation to the sale.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine.

88H Penalties

Schedule 2B contains provision about penalties for contraventions of this Part.

88I Regulations

Regulations under this Part—
   (a) may make provision which applies generally or only for specified cases or purposes,
   (b) may make different provision for different cases or purposes,
   (c) may include incidental, consequential, transitional or transitory provision,
   (d) may confer a discretion on the Commissioners, and
   (e) may make provision by reference to things specified in a notice published by the Commissioners (and not withdrawn by a subsequent notice).

88J Groups

(1) Two or more bodies corporate are members of a group for the purposes of this Part if each is established or has a fixed establishment in the United Kingdom and—
   (a) one of them controls each of the others,
   (b) one person (whether a body corporate or an individual) controls all of them, or

(c) two or more individuals carrying on a business in partnership control all of them.

(2) For the purposes of this section, a body corporate is to be taken to control another body corporate if—

(a) it is empowered by or under an enactment to control that body's activities, or

(b) it is that body's holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006.

(3) For the purposes of this section—

(a) an individual or individuals are to be taken to control a body corporate if the individual or individuals (were the individual or individuals a company) would be that body's holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006, and

(b) a body corporate is established or has a fixed establishment in the United Kingdom if it is so established or has such an establishment for the purposes of value added tax.

88K Index

This Table lists the places where some of the expressions used in this Part are defined or otherwise explained.

approved person	section 88C(6)
authorised retail sale	section 88A(5)
controlled activity	section 88A(8)
enactment	section 88A(10)
group (in relation to bodies corporate)	section 88J(1)
group sale	section 88A(6)
incidental sale	section 88A(4)
sale of controlled liquor	section 88A(3)
UK person	section 88A(9)
wholesale	section 88A(2).”

(4) In section 90 (procedure for regulations)—

(a) after subsection (1) insert—

“(1A) A statutory instrument containing regulations under Part 6A is subject to annulment in pursuance of a resolution of the House of Commons.”

(b) in subsection (2), after “containing” insert “any other”.

(5) After Schedule 2A insert—

"SCHEDULE 2B

Section 88H

PENALTIES FOR CONTRAVENTIONS OF PART 6A

Liability to penalty

1 A penalty is payable by a person ("P") who contravenes section 88C(1) or 88F.

Amount of penalty

2 (1) If the contravention is deliberate and concealed, the amount of the penalty is £10,000.

(2) If the contravention is deliberate but not concealed, the amount of the penalty is £7,000.

(3) In any other case, the amount of the penalty is £3,000.

(4) The contravention is—

(a) "deliberate and concealed" if the contravention is deliberate and P makes arrangements to conceal the contravention,

(b) "deliberate but not concealed" if the contravention is deliberate but P does not make arrangements to conceal the contravention.

Reductions for disclosure

3 (1) Paragraph 4 provides for reductions in penalties under this Schedule where P discloses a contravention.

(2) P discloses a contravention by—

(a) telling the Commissioners about it,

(b) giving the Commissioners reasonable help in identifying any other contraventions of section 88C(1) or 88F of which P is aware, and

(c) allowing the Commissioners access to records for the purpose of identifying such contraventions.

(3) Disclosure of a contravention—

(a) is "unprompted" if made at a time when P has no reason to believe that the Commissioners have discovered or are about to discover the contravention, and

(b) otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent.

4 (1) Where P discloses a contravention, the Commissioners must reduce the penalty to one that reflects the quality of the disclosure.

(2) If the disclosure is prompted, the penalty may not be reduced below—

(a) in the case of a contravention that is deliberate and concealed, £5,000,

(b) in the case of a contravention that is deliberate but not concealed, £3,500, and

(c) in any other case, £2,000.

(3) If the disclosure is unprompted, the penalty may not be reduced below—

(a) in the case of a contravention that is deliberate and concealed, £3,000,

(b) in the case of a contravention that is deliberate but not concealed, £2,000, and

(c) in any other case, £1,000.

Special reduction

5 (1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include ability to pay.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

Assessment

6 (1) Where P becomes liable for a penalty under this Schedule, the Commissioners must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the contravention in respect of which the penalty is assessed.

(2) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment is to be treated as an amount of duty due from P under this Act and may be recovered accordingly.

(4) An assessment of a penalty under this Schedule may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.

(5) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty under this Schedule.

Reasonable excuse

7 (1) Liability to a penalty does not arise under this Schedule in respect of a contravention which is not deliberate if P satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.

(2) For the purposes of sub-paragraph (1), where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the contravention.

Companies: officer's liability

8 (1) Where a penalty under this Schedule is payable by a company in respect of a contravention which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as the Commissioners may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow the Commissioners to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "officer" means—

(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),

(b) a manager, and

(c) a secretary.

(4) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.

(5) In the application of sub-paragraph (1) in any other case "officer" means—

(a) a director,

(b) a manager,

(c) a secretary, and

(d) any other person managing or purporting to manage any of the company's affairs.

(6) Where the Commissioners have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

(a) paragraph 5 applies to the specified portion as to a penalty,

(b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,

(c) sub-paragraphs (3) to (5) of paragraph 6 apply as if the notice were an assessment of a penalty,

(d) paragraph 9 applies as if the officer were liable to a penalty, and

(e) Chapter 2 of Part 1 of the Finance Act 1994 (appeals and reviews) applies as if the Commissioners had decided that a penalty of the amount of the specified portion were payable by the officer.

(7) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership.

Double jeopardy

9 P is not liable to a penalty under this Schedule in respect of a contravention in respect of which P has been convicted of an offence.

Interpretation

10 In this Schedule "appeal tribunal" has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994."

(6) In Schedule 5 to FA 1994 (decisions subject to review and appeal), in paragraph 3(1), after paragraph (o) insert—

"(p) any decision for the purposes of Part 6A (wholesaling of controlled liquor) as to whether or not, and in which respects, any person is to be, or to continue to be, approved and registered or as to the conditions or restrictions subject to which any person is approved and registered;

(q) any decision under Schedule 2B (penalties for contraventions of Part 6A) that a penalty is payable by any person or as to the amount of any such penalty."

(7) Subject as follows, the amendments made by this section come into force on the day on which this Act is passed.

(8) So far as relating to section 88C(1) of ALDA 1979, subsection (3) comes into force on 1 January 2016 (but see subsection (11) for the application of section 88C(1) in cases where an application has been made but not disposed of by that date).

(9) So far as relating to section 88F of ALDA 1979, subsection (3) comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

(10) An application for a person to be approved under section 88C of ALDA 1979 may not be made before 1 October 2015.

(11) Where such an application made before 1 January 2016 has not been disposed of by that date, section 88C(1) of ALDA 1979 does not apply in relation to the person until the application is disposed of.

(12) An application is "disposed of" when—

(a) it is determined by Her Majesty's Revenue and Customs,

(b) it is withdrawn, or

(c) it is abandoned or otherwise ceases to have effect.

EXPLANATORY NOTE

WHOLESALING OF CONTROLLED LIQUOR

SUMMARY

1. Clauses [X] amends Part 6 of Alcoholic Liquor Duties Act 1979 (ALDA 1979) to introduce new legislation requiring wholesalers of alcohol, sold at or after the duty point, to be registered to trade by HM Revenue & Customs.

DETAILS OF THE CLAUSE

Clause 88A - Definitions

2. Clause 88A contains various definitions of terms which are used in the act such as 'wholesale, controlled liquor', 'excluded sales' etc.

3. Subsections (2) and (3) define when a sale is made 'wholesale' and when it is a sale of 'controlled liquor'. The sale of the alcohol must be to a buyer carrying on a trade or business for sale in the course of that business. Controlled liquor is not sold wholesale if it is an incidental sale, a group sale or an excluded sale.

4. Subsections (3) and (4) define an incidental sale as a wholesale sale made by an authorised retailer that is incidental to its retail sales. An authorised retail sale is one that is made in accordance with the requirements under a retailer's alcohol licence or similar authorisation.

5. Subsection (7) allows for HMRC to prescribe by regulations for certain sales to be 'excluded sales'.

6. Subsection (8) defines 'controlled activity' as selling, arranging or offering to sell alcohol wholesale.

7. Subsection (9) defines a 'UK person' as someone who is based, i.e. has a business establishment or some other fixed establishment, in the UK for VAT purposes, regardless of whether they are liable to be registered for VAT.

Clause 88B – Further Provisions relating to definitions

8. Clause 88B Subsection (1) allows for HM Revenue & Customs to make regulations to further define how the sales covered in 88A are treated under the scheme. Subsection (2)

allows for provision to further define how HM Revenue & Customs treat cases involving offers for sale and arranging for sale.

Clause 88C – Approved persons

9. Clause 88C sets out the conditions for being granted approval as a registered wholesaler. A trader cannot trade in wholesale alcohol unless they have been approved by HM Revenue & Customs. Applicants will be required to pass a fit and proper test before they can be approved. (The test criteria will be set out in the public notice). If appropriate, conditions or restrictions may be attached to an approval. HM Revenue & Customs will have the power to vary the conditions of approval and if appropriate revoke an approval.

Clause 88D – The register of approved persons

10. Clause 88D states HM Revenue & Customs must maintain a register of approved persons and may make certain information from it available to the public via the internet on an online look-up facility (or other appropriate method) to enable persons making duty paid alcohol purchases to check the approval status of the seller.

Clause 88E – Regulations relating to approved persons and controlled activities

11. Clause 88E allows for HM Revenue & Customs to make regulations setting out the criteria for granting approval and the record keeping requirements of those involved in selling and buying wholesale alcohol.

12. Subsection (1) allows for regulations covering the registration application process, how variations to approvals are handled and the obligations of registered wholesalers. It also allows for any regulations required for administration of the online register.

13. Subsection (2)(b) allows for regulations covering group approvals. Group members will be jointly and severally liable for any penalties levied on the group or its individual members.

14. Subsection (2)(c) allows for regulations requiring both wholesalers and retailers to keep and make available on request appropriate records, for example, sales invoices and details of due diligence checks to ascertain a wholesaler's registration status.

15. Subsection (2)(d) allows for regulations to impose a penalty of up to £1,000 for any contravention of the regulations or conditions of approval.

16. Subsection (2)(e) allows for regulations to provide for alcohol that has been purchased in contravention of the scheme to be forfeited.

Clause 88F – Restriction on buying controlled liquor wholesaler

17. Clause 88F states that a person may not purchase alcohol from a UK wholesaler who is required to be approved unless that person has in fact been approved under the scheme.

Clause 88G – Offences

18. Clause 88G covers the offences for contravention of the scheme.

19. Subsection (1) to (3) states that anyone who knowingly sells, offers to sell or arranges to sell alcohol on a wholesale basis as defined by the scheme, without being approved by HM Revenue and Customs, will be committing an offence.

20. Subsection (4) states that it is an offence for someone to purchase alcohol on a wholesale basis from an unapproved wholesaler where they knew or had reasonable grounds to suspect that the seller was not approved.

Clause 88H – Penalties

21. Provisions covering penalties that may be levied for contraventions of the scheme are covered in Schedule 2B.

Clause 88I – Regulations

22. Clause 88I provides more detail on what can be done by regulations authorised by the Act.

Clause 88J – Groups

23. Clause 88J covers the arrangements for registration of groups of companies.

24. Subsection (1) sets out the requirements for two or more bodies corporate to form a group.

25. Subsection (2) elaborates upon when one body corporate controls another.

26. Subsection (3) states (a) when individuals will be considered to control another body corporate and (b) when a body corporate is to be regarded as having an establishment in the UK for the purposes of being entitled to be a member of a group. The test is whether the company has an establishment in the UK for VAT purposes, regardless of whether they are liable to be registered for VAT.

Schedule 2B – Penalties for contraventions of Part 6A

27. Schedule 2B sets out the penalties that can be levied for contraventions of the scheme.

Liability to a penalty

28. Paragraph 1 states that penalties are payable for contraventions of 88C(1) and 88F (selling without authorisation and buying from an unapproved wholesaler).

Amount of penalty

29. Paragraph 2 sub-paragraphs (1) to (3) set out the levels of penalty that can be charged, depending on whether the offence is considered deliberate and concealed, deliberate but not concealed or otherwise. Sub-paragraph (4) defines 'deliberate and concealed' and 'deliberate but not concealed'.

Reductions for disclosure

30. Paragraph (3) sub-paragraph (1) provides for reductions in penalties for disclosure.

31. Paragraph (3) sub-paragraph (2) describes how a person may disclose a contravention by advising HM Revenue and Customs, assisting in highlighting any additional contraventions and providing all records requested.

32. Paragraph (3) sub-paragraph (3) describes how a disclosure will be considered 'unprompted' if it is notified to HM Revenue and Customs prior to them identifying a contravention. All other cases will be considered 'prompted'.

33. Paragraph 4 provides that following disclosure the Commissioners must reduce the penalty to reflect the quality of the disclosure. It also sets out the minimum levels of the penalties. The amount that the penalty can be reduced by depends upon the quality of the disclosure and whether it is prompted or unprompted.

Special reduction

34. Paragraph 5 states that under special circumstances, not including the ability to pay, HM Revenue and Customs may reduce a penalty.

Assessment

35. Paragraph 6 sets out how penalties will be assessed. HM Revenue and Customs will notify the person by way of a penalty notice, setting out the reason for the penalty. Penalties raised will be due 30 days after the date of issue of the penalty notice. Two or more contraventions may be assessed as one contravention for the purposes of raising a penalty. A penalty must be raised within 12 months of HM Revenue and Customs discovering the contravention.

Reasonable excuse

36. Paragraph 7 states that a penalty will not be levied for non-deliberate contraventions if a person is able to demonstrate that they have a valid excuse. However, it will not be considered a valid excuse that a person entrusted someone else to fulfil their responsibilities, for example an agent or accountant, unless the person is able to demonstrate that they took appropriate steps to prevent any contravention.

Companies: officer's liability

37. Paragraph 8 sub-paragraph (1) describes how penalties or a proportion of a penalty that is levied on a company, can also be levied against an officer of that company, if the officer was responsible or partly responsible for a contravention.

38. Paragraph 8 sub-paragraphs (3) to (5) sets out the definition of an 'officer' for a body corporate, limited liability partnership and all other cases.

Double jeopardy

39. Paragraph 9 of Schedule 2B states a penalty will not be levied for a contravention where a person has already been convicted of an offence for the same contravention.

40. Sub-clause (6) provides that any decision as to approval or the conditions under which a person is approved or as to a penalty for contravention of this Part is treated as a decision which is subject to review and appeal for the purposes of Schedule 5 to Finance Act 1994.

41. Sub-clause (7) provides for the amendments to ALDA 1979 to come into force on the date of Royal Assent to the Finance Bill. Sub-clause (8) states that the requirement for a person obliged to apply to be registered as an alcohol wholesaler comes into effect from 1 January 2016. The window for applications will run from 1 October to 31 December 2015. Sub-clause (10) states that applications will not be accepted prior to 1 October 2015.

42. Sub-clause (9) states that the requirement for persons to have to check the approval status of persons from whom they purchase wholesale alcohol will come into effect on a date to be stated in the regulations.

43. Sub-clause (11) states that a wholesaler's obligations under the scheme do not come into effect until such time as their application has been considered and determined.

BACKGROUND NOTE

44. Alcohol duty fraud in the UK costs taxpayers an estimated £1.3bn per annum. The most prevalent form of alcohol fraud involves the smuggling or diversion of alcoholic drinks into the UK in large commercial quantities, duty unpaid.

45. The wholesale sector is the major point where illicit alcohol is diverted into retail supply chains to intermingle with legitimate goods. Yet it is the only element of the alcohol supply chain not required to be authorised by HMRC or the licensing authorities. Introducing a requirement for wholesalers to register with HMRC will reduce opportunities for fraud.

Following a 2012 formal consultation on alcohol anti-fraud measures the Government announced that it would consult further on the introduction of a registration scheme for alcohol wholesalers and launched a further consultation in 2013. The Government announced at Autumn Statement 2013 that it would proceed with plans to introduce the alcohol wholesaler scheme from April 2017.

46. If you have any questions about this change, or comments on the legislation, please contact John Waller on 03000 588063 (email: john.c.waller@hmrc.gsi.gov.uk).

2015 No.

EXCISE

The Wholesaling of Controlled Liquor Regulations 2015

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	*1st October 2015*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 88E of the Alcoholic Liquor Duties Act 1979(**a**) make the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Wholesaling of Controlled Liquor Regulations 2015 and come into force on 1st October 2015.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Alcoholic Liquor Duties Act 1979;

"approved" means approved under section 88C of the Act by the Commissioners to carry on a controlled activity;

(**a**) 1979 c. 4; section 88E was inserted by the Finance Act 2015 (c.). Section 88E provides that the Commissioners may by regulations make provision regulating the approval and registration of persons under Part 6A of the Act and the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject, about the register maintained under section 88D, regulating the carrying on of controlled activities and imposing obligations on approved persons. Section 88E(2)(a) provides that the Commissioners may by regulations make provision requiring applications to be made electronically. Section 88E(2)(b) provides that the Commissioners may make regulations as to the procedure for the approval and registration of bodies corporate which are members of the same group and for the members of such a group to be jointly and severally liable for any penalties imposed under Schedule 2B of the Act or the regulations. Section 88E(2)(c) provides that the Commissioners may make regulations requiring approved persons to keep and make available for inspection such records relating to controlled activities as may be prescribed in or under the regulations. Section 88E(2)(d) provides that the Commissioners may by regulations make provision imposing a penalty for a contravention of the regulations or any condition or restriction imposed under Part 6A. Section 88E(2)(e) provides that the Commissioners may by regulations make provision for dutiable goods in the United Kingdom to be subject to forfeiture for a contravention of Part 6A or the regulations or any condition or restriction imposed by Part 6A. The power to make regulations under section 88E is conferred on "the Commissioners" and, by virtue of section 4 (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".

"prescribed" means prescribed by the Commissioners in a published notice, as revised or replaced from time to time and "prescribe" is construed accordingly; and

"representative member" means the representative member for a group.

(2) Save for where an alternative meaning is given, expressions used in these Regulations have the same meaning as in Part 6A of the Act.

PART 2

APPROVAL AND REGISTRATION

Application for approval

3.—(1) Every person who is required to be approved (the "applicant") must apply to the Commissioners for approval in respect of all the premises on which it carries on or intends to carry on a controlled activity.

(2) Save as the Commissioners may otherwise allow each application for approval must contain any information and be in such form and manner as the Commissioners may prescribe.

(3) An application under this regulation must be made by a prescribed method of communication.

Letters of registration

4.—(1) The Commissioners must notify every person they approve by issuing a letter of registration.

(2) Every letter of registration issued by the Commissioners must contain any information the Commissioners may prescribe and may contain such other information which the Commissioners may deem to be suitable in any case.

Requirement to notify changes in particulars

5.—(1) Every approved person must give notice to the Commissioners by a prescribed method of communication of any change in the information contained in the letter of registration within such period of the change as the Commissioners may prescribe.

(2) Where –

(a) any approved person gives the Commissioners notice of any change in the information contained in the letter of registration, or

(b) without any such notice having been given it appears to the Commissioners that the letter of registration requires correction,

the Commissioners may, unless they revoke the approval, issue an amended letter of registration.

Unique reference numbers

6.—(1) The Commissioners may assign a unique reference number to persons approved under the Act (the "URN").

(2) The Commissioners may require an approved person to make the URN available to customers and suppliers and to include the URN on prescribed forms of documentation or communications associated with the business.

Record keeping

7. Every approved person must keep and make available such records relating to controlled activities as the Commissioners may prescribe.

PART 3

GROUPS

Applications for approval and registration of bodies corporate which are members of the same group

8.—(1) The Commissioners may require the applicant to provide the information (or any part of the information) mentioned in regulation 3(2) in respect of each of the bodies corporate that are the subject of the application.

(2) The Commissioners may require the applicant to make a declaration that the information is true and complete.

(3) The applicant must satisfy the Commissioners that the bodies corporate which are the subject of the application have consented to group treatment.

(4) The application must specify which one of the bodies corporate that are the subject of the application will be the representative member.

(5) If the Commissioners accept the application, they must notify the representative member of the date on which group treatment will commence.

(6) If the Commissioners refuse the application, they must notify the representative member.

(7) The Commissioners may refuse any application under this Part if it appears necessary to do so for the protection of the revenue.

(8) A body corporate may not be treated as a member of more than one group for the purposes of Part 6A at the same time.

Applications by a representative member.

9.—(1) This regulation applies where two or more bodies corporate are treated as members of a group and the representative member makes an application to the Commissioners—

(a) for another body corporate (which is eligible under this Part) to be treated as a member of the group;

(b) for a body corporate to cease to be treated as a member of the group;

(c) for the bodies corporate no longer to be treated as members of a group; or

(d) for another member to be substituted as the group's representative member.

(2) In respect of an application under paragraph (1)(a), the representative member must satisfy the Commissioners that—

(a) the existing members of the group; and

(b) any body corporate which is the subject of the application,

have consented to group treatment.

(3) A body corporate is to be treated as a member of the group only—

(a) if the application is accepted by the Commissioners; and

(b) from a date notified by the Commissioners to the representative member.

(4) In respect of an application under paragraph 1(b) or 1(c), a body corporate is to be treated as not being a member of the group only—

(a) if the application is accepted by the Commissioners; and

(b) from a date notified by the Commissioners to the representative member and any body corporate which is the subject of the application.

(5) An application under paragraph 1(d) may be made by—

(a) the current representative member; or

(b) the body corporate that is applying to be substituted for the current representative member,

and the applicant must satisfy the Commissioners that the members of the group have consented to the substitution.

(6) In respect of an application under paragraph (1)(d), another member of the group is to be substituted as the representative member—

(a) if the application is accepted by the Commissioners; and

(b) from a date that the Commissioners are satisfied has been notified to the representative member.

Applications by group members other than the representative member

10.—(1) (1) A body corporate may apply to the Commissioners to—

(a) transfer from its current group to a different group; or

(b) cease to be treated as a member of a group.

(2) The Commissioners must be satisfied that the body corporate has given notice of the application to the representative member of the current group and the group it is applying to join.

(3) A body corporate is to be treated as not being a member of the group by virtue of this regulation only-

(a) if the application is accepted by the Commissioners; and

(b) from a date notified by the Commissioners to the representative member and the body corporate which made the application.

Termination of group membership by the Commissioners

11.—(1) The Commissioners may, by notice given to a body corporate, terminate its treatment as a member of a group from a date notified by the Commissioners.

(2) The Commissioners may give notice under paragraph (1) if it appears to them—

(a) to be necessary for the protection of the revenue; or

(b) that the body corporate is not (or is no longer) eligible to be treated as a member of the group.

(3) Where the Commissioners give notice to a body corporate under paragraph (1), notice must also be given to the representative member (if different from the body corporate).

(4) If the body corporate referred to in paragraph (1) is the representative member—

(a) notice must also be given to each member of the group; and

(b) the members of the group must with immediate effect appoint a new representative member in order to continue to be treated as a group

(5) If it appears to the Commissioners that-

(a) the group does not (or has ceased to) have a representative member who is acceptable to the Commissioners; or

(b) there are less than two bodies corporate being treated as members of the group,

they may give notice to each member that the group treatment will cease from a date notified by the Commissioners.

Joint and several liability

12. [Provision for members of a group to be jointly and severally liable for any penalties imposed under Schedule 2B of the Act or the Regulations.]

PART 4

ELECTRONIC COMMUNICATION

Electronic communication

13. [Provision requiring applications and other communications with the Commissioners to be made electronically.]

PART 5

MISCELLANEOUS

Penalties

14. [Provision for the imposition of penalties for a contravention of the Regulations or any condition or restriction imposed under part 6A.]

Forfeiture

15. [Provision for dutiable goods to be subject to forfeiture for a contravention of Part 6A or the Regulations, or any condition or restriction imposed under Part 6A.]

Signatory text

Names

Address Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Order)

Section 88C of the Alcoholic Liquor Duties Act provides that a UK person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under that section. Section 88E of the Act provides that the Commissioners may by regulations make provision about various matters including the approval of persons and the variation or revocation of approval.

These Regulations make provision about applications for approval, the issue of letters of registration, requirements to notify changes in registration particulars, unique reference numbers, revocation and variation of approval and record keeping. They also make provision about the procedure for approval and registration of bodies corporate which are members of the same group, the making of electronic communications, penalties and forfeiture.

A Tax Information and Impact note (TIIN) covering this instrument was published on 10 December 2014 alongside draft clauses of the Finance Bill 2015 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 WHOLESALING OF CONTROLLED LIQUORS REGULATIONS 2015

[2015] 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.

2. Purpose of the instrument

2.1 The instrument deals with applications for approval and registration of wholesalers of duty paid alcohol, the conditions and restrictions that may be imposed on approvals, the arrangements for groups, associated electronic communications and various miscellaneous matters.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument represents the first use of powers in Section 88E of the Alcohol Liquor Duties Act 1979(a).

4.2 It is made in connection with a new requirement for traders who sell, offer to sell or arrange to sell dutiable alcohol at or after a duty point, to be registered and approved by HM Revenue and Customs. This will affect all new and existing alcohol wholesalers.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 XST will make this statement at a later date.

7. Policy background

- What is being done and why

7.1 Alcohol duty fraud in the UK costs taxpayers an estimated £1.3bn per annum. The most prevalent form of alcohol fraud involves the smuggling or diversion of alcoholic drinks into the UK in large commercial quantities, duty unpaid.

Organised criminal gangs do this by systematically exploiting the EU-wide duty suspension arrangements which allow excise goods to move between authorised warehouses duty unpaid until released for consumption onto the home market.

7.2 The wholesale sector is the major point where illicit alcohol is diverted by organised criminals into retail supply chains to intermingle with legitimate goods. This link in the supply chain is vulnerable because it is the only activity not required to be authorised by HMRC or the licensing authorities. Introducing a requirement for wholesalers to register with HMRC will address this and reduce opportunities for fraud, and is expected to bring significant benefits.

7.3 Following a 2012 formal consultation on alcohol anti-fraud measures the Government announced that it would consult further on the introduction of a registration scheme for alcohol wholesalers. The Government announced at Autumn Statement 2013 that it would proceed with plans to introduce the alcohol wholesaler scheme to a Finance Bill 2015 timescale.

7.4 This instrument provides for the following administrative matters to implement the registration scheme:

Approval and registration

The Regulations set out how anyone required to be approved under the Act, that is, anyone who trades in wholesale alcohol that is sold at or after a duty point, must apply for approval and will be registered by HMRC. They also provide for HMRC to prescribe various administrative requirements in a notice, including the information required on the application form, how that information is to be submitted and how variations to the approval are notified. The Regulations deal with the requirements to notify changes of information which occur and the consequences of such changes. They also provide for the conferment, use of unique reference numbers and the keeping and making available of records.

Group registration

The regulations set out the basis under which bodies corporate that satisfy the criteria to form a group can apply for approval under a single registration, elect a representative member, make various changes to the group registration and upon which group membership can be terminated. They also provide for joint and several liability for any penalties which may be imposed under the Act or the Regulations.

8. Consultation outcome

8.1 An initial consultation was undertaken in 2012, ‘Alcohol Fraud: Legislative measures to tackle existing and emerging threats to the UK alcohol duty regime’ followed by a further consultation in 2013, ‘Alcohol Fraud: Next Steps’.

8.2 There was much support for the concept of a registration scheme, although most respondents stressed that burdens on legitimate businesses should be kept to a minimum, in particular the checks and record keeping requirements. HMRC responded to these concerns early on in the consultation process by putting forward an alternative proposal, to allow businesses to risk assess for themselves the frequency with which they carried out checks of a supplier's registration status. HMRC also decided not to proceed with proposals to require checks to be made of a buyer's wholesaler approval status. These changes were widely welcomed.

8.3 Comments received were considered and consolidated into a Summary of Responses document which was published in 2014. The full consultation and summary of responses can be found at:

https://www.gov.uk/government/consultations/alcohol-fraud-next-steps

9. Guidance

9.1 Before the introduction of the scheme the Government will have published detailed guidance about how the scheme will operate, including the application and approval process, in the form of internet publications. A public notice will also be published. Upon implementation, guidance will be reviewed and revised as necessary.

10. Impact

10.1 There will be some additional burdens for businesses including familiarisation with legislation, registration and the requirement to include the unique reference number on invoices and to use the online look up system to verify wholesaler's status

The measure is expected to have no impact on civil society organisations

10.2 The introduction of this measure will impact on Her Majesty's Courts and Tribunals Service as there will be an increase in the number of appeals being heard at tribunal. Work is ongoing to quantify the impact.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 and is available on the GOV.UK 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 The requirements of the scheme are the same for all businesses. The scheme should result in a reduction in the undercutting of legitimate businesses by competition using illicit supplies of alcohol which can disproportionately hit smaller businesses.

12. Monitoring & review

12.1 HMRC will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

John Waller at HMRC Tel: 03000 588063 or email: john.c.waller@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Excise duty on tobacco: anti-forestalling restrictions

After section 6 of TPDA 1979 (alteration of rates of duty) insert—

“6A Anti-forestalling notices in connection with anticipated alteration of rate of duty

(1) If the Commissioners consider that an alteration to a rate of duty charged under section 2 on tobacco products may be made (whether under section 6 or otherwise), they may publish a notice under this section (an “anti-forestalling notice”).

(2) An anti-forestalling notice—

(a) must specify a period of up to 3 months (“the controlled period”),

(b) may impose such restrictions (“anti-forestalling restrictions”) as to the quantities of the tobacco products that may, during the controlled period, be removed for home use, as the Commissioners consider to be reasonable for the purpose of protecting the public revenue,

(c) may make provision for, and in connection with, the controlled period coming to an end early (including provision modifying an anti-forestalling restriction in such circumstances),

(d) may make provision for the removal of tobacco products for home use to be disregarded for the purposes of one or more anti-forestalling restrictions in certain circumstances, and

(e) may make different provision for different cases.

(3) The anti-forestalling restrictions that may be imposed include, in particular—

(a) restrictions as to the total quantity of the tobacco products, or of the tobacco products of a particular description, that may, during the controlled period, be removed for home use, and

(b) restrictions as to the quantity of the tobacco products, or the tobacco products of a particular description, that may be removed for home use during any month, or any period of two weeks, in the controlled period.

This is subject to subsections (4) and (5).

(4) An anti-forestalling notice may not restrict a person, during the controlled period, to removing for home use a total quantity of the tobacco products, or of the tobacco products of a particular description, that is less than 80% of—

$$\frac{\text{TPY}}{365} \times \text{DCP}$$

where—

TPY is the total quantity of the tobacco products, or (as the case may be) of the tobacco products of a particular description, removed for home use by the person in the period of 12 months ending with the third month before the month in which the controlled period begins, and

DCP is the number of days in the controlled period.

(5) The anti-forestalling notice may not restrict a person, in any month of the controlled period, to removing for home use less than 30% of the

total quantity of the tobacco products, or of the tobacco products of a particular description, that could, under the anti-forestalling restrictions imposed by the notice, be removed for home use during the whole controlled period.

(6) If, before the end of the controlled period, it appears to the Commissioners that the rate of duty—

(a) will not be altered during the controlled period, but

(b) may be altered within a month of the end of the controlled period,

the Commissioners may publish an extension notice.

(7) An extension notice may—

(a) extend the controlled period by up to one month, and

(b) in accordance with subsections (2) to (5), make such other modifications of the anti-forestalling notice as the Commissioners think appropriate in consequence of the extension.

(8) The Commissioners may vary or revoke an anti-forestalling notice—

(a) as it applies generally, or

(b) if the Commissioners consider that exceptional circumstances justify doing so, in relation to a particular person.

(9) This section does not affect the Commissioners' powers—

(a) under section 128 of the Customs and Excise Management Act 1979 (restriction of delivery of goods), or

(b) to make regulations under section 7 of this Act in relation to periods specified under that section of that Act.

6B Anti-forestalling notices: sanctions

(1) This section applies if a person fails to comply with an anti-forestalling notice published under section 6A by, on one or more occasions, removing tobacco products for home use during the controlled period in contravention of an anti-forestalling restriction.

(2) The failure to comply attracts a penalty under section 9 of the Finance Act 1994 (civil penalties) of an amount determined in accordance with subsection (3) (rather than that section).

(3) The person is liable to a penalty of—

(a) if the person has given an admission notice, 150% of the lost duty, and

(b) otherwise, 200% of the lost duty.

(4) An "admission notice" is a notice—

(a) in which the person admits that the person—

(i) has failed to comply with the anti-forestalling notice, and

(ii) is liable to a penalty determined in accordance with subsection (3), and

(b) that is in such form, and that provides such information, as the Commissioners may specify.

(5) An admission notice cannot be given if, at any time in the period of 3 years ending with day before the controlled period, the person has given an admission notice in relation to a failure to comply with another anti-forestalling notice.

(6) An admission notice cannot be given—

(a) at a time when the person has reason to believe that Her Majesty's Revenue and Customs have discovered, or are about to discover, that the person has failed to comply with the anti-forestalling notice, or

(b) after the end of the controlled period.

(7) The "lost duty" is the amount (if any) by which the duty that would have been charged under section 2 on the excess tobacco products if they had, immediately after the end of the controlled period, been removed for home use exceeds the duty that was charged under that section on those tobacco products.

(8) The "excess tobacco products" are the tobacco products mentioned in subsection (1) that the person removed, for home use, in contravention of an anti-forestalling restriction.

(9) See section 6A (anti-forestalling notices in connection with anticipated alteration of rate of duty) for the meaning of "anti-forestalling notice", "anti-forestalling restriction" and "controlled period"."

EXPLANATORY NOTE

EXCISE DUTY ON TOBACCO: ANTI-FORESTALLING RESTRICTIONS

SUMMARY

1. This clause introduces new sections 6A and 6B of the Tobacco Products Duty Act 1979 (TPDA 1979). The new sections aim to prevent tax avoidance through excessive clearance of tobacco products shortly before an expected increase in the rate of duty and provide for effective sanctions. This measure is intended to come into force in time to apply to the forestalling restrictions ahead of the 2016 Budget.

DETAILS OF THE CLAUSE

2. Section 6A allows the Commissioners of HM Revenue & Customs to publish an anti-forestalling notice that will specify a controlled period of up to 3 months and impose such restrictions as the Commissioners consider to be reasonable.

3. Section 6B provides for sanctions for failing to comply with the new anti-forestalling notices.

4. Subsection 6A(3)(a) provides for restrictions as to the total quantity of tobacco products which may be removed during a controlled period and subsection 6A(3)(b) allows HMRC to apply monthly limits to removals during the controlled period.

5. Subsection 6A(4) provides a minimum level for the restricted quantities to be set by HMRC based on the average daily clearance by the business concerned over the year ending two months before the start of the restricted period. The restricted amount may not be less than 80% of the average daily clearances as described above multiplied by the number of days in the restricted period.

6. Subsection 6A(5) prevents HMRC from imposing restrictions to remove quantities of tobacco products of less than 30% of the total allocation in any given month.

7. Subsections 6(a) and 7 provide a power to extend the controlled period where a Budget is later than anticipated. For example, one month later and after the initially specified controlled period.

8. Subsections 6B(1) and (2) provide for a penalty to be charged relating to the amount of goods cleared where there are removals in excess of a restriction on one or more occasion and where a person has failed to comply with the anti-forestalling notice.

9. Subsection 6B(3) provides for the amount of the penalty and there is a reduction of 50% where the person has given an admission notice.

10. Subsection 6B(5) provides that a person cannot benefit from a reduction in the next three years following from a year when that person has benefitted from a reduction.

11. Subsection 6B(6)(b) provides that the admission notice must be sent by the end of the restricted period rather than at the time when the closing statement is submitted.

BACKGROUND NOTE

12. This clause has been introduced to tighten anti-forestalling restrictions and introduce effective sanctions in order to prevent tax avoidance through excessive clearance of tobacco products shortly before an expected increase in the rate of duty.

13. HM Revenue & Customs (HMRC) will publish the Public Notice 150 days before the forestalling controlled period where possible to enable appropriate preparation for business to plan for any supply and demand issues. Where a decision is taken to hold an "emergency budget" HMRC will not be able to provide 150 days' notice before the controlled period.

14. If you have any questions about this change, or comments on the legislation, please contact Louise Shelton on 03000 588068 (email: louise.shelton@hmrc.gsi.gov.uk).

1 Aqua methanol etc

(1) Schedule 1 contains provision relating to fuel duties.

(2) Part 1 of the Schedule contains provision for charging excise duty on aqua methanol.

(3) Part 2 of the Schedule contains miscellaneous amendments.

SCHEDULE 1

Section 1

AQUA METHANOL ETC

PART 1

AQUA METHANOL

Introductory

1 HODA 1979 is amended as follows.

Definition

2 After section 2AB insert—

"2AC Aqua methanol

(1) In this Act "aqua methanol" means a liquid fuel which—
(a) consists of 95 per cent methanol and 5 per cent water, and
(b) has a density of 0.815 mg/l at a temperature of 15°C and under a pressure of 1013.25 millibars.

(2) A substance shall be treated as meeting the condition in paragraph (a) of subsection (1) above if—
(a) the percentage of water it contains is not less than 4.7 and not more than 5.3 per cent, and
(b) the remainder of the substance consists of methanol."

3 In section 2A (power to amend definitions), in subsection (1), after paragraph (b) insert—
"(ba) aqua methanol;".

Charging of excise duty

4 After section 6AF insert—

"6AG Excise duty on aqua methanol

(1) A duty of excise shall be charged on the setting aside for a chargeable use by any person, or (where it has not already been charged under this section) on the chargeable use by any person, of aqua methanol.

(2) In subsection (1) "chargeable use" means use—
(a) as fuel for any engine, motor or other machinery, or
(b) as an additive or extender in any substance so used.

(3) The rate of duty under this section is—
(a) in the case of a chargeable use within subsection (2)(a), £0.079 a litre;

(b) in the case of a chargeable use within subsection (2)(b), the rate prescribed by order made by the Treasury.

(4) In exercising their power under subsection (3)(b), the Treasury shall so far as practicable secure that aqua methanol set aside for use or used as an additive or extender in any substance is charged with duty at the same rate as the substance in which it is an additive or extender.

(5) The power of the Treasury to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

(6) An order under this section—

(a) may make different provision for different cases, and

(b) may prescribe the rate of duty under subsection (3)(b) by reference to the rate of duty under this Act in respect of any other substance.

6AH Application to aqua methanol of provisions relating to hydrocarbon oil

(1) The Commissioners may by regulations provide for—

(a) references in this Act, or specified references in this Act, to hydrocarbon oil to be construed as including references to aqua methanol;

(b) references in this Act, or specified references in this Act, to duty on hydrocarbon oil to be construed as including references to duty under section 6AG above;

(c) aqua methanol to be treated for the purposes of such of the following provisions of this Act as may be specified as if it fell within a specified description of hydrocarbon oil.

(2) Where the effect of provision made under subsection (1) above is to extend any power to make regulations, provision made in exercise of the power as extended may be contained in the same statutory instrument as the provision extending the power.

(3) In this section “specified” means specified by regulations under this section.

(4) Regulations under this section may make different provision for different cases.

(5) Paragraph (b) of subsection (1) above shall not be taken as prejudicing the generality of paragraph (a) of that subsection.”

5 In section 6A (fuel substitutes), in subsection (1)—

(a) omit the “or” after paragraph (d), and

(b) after paragraph (e) insert “, or

(f) aqua methanol.”

Mixing of aqua methanol

6 (1) The italic cross-heading before section 20A becomes “*Mixing*”.

(2) After section 20AAB insert—

“20AAC Prohibition on mixing of aqua methanol

(1) Aqua methanol on which duty under section 6AG(3)(a) of this Act has been charged must not be mixed with any relevant substance.

(2) In subsection (1) “relevant substance” means biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil.

(3) A person commits an offence under this subsection if—

(a) the person intentionally uses aqua methanol in contravention of subsection (1) above, or

(b) the person supplies aqua methanol, intending that it will be used in contravention of subsection (1) above.

(4) A person guilty of an offence under subsection (3) above shall be liable—

(a) on summary conviction in England and Wales—

(i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or

(ii) to a fine not exceeding £20,000 or (if greater) 3 times the value of the aqua methanol in question,

or both;

(b) on summary conviction in Scotland—

(i) to imprisonment for a term not exceeding 12 months, or

(ii) to a fine not exceeding the statutory maximum or (if greater) 3 times the value of the aqua methanol in question,

or both;

(c) on summary conviction in Northern Ireland—

(i) to imprisonment for a term not exceeding 6 months, or

(ii) to a fine not exceeding the statutory maximum or (if greater) 3 times the value of the aqua methanol in question,

or both;

(d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

(5) Any aqua methanol, or any mixture containing aqua methanol, in respect of which an offence under subsection (3) above has been committed shall be liable to forfeiture.

(6) Section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 does not apply in relation to the offence under subsection (3) above, but where such an offence is committed before section 85(1) comes into force the reference in subsection (4)(a)(ii) above to £20,000 shall be read as a reference to the statutory maximum.

20AAD Mixing of aqua methanol in contravention of prohibition: adjustment of duty

(1) A duty of excise shall be charged on a mixture which is produced by mixing aqua methanol on which duty under section 6AG(3)(a) of this Act has been charged with a relevant substance.

(2) In subsection (1) "relevant substance" means biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil.

(3) The rate of duty on a mixture under subsection (1) shall be the rate of duty specified in section 6(1A)(c) (general rate for heavy oil).

(4) The person liable to pay duty charged under this section on production of a mixture is the person producing the mixture.

(5) Where it appears to the Commissioners—
  (a) that a person ("P") has produced a mixture on which duty is charged under this section, and
  (b) that P is the person liable to pay the duty,

they may assess the amount of duty due from P to the best of their judgment and notify that amount to P or P's representative.

(6) An assessment under subsection (5) above shall be treated as if it were an assessment under section 12(1) of the Finance Act 1994.

(7) Where duty under a provision of this Act has been paid on an ingredient of a mixture, the duty charged under this section shall be reduced by the amount of any duty which the Commissioners are satisfied has been paid on the ingredient (but not to a negative amount).

(8) The Commissioners may exempt a person from liability to pay duty under this section in respect of production of a mixture of a kind described in subsection (1) if satisfied that—
  (a) the liability was incurred accidentally, and
  (b) in the circumstances the person should be exempted.

Powers to allow reliefs".

7 In paragraph 3 of Schedule 41 to FA 2008 (penalties for putting product to use that attracts higher duty), in the Table in sub-paragraph (1), at the appropriate place insert—

"HODA 1979 section 20AAD(5)	Mixtures containing aqua methanol."

Enforcement

8 (1) Section 22 (prohibition on use of petrol substitutes on which duty has not been paid) is amended as follows.

(2) After subsection (1AB) insert—

"(1AC) Where any person—

(a) puts any aqua methanol to a chargeable use (within the meaning of section 6AG above), and

(b) knows or has reasonable cause to believe that there is duty charged under section 6AG above on that aqua methanol which has not been paid and is not lawfully deferred,

his putting the aqua methanol to that use shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which a person contravenes this section shall be liable to forfeiture."

(3) In subsection (1A), for "or (1AB)" substitute ", (1AB) or (1AC)".

(4) The heading of section 22 becomes "**Prohibition on use of fuel substitutes on which duty has not been paid**".

Consequential amendments

9 In section 23C (warehousing), in subsection (4), after paragraph (d) insert—

"(da) aqua methanol,".

10 In section 27(1) (interpretation), before the definition of "aviation gasoline" insert—

""aqua methanol" has the meaning given by section 2AC above;".

11 In section 16 of FA 1994 (appeals to a tribunal), in subsection (6)(c), before "section 23(1)" insert "or (1AC)".

PART 2

HYDROCARBON OILS: MISCELLANEOUS AMENDMENTS

HODA 1979

12 In section 20AAA of HODA 1979 (mixing of rebated oil), in subsection (4)(a), for "section 6A(1A)(c)" substitute "section 6(1A)(c)".

FA 1994

13 In section 16 of FA 1994 (appeals to a tribunal), in subsection (6)(c), after "section 22(1)" insert "(1AA), (1AB)".

PART 3

COMMENCEMENT

14 The amendments made by this Schedule come into force—

(a) so far as they confer a power to make regulations or an order, on the day on which this Act is passed, and

(b) for all other purposes, on 1 April 2015.

EXPLANATORY NOTE

AQUA METHANOL ETC.

SUMMARY

1. Clause [X] introduces Schedule [Y] which contains provisions for charging excise duty on aqua methanol. This introduces a new rate of excise duty for aqua methanol from 1 April 2015. Part 2 of the schedule contains miscellaneous amendments.

DETAILS OF THE SCHEDULE

2. Paragraph 1 provides that the Hydrocarbon Oil Duties Act 1979 (HODA 1979) is amended in accordance with the Schedule.

3. Paragraph 2 inserts the new section 2AC to provide a definition for aqua methanol.

4. Paragraph 3 amends section 2A (the power to amend definitions) to provide that the definition of aqua methanol can be amended by Treasury Order.

5. Paragraph 4 inserts new sections 6AG and 6AH.

6. New section 6AG(1) provides that a duty of excise shall be charged when aqua methanol is allocated for chargeable use.

7. New section 6AG(2) provides for the meaning of chargeable use. Chargeable use means used as fuel for any engine, motor or other machinery or as an additive or extender in such fuel.

8. New section 6AG(3) provides for the rate of duty for aqua methanol.

9. New section 6AG(4) provides that the fuel duty rate when aqua methanol is allocated for use as an additive or extender should be the same rate as the substance in which it is an additive or extender.

10. New section 6AG (5) provides that the power for the Treasury to make an order under section 6AG prescribing the rate of duty when aqua methanol is used as an additive or extender is exercisable by statutory instrument.

11. New section 6AG(6) provides that an order can make different provision for different cases and prescribe the rates of duty by reference to rates of duty in HODA 1979.

12. New section 6AH provides a power for the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") to provide in regulations that specified references in HODA 1979 to hydrocarbon oil and the duty on hydrocarbon oil apply to aqua methanol.

13. Paragraph 5 amends section 6A (fuel substitutes) so that aqua methanol does not fall within the scope of that section.

14. Paragraph 6 inserts new sections 20AAC and 20AAD.

15. New section 20AAC prohibits the mixing of aqua methanol on which duty has been charged at the rate specified in section 6AG(3)(a) with any relevant substance (as defined in subsection (2)) and provides for the penalties if a person intentionally uses aqua methanol in contravention of the prohibition or supplies aqua methanol intending that it will be so used.

16. New section 20AAD provides that excise duty shall be charged on a mixture produced by mixing aqua methanol on which duty has been charged at the rate specified in section 6AG(3)(a) with a relevant substance (as defined in subsection(2)). The section also specifies the rate of duty on such a mixture and that the person liable to pay the duty is the person producing the mixture. New Section 20AAD also provides that the Commissioners may exempt a person from liability under the section in specified circumstances and that the amount payable may be reduced by an amount that has been paid on an ingredient of the mixture.

17. Paragraph 7 amends paragraph 3 of Schedule 41 to Finance Act 2008.

18. Paragraph 8 amends section 22 (and its heading) prohibition on use of petrol substitutes on which duty has not been paid. The paragraph also provides that a penalty will apply if aqua methanol is put to chargeable use in situations where the Commissioners believe that duty has not been paid.

19. Paragraphs 9 – 11 provide for minor and consequential amendments.

20. Paragraphs 12 – 13 contain miscellaneous amendments.

21. Paragraph 14 contains commencement provisions.

BACKGROUND NOTE

22. At Autumn Statement 2013, the Government announced that the duty differential between the lower rate for alternative road fuel gases and the main rate for petrol and diesel will be maintained until 2024, with a review of the impact of these incentives at Budget 2018.

23. Certain alternative fuels such as compressed natural gas, liquid natural gas and biomethane currently benefit from a lower rate of fuel duty than that applied to petrol and diesel, in recognition of their environmental benefits.

24. The Government announced at Budget 2014 that it will apply a reduced rate of fuel duty to aqua methanol from 1 April 2015. The rate is set at 7.90 pence per litre. Therefore, aqua methanol will be added to the list of cleaner fuels that will benefit from the reduced rate.

25. The duty incentive for aqua methanol will be reviewed at Autumn Statement 2016.

26. If you have any questions about this change, or comments on the legislation, please contact Ademola Adetosoye on 03000 586040 (email: Ademola.adetosoye@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2015 No.0000

EXCISE

The Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) (Amendment) Regulations 2015

Made - - - -	*xx March 2015*
Laid before Parliament	*xx March 2015*
Coming into force - -	*1st April 2015*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 6AH, 20AA(1)(a) and (2)(a) to (d), (g), (h) and (i), 21(1)(a) and (2), 23C of, and paragraphs (3) and (11) of Schedule 3 and paragraphs 17 and 21 of Schedule 4 to, the Hydrocarbon Oil Duties Act 1979(**a**), sections 93(1)(a), (b), (c), (2)(a) and (3), 118A(1) and (2), 100G(1), 100H(1)(b) and (2) and 127A of the Customs and Excise Management Act 1979(**b**) and section 1 of the Finance (No. 2) Act 1992(**c**):

Citation and commencement

1. These Regulations may be cited as the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) (Amendment) Regulations 2015 and come into force on 1st April 2015.

