HM TREASURY

DRAFT CLAUSES & EXPLANATORY NOTES

for

FINANCE BILL 2013

11 December 2012

Introduction

This document contains draft clauses and explanatory notes to be included in Finance Bill 2013. Accompanying draft secondary legislation is provided alongside the relevant clause, where available.

The consultation on this legislation is open until 6 February 2013.

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 HM Treasury and HM Revenue & Customs websites.

1 Charge for 2013-14

Income tax is charged for the tax year 2013-14.

2 Basic rate limit for 2013-14

(1) For the tax year 2013-14 the amount specified in section 10(5) of ITA 2007 (basic rate limit) is replaced with "£32,010".

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

3 Personal allowance for 2013-14 for those born after 5 April 1948

(1) For the tax year 2013-14 the amount specified in section 35(1) of ITA 2007 (personal allowance for those born after 5 April 1948) is replaced with "£9,440".

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

EXPLANATORY NOTE

CHARGE FOR 2013-14

SUMMARY

1. This clause provides for income tax for the tax year 2013-14.

DETAILS OF THE CLAUSE

2. Section 1 provides for income tax for 2013-14.

BACKGROUND

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

4. This clause imposes a charge to income tax for the tax year 2013-14. Section 1(2) Finance Act 2012 provides the main rates of income tax for 2013-14: the 20 per cent basic rate, the 40 per cent higher rate and the 45 per cent additional rate.

5. If you have any questions about this change, or comments on the legislation, please contact Roopal Pujara on 020 7147 3138 (email: roopal.pujara@hmrc.gsi.gov.uk) or Paul Thomas on 020 7147 2479 (email: paul.thomas@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

BASIC RATE LIMIT FOR 2013-14

SUMMARY

1. This clause sets the amount of the basic rate limit for income tax at £32,010 for 2013-14.

DETAILS OF THE CLAUSE

2. Subsection (1) replaces the existing amount of the basic rate limit in section 10(5) of the Income Tax Act 2007 (£34,370) with £32,010 for 2013-14.

3. Subsection (2) disapplies the indexation provisions for the basic rate limit at section 21 Income Tax Act 2007 as far as it applies to section 10(5), for 2013-14.

BACKGROUND

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

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

6. Autumn statement 2012 announced that the basic rate limit will be set at £32,010 for 2013-14. This supersedes the corresponding amount announced at Budget 2012.

7. The table below sets out the amount of the basic rate limit for 2012-13, the indexed amount for 2013-14, and the amount specified by this clause for 2013-14.

2012-13	2013-14 indexed	2013-14 by this clause
£34,370	£35,300	£32,010

8. The effect of this clause is to override the indexed amount for the basic rate limit. This clause is part of a package of measures, together with a further clause that sets the personal allowance for 2013-14 for those born after 5 April 1948 by an amount above indexation.

9. If you have any questions about this change, or comments on the legislation, please contact Roopal Pujara on 020 7147 3138 (email: roopal.pujara@hmrc.gsi.gov.uk) or Paul Thomas on 020 7147 2479 (email: paul.thomas@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PERSONAL ALLOWANCE FOR 2013-14 FOR THOSE BORN AFTER 5 APRIL 1948

SUMMARY

1. This clause sets the amount of the personal allowance for those born after 5 April 1948.

DETAILS OF THE CLAUSE

2. Subsection (1) sets the amount of the personal allowance for those born after 5 April 1948 in section 35(1) of the Income Tax Act 2007 (£8,105) with £9,440 for 2013-14.

3. Subsection (2) disapplies the indexation provisions for the personal allowance, at section 57 of the Income Tax Act 2007, for those born after 5 April 1948 for 2013-14.

BACKGROUND

4. An individual is entitled to a personal allowance for income tax. The amount depends upon the individual's date of birth and income from 2013-14.

5. Up to 2012-13, an individual's personal allowance depends on their age. Finance Act 2012 made changes to the main income tax personal allowances. From 2013-14, there are still three main personal allowances, but availability will be by reference to date of birth. Section 4, Finance Act 2012 substitutes 'born after 5 April 1948' for 'aged under 65' in section 35 with effect from tax year 2013-14.