(**a**) 1979 c. 5; section 6AH was inserted by section [] of the Finance Act 2015 (c.); section 20AA was inserted by section 2(1) of the Finance Act 1989 (c. 26) and 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), the Finance Act 2008 (c. 9), Schedule 5, paragraph 17 and Schedule 6, paragraphs 24 and 30; section 23C was inserted by section 13 of the Finance Act 2004 (c. 12) and amended by S.I. 2020/593; the power to make regulations under sections 6AH and 21 is conferred on "the Commissioners". 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 the Customs and Excise Management Act 1979 (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". Section 21 of the Hydrocarbon Oil Duties Act 1979 provides that the Commissioners may make regulations which relate to hydrocarbon oil. Section 6AH of that Act (which was inserted by the Finance Act 2015 ([c.]), section [6AH], provides that the Commissioners may by regulations provide for specified references in the Act to hydrocarbon oil to be construed as including references to aqua methanol. Regulation 3(2B) of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065) (as inserted by these Regulations) provides that references to hydrocarbon oil in section[s 20AA(1)(a), and] 21(2) of, and paragraphs 3 and 11 of Schedule 3 and paragraphs 17 and 21 of Schedule 4 to, the Hydrocarbon Oil Duties Act 1979 are to be construed as including reference to aqua methanol.

(**b**) 1979 c. 2; section 93(1) was substituted by the Finance (No. 2) Act 1992 (c. 48), Schedule 2, paragraph 2(1); section 93 (2)(a) was amended by the Finance Act 1981 (c. 35), Schedule 8, Part 1, paragraph 2(a); section 93(3) was amended by the Finance (No. 2) Act 1992, Schedule 2, paragraph 2(4); section 118A was inserted by the Finance Act 1991 (c. 31), Schedule 5 and amended by the Finance (No. 3) Act 2010 (c. 33), Schedule 13, paragraph 1; section 127A was inserted by the Finance Act 1983 (c. 28), section 6 and amended by the Finance (No. 2) Act 1992, Schedule 1, paragraph 7.

(**c**) 1992 c. 48.

Amendments to the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004

2. The Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004(**a**) are amended as follows.

3. In regulation 2 (interpretation)—

(a) after the definition of "approved person" insert—

""aqua methanol duty" means the duty charged on aqua methanol by section 6AG(**b**) of the Oil Act;";

(b) in the definition of "biofuel" before "biodiesel" insert "aqua methanol,";

(c) in the definition of "chargeable use" before sub-paragraph (a) insert—

"(za) in relation to aqua methanol, means chargeable use within the meaning of section 6AG(2) of the Oil Act,".

4. In regulation 3 (construction of references to hydrocarbon oil etc in the Oil Act)—

(a) after paragraph (2A) insert—

"(2B) The references to hydrocarbon oil in the following provisions of the Oil Act are to be construed as including references to aqua methanol—

(a) section 15(1) (drawback of duty on exportation etc);

(b) section 20AA(1)(a) (power to allow reliefs);

(c) section 21(2) (regulations with respect to hydrocarbon oil);

(d) paragraphs (3) and (11) of Schedule 3 (subjects for regulations);

(e) paragraphs (17) and (21) of Schedule 4 (subjects for regulations).";

(b) in paragraph (3), before sub-paragraph (a) insert—

"(za) aqua methanol duty;";

(c) in paragraph (4) before "biodiesel" insert "aqua methanol duty".

5. In regulation 19 (returns, time and method of payment), in paragraph (1A)(a) before "biodiesel" insert "aqua methanol".

6. In regulation 19A (large producers), in paragraph 4(a) before "biodiesel" insert "aqua methanol".

7. In the Schedule (particulars to be entered in the motor fuels record)—

(a) except in paragraph 1(bb), before "biodiesel" (wherever else it occurs) insert "aqua methanol,";

(b) in paragraph 1(charge arising on setting aside), after sub-paragraph (bb) insert—

"(bc) in the case of a consignment of aqua methanol, a description indicating that the aqua methanol has been charged with aqua methanol duty upon being set side as —

(i) suitable only as fuel for an engine, motor or machinery powered by aqua methanol;

(ii) an additive or extender in fuel for an engine, motor or machinery powered by diesel;

(iii) an additive or extender in fuel for an engine, motor or machinery powered by unleaded petrol;

(iv) an additive or extender in fuel for an engine, motor or machinery powered by light oil other than unleaded petrol;

(**a**) S.I. 2004/2065; amended by S.I. 2007/1640, 2007/3307, 2008/753, 2014/471.
(**b**) Section 6AG was inserted by the [Finance Act 2015 (c.), section [].]

(v) an additive or extender in fuel for an engine, motor or machinery not falling within sub-paragraphs (ii) to (iv);";

(c) in paragraph 2 (charge arising on chargeable use), after sub-paragraph (b) insert—

"(bb) in the case of a consignment of aqua methanol, a description indicating that the aqua methanol has been charged with aqua methanol duty upon chargeable use as —

(i) fuel for an engine, motor or machinery powered by aqua methanol;

(ii) an additive or extender in fuel for an engine, motor or machinery powered by diesel;

(iii) an additive or extender in fuel for an engine, motor or machinery powered by unleaded petrol;

(iv) an additive or extender in fuel for an engine, motor or machinery powered by light oil other than unleaded petrol;

(v) an additive or extender in fuel for an engine, motor or machinery not falling within sub-paragraphs (ii) to (iv);".

Amendment to the Excise Duties (Deferred Payment) Regulations 1992

8. In regulation 2 (interpretation) of the Excise Goods (Deferred Payment) Regulations 1992(**a**), in the definition of "biofuels" after "(bioethanol)" insert ",6AG(2) (aqua methanol)".

Amendments to the Excise Warehousing (Energy Products) Regulations 2004

9.—(1) The Excise Warehousing (Energy Products) Regulations 2004(**b**) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of "special energy product"—

(a) in sub-paragraph (e) omit "or";

(b) at the end of sub-paragraph (f) insert "or"; and

(c) after sub-paragraph (f) insert—

"(g) aqua methanol.".

(3) In regulation 5 (treatment of warehoused special energy products), after paragraph (3)(a) insert—

"(aa) aqua methanol shall be treated as charged by section 6AG of the Oil Act (aqua methanol;".

name
name
date Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 6AG of the Hydrocarbon Oil Duties Act 1979 (c. 5) ("HODA")(**c**) provides for a charge to excise duty on aqua methanol that is set aside for use, or used, as fuel for any engine, motor or

(**a**) S.I. 1992/3152, amended by S.I. 2004/2065; there are other amending instruments but none is relevant.
(**b**) S.I. 2004/2064, amended by S.I. 2010/593.
(**c**) Section 6AG was inserted by [ ].

other machinery or as an additive or extender in any substance so used ("chargeable use"). These Regulations amend the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004 (S.I. 2004/2065) ("the principal Regulations") so that they apply to aqua methanol that is put to a chargeable use and make consequential amendments to the Excise Duties (Deferred Payment) Regulations 1992 (S.I. 1992/3152) ("the Deferment Regulations") and the Excise Warehousing (Energy Products) Regulations 2004 (S.I. 2004/2064) ("the Energy Products Regulations").

Regulation 3 amends regulation 2 of the principal Regulations so that it includes references to "aqua methanol" and "aqua methanol duty".

Regulation 4 amends regulation 3 of the principal Regulations so that certain references to hydrocarbon oil, or to the duty on hydrocarbon oil, in HODA are to be construed as including references to aqua methanol and aqua methanol duty.

Regulations 5 and 6 amend regulations 19 and 19A of the principal Regulations so that they apply to aqua methanol.

Regulation 7 amends the particulars to be entered in the motor fuels record in the Schedule to the principal Regulations to include a description indicating that aqua methanol has been charged with aqua methanol duty upon chargeable use as fuel for an engine, motor or machinery powered by aqua methanol or as an additive or extender in fuels for engines, motors and machinery powered by other fuels.

Regulation 8 amends the Deferment Regulations so that those Regulations provide for the deferment of duty in respect of aqua methanol.

Regulation 9 amends the Energy Products Regulations so that aqua methanol falls within the definition of "special energy product" and, for the purposes of regulation 5 of those Regulations (treatment of warehoused special energy products), is treated as charged with duty under section 6AG of HODA.

A Tax Information and Impact Note (TIIN) covering this instrument was published on 10th December 2014 alongside draft clauses of the Finance Bill 2015 and this instrument and is available on the HMRC website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE BIOFUELS AND OTHER FUEL SUBSTITUTES (PAYMENT OF EXCISE DUTIES ETC.) (AMENDMENT) REGULATIONS 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Biofuels and Other Fuels Substitutes (Payment of Excise Duties Etc.) Regulations 2004 (S.I 2004/2065) ("the principal Regulations") so that they apply to aqua methanol and provide for the administration and collection of excise duty charged on it.

2.2 They also make amendments to the Excise Duties (Deferred Payment) Regulations 1992 (S.I. 1992/3152), so that those Regulations provide for the deferment of excise duty in respect of aqua methanol and the Excise Warehousing (Energy Products) Regulations 2004 (S.I. 2004/2064), so that aqua methanol falls within the definition of "special energy products" and, for the purposes of the treatment of warehoused special energy products, is treated as charged with duty under section 6AG of the Hydrocarbon Oil Duties Act 1979 ("HODA").

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3. Matters of special interest to the Joint Committee on Statutory Instruments

[None]

4. Legislative Context

4.1 The Finance Act 2015 (c.) inserted a new section 6AG into HODA to provide for a separate charge to excise duty on aqua methanol set aside for a chargeable use or put to a chargeable use. "Chargeable use" means use (a) as fuel for any engine, motor or other machinery or (b) as an additive or extender in any substance so used.

4.2 The principal Regulations regulate the administration and collection of the excise duties charged on biodiesel, bioethanol and other fuel substitutes. These Regulations amend the principal Regulations, and the Regulations referred to in paragraph 2.2 above, so that they also apply to aqua methanol.

4.3. The Aqua Methanol (Use as Additive or Extender) (Rates of Excise Duty) Order 2015 (S.I. 2015/xxxx) is related to the principal Regulations. The rates of duty prescribed by that Order are determined by the entry made in the motor fuels record in the Schedule to the principal Regulations, which is amended by this instrument to cover aqua methanol.

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 Under HODA, certain alternative fuels benefit from a lower rate of fuel duty than that applied to petrol and diesel, in recognition of their environmental benefits.

7.2 The fuels included in this group are compressed natural gas (CNG), liquid natural gas (LNG), biomethane and liquefied petroleum gas (LPG).

7.3 In line with Government policy to provide incentives to cleaner fuels, the Government announced at Budget 2014, that it will apply a reduced rate of fuel duty to aqua methanol that is set aside for road use.

7.4 The rate of duty for aqua methanol set aside for use, or used, as fuel for any engine, motor or other machinery is set at 7.90 pence per litre. The rate of duty when aqua methanol is set aside for use, or used, as an additive or extender in any substance used as fuel for any engine, motor or other machinery is prescribed by the Aqua Methanol (Use as Additive or Extender) (Rates of Excise Duty) Order 2015 (S.I. 2015/xxxx).

7.5 The amendments made to the principal Regulations by these regulations ensure that, for the purposes of administering and collecting the duty charged on aqua methanol, the provisions in the principal Regulations apply and that the particulars of how aqua methanol is set aside for use, or used, as fuel in any engine motor or other machinery are contained in the motor fuels record that is required to be kept.

- **Consolidation**

7.6 There are currently no plans to consolidate the amendments made to the principal Regulations.

8. Consultation outcome

An informal consultation was conducted with key stakeholders and feedback from this exercise has been fully considered in drafting this legislation.

9. Guidance

The Public Notice 179E (Biofuels and other fuel substitutes), available on www.gov.uk will be revised to reflect the change.

10. Impact

10.1 The impact on business is 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 10th December 2014 alongside draft clauses of the Finance Bill 2015 and this instrument and is available on the Government website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins
It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

The legislation applies to small business. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to keep minimum any new regulatory requirements as part of this change.

12. Monitoring & review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Indirect Tax Directorate of HMRC.

13. Contact

Razia Sultana at HM Revenue and Customs
Tel: 03000 577 359 or email: razia.sultana@hmrc.gsi.gov.uk.

STATUTORY INSTRUMENTS

2015 No.0000

EXCISE

The Aqua Methanol (Use as Additive or Extender) (Rates of Excise Duty) Order 2015

Made - - - -	*xx March 2015*
Laid before the House of Commons	*xx March 2015*
Coming into force - -	*1st April 2015*

The Treasury make the following Order in exercise of the powers conferred by section 6AG(3), (4) and (6) of the Hydrocarbon Oil Duties Act 1979(**a**):

Citation and commencement

1. This Order may be cited as the Aqua Methanol (Use as Additive or Extender) (Rates of Excise Duty) Order 2015 and comes into force on 1st April 2015.

Interpretation

2.—(1) In this Order—

"the Act" means the Hydrocarbon Oil Duties Act 1979;

"additive or extender" means additive or extender comprised in section 6AG of the Act;

"duty" means excise duty;

"engine" means an engine, motor or other machinery comprised in section 6AG of the Act;

"record" means the motor fuels record governed by regulation 13 of the Biofuels and Other Fuel Substitutes (Payment of Excise Duty etc.) Regulations 2004(**b**).

(2) Where in this Order a rate of duty or a rebate is described as a rate or rebate specified in a section of the Act, that rate or rebate is the rate or rebate specified or having statutory effect at the time when the aqua methanol became the subject of the charge to duty by virtue of section 6AG of the Act.

Rates of Duty

3. The rate of duty charged by virtue of section 6AG of the Act on the setting aside for use, or on the use, of aqua methanol as an additive or extender in fuel for any engine is the relevant rate prescribed by regulation 4.

(**a**) 1979 c. 5; section 6AG was inserted by section [] of the Finance Act 2015 (c.).
(**b**) S.I. 2004/2065; relevant amending instruments are 2007/1640, 2008/753, 2014/471, 2015/[ ] .

4.—(1) Where aqua methanol is entered in the record upon being set aside for use, or on the use, as an additive or extender in fuel for an engine powered by—

(a) diesel, the rate is the rate specified in section 6 of the Act for heavy oil;

(b) unleaded petrol, the rate is the rate specified in section 6 of the Act for unleaded petrol;

(c) light oil other than unleaded petrol, the rate is the rate specified in section 6 of the Act for light oil other than unleaded petrol.

(2) Where aqua methanol is entered in the record upon being set aside for use, or on the use, as an additive or extender in fuel for an engine powered by—

(a) heavy oil; and

(b) in relation to that oil, a rebate of duty is allowable, or has been allowed, under sections 11, 13ZA(**a**) or 13AA(1)(**b**) of the Act,

the rate is the rate specified in section 6 of the Act for heavy oil minus the applicable rate of rebate that is allowable or has been allowed.

(3) Where aqua methanol is set aside for use, or used, as an additive or extender in fuel for an engine but is not entered in the record under paragraph (1) or (2), the rate is the rate specified in section 6 of the Act for light oil other than unleaded petrol.

name
name

date — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes the rates of excise duty charged under section 6AG of the Hydrocarbon Oil Duties Act 1979 (c. 5) on aqua methanol that is set aside for use, or used, as an additive or extender in fuel for any engine, motor or other machinery.

This Order is related to the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004 (S.I. 2004/2065) ("the 2004 Regulations") which provides a framework for the payment of excise duty dealt with by this Order and the Other Fuel Substitutes (Rates of Excise Duty etc.) Order 1995 (S.I. 1995/2716).

Article 4 provides for the rate of excise duty on aqua methanol that is set aside for use, or used, as an additive or extender in fuel for any engine, motor or other machinery to be determined by an entry in a record that it has been set aside for use, or used, as an additive or extender in fuel for a diesel engine, a leaded or unleaded petrol engine or an engine powered by heavy oil on which a rebate of duty is allowable or has been allowed. That record is known as the motor fuels record and is governed by the 2004 Regulations. Where an entry in the record is not made under any of those headings, the rate of duty is that applicable to light oil other than unleaded petrol.

(**a**) Section 13ZA was inserted by the Finance Act 2008 (c. 9), Schedule 6, paragraph 28.

(**b**) Section 13AA was inserted by section 5(4) of the Finance Act 1996 (c. 8) and amended by section 7(6) of the Finance Act 1997 (c. 16), section 10(6) of the Finance Act 2004 (c. 12), section 4(8) of the Finance Act 2005 (c. 7) and section 13(6) of, and paragraph 10 of Schedule 5 to, the Finance Act 2008 (c. 9).

A Tax Information and Impact Note (TIIN) covering this instrument was published on 10th December 2014 alongside draft clauses of the Finance Bill 2015 and this instrument and is available on the HMRC website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM
TO

THE AQUA METHANOL (USE AS ADDITIVE OR EXTENDER) (RATES OF EXCISE DUTY) ORDER 2015

[2015] 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.

2. Purpose of the instrument

This Order prescribes the rates of excise duty charged on the setting side for use, or on the use, of aqua methanol as an additive or extender in fuel for any engine, motor or other machinery.

3. Matters of special interest to the Select Committee on Statutory Instruments

[None]

4. Legislative Context

4.1 Section [x] of the [Finance Act 2015] (c.) inserted a new section 6AG into the Hydrocarbon Oil Duties Act 1979 (c. 5) ("HODA") to charge excise duty on aqua methanol when it is set aside for a chargeable use or on its chargeable use. "Chargeable use" means use (a) as fuel for any engine, motor or other machinery or (b) as an additive or extender in any substance so used.

4.2 The rate of duty when aqua methanol is set aside for use, or used, as fuel for any engine motor or other machinery is contained in s 6AG(3)(a) of HODA (see paragraph 7.5 below). When it is set aside for use, or used, as an additive or extender, section 6AG (3)(b) provides that the rate of duty is that prescribed by a Treasury Order. This instrument prescribes those rates.

4.3 This instrument is related to the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004 (S.I. 2004/2065) ("the 2004 Regulations") which provides a framework for the payment of excise duty dealt with by this Order and the Other Fuel Substitutes (Rates of Excise Duty etc.) Order 1995 (S.I. 1995/2716). The 2004 Regulations have been amended by [S.I. 2005/xxxx] so that they apply to aqua methanol.

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 Under HODA, certain alternative fuels benefit from a lower rate of fuel duty than that applied to petrol and diesel, in recognition of their environmental benefits.

7.2 The fuels included in this group are compressed natural gas (CNG), liquid natural gas (LNG), biomethane and liquefied petroleum gas (LPG).

7.3 In line with Government policy to provide incentives to cleaner fuels, the Government announced at Budget 2014, that it will apply a reduced rate of fuel duty to aqua methanol that is set aside for road use.

7.5 The rate of duty for aqua methanol set aside for use or used as fuel for any engine, motor or other machinery is set at 7.90 pence per litre. The rate of duty when it is used as an additive or extender is set by this Order by reference to the rate for the fuel to which it is an additive or extender.

- **Consolidation**

7.6 There are currently no plans to consolidate the Order.

8. Consultation outcome

An informal consultation was conducted with key stakeholders and feedback from this exercise has been fully considered in drafting the legislation.

9. Guidance

The Public Notice 179E (Biofuels and other fuel substitutes), available on www.gov.uk will be amended to cover this instrument.

10. Impact

10.1 The impact on business is negligible.

10.2 There is no impact on the public sector.

10.3 Tax Information and Impact Note (TIIN) covering this instrument was published on 10th December 2014 alongside draft clauses of the Finance Bill 2015 and this instrument and is available on the HMRC website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

The legislation applies to small business. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to keep to a minimum any new regulatory requirements as part of this change.

12. Monitoring & review

Reviews of compliance with the practical application of the Order will form part of the compliance review programme of the Indirect Tax Directorate of HMRC.

13. Contact

Razia Sultana at HM Revenue and Customs
Tel: 03000 577 359 or email: razia.sultana@hmrc.gsi.gov.uk.

1 Tax credit in Northern Ireland

(1) Part 2 of FA 2001 (aggregates levy) is amended in accordance with subsections (2) to (5).

(2) After section 30A insert—

“30B Tax credit in Northern Ireland: further provision

(1) The Commissioners may by regulations make provision of the kind described in section 30(2) (entitlement to tax credit) in relation to cases within subsection (3) below.

(2) Tax credit to which a person is entitled under the regulations is referred to in this section as “special tax credit”.

(3) The cases are where—

(a) a person has been charged with, and has fully accounted for, aggregates levy in respect of the commercial exploitation of a quantity of aggregate,

(b) the exploitation was of imported aggregate and occurred in Northern Ireland in the period defined in subsection (5), and

(c) the person has given the Department of the Environment in Northern Ireland (“the Department”) written notice that the person has been charged with the levy in a case falling within paragraph (b).

(4) For this purpose aggregate is “imported” if it was won from a site in a member State other than the United Kingdom.

(5) The period mentioned in subsection (3)(b)—

(a) begins with 1 April 2004, and

(b) ends with 30 November 2010.

(6) Regulations may in particular—

(a) provide that a person is not entitled to special tax credit unless the Department has certified that it is satisfied that specified requirements were met in relation to the site from which the aggregate originates during a period which includes the time when the aggregate was won from the site;

(b) specify further conditions for entitlement to special tax credit;

(c) make provision about the rate at which special tax credit is to be given (including provision restricting the amount of special tax credit in cases where entitlement to a tax credit has already arisen);

(d) provide for compound interest at the applicable rate (see section 30C) to be treated as added, for such period and for such purposes as may be prescribed, to the amount of any special tax credit;

(e) authorise the Commissioners to adjust a person's claim for special tax credit in specified circumstances.

(7) Regulations under subsection (6)(a) may specify the requirements in question by reference to any provisions of a notice published by the Department in pursuance of the regulations and not withdrawn by a further notice.

(8) Subsection (3) of section 30 (except paragraph (f) of that subsection) applies to regulations under this section as it applies to regulations under that section.

(9) Section 32(1) (time limit for claims) does not apply to a claim for repayment of aggregates levy made under regulations under this section.

30C Special tax credit: applicable rate of interest

(1) The reference in section 30B(6)(d) to the applicable rate is to a rate provided for in regulations made by the Treasury.

(2) Regulations under this section may provide for the rate to be determined, and to change from time to time, by reference to a rate referred to in the regulations.

(3) Regulations under this section are to be made by statutory instrument.

(4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

30D Section 30B: certification by Department

(1) A person may, for the purpose of making a claim for special tax credit, apply to the Department for a certificate under subsection (3).

(2) The application must specify—
(a) a site, and
(b) a time ("the relevant time").

(3) Where an application is made and the Department has not previously made a determination under this subsection relating to both the specified site and a period that includes the relevant time, the Department must either—
(a) certify that it is satisfied that any requirements specified by virtue of section 30B(6)(a) were met in relation to the site during a period (specified in the certificate) that includes the relevant time, or
(b) refuse the application.

(4) If the Department makes the certification mentioned in subsection (3)(a), it must give a copy of the certificate to—
(a) the applicant, and
(b) HMRC.

(5) Where an application is made and the Department has previously given a certificate under subsection (3)(a) relating to both the specified site and a period that includes the relevant time, the Department must give the applicant a copy of the certificate.

(6) Any expenses of the Department under or by virtue of this section or section 30B are to be appropriated from the Consolidated Fund of Northern Ireland by Act of the Northern Ireland Assembly.

(7) In this section "the Department" and "special tax credit" have the same meaning as in section 30B."

(3) In section 17 (meaning of "aggregate" and "taxable aggregate"), in subsection (6)(a), for "or 30A" substitute ", 30A or 30B".

(4) In section 48(1) (interpretation of Part), in the definition of "tax credit regulations", for "or 30A" substitute ", 30A or 30B".

(5) In paragraph 9A of Schedule 6 (incorrect records etc evidencing claim for tax credit), in sub-paragraph (1)(a)—

(a) omit the "or" at the end of sub-paragraph (i), and

(b) after sub-paragraph (ii) insert ", or

(iii) section 30B(3) of this Act (tax credit in Northern Ireland: further provision);".

EXPLANATORY NOTE

TAX CREDIT IN NORTHERN IRELAND

SUMMARY

1. Clause [X] enables the Commissioners of HM Revenue and Customs (HMRC) to pay credit relating to aggregates levy paid on aggregate commercially exploited in Northern Ireland (NI) between 1 April 2004 and 30 November 2010 following importation of the aggregate from another European Union (EU) Member State. It also outlines the part to be played by the Department of the Environment in NI (DoE) in this process and specifies information which must be provided by the person claiming a credit.

DETAILS OF THE CLAUSE

2. Subsection (2) inserts new sections 30B, 30C and 30D into the Finance Act (FA) 2001.

3. New section 30B(1) enables HMRC to make regulations for the purpose of administering the credit. Section 30B(3) sets out the circumstances in which a person is to be entitled to claim the credit; in particular, they must have previously accounted for aggregates levy in respect of aggregate imported into Northern Ireland during a specified period, and must have previously notified their claim to the DoE. Sections 30B(4) and (5) define terms used in section 30B(3). Section 30B(6) sets out those matters which regulations made by HMRC for the purposes of administering the credit may cover. In particular, it includes a power to impose a requirement that a person is not to be entitled to the credit unless the DoE is satisfied that the site from which the aggregate originated ('originating site') met prescribed conditions; and a power to provide that claims for credit may include interest. Section 30B(7) enables the DoE to set out those prescribed conditions in a notice. Sections 30B(8) and (9) make consequential amendments to FA 2001.

4. New section 30C provides that the power to determine the rate of interest, and method of calculation, is to be set by an Order made by the Treasury, subject to the negative resolution procedure.

5. New section 30D sets out the procedure for making an application to the DoE which will apply if HMRC has imposed a requirement under section 30B(6) that a person is not to be entitled to the credit unless the DoE is satisfied that the originating site met prescribed conditions. Section 30C(2) sets out the information that an application to the DoE must contain. Sections 30C(3), (4) and (5) require the DoE to consider applications that are submitted and either certify that the originating site met the prescribed conditions or refuse the application. Section 30C(6) provides that expenses incurred by the DoE in complying

with its obligation under this section are to be met from the Consolidated Fund of Northern Ireland.

6. Subsections (3), (4), and (5) make minor consequential amendments to the FA 2001

BACKGROUND NOTE

7. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

8. The Aggregates Levy Credit Scheme (ALCS) was introduced on 1 April 2004. It provided an 80 per cent levy credit to operators in NI who commercially exploited aggregate originating there, provided they entered into an agreement with the DoE to improve environmental standards at their site(s). The scheme was intended to help aggregate producers in NI cope with the very different market conditions (compared with those in Great Britain) as a result of being the only part of the UK to share a land boundary with another EU Member State.

9. In response to action taken by the British Aggregates Association, in 2010 the European General Court annulled the European Commission's 2004 State aid approval for the ALCS. The scheme was therefore suspended from 1 December 2010 while the Commission undertook an investigation.

10. The Commission completed its investigation and published its decision on 7 November 2014. The Commission was broadly content that the scheme complied with the prevailing rules but expressed concern that the tax benefit arising from the ALCS did not apply to aggregate commercially exploited in NI that originated in another EU Member State. The Commission's decision identified the steps which the UK was required to take in order to correct this distortion; this legislation gives effect to the requirements set out in the Commission's decision.

11. HMRC will work in partnership with the DoE in the operation of the tax credits scheme. A business wishing to claim a levy credit will need to supply DoE with details of the quarry in the other Member State from which it obtained the aggregate. DoE will investigate the environmental standards that applied at that quarry at the time of the purchase and, if satisfied that those standards were broadly equivalent to those met by quarries in NI under the ALCS, will issue the business with a certificate. The business will then need to write to HMRC to claim a levy credit, attaching a copy of the DoE certificate and other evidence supporting its claim.

12. If you have any questions about this change, or comments on the legislation, please contact Catherine Osborne on 03000 536971 (email: catherine.osborne@hmrc.gsi.gov.uk).

1 Landfill tax: treatment of fines

Schedule 1 makes provision about the treatment of fines for the purposes of landfill tax.

SCHEDULE 1 Section 1

LANDFILL TAX: TREATMENT OF FINES

1 Part 3 of FA 1996 (landfill tax) is amended as follows.

2 (1) Section 42 (amount of tax charged on a taxable disposal) is amended as follows.

(2) In subsection (2), after "qualifying material" insert "or qualifying fines".

(3) After subsection (3) insert—

"(3A) Qualifying fines are a mixture of—

(a) fines that consist of such qualifying material as is prescribed by order, and

(b) fines that consist of material that is not qualifying material,

that satisfies all the requirements prescribed in an order.

(3B) An order under subsection (3A) relating to the mixture of fines may require, in particular—

(a) that fines that consist of material that is not qualifying material do not exceed a prescribed proportion;

(b) that the mixture of fines does not include prescribed materials or prescribed descriptions of materials;

(c) that the mixture of fines is such that, if subjected to a prescribed test, it would give a prescribed result;

(d) that the mixture of fines originates, or does not originate, in a prescribed way."

(4) In subsection (4)(a), after "listed" insert "or what fines are to be qualifying fines".

(5) In subsection (6), after "listed," insert "or what fines are to be qualifying fines,".

3 In section 63 (qualifying material: special provisions), after subsection (4) insert—

"(4A) Subsections (2) to (4) do not apply where the material disposed of consists of qualifying fines."

4 After section 63 insert—

"63A Qualifying fines: special provisions

(1) This section applies for the purposes of section 42.

(2) An order may provide that fines must not be treated as qualifying fines unless prescribed conditions are met.

(3) A condition may relate to any matter the Treasury think fit.

(4) The conditions may include conditions making provision about—

(a) the production of a document which includes a statement of the nature of the fines;

(b) carrying out a specified test on fines proposed to be disposed of as qualifying fines;

(c) the frequency with which tests are to be carried out on any fines proposed to be disposed of as qualifying fines;

(d) the frequency with which tests are to be carried out on any fines that come from a particular source and are proposed to be disposed of as qualifying fines;

(e) the steps to be taken by operators of landfill sites in relation to persons sending fines to be disposed of as qualifying fines.

(5) The conditions may enable provision to be made by notices issued by the Commissioners in accordance with such provision as is made in the conditions.

(6) A notice issued as described in subsection (5) may be revoked by a notice issued in the same way.

(7) If an order includes provision falling within subsection (4)(b), the Commissioners may direct a person to carry out such a test in relation to any fines proposed to be disposed of as qualifying fines.

(8) In this section "specified" means specified in—

(a) a condition prescribed under subsection (2), or

(b) a notice issued as described in subsection (5)."

5 In section 70(1) (interpretation), at the appropriate place insert—

""fines" means particles produced by a waste treatment process that involves an element of mechanical treatment;".

6 (1) In section 71 (orders and regulations), subsection (7) is amended as follows.

(2) After paragraph (a) insert—

"(aa) an order under section 42(3A) providing for fines which would otherwise be qualifying fines not to be qualifying fines;".

(3) After paragraph (c) insert—

"(cza) an order under section 63A(2) other than one which provides only that an earlier order under section 63A(2) is not to apply to fines;".

7 (1) Schedule 5 (provision about information etc) is amended as follows.

(2) In the heading to Part 1, after "Information" insert "and samples".

(3) After paragraph 2A insert—

"Information: qualifying fines

2B (1) Regulations may make provision about giving the Commissioners information about fines proposed to be disposed of, or disposed of, as qualifying fines.

(2) Regulations under this paragraph may require a person to notify the Commissioners if the result of a test carried out on fines indicates that the fines are not qualifying fines.

Samples: qualifying fines

2C (1) Regulations may require persons—

(a) where a sample is taken from a quantity of fines in order to carry out a test on the fines, to retain a prescribed amount of that sample;

(b) to preserve fines retained under paragraph (a) for such period not exceeding three months as may be specified in the regulations.

(2) A duty under regulations under this paragraph to preserve fines may be discharged by taking such steps to preserve them as the Commissioners may specify in writing."

(4) In paragraph 10 (power to take samples), after sub-paragraph (1) insert—

"(1A) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is an amount of fines retained under paragraph 2C(1)(a), such samples as he may require with a view to determining how the fines tested ought to be or to have been treated for the purposes of tax."

(5) In paragraph 22 (information)—

(a) in sub-paragraph (1)(b), after "2" insert "or 2A";

(b) in sub-paragraph (3), for the words from "who" to "liable" substitute "who—

(a) fails to preserve records in compliance with any provision of regulations made under paragraph 2 (read with that paragraph and any direction given under the regulations), or

(b) fails to preserve records in compliance with any provision of regulations made under paragraph 2A (read with that paragraph and any direction given under the regulations),

is liable".

8 The amendments made by this Schedule have effect in relation to disposals made (or treated as made) on or after the day on which this Act is passed.

EXPLANATORY NOTE

LANDFILL TAX: TREATMENT OF FINES

SUMMARY

1. Clause [X] and Schedule [A] amend Part 3 of the Finance Act 1996 (FA 1996) to provide for the introduction of a new testing regime to help landfill site operators to identify the landfill tax liability of waste fines disposed of at landfill sites in England, Wales and Northern Ireland. Fines are the waste produced by any waste treatment process that involves an element of mechanical treatment, and can include a wide variety of different materials some of which may be liable to landfill tax at the standard rate and some at the lower rate.

2. This schedule establishes a new category of "qualifying fines" which will be liable to landfill tax at the lower rate and provides for the power to impose requirements with which fines must comply in order to be considered "qualifying fines". The amendments made by this schedule will apply to disposals made (or treated as made) on or after the day on which Finance Bill 2015 receives Royal Assent.

DETAILS OF THE SCHEDULE

3. Paragraph (2) inserts new subsections into section 42 of FA 1996 and makes consequential amendments accommodate the introduction of those new subsections. Sub-paragraphs (2)(2) and (2)(3) insert sections 42(3A) and 42(3B) into FA 1996; these provide that a new category of material referred to "qualifying fines" is to be eligible for the lower rate of landfill tax, and that fines are to be treated as "qualifying fines" if they are comprised of a mixture of materials specified in an order. Sub-paragraphs (4) and (5) make consequential amendments to section 42 of FA 1996 accommodate the insertion of the new subsections 42(3A) and 42(3B).

4. Paragraph (3) makes a consequential amendment to section 63 of FA 1996.

5. Paragraph (4) inserts a new section 63A into FA 1996.Section 63A(1) to (4) provides for the power to make an Order requiring that fines are only to be treated as "qualifying fines" if they are subjected to a specified test, and includes a power to specify the frequency with which such tests are to be carried out; as well as what documents are to be produced, and what conditions landfill operators are to adhere to, in connection with carrying out the specified test. Section 63A(5) and (6) enables these conditions to be set out in notice issued by HMRC. Section 63A(7) provides that HMRC may have the power to direct that a person must carry out the specified test in certain circumstances. Section 63A(8) defines terms used elsewhere in section 63A.

6. Paragraph (5) amends section 70(1) of FA 1996 to include a statutory definition of "fines".

7. Paragraph (6) makes consequential amendments to section 71 of FA 1996.

8. Paragraph (7) inserts new paragraphs (2B) and (2C) into schedule 5 to FA 1996 and make consequential amendments to that schedule. Sub-paragraphs (7)(1) to (7)(3) insert the new paragraphs (2B) and (2C) into schedule 5 to FA 1996. Paragraph (2B) provides for the power to make regulations requiring persons to give HMRC information concerning fines that are claimed to be "qualifying fines", and to notify HMRC if the specified test indicates that fines do not meet the criteria for "qualifying fines"; while paragraph (2C) provides for the power to make regulations requiring persons to retain and preserve samples of fines that have been subjected to testing. Sub-paragraph (7)(4) makes consequential amendments to paragraph 10 of schedule 5 and sub-paragraph (7)(5) makes consequential amendments to paragraph 22 of schedule 5.

9. Paragraph (8) provides that the amendments made by this schedule are to have effect in relation to disposals made (or treated as having been made) on or after the day on which the Finance Bill 2015 receives Royal Assent.

BACKGROUND NOTE

10. Landfill tax was introduced on 1 October 1996 in support of the UK's waste policy to increase the cost of disposal to landfill to reflect the environmental costs; and encourage more environmentally-friendly alternative behaviours. Less polluting materials are subject to a lower rate of tax and all other taxable waste is subject to the standard rate. The tax currently applies to waste disposed of at permitted landfill sites across the UK but from 1 April 2015 it will no longer apply in Scotland following the decision to devolve it.

11. Landfill site operators are responsible for ensuring the tax liability of waste is identified and charged. They raised concerns that the lower rate of tax was not being applied equitably and requested greater certainty on which to base their liability decisions, particularly in relation to fines. At present, fines are not separately identified within landfill tax legislation although they can be lower-rated if they comprise solely qualifying materials listed in legislation or mainly such materials, save for a small amount of non-qualifying material.

12. The Government responded by developing proposals through consultation. This measure, secondary legislation and prescribed testing regime will provide certainty and fairness.

13. If you have any questions about this change, or comments on the legislation, please contact Phil Sears on 03000 585502 (email:phil.sears@hmrc.gsi.gov.uk).

1 Combined heat and power stations

(1) Schedule 6 to FA 2000 (climate change levy) is amended as follows.

(2) In paragraph 24B (deemed taxable supply: commodities to be used in combined heat and power station)—

(a) in sub-paragraph (2), at the end insert "to which sub-paragraph (2A) does not apply",

(b) after that sub-paragraph insert—

"(2A) This sub-paragraph applies to electricity so far as—

(a) it is included in the CHP Qualifying Power Output of the combined heat and power station's CHPQA scheme, and

(b) either Condition A or B is met.

(2B) Condition A is that the producer of the electricity makes no supply of it to another person, but causes it to be consumed in the United Kingdom.

(2C) Condition B is that the electricity is supplied (within the meaning of Part 1 of the Electricity Act 1989 (see section 64 of that Act)) by a person who is an exempt unlicensed electricity supplier.",

(c) in sub-paragraph (3), after "electricity" insert "to which sub-paragraph (2A) does not apply",

(d) for sub-paragraph (7) substitute—

"(7) For the purposes of this paragraph—

"CHP Qualifying Power Output" has the meaning given by section 4 of the Combined Heat and Power Quality Assurance Standard, Issue 5 (November 2013), prepared by the Department of Energy and Climate Change or, if that issue of the Standard has been replaced by another issue, by the current issue of the Standard (taking account, in either case, of any amendment which has been made to the issue);

"CHPQA scheme", in relation to a combined heat and power station, means the scheme in relation to which the station's CHPQA certificate was issued;

"CHPQA site", in relation to a fully exempt combined heat and power station or a partly exempt combined heat and power station, means the site of the CHPQA scheme."

(3) In paragraph 24C (initial determination under paragraph 24B(3) superseded by later determination), in sub-paragraph (1)—

(a) in paragraph (a), at the end insert "to which paragraph 24B(2A) does not apply", and

(b) in paragraph (c)(i), after "electricity" insert "to which paragraph 24B(2A) does not apply".

(4) In paragraph 62 (tax credits), in sub-paragraph (1)(bb), after "electricity" (in both places it occurs) insert "to which paragraph 24B(2A) does not apply".

(5) The amendments made by this section have effect in relation to carbon price support rate commodities brought onto, or arriving at, a CHPQA site of a combined heat and power station in Great Britain on or after 1 April 2015.

EXPLANATORY NOTE

COMBINED HEAT AND POWER STATIONS

SUMMARY

1. Clause [X] amends Schedule 6 to the Finance Act 2000 so that operators of combined heat and power (CHP) stations do not pay the carbon price support (CPS) rates of climate change levy (CCL) on commodities used to generate good quality electricity used on-site. This applies to commodities that are brought onto or arrive at a CHP station after 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (2) amends paragraph 24B of Schedule 6 so that operators of CHP stations are not deemed to have made a taxable supply of CPS rate commodities used to generate good quality electricity where certain conditions are met. These conditions are that the electricity is the product of good quality CHP and that it is either self-supplied or supplied under an exemption from the requirement for an electricity supplier licence under the Electricity Act 1989.

3. Subsection (3) makes consequential amendments to paragraph 24C of Schedule 6 which relates to corrections to the determination of the amount of CPS rate commodities subject to a deemed self-supply.

4. Subsection (4) makes a consequential amendment to paragraph 62 of Schedule 6 which relates to the claiming of tax credits.

5. Subsection (5) provides that these amendments apply in respect of CPS rate commodities brought onto, or arriving at, the site of a CHP on or after 1 April 2015.

BACKGROUND NOTE

6. The carbon price floor (CPF) was introduced in Great Britain in 2013, introducing CPS rates of CCL and fuel duty on fossil fuels used in electricity generation. These rates top up the EU Emissions Trading System carbon price in order to create a long-term price for carbon in Great Britain and provide certainty for businesses investing in low carbon electricity generation.

7. CHP stations are a class of technology that enables the efficient use of fuel by producing both electricity and heat in a usable form from the same input of fuel. Where the efficiency of the combined production of heat and electricity exceeds certain thresholds the

electricity generated is deemed to be good quality. The efficiency of CHP stations is monitored and certified by the CHP Quality Assurance (CHPQA) programme, operated by the Department of Energy and Climate Change.

8. Natural gas, liquid petroleum gas or solid fossil fuels used in electricity generation in Great Britain are liable to the CPS rates of CCL. CHP operators are deemed to have made a taxable supply to themselves when these CPS rate commodities are used to generate electricity in a CHP station that has a generating capacity of more than 2 megawatts. However, where the commodities are used to produce heat, steam or mechanical power, rather than electricity, no such self-supply occurs. A formula set out in regulations is used to determine the quantity of CPS rate commodities referable to the production of electricity.

9. Budget 2014 announced that from 1 April 2015 the Government would make the change set out in this clause so that the CPS rates of CCL do not become due where the above mentioned CPS rate commodities are used in a CHP station to generate good quality electricity consumed on-site. This mitigates the impact of the CPF on this carbon efficient form of heat and electricity generation and provides further support for UK manufacturing industry. Since Budget 2014, HM Revenue & Customs have worked with industry representatives on the definition of on-site and other details.

10. If you have any questions about this change, or comments on the legislation, please contact Andy Jameson on 03000 586082 (email: andy.jameson@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2015 No. 0000

EXCISE

The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendments for Carbon Price Support) Regulations 2015

Made - - - -	*xx March 2015*
Laid before Parliament	*xx March 2015*
Coming into force - -	*1st April 2015*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 20AA(1)(a) and (2) of the Hydrocarbon Oil Duties Act 1979(**a**):

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendments for Carbon Price Support) Regulations 2015 and come into force on 1st April 2015.

(2) They have effect in relation to qualifying oil or qualifying bioblend used in a combined heat and power station in Great Britain on or after that date.

Amendments to the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005

2. The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005(**b**) are amended as follows.

3. In regulation 9 (application and interpretation of part 4), in paragraph (2)—

(**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 Hydrocarbon Oil Duties Act 1979 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(inserted by the Finance Act 2002 (c. 23). 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, amended by 2007/2191, 2008/753, 2013/657 and 2014/713.

(a) after “Part” insert “and Schedule 3”;

(b) before the definition of “CHPQA” insert—

“(ba) “CHP Qualifying Heat Output”, “CHP Qualifying Power Output”, “CHP Total Fuel Input” and “CHP Total Power Output” have the meaning given in section 4 of the CHPQA;”;

(c) for the definition of “CHPQA” substitute—

“(c) “CHPQA” refers to the Combined Heat and Power Quality Assurance Standard, Issue 5 (November 2013), prepared by the Department of Energy and Climate Change (“the CHPQA Standard”);”;

(d) after the definition of “CHPQA certificate” insert—

“(da) “non-qualifying electricity” means electricity to which paragraph 24B(2A) of Schedule 6 to the Finance Act 2000(**a**) does not apply;

(db) “qualifying electricity” means electricity to which paragraph 24B(2A) of Schedule 6 to the Finance Act 2000 applies.”.

4. In regulation 10 (amount of relief)—

(a) in paragraph (1), for “paragraph (4)” substitute “paragraphs (4) and (7)”;

(b) after paragraph (3) insert—

“(3A) Paragraphs (4) and (5) apply to qualifying oil or qualifying bioblend used to produce outputs of the station before 1st April 2015.”;

(c) after paragraph (5) insert—

“(6) Paragraphs (7) and (8) apply to qualifying oil or qualifying bioblend used to produce outputs of the station on or after 1st April 2015.

(7) Where a quantity of the qualifying oil or qualifying bioblend used to produce outputs of the station is referable to the production of non-qualifying electricity in the relevant annual operation, the amount of relief allowed under paragraphs (1) and (2) is the amount of duty that has been charged and paid on the quantity that is so referable less the relevant amount specified in Schedule 2 (carbon price support rates).

(8) For the purposes of paragraph (7), the quantity of qualifying oil or qualifying bioblend that is referable to the production of non-qualifying electricity is such quantity as is determined in accordance with Schedule 3.”.

5. After Schedule 2 insert—

“SCHEDULE 3

Regulation 10(8)

FUELS REFERABLE TO THE PRODUCTION OF NON-QUALIFYING ELECTRICTY IN A COMBINED HEAT AND POWER STATION

1. The extent to which a quantity of qualifying oil or qualifying bioblend (“input fuels”) is referable to the production of non-qualifying electricity in a combined heat and power station is to be determined in accordance with paragraphs 2 to 5.

2. Calculate the total quantity of input fuels referable to the production of electricity in accordance with the following formula—

(**a**) 2000 c. 17; paragraph 24B was inserted by the Finance Act 2013 (c. 29), Schedule 42, paragraph 10 and was amended by the Finance Act 2015 (c.), section [].

$$\left(TFI - \frac{QHO}{\eta h, ref}\right) \times \left(1 - \frac{MO}{TPO}\right)$$

Where—

TFI is the CHP Total Fuel Input for the station specified on the CHPQA certificate relating to the relevant annual operation.

QHO is the CHP Qualifying Heat Output for the station specified on the CHPQA certificate relating to the relevant annual operation.

$\eta h, ref$ is the reference boiler heat efficiency, taken here to be 81%.

MO is Mechanical Output, which is the amount which is the amount of energy in megawatt-hours (electrical) (MWhe) generated by the station in the relevant annual operation that is used to drive a mechanical load (such as a pump, fan or compressor) through direct coupling, without the use of electricity.

TPO is the CHP Total Power Output for the station specified on the CHPQA certificate relating to the relevant annual operation.

3. Calculate the total quantity of input fuels referable to the production of non–qualifying electricity in accordance with the following formula—

$$Q \times \left(1 - \frac{ES}{TPO - MO}\right)$$

Where—

Q is the quantity of input fuels referable to the production of electricity calculated in accordance with paragraph 2.

ES (which must not exceed the QPO) is the amount of qualifying electricity in megawatt-hours generated by the station in the relevant annual operation.

QPO is the CHP Qualifying Power Output for the station specified on the CHPQA certificate relating to the relevant annual operation.

TPO and MO have the meaning given in paragraph 2.

4. Calculate the percentage of input fuels referable to the production of non-qualifying electricity in accordance with the following formula—

$$\left(\frac{R}{TFI}\right) \times 100$$

Where—

R is the quantity of input fuels referable to non-qualifying electricity calculated in accordance with paragraph 2.

TFI has the meaning given in paragraph 2.

5. Apply the percentage calculated in accordance with paragraph 3 to the quantity of input fuels used to generate outputs of the station.”.

name
name

xx March 2015 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 Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320) ("the principal Regulations").

The principal Regulations provide for a relief from excise duty for rebated oils and bioblends used to generate electricity ("input fuels"). Except in the case of a claim for relief for input fuels used to generate electricity in a generating station, or the outputs of a combined heat and power station, situated in Northern Ireland, the amount of relief is reduced by the carbon price support rates specified in Schedule 2 of the principal Regulations.

These Regulations amend the principal Regulations so that, in relation to input fuels used to generate the outputs of a combined heat and power station on or after 1st April 2015, the carbon price support rates specified in Schedule 2 only apply to input fuels that are referable to the production of non-qualifying electricity. "Non-qualifying electricity" is electricity to which paragraph 24B(2A) of Schedule 6 to the Finance Act 2000 (c.17) does not apply.

Regulation 5 inserts a new Schedule 3 into the principal Regulations to provide the method for determining the quantity of input fuels that are referable to the production of non-qualifying electricity.

A Tax Information and Impact Note (TIIN) covering this instrument was published on 10th December 2014 alongside draft clauses of the Finance Bill 2015 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) (AMENDMENTS FOR CARBON PRICE SUPPORT) REGULATIONS 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320) ("the principal Regulations").

2.2 The principal Regulations provide for a relief from excise duty for rebated oils and bioblends used to generate electricity ("input fuels"). Except in the case of a claim for relief for input fuels used to generate electricity in a generating station, or the outputs of a combined heat and power station, situated in Northern Ireland, the amount of relief is reduced by the carbon price support rates specified in Schedule 2 of the principal Regulations.

2.3 These Regulations amend the principal Regulations so that, in relation to input fuels used to generate the outputs of a combined heat and power station on or after 1st April 2015, the carbon price support rates specified in Schedule 2 only apply to input fuels that are referable to the production of non-qualifying electricity (see paragraph 4.2 below) .

3. Matters of special interest to the Joint Committee on Statutory Instruments

[None].

4. Legislative Context

4.1 Paragraph 24B of Schedule 6 to the Finance Act 2000 (c. 17) (as inserted by the Finance Act 2013 (c. 29)) provides for carbon price support (CPS) rates of climate change levy (CCL) to be charged on fossil fuels (other then oils) that are referable to the production of electricity in a combined heat and power (CHP) station situated in Great Britain. In relation to oils and bioblends, the CPS rates of fuel duty were introduced by amending the principal Regulations to reduce the amount of relief that can be claimed under those Regulations.

4.2 The Finance Act 2015 (c.) amended paragraph 24B of the Finance Act 2000 so that the CPS rates of CCL are only charged on fossil fuels used to generate "non-qualifying" electricity in a CHP station. "Non-qualifying" electricity is electricity to which sub-paragraph (2A) of paragraph 24B does not apply.

4.3 In relation to oils and bioblends, these Regulations amend the principal Regulations so that, in respect of electricity produced in a CHP station in Great Britain, the CPS rates of fuel duty only apply to oils and bioblends that are referable to the production of non-qualifying electricity.

5. Territorial Extent and Application

This instrument applies to Great Britain.

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 CHP stations are a class of technology that enables the efficient use of fuel by producing both electricity and heat in a usable form from the same input of fuel. Where the efficiency of the combined production of heat and electricity exceeds certain thresholds the electricity generated is deemed to be good quality. The efficiency of CHP stations is monitored and certified by the CHP Quality Assurance (CHPQA) programme, operated by the Department of Energy and Climate Change.

7.2 Natural gas, liquid petroleum gas or solid fossil fuels used in electricity generation are liable to the CPS rates of CCL. For CCL purposes, a self-supply is deemed to occur when these commodities are burnt to generate electricity in a CHP that has a generating capacity of more than 2 megawatts, with the operator of the CHP being required to pay the relevant CPS rate of CCL on that supply.

7.3 Oils and bioblends used in electricity generation are liable to the CPS rates of fuel duty. Insofar as a CHP achieves the efficiency threshold set by the CHPQA, duty on fuel can be reclaimed.

7.4 The amount reclaimable is reduced by the relevant CPS rate to the extent that the fuel is used to generate electricity

- **Consolidation**

7.5 There are currently no plans to consolidate the amendments made to the principal Regulations.

8. Consultation outcome

9. Guidance

The Public Notice 175 (Motor and heating fuels – relief from Excise Duty: oils used to generate electricity), available on www.gov.uk will be revised to reflect the change.

10. Impact

10.1 The impact on business is 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 10th December 2014 alongside draft clauses of the Finance Bill 2015 and this instrument and is available on the Government website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins
It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

The legislation applies to small business. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to keep to a minimum any new regulatory requirements as part of this change.

12. Monitoring & review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Indirect Tax Directorate of HMRC.

13. Contact

Ademola Adetosoye at HM Revenue and Customs
Tel: 03000 586 040 or email: ademola.adetosoye@hmrc.gsi.gov.uk

STATUTORY INSTRUMENTS

2015 No.0000

CLIMATE CHANGE LEVY

The Climate Change Levy (General) (Amendment) Regulations 2015

Made - - - -	*March 2015*
Laid before the House of Commons	*March 2015*
Coming into force - -	*1st April 2015*

The Commissioners for Her Majesty's Revenue and Customs(**a**) make the following Regulations in exercise of the powers conferred by paragraphs 22, 24B(3), 24D, 62(1)(bb) and 146(7) of Schedule 6 to the Finance Act 2000(**b**) :

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Climate Change Levy (General) (Amendment) Regulations 2015 and come into force on 1st April 2015.

(2) They have effect in relation to carbon price support rate commodities brought onto, or arriving at, a CHPQA site of a combined heat and power station in Great Britain on or after that date.

Amendments to the Climate Change Levy (General) Regulations 2001

2. The Climate Change Levy (General) Regulations 2001(**c**) are amended as follows.

3. In regulation 11 (other tax credits: entitlement)—

(a) in sub-paragraph (1)(bb), after "electricity" (in both places it occurs) insert "to which paragraph 24B(2A)(**d**) of the Act does not apply";

(b) in sub-paragraph (2)(ab), after "electricity" insert "to which paragraph 24B(2A) of the Act does not apply".

4. In regulation 51A (interpretation of part 4(A))—

(a) for the definition of "CHPQA" substitute—

(**a**) The regulations made under the powers cited are to be made by the Commissioners; paragraph 147 of Schedule 6 to the Finance Act 2000 (c. 17) 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 in any enactment to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**b**) 2000 c. 17; paragraphs 24B, 24D and 62(1) (bb) were inserted by the Finance Act 2013 (c. 29), Schedule 42, paragraphs 10 and 16. Paragraphs 24B and 62(1)(bb) have been amended by section [] of the Finance Act 2015 (c.).

(**c**) S.I. 2001/838; relevant amending instruments are S.I. 2003/604, 2005/1716, 2012/3049, 2013/713, 2013/1716.

(**d**) Section 24B(2A) was inserted by section [] of the Finance Act 2015 (c.).

““CHPQA” refers to the Combined Heat and Power Quality Assurance Standard, Issue 5 (November 2013) prepared by the Department of Energy and Climate Change (“the CHPQA Standard”);”

(b) omit the definition of “QPO”;

(c) in the definition of “QPO electricity”, after those words insert “means qualifying power output electricity and”.

5. In Schedule 3 (fuels referable to the production of electricity in a combined heat and power station)—

(a) in paragraph 1 (interpretation)—

(i) after “CHP Qualifying Heat Output” insert “CHP Qualifying Power Output”;

(ii) at the end insert—

““non-qualifying electricity” means electricity to which paragraph 24B(2A) of the Act does not apply;

“qualifying electricity” means electricity to which paragraph 24B(2A) of the Act applies.”.

(b) in paragraph 2 (calculation of fuels referable to the production of electricity)—

(i) in sub-paragraph (1), for “to (4)” substitute “(3) and (4)”;

(ii) in sub-paragraph (2), in the definition of “MO” for “power” substitute “energy”;

(iii) after sub-paragraph (2) insert—

“(2A) Sub-paragraphs (2B) to (2E) apply, instead of sub-paragraphs (3) and (4), in relation to carbon price support rate commodities brought onto, or arriving at, a CHPQA site on or after 1st April 2015.

(2B) The extent to which a quantity of a carbon price support rate commodity is referable to the production of non-qualifying electricity in a combined heat and power station is to be determined in accordance with sub-paragraphs (2C) to (2E).

(2C) Calculate the total quantity of input fuels referable to the production of non-qualifying electricity in accordance with the following formula—

$$Q \times \left(1 - \frac{ES}{TPO - MO}\right)$$

Where—

Q is the quantity of input fuels referable to the production of electricity calculated in accordance with sub-paragraph (2);

ES (which must not exceed the QPO) is the amount of qualifying electricity in MWh generated by the station in the annual operation to which the current CHPQA certificate relating to the station applies at the time the quantity of carbon price support rate commodity is brought onto, or arrives at, the CHPQA site;

QPO is the CHP Qualifying Power Output for the station specified on the current CHPQA certificate relating to the station at the time the quantity of carbon price support rate commodity is brought onto, or arrives at, the CHPQA site;

TPO and MO have the meaning given in sub-paragraph (2).

(2D) Calculate the percentage of input fuels referable to the production of non-qualifying electricity in accordance with the following formula—

$$\left(\frac{R}{TFI}\right) \times 100$$

Where—

R is the quantity of input fuels referable to non-qualifying electricity calculated in accordance with sub-paragraph (2C);

TFI has the meaning given in sub-paragraph (2).

(2E) Apply the percentage calculated in accordance with sub-paragraph (2D) to the quantity of carbon price support rate commodities brought onto, or arriving at, the CHPQA site.”.

6. In paragraph 4(1) and (2) after “CHP Qualifying Heat Output,” insert “the CHP Qualifying Power Output, the qualifying electricity,”.

7. In paragraph 5(b) after “CHP Qualifying Heat Output,” insert “CHP Qualifying Power Output, qualifying electricity,”.

name
name
xx March 2015 Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section [] of the Finance Act 2015 (c.) amended Schedule 6 to the Finance Act 2000 (c.17) to provide that, with effect from 1st April 2015, the carbon price support rates of climate change levy do not apply to carbon price support rate commodities used to generate electricity that is included in the CHP Qualifying Power Output of a combined heat and power station’s CHPQA scheme and is either self-supplied or supplied by a person who is an exempt unlicensed electricity supplier.

As a consequence of those amendments, these Regulations amend the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) to provide the formula for calculating the quantity of carbon price support rate commodities used to generate electricity in a combined heat and power station that are subject to the carbon price support rates of climate change levy; and they make other consequential amendments.

A Tax Information and Impact Note (TIIN) covering this instrument was published on 10th December 2014 alongside draft clauses of the Finance Bill 2015 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 Climate Change Levy (General) (Amendment) Regulations 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's 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 amends the Climate Change Levy (General) Regulations 2001 (SI 2001/838) (the principal regulations). The amendment inserts a new formula to determine the quantity of carbon price support (CPS) rate commodities that are liable to the CPS rates of climate change levy (CCL) which are consumed in good quality combined heat and power (CHP) stations and referable to the production of electricity (other than electricity that is either self-supplied or supplied under an exemption from the requirement for an electricity supplier licence). The instrument also makes some consequential amendments.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 It has not been possible to comply with the 21 day rule. This is because the instrument has to come into force on 1 April 2015 but it could not be made and laid until the amendment made to paragraph 24B of Schedule 6 to the Finance Act 2000 by section [ ] of the Finance Act 2015 (c.) had received Royal Assent.

4. Legislative Context

4.1 Section [ ] of the Finance Act 2015 amended paragraph 24B of Schedule 6 to the Finance Act 2000 to the effect that the operator of a CHP station is not deemed to have made a taxable supply to himself in respect of CPS rate commodities where these are used to generate good quality electricity that is either self-supplied or supplied under an exemption from the requirement for an electricity supplier licence under the Electricity Act 1989.

4.2 Paragraphs 24B(3) and 24D of Schedule 6 (as inserted by the Finance Act 2013 (c. 29)) provide that the Commissioners may make regulations to determine whether a deemed self-supply of CPS rate commodities has been made for the purposes of paragraph 24B(2) and to determine the quantity of any commodity which is the subject of such a deemed supply.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 CHP stations are a class of technology that enables the efficient use of fuel by producing both electricity and heat in a usable form from the same input of fuel. Where the energy efficiency and environmental performance of the combined production of heat and electricity meet or exceed certain thresholds set and certified by the Department of Energy and Climate Change under its CHP Quality Assurance Standard, the electricity generated is deemed to be good quality.

7.2 Natural gas, liquid petroleum gas and solid fossil fuels used in electricity generation in Great Britain are liable to the CPS rates of CCL, part of the carbon price floor (CPF) introduced throughout Great Britain in April 2013. For CCL purposes, a self-supply is deemed to occur when these CPS rate commodities are used to generate electricity in a CHP station that has a generating capacity of more than 2 megawatts, with the operator of the CHP station being required to pay the relevant CPS rate of CCL on that supply. The operator of a CHP station is deemed to have made a taxable self-supply to himself where these commodities are determined to be referable to the production of electricity, rather than to heat, steam or mechanical power.

7.3 The effect of current CCL legislation is, therefore, that all taxable commodities used in a CHP station to produce heat, steam or mechanical power are excluded from the CPS rates. Budget 2014 announced that this exclusion would be extended to CPS rate commodities used in a CHP station to generate good quality electricity consumed on-site. This mitigates the impact of the CPS rates of CCL on this carbon efficient form of heat and electricity generation and provides further support for UK manufacturing industry.

7.4 This instrument amends the principal regulations so that, with effect from 1 April 2015, the formula in Schedule 3 determines the quantity of CPS rate commodities that are used in a CHP station to generate electricity that is not good quality electricity used on-site. For the purposes of the compulsory review of the calculations required under the Schedule, the current formula for determining the quantity of CPS rate commodities referable to the production of electricity will continue to apply for the period 1 January 2015 to 31 March 2015 after the coming into force of these Regulations.

- ***Consolidation***

7.5 There is no present intention to consolidate the amendments that have been made to the principal regulations.

8. Consultation outcome

8.1 This policy was announced at Budget 2014 and since then HMRC have worked with industry representatives on the definition of on-site and other details.

9. Guidance

9.1 Public notices on the CPF and CCL will be amended as appropriate.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not expected to be significant and this measure will only impact on businesses. For those businesses that own or operate CHP stations and businesses that receive on-site electricity from them, this measure will provide a benefit.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note (TIIN) covering this instrument was published on 10 December 2014 alongside draft clauses of the Finance Bill 2015 and this instrument is available on the Government website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small businesses to the extent that they own or operate CHP stations.

11.2 No special approach has been taken to minimise the impact of the requirements on firms employing up to 20 people.

12. Monitoring & review

12.1 This measure will be kept under review through communication with affected taxpayer groups. The change will be monitored and reviewed as part of HMRC's normal assurance process.

13. Contact

Andy Jameson at HMRC Tel: 03000 586082 email: andy.jameson@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 VED: extension of old vehicles exemption from 1 April 2016

(1) In Schedule 2 to VERA 1994 (exempt vehicles) in paragraph 1A(1) (exemption for old vehicles) for the words from "constructed" to the end substitute "constructed before 1 January 1976".

(2) The amendment made by subsection (1) comes into force on 1 April 2016; but nothing in that subsection has the effect that a nil licence is required to be in force in respect of a vehicle while a vehicle licence is in force in respect of it.

EXPLANATORY NOTE

VED: EXTENSION OF OLD VEHICLES EXEMPTION FROM 1 APRIL 2016

SUMMARY

1. Section 1 of the Vehicle Excise and Registration Act 1994 (VERA) provides for the charging of Vehicle Excise Duty (VED) in respect of mechanically propelled vehicles and Schedule 1 of VERA sets out the rates of duty. Paragraph 1A of Schedule 2 of VERA provides a VED exemption in respect of vehicles constructed before 1 January 1974 and will be extended to 1 January 1975 from 1 April 2015 as amended by the Finance Act 2014.

2. Clause [X] provides for an extension to the scope of the exemption to include vehicles constructed before 1 January 1976 and will come into force on 1 April 2016. This clause amends Paragraph 1A of Schedule 2 of VERA.

DETAILS OF THE CLAUSE

3. Subsection (1) extends the exemption from VED contained in paragraph 1A of Schedule 2 of VERA to vehicles constructed before 1 January 1976.

4. Subsection (2) provides for the extension of the exemption to come into force on 1 April 2014. This subsection also provides a transitional provision so that a nil licence does not need to be in force on 1 April 2016 for a vehicle constructed before 1 January 1976 if there is a vehicle licence already in force in respect of that vehicle. When that existing vehicle licence expires, a nil licence will need to be in force for the vehicle.

BACKGROUND

8. The Government considers classic vehicles to be an important part of the nation's historical heritage. The VED exemption is, therefore, designed to support classic vehicle industry within the UK.

9. Budget 2013 announced a measure to extend the scope of the VED exemption to classic vehicles by one additional year. Budget 2014 further announced the Government's intention to legislate in each year's Finance Bill to extend the old vehicle exemption by a further year so that vehicles which were constructed 40 years previously will be exempt from paying VED.

10. Finance Act 2014 extended the scope of the exemption for historic vehicles constructed before 1 January 1974 with effect from 1 April 2014 and vehicles constructed before 1 January 1975 with effect from 1 April 2015.

11. If you have any questions about this change, or comments on the legislation, please contact Alan Hackett on 020 7270 5042 (email: alan.hackett@hmtreasury.gsi.gov.uk).

1 SDLT: alternative property finance relief

(1) FA 2003 is amended as follows.

(2) In section 73BA (meaning of “financial institution”), after subsection (2) insert—

“(3) In sections 71A, 73AB and 73B, “financial institution” also includes a person with permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity specified in Article 63F(1) of the Financial Services and Markets Act (Regulated Activities) Order 2001 (S.I. 2001/544) (entering into regulated home purchase plans as home purchase provider).”

(3) In paragraph 9 of Schedule 4A (higher rate for certain SDLT transactions: interpretation), for the definition of “financial institution” substitute—

““financial institution” is to be read in accordance with subsections (1) and (2) of section 73BA and, in paragraphs 6A to 6H, also in accordance with subsection (3) of that section;”.

(4) The amendment made by subsection (2) has effect where the effective date of the first transaction is, or is after, the day on which this Act is passed.

(5) In subsection (4)—

“effective date” has the same meaning as in Part 4 of FA 2003 (see section 119(1) of that Act);

“first transaction” means the first transaction within the meaning of section 71A(1)(a) of FA 2003.

EXPLANATORY NOTE

SDLT: ALTERNATIVE PROPERTY FINANCE RELIEF

SUMMARY

1. Clause [X] adds authorised providers of home purchase plans to the definition of a financial institution that applies for the purposes of alternative property finance reliefs. This will extend the availability of alternative property finance relief to all buyers who use an authorised home purchase plan to finance their home purchase.

DETAILS OF THE CLAUSE

2. Subsection 2 amends section 73BA of the Finance Act 2003 (FA2003) extending the definition of a financial institution that applies for the purposes of the alternative property finance reliefs to include a person authorised by the Financial Conduct Authority to provide home purchase plans.

3. Subsection 3 makes a consequential amendment to the definition of a financial institution at paragraph 9 of Schedule 4A FA2003, which applies for the purpose of the higher rate of stamp duty land tax.

4. Subsection 4 provides that the amendment will have effect where the effective date of the first transaction is on or after the date on which Finance Bill 2015 receives Royal Assent.

5. Subsection 5 defines ‘effective date’ and ‘first transaction’ for the purposes of subsection 2.

BACKGROUND NOTE

6. Financing a property purchase in a way that does not involve the payment of interest generally involves more than one Stamp Duty Land Tax (SDLT) charge. The alternative property finance reliefs ensure that buyers who finance property purchases using such alternative methods pay the same level of SDLT as those who use a conventional mortgage. Relief is only available where the financier is a financial institution as defined in the legislation. Broadly these are traditional financial institutions such as banks and building societies.

7. Home purchase plans were developed to provide a method of financing a home purchase which doesn’t involve the payment of interest and are regulated by the Financial Conduct Authority in a similar way to conventional mortgages.

8. The alternative property finance reliefs are currently only available for home purchase plans provided by a defined financial institution and a buyer who uses a plan provided by such an institution will be able to claim relief. However, a buyer will not be able to claim relief where their home purchase plan provider is not one of the defined financial institutions, even where the provider is authorised by the Financial Conduct Authority to provide home purchase plans.

9. These changes are being made to ensure that all buyers who use a home purchase plan, provided by an authorised provider, to finance their home purchase will pay the same level of SDLT as those who use a conventional mortgage.

10. If you have any questions about these changes, or comments on the legislation please contact Jane Ewart on 03000 585790 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

1 Stamp duty land tax: multiple dwellings relief

(1) After paragraph 2(6) of Schedule 6B to FA 2003 (stamp duty land tax: superior interest in dwellings subject to a long lease excluded from multiple dwellings relief) insert—

"(7) Sub-paragraph (6) does not apply where—

(a) the vendor is a qualifying body within the meaning of paragraph 5 of Schedule 9,

(b) the transaction is—

(i) a sale under a sale and leaseback arrangement within the meaning of section 57A(2), and

(ii) that sale is the grant of a leasehold interest, and

(c) the leaseback element of that arrangement is exempt from charge under section 57A."

(2) The amendment made by this section has effect in relation to any land transaction of which the effective date is on or after the day on which this Act is passed.

EXPLANATORY NOTE

STAMP DUTY LAND TAX: MULTIPLE DWELLINGS RELIEF

SUMMARY

1. Clause [X] amends Paragraph 2(6) of Schedule 6B to Finance Act 2003 (multiple dwellings relief) to allow relief to be claimed in respect of certain leases of dwellings which are currently excluded.

2. The change will apply to leases granted on or after the day on which Finance Bill 2015 receives Royal Assent.

DETAILS OF THE CLAUSE

3. Subsection (1) of the clause provides that paragraph 2(6) of Schedule 6B does not apply where a lease is granted by a qualifying body for the purposes of the stamp duty land tax (SDLT) shared ownership provisions at Schedule 9 Finance Act 2003 and the transaction constitutes the 'sale' element of a 'sale and leaseback' arrangement in which the 'leaseback' element qualifies for relief under section 57A Finance Act 2003.

4. Subsection (2) provides for commencement.

BACKGROUND NOTE

5. SDLT multiple dwellings relief (MDR) applies to reduce the amount of SDLT payable where interests in more than one dwelling are acquired in a single transaction or in linked transactions.

6. MDR excludes interests in dwellings which are superior interests (usually the freehold or a headlease) over dwellings subject to a lease granted for more than 21 years. This means that relief is not available for acquisitions of 'ground rents': that is, freehold reversions of blocks of flats let on long leases.

7. This clause is intended to assist housing associations and similar bodies which enter into a 'lease and leaseback' arrangement with an investor to secure funds for development of new social rented or shared ownership housing. Under these arrangements, the housing body grants a long lease of its existing freehold housing stock to an investor for a premium, and the investor then leases it back to the housing body for a term of years at a market rent.

8. In these circumstances the 'leaseback' element will generally qualify for SDLT sale and leaseback relief under section 57A Finance Act 2003. The 'lease' element will generally qualify for MDR in respect of dwellings let on periodic tenancies or assured shorthold

tenancies but not in respect of dwellings subject to shared ownership leases, because these are long leases.

9. The clause therefore allows MDR to apply to leases of shared ownership properties which are granted as part of a ‘lease and leaseback’ arrangement by a qualifying body.

10. The clause has effect for transactions where the effective date is on or after the date on which Finance Bill 2015 receives Royal Assent.

11. If you have any questions about this measure, or comments on the legislation, please contact Keith Brown on 03000 585733 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

1 Disposals of UK residential property interests by non-residents etc

Schedule 1 contains provision about capital gains tax on the disposal of UK residential property interest—
(a) by a person who is not resident in the United Kingdom, or
(b) by an individual, in the overseas part of a split year.

SCHEDULES

SCHEDULE 1

Section 1

DISPOSALS OF UK RESIDENTIAL PROPERTY INTERESTS BY NON-RESIDENTS ETC

PART 1

AMENDMENTS OF THE TAXATION OF CHARGEABLE GAINS ACT 1992

1 TCGA 1992 is amended in accordance with paragraphs 2 to 17.

2 In section 1 (the charge to tax), in subsection (2A), for the words from "gains are" to the end substitute "gains are—

(a) ATED-related gains in respect of which the companies are chargeable to capital gains tax under section 2B, or

(b) relevant gains on chargeable non-resident disposals of UK residential property interests."

3 (1) Section 2 (persons meeting residence condition: amount charged) is amended as follows.

(2) After subsection (2) insert—

"(2A) The amounts that may be deducted under subsection (2)(b) include any allowable relevant losses accruing to a person on a chargeable non-resident disposal of a UK residential property interest in a year of assessment ("year P") previous to the year mentioned in subsection (2)(a) (so far as those losses have not been allowed as a deduction from chargeable gains accruing in year P or any previous year)."

(3) After subsection (7A) insert—

"(7B) Except where otherwise specified (see subsection (2A)), nothing in this section applies in relation to a chargeable relevant gain, or an allowable relevant loss, on a chargeable non-resident disposal of a UK residential property interest."

4 Before section 8 (and its italic heading) insert—

"Capital gains tax: disposals of UK residential property by non-residents etc

7AA Capital gains tax on gains on disposals of UK residential property interests by non-residents etc

(1) A person (other than a company) is chargeable to capital gains tax in respect of a chargeable relevant gain accruing to the person in a tax year on a disposal of a UK residential property interest if the residence condition is not met (see subsection (7)).

(2) In addition, an individual is chargeable to capital gains tax in respect of a chargeable relevant gain accruing to the individual on a disposal of a UK residential property interest in the overseas part of a tax year which is a split year as regards the individual.

(3) Subsections (1) and (2) do not apply to chargeable gains in respect of which a person is chargeable to capital gains tax under section 10 (non-resident with UK branch or agency).

(4) A company is chargeable to capital gains tax in respect of a chargeable relevant gain accruing to it in a tax year on a disposal of a UK residential property interest if the residence condition is not met.

(5) Subsection (4) does not apply to a chargeable gain included in the chargeable profits (for corporation tax purposes) of the company as a result of section 10B (non-resident company with UK permanent establishment).

(6) Subsection (4) does not apply if the company makes a claim under this subsection and is—

(a) a diversely-held company at the time of the disposal,

(b) a unit trust scheme which meets the widely-marketed fund condition in relation to the disposal, or

(c) an open-ended investment company which meets the widely-marketed fund condition in relation to the disposal.

(7) The residence condition is—

(a) in the case of an individual, that the individual is resident in the United Kingdom for the tax year,

(b) in the case of personal representatives of a deceased person, that the single and continuing person mentioned in section 62(3) is resident in the United Kingdom,

(c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is resident in the United Kingdom during any part of the tax year, and

(d) in any other case, that the person is resident in the United Kingdom when the gain accrues.

(8) A disposal by a person of a UK residential property interest is a "chargeable non-resident disposal" for the purposes of this Act if the circumstances in which it is made are such that, were a relevant gain to accrue on the disposal, the person would be chargeable to capital gains tax under this section in respect of that gain.

(9) In this Act, "UK residential property interest", in relation to a disposal of an interest in UK land, has the meaning given by Schedule B1.

(10) Part 2 of Schedule C1 sets out how to determine whether or not a unit trust scheme, or a company which is an open-ended investment company, meets the widely-marketed fund condition in relation to the disposal mentioned in subsection (4).

(11) In this section—

"closely-held company", in relation to a disposal of a UK residential property interest, is to be interpreted in accordance with Part 1 of Schedule C1;

"diversely-held company" means a company which is not a closely-held company;

"open-ended investment company" has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act).

(12) See section 57B and Schedule 4ZZB for how to determine—

(a) whether a relevant gain (or loss) accrues on a chargeable non-resident disposal of a UK residential property interest, and

(b) the amount of any relevant gain (or loss) so accruing.

7AB Amount of gains chargeable under section 7AA

(1) Capital gains tax is charged under section 7AA(1), (2) or (4) on the total amount of relevant gains on chargeable non-resident disposals of a UK residential property interest accruing to the person in the tax year (or, in the case of the charge under section 7AA(2), the overseas part of the tax year), after deducting—

(a) allowable relevant losses accruing to the person in the tax year (or that part, as the case may be) on any chargeable non-resident disposal of a UK residential property interest,

(b) where section 7AA(2) applies, allowable relevant losses accruing to the person on any chargeable non-resident disposal of a UK residential property interest in the UK part of the tax year, so far as those losses have not been allowed as a deduction from chargeable gains accruing to the person in the UK part of the year, and

(c) so far as they have not been allowed as a deduction from chargeable gains accruing to the person in any previous tax year, allowable losses accruing to the person on any disposal in a previous tax year (not earlier than the year 1965-66) of a UK residential property interest.

(2) The only deductions that can be made from chargeable gains in respect of which a person is within the charge to capital gains tax under section 7AA are those permitted by this section.

This is subject to section 62(2AA) (carry-back of losses accruing in year of death).

7AC Further provision about use of relevant losses on disposals of UK residential property interests

(1) Subsections (2) to (4) apply in relation to a relevant loss accruing to a person in a tax year on a chargeable non-resident disposal of a UK residential property interest.

(2) The loss is not allowable as a deduction from chargeable gains accruing in any earlier tax year.

This is subject to section 62(2) and (2AA) (carry-back of losses accruing in year of death).

(3) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.

(4) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts."

5 In section 8 (company's profits for corporation tax purposes to include chargeable gains), in subsection (4A), for the words from "in relation to" to the end substitute "in relation to—

(a) an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B, or

(b) a chargeable relevant gain, or an allowable relevant loss, on a chargeable non-resident disposal of a UK residential property interest."

6 In section 10A (temporary non-residents), as that section has effect where the year of departure (as defined in Part 4 of Schedule 45 to FA 2013) is the tax year 2012-13 or an earlier tax year, in subsection (5) for "section 10" substitute "section 7AA, 10".

7 In section 13 (attribution of gains to members of non-resident companies), in subsection (1A), for the words from "an ATED-related gain" to the end substitute—

"(a) an ATED-related gain chargeable to capital gains tax by virtue of section 2B (capital gains tax on ATED-related gains), or

(b) a relevant gain on a disposal of a UK residential property interest chargeable to capital gains tax by virtue of section 7AA (disposals of UK residential property interests by non-residents etc)."

8 In Part 2, after Chapter 5 insert—

"CHAPTER 6

COMPUTATION OF GAINS AND LOSSES: RELEVANT UK LAND DISPOSALS

57B Gains and losses on disposals by non-residents etc of UK residential property interests

Schedule 4ZZB makes provision about the computation of—

(a) relevant gains or losses (see section 7AA), and

(b) other gains or losses,

on chargeable non-resident disposals of UK residential property interests."

9 (1) Section 62 (death: general provisions) is amended as follows.

(2) In subsection (2A), for the words from "are gains" to the end substitute "are—

(a) gains that are treated as accruing by virtue of section 87 or 89(2) (read, where appropriate, with section 10A), or

(b) relevant gains on chargeable non-resident disposals of a UK residential property interest."

(3) After subsection (2A) insert—

"(2AA) Where allowable relevant losses on the disposal of a UK residential property interest are sustained by an individual in the year of assessment in which the individual dies, the losses may, so far as they cannot be deducted from chargeable gains accruing to the individual in that year, be deducted from any gains such as are mentioned in subsection (2A)(b) that accrued to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.

(2AB) The same loss (or part of a loss) may not be relieved under both subsection (2) and subsection (2AA)."

10 In section 86 (attribution of gains to settlors with interest in non-resident or dual-resident settlements), after subsection (4) insert—

"(4ZA) An amount in relation to which the condition in subsection (1)(e) is met is to be disregarded for the purposes of this section, so far as tax is chargeable on the amount under section 7AA (tax on disposals of UK residential property interests by non-residents etc)."

11 In section 87 (non-UK resident settlements: attribution of gains to beneficiaries), after subsection (5) insert—

"(5A) In determining the section 2(2) amount for a settlement for a tax year—

(a) an amount is to be disregarded for the purposes of subsection (4)(a) so far as tax is chargeable on the amount under section 7AA (tax on disposals of UK residential property interests by non-residents etc);

(b) the reference in subsection (4)(b) to chargeable gains treated under section 86 as accruing in that year is to be taken to include gains on which tax would have been charged under that section but for section 86(4ZA)."

12 In section 88 (gains of dual resident settlements), after subsection (5) insert—

"(5A) In determining under subsection (3) the assumed chargeable amount in respect of a tax year, an amount on which the trustees would be chargeable as mentioned in paragraph (a) or (b) of that subsection is to be disregarded so far as tax is chargeable on the amount under section 7AA (tax on disposals of UK residential property interests by non-residents etc)."

13 In section 288 (interpretation), in subsection (1), at the appropriate place insert—

""chargeable non-resident disposal", in relation to a UK residential property interest, has the meaning given by section 7AA(8);"

""relevant gain" and "relevant loss", in relation to a chargeable non-resident disposal of a UK residential property interest, are to be construed in accordance with section 57B and Schedule 4ZZB;"

""UK residential property interest" has the meaning given by Schedule B1;"

14 After Schedule A1, insert—

"SCHEDULE B1

MEANING OF "UK RESIDENTIAL PROPERTY INTEREST"

Meaning of "UK residential property interest"

1 (1) Where a person ("P") disposes of an interest in UK land ("the interest"), that interest in UK land is a UK residential property interest if the first or second condition is met.

(2) The first condition is met if—

(a) the land has at any time in the relevant ownership period consisted of or included a dwelling, or

(b) the interest subsists for the benefit of land that has at any time in the relevant ownership period consisted of or included a dwelling.

(3) The second condition is met if the interest in UK land subsists under a contract for an off-plan purchase.

For this purpose, "contract for an off-plan purchase" means a contract for the acquisition of land consisting of, or including, a building or part of a building that is to be constructed or adapted for use as a dwelling.

(4) "Relevant ownership period" means the period—

(a) beginning with the day on which P acquired the interest or 6 April 2015 (whichever is later), and

(b) ending with the day before the day on which the disposal occurs.

(5) If the interest results from interests in UK land which P has acquired at different times ("the acquired interests"), P is regarded for the purposes of sub-paragraph (4)(a) as having acquired the interest when P first acquired any of the acquired interests.

(6) In this paragraph "dwelling" has the meaning given by paragraph 3.

(7) See also paragraph 1(2) of Schedule 4ZZB.

"Interest in UK land"

2 (1) "Interest in UK land" means—

(a) an estate, interest, right or power in or over land in the United Kingdom, or

(b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,

other than an excluded interest.

(2) The following are excluded interests—

(a) any security interest;

(b) a licence to use or occupy land;

(c) in England and Wales or Northern Ireland—

(i) a tenancy at will;

(ii) a manor.

(3) In sub-paragraph (2) “security interest” means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any other obligation.

(4) In relation to land in Scotland the reference in sub-paragraph (3) to a rentcharge is to be read as a reference to a feu duty or a payment mentioned in section 56(1) of the Abolition of Feudal Tenure etc (Scotland) Act 2000 (asp 5).

(5) The Treasury may by regulations provide that any other description of interest or right in relation to land in the United Kingdom is an excluded interest.

(6) Regulations under sub-paragraph (5) may make incidental, consequential, supplementary or transitional provision or savings.

Meaning of “dwelling”

3 (1) A building counts as a dwelling at any time when—
(a) it is used or suitable for use as a dwelling, or
(b) it is in the process of being constructed or adapted for such use.

(2) Land that at any time is, or is intended to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling at that time.

(3) For the purposes of sub-paragraph (1) a building is not used (or suitable for use) as a dwelling if it is used as—
(a) residential accommodation for school pupils;
(b) residential accommodation for members of the armed forces;
(c) a home or other institution providing residential accommodation for children;
(d) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder;
(e) a hospital or hospice;
(f) a prison or similar establishment;
(g) a hotel or inn or similar establishment.

(4) For the purposes of sub-paragraph (1) a building is not used (or suitable for use) as a dwelling if it is an institution (not falling within any of paragraphs (c) to (f) of sub-paragraph (3)) which is used, or suitable for use, as the sole or main residence of its residents.

(5) For the purposes of sub-paragraph (1) a building is not used (or suitable for use) as a dwelling if it falls within—

(a) paragraph 4 of Schedule 14 to the Housing Act 2004 (certain buildings occupied by students and managed or controlled by their educational establishment etc),

(b) any corresponding provision having effect in Scotland, or

(c) any corresponding provision having effect in Northern Ireland.

(6) In sub-paragraph (5) "corresponding provision" means provision designated by regulations made by the Treasury as corresponding to the provision mentioned in sub-paragraph (5)(a).

(7) If, in any tax year, the accommodation provided by a building—

(a) meets the conditions in sub-paragraph (8), or

(b) forms part of accommodation that does so,

then for the purposes of sub-paragraph (1) the building is not, at any time in the tax year, used or suitable for use as a dwelling.

(8) The conditions are that the accommodation—

(a) includes at least 15 bedrooms,

(b) is purpose-built for occupation by students, and

(c) is occupied by students on more than half the days in the tax year.

(9) For the purposes of sub-paragraph (8) accommodation is occupied by students if it is occupied exclusively or mainly by persons who occupy it for the purpose of undertaking a course of education (otherwise than as school pupils).

(10) A building which (for any reason) becomes temporarily unsuitable for use as a dwelling is treated for the purposes of sub-paragraph (1) as continuing to be suitable for use as a dwelling; but see also the special rules in—

(a) paragraph 5 (damage to a dwelling), and

(b) paragraph 7(7) (periods before or during certain works).

(11) In this paragraph "building" includes a part of a building.

Power to modify meaning of "use as a dwelling"

4 (1) The Treasury may by regulations amend paragraph 3 for the purpose of clarifying or changing the cases where a building is or is not to be regarded as being used as a dwelling (or suitable for use as a dwelling).

(2) The provision that may be made under sub-paragraph (1) includes, in particular, provision omitting or adding cases where a building is or is not to be regarded as being used (or as suitable for use) as a dwelling.

(3) Regulations under this paragraph may make incidental, consequential, supplementary or transitional provision or savings.

(4) In this paragraph "building" includes a part of a building.

Damage to a dwelling

5 (1) Sub-paragraph (2) applies where a person disposes of an interest in UK land and a building that forms, or has formed, part of the land has at any time in the relevant ownership period been temporarily unsuitable for use as a dwelling.

(2) Paragraph 3(10) (disregard of temporary unsuitability) does not apply in relation to the building's temporary unsuitability for use as a dwelling if—

(a) the temporary unsuitability resulted from damage to the building, and

(b) the first and second conditions are met.

(3) The first condition is that the damage was—

(a) accidental, or

(b) otherwise caused by events beyond the control of the person disposing of the interest in UK land.

(4) The second condition is that, as a result of the damage, the building was unsuitable for use as a dwelling for a period of at least 90 consecutive days.

(5) Where the first and second conditions are met, work done in the 90-day period to restore the building to suitability for use as a dwelling does not count, for the purposes of paragraph 3(1), as construction or adaptation of the building for use as a dwelling.

(6) The first condition is regarded as not being met if the damage occurred in the course of work that—

(a) was being done for the purpose of altering the building, and

(b) itself involved, or could be expected to involve, making the building unsuitable for use as a dwelling for 30 days or more.

(7) The 90-day period mentioned in sub-paragraph (4) must end at or before the end of the relevant ownership period but may begin at any time (whether or not within the ownership period).

(8) In this paragraph—

(a) references to alteration include partial demolition;

(b) "building" includes a part of a building;

(c) "relevant ownership period" has the meaning given by paragraph 1(4).

Demolition of a building

6 (1) A building is regarded as ceasing to exist from the time when it has either—

(a) been demolished completely to ground level, or

(b) been demolished to ground level except for a single facade (or, in the case of a building on a corner site, a double facade) the retention of which is a condition or requirement of planning permission or development consent.

(2) In this paragraph—

"development consent" means development consent under the Planning Act 2008;

"planning permission" has the meaning given by the relevant planning enactment.

(3) In sub-paragraph (2) "the relevant planning enactment" means—

(a) in relation to land in England and Wales, section 336(1) of the Town and Country Planning Act 1990;

(b) in relation to land in Scotland, section 227(1) of the Town and Country Planning (Scotland) Act 1997;

(c) in relation to land in Northern Ireland, Article 2(2) of the Planning (Northern Ireland) Order 1991 (S.I. 1991/1220 (N.I. 11)).

Disposal of a building that has undergone works

7 (1) This paragraph applies where a person disposes of an interest in UK land, and a building which is (or was formerly) on the land and has at any time in the relevant ownership period been suitable for use as a dwelling—

(a) has undergone complete or partial demolition or any other works during the relevant ownership period, and

(b) as a result of the works, has, at or at any time before the completion of the disposal, either ceased to exist or become unsuitable for use as a dwelling.

(2) If the conditions in sub-paragraph (4) are met at, or at any time before, the completion of the disposal, the building is taken to have been unsuitable for use as a dwelling throughout the part of the relevant ownership period when the works were in progress.

(3) If the conditions in sub-paragraph (4) are met at, or at any time before, the completion of the disposal, the building is also taken to have been unsuitable for use as a dwelling throughout any period which—

(a) ends immediately before the commencement of the works, and

(b) is a period throughout which the building was, for reasons connected with the works, not used as a dwelling.

(4) The conditions are that—

(a) as a result of the works the building has (at any time before the completion of the disposal) either ceased to exist or become suitable for use otherwise than as a dwelling,

(b) any planning permission or development consent required for the works, or for any change of use with which they are associated, has been granted, and

(c) the works have been carried out in accordance with any such permission or consent.

(5) If at the completion of the disposal the conditions in sub-paragraph (4) have not been met, the works are taken not to have affected the building's suitability for use as a dwelling (at any time before the disposal).

(6) Sub-paragraph (2) does not apply in relation to any time when—

(a) the building was undergoing any work, or put to a use, in relation to which planning permission or development consent was required but had not been granted, or

(b) anything was being done in contravention of a condition or requirement attached to a planning permission or development consent relating to the building.

(7) Where a building is treated under sub-paragraph (2) or (3) as unsuitable for use as a dwelling, the unsuitability is not regarded as temporary for the purposes of paragraph 3(10).

(8) For the purposes of this paragraph the time of the completion of a disposal of an interest in UK land is—

(a) the time of the disposal, or

(b) if the disposal is under a contract which is completed by a conveyance, the time when the interest is conveyed.

(9) In this paragraph—

"building" includes a part of a building;

"conveyance" includes any instrument (and "conveyed" is to be construed accordingly);

"development consent" has the same meaning as in paragraph 6;

"planning permission" has the same meaning as in paragraph 6;

"relevant ownership period" has the meaning given by paragraph 1(4).

Interpretation

8 In this Part of this Schedule—

"interest in UK land" has the meaning given by paragraph 2;

"land" includes a building."

15 After Schedule B1 (as inserted by paragraph 14), insert—

"SCHEDULE C1

SECTION 7AA: MEANING OF "CLOSELY-HELD COMPANY" AND HOW TO MEET THE "WIDELY-MARKETED FUND" CONDITION

PART 1

MEANING OF "CLOSELY-HELD COMPANY"

Introduction

1 This Part of this Schedule sets out the rules for determining, for the purposes of section 7AA, whether or not a company which disposes of a UK residential property interest is a closely-held company in relation to the disposal.

Main definition

2 (1) "Closely-held company" means a company in relation to which condition A or B is met.

But see also the exception in paragraph 5.

(2) Condition A is that the company is under the control of 5 or fewer participators.

(3) Condition B is that 5 or fewer participators together possess or are entitled to acquire—

(a) such rights as would, in the event of the winding up of the company ("the relevant company") on the basis set out in paragraph 3, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or

(b) such rights as would, in that event, so entitle them if there were disregarded any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company).

3 (1) This paragraph applies for the purposes of paragraph 2(3).

(2) In the notional winding up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—

(a) any part of those assets which the person would be entitled to receive in the event of the winding up of the relevant company, and

(b) any part of those assets which the person would be entitled to receive if—

(i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding up were also wound up on the basis set out in this paragraph, and

(ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.

(3) In the application of sub-paragraph (2)—

(a) to the notional winding up of the other company mentioned in paragraph (b) of that sub-paragraph, and

(b) to any further notional winding up required by that paragraph (or by any further application of that paragraph),

references to "the relevant company" are to be read as references to the company concerned.

4 (1) This paragraph applies for the purpose of determining whether, under sub-paragraph (3) of paragraph 2, 5 or fewer participators together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that sub-paragraph.

(2) A person is to be treated as a participator in the relevant company if the person is a participator in any other company which would be entitled to receive assets in the notional winding up of the relevant company on the basis set out in paragraph 3.

(3) No account is to be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

(4) But sub-paragraph (3) does not apply for the purposes of paragraph 3.

5 (1) A company is not to be treated as a closely-held company if condition A or B is met.

(2) Condition A is that the company cannot be treated as a closely-held company except by taking, as one of the 5 or fewer participators requisite for its being so treated, a person who is—

(a) a diversely-held company, or

(b) a qualifying institutional investor.

(3) Condition B is that the company—

(a) would not be a closely-held company were it not for paragraph (a) of paragraph 2(3) or paragraph (d) of paragraph 12(2), and

(b) would not be a closely-held company if the references in paragraphs 2(3)(a) and 12(2)(d) to participators did not include loan creditors which are diversely-held companies or qualifying institutional investors.

(4) In this paragraph "qualifying institutional investor" means any of the following persons—

(a) a unit trust scheme which meets the widely-marketed fund condition in relation to the disposal,

(b) a company which is an open-ended investment company and meets the widely-marketed fund condition in relation to the disposal,

(c) the trustee or manager of a pension scheme (as defined in section 150(1) of FA 2004), or

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

(5) The Treasury may by regulations amend sub-paragraph (4).

(6) Regulations under sub-paragraph (5) may make incidental, consequential, supplementary or transitional provision or savings.

(7) References in sub-paragraph (4) to meeting the widely-marketed fund condition are to be interpreted in accordance with Part 2 of this Schedule, but for this purpose that Part is modified as follows—

(a) for paragraph 8 substitute—

"8 This Part of this Schedule—

(a) applies where a company ("C") disposes of a UK residential property interest at a time when a unit trust scheme or a company which is an open-ended investment company ("the scheme") is a participator in C, and

(b) sets out the rules for determining whether or not the scheme is to be regarded, in relation to that disposal, as meeting the widely-marketed fund condition.";

(b) for paragraph 9(7) substitute—

"(7) In this paragraph, "the relevant ownership period" means whichever of the following is the shortest—

(a) the period beginning with the day on which C acquired the UK residential property interest which, or a part of which, is the subject of the disposal and ending with the day on which the disposal occurs;

(b) the period of 5 years ending with the day on which the disposal occurs;

(c) the period beginning when the scheme first became a participator in C and ending with the day on which the disposal occurs."

Divided companies

6 (1) This paragraph applies where the company which makes the disposal mentioned in paragraph 1—

(a) is a divided company,

(b) is not a unit trust scheme, or an open-ended investment company, which meets the widely-marketed fund condition in relation to the disposal, and

(c) would not, without this paragraph, be regarded as a closely-held company.

(2) The company is treated as if it were a closely-held company if the conditions in sub-paragraph (3) are met.

(3) The conditions are that—

(a) the gain or loss accruing on the disposal is primarily or wholly attributable to a particular division of the company, and

(b) if that division were a separate company, that separate company would be a closely-held company.

(4) For the purposes of this paragraph a company is a "divided company" if, under the law under which the company is formed, under the company's articles of association or other document regulating the company or under arrangements entered into by or in relation to the company—

(a) some or all of the assets of the company are available primarily, or only, to meet particular liabilities of the company, and

(b) some or all of the members of the company, and some or all of its creditors, have rights primarily, or only, in relation to particular assets of the company.

(5) References in this paragraph to a "division" of a divided company are to an identifiable part of the company that carries on distinct business activities and to which particular assets and liabilities of the company are primarily or wholly attributable.

(6) The reference in sub-paragraph (1)(b) to meeting the widely-marketed fund condition in relation to the disposal is to be interpreted in accordance with Part 2 of this Schedule.

Arrangements for avoiding tax

7 (1) This paragraph applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, of any party entering into them (or any part of them) is to avoid capital gains tax being charged under section 7AA(4) as a result of a company's being a closely-held company at the time of the disposal mentioned in paragraph 1.

(2) The arrangements (or part of the arrangements) are to be disregarded in determining whether or not the company is a closely-held company at that time.

(3) In this paragraph "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

PART 2

UNIT TRUST SCHEMES AND OEICS: THE WIDELY-MARKETED FUND CONDITION

Introduction

8 This Part of this Schedule—

(a) applies where a unit trust scheme, or a company which is an open-ended investment company ("the scheme"), disposes of a UK residential property interest, and

(b) sets out the rules for determining, for the purposes of section 7AA(6), whether or not the scheme meets the widely-marketed fund condition in relation to that disposal.

Widely-marketed fund condition

9 (1) The scheme meets the widely-marketed fund condition in relation to the disposal if—

(a) the scheme has met conditions A to C throughout the relevant ownership period, or

(b) the alternative conditions in paragraph 10 are met.

(2) Condition A is that the scheme produces documents, available to investors and to HMRC, which contain—

(a) a statement specifying the intended categories of investor,

(b) an undertaking that units in the scheme will be widely available, and

(c) an undertaking that units in the scheme will be marketed and made available in accordance with the requirements of sub-paragraph (5)(a).

(3) Condition B is that—

(a) the specification of the intended categories of investor does not have a limiting or deterrent effect, and

(b) any other terms or conditions governing participation in the scheme do not have a limiting or deterrent effect.

(4) In sub-paragraph (3) "limiting or deterrent effect" means an effect which—

(a) limits investors to a limited number of specific persons or specific groups of connected persons, or

(b) deters a reasonable investor falling within one of (what are specified as) the intended categories of investor from investing in the scheme.

(5) Condition C is that—

(a) units in the scheme are marketed and made available—

(i) sufficiently widely to reach the intended categories of investors, and

(ii) in a manner appropriate to attract those categories of investors, and

(b) a person who falls within one of the intended categories of investors can, upon request to the manager of the scheme, obtain information about the scheme and acquire units in it.

(6) A scheme is not regarded as failing to meet condition C at any time by reason of the scheme's having, at that time, no capacity to receive additional investments, unless—

(a) the capacity of the scheme to receive investments in it is fixed by the scheme documents (or otherwise), and

(b) a pre-determined number of specific persons or specific groups of connected persons make investments in the scheme which collectively exhaust all, or substantially all, of that capacity.

(7) In this paragraph, "the relevant ownership period" means—

(a) the period beginning with the day on which the scheme acquired the UK residential property interest which, or a part of which, is the subject of the disposal mentioned in paragraph 8, and ending with the day on which the disposal occurs, or

(b) if shorter, the period of 5 years ending with the day on which the disposal occurs.

10 (1) The alternative conditions (see paragraph 9) are met if—

(a) at the time of the disposal mentioned in paragraph 8, an investor in the scheme is an offshore fund, an open-ended investment company or an authorised unit trust ("the feeder fund"),

(b) conditions A to C are met in relation to the scheme throughout the alternative period, after taking into account—
   (i) the scheme documents relating to the feeder fund, and
   (ii) the intended investors in the feeder fund, and

(c) the scheme and the feeder fund have the same manager.

(2) For the purposes of sub-paragraph (1), the alternative period is the shorter of—
   (a) the relevant ownership period (as defined in paragraph 9(7)), and
   (b) the period beginning when the feeder fund first became an investor in the scheme and ending with the day on which the disposal occurs.

Arrangements for avoiding tax

11 (1) This paragraph applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, of any party entering into them (or any part of them) is to avoid capital gains tax being charged under section 7AA(4) as a result of the failure by a unit trust scheme or an open-ended investment company to meet the widely-marketed fund condition in relation to the disposal mentioned in paragraph 8.

(2) The arrangements (or part of the arrangements) are to be disregarded in determining whether or not the unit trust scheme or open-ended investment company meets the widely-marketed fund condition in relation to the disposal.

(3) In this paragraph, “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

PART 3

INTERPRETATION OF SCHEDULE

Meaning of “control”

12 (1) For the purposes of this Schedule, a person (“P”) is treated as having control of a company (“C”) if P—
   (a) exercises,
   (b) is able to exercise, or
   (c) is entitled to acquire,

direct or indirect control over C’s affairs.

(2) In particular, P is treated as having control of C if P possesses or is entitled to acquire—
   (a) the greater part of the share capital or issued share capital of C,
   (b) the greater part of the voting power in C,

(c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or

(d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.

(3) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in sub-paragraph (2)(c).