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

7. Autumn Statement 2012 announced that the basic personal allowance will be increased to £9,440 in 2013-14. This supersedes the corresponding amount announced at Budget 2012.

8. The table below sets out the amount of the personal allowance for those aged under 65 for 2012-13, the indexed amount for 2013-14 and the amount specified for this clause for 2013-14 for those born after 5 April 1948:

2012-13	2013-14 indexed	2013-14 by this clause
£8,105	£8,325	£9,440

9. The effect of this clause is to override the indexed amount for the personal allowance for those born after 5 April 1948. This clause is part of a package of measures together, with a further clause that sets the basic rate limit in an amount below indexation.

10. If you have any questions about this change, or comments on the legislation, please contact Roopal Pujara on 020 7147 3138 (email: roopal.pujara@hmrc.gsi.gov.uk) or Paul Thomas on 020 7147 2479 (email: paul.thomas@hmrc.gsi.gov.uk).

1 Income tax exemption for universal credit

(1) In section 677(1) of ITEPA 2003 (UK social security benefits wholly exempt from tax), in Part 1 of Table B (benefits payable under primary legislation) insert at the appropriate place—

"Universal credit	WRA 2012	Part 1
	Any provision made for Northern Ireland which corresponds to Part 1 of WRA 2012"	

(2) The amendment made by this section has effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

INCOME TAX EXEMPTION FOR UNIVERSAL CREDIT

SUMMARY

1. This clause adds Universal Credit to the table of social security benefits that are wholly exempt from income tax.

DETAILS OF THE CLAUSE

2. Subsection 1 adds Universal Credit and its 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 2 provides that this clause has effect for 2013-14 and later tax years.

BACKGROUND NOTE

4. Universal Credit will bring together different forms of income-related benefits and tax credits and provide a simple, integrated benefit for people in or out of work. The benefit will consist of a basic standard allowance with additional elements for disability, children disabled children, child care, carers and housing costs.

5. If you have any questions about these changes or comments on the legislation, please contact Paul Thomas on 020 7147 2479 (email: paul.thomas@hmrc.gsi.gov.uk).

1 Limit on income tax reliefs

Schedule 1 contains provision limiting the deductions which may be made at Step 2 of the calculation in section 23 of ITA 2007 (calculation of income tax liability).

SCHEDULES

SCHEDULE 1

Section 1

LIMIT ON INCOME TAX RELIEFS

The limit

1 In Chapter 3 of Part 2 of ITA 2007 (calculation of income tax liability) after section 24 insert—

"24A Limit on Step 2 deductions

(1) If the taxpayer is an individual, there is a limit on certain deductions which may be made for the tax year at Step 2.

(2) The limit is determined as follows.

(3) Amount A must not exceed amount B.

(4) Amount A is—
- (a) the deductions for the tax year at Step 2 for the reliefs listed in subsection (6) taken together, less
- (b) so much of those deductions as fall within subsection (7).

(5) Amount B is—
- (a) £50,000, or
- (b) if more, 25% of the taxpayer's adjusted total income for the tax year (see subsection (8)).

(6) The reliefs are—
- (a) relief under section 64 (trade loss relief against general income);
- (b) relief under section 72 (early trade losses relief);
- (c) relief under section 96 (post-cessation trade relief);
- (d) relief under section 120 (property loss relief against general income);
- (e) relief under section 125 (post-cessation property relief);
- (f) relief under section 128 (employment loss relief against general income);
- (g) relief under Chapter 6 of Part 4 (share loss relief);
- (h) relief under Chapter 1 of Part 8 (interest payments);
- (i) relief under section 555 of ITEPA 2003 (deduction for liabilities relating to former employment);
- (j) relief under section 446 of ITTOIA 2005 (strips of government securities: relief for losses);

(k) relief under section 454(4) of ITTOIA 2005 (listed securities held since 26 March 2003: relief for losses: persons other than trustees).