(4) If two or more persons together satisfy any of the conditions in sub-paragraphs (1) and (2), they are treated as having control of C.

13 (1) This paragraph applies for the purposes of paragraph 12.

(2) If a person—

(a) possesses any rights or powers on behalf of another person ("A"), or

(b) may be required to exercise any rights or powers on A's direction or on A's behalf,

those rights or powers are to be attributed to A.

(3) There are also to be attributed to P all the rights and powers of any associate of P (including rights and powers exercisable jointly by any two or more associates of P).

(4) In this paragraph "associate", in relation to P, means—

(a) any relative of P,

(b) the trustees of any settlement in relation to which P is a settlor, and

(c) the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor.

(5) In this paragraph "relative" means—

(a) a spouse or civil partner,

(b) a parent or remoter forebear,

(c) a child or remoter issue, or

(d) a brother or sister.

Other definitions

14 In this Schedule—

"diversely-held company" means a company which is not a closely-held company;

"loan creditor" has the meaning given by section 453 of CTA 2010;

"open-ended investment company" has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act);

"participator", in relation to a company, has the meaning given by section 454 of CTA 2010;

"units" means the rights or interests (however described) of the participants in a unit trust scheme or open-ended investment company."

16 (1) Schedule 4ZZA (relevant high value disposals: gains and losses) is amended as follows.

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

"(3A) An election made in relation to an asset under paragraph 2(1)(b) of Schedule 4ZZB (disposals by non-residents etc of UK residential property interests: gains and losses) also has effect as an election made under this paragraph in relation to the asset."

(3) After paragraph 6 insert—

"*Special rule for certain disposals to which both this Schedule and Schedule 4ZZB relate*

6A (1) This paragraph applies where conditions A and B are met.

(2) Condition A is that the relevant high value disposal is—

(a) a chargeable non-resident disposal of a UK residential property interest, or

(b) one of two or more disposals which are (by virtue of section 2C and this Schedule) treated as comprised in a chargeable non-resident disposal of a UK residential property interest.

(3) Condition B is that—

(a) the interest disposed of by the relevant high value disposal was held by P on 5 April 2015,

(b) neither Case 2 nor Case 3 applies, and

(c) no election under paragraph 5 of this Schedule (or paragraph 2(1)(b) of Schedule 4ZZB) is or has been made in relation to the chargeable interest which, or a part of which, is the subject of the relevant high value disposal.

(4) The ATED-related gain or loss accruing on the relevant high value disposal is computed as follows.

Step 1

Determine the amount of the post-April 2015 ATED-related gain or loss.

Step 2

Determine the amount of the pre-April 2015 ATED-related gain or loss.

Step 3

Add—

(a) the amount of any gain or loss determined under Step 1, and

(b) the amount of any gain or loss determined under Step 2,

(treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the ATED-related gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the ATED-related loss on the relevant high value disposal.

(5) The post-April 2015 ATED-related gain or loss is equal to the amount that would be given by paragraph 3(1) as the amount of the ATED-related gain or loss if the relevant year for the purposes of that paragraph were 2015.

(6) The "pre-April 2015 ATED-related gain or loss" means the relevant fraction of the notional pre-April 2015 gain or loss.

(7) "The relevant fraction" is—

$$\frac{CD}{TD}$$

where—

"CD" is the number of days in the relevant ownership period which are ATED chargeable days;

"TD" is the total number of days in the relevant ownership period.

(8) If the interest disposed of was not held by P on 5 April 2013, the "notional pre-April 2015 gain or loss" is the gain or loss which would have accrued on 5 April 2015 had the interest been disposed of on that date for a consideration equal to its market value on that date.

(9) If the interest disposed of was held by P on 5 April 2013, the "notional pre-April 2015 gain or loss" is the gain or loss which would have accrued on 5 April 2015 if P had—

(a) acquired the interest on 5 April 2013 for a consideration equal to its market value on that date, and

(b) disposed of it on 5 April 2015 for a consideration equal to its market value on that date.

(10) Paragraph 3(3) applies for the purposes of sub-paragraphs (8) and (9) as for the purposes of paragraph 3(2).

(11) In sub-paragraph (7) "relevant ownership period" means the period—

(a) beginning with the day on which P acquired the chargeable interest or, if later, 6 April 2013, and

(b) ending with 5 April 2015.

(12) For how to compute the amount of the gain or loss on the relevant high value disposal that is neither ATED-related nor a relevant gain or loss (for the purposes of Schedule 4ZZB) see paragraph 15 to 18 of Schedule 4ZZB."

17 After Schedule 4ZZA insert—

"SCHEDULE 4ZZB

DISPOSALS BY NON-RESIDENTS ETC OF UK RESIDENTIAL PROPERTY INTERESTS: GAINS AND LOSSES

PART 1

INTRODUCTION

Introduction

1 (1) This Schedule applies for the purpose of determining, in relation to a chargeable non-resident disposal by a person ("P") of a UK residential property interest—

(a) whether a relevant gain or loss accrues to P on the disposal, and the amount of any such gain or loss, and

(b) whether a gain other than a relevant gain or loss accrues to P on the disposal, and the amount of any such gain or loss.

(2) Where the disposal counts as a disposal of a UK residential property interest only because of the second condition in paragraph 1 of Schedule B1 (disposal of interest subsisting under a contract for an off-plan purchase), the land that is the subject of the contract concerned is treated for the purposes of this Schedule as consisting of, or (as the case requires) including, a dwelling throughout P's period of ownership of the UK residential property interest.

(3) In this Schedule—

(a) Part 2 is about elections to vary the method of computation of gains and losses;

(b) Part 3 contains the main rules for computing the gains and losses;

(c) Part 4 contains separate rules for computing, in a case where the disposal also either is or involves a relevant high value disposal (as defined in section 2C)—

(i) the amount of any relevant gains or losses accruing on the disposal, and

(ii) the amount of any gains or losses accruing on the disposal that are neither ATED-related nor relevant gains or losses.

(d) Part 5 contains special rules for chargeable non-resident disposals of UK residential property interests made by companies;

(e) Part 6 contains definitions for the purposes of this Schedule.

PART 2

ELECTIONS FOR ALTERNATIVE METHODS OF COMPUTATION

2 (1) A person ("P") making a chargeable non-resident disposal of the whole or part of a UK residential property interest which (or any part of which) P held on 5 April 2015 may—

(a) make an election for straight-line time apportionment in relation to the UK residential property interest;

(b) make an election for the retrospective basis of computation to apply in relation to that interest,

(but may not do both).

(2) P may not make an election under sub-paragraph (1)(a) if the disposal is one to which Part 4 of this Schedule applies (cases involving relevant high value disposals).

(3) For the effect of making an election under sub-paragraph (1)(a), see paragraph 8.

(4) For the effect of making (or not making) an election under sub-paragraph (1)(b), see paragraphs 5(1)(b), 9(1)(b), 12(1)(b), 13(1)(a) and 14(1)(c) (and paragraph 6A(3)(c) of Schedule 4ZZA).

(5) An election made in relation to an asset under paragraph 5 of Schedule 4ZZA (relevant high value disposals: gains and losses) has effect as if also made under sub-paragraph (1)(b) (and for this purpose it does not matter if the election was made before this paragraph was in force).

3 (1) Sub-paragraphs (2) to (5) apply to elections under paragraph 2(1).

(2) An election is irrevocable (and precludes the making of any further election under that paragraph in relation to the same UK residential property interest).

(3) An election must be made by being included in—

(a) the NRCGT return relating to the disposal, or

(b) a tax return under the Management Act for the tax year in which the first chargeable non-resident disposal by P of the UK residential property interest (or any part of it) is made.

(4) The reference in sub-paragraph (3) to an election being included in a return includes an election being included by virtue of an amendment of the return.

(5) All such adjustments are to be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election.

PART 3

MAIN COMPUTATION RULES

Disposals to which this Part applies

4 (1) This Part of this Schedule applies where a person ("P") makes a chargeable non-resident disposal of a UK residential property interest ("the disposed of interest").

(2) But this Part of this Schedule does not apply if the disposal is—

(a) a relevant high value disposal, or

(b) a disposal in which a relevant high value disposal is comprised (see paragraph 11(2)).

Introduction to paragraphs 6 to 8

5 (1) Paragraphs 6 to 8 apply where—
(a) the disposed of interest was held by P on 5 April 2015, and
(b) P has not made an election under paragraph 2(1)(b) in relation to the disposed of interest (or in relation to an asset of which the disposal is a part disposal).

(2) In paragraphs 6 and 7—
(a) "notional post-April 2015 gain or loss" means the gain or loss which would have accrued on the disposal had P acquired the UK residential property interest on 5 April 2015 for a consideration equal to its market value on that date;
(b) "notional pre-April 2015 gain or loss" means the gain or loss which would have accrued on 5 April 2015 had the UK residential property interest been disposed of for a consideration equal to its market value on that date;

but see also paragraph 8(1).

Assets held at 5 April 2015: default method

6 (1) The relevant gain or loss accruing on the disposal is equal to the relevant fraction of the notional post-April 2015 gain or loss (as the case may be).
But see also sub-paragraph (3).

(2) "The relevant fraction" is—

$$\frac{RD}{TD}$$

where—
"RD" is the number of days in the post-commencement ownership period on which the subject matter of the UK residential property interest consists solely or partly of a dwelling;
"TD" is the total number of days in the post-commencement ownership period.

(3) If there has been mixed use of the subject matter of the UK residential property interest on one or more days in the post-commencement ownership period, the relevant gain or loss accruing on the disposal is the fraction of the amount that would (apart from this sub-paragraph) be given by sub-paragraphs (1) and (2) that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.

(4) For the purposes of this paragraph there is "mixed use" of land on any day on which the land consists partly, but not exclusively, of one or more dwellings.

(5) "The post-commencement ownership period" means the period beginning with 6 April 2015 and ending with the day before the day on which the disposal occurs.

7 The gain or loss accruing on the disposal which is not a relevant gain or loss is computed as follows.

Step 1

Determine the amount of the notional pre-April 2015 gain or loss.

Step 2

In a case where there is a notional post-April 2015 gain, determine the amount of that gain remaining after the deduction of the relevant gain determined under paragraph 6.

Step 3

In a case where there is a notional post-April 2015 loss, determine the amount of that loss remaining after the deduction of the relevant loss determined under paragraph 6.

Step 4

Add—

(a) the amount of any gain or loss determined under Step 1, and

(b) the amount of any gain determined under Step 2 or (as the case may be) any loss determined under Step 3,

(treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the gain on the disposal which is not a relevant gain.

If the result is a negative amount, that amount (expressed as a positive number) is the loss on the disposal which is not a relevant loss.

Case where election made for straight-line time apportionment

8 (1) Where the chargeable non-resident disposal is of (or of part of) a UK residential property interest in respect of which P makes, or has made, an election for straight-line time apportionment under paragraph 2(1)(a)—

(a) paragraphs (a) and (b) of paragraph 5(2) do not apply in relation to the disposal, and

(b) for the purposes of paragraphs 6 and 7, the "notional pre-April 2015 gain or loss" and the "notional post-April 2015 gain or loss" are to be determined in accordance with the following steps.

Step 1

Determine the amount of the gain or loss which accrues to P on the disposal.

Step 2

An amount equal to the post-commencement fraction of that gain or loss is the notional post-April 2015 gain or (as the case may be) loss.

Step 3

An amount equal to the pre-commencement fraction of that gain or loss is the notional pre-April 2015 gain or (as the case may be) loss.

(2) The "post-commencement fraction" is—

$$\frac{PCD}{TD}$$

where—

"PCD" is the number of days in the post-commencement ownership period;

"TD" is the total number of days in the ownership period.

(3) The "pre-commencement fraction" is—

$$\frac{TD - PCD}{TD}$$

where "PCD" and "TD" have the same meanings as in sub-paragraph (2).

(4) In this paragraph—

"ownership period" means the period beginning with the day on which P acquired the UK residential property interest or, if later, 31 March 1982 and ending with the day before the day on which the disposal of the UK residential property interest occurs;

"post-commencement ownership period" has the meaning given by paragraph 6(5).

Cases where asset acquired after 5 April 2015 or election made under paragraph 2(1)(b)

9 (1) This paragraph applies if—

(a) the disposed of interest was not held by P throughout the period beginning with 5 April 2015 and ending with the disposal, or

(b) the chargeable non-resident disposal is a disposal of, or of part of, a UK residential property interest in respect of which P makes, or has made, an election under paragraph 2(1)(b).

(2) The relevant gain or loss accruing on the disposal is computed as follows.

Step 1

Determine the amount of the gain or loss which accrues to P.

Step 2

The relevant gain or loss accruing on the disposal is an amount equal to the relevant fraction of that gain or loss (but see Step 3).

Step 3

If there has been mixed use of the subject matter of the UK residential property interest on one or more days in the relevant ownership period, the relevant gain or loss accruing on the disposal is an amount equal to the appropriate fraction of the amount given by Step 2.

(3) For the purposes of this paragraph there is "mixed use" of land on any day on which the land consists partly, but not exclusively, of one or more dwellings.

(4) In Step 3 "the appropriate fraction" means the fraction that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.

(5) The gain or loss accruing on the disposal that is not a relevant gain or (as the case may be) loss is to be computed as follows.

Step 1

In a case where there is a gain under Step 1 of sub-paragraph (2), determine the amount of the gain remaining after the deduction of the relevant gain determined under that sub-paragraph.

That remaining gain is the gain accruing on the disposal which is not a relevant gain.

Step 2

In a case where there is a loss under Step 1 of sub-paragraph (2), determine the amount of the loss remaining after deduction of the relevant loss determined under that sub-paragraph.

That remaining loss is the loss accruing on the disposal which is not a relevant loss.

(6) For the purposes of sub-paragraph (2), "the relevant fraction" is—

$$\frac{RD}{TD}$$

where—

"RD" is the number of days in the relevant ownership period on which the subject matter of the UK residential property interest consists solely or partly of a dwelling;

"TD" is the total number of days in the relevant ownership period.

(7) "The relevant ownership period" means the period—

(a) beginning with the day on which P acquired the UK residential property interest or, if later, 31 March 1982, and

(b) ending with the day before the day on which the disposal of the UK residential property interest occurs.

PART 4

CASES INVOLVING RELEVANT HIGH VALUE DISPOSALS

Overview

10 (1) This Part is about chargeable non-resident disposals which are, or involve, relevant high value disposals (see section 2B, which charges capital gains tax on ATED-related gains on relevant high value disposals).

(2) Paragraphs 11 to 14 contain provision about how any relevant gains and losses on such a disposal are computed, including provision—

(a) for the relevant gains or losses to be computed for each relevant high value disposal (or disposal treated as a relevant high value disposal) comprised in the chargeable non-resident disposal (paragraphs 12 to 14), and

(b) for the results to be added (where necessary) to find the relevant gain or loss on the chargeable non-resident disposal (see paragraph 11).

(3) For provision about how to compute any ATED-related gains or losses accruing on the relevant high value disposals, see Schedule 4ZZA.

(4) Paragraphs 15 to 18 contain provisions for computing any gains or losses accruing on the disposals mentioned in sub-paragraph (1) which are neither ATED-related nor relevant gains or losses, including provision—

(a) for such balancing gains or losses to be computed for each relevant high value disposal (or disposal treated as a relevant high value disposal) comprised in the disposal of a UK residential property interest, and

(b) for the results to be added together (where necessary) to find the relevant gain or loss on the disposal of the UK residential property interest (see paragraph 15).

Disposal involving one or more relevant high value disposals

11 (1) This Part of this Schedule applies where—

(a) a person (other than an excluded person) ("P") makes a chargeable non-resident disposal of a UK residential property interest ("the disposed of interest"), and

(b) that disposal ("the disposal of land") is a relevant high value disposal or a relevant high value disposal is comprised in the disposal of land.

In this sub-paragraph "excluded person" has the meaning given by section 2B(2).

(2) A relevant high value disposal is "comprised in" the disposal of land if—

(a) the disposal of land is treated for the purposes of section 2C and Schedule 4ZZA as two or more disposals, and

(b) the relevant high value disposal is one of those.

(3) The relevant gain or loss accruing on the disposal of land is computed as follows.

Step 1

Determine in accordance with paragraphs 12 to 14 the amount of the relevant gain or loss accruing on each relevant high value disposal.

Step 2

Add together the amounts of any gains or losses determined under Step 1 (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the relevant gain on the disposal of land.

If the result is a negative amount, that amount (expressed as a positive number) is the relevant loss on the disposal of land.

(4) See paragraphs 15 to 19 for how to compute the gain or loss on the disposal of land which is neither ATED-related nor a relevant gain or loss.

(5) For the purposes of this Part of this Schedule a day is a "non-ATED chargeable day" in relation to a relevant high value disposal if—

(a) it is a day on which the subject matter of the relevant high value disposal consists wholly or partly of a dwelling, but

(b) it is not an ATED chargeable day (as defined in paragraph 3 of Schedule 4ZZA).

Assets held at 5 April 2015 (where no election made and no additional rebasing required)

12 (1) This paragraph applies where—

(a) the disposed of interest was held by P on 5 April 2015,

(b) P has not made an election under paragraph 2(1)(b) (or paragraph 5 of Schedule 4ZZA) in relation to the disposed of interest or any asset of which the disposal of land is a part disposal, and

(c) paragraph 14 does not apply.

(2) The relevant gain or loss accruing on the relevant high value disposal is equal to the special fraction of the notional post-April 2015 gain or loss (as the case may be) on that disposal.

(3) "Notional post-April 2015 gain or loss" means the gain or loss which would have accrued on the relevant high value disposal had P acquired the subject matter of that disposal on 5 April 2015 for a consideration equal to its market value on that date.

(4) "The special fraction" is—

$$\frac{SD}{TD}$$

where—

"SD" is the number of non-ATED chargeable days in the post-commencement ownership period;

"TD" is the total number of days in the post-commencement ownership period.

(5) "The post-commencement ownership period" means the period beginning with 6 April 2015 and ending with the day before the day on which the relevant high value disposal occurs.

Asset acquired after 5 April 2015 or election made under paragraph 2(1)(b) (but no additional rebasing required)

13 (1) This paragraph applies where—

(a) P makes, or has made, an election under paragraph 2(1)(b) (or paragraph 5 of Schedule 4ZZA) in respect of the disposed of interest (or a UK residential property interest of which the disposal of land is a part disposal), or

(b) the disposed of interest was not held by P throughout the period beginning with 5 April 2015 and ending with the disposal.

(2) But this paragraph does not apply if paragraph 14 applies.

(3) The relevant gain or loss accruing on the relevant high value disposal is computed as follows.

Step 1

Determine the amount of the gain or loss which accrues to P.

Step 2

The relevant gain or loss accruing on the relevant high value disposal is an amount equal to the special fraction of that gain or loss.

(4) For this purpose "the special fraction" is—

$$\frac{SD}{TD}$$

where—

"SD" is the number of non-ATED chargeable days in the relevant ownership period;

"TD" is the total number of days in the relevant ownership period.

(5) "The relevant ownership period" means the period—

(a) beginning with the day on which P acquired the disposed of interest or, if later, 31 March 1982, and

(b) ending with the day before the day on which the relevant high value disposal occurs.

Certain disposals after 5 April 2016 (computation involving additional rebasing)

14 (1) This paragraph applies where—

(a) the disposed of interest was held by P on 5 April 2016,

(b) the relevant high value disposal falls within Case 3 for the purposes of Schedule 4ZZA, and

(c) no election is or has been made (or treated as made) by P under paragraph 2(1)(b) in respect of the chargeable interest which (or a part of which) is the subject of the relevant high value disposal.

(2) The relevant gain or loss accruing to P on the relevant high value disposal is computed as follows.

Step 1

Determine the amount equal to the special fraction of the notional post-April 2016 gain or loss (as the case may be).

Step 2

Determine the amount equal to the special fraction of the notional pre-April 2016 gain or loss (as the case may be).

Step 3

Add—

(a) the amount of any gain or loss determined under Step 1, and

(b) the amount of any gain or loss determined under Step 2,

(treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the relevant gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the relevant loss on the relevant high value disposal.

(3) "The special fraction" is—

$$\frac{SD}{TD}$$

where—

"SD" is the number of non-ATED chargeable days in the relevant ownership period;

"TD" is the total number of days in the relevant ownership period.

(4) The "relevant ownership period" is—

(a) for the purpose of computing the amount of the post-April 2016 relevant gain or loss, the period beginning with 6 April 2016 and ending with the day on which the relevant high value disposal occurs;

(b) for the purpose of computing the amount of the pre-April 2016 relevant gain or loss, the period beginning with the day on which P acquired the interest or, if later, 6 April 2015 and ending with 5 April 2016.

(5) The "notional post-April 2016 gain or loss" is the amount of the gain or loss which would have accrued on the relevant high value disposal had P acquired the subject-matter of that disposal on 5 April 2016 for a consideration equal to its market value on that date.

(6) If the interest disposed of by the relevant high value disposal was not held by P on 5 April 2015, the "notional pre-April 2016 gain or loss" means the gain or loss which would have accrued on 5 April 2016 had the subject-matter of the relevant high value disposal been disposed of for a consideration equal to its market value on that date.

(7) If the interest disposed of by the relevant high value disposal was held by P on 5 April 2015 "notional pre-April 2016 gain or loss" means the gain or loss which would have accrued on 5 April 2016 had P acquired the subject-matter of the relevant high value disposal on 5 April 2015 for a consideration equal to its market

value on that date and disposed of it on 5 April 2016 for a consideration equal to its market value on that date.

Amount of gain or loss that is neither ATED-related nor a relevant gain or loss

15 (1) The gain or loss on the disposal of land which is neither ATED-related nor a relevant gain or loss ("the balancing gain or loss") is computed as follows.

Step 1

Determine in accordance with paragraphs 16 to 18 the amount of the gain or loss accruing on each relevant high value disposal which is neither ATED-related nor a relevant gain or loss.

This is the "balancing" gain or loss for each such disposal.

Step 2

Add together the amounts of any balancing gains or losses determined under Step 1 (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the balancing gain on the disposal of land.

If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the disposal of land.

(2) In relation to a relevant high value disposal, "balancing day" means a day which is neither—

(a) a day on which the subject matter of the relevant high value disposal consists wholly or partly of a dwelling, nor

(b) an ATED chargeable day (as defined in paragraph 3 of Schedule 4ZZA).

16 (1) This paragraph applies where a person makes a relevant high value disposal to which paragraph 12 applies.

(2) Sub-paragraph (3) applies if paragraph 6A of Schedule 4ZZA does not apply.

(3) The amount of the balancing gain or loss on the relevant high value disposal is found by adding—

(a) the amount of the balancing gain or loss belonging to the notional post-April 2015 gain or loss, and

(b) the amount of the notional pre-April 2015 gain or loss,

(treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the balancing gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the relevant high value disposal.

(4) If paragraph 6A of Schedule 4ZZA applies, the amount of the balancing gain or loss on the relevant high value disposal is found by adding—

(a) the amount of the balancing gain or loss belonging to the notional post-April 2015 gain or loss,

(b) the amount of the balancing gain or loss belonging to the notional pre-April 2015 gain or loss, and

(c) if P held the disposed of interest on 5 April 2013, the amount of the notional pre-April 2013 gain or loss,

(treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the balancing gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the relevant high value disposal.

(5) The balancing gain or loss belonging to the notional post-April 2015 gain or loss is equal to the balancing fraction of the notional post-April 2015 gain or loss.

(6) The balancing gain or loss belonging to the notional pre-April 2015 gain or loss is equal to the balancing fraction of the notional pre-April 2015 gain or loss.

(7) "The balancing fraction" is—

$$\frac{BD}{TD}$$

where—

"BD" is the number of balancing days in the appropriate ownership period;

"TD" is the total number of days in the appropriate ownership period.

(8) "Appropriate ownership period" means—

(a) for the purpose of computing the balancing gain or loss belonging to the notional post-April 2015 gain or loss, the post-commencement ownership period mentioned in paragraph 12(5);

(b) for the purpose of computing the balancing gain or loss belonging to the notional pre-April 2015 gain or loss, the relevant ownership period defined in paragraph 6A(11) of Schedule 4ZZA.

(9) In this paragraph—

(a) "the notional post-April 2015 gain or loss" has the same meaning as in paragraph 12;

(b) "the notional pre-April 2015 gain or loss" has the same meaning as in paragraph 6A of Schedule 4ZZA;

(c) "notional pre-April 2013 gain or loss" means the gain or loss which would have accrued on 5 April 2013 had the subject matter of the relevant high value disposal been disposed of for a consideration equal to its market value at that date.

17 (1) In the case of a relevant high value disposal to which paragraph 13 applies, the amount of the balancing gain or loss is determined as follows.

(2) Determine the number of balancing days in the relevant ownership period.

(3) The balancing gain or loss on the disposal is equal to the balancing fraction of the amount of the gain or (as the case may be) loss determined under Step 1 of paragraph 13(3).

(4) "The balancing fraction" is—

$$\frac{BD}{TD}$$

where—

"BD" is the number of balancing days in the relevant ownership period;

"TD" is the total number of days in the relevant ownership period.

(5) In this paragraph "relevant ownership period" has the same meaning as in paragraph 13.

18 (1) Where a person ("P") makes a relevant high value disposal to which paragraph 14 applies, the amount of the balancing gain or loss on the disposal is determined as follows.

(2) To find the amount of the balancing gain or loss on the relevant high value disposal, add—

(a) the amount of the balancing gain or loss belonging to the notional post-April 2016 gain or loss,

(b) the amount of the balancing gain or loss belonging to the notional pre-April 2016 gain or loss, and

(c) if P held the disposed of interest on 5 April 2015, the amount of the notional pre-April 2015 gain or loss,

(treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the balancing gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the relevant high value disposal.

(3) The balancing gain or loss belonging to the notional post-April 2016 gain or loss is equal to the balancing fraction of the notional post-April 2016 gain or loss.

(4) The balancing gain or loss belonging to the notional pre-April 2016 gain or loss is equal to the balancing fraction of the notional pre-April 2016 gain or loss.

(5) "The balancing fraction" is—

$$\frac{BD}{TD}$$

where—

"BD" is the number of balancing days in the appropriate ownership period;

"TD" is the total number of days in the appropriate ownership period.

(6) The appropriate ownership period is—

(a) for the purpose of computing the balancing gain or loss belonging to the notional post-April 2016 gain or loss, the relevant ownership period mentioned in paragraph 14(4)(a);

(b) for the purpose of computing the balancing gain or loss belonging to the notional pre-April 2016 gain or loss, the relevant ownership period mentioned in paragraph 14(4)(b).

(7) In this paragraph—

(a) "notional post-April 2016 gain or loss" and "notional pre-April 2016 gain or loss" mean the same as in paragraph 14;

(b) "the notional pre-April 2015 gain or loss" means the gain or loss which would have accrued on 5 April 2015 if the subject matter of the relevant high value disposal had been disposed of for a consideration equal to its market value on that date.

Where relevant high value disposal and "other" disposal are comprised in the disposal of land

19 (1) This paragraph applies where—

(a) part only of the subject matter of the disposal of land is treated under section 2C and Schedule 4ZZA as disposed of by one or more relevant high value disposals, so that,

(b) the remaining subject matter of the disposal is treated as disposed of by a disposal which is not a relevant high value disposal (the "non-ATED related disposal").

(2) Where this paragraph applies this Part of this Schedule (apart from this paragraph) applies in relation to the non-ATED related disposal as if it were a relevant high value disposal.

(3) If there has been mixed use of the subject matter of the non-ATED related disposal at any time in the relevant ownership period, then the amount of any relevant gain or loss on that disposal computed under this Part of this Schedule is taken to be the appropriate fraction of the amount that it would otherwise be.

(4) For the purposes of this paragraph there is mixed use of land on any day on which the land consists partly, but not exclusively, of one or more dwellings.

(5) In sub-paragraph (3) "the appropriate fraction" means the fraction that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.

(6) In sub-paragraph (3) "the relevant ownership period" means, as applicable—

(a) the post-commencement period, as defined in paragraph 12(2);

(b) the relevant ownership period, as defined in paragraph 13(5), or

(c) the relevant ownership period as defined in paragraph 14(4).

PART 5

SPECIAL RULES FOR COMPANIES

20 This Part of this Schedule applies where the person disposing of the interest in residential property is a company.

21 The following amounts are computed as if the computation were for corporation tax purposes—

(a) the notional post-April 2015 gain or loss for the purposes of paragraphs 6 and 7;

(b) the notional pre-April 2015 gain or loss for the purposes of paragraphs 6 and 7;

(c) the gain or loss determined under Step 1 of paragraph 9(2);

(d) the notional post-April 2015 gain or loss for the purposes of paragraph 12;

(e) the gain or loss determined under Step 1 of paragraph 13(3);

(f) the notional post-April 2016 gain or loss for the purposes of paragraph 14;

(g) the notional pre-April 2016 gain or loss for the purposes of paragraph 14;

(h) the notional post-April 2015 gain or loss, the notional pre-April 2015 gain or loss and the notional pre-April 2013 gain or loss for the purposes of paragraph 16;

(i) the notional post-April 2016 gain or loss, the notional pre-April 2016 gain or loss and the notional pre-April 2015 gain or loss for the purposes of paragraph 18.

PART 6

INTERPRETATION

22 (1) In this Schedule—

"chargeable interest" has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act);

"dwelling" has the meaning given by paragraph 3 of Schedule B1.

(2) In this Schedule "subject matter"—

(a) in relation to a UK residential property interest (or a disposal of such an interest), means the land (mentioned in paragraph 1(2) or (3) of Schedule B1) to which the interest relates, and

(b) in relation to a relevant high value disposal, has a corresponding meaning."

PART 2

OTHER AMENDMENTS

18 (1) The Corporation Tax Act 2009 is amended as follows.

(2) In section 2 (charge to corporation tax), in subsection (2A), for the words from "under" to the end substitute "under—

(a) section 2B of TCGA 1992 (companies etc chargeable to capital gains tax on ATED-related gains on relevant high-value disposals), or

(b) section 7AA of that Act (capital gains tax on gains on disposals of UK residential property interests by non-residents etc)."

PART 3

COMMENCEMENT

19 (1) The amendments made by this Schedule have effect in relation to disposals made on or after 6 April 2015.

EXPLANATORY NOTE

DISPOSALS OF UK RESIDENTIAL PROPERTY INTERESTS BY NON-RESIDENTS ETC.

SUMMARY

1. Clause [X] introduces Schedule [A] which extends capital gains tax (CGT) from 6 April 2015 to chargeable gains accruing to non-UK resident persons on the disposal of an interest in UK residential property. As well as individuals, trustees and other persons that are normally chargeable to CGT when UK resident, the charge to CGT will also apply to certain non-resident companies (and not corporation tax).

DETAILS OF THE CLAUSE AND SCHEDULE

Clause [X]

2. Clause [X] introduces Schedule [A], which makes amendments in respect of capital gains tax.

Schedule [A] Part 1

3. Paragraph 1 of Schedule [A] introduces changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992).

4. Paragraph 2 of Schedule [A] amends section 1 of TCGA 1992 to charge companies to capital gains tax (CGT), and not corporation tax, to the extent that their gains are chargeable non-resident disposals of UK residential property interests.

5. Paragraph 3 of Schedule [A] inserts new subsections (2A) and (7B) into section 2 of TCGA 1992. These treat unused losses accrued by a person on chargeable non-resident disposals of UK residential property interests when non-UK resident to be general allowable losses for use against chargeable gains when UK resident.

6. Paragraph 4 of Schedule [A] inserts new sections 7AA to 7AC into TCGA 1992.

7. New section 7AA holds that a person who does not meet the UK residence condition is chargeable to CGT in respect of a relevant gain on a chargeable non-resident disposal of a UK residential property interest. However, a company is not chargeable if it is a diversely-held company, or a qualifying unit trust scheme or an open-ended investment company that meets the widely-marketed fund condition. Where the gain on disposal of a UK residential property interest would be chargeable as part of the corporation tax profits of a UK permanent establishment of a company, then it is not chargeable to CGT on that gain.

8. New section 7AB provides that a person is charged CGT on the total amount of the gains on chargeable non-resident disposals of a UK property interest accruing in a tax year after deducting losses on similar disposals.

9. New section 7AC holds that a loss on a chargeable non-resident disposal of a UK property interest (when non-UK resident) is not allowable as a deduction from chargeable gains (when UK resident) in a previous year.

10. Paragraph 5 of Schedule [A] amends section 8 of TCGA 1992, which provides certain rules for taxing gains, and relieving losses, of companies chargeable to corporation tax. The amended subsection 8(4A) prevents these rules from applying to chargeable gains and allowable losses on a chargeable non-resident disposal of a UK residential property interest.

11. Paragraph 6 of Schedule [A] inserts new subsection (1A) into section 10A of TCGA 1992. This disapplies rules that tax gains accruing to temporary non-residents in the year of their return to the UK in relation to gains on disposals of UK residential property interests.

12. Paragraph 7 of Schedule [A] amends section 13 of TCGA 1992, which treats gains accruing to non-UK resident companies as if a proportionate amount had accrued to UK participators in the company. The amended subsection 13(1A) prevents these rules from applying to gains on a disposal of a UK residential property interest that is chargeable to CGT by virtue of new section 7AB.

13. Paragraph 8 of Schedule [A] inserts new section 57B into TCGA 1992, which introduces new Schedule 4ZZB.

14. Paragraph 9 of Schedule [A] amends section 62 of TCGA 1992, which, amongst other things, allows unused losses to be carried back for the 3 tax years prior to the year in which a person dies, to include unused losses on the disposal of a UK residential property interest.

15. Paragraph 10 of Schedule [A] inserts new subsection (4ZA) into section 86 of TCGA 1992. Section 86 attributes gains accruing to a non-resident trust to the settlor of the trust; and new subsection (4ZA) prevents a double charge by disapplying that rule to the extent that a gain accrues on the disposal of a UK residential property interest and the trustees are chargeable under new section 7AA.

16. Paragraph 11 of Schedule [A] inserts new subsection (5A) into section 87 of TCGA 1992. Section 87 attributes gains accruing to non-resident trusts to the beneficiaries of the trust; and new subsection (5A) prevents a double charge by disapplying that rule to the extent that a gain accrues on the disposal of a UK residential property interest and the trustees are chargeable under new section 7AA.

17. Paragraph 12 of Schedule [A] inserts new subsection (5A) into section 88 of TCGA 1992. Section 88 ignores for the purpose of section 87 amounts that are chargeable to another country under a double taxation agreement. New subsection (5A) disapplies that rule to the extent that a gain accrues on the disposal of a UK residential property interest and the trustees are chargeable under new section 7AA.

18. Paragraph 13 of Schedule [A] inserts interpretive provisions into section 288 of TCGA 1992.

19. Paragraph 14 of Schedule [A] inserts new Schedule B1 into TCGA 1992.

20. Paragraph 1 of new Schedule B1 defines "UK residential property interest" as, broadly, an interest in UK land that has consisted of or included a dwelling at any time during the relevant ownership period, being the period from acquisition or 6 April 2015 (whichever is later) to the day before the date of disposal.

21. Paragraph 2 of new Schedule B1 defines "interest in UK land".

22. Paragraph 3 of new Schedule B1 defines "dwelling" and provides that a building counts as a dwelling at any time when it is used or suitable for use as a dwelling or in the process of being constructed or adapted for such use. Sub-paragraphs 3(3) to (11) prescribe occasions when a building does not count as a dwelling.

23. Paragraph 4 of new Schedule B1 provides HM Treasury with the power to amend by regulations the cases where a building is or is not be regarded as being used as a dwelling.

24. Paragraph 5 of new Schedule B1 provides that temporary unsuitability for use as a dwelling as a result of damage is taken into account in applying the definition of "dwelling" only if certain conditions are met.

25. Paragraph 6 of new Schedule B1 provides that a building "ceases to exist" when demolished completely to ground level or to ground level except for a façade retained as a condition of planning consent.

26. Paragraph 7 of new Schedule B1 provides that works to demolish or convert a building to a use other than use as a dwelling, and any period immediately prior to then when the building was not used as a dwelling, are periods when the building is to be regarded as unsuitable for use as a dwelling provided that the works are completed by the time the property is conveyed and are performed in accordance with any necessary planning permission or development consent.

27. Paragraph 8 of new Schedule B1 contains definitions for paragraphs 1 to 7.

28. Paragraph 15 of Schedule [A] inserts Schedule C1.

29. New Schedule C1, Part 1 consists of paragraphs 1 to 7, which makes provision about the meaning of “closely-held company”. A company that is not closely-held is a diversely-held company for the purpose of new section 7AA to TCGA 1992.

30. Paragraph 1 of new Schedule C1 explains the purpose of Part 1.

31. Paragraph 2 of new Schedule C1 defines a closely held company as one that is either under the control of five or fewer persons that have an interest in the company (“participators”), or where those five or fewer persons would be entitled to the greater part of the assets of the company were it to be wound up.

32. Paragraph 3 of new Schedule C1 ensures that when assessing the interests a person has in the assets of a company being wound up, regard is to be had to both direct and indirect interests.

33. Paragraph 4 of new Schedule C1 ensures that when assessing who are the participators in a company for the purposes of the assets test in paragraph 2, participators in other companies that have an interest in the company notionally wound up are also included.

34. Paragraph 5 of new Schedule C1 provides for certain companies not to be treated as closely held companies. The first group are companies that can only be regarded as closely held by including in the group of controlling participators a company which is itself either a diversely held company or a qualifying institutional investor as defined in sub-paragraph (4). The second group are those where it is only possible to regard a company as closely held by including a company as a participator that is a loan creditor of the company, and which is itself a diversely held company or a qualifying institutional investor. The Treasury may vary the types and descriptions of entities that are treated as qualifying institutional investors by Statutory Instrument.

35. Paragraph 6 of new Schedule C1 deals with a special type of company (“divided company”) sometimes called a protected cell company. This ensures that the closely held company test is applied to each individual cell or division of the company, rather than just at the level of the whole company.

36. Paragraph 7 of new Schedule C1 is an anti-avoidance rule which ensures that companies cannot escape a charge to capital gains tax by entering into arrangements to manipulate the control of the company at the time of a disposal of a UK residential property interest.

37. New Schedule C1, Part 2 consists of paragraphs 8 to 11 which makes provision about the “widely-marketed fund condition”.

38. Paragraph 8 of new Schedule C1 explains that the purpose of Part 2 is to determine whether a (variable capital) fund making a disposal is widely-marketed and so can be a qualifying institutional investor.

39. Paragraph 9 of new Schedule C1 sets out the conditions to be satisfied for a fund to be widely-marketed.

40. Paragraph 10 of new Schedule C1 sets out how a feeder fund can be taken into consideration to enable a fund to meet the widely-marketed test.

41. Paragraph 11 of new Schedule C1 is an anti-avoidance rule which ensures that a tax charge cannot be avoided by artificial arrangements to meet the widely marketed rule or by artificial inclusion of a fund in the arrangements for property ownership and disposal.

42. New Schedule C1, Part 3 consists of paragraphs 12 to 14 which contain interpretative provisions for new Schedule C1.

Paragraph 16 of Schedule [A] amends Schedule 4ZZA to TCGA 1992, which determines whether an Annual Tax on Enveloped Dwellings (ATED)-related gain or loss accrues to a person. Paragraph 5 of the Schedule is amended to provide that an election under paragraph 2(1)(b) of Schedule 4ZZB to compute gains or losses on the basis of the position over their whole period of ownership applies for the purpose of Schedule 4ZZA as well as for Schedule 4ZZB. New paragraph 6A applies where the gain on a disposal is potentially liable to both CGT as an ATED-related disposal and to CGT under new section 7AB. It provides for the ATED-related gain to be the sum of two components derived from periods before and after 5 April 2015.

43. Paragraph 17 of Schedule [A] inserts Schedule 4ZZB, which makes provision about the computation of the amount of gain or loss that accrues to a person in relation to a chargeable non-resident disposal of a UK residential property interest.

44. New Schedule 4ZZB, Part 1 consists of paragraph 1, which introduces the Schedule.

45. New Schedule 4ZZB, Part 2 consists of paragraphs 2 and 3, which provide for when a person may elect not use the default computation in Part 3 for computing relevant gains and losses (i.e. the amount of gains or losses accruing on the disposal of assets that are chargeable to the extended CGT charge) and the amount of gains or losses that are not a relevant gains or losses.

46. Paragraph 2 of new Schedule 4ZZB provides that a person may elect to determine the amount of post 5 April 2015 gain or loss by using the straight-line time apportionment method provided by paragraph 8 unless the disposal is one to which ATED-related CGT applies; or to elect to compute gains or losses on the basis of the position over their whole period of ownership, when such an election would apply also for the purpose of ATED-related CGT.

47. Paragraph 3 of new Schedule 4ZZB provides how an election made under paragraph 2 is to be made and that it is irrevocable.

48. New Schedule 4ZZB, Part 3 consists of paragraphs 4 to 9, which contain the main rules for computing relevant gains and losses and the amount of a gain or loss that is not a relevant gain or loss.

49. Paragraph 4 of new Schedule 4ZZB provides that Part 3 applies when the disposal is of a chargeable non-resident disposal of a UK property interest that is not also chargeable to ATED-related CGT.

50. Paragraph 5 of new Schedule 4ZZB introduces paragraphs 6 to 8.

51. Paragraphs 6 and 7 of new Schedule 4ZZB provide the default computation to apply where the asset was held at 5 April 2015. The relevant gain or loss is that proportion of the post 5 April 2015 gain (as determined by the gain or loss from the asset's market value as at 5 April 2015) that represents the amount of days in the post 5 April 2015 period in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned. Paragraph 7 determines the gain or loss that is not a relevant gain or loss.

52. Paragraph 8 of new Schedule 4ZZB modifies the computations at paragraphs 6 and 7 where the asset was held at 5 April 2015 and an election is made, under sub-paragraph 2 of this Schedule, to determine the amount of post 5 April 2015 gain or loss by using the straight-line time apportionment method. The relevant gain or loss is that proportion of the post 5 April 2015 gain that reflects the amount of days in the post 5 April 2015 period in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned.

53. Paragraph 9 of new Schedule 4ZZB provides the computation to apply where the asset was acquired after 5 April 2015; or was held on 5 April 2015 and an election is made, under sub-paragraph 2 of this Schedule, to compute gains or losses on the basis of the position over the whole period of ownership. Here the relevant gain or loss is that proportion of the gain or loss over the period of ownership (since 31 March 1982) that reflects the amount of days in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned. Sub-paragraph 9(5) provides for the amount of pre-6 April 2015 gain or loss that is not a relevant gain or loss.

54. New Schedule 4ZZB, Part 4 consists of paragraphs 10 to 19, which contain separate computation rules where the disposal also either is or involves a disposal that is chargeable to ATED-related CGT.

55. Paragraph 10 of new Schedule 4ZZB provides an overview to Part 4. Paragraphs 12 to 14 contain provisions about calculating relevant gains and losses. ATED-related gains or losses are to be computed in accordance with Schedule 4ZZA. Paragraphs 15 to 18 contain provision about computing any gains or losses that are neither ATED-related nor relevant gains or losses.

56. Paragraph 11 of new Schedule 4ZZB provides that the amount of relevant gain or loss is the sum of the amounts determined under paragraphs 12 to 14; and defines "non-

ATED chargeable day" for the purposes of the special fraction at sub-paragraphs 12(4), 13(4) and 14(3).

57. Paragraph 12 of new Schedule 4ZZB provides for the case where an asset is held at 5 April 2015, no election has been made under paragraph 2 (or its equivalent ATED-related CGT provision) to compute gains or losses on the basis of the position over the whole period of ownership and no additional rebasing is required (when paragraph 14 applies instead).

58. Paragraph 13 of new Schedule 4ZZB provides for the case where an asset is acquired after 5 April 2015 or an election is made under sub-paragraph 2 (or its equivalent ATED-related CGT provision) to compute gains or losses on the basis of the position over the whole period of ownership and no additional rebasing is required (when paragraph 14 applies instead).

59. Paragraph 14 of new Schedule 4ZZB provides for the case where an asset is rebased to its open market value at 5 April 2016 for the purposes of ATED-related CGT.

60. Paragraph 15 of new Schedule 4ZZB provides that the amount of gain or loss that is neither ATED-related nor a relevant gain or loss is the sum of the amounts determined in accordance with paragraphs 16 to 18; and defines "balancing day" for the purposes of the balancing fractions at sub-paragraphs 16(7), 17(4) and 18(5).

61. Paragraph 16 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor relevant gains or losses when paragraph 12 applies.

62. Paragraph 17 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor relevant gains or losses when paragraph 13 applies.

63. Paragraph 18 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor relevant gains or losses when paragraph 14 applies.

64. Paragraph 19 of new Schedule 4ZZB provides that where part only of the land disposed of is a relevant high value disposal such that the gains that accrue on its disposal is wholly or in part chargeable to ATED-related CGT, the remaining part of the land is treated for Part 4 in the same way as if it formed part of the relevant high value disposal.

65. New Schedule 4ZZB, Part 5 consists of paragraphs 20 and 21.

66. Paragraph 20 of new Schedule 4ZZB provides that Part 5 applies where a company disposes of a residential property interest.

67. Paragraph 21 of new Schedule 4ZZB provides for indexation to apply when calculating the amount of a relevant gain or loss.

68. New Schedule 4ZZB, Part 6 consists of paragraph 22 and contains interpretative definitions for the purposes of the Schedule.

Schedule [A] Part 2

69. Paragraph 18 of Schedule [A] contains minor and consequential amendments to the Corporation Tax Act 2009 that flow from this new legislation.

Schedule [A] Part 3

70. Paragraph 19 of Schedule [A] contains commencement provisions.

BACKGROUND NOTE

71. A person is not generally chargeable to CGT unless they are resident in the UK; and companies have been chargeable to corporation tax, and not CGT, in respect of chargeable gains accruing to them. Some exceptions exist (for example where a non-resident trades through a UK branch or agency; or where they are necessary to prevent tax avoidance).

72. This measure brings the UK into alignment with most other countries who charge non-residents in relation to immovable property located in their country.

73. It provides a number of exemptions for communal residential accommodation such as purpose built student accommodation, hospices etc. and also exempts non-resident companies that are diversely owned.

If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk).

1 Private residence relief

Schedule 1 contains amendments of the TCGA 1992 in connection with private residence relief.

SCHEDULES

SCHEDULE 1 Section 1

PRIVATE RESIDENCE RELIEF

1 The TCGA 1992 is amended in accordance with this Schedule.

2 (1) Section 222 (relief on disposal of private residence) is amended as follows.

(2) After subsection (5) insert—

"(5A) Where the whole or part of the gain mentioned in subsection (1) is chargeable (in whole or in part) to capital gains tax under section 7AA(1) or (2)—

(a) the individual may cancel any notice which the individual has given at any time in relation to the dwelling-house or the part of the dwelling-house, and

(b) subsection (5B) applies to any determination the individual makes under subsection (5) in relation to the dwelling-house or the part of the dwelling-house.

(5B) A determination to which this subsection applies—

(a) must be made in the NRCGT return relating to the disposal,

(b) may be made with respect to any past period within the individual's period of ownership, and

(c) is irrevocable.

(5C) The right under subsection (5B)(b) may be exercised so as to vary a notice given in accordance with subsection (5)(a) in respect of another dwelling-house or part of a dwelling-house (but this does not apply so far as the individual has already disposed of the asset to which the notice related)."

(3) In subsection (7), for "223" substitute "222A".

3 After section 222 insert—

"222A Non-qualifying tax years

(1) For the purposes of sections 222 to 226 the dwelling-house or part of a dwelling-house mentioned in section 222(1) is treated as not being occupied as a residence by the individual ("P") at any time in P's period of ownership which falls within—

(a) a non-qualifying tax year, or

(b) a non-qualifying partial tax year.

In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as "the dwelling-house".

(2) A tax year the whole of which falls within P's period of ownership is "a non-qualifying tax year" in relation to the dwelling-house if P—
   (a) was not resident for that tax year in the territory in which the dwelling-house is situated, and
   (b) did not meet the day count test in respect of the dwelling-house in that tax year (see section 222B).

(3) A partial tax year is "a non-qualifying partial tax year" in relation to the dwelling-house if P—
   (a) was not resident for the tax year in question in the territory in which the dwelling-house is situated, and
   (b) did not meet the day count test in respect of the dwelling-house in that partial tax year.

(4) Where part only of a tax year falls within P's period of ownership, that part is a "partial tax year" for the purposes of this section.

(5) Where a gain to which section 222 applies is not a NRCGT gain, subsection (1) does not apply in respect of a tax year or partial tax year before the tax year 2015-16.

(6) In subsection (5) a "NRCGT gain" is a gain in respect of which an individual is (in whole or in part) chargeable to capital gains tax under section 7AA(1) or (2).

(7) For the purposes of this section an individual is resident in a territory other than the United Kingdom ("the overseas territory") for any period in relation to which the condition in subsection (8) is met.

(8) The condition is that the individual is liable to tax in the overseas territory under the law of that territory by reason of the individual's domicile or residence.

(9) But the condition in subsection (8) is not treated as met if the individual's liability to tax in the overseas territory is in respect only of income from sources in that territory or capital situated there.

(10) Where an individual is resident in the overseas territory for part, but not the whole, of a tax year, then for the purposes of this section—
   (a) if the individual is resident in the overseas territory for half or more than half of the tax year, the individual is counted as being resident in the overseas territory for the tax year, but
   (b) otherwise, the individual is counted as not being resident in the overseas territory for the tax year.

(11) Section 11(1)(a) (visiting forces etc) is to be disregarded in determining for the purposes of this section whether or not an individual is resident in the United Kingdom.

(12) Subsection (1) is subject to—
   (a) section 222(8) (job-related accommodation), and
   (b) section 223(3) (absence reliefs).

222B Day count test

(1) This section explains how P meets the day count test (see section 222A) with respect to the dwelling-house or part of a dwelling-house mentioned in section 222(1) in a full or partial tax year.

In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as “the dwelling-house”.

(2) In a full tax year, P meets that test with respect to the dwelling-house if, during that year, P spends at least 90 days in the dwelling-house or in one or more other qualifying units.

(3) In a partial tax year, P meets that test with respect to the dwelling-house if, during that partial tax year, P spends at least the relevant fraction of 90 days in the dwelling-house or in one or more other qualifying units.

(4) The relevant fraction is the number of days in the partial tax year divided by the number of days in the tax year, rounded up to the nearest whole number if necessary.

(5) For the purposes of subsections (2) and (3) the days need not be consecutive, and days spent in different qualifying units may be aggregated.

(6) A day spent by P’s spouse or civil partner in the dwelling-house, or in a dwelling-house or part of a dwelling-house which is a qualifying unit in relation to P, counts as a day spent by P in the dwelling-house or qualifying unit (but no day is to be counted twice as a result of this subsection).

(7) For the purposes of the day count test, if an individual is present in a qualifying unit at the end of a day, that day counts as a day spent by the individual in the qualifying unit.

(8) For the purposes of this section a dwelling-house or part of a dwelling-house is a qualifying unit in relation to P if—

(a) P has an interest in it, and

(b) it is situated in the same territory as the dwelling-house mentioned in subsection (1).

(9) In this section “partial tax year” has the meaning given by section 222A(4).”

4 (1) Section 223 (amount of relief) is amended as follows.

(2) After subsection (4) insert—

“(4A) An individual is not to be allowed both of the following in respect of the same period—

(a) relief under subsection (3) in respect of the dwelling-house or the part of the dwelling-house, and

(b) relief under this section in respect of another dwelling-house or part of a dwelling-house of the individual.

But paragraph (b) does not include relief for the last part of the period of ownership referred to in subsections (1) and (2).”

(3) For subsection (7) substitute—

“(7) In this section “period of ownership”—

(a) does not include any period before 31 March 1982, and

(b) where the gain to which section 222 applies is one in respect of which the individual is (in whole or in part) chargeable to capital gains tax under section 7AA(1) or (2), does not include any period before 6 April 2015 (but see subsection (7A)).

(7A) Paragraph (b) of the definition of "period of ownership" does not apply in a case where paragraph 9 of Schedule 4ZZB applies by virtue of sub-paragraph (1)(b) of that paragraph (the individual has made an election for the retrospective basis of computation to apply).

(7B) In this section "period of absence" means a period during which the dwelling-house or the part of the dwelling-house was not an individual's only or main residence."

5 After section 223 insert—

"223A Amount of relief: disposals chargeable under section 7AA

(1) This section applies where—

(a) the individual mentioned in section 223(1) ("P") acquired the asset to which the gain mentioned in section 222(1) is attributable before 6 April 2015, and

(b) P's period of ownership for the purposes of section 223 begins on that date because of paragraph (b) of the definition of "period of ownership" in section 223(7).

(2) Times before 6 April 2015 are to be ignored in determining whether or not condition A in section 223 is met in relation to a period of absence, unless P elects that this subsection is not to apply in relation to the period.

(3) An election under subsection (2) must specify which day before 6 April 2015 P relies on in relation to the period of absence for the purpose of meeting condition A in section 223.

(4) Where P has made an election under subsection (2), section 223 applies as if relevant prior periods of absence counted towards the maximum periods (and maximum aggregate periods) specified in subsection (3)(a), (c) and (d) of that section.

(5) In relation to a maximum period (or maximum aggregate period) specified in paragraph (a), (c) or (d) of section 223(3), "relevant prior period of absence" means a period of absence which would have counted towards that maximum period (or maximum aggregate period) if the bridge period were included in the period of ownership.

(6) In subsection (5) "the bridge period" means the period beginning with the day specified in the election and ending with 5 April 2015."

6 (1) Section 225 (private residence occupied under terms of settlement) is amended as follows.

(2) Renumber the section as subsection (1) of that section.

(3) In subsection (1) (as so renumbered)—

(a) in the words before paragraph (a), after "person" insert "("B")";

(b) in paragraph (a), for "the occupation of the dwelling-house or part of the dwelling-house," substitute "the matters dealt with in subsection (2),".

(4) After subsection (1) insert—

"(2) In sections 222 to 224, as applied by subsection (1), references to the individual, in relation to—

(a) the occupation of the dwelling-house or part of the dwelling-house,

(b) residence in a territory, or

(c) meeting the day count test,

are to be taken as references to B."

7 (1) Section 225A (private residence held by personal representatives) is amended as follows.

(2) In subsection (5)—

(a) in paragraph (a), for the words from "the occupation" to the end substitute "the matters dealt with in paragraph (aa),";

(b) after paragraph (a) insert—

"(aa) in relation to the occupation of the dwelling-house or part of the dwelling-house, residence in a territory, or meeting the day count test, references to the individual are to be taken as references to a qualifying individual or qualifying individuals, and".

(3) After subsection (6) insert—

"(7) In subsection (5)(aa) "a qualifying individual" means an individual by virtue of whom the first and second conditions are satisfied and "qualifying individuals" means two or more individuals by virtue of all of whom (taken together) the first and second conditions are satisfied."

8 The amendments made by this Schedule have effect in relation to disposals made on or after 6 April 2015.

EXPLANATORY NOTE

PRIVATE RESIDENCE RELIEF

SUMMARY

1. Clause [X] introduces Schedule [A], which restricts access to capital gains tax (CGT) private residence relief when the residence is in a country where the person making the disposal is not also tax resident. The changes apply to disposals made on or after 6 April 2015.

DETAILS OF THE SCHEDULE

Clause [X]

2. Clause [X] introduces Schedule [A], which amends capital gains tax private residence relief.

Schedule [A]

3. Paragraph 1 of Schedule [A] introduces changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992).

4. Paragraph 2 of Schedule [A] inserts new subsections (5A) to (5C) into section 222 of TCGA 1992. These provide that a non-UK resident person may determine which of two or more residences their main residence is for any period at the time of disposal.

5. Paragraph 3 of Schedule [A] inserts new sections 222A and 22B into TCGA 1992. These treat a residence as not being occupied as a residence for a tax year (the "deeming" rule) when it is located in a territory in which the person is not tax resident and the person is not present in it for at least 90 midnights during the year (the "90-day" rule). Where the property is owned for part of a year the 90-day rule is reduced by a proportionate amount. Where more than one residence is owned in the same territory during the year, the 90-day rule applies across the properties.

6. Paragraph 4 of Schedule [A] inserts new subsection (4A) into section 223 of TCGA 1992 and amends the definitions of "period of ownership" and "period of absence" in consequence of the deeming rule. They ensure that an individual does not obtain relief in respect of more than one residence for the same period.

7. Paragraph 5 of Schedule [A] inserts new section 223A into TCGA 1992. This holds that where a non-UK resident person disposes of a dwelling-house, the use of the property prior to 6 April 2015 is ignored in determining eligibility to private residence relief unless the

person otherwise elects and specifies the date as to when, prior to then, the property was the person's only or main residence. Any absence from that date to 5 April 2015 is deducted from the amount of absence available for relief for periods after 5 April 2015.

8. Paragraph 6 of Schedule [A] amends section 225 of TCGA 1992 to make corresponding changes in respect of beneficiaries of a trust occupying a dwelling-house under the terms of the settlement.

9. Paragraph 7 of Schedule [A] amends section 225A of TCGA 1992 to make corresponding changes in respect of legatees of a deceased person occupying a dwelling-house under an entitlement as legatee.

10. Paragraph 8 of Schedule [A] contains commencement provisions.

BACKGROUND NOTE

11. No capital gains tax (CGT) is due on gains accruing on the disposal of a dwelling-house if the person making the disposal has used it as their only or main residence throughout their period of ownership.

12. Where a dwelling-house was the person's only or main residence for part of their period of ownership only an appropriate fraction of the gain is not chargeable to CGT. The remaining portion of the gain is chargeable to CGT subject to final period relief (which takes out of charge the last 18 months of ownership); relief for certain types of absences; and lettings relief.

13. Where a person has more than one residence, he may determine for any period which of them is his main residence by making an election.

13. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk).

1 Deferred entrepreneurs' relief on invested gains

(1) In Part 5 of TCGA 1992 (transfer of business assets) after Chapter 3 (enterprepreneurs' relief) insert—

"CHAPTER 4

ENTREPRENEURS' RELIEF WHERE HELD-OVER GAINS BECOME CHARGEABLE

169T Overview of Chapter

This Chapter makes provision about claiming entrepreneurs' relief in certain cases where, in relation to held-over gains that originally arose on a business disposal, there is a chargeable event for the purposes of Schedule 5B or 8B (relief for gains invested under the enterprise investment scheme or in social enterprises).

169U Eligibility conditions for deferred entrepreneurs' relief

(1) Section 169V applies if, ignoring the operation of section 169V(2)(b), each of the following conditions is met.

(2) The first condition is that a chargeable gain ("the first eventual gain") accrues as a result of the operation of—

paragraph 4 of Schedule 5B (enterprise investment scheme), or

paragraph 5 of Schedule 8B (investments in social enterprises).

(3) If the first condition is met, the paragraph and Schedule mentioned in subsection (2) that apply in the case are referred to in this section, and section 169V, as "the relevant paragraph" and "the applicable Schedule".

(4) The second condition is—

(a) that the first eventual gain accrues in a case in which the original gain would, but for the operation of the applicable Schedule, have accrued on a relevant business disposal, or

(b) where the first eventual gain accrues in a case in which the original gain would, but for the operation of the applicable Schedule, have accrued as a result of the operation of either of the paragraphs mentioned in subsection (2), that the underlying disposal is a relevant business disposal.

(5) The third condition is that a claim for entrepreneurs' relief in respect of the first eventual gain is made, on or before the first anniversary of the 31 January following the tax year in which the first eventual gain accrues, by the individual who made the disposal mentioned in subsection (4)(a) or (b).

(6) The fourth condition is that the first eventual gain is the first gain to accrue in the case as a result of the operation of the relevant paragraph.

(7) In subsection (4) "the underlying disposal" means the disposal (not being a disposal within paragraph 3 of Schedule 5B or paragraph 6 of Schedule 8B) by virtue of which Schedule 5B or 8B has effect.

(8) For the purposes of subsection (4), whether the disposal on which the original gain would have accrued is a relevant business disposal, or whether the underlying disposal is a relevant business disposal, is to be

decided according to the law applicable to disposals made at the time the disposal was made.

(9) In this section—

"the original gain", in relation to a particular case, has the same meaning as in the applicable Schedule,

"relevant business asset" has the meaning given by section 169L, and

"relevant business disposal" means—

(a) a disposal—

(i) within section 169H(2)(a) or (c) (qualifying business disposals), and

(ii) consisting of the disposal of (or of interests in) shares in or securities of a company, or

(b) a disposal of relevant business assets which is comprised in a disposal—

(i) within section 169H(2)(a) or (c), and

(ii) not consisting of the disposal of (or of interests in) shares in or securities of a company.

169V Operation of deferred entrepreneurs' relief

(1) Where this section applies, the following rules have effect.

(2) The gain mentioned in section 169U(2) ("the first eventual gain")—

(a) is treated for ER purposes as the amount resulting from a calculation under section 169N(1) carried out—

(i) in respect of a qualifying business disposal made when the first eventual gain accrues, and

(ii) because of the claim mentioned in section 169U(5), and

(b) except for ER purposes, is not to be taken into account under this Act as a chargeable gain.

(3) If the first eventual gain is a part only of the original gain in the case concerned, each part of the original gain that subsequently accrues as a chargeable gain as a result of the operation of the relevant paragraph—

(a) is treated for ER purposes as the amount resulting from a calculation under section 169N(1) carried out—

(i) in respect of a qualifying business disposal made when that chargeable gain so accrues, and

(ii) because of the claim mentioned in section 169U(5), and

(b) except for ER purposes, is not to be taken into account under this Act as a chargeable gain.

(4) If the disposal mentioned in paragraph (a) or (b) of section 169U(4) is a disposal within section 169H(2)(c) (qualifying business disposal: disposal associated with a relevant material disposal)—

(a) a disposal mentioned in subsection (2) or (3) of this section is treated for the purposes of section 169P(1) as a disposal associated with a relevant material disposal, but

(b) section 169P applies in relation to that disposal as if the disposal referred to in section 169P(4) were the disposal mentioned in section 169U(4)(a) or (b).

(5) In this section "ER purposes" means the purposes of—
(a) section 169N(2) to (4B), (7) and (8), and
(b) section 169P."

(2) The amendment made by subsection (1) has effect in relation to cases where the disposal mentioned in the new section 169U(4)(a) or (b) is made on or after 3 December 2014.

EXPLANATORY NOTE

DEFERRED ENTREPRENEURS' RELIEF ON INVESTED GAINS

SUMMARY

1. Clause [X] extends the scope of capital gain tax entrepreneurs' relief. At the moment a chargeable gain which is deferred either under the enterprise investment scheme (EIS) or under social investment tax relief (SITR) cannot also be the subject of a claim to ER. As a result of these changes, ER may be claimed on deferred gains when they are charged to tax, subject to the conditions for relief which applied when they were first deferred. The new rules apply to gains which would originally have accrued on or after 3 December 2014.

DETAILS OF THE CLAUSE

2. Clause [X] introduces new Chapter 4 (containing sections 169T to 169V) into Part 5 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) and specifies the date on which they come into effect.

3. Subsection (1) of Clause [X] contains the new sections.

4. New section 169T provides an overview of the new Chapter.

5. New section 169U specifies a number of conditions which must be met in order for a gain which has been deferred under EIS or SITR to qualify for ER when it is treated as accruing. Where all these conditions are met, new section 169V applies to govern how ER is allowed.

6. Subsection (2) of new section 169U states the first condition. A gain representing all or part of a gain which has previously been deferred (or 'held-over') under either EIS or SITR must be treated as accruing under the provisions for those reliefs. The gain which is treated as accruing is known for the purposes of this Clause as 'the first eventual gain'.

7. Subsection (4) of new section 169U states the second condition. This condition specifies the nature of the disposal which originally gave rise to the first eventual gain (before any deferrals). This disposal must be a 'relevant business disposal', as defined at subsection (9). Where a gain has been deferred more than once, for instance by being serially reinvested in more than one holding of EIS shares or social investment, it is the 'underlying disposal' associated with the first deferral which has to meet this condition.

8. Subsection (5) of new section 169U states the third condition. This is that a claim to ER must be made in respect of the first eventual gain. The time limit for this claim is 31 January in the year immediately following the tax year in which the gain accrues. The person making this claim must be the same person who made the disposal which originally gave rise to the first eventual gain.

9. Subsection (6) of new section 169U states the fourth condition. This is that the first eventual gain is the first gain treated as accruing in respect of a particular deferred gain. This means that where part of a deferred gain has previously accrued without a claim to ER being made in respect of it, it is not possible to claim ER under these new provisions when another part of the same gain subsequently accrues.

10. Subsection (7) of new section 169U explains what is meant by ‘underlying disposal’ in subsection (4).

11. Subsection (8) of new section 169U ensures that when deciding whether the ‘source’ disposal identified in subsection (4) was either a material disposal or an associated disposal for ER purposes (see subsection (9)), the law which was relevant to the disposal is to be applied. The ER rules as they stood at any other time, for instance when the first eventual gain is treated as accruing, are not relevant.

12. Subsection (9) of new section 169U provides definitions of terms used earlier in section 169U, including ‘relevant business disposal’ as used in subsection (4). A disposal of shares in or securities of a company is a relevant business disposal if it is either a ‘material disposal of business assets’ or a ‘disposal associated with a relevant material disposal’ (also known as an ‘associated disposal’) for normal ER purposes. A disposal of another sort of asset is a relevant business disposal if it is a disposal of a ‘relevant business asset’ within section 169L and is also either a ‘material disposal of business assets’ or a ‘disposal associated with a relevant material disposal’.

13. New section 169V contains rules which apply where the conditions in section 169U are all met. The rules explain how ER applies to the deferred gain when it is treated as accruing.

14. Subsection (2) of new section 169V treats the first eventual gain as an amount computed under section 169N(1) and therefore as a gain on which ER is due, subject to the ‘lifetime limit’ applicable to the total amount of relief given. However, the gain is not to be treated as a chargeable gain except for ER purposes. That is to say, to the extent that ER is given in respect of it, the first eventual gain is not treated as a gain for other purposes of TCGA 1992. This avoids taxing the same gain twice.

15. Subsection (3) of new section 169V applies where the first eventual gain does not represent the whole of the deferred gain. In these cases, the rest of the deferred gain (when it is finally treated as accruing) is also treated as an amount computed under section 169N(1) on which ER is due, without the need for further claims to ER on the later accrual or accruals. As before, the gains which are subject to ER under this subsection are not treated as gains for other purposes of TCGA 1992.

16. Subsection (4) of new section 169V is relevant when the disposal which was the source of the first eventual gain (see section 169U, subsection (4) above) was a disposal associated with a relevant material disposal (an ‘associated disposal’). It provides that the qualifying business disposal implied by subsection (2) or (3) at the time the first eventual gain accrues is treated as an associated disposal for the purposes of section 169P(1). It also

ensures that when deciding whether section 169P applies, the conditions in section 169P(4) are to be applied to the disposal which was the source of the first eventual gain.

17. Subsection (5) of new section 169V defines the phrase ‘ER purposes’ which is used in subsections (2) and (3).

18. Subsection (2) of Clause [X] gives the effective date for these changes. They apply to gains which have as their source a qualifying business disposal on or after 3 December 2014.

BACKGROUND NOTE

19. The mechanism of entrepreneurs’ relief was amended in 2010. As a result of those changes it was no longer possible for an individual to claim ER on a gain and also to defer the accrual of the same gain if they reinvested the proceeds of their disposal in EIS shares. Nor could ER be claimed when the gain was eventually treated as accruing (for instance when the EIS shares were sold). When SITR was introduced in 2013 the same constraint applied. This has tended to deter investment in EIS shares or in social enterprises in some circumstances.

20. By allowing potential investors to benefit both from the deferral of gains and from ER on those same gains this measure will encourage more investment in business via EIS and SITR. It thereby supports the growth of social enterprises, start-up companies and small and medium-sized businesses carried on by companies.

21. If you have any questions about this change, or comments on the legislation, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).

1 Annual tax on enveloped dwellings: annual chargeable amount

(1) In section 99 of FA 2013 (amount of tax chargeable), in the table in subsection (4), for the last four entries substitute—

“£23,350	More than £2 million but not more than £5 million.
£54,450	More than £5 million but not more than £10 million.
£109,050	More than £10 million but not more than £20 million.
£218,200	More than £20 million.”

(2) The amendment made by subsection (1) has effect for the chargeable period beginning on 1 April 2015 and, subject to section 101 of FA 2013, for subsequent chargeable periods.

(3) Section 101(1) of FA 2013 does not apply in relation to the chargeable period beginning on 1 April 2015.

(4) Accordingly, the Treasury is not required to make an order under section 101(5) of FA 2013 in respect of that period.

EXPLANATORY NOTE

ANNUAL TAX ON ENVELOPED DWELLING: ANNUAL CHARGEABLE AMOUNT

SUMMARY

1. Clause [X] increases annual tax charges for the Annual Tax on Enveloped Dwellings for the chargeable period 1 April 2015 to 31 March 2016 over and above the normal annual Consumer Prices Index increase.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for an amendment to section 99 of Finance Act 2013 (amount of tax chargeable) and sets revised amounts for properties valued at more than £2 million as follows:

Annual Chargeable Amount for 2015/16	**Taxable Value of the Interest**
£23,350	More than £2 million but not more than £5 million.
£54,450	More than £5 million but not more than £10 million.
£109,050	More than £10 million but not more than £20 million.
£218,200	More than £20 million.

3. Subsection 2 brings this annual increase into effect for the chargeable period beginning 1 April 2015.

4. Subsections 3 and 4 dis-apply the requirement to increase the charges by the September 2014 Consumer Prices Index and to publish an Order stating the revised amounts. Indexation will be reapplied to the annual charges for the chargeable period beginning 1 April 2016 for properties valued at more than £2 million.

BACKGROUND NOTE

5. The Annual Tax on Enveloped Dwellings is an annual tax payable by companies, partnerships with a corporate member and collective investment vehicles which own UK residential property valued at more than £2 million.

6. Most residential properties are owned directly by individuals. But in some cases they may be owned by a company, partnership with a corporate member or other collective investment vehicle. In these circumstances the property is said to be 'enveloped' because the ownership sits within a corporate 'wrapper' or 'envelope'.

7. Budget 2014 announced a reduction in the £2 million entry threshold to £500,000 to be phased in over 2 years. From 1 April 2015 a new band will come into effect for properties with a value greater than £1 million but not more than £2 million with an annual charge of £7,000. From 1 April 2016 a further new band will come into effect for properties valued at more than £500,000 but not more than £1 million.

8. The ATED chargeable period runs from 1 April to 31 March. The amount of tax charged is based on the value of the property on a particular date. The annual chargeable amounts are subject to indexation by reference to the previous September Consumer Prices Index (CPI). Parliament can over-ride the normal indexation by provision in the Finance Bill.

9. This clause increases the annual charge for the chargeable period 1 April 2015 to 31 March above normal September 2014 CPI increase for properties valued at more than £2 million. The new bands to be introduced with effect from 1 April 2015 and 1 April 2016 will not be affected by this change.

10. This measure is to ensure that those wrapping residential property in corporate and other 'envelopes' and not using them for a commercial purpose, pay a fair share of tax.

11. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: ated.technicalqueries@hmrc.gsi.gov.uk).

1 ATED: taxable value

In section 102 of FA 2013 (annual tax on enveloped dwellings: taxable value), after subsection (2) insert—

"(2A) But a day that is a valuation date only because of subsection (2)(b) (a "5-yearly valuation date") is to be treated as if it were not a valuation date for the purpose of determining the taxable value of a single-dwelling interest on any day in the chargeable period beginning with that 5-yearly valuation date."

2 ATED: interests held by connected persons

(1) Section 110 of FA 2013 (interests held by connected persons) is amended as follows.

(2) In subsection (1), after "If on any day" insert "("the relevant day")".

(3) In subsection (2)—
(a) omit "on the day in question";
(b) after "P's single dwelling interest" insert "on the relevant day";
(c) for "£500,000" substitute "£250,000".

(4) After subsection (2) insert—

"(2A) Subsection (2B) applies in any case where—
(a) C would (without subsection (2B)) be treated, as a result of subsection (1) (read with section 109), as entitled to a single-dwelling interest with a taxable value (on the relevant day) of more than £2 million, but
(b) C would not be so treated if the value specified in subsection (2) were £500,000 (instead of £250,000).

(2B) Subsection (2) has effect as if the value specified in it were £500,000 (instead of £250,000)."

(5) The amendments made by this section have effect in relation to chargeable periods beginning on or after 1 April 2015.

3 ATED: returns

(1) Part 3 of FA 2013 (annual tax on enveloped dwellings) is amended as follows.

(2) In section 159 (annual tax on enveloped dwellings return), after subsection (3) insert—

"(3A) Where a person—

(a) would (apart from this subsection) be required in accordance with subsection (2) to deliver a return for a chargeable period ("the later period") by 30 April in that period, and

(b) is also required in accordance with subsection (3) to deliver a return for the previous chargeable period by a date ("the later date") which is later than 30 April in the later period,

subsection (2) has effect as if it required the return mentioned in paragraph (a) to be delivered by the later date."

(3) After section 159 insert—

"159A Relief declaration returns

(1) "Relief declaration return" means an annual tax on enveloped dwellings return which—

(a) states that it is a relief declaration return,

(b) relates to one (and only one) of the types of relief listed in the table in subsection (9), and

(c) specifies which type of relief it relates to.

(2) A relief declaration return may be made in respect of one or more single-dwelling interests.

(3) A relief declaration return delivered to an officer of Revenue and Customs on a particular day ("the day of the claim") is treated as made in respect of any single-dwelling interest in relation to which the conditions in subsection (4) are met (but need not contain information which identifies the particular single-dwelling interest or interests concerned).

(4) The conditions are that—

(a) the person making the return is within the charge with respect to the single-dwelling interest on the day of the claim;

(b) the day of the claim is relievable in relation to the single-dwelling interest by virtue of a provision which relates to the type of relief specified in the return (see subsection (9));

(c) none of the days in the pre-claim period is a taxable day.

(5) The statement under subsection (1)(a) in a relief declaration return is treated as a claim for interim relief (see section 100) with respect to the single-dwelling interest (or interests) in respect of which the return is made.

(6) Subsection (7) applies where—

(a) a person has delivered to an officer of Revenue and Customs on any day a relief declaration return for a chargeable period with respect to one or more single-dwelling interests ("the existing return"), and

(b) there is a subsequent day ("day S") in the same chargeable period on which the relevant conditions are met in relation to another single-dwelling interest.

(7) The existing return is treated as also made with respect to that other single-dwelling interest.

(8) For the purposes of subsection (6)(b), the "relevant conditions" are the same as the conditions in subsection (4), except that for this purpose

references in subsection (4) to the day of the claim are to be read as references to day S.

(9) This table sets out the numbered types of relief to which the provisions specified in the left hand column relate—

Provision	*Type of relief to which it relates*
Section 133 or 134 (property rental business)	1
Section 137 (dwellings opened to the public)	2
Section 138 or 139 (property developers)	3
Section 141 (property traders)	4
Section 143 (financial institutions acquiring dwellings)	5
Section 145 (dwellings used for trade purposes: occupation by certain employees or partners)	6
Section 148 (farmhouses)	7
Section 150 (providers of social housing)	8

(10) Where a person—

(a) has failed to make annual tax on enveloped dwellings returns in respect of two or more single-dwelling interests, and

(b) could have discharged the duties in question by making a single relief declaration return in respect of all the interests,

the failure may be taken, for the purposes of Schedule 55 to FA 2009, to be a failure to make a single annual tax on enveloped dwellings return.

(11) In this section—

"pre-claim period" has the same meaning as in section 100;

"taxable day", in relation to a person and a single-dwelling interest, means a day on which the person is within the charge with respect to the interest, other than a day which is relievable in relation to the interest."

(4) In section 161 (return to include self-assessment), for subsection (2) substitute—

"(2) In subsection (1) "return" means—

(a) an annual tax on enveloped dwellings return, or

(b) a return of the adjusted chargeable amount.

(2A) The reference in subsection (2)(a) to an annual tax on enveloped dwellings return does not include a relief declaration return."

(5) In Schedule 33 (annual tax on enveloped dwellings: returns etc)—

(a) in paragraph 2(a), after "159" insert ", 159A";

(b) in paragraph 20(1), for "in question, the self assessment included in that return" substitute "in question containing a self assessment, that self assessment."

(6) The amendments made by subsections (1) to (5) have effect for chargeable periods beginning on or after 1 April 2015.

(7) In a case (not falling within section 109(5) of FA 2014) which falls within subsection (8), section 159 of FA 2013 (annual tax on enveloped dwellings return) has effect with the same modifications as are set out in section 109(6) of FA 2014 (which provides for extended filing periods in certain cases).

(8) The case is where—

(a) a person has a duty to deliver to an officer of Revenue and Customs an annual tax on enveloped dwellings return with respect to a single-dwelling interest for the chargeable period beginning with 1 April 2015, and

(b) the circumstances on the first day in that chargeable period on which that person is within the charge with respect to that single-dwelling interest are such that that duty could be discharged by the delivery to an officer of Revenue and Customs on that day of a relief declaration return.

EXPLANATORY NOTE

ANNUAL TAX ON ENVELOPED DWELLINGS (ATED): TAXABLE VALUE

SUMMARY

1. This clause corrects an anomaly in the legislation so that the 5 yearly valuation dates work as intended with the next 5 consecutive chargeable periods. The changes have effect for chargeable periods beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Clause 1 inserts new subsection (2A) into section 102 of Finance Act 2013 (taxable value) and provides that the five yearly valuation dates apply to the next five chargeable periods beginning the following 1 April (e.g. the 1 April 2017 valuation date applies to the next five chargeable periods beginning 1 April 2018; the 1 April 2022 valuation date applies to the next five chargeable periods beginning 1 April 2023).

BACKGROUND NOTE

3. ATED is an annual tax payable by companies, partnerships with a corporate member, and collective investment vehicles which own UK residential property valued at more than £2 million. At Budget 2014 the Government announced that the £2m ATED entry threshold would be lowered to £500,000 to be phased in over 2 years.

4. The amount of tax charged is based on the value of the dwelling as at 1 April 2012, and thereafter each 1 April at intervals of 5 years. Where a dwelling is acquired or disposed of, the valuation date is the date of acquisition/disposal.

5. It was the policy intention that a chargeable person who has an interest that falls within ATED because of its value on, say, 1 April 2017, must file a return for the chargeable period beginning 1 April 2018. This was to provide sufficient time to value a property in 2017 and submit a return by the due date of 30 April 2018.

6. However, the legislation as currently drafted means that the chargeable person would in fact have to value their property on 1 April 2017 and file their return by 30 April 2017, giving them only 30 days in which to do so. This clause corrects that anomaly.

7. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: ated.technicalqueries@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

ANNUAL TAX ON ENVELOPED DWELLINGS (ATED): INTERESTS HELD BY CONNECTED PERSONS

SUMMARY

1. Clause [X] amends the aggregation rule where interests are held by connected persons in the same dwelling. Where one of the connected persons is an individual and the aggregate amount of the interests is less than £2 million, the company's interest must be more than £250,000 for aggregation to apply. The changes have effect for chargeable periods beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Clause [X] amends section 110(2) of Finance Act 2013 (Interests held by connected persons) and introduces a new limit of £250,000 for aggregated interests valued up to £2 million. The effect of this amendment is that where one of the connected persons is an individual, and the combined value of the interests in the property is less than £2million, the company's interest must be more than £250,000 for the aggregation rule to apply.

BACKGROUND NOTE

3. ATED is an annual tax payable by companies, partnerships with a corporate member, and collective investment vehicles which own UK residential property valued at more than £2 million. At Budget 2013 the Government announced that the £2 million entry threshold will be lowered to £500,000.

4. The ATED legislation contains a rule which provides that where two or more chargeable interests are held in the same dwelling by connected persons, then those interests must be aggregated and ATED paid on the aggregate amount, where that amount falls within the ATED entry threshold. However, the legislation provides for an exception to this rule where the connected person is an individual. In this case the company's interest must be more than £500,000 for the aggregation rule to apply.

5. Following the lowering of the ATED entry threshold from properties valued at more than £2 million to properties valued at more than £500,000, an additional limit of £250,000 is introduced for interests valued up to £2 million.

6. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: ated.technicalqueries@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

ANNUAL TAX ON ENVELOPED DWELLINGS: RETURNS

SUMMARY

1. Clause [X] amends the annual tax on enveloped dwellings (ATED) return obligations. In particular, it introduces a new type of ATED return, the "relief declaration return", for persons who hold an interest in a dwelling which is eligible for relief from ATED and in respect of which there is no tax to pay. It results in a significant reduction in the administrative burden on businesses by reducing the number of returns that must be filed and the information that must be provided to HM Revenue & Customs. The changes have effect for chargeable periods beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

1. Subsection 1 amends Part 3 of Finance Act 2013.

2. Subsection 2 inserts new subsection (3A) into section 159 Finance Act 2013. It provides that, where a return for a later chargeable period is required by 30 April, and a return for the earlier chargeable period is required later because of the 90 day filing time limit, the return for the later chargeable period can also be delivered within the 90 day time limit.

3. Subsection 3 inserts new section 159A Finance Act 2013 "Relief declaration returns".

4. New subsection 159A(1) defines a relief declaration return as an ATED return which contains a declaration, relates to one, and only one, type of relief and specifies the type of relief it relates to.

5. New subsections 159A(2) and (3) specifies that a relief declaration return may be made in respect of one or more single-dwelling interest and that it does not need to include individual details of the dwelling(s), provided that the conditions in subsection (4) are met.

6. New subsection 159A(4) sets out the conditions which must be met in order for a person to make a relief declaration return. These are:

- the person making the return must be within the scope of ATED, with respect to the single-dwelling interest on the day the claim is made;
- on the day the claim is made, the single-dwelling interest must be eligible for one of the reliefs set out in subsection 9; and
- there is no tax to pay on the day the return is delivered to HMRC.

7. New subsection 159A(5) specifies that a statement (or declaration) made under new section 159A(1) in a relief declaration return is treated as a claim to a relief in relation to the single-dwelling interest or interests.

8. New subsections 159A(6) and (7) specify that, where a person has already delivered a relief declaration return for a chargeable period in respect of one or more single-dwelling interests, and on a subsequent day within the same chargeable period the relevant conditions are also met in relation to another single-dwelling interest (i.e. that interest is eligible for the same type of relief in the chargeable period), the existing return is treated as also having been made in respect of that other interest.

9. New subsection 159A(8) prescribes the "relevant conditions" for this purpose. These are the conditions set out in section 159A(4), except that the day of the claim is a subsequent day in the chargeable period.

10. New subsection 159A(9) lists the relevant reliefs and the relief codes to be specified in a relief declaration return.

11. New subsection 159A(10) provides that, where there has been a failure to make an ATED return in respect of two or more single-dwelling interests and that obligation could have been discharged by making a single relief declaration return, penalties under Schedule 55 Finance Act 2009 (failure to make a return) will be charged as if there were only one failure.

12. New subsection 159A(11) provides definitions of "pre-claim period" and "taxable day".

13. Subsection (4) of the clause amends section 161 of Finance Act 2013 (return to include self-assessment). It inserts new section 161(2A) which dis-applies the self-assessment requirement in respect of a relief declaration return. The effect of this is that no property valuation is required on the return. It also makes a correction to section 161(2).

14. Subsection (5) of the clause makes consequential amendments to Schedule 33 to Finance Act 2013.

15. Subsection (6) of the clause provides that the changes have effect for chargeable periods beginning on or after 1 April 2015.

16. Subsection (7) and (8) provide that the transitional rule in section 109 of Finance Act 2014, which extends the filing date for properties valued at more than £1 million but not more than £2 million to 1 October 2015 instead of the normal date of 30 April 2015, also applies to those persons eligible to make a relief declaration return.

BACKGROUND NOTE

17. The Annual Tax on Enveloped Dwellings is an annual tax payable by companies, partnerships with a corporate member, and collective investment vehicles which own UK residential property valued at more than £2 million.

18. At Budget 2014 the Government announced that the £2 million ATED entry threshold would be lowered to £500,000. Recognising the additional administrative burden on businesses that hold residential property over £500,000, in particular those entitled to claim reliefs, the Government also announced consultation on ways to simplify the administration of ATED.

19. A consultation document "Annual Tax on Enveloped Dwellings: Reducing the Administrative Burden on Business" was published in July 2014 and the Government's response to the consultation was published in December 2014. This clause takes forward proposals in response to that consultation.

20. The clause introduces a new type of ATED return – the 'relief declaration return'. For each type of relief being claimed, the company will submit a 'relief declaration return' stating that a relief is being claimed in respect of one or more properties held at that time. No details will be required of the individual properties or the number of properties eligible for the relief. Where a property is acquired in-year which also qualifies for the same type of relief, the existing return is treated as also having been made in respect of that property.

21. A separate relief declaration return will be required where a property is acquired during the year that qualifies for a different type relief and where no relief declaration return has previously been made in relation to that particular relief.

22. A normal ATED return is required, as now, in respect of any property which does not qualify or ceases to qualify for a relief; i.e. where tax is due.

23. The overall result is that businesses with properties which qualify for relief will generally only be required to deliver one relief declaration return a year for all properties covered by a particular relief instead of, as now, multiple detailed returns for each such property. This offers a significant reduction in the administrative burden.

24. This clause also corrects a minor anomaly in the legislation to ensure that the 5 year property valuation dates work as intended with the next 5 consecutive chargeable periods.

25. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: ated.technicalqueries@hmrc.gsi.gov.uk).

1 Relevant high value disposals: gains and losses

Schedule 1 contains provision about the calculation of relevant high value disposals within the meaning of section 2C of TCGA 1992.

SCHEDULE 1

Section 1

RELEVANT HIGH VALUE DISPOSALS: GAINS AND LOSSES

Introduction

1 The Taxation of Chargeable Gains Act 1992 is amended as follows.

"Relevant high value disposal"

2 (1) Section 2C ("relevant high value disposal") is amended as follows.

(2) In subsection (6), in the definition of "the relevant ownership period" for "6 April 2013" substitute "6 April in the relevant year".

(3) In that subsection, after the definition of "single-dwelling interest" insert—

""the relevant year" means—

(a) in Case 1 in paragraph 2 of Schedule 4ZZA, 2013;

(b) in Case 2 in that paragraph, 2015;

(c) in Case 3 in that paragraph, 2016;".

(4) In subsection (7)(b), for "1 April 2013" substitute "1 April in the relevant year".

Threshold amount for the tax year 2015-16

3 (1) Section 2D (CGT on ATED-related gains: the threshold amount) is amended as follows.

(2) In subsection (2) for "£2 million" substitute "£1 million".

(3) In subsection (3) for "£2 million" substitute "£1 million".

(4) In subsection (5) for ""£2 million"" substitute ""£1 million"".

(5) The amendments made by this paragraph have effect in relation to disposals occurring on or after 6 April 2015.

Threshold amount for the tax year 2016-17

4 (1) Section 2D (CGT on ATED-related gains: the threshold amount) is amended as follows.

(2) In subsection (2) for "£1 million" substitute "£500,000".

(3) In subsection (3) for "£1 million" substitute "£500,000".

(4) In subsection (5) for ""£1 million"" substitute ""£500,000"".

(5) The amendments made by this paragraph have effect in relation to disposals occurring on or after 6 April 2016.

Restriction of losses

5 In section 2E (restriction of losses), in subsection (3)—
(a) after "5 April 2013" insert "etc", and
(b) for "post-April 2013" substitute "post-commencement".

Calculation of gains and losses

6 Schedule 4ZZA (relevant high value disposals: gains and losses) is amended as follows.

7 For the italic heading before paragraph 2 substitute—

"*Assets held on 5 April 2013, 5 April 2015 or 5 April 2016: no paragraph 5 election*"

8 For paragraph 2 substitute—

"2 (1) In Cases 1 to 3 below—
(a) paragraph 3 applies for the purposes of computing the gain or loss accruing to P which is ATED-related, and
(b) paragraph 4 applies for the purposes of computing the gain or loss accruing to P which is not ATED-related.

(2) Case 1 is that—
(a) the interest disposed of was held by P on 5 April 2013, and
(b) neither Case 2 nor Case 3 applies.

(3) Case 2 is that—
(a) the interest disposed of was held by P on 5 April 2015,
(b) Case 3 does not apply, and
(c) no relevant single dwelling interest was subject to ATED on one or more days in the period ending on 31 March 2015 during which P held the interest disposed of.

(4) Case 3 is that—
(a) the interest disposed of was held by P on 5 April 2016, and
(b) no relevant single dwelling interest was subject to ATED on one or more days in the period ending on 31 March 2016 during which P held the interest disposed of.

(5) For the purposes of this paragraph—
(a) "relevant single-dwelling interest" means the single-dwelling interest by reference to which Condition B in section 2C is met in relation to the relevant high value disposal, or, if Condition B is met by reference to more than one such interest, each of them;
(b) a relevant single dwelling interest is "subject to ATED" on a day if P—
(i) was within the charge to annual tax on enveloped dwellings with respect to that interest on that day, or
(ii) would have been within that charge but for the day being "relievable" by virtue of any of the provisions mentioned in section 132 of the Finance Act 2013 (ATED: effect of reliefs).

(6) In paragraphs 3 and 4, "the relevant year" means—
(a) in relation to Case 1, 2013;
(b) in relation to Case 2, 2015;
(c) in relation to Case 3, 2016."

9 (1) Paragraph 3 is amended as follows.

(2) In sub-paragraph (1) for "post-April 2013" substitute "post-commencement".

(3) In sub-paragraph (2)—
(a) for "post-April 2013" substitute "post-commencement", and
(b) for "5 April 2013" substitute "5 April in the relevant year".

(4) In sub-paragraph (5), for "6 April 2013" substitute "6 April in the relevant year".

10 (1) Paragraph 4 is amended as follows.

(2) In sub-paragraph (1)—
(a) for "pre-April 2013" substitute "pre-commencement", and
(b) for "post-April 2013" substitute "post-commencement".

(3) In sub-paragraph (2)—
(a) for "pre-April 2013" substitute "pre-commencement", and
(b) for "5 April 2013" substitute "5 April in the relevant year"

(4) In sub-paragraph (4) for "post-April 2013" substitute "post-commencement".

(5) In sub-paragraph (5) for "pre-April 2013" substitute "pre-commencement".

11 (1) Paragraph 5 is amended as follows.

(2) In sub-paragraph (1) for "5 April 2013" substitute "5 April in the relevant year".

(3) In sub-paragraph (3) for "6 April 2013" substitute "6 April in the relevant year".

(4) For sub-paragraph (6) substitute—

"(6) In this paragraph—
"chargeable interest" has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act);
"relevant year" has the meaning given by paragraph 2."

12 In the italic heading before paragraph 6, for "*assets acquired after 5 April 2013*" substitute "*or none of Cases 1 to 3 apply*".

13 In paragraph 6, for sub-paragraph (1)(b) substitute—
"(b) none of Cases 1, 2 and 3 in paragraph 2 applies to the disposal."

EXPLANATORY NOTE

RELEVANT HIGH VALUE DISPOSALS: GAINS AND LOSSES

SUMMARY

1. Clause [X] reduces the threshold amount for consideration received on a disposal of residential property, above which an Annual Tax on Enveloped Dwellings (ATED)-related gain may accrue and capital gains tax (CGT) may be payable. The changes apply to disposals on or after 3 December 2014.

DETAILS OF THE SCHEDULE

2. Paragraph 2 amends section 2C of the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Subsection (6) of section 2C is amended so that the 'relevant ownership period' depends on whether the property being sold was held on 5 April 2013, 2015 or 2016, and whether CGT was payable before the relevant date. This ensures that any ATED-related gain on which CGT may be payable reflects only changes in the property's value over the period since ATED was first payable. Subsection (7) of section 2C is amended so that subsection (4) continues to apply correctly after the changes to the threshold amount given in paragraphs 3 and 4 take effect.

3. Paragraph 3 amends section 2D TCGA 1992 to reduce the threshold amount from £2 million to £1 million. The change applies to disposals on or after 6 April 2015.

4. Paragraph 4 amends section 2D TCGA 1992 to reduce the threshold amount from £1 million to £500,000. This change applies to disposals on or after 6 April 2016.

5. Paragraph 5 amends section 2E TCGA 1992 so that it continues to apply correctly whichever date is used in Schedule 4ZZA for 'rebasing' the gains or losses which accrue on the disposal.

6. Paragraphs 6 – 13 amend Schedule 4ZZA TCGA which makes provisions for computing ATED-related gains and losses.

7. Paragraph 8 replaces paragraph 2 in Schedule 4ZZA TCGA 1992 with a new paragraph. The new paragraph contains rules for deciding whether a relevant high value disposal within section 2C falls under 'Case 1', 'Case 2' or 'Case 3'. This is necessary in order to determine 'the relevant year' by reference to which the ATED-related gain is to be computed. The conditions for Case 3 are to be considered first, and if they are not met then Case 2 is considered. If a disposal falls within neither Case 3 nor Case 2 then it will be within Case 1. New paragraph 2, subparagraph (5) contains definitions of terms used in earlier subparagraphs and subparagraph (6) gives 'the relevant year' associated with each of the Cases determined under subparagraphs (2) – (4).

8. Paragraphs 9 and 10 amend paragraphs 3 and 4 of Schedule 4ZZA TCGA. Paragraphs 3 and 4 ensure that changes in the value of a property which take place before the property first becomes chargeable to ATED do not contribute to ATED-related gains when the property is sold (a process known as 'rebasing'). The changes brought about by this Clause mean that ATED in respect of a property which is already owned may become payable either in April 2013, April 2015 or April 2016. The amendments to paragraphs 3 and 4 of Schedule 4ZZA ensure that those paragraphs work properly in all cases.

9. Paragraph 11 amends paragraph 6 of Schedule 4ZZA TCGA so that it is capable of applying equitably in any of the three Cases described at new paragraph 2.

10. Paragraph 13 amends paragraph 6 of Schedule 4ZZA TCGA. Paragraph 6 provides rules for computing ATED-related gains and losses where there is no 'rebasing'. The amendment ensures that this paragraph applies where a disposal does not fall within any of the three Cases described at new paragraph 2.

BACKGROUND NOTE

11. These changes, announced at Budget 2014, ensure that the charge to capital gains tax on disposals of residential property continues to be aligned with that property's previous liability to ATED. The value above which a property is potentially liable to ATED decreases from £2 million to £1 million on 1 April 2015 and to £500,000 on 1 April 2016, and the 'threshold amount' for CGT purposes is changing similarly so that the two charges remain aligned. The methods by which ATED-related gains and losses are computed and CGT charged or relieved are not changing except to recognise that owners of certain properties will become liable to ATED and to CGT for the first time as a result of these measures. Gains and losses attributable to periods before they became liable to ATED will continue to be excluded from the charge to CGT on ATED-related gains.

12. These changes further the Government's policy objective of ensuring the fairness of tax on residential property. A package of measures including the charge to CGT on high value disposals was announced at Budget 2012 and the charge was introduced by Finance Act 2013, after consultation.

13. If you have any questions about this change, or comments on the legislation, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).

1 Calculation of rate of inheritance tax on settled property

Schedule 1 contains provision about calculating the rate at which inheritance tax is charged under Chapter 3 of Part 3 of IHTA 1984.

SCHEDULE 1 Section 1

CALCULATION OF RATE OF TAX TO BE CHARGED UNDER CHAPTER 3 OF PART 3 IHTA 1984

1 IHTA 1984 is amended as follows.

2 After section 62 insert—

"62A Same-day additions

(1) For the purposes of this Chapter, there is a "same-day addition", in relation to a settlement ("settlement A"), if—

(a) there is a transfer of value by a person as a result of which the value immediately afterwards of the property comprised in settlement A is greater than the value immediately before,

(b) as a result of the same transfer of value, or as a result of another transfer of value made by that person on the same day, the value immediately afterwards of the property comprised in another settlement ("settlement B") is greater than the value immediately before, and

(c) that person is the settlor of settlements A and B,

and references to the value of the same-day addition are to the difference between the two values mentioned in paragraph (b).

(2) The transfer or transfers of value mentioned in subsection (1) include a transfer or transfers of value as a result of which property first becomes comprised in settlement A or settlement B; but not if settlements A and B are related settlements.

(3) There is not a same-day addition for the purposes of this Chapter if any of the following conditions is met—

(a) immediately after the transfer of value mentioned in subsection (1)(a) all the property comprised in settlement A was held for charitable purposes only without limit of time (defined by a date or otherwise),

(b) immediately after the transfer of value mentioned in subsection (1)(b) all the property comprised in settlement B was so held,

(c) either or each of settlements A and B is a protected settlement (see section 62B), and

(d) either or each of the transfer of value mentioned in subsection (1)(a), and the transfer of value mentioned in subsection (1)(b), results from the payment of a premium under a contract of life insurance the terms of which provide for premiums to be due at regular intervals of one year or less throughout the contract term.

(4) For the purposes of subsection (1) above, it is immaterial whether the amount of the property comprised in settlement A or settlement B (or neither) was increased as a result of the transfer or transfers of value mentioned in that subsection.

62B Protected settlements

(1) For the purposes of this Chapter, a settlement is a "protected settlement" if it commenced before 10 December 2014 and either condition A or condition B is met.

(2) Condition A is met if there have been no transfers of value by the settlor on or after 10 December 2014 as a result of which the value of the property comprised in the settlement was increased.

(3) Condition B is met if—

(a) there has been a transfer of value by the settlor on or after 10 December 2014 as a result of which the value of the property comprised in the settlement was increased, and

(b) that transfer of value was the transfer of value under section 4 on the settlor's death before 6 April 2016 and it had the result mentioned by reason of a protected testamentary disposition.

(4) In subsection (3)(b) "protected testamentary disposition" means a disposition effected by provisions of the settlor's will that at the settlor's death are, in substance, the same as they were immediately before 10 December 2014."

3 (1) Section 66 (rate of ten-yearly charge) is amended as follows.

(2) In subsection (4)—

(a) omit paragraph (b) and the "and" following it, and

(b) at the end of paragraph (c) insert—

"(d) the value of any same-day addition; and

(e) where—

(i) an increase in the value of the property comprised in another settlement is represented by the value of a same-day addition aggregated under paragraph (d) above, and

(ii) that other settlement is not a related settlement,

the value immediately after that other settlement commenced of the property then comprised in that other settlement;".

(3) In subsection (6)(a), for "paragraphs (b) and (c)" substitute "paragraphs (c) to (e)".

4 In section 68 (rate before ten-year anniversary), in subsection (5)—

(a) in paragraph (a), before "property" insert "relevant",

(b) omit the "and" following paragraph (b), and

(c) for paragraph (c) substitute—

"(c) the value, immediately after it became comprised in the settlement, of property which—

(i) became comprised in the settlement after the settlement commenced and before the occasion of the charge under section 65 above, and

(ii) was relevant property immediately after it became so comprised,

whether or not the property has remained relevant property comprised in the settlement;

(d) the value, at the time it became (or last became) relevant property, of property which—

(i) was comprised in the settlement immediately after the settlement commenced and was not then relevant property but became relevant property before the occasion of the charge under section 65 above, or

(ii) became comprised in the settlement after the settlement commenced and before the occasion of the charge under section 65 above, and was not relevant property immediately after it became comprised in the settlement, but became relevant property before the occasion of the charge under that section,

whether or not the property has remained relevant property comprised in the settlement;

(e) the value of any same-day addition; and

(f) where—

(i) an increase in the value of the property comprised in another settlement is represented by the value of a same-day addition aggregated under paragraph (e) above, and

(ii) that other settlement is not a related settlement,

the value immediately after that other settlement commenced of the property then comprised in that other settlement."

5 (1) Section 69 (rate between ten-year anniversaries) is amended as follows.

(2) In subsection (1), for "subsection (2)" substitute "subsection (2A)".

(3) For subsection (2) substitute—

"(2) Subsection (2A) below applies—

(a) if, at any time in the period beginning with the most recent ten-year anniversary and ending immediately before the occasion of the charge under section 65 above (the "relevant period"), property has become comprised in the settlement which was relevant property immediately after it became so comprised, or

(b) if—

(i) at any time in the relevant period, property has become comprised in the settlement which was not relevant property immediately after it became so comprised, and

(ii) at a later time in the relevant period, that property has become relevant property, or

(c) if property which was comprised in the settlement immediately before the relevant period, but was not then relevant property, has at any time during the relevant period become relevant property.

(2A) Whether or not all of the property within any of paragraphs (a) to (c) of subsection (2) above has remained relevant property comprised in the settlement, the rate at which tax is charged under section 65 is to be the appropriate fraction of the rate at which it would last have been charged under section 64 above (apart from section 66(2) above) if—

(a) immediately before the most recent ten-year anniversary, all of that property had been relevant property comprised in the settlement with a value determined in accordance with subsection (3) below, and

(b) any same-day addition made on or after the most recent ten-year anniversary had been made immediately before that anniversary."

(4) In subsection (3)—

(a) omit the words from "which either" to the end of paragraph (b), and

(b) for "purposes of subsection (2)" substitute "purposes of subsection (2A)".

6 In section 71F (calculation of tax charged under section 71E in certain cases), in subsection (9)—

(a) omit the "and" following paragraph (b), and

(b) at the end of paragraph (c) insert ",

(d) the value of any same-day addition, and

(e) where—

(i) an increase in the value of the property comprised in another settlement is represented by the value of a same-day addition aggregated under paragraph (d) above, and

(ii) that other settlement is not a related settlement,

the value immediately after that other settlement commenced of the property then comprised in that other settlement."

7 The amendments made by this Schedule have effect in relation to occasions on which tax falls to be charged under Chapter 3 of Part 3 on or after 6 April 2015.

EXPLANATORY NOTE

INHERITANCE TAX: CALCULATION OF RATE OF INHERITANCE TAX ON SETTLED PROPERTY

SUMMARY

1. Clause [X] introduces Schedule [A]. The Schedule aggregates the value of property in trusts that are not related, for the purpose of determining the rate at which inheritance tax is charged, when the value of property in those trusts is increased on the same day. The Schedule also simplifies some of the rules for calculating the rate of tax for the purposes of the ten year anniversary and exit charges. This Schedule has effect in relation to occasions on which tax falls to be charged on or after 6 April 2015.

DETAILS OF THE CLAUSE AND SCHEDULE

Clause [X]

2. Clause [X] introduces Schedule [A], which makes amendments in respect of inheritance tax.

Schedule [A]

3. Paragraph 1 provides for the Inheritance Tax Act 1984 (IHTA 1984) to be amended in accordance with Schedule [A].

4. Paragraph 2 inserts new sections 62A and 62B into IHTA 1984. They define "same-day addition" and "protected settlements" for the purposes of Chapter 3 of Part 3 to IHTA 1984.

5. Paragraph 3 amends section 66 of IHTA 1984, which provides for the rate of the ten-yearly charge. The amendment provides that the value of the property held on trust that is taken into account when determining the ten-yearly charge is to include the value of any same day addition and the initial value of property in other trusts (other than protected settlements and related settlements) that have increased in value on the same day. The amendment also removes the requirement to take into account the value of trust property that has never become relevant property.

6. Paragraph 4 amends section 68 of IHTA 1984, which provides for the rate of tax when property leaves a trust before the first ten-year anniversary. The amendment provides for the inclusion of same day additions and the exclusion of property that has never become relevant property for the purpose of calculating this charge.

7. Paragraph 5 amends section 69 of IHTA 1984, which provides for the rate of tax when property leaves a trust between ten-year anniversaries. The amendment provides for the inclusion of same day additions and the exclusion of property that has never become relevant property for the purpose of calculating this charge.

8. Paragraph 6 amends section 71F of IHTA 1984, which provides for the rate of tax on property leaving 18/25 trusts under section 71E. The amendment provides for the inclusion of same day additions for the purpose of calculating this change.

9. Paragraph 7 provides that this Schedule has effect in relation to occasions on which tax falls to be charged on or after 6 April 2015.

BACKGROUND NOTE

10. The value of property held in most forms of trust is subject to IHT at 6% every ten years on the amount above the nil rate band (currently £325,000); and a proportionate "exit" charge when the value of the property leaves the trust between ten-year anniversaries.

11. Where more than one trust is settled on the same day by the same person, they are "related settlements" and the value comprised in them is aggregated when determining the rate at which tax is charged. But this rule can be avoided by creating multiple settlements on different days. The purpose of these amendments is to prevent the leakage of IHT through the use of multiple trusts. It also simplifies some of the rules for calculating the rate of tax for the purposes of the ten year anniversary and exit charges.

12. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Exemption from ten-yearly charge for heritage property

(1) Section 79 of IHTA 1984 (exemption from ten-yearly charge) is amended as follows.

(2) In subsection (3)—
(a) for "then, if" substitute "subsection (3A) below applies if",
(b) in paragraph (a), for "has, on a claim made for the purpose, been" substitute "is, on a claim made for the purpose,",
(c) after that paragraph insert—
"(aa) that claim is made during the period beginning with the date of a ten-year anniversary of the settlement ("the relevant ten-year anniversary") and ending—
(i) two years after that date, or
(ii) on such later date as the Board may allow,",
(d) in paragraph (b)—
(i) for "that section has been given" substitute "section 31 is given", and
(ii) for "have been given" substitute "are given", and
(e) omit the words from "section 64" to the end.

(3) After that subsection insert—

"(3A) Tax is not chargeable under section 64 above in relation to the property by reference to the relevant ten-year anniversary concerned or any subsequent ten-year anniversaries; but on the first occurrence of an event which, if there had been a conditionally exempt transfer of the property immediately before that relevant ten-year anniversary, would be a chargeable event with respect to the property—
(a) there is a charge to tax under this subsection, and
(b) on any ten-year anniversary falling after that event, tax is chargeable under section 64 above in relation to the property."

(4) In subsection (4), for the words from "subsection (3)" to "mentioned" substitute "subsection (3A) above in respect of property if, after the occasion mentioned in subsection (3) above and before the occurrence mentioned in subsection (3A)".

(5) In subsections (5), (5A), (6), (8)(a) and (9A)(a) for "subsection (3)" substitute "subsection (3A)".

(6) In subsection (7A), in paragraph (c), for the words from "day" to "section" substitute "relevant ten-year anniversary".

(7) In subsection (8)—
(a) in paragraph (a), for the words from "on the first" to the end substitute "by reference to the relevant ten-year anniversary of the settlement", and

(b) in paragraph (c), omit ", and the claim was made and the undertaking was given,".

(8) Accordingly, in that Act—

(a) in section 207 (liability: conditional exemption), in subsection (3), for "section 79(3)" substitute "section 79(3A)",

(b) in section 237 (imposition of charge), in subsection (3B)(a), for "or 79(3)" substitute "or 79(3A)", and

(c) in Schedule 4 (maintenance funds for historic buildings), in paragraph 3(2)(c), for "or 79(3)" substitute "or 79(3A)".

(9) The amendments made by this section have effect in relation to occasions on which tax would (ignoring the effect of the amendments) fall to be charged under section 64 of IHTA 1984 on or after the day on which this Act is passed.

2 Settlements with initial interest in possession

(1) In section 80 of IHTA 1984 (initial interest of settlor or spouse or civil partner), for "an interest in possession", in each place it appears, substitute "a qualifying interest in possession".

(2) The amendments made by this section come into force on the day after the day on which this Act is passed subject to the saving provision in subsections (3) to (5).

(3) Subsection (4) applies where—

(a) the occasion first referred to in subsection (1) of section 80 of IHTA 1984 occurred before 22 March 2006,

(b) on that occasion the settlor, or the settlor's spouse or civil partner, became beneficially entitled to an interest in possession in property which, as a result of that subsection, was treated as not becoming comprised in a settlement for the purposes of Chapter 3 of Part 3 of IHTA 1984 on that occasion, and

(c) at all times in the relevant period that property, or some part of it, has been property in which the settlor, or the settlor's spouse or civil partner, has been beneficially entitled to an interest in possession.

(4) Section 80(1) of IHTA 1984 continues to have effect, in relation to the part of the property in which the interest in possession of the settlor, or of the settlor's spouse or civil partner, subsists at the end of the relevant period, as if the first and third appearances of "an interest in possession" in that subsection remained as "an interest in possession".

(5) In this section—

(a) "the relevant period" means the period beginning with the occasion first mentioned in section 80(1) of IHTA 1984 and ending with the day on which this Act is passed, and

(b) references in subsections (3)(c) and (4) to the spouse or civil partner of a settlor include references to the widow or widower or surviving civil partner of the settlor.

3 Distributions etc from property settled by will

(1) In section 144 of IHTA 1984 (distributions etc from property settled by will), in subsection (1)(b), after "section" insert "65(4),".

(2) The amendment made by this section has effect in cases where the testator's death occurs on or after 10 December 2014.

EXPLANATORY NOTE

EXEMPTION FROM TEN-YEARLY CHARGE FOR HERITAGE PROPERTY

SUMMARY

1. Clause [X] amends the inheritance tax (IHT) legislation relating to claims for conditional exemption from IHT for heritage property. It will amend the current requirement that a claim must be made and the property designated as being a heritage property *before* the approaching ten-year anniversary, and replace it with one which provides that trustees may make a claim for exemption within 2 years of the ten-yearly charge arising.

2. The amendments have effect for those occasions on which tax would fall to be charged, on or after the Day on which this Act is passed.

DETAILS OF THE CLAUSE

3. Subsection (1) amends section 79 of the Inheritance Tax Act 1984 (IHTA).

4. Subsection (2) amends subsection 79(3) IHTA to provide that a claim for exemption from the ten-yearly charge may be made within 2 years of the date of the ten-year anniversary of the settlement. Subsection (2) also provides that the Board may allow a later date for making the claim.

5. Subsection (3) inserts a new subsection 79(3A) IHTA which provides the circumstances in which a conditionally exempt transfer of property would become a chargeable event with respect to that property.

6. Subsections (4) to (8) make consequential amendments to sections 79, 207, 237 and Schedule 4 IHTA to reflect the change to the period within which a claim for exemption may be made and to replace references to subsection 79(3) with references to subsection 79(3A).

7. Subsection (9) provides that the amendments have effect in relation to occasions on which tax would fall to be charged, on or after the Day on which this Act is passed.

8. The effect of this change will be to change when a trustee may make a claim for exemption from the ten yearly charge. A claim may be made within two years of the ten year charge arising or at such later date as the Board allows. This will provide that trustees of affected properties will be subject to the same requirements as trustees and individuals subject to other IHT charges.

BACKGROUND NOTE

9. This amendment resolves an anomaly in IHTA. In order to preserve and protect national heritage the Government introduced the Conditional Exemption Tax Incentive Scheme. Buildings, land, works of art and other objects which qualify under the scheme are exempt from Inheritance Tax and Capital Gains Tax, providing that certain conditions are met. While relevant property is subject to a charge to tax under section 64 IHTA on each tenth anniversary of the date of creation of the settlement concerned, national heritage property may be exempted from this charge.

10. The current IHT legislation requires trustees to make a claim and obtain a heritage property designation *before* the ten-yearly charge arises. This is a departure from the general regime for conditional exemption and can cause difficulties for trustees and parties engaged in designating heritage status. The change will put trustees dealing with a claim for exemption from a ten-yearly charge on the same footing as trustees and individuals subject to other IHT charges.

11. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email:antonio.zagara@hmrc.gsi.gov.uk.

EXPLANATORY NOTE

SETTLEMENTS WITH INITIAL INTEREST IN POSSESSION

SUMMARY

1. Clause [X] amends the Inheritance tax (IHT) legislation relating to settlements created by individuals before March 2006 giving themselves an interest in possession or to their spouse, widow, civil partner or surviving civil partner. Where “interest in possession” appears in s80 of IHTA, it is replaced with “a qualifying interest in possession” which means that where one party to a couple succeeds to a life interest to which their spouse or civil partner was previously entitled to during the latter’s lifetime, section 80 will apply at that time (because neither spouse would then have a qualifying interest in possession). This means that the settled property would then be treated as being comprised in a settlement and as a result subject to the relevant property charges.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for “an interest in possession” to be substituted by “a qualifying interest in possession”.

3. Subsection 2 provides for the amendments to come into force on the day after the day the Finance Bill receives Royal Assent subject to the saving provision in subsections (3) to (5)

4. Subsections 3and 4 sets out the conditions for the saving provision to apply. Those conditions are:

- that the first occasion referred to in s80(1) occurred before 22 March 2006;

- the settlor or the settlor’s spouse or civil partner became beneficially entitled to an interest in possession in property, which as a result of that subsection was treated as not becoming comprised in a settlement and therefore not subject to relevant property charges on that occasion; and

- that at all times in the relevant period, that property or part of it, has been property in which the settlor or the settlor’s spouse or civil partner has been beneficially entitled to an interest in possession.

5. Subsection 5 defines the “relevant period” and confirms that references to spouse or civil partner of a settlor include references to the widow or widower or surviving civil partners of the settlor.

BACKGROUND NOTE

6. Changes made in 2006 created a gap in the legislation where a spouse1 has a pre-March 2006 entitlement to income (interest in possession) which has continued after March 2006 and their spouse2 then takes an interest in possession, whilst they are still alive, after that date. The amendment will mean that settled property is relevant property once spouse2 takes their life interest.

7. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk)

EXPLANATORY NOTE

DISTRIBUTIONS ETC. FROM PROPERTY SETTLED BY WILL

SUMMARY

1. Clause [X] amends the inheritance tax (IHT) legislation relating to property that is settled by will. It will provide that where property is left in trust in which no interest in possession subsists and an appointment is made within 3 months of the date of death of that property to the spouse or civil partner of the testator, that appointment can be read back into the will and exemption from IHT can apply. The amendment applies to cases where the testator's death occurs on or after 10 December 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 144 of the Inheritance Tax Act 1984 (IHTA) to insert a reference to section 65(4) IHTA.

3. Subsection (2) provides that the amendment applies to cases where the testator's death occurs on or after 10 December 2014.

4. The effect of this change will be that where a trust is wound up within 3 months of the date of death and an appointment of the property is made in favour of the deceased's spouse or civil partner, that appointment of property can be read back into the will and exemption from IHT, under section 18 IHTA (transfers between spouses or civil partners), can apply.

BACKGROUND NOTE

5. This amendment resolves an anomaly in IHTA which adversely affects property left in trust, where the trust is wound up quickly and an appointment of the property is made to the spouse or civil partner. The amendment made by this clause will have effect where the death occurs on or after 10 December 2014.

6. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Inheritance tax: exemption for decorations and other awards

(1) In section 6 of IHTA 1984 (excluded property), for subsection (1B) substitute—

“(1B) A relevant decoration or award is excluded property if it has never been the subject of a disposition for a consideration in money or money’s worth.

(1BA) In subsection (1B) “relevant decoration or award” means a decoration or other similar award—

(a) that is designed to be worn to denote membership of—

(i) an Order that is, or has been, specified in the Order of Wear published in the London Gazette (“the Order of Wear”), or

(ii) an Order of a country or territory outside the United Kingdom,

(b) that is, or has been, specified in the Order of Wear,

(c) that was awarded for valour or gallant conduct,

(d) that was awarded for, or in connection with, a person being, or having been, a member of, or employed or engaged in connection with, the armed forces of any country or territory,

(e) that was awarded for, or in connection with, a person being, or having been, an emergency responder within the meaning of section 153A (death of emergency service personnel etc), or

(f) that was awarded by the Crown or a country or territory outside the United Kingdom for, or in connection with, public service or achievement in public life.”

(2) The amendment made by subsection (1) has effect in relation to transfers of value made, or treated as made, on or after 3 December 2014.

EXPLANATORY NOTE

INHERITANCE TAX: EXEMPTION FOR DECORATIONS AND OTHER AWARDS

SUMMARY

1. Clause [X] amends the legislation relating to property which is to be excluded for the purposes of inheritance tax (IHT). It extends the existing IHT tax exemption which applies to decorations for valour or gallant conduct to encompass an Order, decoration or award, including those made by a country or territory outside the UK. The amendment applies to transfers of value made, or treated as made, on or after 3 December 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) amends IHTA by inserting new s6(1B). It also provides that a relevant decoration and other award is excluded property if it has never been the subject of a disposition for money or money's worth. Subsection (2) provides that the amendment applies to transfers of value made, or treated as made, on or after 3 December 2014.

BACKGROUND NOTE

2. At Autumn Statement 2014 the Government announced that the existing exemption from IHT for awards for valour and gallantry will be extended to include awards for service in the armed forces, and awards made by the State in recognition of achievements and service in public life, such as OBEs. The exemption will also include Orders, decorations or awards made by other countries and territories. The amendments made by this clause will have effect for all transfers of such property made (or treated as made) on or after 3 December 2014.

3. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Inheritance tax exemption for emergency service personnel etc

(1) IHTA 1984 is amended as follows.

(2) After section 153 insert—

"Emergency services

153A Death of emergency service personnel etc

(1) The reliefs in subsection (2) apply where a person—

(a) dies from an injury sustained, accident occurring or disease contracted at a time when that person was responding to emergency circumstances in that person's capacity as an emergency responder, or

(b) dies from a disease contracted at some previous time, the death being due to, or hastened by, the aggravation of the disease during a period when that person was responding to emergency circumstances in that person's capacity as an emergency responder.

(2) The reliefs are—

(a) that no potentially exempt transfer made by the person becomes a chargeable transfer under section 3A(4) because of the death,

(b) that section 4 (transfers on death) does not apply in relation to the death, and

(c) that no additional tax becomes due under section 7(4) because of a transfer made by the person within 7 years of that death.

(3) "Emergency circumstances" means circumstances which are present or imminent and are causing or likely to cause—

(a) the death of a person,

(b) serious injury to, or the serious illness of, a person,

(c) the death of an animal,

(d) serious injury to, or the serious illness of, an animal,

(e) serious harm to the environment (including the life and health of plants and animals),

(f) serious harm to any building or other property, or

(g) a worsening of any such injury, illness or harm.

(4) A person is "responding to emergency circumstances" if the person —

(a) is going anywhere for the purpose of dealing with emergency circumstances occurring there, or

(b) is dealing with emergency circumstances, preparing to do so imminently or dealing with the immediate aftermath of emergency circumstances.

(5) For the purposes of this section, circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances.

(6) "Emergency responder" means—

(a) a person employed, or engaged, in connection with the provision of fire services or fire and rescue services,

(b) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both),

(c) a person employed for the purposes of providing, or engaged to provide, medical, ambulance or paramedic services,

(d) a constable or a person employed for police purposes or engaged to provide services for police purposes,

(e) a person employed for the purposes of providing, or engaged to provide, services for the transportation of organs, blood, medical equipment or medical personnel, or

(f) a person employed, or engaged, by the government of a state or territory, an international organisation or a charity, in connection with the provision of humanitarian assistance.

(7) For the purposes of subsection (6)—

(a) it is immaterial whether the employment or engagement is paid or unpaid, and

(b) "international organisation" means an organisation of which—

(i) two or more sovereign powers are members, or

(ii) the governments of two or more sovereign powers are members.

(8) The Treasury may, by regulations made by statutory instrument, extend the definition of "emergency responder" in subsection (6).

(9) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons."

(3) In section 154 (death on active service)—

(a) in subsection (1), for "Section 4 shall not apply" substitute "The reliefs in subsection (1A) apply",

(b) after that subsection insert—

"(1A) The reliefs are—

(a) that no potentially exempt transfer made by the deceased becomes a chargeable transfer under section 3A(4) because of the death,

(b) that section 4 (transfers on death) does not apply in relation to the death, and

(c) that no additional tax becomes due under section 7(4) because of a transfer made by the deceased within 7 years of that death.",

(c) in subsection (2) omit "either" and after paragraph (b) insert "or

(c) responding to emergency circumstances in the course of the person's duties as a member of any of those armed forces or as a civilian subject to service discipline.", and

(d) After subsection (2) insert—

"(2A) Section 153A(3) to (5) applies for the purposes of this section."

(4) The amendments made by this section have effect in relation to deaths occurring on or after 19 March 2014.

2 Inheritance tax exemption for constables and armed service personnel targeted because of their status

(1) After section 155 of IHTA 1984 insert—

"Constables and service personnel

155A Death of constables and service personnel targeted because of their status

(1) The reliefs in subsection (2) apply where a constable or service person—

(a) dies from an injury sustained or disease contracted in circumstances where the deceased was deliberately targeted by reason of his or her status as a constable or service person, or

(b) dies from a disease contracted at some previous time, the death being due to, or hastened by, the aggravation of the disease by an injury sustained or disease contracted in circumstances mentioned in paragraph (a).

(2) The reliefs are—

(a) that no potentially exempt transfer made by the deceased becomes a chargeable transfer under section 3A(4) because of the death,

(b) that section 4 (transfers on death) does not apply in relation to the death, and

(c) that no additional tax becomes due under section 7(4) because of a transfer made by the deceased within 7 years of his or her death.

(3) For the purposes of this section, it is immaterial whether the deceased was acting in the course of his or her duties as a constable or service person when the injury was sustained or the disease was contracted (ignoring the reference in subsection (1)(b) to a disease contracted at some previous time).

(4) "Service person" means a person who is a member of the armed forces of the Crown or a civilian subject to service discipline (within the meaning of the Armed Forces Act 2006).

(5) This section does not apply where section 153A or 154 applies in relation to the deceased's death."

(2) The amendment made by this section has effect in relation to deaths occurring on or after 19 March 2014.

EXPLANATORY NOTE

INHERITANCE TAX: TAX EXEMPTION FOR EMERGENCY SERVICE PERSONNEL ETC

SUMMARY

1. Clause [X] amends the inheritance tax (IHT) legislation to provide that the estates of: emergency service personnel and humanitarian aid workers who die as a result of responding to an emergency; and police constables and armed service personnel who die as a result of being attacked due to their status, will be exempt from IHT.

2. It also provides that this exemption will include any additional IHT due on death for lifetime transfers and potentially exempt transfers. The amendments made by this clause have effect in relation to deaths occurring on or after 19 March 2014.

DETAILS OF THE CLAUSE

3. Subsection (1) provides for various amendments to be made to the Inheritance Taxes Act 1984 (IHTA).

4. Subsection (2) inserts a new section 153A. New section 153A sets out the conditions that must be met for the estates of emergency service personnel and humanitarian aid workers (emergency responders) to be exempt from IHT. It determines the circumstances in which the exemption applies, for example, those likely to cause the death of a person or serious harm to the environment. Other emergency circumstances covered include serious injury or illness of a person or an animal. It also defines what qualifies as an emergency, to whom the exemption applies and provides that it is immaterial whether the individual is paid or unpaid. The section also provides that regulations may extend the definition of emergency responders.

5. Subsection (3) amends section 154 IHTA to provide that where armed service personnel die while responding to an emergency, or their death is hastened as a result of injury or illness arising from that emergency, then their estates will be exempt from IHT. It also defines the nature of the exemption, and inserts a reference to the definition of emergency in section 153A IHTA.

6. Subsection (4) inserts a new section 155A. New section 155A sets out the conditions to be met for the estates of police constables and armed service personnel to be exempt from IHT. It determines the circumstances in which the exemption applies, the nature of the exemption and to whom it applies. It provides that it is immaterial whether the individual was acting in the course of his duties when attacked and provides a definition of service personnel

7. New section 155A will not apply where the individual's death occurs as a result of responding to emergency circumstances which would be covered under new section 153A, or as a result of being on active service which would be covered under section 154 IHTA

8. The effect of these changes will be that where a police constable or member of the armed services dies as a result of their status, or a member of the emergency services or a humanitarian aid worker dies as a result of responding to an emergency, then their estate will be exempt from IHT. Any additional IHT due on death for lifetime transfers (transfers that are immediately chargeable to IHT) and potentially exempt transfers (lifetime transfers of value that meet certain conditions) will not be payable.

9. Subsection (5) provides that these amendments have effect in relation to deaths occurring on or after 19 March 2014.

BACKGROUND NOTE

10. At Budget 2014 the Government announced its intention to introduce IHT exemptions for members of the emergency services in line with the existing exemption for armed service personnel who die in the line of duty or whose death is hastened by an injury incurred in the line of duty. At the Autumn Statement it announced its further intention to introduce a similar exemption for police constables and armed services personnel who die as result of being attacked due to their professional status.

11. The amendments made by this clause will provide that the estates of such workers will be exempt from IHT. Regulations may extend the definition of emergency worker, if necessary. The changes also provide for circumstances where armed forces personnel die as a result of responding to emergencies.

12. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Inheritance tax: interest

(1) In section 107 of FA 1986 (changes in financial institutions: interest)—
  (a) in subsection (4), for the words from "section 234(4)" to "above)" substitute "paragraph 7(8) of Schedule 53 to the Finance Act 2009 (late payment interest: inheritance tax payable by instalments)";
  (b) in subsection (5), for the words from "amend" to "section 234(3)(c)" substitute "set out one or more descriptions of company for the purposes of paragraph 7(7) of Schedule 53 to the Finance Act 2009".

(2) In Schedule 53 to FA 2009 (special provision: late payment interest start date)—
  (a) in paragraph 7 (inheritance tax payable by instalments) for sub-paragraph (7) substitute—

    "(7) A company falls within this sub-paragraph if—
      (a) its business is carried on in the United Kingdom and is—
        (i) wholly that of a market maker, or
        (ii) that of a discount house, or
      (b) it is of a description set out in regulations under section 107(5) of FA 1986.";

  (b) in paragraph 9 (certain other amounts of inheritance tax), for "date of the testator's death" substitute "end of the month in which the testator died".

(3) The amendments made by this section come into force on such day or days as the Treasury may by regulations made by statutory instrument appoint.

(4) Regulations under subsection (3) may—
  (a) appoint different days for different purposes;
  (b) make transitional or saving provision.

EXPLANATORY NOTE

INHERITANCE TAX: INTEREST

SUMMARY

1. Clause [X] amends the legislation relating to late payment interest provisions for inheritance tax (IHT). It extends the regulation making powers to allow the provisions relating to financial institutions and companies to be updated. It also clarifies the period from which interest is charged. These amendments complement other legislative changes which will be made to support the digitisation of IHT and will ensure that the relevant provisions will apply correctly when the new online service becomes available in 2015/16.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 107 of the Finance Act 1986 to provide that the power to make regulations is extended to paragraph 7(7) and (8) of Schedule 53 to the Finance Act 2009 (FA 2009). Subsection (2)(a) amends paragraph 7(7) of Schedule 53 FA 2009 to include a reference to a description set out in regulations made under section 107(5) of the Finance Act 1986. Taken together, these changes will enable regulations to be made so that the late payment interest provisions in Schedule 53 of FA 2009 relating to inheritance tax instalment payments can be updated.

3. Subsection (2)(b) corrects the period from which late payment interest is charged in paragraph 9 of Schedule 53 FA 2009 by referring to the end of the month in which the testator died. The amendment aligns the date with the current provisions in section 234(4) of the Inheritance Taxes Act 1984.

BACKGROUND NOTE

4. At Autumn Statement 2013 the Government announced that, as part of the Government's digital strategy to improve the process for customers and the administration of the tax, an online service will be provided in 2015/16 for the submission of IHT returns. To support the introduction of the new online service, legislative changes will be made in 2015 to align the treatment of interest and penalties for inheritance tax purposes with other taxes. The amendments made by this clause are part of those changes and will ensure that the relevant provisions relating to late payment interest are updated and apply consistently when the new online service becomes available in 2015/16.

1 Enforcement by deduction from accounts

(1) Schedule 1 contains provision about the enforcement of debts owed to the Commissioners for Her Majesty's Revenue and Customs by deductions being made from accounts held with deposit-takers.

(2) The Treasury may, by regulations made by statutory instrument, make consequential, incidental or supplementary provision in connection with any provision made by that Schedule.

(3) Regulations under subsection (2) may amend, repeal or revoke any enactment (whenever passed or made).

(4) "Enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

(5) A statutory instrument containing (whether alone or with other provision) provision amending, repealing or revoking an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(6) Any other statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 1

Section 1

Enforcement by deduction from accounts

Part 1

Scheme for enforcement by deduction from accounts

Introduction

1 This Part of this Schedule contains provision about the collection of relevant debts by the making of deductions from accounts held with deposit-takers.

"Relevant debt"

2 (1) In this Part of this Schedule "relevant debt" means a sum that is due and payable by a person to the Commissioners—
(a) under or by virtue of an enactment, or
(b) under a contract settlement,
and in relation to which Conditions A to C are met.

(2) Condition A is that the sum is at least £1,000.

(3) Condition B is that the sum is—
(a) an established debt, or
(b) due under section 223 of FA 2014 (accelerated payment of tax) or by virtue of a provision mentioned in sub-paragraph (6) (provisions which prevent the payment of tax being postponed).

(4) Condition C is that HMRC is satisfied that the person is aware that the sum is due and payable by the person to the Commissioners.

(5) A debt is an "established debt" if it results from an assessment or decision or the operation of a statutory provision—
(a) against which no appeal lies, or
(b) against which an appeal lies within a period that has expired without an appeal having been brought, or
(c) against which an appeal has been brought and finally determined or withdrawn.

(6) The provisions referred to in sub-paragraph (3)(b) are—
(a) section 55(8C) and (8D) of TMA 1970 (accelerated payment notice: no postponement of recovery of income tax etc);
(b) section 242(4) of IHTA 1984 (provision preventing legal proceedings for recovery of tax does not apply if accelerated payment notice given);
(c) paragraphs 39(10) and (11) and 40(4) of Schedule 10 to FA 2003 (accelerated payment notice: no postponement of stamp duty land tax, etc);

(d) paragraphs 48(8B) and (8C) and 49(4) of Schedule 33 to FA 2013 (accelerated payment notice: no postponement of ATED etc).

Information notice

3 (1) If it appears to HMRC that—
(a) a person has failed to pay a relevant debt, and
(b) that person holds one or more accounts with a deposit-taker,
HMRC may give the deposit-taker a notice under this paragraph (an "information notice").

(2) HMRC may exercise the power under sub-paragraph (1) only for the purposes of determining whether to give a hold notice to the deposit-taker in respect of the person concerned (see paragraph 4).

(3) An information notice requires the deposit-taker to provide HMRC with the prescribed information specified in the notice about accounts held by that person with the deposit-taker.

(4) Where a deposit-taker is given an information notice, it must comply with the notice as soon as reasonably practicable and, in any event, within the period of 10 working days beginning with the day on which the notice is given to it.

(5) An information notice must explain the effect of—
(a) sub-paragraph (4), and
(b) paragraph 12 (penalties).

Hold notice

4 (1) If it appears to HMRC that—
(a) a person ("P") has failed to pay a relevant debt, and
(b) P holds one or more accounts with a deposit-taker,
HMRC may give the deposit-taker a notice under this paragraph (a "hold notice").

(2) The hold notice must—
(a) specify P's name and last known address,
(b) specify the relevant debt and the amount of that debt in respect of which the notice has effect ("the specified amount"),
(c) specify the safeguarded amount,
(d) specify any account or description of account in respect of which the hold notice is to have no effect,
(e) specify amounts standing to the credit of an account which are to be disregarded for the purposes of the hold notice,
(f) set out any rules which are to apply for the purposes of paragraph 5(8)(b) (priority of accounts subject to a hold notice), and
(g) explain the effect of—
(i) paragraphs 5 to 11 (effect of hold notice, duty to notify account holders etc),
(ii) paragraph 12 (penalties), and
(iii) any regulations under paragraph 18(2)(d) or (e) (descriptions of account and amounts in accounts to be disregarded in

addition to those specified in the hold notice under paragraph (d) or (e) above).

(3) The hold notice may specify any other information which HMRC considers might assist the deposit-taker in identifying accounts which P holds with it.

(4) The specified amount must not exceed so much of the relevant debt as remains after deducting—

(a) any amount of that relevant debt specified in any other hold notice given to another deposit-taker on the same day, and

(b) any amount of that relevant debt specified in a hold notice given on an earlier day to a deposit-taker (except to the extent that HMRC has been notified by that deposit-taker under paragraph 6(2) or (4) that there is no held amount in respect of that amount).

(5) In this Part of this Schedule "the safeguarded amount", in relation to a hold notice, means—

(a) unless paragraph (b) applies, £5,000 or such greater amount as may be specified in the hold notice;

(b) if, within the period of 30 days ending with the day on which the hold notice is given to the deposit-taker, HMRC has received a notice under paragraph 6 which states that there is a held amount in respect of any part of the relevant debt, nil.

Effect of hold notice

5 (1) A hold notice requires the deposit-taker—

(a) to put in place hold arrangements as soon as reasonably practicable and, in any event, within the period of 5 working days beginning with the day on which the hold notice is given to the deposit-taker, and

(b) to maintain those arrangements until the hold notice ceases to be in force.

(2) In this paragraph—

(a) "hold arrangements" means such arrangements as are necessary to ensure that the deposit-taker does not do anything that would reduce the amount standing to the credit of a relevant account below the held amount (if any) in relation to that account, and

(b) references to the time the hold notice takes effect are to the time the deposit-taker complies with sub-paragraph (1)(a).

(3) If there is only one relevant account in existence at the time the hold notice takes effect, "the held amount" in relation to that account is—

(a) if the available amount in respect of the account exceeds the safeguarded amount, so much of the amount of the excess as does not exceed the specified amount, and

(b) if the available amount does not exceed the safeguarded amount, nil.

(4) If there is more than one relevant account in existence at the time the hold notice takes effect, "the held amount" in relation to each relevant account is determined as follows—

Step 1

Determine the available amount in respect of each relevant account.

Step 2

Determine the total of the available amounts in respect of all of the relevant accounts.

If that total does not exceed the safeguarded amount, the held amount in relation to each relevant account is nil (and no further steps are to be taken).

In any other case, go to step 3.

Step 3

Match the safeguarded amount against the available amounts in respect of the relevant accounts, taking those accounts in reverse priority order (see sub-paragraph (8)).

Step 4

Match the amount of the specified debt against what remains of the the available amounts in respect of the relevant accounts by taking each relevant account in priority order and matching the amount (or, as the case may be, remaining amount) of the specified debt against the available amount for each account until either—

(a) the amount of the specified debt has been fully matched, or

(b) what remains of the available amounts is exhausted.

"The held amount", in respect of a relevant account, is so much (if any) of the amount standing to the credit of the account as is matched against the amount of the specified debt under this Step.

(5) In this Part of this Schedule "relevant account", in relation to a hold notice, means an account held by P with the deposit-taker other than an account excluded under paragraph 4(2)(d) or by regulations under paragraph 18(2)(d).

(6) "The available amount" means—

(a) in the case of an account other than a joint account, the amount standing to the credit of that account at the time the hold notice takes effect, and

(b) in the case of a joint account, the appropriate fraction of the amount standing to the credit of that account at that time;

so, if no amount stands to the credit of an account at that time, "the available amount" is nil.

(7) "The appropriate fraction", in relation to a joint account, means—

$$\frac{1}{N}$$

where N is the number of persons who together hold the joint account.

(8) "In priority order" means in such order as the deposit-taker considers appropriate subject to ensuring—

(a) that accounts other than joint accounts always have a higher priority than joint accounts, and

(b) subject to paragraph (a), that any rule specified in the hold notice under paragraph 4(2)(f) is adhered to;

and "in reverse priority order" is to be construed accordingly.

(9) In this paragraph references to an amount standing to the credit of an account are to be read subject to any regulations under paragraph 18(2)(e).

(10) A hold notice ceases to be in force at the time—

(a) the deposit-taker receives a notice cancelling it under paragraph 7(1), 9 or the notice is cancelled under paragraph 10, or
(b) the deposit-taker receives a deduction notice in relation to the hold notice (see paragraph 11).

Duty to notify account holders and HMRC

6 (1) This paragraph applies where a deposit-taker receives a hold notice.

(2) The deposit-taker must give to HMRC a notice which sets out—
(a) prescribed information about each of the affected accounts held by P,
(b) the amount of the held amount in respect of each such account,
(c) if any of the affected accounts are joint accounts held by P and one or more other persons, prescribed information about the other person or persons, and
(d) any other prescribed information.

(3) The notice under sub-paragraph (2) must be given within the period of 5 working days beginning with the day on which the deposit-taker complies with paragraph 5(1)(a).

(4) If the deposit-taker determines that there are no affected accounts as a result of the hold notice, it must give HMRC a notice which—
(a) states that this is the case, and
(b) sets out any other prescribed information.

(5) The notice under sub-paragraph (4) must be given within the period of 5 working days beginning with the day on which the deposit-taker makes that determination.

(6) If HMRC receives a notice under sub-paragraph (2) it must as soon as reasonably practicable—
(a) give a copy of the hold notice to P, and
(b) in relation to each affected account, give a notice to each person within sub-paragraph (7) explaining that a hold notice has been given in respect of the account, the effect of the hold notice so far as it relates to the account and the effect of paragraphs 8 to 10.

(7) The persons mentioned in sub-paragraph (6)(b) are—
(a) any person who holds the affected account with P and in respect of whom prescribed information is provided under sub-paragraph (2)(c), and
(b) any interested third party, in relation to the affected account, in respect of whom sufficient information has been given in the notice under sub-paragraph (2) to enable HMRC to give a notice.

(8) After the deposit-taker has given to HMRC the notice required by sub-paragraph (2), the deposit-taker may give a notice, in relation to any affected account, to—
(a) P,
(b) if the account is held by P and one or more other persons, that person or persons, and
(c) any interested third party in relation to the account,

which states that a hold notice has been received by the deposit-taker in respect of the account and the effect of that notice so far as it relates to that account.

(9) For the purposes of this Part of this Schedule, an account is an "affected account" if, as a result of the hold notice, an amount standing to the credit of that account is the held amount in relation to that account (see paragraph 5(3) or (4)).

(10) In this Part of this Schedule "interested third party", in relation to an account with a deposit-taker, means a person who—
(a) is not a holder of the account, but
(b) has a beneficial interest in an amount standing to the credit of the account.

Cancellation of hold notice or reduction of specified amount

7 (1) Where a hold notice is given to a deposit-taker, HMRC may, by a notice given to the deposit-taker—
(a) cancel the hold notice, or
(b) reduce the amount specified in the hold notice as the specified amount.

(2) Where a notice is given under sub-paragraph (1), HMRC must give P a copy of that notice.

(3) Where the deposit-taker is given a notice under sub-paragraph (1), it must as soon as reasonably practicable and, in any event, within the period of 5 working days beginning with the day the notice is given—
(a) if the hold notice is cancelled, cancel the arrangements mentioned in paragraph 5(1), and
(b) if the specified amount in the hold notice is reduced, make such adjustments to those arrangements as are necessary to give effect to that change.

Making objections to hold notice

8 (1) Where a hold notice is given to a deposit-taker, a person within sub-paragraph (2) may object to HMRC against—
(a) the giving of the hold notice, or
(b) the total of the held amounts by virtue of the hold notice or the held amount in relation to a particular account.

(2) The persons who may object are—
(a) P,
(b) any person given a notice under paragraph 6(6)(b), and
(c) any interested third party in relation to an affected account.

(3) An objection under sub-paragraph (1)(a) may only be made on one or more of the following grounds—
(a) that the relevant debt has already been paid,
(b) that the conditions for giving the hold notice were not met,
(c) that the hold notice is causing or will cause the person making the objection exceptional hardship, or

(d) that there is an interested third party in relation to the affected account or, if there is more than one affected account, all of them.

(4) An objection under sub-paragraph (1)(b) may only be made on one or more of the following grounds—

(a) that the relevant debt has been partly paid,

(b) that the hold notice is causing or will cause the person making the objection exceptional hardship, or

(c) that there is an interested third party in relation to an affected account.

(5) Objections under sub-paragraph (1) may only be made within the period of 30 days beginning with—

(a) in the case of—

(i) P, or

(ii) an interested third party in relation to an affected account who has not been given a notice under paragraph 6(6)(b),

the day on which a copy of the hold notice is given to P under paragraph 6(6)(a), and

(b) in the case of a person given a notice under paragraph 6(6)(b), the day on which that notice is given.

Consideration of objections

9 (1) HMRC must consider any objections made in accordance with paragraph 8.

(2) Having considered the objections, HMRC must determine whether—

(a) to confirm the hold notice (with or without amendment), or

(b) to cancel the hold notice.

(3) An amendment under sub-paragraph (2)(a) may, in particular—

(a) amend the amount of the relevant debt in respect of which the hold notice has effect;

(b) amend the amount specified in the hold notice as the safeguarded amount;

(c) specify one or more accounts which, for the purposes of the hold notice and this Part of this Schedule, are to be treated as if they were not accounts held by P with the deposit-taker;

(d) require the hold notice and this Part of this Schedule to have effect as if a specified amount were not standing to the credit of a specified account held by P.

(4) HMRC must give a notice stating its determination to—

(a) P,

(b) each person other than P who objected, and

(c) any other person who holds a relevant account with P, or is an interested third party in relation to a relevant account, and whom HMRC considers is affected by the determination.

(5) If HMRC cancels the hold notice, it must give P and the deposit-taker a notice to that effect.

(6) If HMRC amends the hold notice, it must give the deposit-taker a copy of the amended hold notice.

(7) Where a copy of the amended hold notice is given to the deposit-taker under sub-paragraph (6)—
 (a) the deposit-taker must make such adjustments to the arrangements mentioned in paragraph 5(1) as are necessary to give effect to the amended hold notice, and
 (b) paragraph 6 applies (with any necessary modifications) in relation to the amended hold notice as it applies in relation to the original hold notice, except that in paragraph 6(6)(b) the reference to paragraphs 8 to 10 is to read as a reference to paragraph 10 only.

(8) The deposit-taker must comply with the duty under sub-paragraph (7)(a) as soon as reasonably practicable and, in any event, within the period of 5 working days beginning with the date on which it is given the copy of the notice.

(9) Nothing in paragraph 8 (making objections to hold notice) applies in relation to an amended hold notice.

Appeals against hold notice

10 (1) Where a hold notice is confirmed (with or without amendment) under paragraph 9, a person within sub-paragraph (2) may appeal against—
 (a) the failure by HMRC to cancel the hold notice under paragraph 9, or
 (b) the total of the held amounts, or the held amount in relation to a particular account, by reason of the hold notice or, if it has been amended, the amended hold notice.

(2) The persons who may appeal are—
 (a) any person given a notice of HMRC's determination under paragraph 9(4), and
 (b) any interested third party in relation to an affected account.

(3) An appeal under sub-paragraph (1) must be made—
 (a) in England and Wales, to the county court, and
 (b) in Northern Ireland, to a county court.

(4) An appeal under sub-paragraph (1)(a) may only be made on one or more of the following grounds—
 (a) that the relevant debt has already been paid,
 (b) that the conditions for giving the hold notice were not met,
 (c) that the hold notice is causing or will cause the person making the appeal exceptional hardship, or
 (d) that there is an interested third party in relation to the affected account or, if there is more than one affected account, all of them.

(5) An appeal under sub-paragraph (1)(b) may only be made on one or more of the following grounds—
 (a) that the relevant debt has already been partly paid,
 (b) that the hold notice is causing or will cause the person making the appeal exceptional hardship, or
 (c) that there is an interested third party in relation to an affected account.

(6) An appeal under this paragraph may only be made within the period of 30 days beginning—

(a) in the case of a person given a notice of HMRC's determination under paragraph 9(4), with the day on which that notice is given to that person, and
(b) in the case of an interested third party to whom paragraph (a) does not apply, the day on which P is given such a notice.

(7) A notice of appeal must state the grounds of appeal.

(8) On an appeal under this paragraph, the court may—
(a) amend or cancel the hold notice, or
(b) dismiss the appeal.

(9) An amendment under sub-paragraph (8)(a) may, in particular—
(a) amend the amount of the relevant debt in respect of which the hold notice has effect;
(b) amend the amount specified in the hold notice as the safeguarded amount;
(c) specify one or more accounts which, for the purposes of the hold notice and this Part of this Schedule, are to be treated as if they were not accounts held by P with the deposit-taker;
(d) require the hold notice and this Part of this Schedule to have effect as if a specified amount were not standing to the credit of a specified account held by P.

(10) Where an appeal on the ground in sub-paragraph (4)(c) or (5)(b) (or a further appeal following such an appeal) is pending, the court to which the appeal is made may, on an application made by the person who made the appeal—
(a) suspend the effect of the hold notice if adequate security is provided in respect of so much of the relevant debt as is specified in the hold notice,
(b) suspend the effect of the hold notice in relation to a particular account if adequate security is provided in respect of the held amount in respect of that account, or
(c) suspend the effect of the hold notice in relation to any part of the held amount standing to the credit of a particular account, if adequate security is provided in respect of that part.

(11) Nothing in Part 5 of TMA 1970 (appeals and other proceedings) applies to an appeal under this paragraph.

Deduction notice

11 (1) If it appears to HMRC that a person in respect of whom a hold notice given to a deposit-taker is in force—
(a) has failed to pay a relevant debt, and
(b) holds one or more accounts with the deposit-taker in respect of which there is a held amount in relation to that debt,

HMRC may give a notice under this paragraph ("a deduction notice") to the deposit-taker in respect of the account or accounts and that person.

(2) A deduction notice may not be made in respect of an account unless—
(a) the period for making an objection under paragraph 8 has expired and either no objections were made or any objection made has been determined, and

(b) if objections were made and determined, the period for appealing under paragraph 10 has expired and any appeal has been finally determined.

(3) The deduction notice must—
(a) specify the name of the person in respect of whom it is given,
(b) specify the account or accounts in respect of which it is given,
(c) in relation to each specified account, specify—
(i) the amount that is to be deducted from the account and paid to the Commissioners, and
(ii) the day by which the payment must be made, and
(d) explain the effect of paragraph 12 (penalties).

(4) The total amount specified in relation to accounts under sub-paragraph (3)(c) must not exceed the unpaid amount of the relevant debt, and the amount specified in relation to a particular account must not exceed the held amount in relation to that account.

(5) HMRC must—
(a) give a copy of the deduction notice to the person in respect of whom it is given, and
(b) in relation to each account in respect of which the notice is given, give a notice to each person within sub-paragraph (6) explaining that a deduction notice has been given in respect of that account and the effect of the deduction notice so far as it relates to that account.

(6) The persons mentioned in sub-paragraph (5)(b) are—
(a) if the account is a joint account, any person who holds the account with P, and
(b) any person—
(i) who is an interested third party in relation to the account whom HMRC knows will be affected by the deduction notice, and
(ii) about whom HMRC has sufficient information to enable it to give the notice under subsection (5)(b).

(7) The deduction notice requires the deposit-taker—
(a) to make the specified payments to the Commissioners from the affected accounts by the specified days, and
(b) not to do anything (otherwise than in accordance with paragraph (a)) during the period in which the notice is in force that would reduce the amount standing to the credit of any affected account below the sum of the balance required to make the payment specified in relation to that account.

(8) HMRC may, by a notice given to the deposit-taker, amend or cancel the deduction notice, and where it does so it must—
(a) give a copy of the notice under this sub-paragraph to the person in respect of whom the deduction notice was given, and
(b) in relation to each account affected by the amendment or cancellation, give a notice to each person within sub-paragraph (6) explaining the effect of the amendment or cancellation so far as it relates to that account.

(9) The deduction notice—

(a) comes into force at the time it is received by the deposit-taker, and
(b) ceases to be in force at the time—
(i) the deposit-taker receives a notice cancelling it under sub-paragraph (8), or
(ii) the deposit-taker makes the final specified payment.

Penalties

12 (1) This paragraph applies to a deposit-taker who—
(a) fails to comply with an information notice, a hold notice or a deduction notice,
(b) fails to comply with an obligation under paragraph 6(2) in accordance with paragraph 6(3) (obligation to notify HMRC of effects of hold notice),
(c) fails to comply with an obligation under paragraph 6(4) in accordance with paragraph 6(5) (obligation to notify HMRC if no affected accounts),
(d) fails to comply with an obligation under paragraph 7(3) (obligation to adjust hold arrangements where specified amount is reduced),
(e) fails to comply with an obligation under paragraph 9(7) (obligation to adjust held arrangements where hold notice is amended following objections) in accordance with paragraph 9(8),or
(f) following receipt of an information notice or hold notice in relation to an account or accounts held with the deposit-taker by a person ("the affected person"), makes a disclosure of information to the affected person or any other person in circumstances where that disclosure is likely to prejudice HMRC's ability to use the provisions of this Part of this Schedule to recover a relevant debt owed by the affected person.

(2) In sub-paragraph (1)(f), the reference to a disclosure of information does not include the giving of a notice in accordance with paragraph 6(8) to the affected person in respect of a hold notice.

(3) The deposit-taker is liable to a penalty of £300.

(4) If a failure within sub-paragraph (1)(a) to (e) continues after the day on which a penalty is imposed under sub-paragraph (3) in respect of the failure, the deposit-taker is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure continues.

(5) A failure by a deposit-taker to do anything required to be done within a limited period of time does not give rise to liability to a penalty under this paragraph if the deposit-taker did it within such further time, if any, as HMRC may have allowed.

(6) Liability to a penalty under this paragraph 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 or (as the case may be) disclosure.

(7) For the purposes of this paragraph—
(a) where the deposit-taker relies on any other person to do anything, that is not a reasonable excuse unless the deposit-taker took reasonable care to avoid the failure or disclosure, and

(b) where the deposit-taker had a reasonable excuse for the failure but the excuse has ceased, the deposit-taker is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalty

13 (1) Where a deposit-taker becomes liable for a penalty under paragraph 12—
(a) HMRC may assess the penalty, and
(b) if HMRC does so, it must notify the deposit-taker in writing.

(2) An assessment of a penalty under paragraph 12 must be made within the period of 12 months beginning with the latest of the following—
(a) the day on which the deposit-taker became liable to the penalty,
(b) the end of the period in which notice of an appeal in respect of the hold notice could have been given, and
(c) if notice of such an appeal is given, the day on which the appeal is finally determined or withdrawn.

Appeal against penalty

14 (1) A deposit-taker may appeal against—
(a) a decision that a penalty is payable by the deposit-taker under paragraph 12, or
(b) a decision as to the amount of such a penalty.

(2) Notice of an appeal must be given to HMRC before the end of the period of 30 days beginning with the day on which the notification under paragraph 13 was given.

(3) Notice of an appeal 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) Subject to this paragraph and paragraph 15, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

Enforcement of penalty

15 (1) A penalty under paragraph 12 must be paid—
(a) before the end of the period of 30 days beginning with the day on which the notification under paragraph 13 was given, or
(b) if notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the day on which the appeal is finally determined or withdrawn.

(2) A penalty under paragraph 12 may be enforced as if it were income tax charged in an assessment and due and payable.

Protection of deposit-takers acting in good faith

16 A deposit-taker is not liable for damages in respect of anything done in good faith for the purposes of complying with a hold notice or a deduction notice.

Power to modify amounts and time limits

17 (1) The Commissioners may by regulations amend any of the following provisions by substituting a different amount for the amount for the time being specified there—
(a) paragraph 2(2) (requirement that relevant debt is a minimum sum);
(b) paragraph 4(5)(a) (meaning of "the safeguarded amount");
(c) paragraph 12(3) or (4) (level of penalties).

(2) The Commissioners may by regulations amend any of the following provisions by substituting a different number of days for the number of days for the time being specified there—
(a) paragraph 3(4) (time limit for complying with information notices);
(b) paragraph 5(1)(a) (time limit for complying with hold notices);
(c) paragraph 6(3) or (5) (time limit for notifying HMRC of effects of hold notice);
(d) paragraph 7(3) (time limit for effecting amendments to hold notices);
(e) paragraph 8(5) (time limit for making objections);
(f) paragraph 9(8) (time limit for effecting amendments to hold notices).

Power to make further provision

18 (1) The Commissioners may by regulations make provision supplementing this Part of this Schedule.

(2) The regulations may, in particular, make provision—
(a) about the form and content of a notice under this Part of this Schedule;
(b) about the manner in which a notice or a copy of a notice is to be given, or the circumstances in which a notice or a copy of a notice is to be treated as given, for the purposes of this Part of this Schedule;
(c) specifying circumstances in which a notice under this Part of this Schedule may not be given;
(d) specifying descriptions of account in respect of which a hold notice or deduction notice has no effect;
(e) specifying circumstances in which amounts standing to the credit of an account are to be disregarded for the purposes of a hold notice or deduction notice;
(f) about fees a deposit-taker may charge a person in respect of whom a notice is given under this Part of this Schedule towards administrative costs in complying with that notice;
(g) with respect to priority as between a notice under this Part of this Schedule and—
(i) any other such notice, or
(ii) any notice or order under any other enactment.

Regulations

19 (1) Regulations under this Part of this Schedule may—
(a) make different provision for different purposes,
(b) include supplementary, incidental and consequential provision, or
(c) make transitional provision and savings.

(2) Regulations under this Part of this Schedule are to be made by statutory instrument.

(3) A statutory instrument containing regulations under this Part of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons if it contain one or both of the following only—
(a) regulations which prescribe information for the purposes of paragraph 3(3) or any provision of paragraph 6, or
(b) regulations under paragraph 17(2).

(4) Any other statutory instrument containing regulations under this Part of this Schedule may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

Joint accounts

20 In this Part of this Schedule a reference to an account held by a person includes a reference to a joint account held by that person and one or more other persons.

Defined terms

21 (1) In this Part of this Schedule—
"affected account" has the meaning given by paragraph 6(9);
"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;
"contract settlement" means an agreement made in connection with any person's liability to make a payment to the Commissioners under or by virtue of an enactment;
"deduction notice" has the meaning given by paragraph 11;
"deposit-taker" means a person who, in the course of a business, may lawfully accept deposits in the United Kingdom (see sub-paragraph (2));
"hold notice" has the meaning given by paragraph 4;
"HMRC" means Her Majesty's Revenue and Customs;
"information notice" has the meaning given by paragraph 3;
"interested third party", in relation to an account held with a deposit-taker, has the meaning given by 6(10);
"joint account", in relation to a person, means an account held by the person and one or more other persons;
"notice" means notice in writing;
"prescribed" means prescribed by regulations made by the Commissioners;
"relevant account" has the meaning given by paragraph 5(5);
"the safeguarded amount" has the meaning given by paragraph 4(5);
"the specified amount" has the meaning given by paragraph 4(2)(b);

"the tribunal" means the First-tier Tribunal;

"working day" means a day other than—

(a) Saturday or Sunday,

(b) Christmas Eve, Christmas Day or Good Friday, or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales or Northern Ireland.

(2) The definition of "deposit-taker" in sub-paragraph (1) is to be read with—

(a) section 22 of the Financial Services and Markets Act 2000 (regulated activities),

(b) any relevant order under that section, and

(c) Schedule 2 to that Act.

Extent

22 This Part of this Schedule extends to England and Wales and Northern Ireland.

PART 2

MISCELLANEOUS AMENDMENTS

TMA 1970

23 In section 28C of TMA 1970 (determination of tax where not return delivered), after subsection (4) insert—

"(4A) Where—

(a) action is being taken under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) for the recovery of an amount ("the original amount") of tax charged by a determination under this section, and

(b) before that action is concluded, the determination is superseded by such a self-assessment as is mentioned in subsection (3),

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not been paid and does not exceed the original amount."

Insolvency Act 1986

24 The Insolvency Act 1986 is amended as follows.

25 In section 126 (power to stay or restrain proceedings against company), after subsection (2) insert—

"(3) Subsection (1) applies in relation to any action being taken in respect of the company under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) as it applies in relation to any action or proceedings mentioned in paragraph (b) of that subsection."

26 In section 128 (avoidance of attachments, etc), after subsection (2) insert—

"(3) In subsection (1) "attachment" includes a hold notice or a deduction notice under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts), and, if subsection (1) has effect in relation to a deduction notice, it also has effect in relation to the hold notice to which it relates (whenever the hold notice was given)."

27 In section 130 (consequences of winding-up order), after subsection (3) insert—

"(3A) In subsections (2) and (3), the reference to action or proceedings includes action in respect of the company under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts)."

28 (1) Section 176 (preferential charge on goods distrained) is amended as follows.

(2) For subsection (2) substitute—

"(2) Subsection (2A) applies where—

(a) any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the company, or

(b) Her Majesty's Revenue and Customs has been paid any amount from an account of the company under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts),

in the period of 3 months ending with the date of the winding-up order.

(2A) Where this subsection applies—

(a) in a case within subsection (2)(a), the goods or effects, or the proceeds of their sale, and

(b) in a case within subsection (2)(b), the payment,

is charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting them."

(3) Accordingly, in the heading for the section after "distrained" insert ", etc".

29 In section 183 (effect of execution or attachment (England and Wales)), after subsection (4) insert—

"(4A) For the purposes of this section, Her Majesty's Revenue and Customs is to be regarded as having attached a debt due to a company if it has taken action under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction for accounts) as a result of which an amount standing to the credit of an account held by the company is—

(a) subject to hold arrangements (within the meaning of paragraph 5(2) of that Schedule), or

(b) the subject of a deduction notice under paragraph 11 of that Schedule."

30 Section 346 (enforcement procedures), after subsection (1)—

"(1A) For the purposes of this section, Her Majesty's Revenue and Customs is to be regarded as having attached a debt due to a person if it has taken action under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) as a result of which an amount standing to the credit of an account held by that person is—

(a) subject to hold arrangements (within the meaning of paragraph 5(2) of that Schedule), or

(b) the subject of a deduction notice under paragraph 11 of that Schedule."

31 (1) In section 347 (distress, etc), for subsection (3) substitute—

"(3) Subsection (3A) applies where—

(a) any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, or

(b) Her Majesty's Revenue and Customs has been paid any amount from an account of an individual under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) and the individual is adjudged bankrupt before the end of the period of 3 months beginning with the payment.

(3A) Where this subsection applies—

(a) in a case within subsection (3)(a), the goods or effects, or the proceeds of their sale, and

(b) in a case within subsection (3)(b), the payment,

is charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting them."

(2) In paragraph 40(3) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (which amends section 347(3) of the Insolvency Act 1986 to substitute "made" for "adjudged"), the reference to subsection (3) of section 347 is to be read as a reference to the version of subsection (3) substituted by sub-paragraph (1) of this paragraph.

FA 1998

32 In Schedule 18 to FA 1998 (company tax returns, assessments etc), in paragraph 40, after sub-paragraph (4) insert—

"(5) Where—

(a) action is being taken under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement of deduction from accounts) for the recovery of an amount ("the original amount") of any tax charged by a determination under paragraph 36 or 37, and

(b) before that action is concluded, the determination is superseded by a self-assessment,

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not been paid and does not exceed the original amount."

FA 2003

33 In Schedule 10 to FA 2003 (stamp duty land tax: returns etc), in paragraph 27, after sub-paragraph (3) insert—

"(4) Where—
(a) action is being taken under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement of deduction from accounts) for the recovery of an amount ("the original amount") of tax charged by a Revenue determination, and
(b) before that action is concluded, the determination is superseded by a self-assessment,

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not yet been paid and does not exceed the original amount."

FA 2013

34 In Schedule 33 to FA 2013 (annual tax on enveloped dwellings: returns etc), in paragraph 20, after sub-paragraph (3) insert—

"(4) Where—
(a) action is being taken under Part 1 of Schedule 1 to FA 2015 (enforcement of deduction from accounts) for the recovery of an amount ("the original amount") of tax charged by an HMRC determination, and
(b) before that action is concluded, the determination is superseded by a self-assessment,

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not yet been paid and does not exceed the original amount."

EXPLANATORY NOTE

ENFORCEMENT BY DEDUCTION FROM ACCOUNTS

SUMMARY

1. Clause [X} and Schedule [Y] introduce a new power to allow HMRC to recover debts due to it (including tax and tax credit debts) directly from the bank and building society accounts (including Individual Savings Accounts) of debtors. This is also known as the Direct Recovery of Debts ("DRD").

2. This power can only be used to recover debts of more than £1,000, and is subject to a number of statutory safeguards. One such safeguard is the requirement on HMRC to be satisfied that the debtor is aware they owe HMRC a debt – to meet this requirement HMRC will ensure that every debtor will receive a face-to-face visit from HMRC's agents, before their debts are considered for recovery through DRD. This will provide a further opportunity for HMRC to personally identify the taxpayer and confirm it is their debt; explain to debtors what they owe and discuss options to resolve it; and identify debtors who are in a vulnerable position and offer them the support they need, including removing them from the DRD process.

3. Only debtors who have received this face-to-face visit, have not been identified as vulnerable, have sufficient money in their accounts and have still refused to settle their debts will be considered for debt recovery through DRD.

4. Another key statutory safeguard is the requirement that HMRC must always leave a minimum of £5,000 across a debtor's bank and building society accounts once the debt has been held.

5. Debtors affected by this policy will have 30 days to object before any money is transferred to HMRC. If debtors do not agree with HMRC's decision, they will be able to appeal against this to a County Court on specified grounds, including hardship and third party rights.

6. This power will commence at Royal Assent of Finance Bill 2015. The Government has stated that in order to allow for an extended period of scrutiny, this measure will be legislated for in the next Parliament.

7. This draft legislation is the Government's first attempt to formally set out the DRD process, including the responsibilities it places on the various parties involved. Revised safeguards for this policy were announced in the Government's consultation response published on 21 November. The Government welcomes comments on this draft legislation, to ensure it meets the policy objectives it has set out.

DETAILS OF THE CLAUSE

8. Clause 1 introduces the Schedule, and sets out the Treasury's powers to make consequential, incidental or supplementary amendments, including to primary legislation.

DETAILS OF THE SCHEDULE

9. Paragraph 2 defines the debts which are subject to DRD, using the concept of "relevant debt". Three conditions must be satisfied in order for DRD to apply. Condition A is that the sum is at least £1,000. Condition B is that the sum is either an "established debt" or one due under the accelerated payments legislation in Finance Act 2014. Condition C is that HMRC is satisfied that the debtor is aware that they owe the debt to HMRC. In its response to the consultation, the Government committed to having a face to face meeting to fulfil these objectives, including that HMRC is satisfied that the debtor knows that they owe a debt to HMRC and can assess whether or not the debtor is vulnerable, and remove them from the DRD process.

10. Paragraph 2(5) provides that an established debt is one against which there is no right of appeal or (where there is a right of appeal) the appeal period has either expired or the appeal has been settled or withdrawn.

11. Paragraph 3 provides a definition of an "information notice" and when it may be issued to a deposit-taker. If HMRC believes that a person has failed to pay a relevant debt, they may issue an information notice to a deposit taker, where it appears the person holds one or more accounts with that deposit-taker. The information notice requires the deposit taker to provide HMRC with "prescribed information" within 10 working days about accounts held with them by the person. The information deposit-takers have to provide will be prescribed in secondary legislation.

12. Paragraph 4(1) and (2) gives HMRC the power to issue a "hold notice". A hold notice can only be issued to a deposit-taker by HMRC where it appears that a person has failed to pay a relevant debt and they hold one or more accounts with the deposit-taker. The hold notice must set out in particular:

a. enough information for the deposit-taker to be able to identify the account holder and any account(s) to which the hold notice will apply,
b. the amount of the relevant debt in respect of which the notice will have effect ("the specified amount"),
c. the "safeguarded amount" (the amount which must always be left available to the debtor across their accounts – defined in sub-paragraph (4)),
d. the order of priority of accounts subject to the notice,
e. any descriptions of account which (in whole or part) are to be disregarded for the purposes of the hold notice.

13. Paragraph 4(4) provides for rules which have the effect that where hold notices are issued for the same debt to more than one deposit-taker, the total amount which might be held under those notices cannot exceed the total debt due to HMRC. This is to ensure HMRC can never use DRD to collect more than is due to it.

14. Paragraph 4(5) provides a definition of "the safeguarded amount", which must be specified in the hold notice. This is a minimum of £5,000 which will continue to be available to the debtor whilst the hold is in place. HMRC will have the discretion to set the safeguarded amount at a higher amount in cases where it is reasonable to do so (for example, where a business may need to pay salaries to its employers whilst the hold notice is in effect). However the hold notice does not need to specify a safeguarded amount if the deposit taker has already safeguarded £5,000 under a previously issued hold notice in respect of the same debt, within the last 30 days.

15. Paragraph 5(1) and (2) sets out the requirement for the deposit-taker to give effect to a hold notice as soon as reasonably practicable after that notice is issued, and in any case within 5 working days from that date. It also requires the deposit-taker to ensure that until the hold notice ceases to have effect they must not allow the credit balance in each account subject to the hold notice to fall below the "held amount" (this concept is defined in paragraph 5(3) and (4), depending on how many accounts are affected by the hold notice).

16. Paragraph 5(3) explains that where only one account is affected by a hold notice the held amount is calculated as follows. The deposit-taker must first deduct the safeguarded amount (the amount specified in the notice that must continue to be available to the debtor) from the total amount available in the affected account. If there is less than the safeguarded amount available in the affected account, the held amount is nil, so no hold is placed on that account. If there is money left, a hold will be placed on the remaining credit balance up to the amount of the relevant debt – the amount of that hold is the held amount.

17. Paragraph 5(4) explains that where there is more than one account subject to the same hold notice the held amount is calculated as follows. The deposit-taker must first determine the total amount available across all the accounts affected by the hold notice. Only if that total exceeds the safeguarded amount can any hold be placed on the accounts. If there is more than the safeguarded amount across the accounts, the deposit-taker proceeds to apply that safeguarded amount to those accounts. They must apply it first to the account which has the lowest priority (i.e. 'reverse priority order' – paragraph 5(8) defines "priority order"). So, it will be applied in the first instance to joint accounts (to best protect the rights of third parties), and then to sole accounts in opposite priority order to that which may be specified in the hold notice (for example, the order in the hold notice may say DRD applies to savings accounts first, then current accounts – so the safeguarded amount is matched first against current accounts, then savings accounts).

18. Once the safeguarded amount has been fully matched against the available amounts across the accounts, the remainder of those accounts may be subject to a hold. The amount which is to be held is identified by applying the "specified debt" (the amount of debt specified in the hold notice) to the remainder in the available accounts, in the order of priority provided for under paragraph 5(8). So, it will be applied in the first instance to sole accounts in such priority order as may be specified in the hold notice, and then to any joint accounts.

19. Paragraph 5(6) and (7) define the concepts of 'relevant amount' and 'appropriate fraction'. The latter concept is relevant to determining what proportion of a joint account a debtor is deemed to own. A pro-rata approach is adopted – the debtor is deemed to own half

if it is a joint account held with one other person; a third if it is held with two other people, and so forth.

20. Paragraph 5(8) defines the priority order in which the hold should be applied to the relevant accounts. Under paragraph 5(8)(a) joint accounts will always have a lower priority than other accounts – to protect third party rights. Under paragraph 5(8)(b) and paragraph 4(2)(f) HMRC can specify the order in which the hold should be applied to other types of accounts. However, there may be cases where there are relevant accounts with the deposit taker that are of equal priority under the hierarchy HMRC specifies in the hold notice. In these circumstances, deposit-takers will have limited discretion to determine the order in which they apply the hold notice to these accounts.

21. Taking a worked-example to explain the above:

- P owes HMRC a debt of £3,000 which has met all the legal and policy requirements for DRD. P holds three accounts with the deposit-taker– a joint account with his wife of £10,000, a savings account in his name only with £3,000 and a current account in his name only with £3,000.
- If HMRC issues the deposit-taker with a hold notice in respect of this debt, it may provide in the hold notice that the safeguarded amount is £5,000 (the minimum safeguarded amount).
- Under paragraph 5(7), P is deemed to own £5,000 of the joint account held with his wife.
- Under paragraph 5(8)(a) all ‘sole accounts’ have higher priority than joint accounts. So, when applying the safeguard of £5,000 in ‘reverse priority order’ the deposit-taker would first match it against the £5,000 which P is deemed to hold in the joint-account – exhausting that safeguard in this case.
- The deposit-taker then looks to place a hold on the remaining £6,000 (the total amount available in the two other accounts P holds). To determine how to apply this hold the deposit-taker will look to the terms of the hold notice – if HMRC has provided that the hold is to be applied to savings accounts ahead of current accounts, then the deposit-taker would hold the £3,000 in the savings account, leaving P’s current account untouched.

22. Paragraph 5(10) provides when a hold notice ceases to have effect

23. Paragraph 6 describes the duty of the deposit-taker to notify HMRC that they have applied a hold notice to one or more accounts, and the consequent obligation on HMRC to notify affected parties. The deposit-taker is also provided with a discretion to notify anyone affected by the hold, but they are only entitled to do this once they have imposed the hold (this ensures they do not become liable for a penalty under paragraph 12(1)(f)).

24. Under this paragraph the deposit-taker must provide HMRC with “prescribed information” within 5 working days of the day it places a hold on the account. Secondary legislation will in due course specify what this prescribed information comprises, and this will include details of any joint-account holders or other third parties which the deposit-taker is aware have a beneficial interest in respect of an account affected by the notice. On receipt of

this notification from the deposit-taker HMRC must as soon as reasonably practicable notify the debtor and any joint account holders or third parties that the deposit-taker has notified to them. HMRC will provide a copy of the hold notice to the debtor, but will only provide joint-account holders and interested third parties with details of how the account they have an interest in is affected, and of their rights to bring objections and an appeal.

25. Paragraph 7 makes provision for HMRC of its own accord to cancel or reduce the specified amount in the hold notice it has issued, and places requirements on the deposit-taker to implement any notice making such changes which it receives.

26. Paragraphs 8(1)-(2) explains that the debtor, anyone who holds a joint account with the debtor which is affected by the hold notice, or an interested third party, can object to HMRC. Objections under paragraph 8(1)(a) are made against the fact a hold notice has been issued at all by HMRC, whilst objections under paragraph 8(1)(b) are in effect on the basis of quantum.

27. Paragraphs 8(3) and 8(4) set out the grounds on which an objection against a hold notice can be made. These grounds vary depending on whether the objection is against the hold notice as a whole, or just on the basis of quantum.

28. Paragraph 8(5) provides that objections must be brought within 30 days from the date the hold notice is given, or for a third-party who was not given such notice, within 30 days from the date the debtor is given notice.

29. Paragraph 9 provides how HMRC will deal with any objections which are brought. On receipt of objections, HMRC can reject them entirely and confirm the hold notice without amendment, accept them in part and amend the hold notice accordingly, or accept them entirely and cancel the hold notice. When HMRC receives objections (for example which suggest that HMRC has made a mistake or that the effect of the hold notice will cause undue hardship), it will promptly carry out an internal review of the case. If there is clear evidence that DRD action will cause undue hardship, or that HMRC has made a mistake, it will instruct the deposit-taker to release an appropriate amount to the debtor.

30. Paragraph 9(3) gives examples of the amendments to a hold notice that may be made by HMRC after considering an objection. HMRC may amend the amount of the relevant debt, amend the amount specified as safeguarded (to allow additional funds to be made available to the debtor, in excess of the £5,000 minimum), exclude accounts from the notice, or exclude a specified credit balance in an account from the notice.

31. Paragraphs 9(4) – (6) requires HMRC to notify their decision to each person who objected to the hold notice and to notify the deposit holder where the hold notice is cancelled or amended. HMRC is also required to notify all other third parties who it is aware of who may be affected by an amended hold notice.

32. Paragraph 9(7)-(8) provide that when a deposit-taker is given an amended hold notice they must as soon as reasonably practicable and in any event within 5 working days make the necessary adjustments to their hold arrangements.

33. Paragraph 10 provides that the debtor, anyone who holds a joint account with the debtor which is affected by the hold notice, or an interested third party, can appeal against a hold notice, or against the amount which must be held by virtue of a hold notice. An appeal can only be made where an objection has been determined in accordance with paragraph 9.

34. Paragraphs 10(4) and 10(5) set out the grounds for making an appeal e.g. that the hold notice is causing undue hardship. These vary depending on whether an appeal is brought against the decision not to cancel the hold notice, or just on the basis of quantum. As set out in paragraph 2, this measure will only be applied to established debts where debtors will have already had the option to appeal against the underlying liability. Appeals brought at this stage are therefore confined to issues relating to HMRC's decision to use DRD rather than another enforcement tool, or the way in which it has used DRD in a particular case.

35. An appeal under this paragraph must be made within 30 days from the day on which the debtor, joint-account holder or interested third party was given notice by HMRC of its determination under paragraph 9(4). For interested third parties who have not received a notice from HMRC (for example, because HMRC and the deposit-taker were unaware of them), but who nonetheless found out that an account they have an interest in is affected by a hold-notice (for example, because the debtor tells them), they will have 30 days from the day HMRC gave the debtor notice of its determination under paragraph 9(4).

36. Appeals are brought to the County Court. Paragraph 10(8) - (10) sets out the powers of that Court on an appeal under this paragraph. The Court's power to amend the hold notice is the same as HMRC's power to make amendments under paragraph 9(3) in determining an objection. However, paragraph 10(10) permits the Court to suspend the effect of all or part of a hold notice where adequate security is provided by the debtor or another.

37. Paragraph 11(1) – (2) sets out HMRC's power to give a deduction notice to a deposit-taker. A deduction notice can only be issued where a hold notice is in force in respect of which money is being held by the deposit-taker under that notice, and there is no longer any possibility of objections or appeals continuing or being made in respect of that hold notice. Under paragraph 11(3) the deduction notice must specify in particular the amounts which are to be deducted, and by when payment to HMRC has to be made. Paragraph 11(4) is to ensure that the amounts to be deducted cannot exceed what is owed to HMRC. Paragraph 11(6)(b) provides that deposit-taker must keep a hold in place on the relevant account until all the necessary payments have been made to HMRC, at which point the deduction notice automatically ceases to have force.

38. Paragraph 12 provides for penalties to be chargeable where a deposit-taker fails to comply with the terms of an information notice, a hold notice or a deduction notice, or fails to adjust hold arrangements when required to do so. Also, liability for a penalty will arise under paragraph 12(1)(f) if after receipt of an information notice or hold notice the deposit-taker makes a disclosure which has the effect of 'tipping-off' the debtor. These penalties comprise a fixed penalty of £300 and a daily-default penalty of £60.

39. Paragraph 12(5) provides that HMRC may extend the time limit for a deposit-taker to comply with a notice, and that no penalty will be chargeable during the extended period. Paragraph 12(6) and (7) provide the deposit-taker with a reasonable excuse defence.

40. Paragraph 13 sets out the time limits for making an assessment of a penalty under paragraph 12

41. Paragraph 14 provides deposit-takers with a right to appeal against an assessment of a penalty, or against the quantum of a penalty assessment. An appeal must be in writing and given within 30 days of the issue of the penalty assessment. Appeals against a penalty assessment are made to the First-tier Tribunal and are subject to the standard tax appeal provisions contained at Part 5 of TMA 1970.

42. Paragraph 15 requires a penalty to be paid within 30 days of the issue of the penalty notice or within 30 days from the date an appeal against the penalty is finally determined, whichever is later.

43. Paragraph 16 protects deposit-takers from claims to damages in respect of anything they do in good faith when complying with a hold notice or a deduction notice.

44. Paragraph 17 provides HMRC Commissioners with the power to vary specified time limits and sums included in the Schedule.

45. Paragraph 18 provides HMRC Commissioners with powers to make secondary legislation in relation to the administration of the DRD regime. Paragraph 19 then contains further provision relating to how such powers are to be exercised.

46. Paragraphs 20 and 21 contain provisions relating to interpretation.

47. Paragraph 22 provides that DRD only extends to England, Wales and Northern Ireland (so, not to Scotland).

48. Paragraphs 23 – 34 contain miscellaneous amendments to other Acts. Notably, a number of amendments are made to the Insolvency Act 1986. These have the effect of restricting HMRC’s ability to use DRD in specified insolvency situations. Their intention is to mirror a number of the restrictions which apply under that Act to HMRC’s ability to use its existing powers to enforce against goods, or seek ‘attachment’ of money held in accounts. These amendments will only have effect in respect of England and Wales (as that is the extent of the Insolvency Act 1986). Government will separately investigate having equivalent amendments made under the devolved Northern Irish legislation which relates to insolvency.

BACKGROUND NOTE

49. The vast majority of people pay their taxes in full and on time. In 2013-14, £506 billion in revenue was paid by around 35 million taxpayers. Around 90% was paid on time but around £50 billion was not, and became a debt.

50. Some people require an additional prompt or reminder to pay what they owe, and a significant number of people pay once HMRC begins to pursue the money owed. In 2013-14, HMRC made around 16 million contacts with debtors by letter, phone, SMS or other means. This included making more than 900,000 visits to follow up on around 400,000 cases of debt.

51. HMRC encourages people to get in touch as soon as possible if they require additional assistance with their taxes, or believe they will have difficulty paying.

52. However, a very small minority of taxpayers still refuse to pay what they owe, despite having the money to do so. DRD is intended to help to level the playing field. It is a targeted measure that will affect a small number of individuals and businesses who are making an active decision to not pay, or delay paying, the money they owe – even though they have sufficient funds in their accounts.

53. This measure was announced at Budget 2014. A consultation document was published on 6 May 2014. The formal consultation was open until 29 July 2014 and the Government published its response on 21 November 2014. This response announced additional safeguards for debtors, in response to issues raised during the consultation.

54. The Government has stated that, in order to allow for an extended period of scrutiny, this measure will be legislated for in a Finance Bill in 2015 during the next Parliament.

55. HMRC has powers in England, Wales and Northern Ireland to take control of certain types of goods to cover a debt, without the need to apply to court. However this power does not apply to bank accounts and property.

56. Section 61 of the Taxes Management Act 1970 (TMA) granted HMRC the power to seize and sell goods in order to settle tax debts. This is called "distraint", and applied to England, Wales and NI. It still applies to NI, but has been superseded for England and Wales by the Tribunal, Courts and Enforcement Act 2007 (TCEA).

57. TCEA updated the basis of HMRC's powers in England and Wales, alongside wider reforms to the powers granted to other enforcement agents (HMRC, police, or court-appointed bailiffs).

58. HMRC does not have direct seizure powers in Scotland. However, section 128 of the Finance Act 2008 allows HMRC to seek "Summary Warrants" from the Sheriff, which allow a Sheriff's Officer to carry out "diligence" on our behalf. This means that they can seize goods or cash (including from bank accounts) in order to settle tax debts.

59. If you have any questions about this change, or comments on the legislation, please contact Andrew Willis on 03000 579079 (email: andrew.willis@hmrc.gsi.gov.uk).

1 Penalties

(1) Schedule 1 contains provisions amending—
   (a) Schedule 24 to FA 2007 (penalties for errors),
   (b) Schedule 41 to FA 2008 (penalties for failure to notify), and
   (c) Schedule 55 to FA 2009 (penalties for failure to make returns etc).

(2) That Schedule comes into force on such day as the Treasury may by order appoint.

(3) An order under subsection (2)—
   (a) may commence a provision generally or only for specified purposes, and
   (b) may appoint different days for different provisions or for different purposes.

(4) The power to make an order under this section is exercisable by statutory instrument.

SCHEDULE 1

Section 1

PENALTIES

Penalties for errors

1 Schedule 24 to FA 2007 is amended as follows.

2 (1) Paragraph 4 (penalties payable under paragraph 1) is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) If the inaccuracy is in category 0, the penalty is—

(a) for careless action, 30% of the potential lost revenue,

(b) for deliberate but not concealed action, 70% of the potential lost revenue, and

(c) for deliberate and concealed action, 100% of the potential lost revenue."

(3) In sub-paragraph (2)—

(a) in paragraph (a), for "30%" substitute "37.5%",

(b) in paragraph (b), for "70%" substitute "87.5%", and

(c) in paragraph (c), for "100%" substitute "125%".

(4) In sub-paragraph (5), for "3" substitute "4".

3 (1) Paragraph 4A (categorisation of inaccuracies) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(A1) An inaccuracy is in category 0 if—

(a) it involves a domestic matter,

(b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and the tax at stake is income tax, capital gains tax or inheritance tax, or

(c) it involves an offshore matter and the tax at stake is a tax other than income tax, capital gains tax or inheritance tax.

(1) An inaccuracy is in category 1 if—

(a) it involves an offshore matter or an offshore transfer,

(b) the territory in question is a category 1 territory, and

(c) the tax at stake is income tax, capital gains tax or inheritance tax."

(3) In sub-paragraph (2)—

(a) in paragraph (a), after "matter" insert "or an offshore transfer", and

(b) in paragraph (c), for "or capital gains tax" substitute ", capital gains tax or inheritance tax".

(4) In sub-paragraph (3)—

(a) in paragraph (a), after "matter" insert "or an offshore transfer", and

(b) in paragraph (c), for "or capital gains tax" substitute ", capital gains tax or inheritance tax".

(5) After sub-paragraph (4) insert—

"(4A) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (4) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.

(4B) An inaccuracy "involves an offshore transfer" if—

(a) it does not involve an offshore matter,

(b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,

(c) the tax at stake is income tax, capital gains tax or inheritance tax, and

(d) the applicable condition in paragraph 4AA is satisfied."

(6) In sub-paragraph (5), for the words following "revenue" substitute "and does not involve either an offshore matter or an offshore transfer".

(7) In sub-paragraph (6)(a), after "matters" insert "or transfers".

(8) In sub-paragraph (7), for ""Category 1" substitute ""Category 0 territory", "category 1".

4 After paragraph 4A insert—

"4AA(1) This paragraph makes provision in relation to offshore transfers.

(2) Where the tax at stake is income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—

(a) is received in a territory outside the UK, or

(b) is transferred before the filing date to a territory outside the UK.

(3) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—

(a) are received in a territory outside the UK, or

(b) are transferred before the filing date to a territory outside the UK.

(4) Where the tax at stake is inheritance tax, the applicable condition is satisfied if—

(a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable is a transfer of assets, and

(b) after that disposition but before the filing date the assets, or any part of the assets, are transferred to a territory outside the UK.

(5) In the case of a transfer falling within sub-paragraph (2)(b), (3)(b) or (4)(b), references to the income, proceeds or assets transferred

are to be read as including references to any assets derived from or representing the income, proceeds or assets.

(6) In relation to an offshore transfer, the territory in question for the purposes of paragraph 4A is the highest category of territory by virtue of which the inaccuracy involves an offshore transfer.

(7) "Filing date" means the date when the document containing the inaccuracy is given to HMRC.

(8) "Assets" has the same meaning as in paragraph 4A."

5 In paragraph 10 (standard percentage reductions for disclosure), in the Table in sub-paragraph (2), at the appropriate places insert—

"37.5%	18.75%	0%",
"87.5%	43.75%	25%", and
"125%	62.5%	40%".

6 In paragraph 12(5) (interaction with other penalties and late payment surcharges: the relevant percentage)—

(a) before paragraph (a) insert—

"(za) if the penalty imposed under paragraph 1 is for an inaccuracy in category 0, 100%,", and

(b) in paragraph (a), for "100%" substitute "125%".

7 (1) Paragraph 21A (classification of territories) is amended as follows.

(2) Before sub-paragraph (1) insert—

"(A1) A category 0 territory is a territory designated as a category 0 territory by order made by the Treasury."

(3) For sub-paragraph (2) substitute—

"(2) A category 2 territory is a territory that is not any of the following—

(a) a category 0 territory;

(b) a category 1 territory;

(c) a category 3 territory."

(4) For sub-paragraph (7) substitute—

"(7) An instrument containing (whether alone or with other provisions) the first order to be made under sub-paragraph (A1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons."

8 In paragraph 21B(2) (location of assets etc), for "and capital gains tax" substitute ", capital gains tax and inheritance tax".

Penalties for failure to notify

9 Schedule 41 to FA 2008 is amended as follows.

10 (1) Paragraph 6 (amount of penalty: standard amount) is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) If the failure is in category 0, the penalty is—
(a) for a deliberate and concealed failure, 100% of the potential lost revenue,
(b) for a deliberate but not concealed failure, 70% of the potential lost revenue, and
(c) for any other case, 30% of the potential lost revenue."

(3) In sub-paragraph (2)—
(a) in paragraph (a), for "100%" substitute "125%",
(b) in paragraph (b), for "70%" substitute "87.5%", and
(c) in paragraph (c), for "30%" substitute "37.5%".

(4) In sub-paragraph (5), for "3" substitute "4".

11 (1) Paragraph 6A (categorisation of failures) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(A1) A failure is in category 0 if—
(a) it involves a domestic matter,
(b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and the tax at stake is income tax or capital gains tax, or
(c) it involves an offshore matter and the tax at stake is a tax other than income tax or capital gains tax.

(1) A failure is in category 1 if—
(a) it involves an offshore matter or an offshore transfer,
(b) the territory in question is a category 1 territory, and
(c) the tax at stake is income tax or capital gains tax."

(3) In sub-paragraph (2)(a), after "matter" insert "or an offshore transfer".

(4) In sub-paragraph (3)(a), after "matter" insert "or an offshore transfer".

(5) After sub-paragraph (4) insert—

"(4A) A failure "involves an offshore transfer" if—
(a) it does not involve an offshore matter,
(b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
(c) the tax at stake is income tax or capital gains tax, and
(d) the applicable condition in paragraph 6AA is satisfied."

(6) In sub-paragraph (5), for the words following "revenue" substitute "and does not involve either an offshore matter or an offshore transfer".

(7) In sub-paragraph (6)(a), after "matters" insert "or transfers".

(8) In sub-paragraph (9), after "paragraph" insert "and paragraph 6AA".

12 After paragraph 6A insert—

"6AA(1) This paragraph makes provision in relation to offshore transfers.

(2) Where the tax at stake is income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—

(a) is received in a territory outside the UK, or

(b) is transferred before the calculation date to a territory outside the UK.

(3) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—

(a) are received in a territory outside the UK, or

(b) are transferred before the calculation date to a territory outside the UK.

(4) In the case of a transfer falling within sub-paragraph (2)(b) or (3)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.

(5) In relation to an offshore transfer, the territory in question for the purposes of paragraph 6A is the highest category of territory by virtue of which the failure involves an offshore transfer.

(6) In this paragraph "calculation date" means the date by reference to which the potential lost revenue is to be calculated (see paragraph 7)."

13 In paragraph 13 (standard percentage reductions for disclosure), in the Table in sub-paragraph (3), at the appropriate places insert—

"37.5%	case A: 12.5% case B: 25%	case A: 0% case B: 12.5%",

"87.5%	43.75%	25%", and

"125%	62.5%	40%".

Penalties for failure to make returns etc

14 Schedule 55 to FA 2009 is amended as follows.

15 (1) Paragraph 6 (penalty for failure continuing 12 months after penalty date) is amended as follows.

(2) In sub-paragraph (3A)—

(a) before paragraph (a) insert—

"(za) for the withholding of category 0 information, 100%,", and

(b) in paragraph (a), for "100%" substitute "125%".

(3) In sub-paragraph (4A)—

(a) before paragraph (a) insert—

"(za) for the withholding of category 0 information, 70%,", and

(b) in paragraph (a), for "70%" substitute "87.5%".

(4) In sub-paragraph (6), for "3" substitute "4".

16 (1) Paragraph 6A (categorisation of information) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(A1) Information is category 0 information if—

(a) it involves a domestic matter,

(b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and it is information which would enable or assist HMRC to assess P's liability to income tax, capital gains tax or inheritance tax, or

(c) it involves an offshore matter and it is information which would enable or assist HMRC to assess P's liability to a tax other than income tax, capital gains tax or inheritance tax.

(1) Information is category 1 information if—

(a) it involves an offshore matter or an offshore transfer,

(b) the territory in question is a category 1 territory, and

(c) it is information which would enable or assist HMRC to assess P's liability to income tax, capital gains tax or inheritance tax."

(3) In sub-paragraph (2)—

(a) in paragraph (a), after "matter" insert "or an offshore transfer", and

(b) in paragraph (c), for "or capital gains tax" substitute ", capital gains tax or inheritance tax".

(4) In sub-paragraph (3)—

(a) in paragraph (a), after "matter" insert "or an offshore transfer", and

(b) in paragraph (c), for "or capital gains tax" substitute ", capital gains tax or inheritance tax".

(5) After sub-paragraph (4) insert—

"(4A) If the liability to tax which would have been shown in the return is a liability to inheritance tax, assets are treated for the purposes of sub-paragraph (4) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.

(4B) Information "involves an offshore transfer" if—

(a) it does not involve an offshore matter,

(b) it is information which would enable or assist HMRC to assess P's liability to income tax, capital gains tax or inheritance tax,

(c) by failing to make the return, P deliberately withholds the information (whether or not the withholding of the information is also concealed), and

(d) the applicable condition in paragraph 6AA is satisfied."

(6) In sub-paragraph (5), for the words following "if" substitute "it does not involve an offshore matter or an offshore transfer".

(7) In sub-paragraph (6)(a), after "matters" insert "or transfers".

(8) In sub-paragraph (9), after "paragraph" insert "and paragraph 6AA".

17 After paragraph 6A insert—

"6AA(1) This paragraph makes provision in relation to offshore transfers.

(2) Where the liability to tax which would have been shown in the return is a liability to income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—

(a) is received in a territory outside the UK, or

(b) is transferred before the relevant date to a territory outside the UK.

(3) Where the liability to tax which would have been shown in the return is a liability to capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—

(a) are received in a territory outside the UK, or

(b) are transferred before the relevant date to a territory outside the UK.

(4) Where the liability to tax which would have been shown in the return is a liability to inheritance tax, the applicable condition is satisfied if—

(a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable is a transfer of assets, and

(b) after that disposition but before the relevant date the assets, or any part of the assets, are transferred to a territory outside the UK.

(5) In the case of a transfer falling within sub-paragraph (2)(b), (3)(b) or (4)(b), references to the income, proceeds or assets transferred are to be read as including references to any assets derived from or representing the income, proceeds or assets.

(6) In relation to an offshore transfer, the territory in question for the purposes of paragraph 6A is the highest category of territory by virtue of which the information involves an offshore transfer.

(7) "Relevant date" means the date on which P becomes liable to a penalty under paragraph 6.".

18 In paragraph 15 (standard percentage reductions for disclosure), in the Table in sub-paragraph (2), at the appropriate places insert—

"87.5%	43.75%	25%", and

"125%	62.5%	40%".

19 In paragraph 17(4) (interaction with other penalties and late payment surcharges), omit the "and" at the end of paragraph (b) and after that paragraph insert—

"(ba) if one of the penalties is a penalty under paragraph 6(3) or (4) and the information withheld is category 1 information, 125%, and".

EXPLANATORY NOTE

PENALTIES

SUMMARY

1. Clause [X] and Schedule [A] amend the existing penalty regime that applies to non-compliance involving an offshore matter. They extend its scope by applying it to inheritance tax, and to where the proceeds of non-compliances are hidden offshore. The territory classification system is also updated to reflect advances in international tax transparency through the implementation of the Common Reporting Standard (CRS). It is anticipated that the provisions will commence in April 2016.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces Schedule [A] which amends the offshore penalty provisions relating to errors in returns, failure to notify liability, failure to make returns in Schedule 24 to Finance Act 2007 (Schedule 24), Schedule 41 to Finance Act 2008 (Schedule 41) and Finance Act 2009 (Schedule 55).

3. Subsections (2) to (4) provide that the Schedule comes into force on a day specified by a Statutory Instrument made by the Treasury: different times may be specified in respect of different provisions or for certain purposes. It is anticipated that the provisions will commence in April 2016.

DETAILS OF THE SCHEDULE

Penalties for errors.

4. Paragraph 1 provides for Schedule 24 to be amended. Schedule 24 imposes penalties for inaccuracies in a return or other document submitted to HM Revenue & Customs (HMRC). Penalties for inaccuracies currently fall into any one of 3 categories for the purposes of determining the level of penalty applicable. Penalties arising from a “domestic matter” in relation to income tax and capital gains tax and for all inaccuracies relating to other taxes subject to the penalty regime in Schedule 24, currently attract the lowest level of penalty set by category 1.

5. Inaccuracies involving an offshore matter in relation to income tax and capital gains tax may be liable for a higher penalty than for a domestic matter relating to those taxes depending upon the extent of any information sharing arrangements between the territory concerned and the UK. Territories currently designated as category 1 territories pursuant to

an Order made under paragraph 21A of Schedule 24, have the highest level of information sharing arrangements so that penalties for inaccuracies arising in connection with those territories are the same as for penalties involving domestic matters and so fall as category 1 inaccuracies. Territories in categories 2 and 3 have correspondingly poorer information exchange arrangements. Inaccuracies relating to income tax and capital gains tax involving those territories attract consequentially higher category 2 and 3 penalty levels.

6. Paragraph 2 amends paragraph 4 of Schedule 24 by inserting sub-paragraph (1A) and amending sub-paragraphs (2) and (5) so as to as to increase the levels of penalty in respect of a category 1 inaccuracy as a result of the lowest level of penalty now being attached to the new category 0 described below. No change is made to current levels of penalty in relation to inaccuracies falling within categories 2 and 3. A consequential amendment is made so that paragraph 4(5) of Schedule 24 refers to 4 categories of inaccuracy (0, 1, 2 and 3)

7. Paragraph 3 amends paragraph 4A of Schedule 24 by–

- inserting the new category of inaccuracy (category 0) which carries the lowest level of penalty as described above (equivalent to those currently in category 1) (see newly inserted sub-paragraph (A1) (which creates category 0) and consequential amendment to sub-paragraph (7));

- determining the penalty for an inheritance tax inaccuracy by reference to whether the inaccuracy involves a domestic matter, an offshore matter or an offshore transfer in the same way as for income tax and capital gains tax (see new sub-paragraph (A1)(b) and (c), the consequential amendments made to sub-paragraphs (2)(c) and (3)(c) and the provision made by newly inserted sub-paragraph (4A) for determining where assets are treated as situated or held for the purposes of penalties relating to inheritance tax); and

- inserting, in categories (0, 1, 2 and 3), the concept of an “offshore transfer” (see the definition in newly inserted sub-paragraph (4B) and consequential amendments made to sub-paragraphs (2)(a), (3)(a), (5) and (6)(a)) which is separate from the existing concept of “offshore matter”.

8. The newly inserted sub-paragraph (4A) requires that where the tax at stake is inheritance tax, the question of the territory where assets are situated or held is determined by reference to where they are situated or held immediately after the transfer of value giving rise to the charge to inheritance tax.

9. The newly inserted sub-paragraph (4B) provides that an inaccuracy only involves an “offshore transfer” if it does not involve an “offshore matter”, is deliberate (whether or not concealed), results in a potential loss of income tax, capital gains tax or inheritance tax and the “applicable condition” in newly inserted paragraph 4AA is satisfied.

10. Paragraph 4 inserts paragraph 4AA into Schedule 24. It sets out the “applicable condition” referred to by newly inserted paragraph 4A(4B). The applicable condition will be

satisfied if, by the date when the document containing the inaccuracy is given to HMRC ("filing date")-

- income (or any part of it) chargeable to income tax is received in, or transferred to, a territory outside the UK;
- the proceeds (or any part of them) of a disposal giving rise to a charge to capital gains tax are received in, or transferred to, a territory outside the UK; or
- the disposition giving rise to transfer of value by reason of which inheritance tax is chargeable is a transfer of assets and after the disposition the assets (or part of them) are transferred to a territory outside the UK.

11. Paragraph 4AA(5) extends the applicable condition by providing that references to income, proceeds or assets transferred must be read as including any assets derived from or representing the income, proceeds or assets.

12. Paragraph 4AA(6) ensures that where more than one category of territory is involved in an "offshore transfer", the level of penalty for the inaccuracy will be determined by reference to the highest category of territory involved.

13. Paragraph 4AA(8) provides that references to income or the proceeds of a disposal or transfer of value must be read as including references to any assets (as defined in section 21(1) of the Taxation of Capital Gains Act 1992) derived from or representing the income or proceeds.

14. <u>Paragraph 5</u> amends the Table in paragraph 10 of Schedule 24 which specifies the minimum percentages to which a penalty in paragraph 4 may be reduced on account of disclosures made by a taxpayer who is liable to a penalty. The amendment to the table is made in consequence of the new level of penalties applying to a category 1 inaccuracy so as to specify the minimum percentages to which those penalties may be reduced depending upon whether or not the taxpayer made a prompted or unprompted disclosure.

15. <u>Paragraph 6</u> makes consequential amendments to paragraph 12 of Schedule 24 so that where penalties are imposed under paragraphs 1 and 1A of that Schedule in respect of the same inaccuracy, the aggregate amount of the penalties must not exceed 100% of the potential lost revenue in respect of a category 0 inaccuracy and 125% in respect of a category 1 inaccuracy.

16. <u>Paragraph 7</u> makes consequential amendments to paragraph 21A of Schedule 24 which determines the category in which a territory falls for the purposes of offshore matters. A new sub-paragraph (A1) is inserted and sub-paragraph (2) is substituted so that a territory will fall as a category 2 territory unless designated by Treasury Order as a category 0, 1 or 3 territory. <u>Sub-paragraph (7)</u> is substituted so that the first Treasury Order specifying territories in category 0 must, before it is made, be laid in draft before, and approved by a resolution of, the House of Commons.

17. Paragraph 8 amends paragraph 21B(2) of Schedule 24 so that the Treasury, when exercising the power to make regulations for determining the place where an income source is located, asset is situated or held, or activities wholly or mainly carried on, may make different provision for inheritance tax as well as for income tax and capital gains tax.

Penalties for failure to notify

18. Paragraphs 9 to 13 make amendments to Schedule 41 in relation to the new category 0 and an offshore transfer that correspond to the amendments made to Schedule 24 by the provisions described in paragraphs 6 to 15 of this Explanatory Note. Since Schedule 41 does not apply to inheritance tax, there are no amendments in relation to that tax.

Penalties for failure to make returns etc

19. Paragraphs 14 to 19 make amendments to Schedule 55 in relation to the new category 0, an offshore transfer and inheritance tax that correspond to the amendments made to Schedule 24 by the provisions described in paragraphs 6 to 15 of this Explanatory Note.

BACKGROUND NOTE

20. HMRC may charge penalties in cases where income, gains etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. Schedules 24, 41 and 55 of FA 2007 (errors in tax returns etc.), FA 2008 (failure to notify liability) and FA 2009 (returns not filed on time) respectively ("the penalty Schedules") set out the minimum and maximum penalties that may be charged.

21. In each case the penalty is a percentage of the amount of revenue potentially lost or, in relation to a penalty under Schedule 55 FA 2009, which would have been shown in the return in question. Schedule 10 to FA 2010 amended the penalty Schedules to categorise conduct giving rise to a penalty in relation to income tax or capital gains tax by reference to whether the conduct involved an offshore matter. Maximum penalties are higher for penalties relating to territories falling within categories 2 and 3 than in relation to territories falling within category 1 (which also includes penalties in relation to a "domestic matter"). The legislation provides that a territory falls within category 2 unless designated as category 1 or 3 by Treasury Order. Designation of a territory is made by reference to the level of information exchange arrangements (if any) between the UK and the territory. Territories within category 1 (which include EU member States) have entered into arrangements for automatic exchange of information with the UK broadly comparable with information provided automatically to HMRC within the UK. The higher penalties corresponding to categories 2 and 3 reflect the fact that, owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance and that the choice of such territories by those failing to report accurately their tax obligations may well have been influenced by that factor.

22. This measure makes the tax system fairer, by strengthening civil sanctions for the small minority who evade tax by hiding taxable income, gains and assets offshore, and contributes

to building the deterrent effect. This Schedule builds on the increased penalties for offshore non-compliance introduced in FA 2010 in three ways.

23. First, a new category 0 is introduced, having the same penalty levels as the current category 1. The intention is that only overseas territories making arrangements with the UK that meet the new Common Reporting Standard will fall into category 0. The penalty levels in new category 1 are raised slightly, those in categories 2 and 3 will stay the same. It is envisaged that most or all territories currently in category 1 will, over time, make arrangements so as to fall within category 0.

24. Second, penalties relating to inheritance tax are brought within the scope of the scheme already existing for income tax and capital gains tax so that penalties involving assets in category 1-3 territories will be higher than those for failures in relation to assets in the UK or category 0 territories.

25. Third, the provisions will cover not only income and gains arising offshore, but also non-compliance in the UK where the payment is made overseas or received in the UK and then moved offshore.

26. If you have any questions about this measure, or comments on the draft legislation, please contact Amit Puri on 03000 526801 (email: Amit.Puri@hmrc.gsi.gov.uk).

1 Penalties in connection with offshore asset moves

Schedule 1 contains provision for imposing an additional penalty in cases where—

(a) a person is liable for a penalty for a failure to comply with an obligation or provide a document, or for providing an inaccurate document, relating to income tax, capital gains tax or inheritance tax, and

(b) there is a related transfer of, or change in the ownership arrangements for, an asset situated or held outside the United Kingdom.

SCHEDULE 1

Section 1

PENALTY IN CONNECTION WITH OFFSHORE ASSET MOVES

Penalty linked to offshore asset moves

1 (1) A penalty is payable by a person ("P") where Conditions A, B and C are met.

(2) Condition A is that—
(a) P is liable for a penalty specified in paragraph 2 ("the original penalty"), and
(b) the original penalty is for a deliberate failure (see paragraph 3).

(3) Condition B is that there is a relevant offshore asset move (see paragraph 4) which occurs after the relevant time (see paragraph 5).

(4) Condition C is that—
(a) the main purpose, or one of the main purposes, of the relevant offshore asset move is to prevent or delay the discovery by Her Majesty's Revenue and Customs ("HMRC") of a potential loss of revenue, and
(b) the original penalty relates to an inaccuracy or failure which relates to the same potential loss of revenue.

Original penalties triggering penalties under this Schedule

2 The penalties referred to in paragraph 1(2) are—
(a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (penalty for error in taxpayer's document) in relation to an inaccuracy in a document of a kind listed in the Table in paragraph 1 of that Schedule, where the tax at stake is income tax, capital gains tax or inheritance tax,
(b) a penalty under paragraph 1 of Schedule 41 to FA 2008 (penalty for failure to notify etc) in relation to the obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax), and
(c) a penalty under paragraph 6 of Schedule 55 to FA 2009 (penalty for failures to make return etc where failure continues after 12 months), where the tax at stake is income tax, capital gains tax or inheritance tax.

"Deliberate failure"

3 The original penalty is for a "deliberate failure" if—
(a) in the case of a penalty within paragraph 2(a), the inaccuracy to which it relates was deliberate on P's part (whether or not concealed);
(b) in the case of a penalty within paragraph 2(b), the failure by P was deliberate (whether or not concealed);

(c) in the case of a penalty within paragraph 2(c), the withholding of the information, resulting from the failure to make the return, is deliberate (whether or not concealed).

"Relevant offshore asset move"

4 (1) There is a "relevant offshore asset move" if, at a time when P is the beneficial owner of an asset ("the relevant time")—

(a) the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,

(b) the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or

(c) there is a change in the arrangements for the ownership of the asset,

and P remains the beneficial owner of the asset, or any part of it, immediately after the relevant time.

(2) Whether a territory is a "specified territory" or "non-specified territory" is to be determined, for the purposes of sub-paragraph (1), as at the relevant time.

(3) Where—

(a) an asset of which P is the beneficial owner ("the original asset") is disposed of, and

(b) all or part of any proceeds from the sale of the asset are (directly or indirectly) reinvested in another asset of which P is also the beneficial owner ("the new asset"),

the original asset and the new asset are to be treated as the same asset for the purposes of determining whether there is a relevant offshore asset move.

(4) "Asset" has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.

(5) "Specified territory" means a territory specified in regulations made by the Treasury by statutory instrument; and references to "non-specified territory" are to be construed accordingly.

(6) Regulations under sub-paragraph (5) are subject to annulment in pursuance of a resolution of the House of Commons.

"Relevant time"

5 (1) "The relevant time" has the meaning given by this paragraph.

(2) Where the original penalty is under Schedule 24 to FA 2007, the relevant time is—

(a) if the tax at stake as a result of the inaccuracy is income tax or capital gains tax, the beginning of the tax year to which the document containing the inaccuracy relates, and

(b) if the tax at stake as a result of the inaccuracy is inheritance tax, the time when liability to the tax first arises.

(3) Where the original penalty is for a failure to comply with an obligation specified in the table in paragraph 1 of Schedule 41 of FA 2008, the relevant time is the beginning of the tax year to which that obligation relates.

(4) Where the original penalty is for a failure to make a return or deliver a document specified in the table in paragraph 1 of Schedule 55 to FA 2009, the relevant time is—

(a) if the tax at stake is income tax or capital gains tax, the beginning of the tax year to which the return or document relates, and

(b) if the tax at stake is inheritance tax, the time when liability to the tax first arises.

Amount of the penalty

6 (1) The penalty payable under paragraph 1(1) is 50% of the amount of the original penalty payable by P.

(2) The penalty payable under paragraph 1(1) is not a penalty determined by reference to a liability to tax (despite the fact that the original penalty by reference to which it is calculated may be such a penalty).

Assessment

7 (1) Where a person becomes liable for a penalty under paragraph 1(1), HMRC must—

(a) assess the penalty,

(b) notify the person, and

(c) state in the notice the tax period in respect of which the penalty is assessed.

(2) A penalty under paragraph 1(1) must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment—

(a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(4) An assessment of a penalty under paragraph 1(1) must be made within the same period as that allowed for the assessment of the original penalty.

(5) If, after an assessment of a penalty is made under this paragraph, HMRC amends the assessment, or makes a supplementary assessment, in respect of the original penalty, it must also at the same time amend the assessment, or make a supplementary assessment, in respect of the penalty under paragraph 1(1) to ensure that it is based on the correct amount of the original penalty.

(6) In this paragraph—

(a) a reference to an assessment to tax, in relation to inheritance tax, is to a determination, and

(b) "tax period" means a tax year, accounting period or other period in respect of which tax is charged.

Appeal

8 (1) A person may appeal against a decision of HMRC that a penalty is payable by the person.

(2) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to, or determination of, the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(3) Sub-paragraph (2) does not apply in respect of a matter expressly provided for by this Schedule.

(4) On an appeal under this paragraph, the tribunal may affirm or cancel HMRC's decision.

Commencement and transitionals

9 (1) This Schedule has effect in relation to relevant offshore asset moves occurring after the day on which this Act is passed.

(2) For the purposes of this Schedule, it does not matter if liability for the original penalty first arose on or before that day, unless the case is one to which sub-paragraph (3) applies.

(3) The original penalty is to be ignored if P's liability for it for arose before the day on which this Act is passed and before that day—

(a) if the original penalty was under Schedule 24 to FA 2007, any tax which was unpaid as a result of the inaccuracy has been assessed or determined;

(b) if the original penalty was under Schedule 41 to FA 2008 or Schedule 55 to FA 2009, the failure to which it related was remedied and any tax which was unpaid as a result of the failure has been assessed or determined.

EXPLANATORY NOTE

PENALTIES IN CONNECTION WITH OFFSHORE ASSET MOVES

SUMMARY

1. Clause [X] and Schedule [Y] introduce a new penalty for income tax, capital gains tax and inheritance tax where assets are moved from a 'specified territory' to a 'non-specified territory' and the main, or one of main purposes, of the movement is to prevent the discovery of a loss of revenue by HM Revenue & Customs (HMRC). The Schedule has effect from the day after Finance Bill 2015 receives Royal Assent.

DETAILS OF THE CLAUSE

2. Clause [X] introduces Schedule [Y] which imposes an additional penalty where:

- a person is liable for an earlier penalty for a failure to comply with certain income tax, capital gains tax or inheritance tax obligations; and
- there is a related transfer of, or change in the ownership arrangements for, an asset situated or held outside the UK.

DETAILS OF THE SCHEDULE

3. Paragraph 1 provides that a penalty is payable, in addition to a penalty for an earlier deliberate failure, where an asset is moved from one territory to another (a 'relevant offshore asset move') to prevent or delay the discovery of that original failure.

4. Paragraph 2 specifies which penalties for the earlier failure potentially trigger the additional penalty.

5. Paragraph 3 defines the term 'deliberate failure' in relation to the 'original penalty'.

6. Paragraph 4 defines the term 'relevant offshore asset move'. Such an event occurs when an asset is moved from a specified territory to a non-specified territory, the person holding the asset makes a corresponding change of residence, or there is an a change in ownership arrangements but the taxpayer remains beneficial owner of the asset. In applying the tests, any second or later asset purchased with all or part of the proceeds of sale of the original asset will be regarded as the original asset. Paragraph 4(5) and (6) provide that HM Treasury will make Statutory Instruments setting out which territories are 'specified'.

7. Paragraph 5 defines the 'relevant time' after which the occurrence of a 'relevant offshore move' will cause Condition B of paragraph 1 of this Schedule to be met. For income

tax and capital gains tax, the ‘relevant time’ is the beginning of the tax year relevant to the failure or inaccuracy giving rise to the ‘original penalty’. For inheritance tax, the ‘relevant time’ is the time when the liability for the tax at stake first arises.

8. Paragraph 6 provides that the amount of additional penalty is 50% of the original penalty. It also makes clear that although the original penalty is determined by reference to a liability to tax, the penalty under this Schedule is not (further distinguishing between the conduct giving rise to the two penalties).

9. Paragraph 7 provides for the assessment and notification of the penalty. The time limits for HMRC to assess the penalty are the same as those applying to the relevant ‘original penalty’. Payment must be made before the expiry of 30 days beginning on the day of notification. Procedurally, the penalty is treated in the same way as a tax assessment and may be enforced in the same way. An amendment must be made to the amount of penalty if the ‘original penalty’ is amended (up or down).

10. Paragraph 8 affords a right of appeal against HMRC’s decision to impose a penalty under this Schedule which may be either affirmed or cancelled by a tribunal. Except where express provision is made in the Schedule, an appeal will be treated in the same way as an appeal against an assessment or determination of the tax concerned (including HMRC review of the decision and determination of the appeal by the First-tier Tribunal or Upper Tribunal).

11. Paragraph 9 provides that the Schedule has effect in relation to ‘relevant offshore asset moves’ occurring after the day on which Finance Bill 2015 receives Royal Assent. Apart from two exceptions, it does not matter if the liability for the original penalty arose before or after that day. The two cases in which a person will not be liable to the additional penalty are where:

- the tax unpaid as a result of an inaccuracy giving rise to an ‘original penalty’ under Schedule 24 FA 2007 has been assessed or determined before this legislation comes into effect; and
- the tax unpaid as a result of a failure giving rise to an ‘original penalty’ under Schedule 41 FA 2008 and Schedule 55 FA 2009 has been assessed or determined before this legislation comes into effect and the failure relating to it has been remedied by that day.

BACKGROUND NOTE

12. HMRC may charge penalties in cases where income, gains and assets etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. The maximum and minimum penalty vary according to the transparency of the jurisdiction in which the income etc. arises or is hidden. The higher penalties apply where owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance (which may have formed part of the reason for choosing the territory concerned).

13. As more overseas territories enter into agreements to provide greater automatic exchange of information with the UK under the new Common Reporting Standard (with first information exchanges to be made in 2017), there is a risk that money and investments will be moved from those territories to others that have not entered into such agreements in order to continue to 'hide' past failures to pay tax lawfully payable. While the past failures are already liable to penalties there would be no further sanction for new, additional steps taken to continue hiding the original failures. These provisions address this by imposing a further penalty for an offshore asset move irrespective of whether the conduct giving rise to the 'original penalty' occurred before or after the day on which Finance Bill 2015 receives Royal Assent, but only in cases where the original penalty reflected a deliberate failure. It is intended that territories will be 'specified' once they have committed to exchanging information under the Common Reporting Standard.

14. The Explanatory Note to a related Schedule (published alongside this one) contains a fuller explanation of the offshore penalty regime and other measures being taken to deter non-compliance involving offshore matters.

15. If you have any questions about this measure, or comments on the draft legislation, please contact Amit Puri on 03000 526801 (email: Amit.Puri@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2015 No.

CAPITAL GAINS TAX

INCOME TAX

INHERITANCE TAX

The Offshore Asset Moves Penalty (Specified Territories) Regulations 2015

Made - - - -	*** April 2015*
Laid before the House of Commons	*** April 2015*
Coming into force - -	*** April 2015*

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 4(5) and (6) of Schedule X to the Finance Act 2015(**a**).

Citation and commencement

1. These Regulations may be cited as the Offshore Asset Moves Penalty (Specified Territories) Regulations 2015 and come into force on ** April 2015.

Territories specified

2. The territories listed in the Schedule to these Regulations are specified for the purposes of Schedule XX to the Finance Act 2015.

Lord Commissioner of Her Majesty's Treasury
Lord Commissioner of Her Majesty's Treasury
** April 2015 Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) 2015 c. XX

SCHEDULE

Territories specified

Albania, Andorra, Anguilla, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, The Bahamas, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Grenada, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea (South), Latvia, Liechtenstein, Lithuania, Luxembourg, Macau, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Montserrat, Netherlands (not including Bonaire, Sint Eustatius and Saba), New Zealand (not including Tokelau), Niue, Norway, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Seychelles, Singapore, Sint Maarten, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey, Turks and Caicos Islands, United Arab Emirates and Uruguay.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the territories falling as a “specified territory” for the purposes of determining whether a “relevant offshore asset move” described in paragraph 4 of Schedule XX to the Finance Act 2015 (c. XX) (“the Schedule”) has occurred. Under the Schedule, a person becomes liable to a penalty if there is “relevant offshore asset move” after the relevant time (determined in accordance with paragraph 5 of the Schedule) if the purpose or one of the main purposes of the move is to prevent or delay the discovery by Her Majesty’s Revenue and Customs of a potential loss of income tax, capital gains tax or inheritance tax for which that person is liable for the penalties specified in paragraph 2 of the Schedule in respect of a “deliberate failure” (see paragraph 3 of the Schedule).

A “relevant offshore asset move” occurs upon the happening of any of the three events set out in paragraph 4(1) of the Schedule at the time when the person concerned beneficially owns the asset in question and remains its beneficial owner immediately after. One of the cases occurs where an asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory. Another case occurs where the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory. The final case occurs where there is a change in the arrangements for the ownership of the asset. Any territory not specified by these Regulations falls as a “non-specified territory” for these purposes.

A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at http://www.hmrc.gov.uk/tiin/tiins.htm. It remains an accurate summary of the impacts that apply to this statement.

EXPLANATORY MEMORANDUM TO

THE OFFSHORE ASSET MOVES PENALTY (SPECIFIED TERRITORIES) REGULATIONS 2015

2015 [xxxx]

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC).

2. Purpose of the instrument

2.1 The purpose of these Regulations is to specify the territories falling as a “specified territory” for the purposes of determining whether a “relevant offshore asset move” described in paragraph 4 of Schedule XX to the Finance Act 2015 (c. XX) has occurred.

2.2 These Regulations come into force on XX April 2015.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 These Regulations are made upon the first exercise of the power contained in paragraph 4(5) and (6) of Schedule xxx (“the Schedule”) to the Finance Act 2015 (“the Act”) which was passed on XXX March 2015. Paragraph 9(1) of the Schedule provides that the Schedule has effect in relation to “relevant offshore asset moves” occurring the day after the Act is passed.

3.2 Whether a “relevant offshore asset move” has occurred can only be determined in certain cases by reference to whether a particular territory is a “specified territory”. As the Schedule has effect in relation to income tax, capital gains tax and inheritance tax, no resolution pursuant to the Provisional Collection of Taxes Act 1968 (c. 2) has been made. Accordingly, it has been necessary to make the regulations as soon as possible after the passing of the Act and for them to come into force on the day after the Act is passed without laying the Regulations for 21 days before they come into force.

4. Legislative Context

4.1 The Schedule introduces an additional penalty where, after the “relevant time”, a “relevant offshore asset move” occurs in relation to a person who is already liable to a penalty under paragraph 1 of Schedule 24 to the Finance Act 2007 (c. 11), paragraph of Schedule 41 to the Finance Act 2008 (c. 9) or paragraph 6 of Schedule 55 to the Finance Act 2009 (c. 10) for a deliberate (whether or not concealed) inaccuracy in a document or failure to comply with a tax obligation or notify a tax liability. The penalty only arises if the main purpose (or one of the main purposes) of the relevant offshore asset move is to prevent or delay the discovery by HMRC of the potential loss of revenue arising from the failure giving rise to the “original penalty”.

4.2 Paragraph 4(1) of the Schedule provides that a “relevant offshore asset move” occurs if (at the time when “P” (the person liable to the “original penalty”) is the owner of the asset in question)-

- the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,
- the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or
- there is a change in the arrangements for the ownership of the asset,

and P remains the beneficial owner of the asset, or any part of it immediately after.

4.3 Paragraph 4(5) and (6) of the Schedule provide for territories to be specified by Regulations made by the Treasury subject to annulment in pursuance of a resolution of the House of Commons. As the Schedule (by virtue of paragraph 9(1)) has effect in relation to “relevant offshore asset moves” occurring after the day on which the Act is passed, it is necessary for the territories to be specified for the purposes of determining whether a “relevant offshore asset move” has occurred in all the situations covered by paragraph 4(1) with effect from the same time as the Schedule.

5. Territorial Extent and Application

These Regulations apply 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

7.1 HMRC may charge penalties in cases where income, gains and chargeable transfers of assets etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. The maximum and minimum penalty vary according to the transparency of the jurisdiction in which the income etc. arises or is hidden. The higher penalties apply where, owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance (which may have formed part of the reason for choosing the territory concerned).

7.2 As more overseas territories enter into agreements to provide greater automatic exchange of information with the UK under the new Common Reporting Standard (with first information exchanges to be made in 2017), there is a risk that money and investments will be moved from those territories to others that have not entered into such agreements in order to continue to “hide” past failures to pay tax lawfully payable. While the past failures are already liable to penalties there would be no further sanction for new additional steps taken to continue hiding those failures. The Schedule addresses the issue by imposing a further penalty for an offshore asset move from a specified territory to a non-specified territory. It is intended that territories will be ‘specified’ once they have committed to exchanging information under the Common Reporting Standard. These Regulations list the territories that have made that commitment.

8. Consultation outcome

8.1 Most of the respondents understood the policy intention, and agreed that there should be a deterrent against the movement of a person’s hidden offshore funds from a jurisdiction that has committed to adopting the new global standard for the automatic exchange of information to another jurisdiction that has not similarly committed to the Common Reporting Standard, because the latter is less transparent for tax purposes.

8.2 The Government reconsidered the proposals on which it consulted in light of the responses received, particularly the view that the options proposed were too complex, and developed the simplified measure set out in the Schedule.

9. Guidance

HMRC published guidance will be amended to reflect the Schedule and associated list of specified territories.

10. Impact

10.1 Negligible impact on businesses, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note (TIIN) was published on 10 December 2014 on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

The legislation does not apply to business, it only applies to individuals.

12. Monitoring & review

The operation of the Schedule and this instrument listing “Specified territories” will be monitored through information collected in compliance work to ensure that they operate as intended.

13. Contact

If you have any queries regarding the application of the instrument, please contact Amit Puri on 03000 526 801 (email: amit.puri@hmrc.gsi.gov.uk).

1 Country-by-country reporting

(1) The Treasury may make regulations for implementing the OECD's guidance on country-by-country reporting.

(2) "The OECD's guidance on country-by-country reporting" is the guidance on country-by-country reporting contained in the OECD's Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, published in 2014 (or any other document replacing that Guidance).

(3) In subsection (1), the reference to implementing the OECD's guidance on country-by-country reporting is a reference to implementing the guidance to any extent, subject to such exceptions or other modifications as the Treasury consider appropriate.

(4) Regulations under this section may in particular—

(a) require persons specified for the purposes of this paragraph ("reporting entities") to provide HMRC with information of specified descriptions;

(b) require reporting entities to provide the information—

(i) at specified times,

(ii) in relation to specified periods of time, and

(iii) in the specified form and manner;

(c) impose obligations on reporting entities (including obligations to obtain information from specified persons for the purposes of complying with requirements imposed by virtue of paragraph (a));

(d) make provision (including provision imposing penalties) about contravention of, or non-compliance with, the regulations;

(e) make provision about appeals in relation to the imposition of any penalty.

"Specified" means specified in the regulations.

(5) The regulations may allow any requirement, obligation or other provision that may be imposed or made by virtue of subsection (4)(a), (b) or (c) to be imposed or made instead by a specific or general direction given by the Commissioners for HMRC.

(6) The regulations may—

(a) provide that a reference in the regulations to a provision of the Guidance mentioned in subsection (2) (or to a provision of any document replacing that Guidance) is to be read as a reference to the provision as amended from time to time;

(b) make different provision for different purposes;

(c) contain incidental, supplemental, transitional, transitory or saving provision.

(7) In this section—

"HMRC" means Her Majesty's Revenue and Customs;

"the OECD" means the Organisation for Economic Co-operation and Development.

(8) The power of the Treasury to make regulations under this section is exercisable by statutory instrument; and any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the House of Commons.

EXPLANATORY NOTE

COUNTRY-BY-COUNTRY REPORTING

SUMMARY

1. Clause [X] gives the Treasury a power to make regulations to introduce country-by-country reporting. It means that the Treasury will be able in the future to implement recommendations made by the Organisation for Economic Co-operation and Development (OECD) on country-by-country reporting and require UK-based multinational enterprises to report for each tax jurisdiction in which they have a presence how their revenue, profit and taxes are allocated, as well as other indicators of economic activity.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces a power to make regulations to implement country-by-country reporting.

3. Subsection (3) provides that the Treasury may modify the way in which the country-by-country reporting requirement is implemented.

4. Subsection (4) and subsection (6) set out particular matters which may be dealt with by regulations, including who will be required to make the report, the timing and form of the report, and penalties for failing to comply with the regulations.

5. Subsection (5) enables the regulations to allow certain requirements, obligations or other provisions within subsection (4) to be made by directions given by the Commissioners of HM Revenue & Customs.

6. Subsection (8) provides that the regulations will be made by statutory instrument. The regulations will be subject to negative procedure.

BACKGROUND NOTE

7. The OECD developed a country-by-country reporting template and accompanying guidance as part the strand of work in the OECD/G20 Base Erosion and Profit Shifting (BEPS) project intended to strengthen international standards on tax transparency. The reporting template requires multinational enterprises to show for each tax jurisdiction in which they do business:

- the amount of revenue, profit before income tax and income tax paid and accrued; and
- their total employment, capital, retained earnings and tangible assets.

Multinational enterprises will also be required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of business activities within a selection of broad areas which each entity engages in.

8. The country-by-country report is intended to be a risk-assessing tool to help tax administrations assess whether multinational groups may have engaged in transfer pricing or other practices in order to artificially reduce their taxable profit or shift their income into jurisdictions where they will pay less tax. The Government announced on 20 September 2014 that it is committed to implementing country-by-country reporting in the UK.

9. Regulations will be made at a later date after the OECD has completed further work on implementation issues, including how the reports will be filed and how countries will exchange the information contained in the reports.

10. If you have any questions about this change, or comments on the legislation, please contact Anne Stark on 03000 585904 (email: anne.b.stark@hmrc.gsi.gov.uk).

1 Disclosure of tax avoidance schemes

Schedule 1 contains amendments relating to the disclosure of tax avoidance schemes.

SCHEDULE 1

Section 1

DISCLOSURE OF TAX AVOIDANCE SCHEMES

Requirement to update DOTAS information

1 After section 310B of FA 2004 insert—

"310C Duty of promoters to provide updated information

(1) This section applies where—

(a) information has been provided under section 308 about any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under section 311, and

(b) after the provision of the information, there is a change in relation to the arrangements of a kind mentioned in subsection (2).

(2) The changes referred to in subsection (1)(b) are—

(a) a change in the name by which the notifiable arrangements, or proposed notifiable arrangements, are known;

(b) a change in the name or address of any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.

(3) A person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal must inform HMRC of the change mentioned in subsection (1)(b) within 30 days after it is made.

(4) Subsections (5) and (6) apply for the purposes of subsection (3) where there is more than one person who is a promoter in relation to the notifiable arrangements or proposal.

(5) If the change in question is a change in the name and address of a person who is a promoter in relation to the notifiable arrangements or proposal, it is the duty of that person to comply with subsection (3).

(6) If a person provides information in compliance with subsection (3), the duty imposed by that subsection on any other person, so far as relating to the provision of that information, is discharged."

2 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), after "310A," insert "310C,".

3 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), after paragraph (ca) insert—

"(cb) section 310C (duty of promoters to provide updated information),".

Arrangements to be given reference number

4 In section 311(1)(a) of FA 2004 (period for allocation of reference number to arrangements) for “30 days” substitute “90 days”.

Duty of promoter to notify client of information

5 (1) Section 312 of FA 2004 (duty of promoter to notify client of number) is amended as follows.

(2) In subsection (2) for the words from “with prescribed information” to the end substitute “with—

(a) prescribed information relating to any reference number (or, if more than one, any one reference number) that has been notified to the promoter (whether by HMRC or any other person) in relation to—

(i) the notifiable arrangements, or

(ii) any arrangements substantially the same as the notifiable arrangements (whether involving the same or different parties), and

(b) any other prescribed information relating to arrangements within paragraph (a)(i) or (ii) or to notifiable proposals or notifiable arrangements more generally.”

(3) In subsection (5)(c), for the words from “HMRC” to the end substitute “HMRC—

(i) prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable arrangements, and

(ii) any other prescribed information relating to the proposed notifiable arrangements, to any arrangements substantially the same as the proposed notifiable arrangements (whether involving the same or different parties), or to notifiable proposals or notifiable arrangements more generally.”

(4) Accordingly, in the heading, after “number” insert “etc”.

Notification of employees

6 (1) Section 312A of FA 2004 (duty of client to notify parties of number) is amended as follows.

(2) In subsection (1), for “prescribed information” to the end substitute “information under section 312(2) or as mentioned in section 312(5)”.

(3) In subsection (2), after “number” insert “, and any other prescribed information relating to the arrangements or proposed arrangements, to any arrangements substantially the same as those arrangements (whether involving the same or different parties) or to notifiable proposals or notifiable arrangements more generally,”.

(4) After that subsection insert—

“(2A) Where the client—

(a) is an employer, and

(b) by reason of the arrangements or proposed arrangements, receives or might reasonably be expected to receive an advantage, in relation to any relevant tax, in relation to the employment of one or more of the client's employees,

the client must, within the prescribed period, provide to each of the client's relevant employees prescribed information relating to the reference number and any other prescribed information relating to the arrangements or proposed arrangements or to notifiable proposals or notifiable arrangements more generally."

(5) For subsection (3) substitute—

"(3) For the purposes of this section—

(a) a tax is a "relevant tax", in relation to arrangements or arrangements proposed in a proposal of any description, if it is prescribed in relation to arrangements or proposals of that description by regulations under section 306;

(b) "relevant employee" means an employee in relation to whose employment the client receives or might reasonably be expected to receive the advantage mentioned in subsection (2A);

(c) "employee" includes a former employee;

(d) a reference to employment includes holding an office (and references to "employee" and "employer" are to be construed accordingly)."

(6) In subsection (4), for "the duty under subsection (2)" substitute "one or both of the duties under this section".

(7) In subsection (5), after "subsection (2)" insert "or (2A)".

(8) Accordingly, in the heading for "to notify parties of number" substitute "to provide information to parties etc".

7 In section 313 of that Act (duty of parties to notifiable arrangements to notify Board of number, etc), after subsection (5) insert—

"(6) The duty under subsection (1) does not apply in prescribed circumstances."

8 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), after "312A(2)" insert "and (2A)".

9 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), in paragraph (da), after "312A(2)" insert "and (2A)".

Employers' duty of disclosure

10 After section 313ZB of FA 2004 insert—

"313ZC Duty of employer to notify HMRC of details of employees etc

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that a person who is a promoter in relation to notifiable arrangements or a notifiable proposal is providing (or has provided) services in connection with the notifiable arrangements or notifiable proposal to a person ("the client").

(3) Condition B is that the client receives information under section 312(2) or as mentioned in section 312(5).

(4) Condition C is that the client is an employer in circumstances where, as a result of the notifiable arrangement or proposed notifiable arrangement—

(a) one or more of the client's employees receive, or might reasonably be expected to receive, in relation to their employment, an advantage in relation to any relevant tax, or

(b) the client receives or might reasonably be expected to receive such an advantage in relation to the employment of one or more of the client's employees.

(5) Where an employee is within subsection (4)(a), or is an employee mentioned in subsection (4)(b), the client must provide HMRC with prescribed information relating to the employee at the prescribed time or times.

(6) The client need not comply with subsection (5) in relation to any notifiable arrangements at any time after HMRC have given notice under section 312(6) or 313(5) in relation to the notifiable arrangements.

(7) The duty under subsection (5) does not apply in prescribed circumstances.

(8) Section 312A(3) applies for the purposes of this section as it applies for the purposes of that section."

11 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), for "and 313ZA(3)" substitute ", 313ZA(3) and 313ZC(5)".

12 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), after paragraph (dc) insert—

"(dca) section 313ZC (duty of employer to provide details of employees etc),".

Identifying scheme users

13 (1) Section 313C of FA 2004 (information provided to introducers) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies where HMRC suspect—

(a) that a person ("P") is an introducer in relation to a proposal, and

(b) that the proposal may be notifiable.

(1A) HMRC may by written notice require P to provide HMRC with one or both of the following—

(a) prescribed information in relation to each person who has provided P with any information relating to the proposal;

(b) prescribed information in relation to each person with whom P has made a marketing contact in relation to the proposal."

(3) In subsection (3), for "or by virtue of subsection (1)" substitute "subsection (1A)".

(4) For the heading substitute "Provision of information to HMRC by introducers".

14 In section 98C of TMA 1970 (notification under Part 7 of FA 2004: penalties), in subsection (2)(f) after "information" insert "or have been provided with information".

Protection of persons making voluntary disclosures

15 After section 316 of FA 2004 insert—

"316A Confidentiality

No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by or under this Part."

Publication of DOTAS information

16 After section 316A of FA 2004 insert—

"316B Publication by HMRC

(1) HMRC may publish information about—

(a) any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under section 311;

(b) any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.

(2) The information that may be published is (subject to subsection (4))—

(a) any information relating to arrangements within subsection (1)(a), or a person within subsection (1)(b), that is prescribed information for the purposes of section 308, 309 or 310;

(b) any ruling of a court or tribunal relating to any such arrangements or person (in that person's capacity as a promoter in relation to a notifiable proposal or arrangements);

(c) the number of persons in any period who enter into transactions forming part of notifiable arrangements within subsection (1)(a);

(d) whether arrangements within subsection (1)(a) are APN relevant (see subsection (7));

(e) any other information that HMRC considers it appropriate to publish for the purpose of identifying arrangements within subsection (1)(a) or a person within subsection (1)(b).

(3) The information may be published in any manner that HMRC considers appropriate.

(4) No information may be published under this section that identifies a person who enters into a transaction forming part of notifiable arrangements within subsection (1)(a).

(5) But where a person who is a promoter within subsection (1)(b) is also a person mentioned in subsection (4), nothing in subsection (4) is to be taken as preventing the publication under this section of information so far as relating to the person's activities as a promoter.

(6) Before publishing any information under this section that identifies a person as a promoter within subsection (1)(b), HMRC must—

(a) inform the person that they are considering doing so, and

(b) give the person reasonable opportunity to make representations about whether it should be published.

(7) Arrangements are "APN relevant" for the purposes of subsection (2)(d) if HMRC has indicated in a publication that it may exercise (or has exercised) its power under section 219 of the Finance Act 2014 (accelerated payment notices) by virtue of the arrangements being DOTAS arrangements within the meaning of that section.

316C Section 316B: subsequent judicial rulings

(1) This section applies if—

(a) information about notifiable arrangements, or proposed notifiable arrangements, is published under section 316B,

(b) at any time after the information is published, a ruling of a court or tribunal is made in relation to tax arrangements, and

(c) HMRC is of the opinion that the ruling is relevant to the arrangements.

(2) A ruling is "relevant" to the arrangements if—

(a) the principles laid down, or reasoning given, in the ruling would, if applied to the arrangements, allow the purported advantage arising from the arrangements in relation to tax, and

(b) the ruling is final.

(3) HMRC must publish information about the ruling.

(4) The information must be published in the same manner as HMRC published the information mentioned in subsection (1)(a) (and may also be published in any other manner that HMRC considers appropriate).

(5) A ruling is "final" if it is—

(a) a ruling of the Supreme Court, or

(b) a ruling of any other court or tribunal in circumstances where—

(i) no appeal may be made against the ruling,

(ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,

(iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or

(iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.

(6) Where a ruling is final by virtue of sub-paragraph (ii), (iii) or (iv) of subsection (5)(b), the ruling is to be treated as made at the time when the sub-paragraph in question is first satisfied.

(7) In this section "tax arrangements" means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the obtaining of an advantage in relation to tax was the main purpose, or one of the main purposes."

Increase in penalties for failure to comply with section 313 of FA 2004

17 In section 98C of TMA 1970 (notification under Part 7 of FA 2004)—

(a) in subsection (3) for "penalty of the relevant sum" substitute "penalty not exceeding the relevant sum", and

(b) in subsection (4)—

(i) in paragraph (a) for "£100" substitute "£5,000",

(ii) in paragraph (b) for "£500" substitute "£7,500", and

(iii) in paragraph (c) for "£1,000" substitute "£10,000".

Transitional provisions

18 (1) Subject to sub-paragraph (2), section 310C of FA 2004 applies in relation to notifiable arrangements, or proposed notifiable arrangements, only if a reference number under section 311 of that Act is allocated to the arrangements on or after the day on which this Act is passed.

(2) Section 310C of FA 2004 does not apply in relation to notifiable arrangements, or proposed notifiable arrangements, where prescribed information relating to the arrangements was provided to HMRC before that day in compliance with section 308 of that Act.

19 Any notice given by HMRC under section 312A(4) of FA 2004 (notice that section 312A(2) duty does not apply) before the day on which this Act is passed is treated on and after that day as given also in relation to the duty under section 312A(2A) of that Act.

20 (1) Subject to sub-paragraph (2), section 316B of FA 2004 applies in relation to notifiable arrangements, or proposed notifiable arrangements, only if a reference number under section 311 of that Act is allocated to the arrangements on or after the day on which this Act is passed.

(2) Section 316B of FA 2004 does not apply in relation to notifiable arrangements, or proposed notifiable arrangements, where prescribed information relating to the arrangements was provided to HMRC before that day in compliance with section 308, 309 or 310 of that Act.

(3) Section 316B(2)(b) of FA 2004 applies in relation to a ruling of a court or tribunal only if the ruling is given on or after the day on which this Act is passed.

EXPLANATORY NOTE

DISCLOSURE OF TAX AVOIDANCE SCHEMES

SUMMARY

1. This measure makes changes to the Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act 2004 (FA 2004). In particular it changes the information that employers must provide to employees and to HM Revenue & Customs (HMRC) in relation to avoidance involving their employees. It provides HMRC with a power to identify users of undisclosed avoidance, increases the penalty for users who do not comply with their reporting requirements under DOTAS and introduces protection for those wishing to voluntarily provide information about potential failures to comply with the DOTAS. It also introduces a requirement, under which promoters of tax avoidance schemes must notify HMRC of relevant changes to notified schemes and provides for HMRC to publish information about promoters and schemes that are notified under the regime.

2. These changes will be introduced by Finance Bill 2015 and take effect from Royal Assent to the Bill, to improve the information provided to users of tax avoidance schemes and to HMRC and to improve compliance with the DOTAS regime more generally.

DETAILS OF THE SCHEDULE

3. Paragraph 1 introduces a new section 310C into FA 2004. It requires promoters to notify HMRC within 30 days if the name of a scheme, or the name or address of a promoter, changes after a reference number has been issued under section 311 of FA 2004. Subsections (4), (5) and (6) of section 310C deal with the situation where there is more than one promoter in relation to the notified scheme. A promoter is only obliged to provide information about changes to a promoter's detail that apply specifically to itself and the requirement on a promoter to provide information is satisfied if that information has been provided by another promoter.

4. Paragraph 3 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 310C of FA 2004.

5. Paragraph 5 amends section 312(2) and (5) of FA 2004. It enables HMRC to include information not directly related to the reference number issued under section 311 of FA 2004 on the form promoters use to provide that number to their clients.

6. Paragraph 6 amends section 312A(2) of FA 2004 to make similar provision where a client receives information from a promoter under section 312 of FA 2004 and is required to provide prescribed information to others who are party to those arrangements.

7. Sub-paragraph (4) of Paragraph 6 introduces a new subsection (2A) into section 312A of FA 2004. It requires that where an employer receives, or might reasonably be expected to receive, a tax advantage from notifiable arrangements relating to an employee's employment, the employer must provide prescribed information to the employee.

8. Paragraph 9 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 312A(2A) of FA 2004.

9. Paragraph 10 introduces a new section 313ZC into FA 2004. It requires employers to provide HMRC with prescribed information at the prescribed time about each employee to whom they have provided information in accordance with section 312A of FA 2004. The duty on the employees to provide similar information under section 313 of FA 2004 is disapplied in regulations in circumstances where section 313ZC of FA 2004 applies.

10. Paragraph 7 amends section 313 of FA 2004 so that the requirements of that section can be disappplied in regulations in cases where an employer is required to provide prescribed information about employees under new section 313ZC of FA 2004.

11. Paragraph 12 amends section 98C of the Taxes Management Act 1970 to introduce penalties where a person has failed to provide information required under section 313ZC of FA 2004.

12. Paragraph 13 amends section 313C of FA 2004. It enables HMRC to require a person suspected of being an introducer in relation to a notifiable proposal to provide prescribed information about those with whom they have made a marketing contact within the meaning of section 307(4B) of FA 2004.

13. Paragraph 14 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 313C of FA 2004.

14. Paragraph 15 introduces a new section 316A into FA 2004. It enables persons to voluntarily provide information or documents to HMRC which they suspect may assist HMRC in determining whether there has been a breach of any of the requirements of Part 7 of FA 2004.

15. Paragraph 16 introduces a new section 316B into FA 2004. It enables HMRC to publish information about promoters and schemes that are notified under Part 7 of FA 2004 and which have been issued with a reference number under section 311 of FA 2004. HMRC must inform a promoter before publishing any information which would identify that person as a promoter and may not publish any information that will identify scheme users.

16. Paragraph 16 also introduces a new section 316C into FA 2004. It requires HMRC to publish information about court rulings that are relevant to the earlier publication of information under section 316B of FA 2004 and to publish it in the same manner as the original publication.

17. Paragraph 17 amends subsection 98C(3) of the Taxes Management Act 1970. It increases the penalties for users of tax avoidance schemes who fail to correctly provide information about the reference number to HMRC under section 313 of FA 2004. The penalties are increased to an amount not exceeding £5,000, £7,500 and £10,000 for each of the three categories of failures mentioned in that subsection.

18. Paragraph 18 sets out transitional provisions for new sections 310C and 316B of FA 2004. The new sections take effect only for schemes which are notified under section 308 and issued with a reference number under section 311 of FA 2004, on or after Finance Bill 2015 receives Royal Assent, and in relation to court rulings given after that day.

19. Paragraph 18 also sets out transitional provisions for section 312A(4) of FA 2004. It treats any notice given under section 312A(4) of FA 2004 before Finance Bill 2015 receives Royal Assent as given also in relation to section 312A(2A) of FA 2004.

BACKGROUND NOTE

20. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of FA 2004 is designed to give HMRC early warning of tax avoidance schemes. This provides HMRC with the opportunity to consider changes in the law to close loopholes and to challenge schemes that it believes do not work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to provide details of their scheme to HMRC if it meets certain criteria. The changes being made will improve the information provided to HMRC and to users of tax avoidance schemes as well as improving compliance with the DOTAS regime more generally. The publication of information about promoters and schemes notified under the regime and issued with reference number will help would-be users to better understand the serious risks they face when getting involved with tax avoidance.

21. If you have any questions about this change, or comments on the legislation, please contact Gary Coombs on 03000 589577 (email: gary.coombs@hmrc.gsi.gov.uk)

STATUTORY INSTRUMENTS

2015 No.

TAXES

The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) (Amendment) Regulations 2015

Made - - - -	*****
Laid before House of Commons	*****
Coming into force - -	*31st March 2015*

The Commissioners for Her Majesty's Revenue and Customs(**a**) in exercise of the powers conferred by section 307(5) and 318(1) of the Finance Act 2004(**b**) make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) (Amendment) Regulations 2015 and come into force on 31st March 2015.

2. The Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004(**c**) are amended as follows.

Persons not to be treated as promoters – employees

3. After paragraph (3) of regulation 3 (persons not to be treated as promoters – employees) insert—

> "(4) This Regulation does not apply where, but for the requirements of this regulation, a duty falls on any person under section 309."

Persons not to be treated as promoters under section 307(1)(b)(ii)

4. Omit regulation 5 (persons not to be treated as promoters under section 307(1)(b)(ii)).

(**a**) The functions of the Commissioners "Board" of Inland Revenue 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 that Act provides that a reference to the Commissioners of Inland Revenue, however expressed, shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
(**b**) 2004 c. 12.
(**c**) SI 2004/1865. Amended by SI 2004/2613 and SI 2012/1868.

Name

Two of the Commissioners for her Majesty's Revenue and Customs

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Promoters and Prescribed Circumstances Regulations) 2004 (S.I. 2004/1865) ("the 2004 Regulations") to ensure that neither an employee of a promoter resident outside of the United Kingdom in the event that the employer does not make a disclosure, nor any person who is to any extent responsible for the organisation or management of notifiable arrangements, is excluded from being treated as a promoter.

Regulation 1 provides for citation and commencement.

Regulation 3 inserts new regulation 3(4) into the 2004 Regulations which prescribes circumstances where regulation 3 will not apply to employees.

Regulation 4 omits regulation 5 of the 2004 Regulations.

A Tax Information and Impact Note covering this instrument was published on 10th December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE TAX AVOIDANCE SCHEMES (PROMOTERS AND PRESCRIBED CIRCUMSTANCES) (AMENDMENT) REGULATIONS 2015

[2015] 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.

2. Purpose of the instrument

2.1. These Regulations amend the Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (the “Promoter Regulations”) to ensure that employees of promoters resident outside the United Kingdom are not excluded as promoters in the event that their employer does not disclose and to ensure that persons who are to any extent responsible for the organisation or management of notifiable arrangements are not excluded from being treated as a promoter.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1. None

4. Legislative Context

4.1. Part 7 of the Finance Act 2004 (sections 306 – 319) provides for the notification (“disclosure”) to the HMRC of certain tax arrangements and proposals for such arrangements (“schemes”).

4.2. Sections 308, 309 and 310 require certain persons to disclose information about schemes falling within certain descriptions. The requirement usually falls on the promoter who must explain how the scheme works within 5 days of its being marketed, made available for implementation or implemented. Where the promoter is not resident in the United Kingdom the obligation may fall on other persons if the promoter does not comply with the requirement on them.

4.3. Section 311 provides that HMRC may issue a scheme reference number (SRN) to the person who disclosed the scheme. Section 312 requires a promoter to issue a SRN to a client who the promoter becomes aware has entered into a transaction forming part of the scheme. Section 312A imposes a similar obligation on the client to issue the

SRN to other persons who are party to the scheme. Any person who receives a SRN must report it to HMRC unless exempted by regulations.

4.4. Section 98C of the Taxes Management Act imposes penalties on persons who fail to comply with obligations under Part 7 of the Finance Act 2004.

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. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act 2004 is designed to give HMRC early warning of tax avoidance schemes, giving it the opportunity to consider changes in the law to close loopholes or challenge schemes that it does not believe work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of certain descriptions of schemes to HMRC.

7.2. The obligation to disclose applies equally to promoters who are resident in, or outside, the United Kingdom. If a promoter not resident in the United Kingdom fails to disclose, the requirement falls on each person who enters into a transaction forming part of the scheme unless there is another person within the meaning of promoter in the United Kingdom.

7.3. The 2004 Promoter Regulations treat certain persons as not being promoters. Since 2008, where more than one person is within the meaning of promoter, section 308 lifts the obligation to disclose where one of those promoters has disclosed the scheme.

7.4. These regulations make two changes to the 2004 Promoter Regulations. First, where a promoter who is not resident in the United Kingdom fails to disclose, the exemption provided generally to exclude employees of a promoter from being treated as a promoter is disapplied. Second, the regulation that excludes a person from being treated as a promoter if they are responsible to any extent for the organisation or management of the scheme but are not connected to a promoter who is involved in the design of the scheme is removed. Together these changes will make it more difficult for promoters not resident in the United Kingdom to avoid disclosure.

8. Consultation outcome

8.1. The Government published a consultation document on 31 July 2014 entitled 'Strengthening the Tax Avoidance Disclosure Regimes'. That consultation contained a number of proposals to strengthen the disclosure regime, including improving the information available to HMRC. These regulations take forward the elements outlined in that consultation which seek to make it more difficult for promoters not resident in the United Kingdom to avoid disclosure.

9. Guidance

9.1. Relevant guidance will be updated.

10. Impact

10.1. The impact on business, including civil society organisations is expected to be negligible. The regulations impose reporting obligations onto employees or a promoter and persons working with the promoter only to the extent that the promoter fails to comply with DOTAS.

10.2. The impact on the public sector is nil.

10.3. A Tax Information and Impact Note covering these Regulations was published on 10 December 2014 and can be found at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1. The legislation applies small business.

11.2. Businesses of any size can develop, market and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses.

12. Monitoring & review

12.1. HMRC routinely monitors the information it receives from promoters and users of disclosed tax avoidance schemes and uses that information to evaluate this measure and any future policy developments

13. Contact

Gary Coombs in the Counter-Avoidance Directorate of HM Revenue and Customs Tel: 03000 589577 or email: gary.coombs@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Employment intermediaries: determination of penalties

(1) Section 100 of TMA 1970 (determination of penalties by officer of Board) is amended as follows.

(2) In subsection (2)(c), after "those amendments" insert ", subject to subsection (2A)".

(3) After subsection (2) insert—

"(2A) Subsection (2)(c) does not exclude the application of subsection (1) where the penalty relates to a failure to furnish any information or produce any document or record in accordance with regulations under section 716B of ITEPA 2003 (employment intermediaries to keep, preserve and provide information etc)."

(4) The amendments made by this section come into force on 6 April 2015.

EXPLANATORY NOTE

EMPLOYMENT INTERMEDIARIES: DETERMINATION OF PENALTIES

SUMMARY

1. This clause amends existing legislation for the procedure for recovery of penalties under Section 100 Taxes Management Act 1970 (TMA 1970). This allows HMRC to issue penalties without the issuing proceedings before the First-Tier Tribunal where the penalty relates to the late filing, non-submission of quarterly returns or incorrect or incomplete quarterly returns from employment intermediaries from 6 April 2015

DETAILS OF THE CLAUSE

2. Subsection 1 provides that Section 100 TMA 1970 (determination of penalties by officer of Board) is amended.

3. Subsection 2 inserts new “subject to subsection (2A)” after “those amendments” in section (2)(c).

4. Subsection 3 inserts after subsection (2) new subsection (2A).

5. New subsection (2A) provides that penalties issued under s98 TMA 1970 where the penalty relates to a failure to furnish any information or produce any document or record required to be submitted by a specified employment intermediary as set out in regulations under s716B of the Income Tax (Earnings and Pensions Act) 2003 (ITEPA 2003) (employment intermediaries to keep, preserve and provide information etc) do not fall within the list of exceptions to section 100 TMA 1970 in s100(2) TMA 1970. The result is that proceedings before the First Tier-Tribunal are not required to issue an initial penalty related to the above.

6. The amendments made by this section come into force on 6 April 2015.

BACKGROUND NOTE

7. Legislation was introduced in Finance Act 2014 to prevent the avoidance of employment taxes by a UK agency engaging UK workers via non-UK agencies and intermediaries facilitating false self-employment and the Employment Intermediaries Information Quarterly Return (the first return is due to be submitted by 5 August 2015). It supports the Government’s anti-avoidance policy by tackling those who have carelessly or deliberately failed to comply with regulations made under s71bB of ITEPA 2003. These regulations will allow HMRC to take an appropriate targeted compliance response where required

8. If you have any questions about this change, or comments on the legislation, please contact Adrian Dixon 03000 586934 (email: adrian.dixon@hmrc.gsi.gov.uk).

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This document can be found in full on our website at: www.gov.uk