(7) The deductions falling within this subsection are—

(a) deductions for amounts of relief so far as attributable to allowances under Part 3A of CAA 2001 (business premises renovation allowances);

(b) deductions for amounts of relief under a provision mentioned in subsection (6)(a) to (e) so far as made from profits of the trade or business to which the relief in question relates;

(c) deductions for amounts of relief under the provision mentioned in subsection (6)(a) or (b) so far as attributable to a deduction allowed under section 205 or 220 of ITTOIA 2005 (deduction for overlap profit in final tax year or on change of accounting date);

(d) deductions for amounts of relief under the provision mentioned in subsection (6)(g)—

(i) where the shares in question fall within section 131(2)(a) (qualifying shares to which EIS relief is attributable), or

(ii) where SEIS relief is attributable to the shares in question as determined in accordance with Part 5A (seed enterprise investment scheme).

(8) The taxpayer's "adjusted total income" for the tax year is calculated as follows.

Step 1

Take the amount of the taxpayer's total income for the tax year.

Step 2

Add back the amounts of any deductions allowed under Part 12 of ITEPA 2003 (payroll giving) in calculating the taxpayer's income which is charged to tax for the tax year.

Step 3

If the taxpayer is given relief in accordance with section 192 of FA 2004 (pension schemes: relief at source) in respect of any contribution paid in the tax year under a pension scheme, deduct the gross amount of the contribution.

The "gross" amount of a contribution is the amount of the contribution before deduction of tax under section 192(1) of FA 2004.

Step 4

If the taxpayer is entitled to a deduction for relief under section 193(4) or 194(1) of FA 2004 (pension schemes: excess relief under net payment arrangements or relief on making a claim) for the tax year, deduct the amount of the excess or contribution (as the case may be).

The result is the taxpayer's adjusted total income for the tax year."

Consequential amendments

2 (1) ITA 2007 is amended as follows.

(2) In section 23 (calculation of income tax liability) at step 2 for "section 25" substitute "sections 24A and 25".

(3) In the following provisions (which explain how certain reliefs work) for "section 25(4) and (5)" substitute "sections 24A and 25(4) and (5)"—

(a) section 65(1),

(b) section 73,

(c) section 121(1),

(d) section 129(1), and

(e) section 133(1).

Commencement and transitional provision

3 The amendments made by this Schedule have effect for the tax year 2013-14 and subsequent tax years.

4 (1) The amendments also have effect for tax years before the tax year 2013-14 but subject to sub-paragraph (2) below.

(2) Section 24A(6) of ITA 2007 (as inserted by paragraph 1 above) has effect as if—

(a) in paragraphs (a), (b), (f) and (g) the references to relief were limited to relief in respect of a loss made in the tax year 2013-14 or a subsequent tax year, and

(b) all the other paragraphs were omitted.

5 In section 24A(6)(d) of ITA 2007 (as inserted by paragraph 1 above) the reference to relief does not include relief in respect of a loss made in the tax year 2012-13.

EXPLANATORY NOTE

LIMIT ON INCOME TAX RELIEFS

SUMMARY

1. This clause and Schedule provide for a limit on the amount of income tax relief that an individual may deduct at step 2 of their income tax calculation for a tax year in relation to certain prescribed reliefs. The limit is the greater of £50,000 or 25 per cent of the individual's adjusted total income for the tax year. The limit has effect for the tax year 2013-14 and subsequent tax years.

DETAILS OF THE SCHEDULE

The limit

2. Paragraph 1 inserts new section 24A after section 24 of Chapter 3 of Part 2 of Income Tax Act 2007 (ITA). New section 24(A)(1) provides for a limit on the amount of relief that may be deducted at step 2 of the income tax calculation for those reliefs listed in new section 24A(6). The reliefs are:

- Trade Loss Relief against general income– available for losses made by an individual carrying on a trade, profession or vocation. This will exclude relief for losses attributable to overlap relief and Business Premises Renovation Allowances (BPRA);
- Early Trade Losses Relief – available to an individual in the first four years of the trade, profession or vocation. This will exclude relief for losses attributable to overlap relief and BPRA;
- Post-cessation Trade Relief – available for qualifying payments or qualifying events within seven years of the permanent cessation of the trade;
- Property Loss Relief against general income – available for property business losses arising from capital allowances or agricultural expenses. This will exclude relief for losses attributable to BPRA;
- Post-cessation Property Relief – available for qualifying payments or qualifying events within seven years of the permanent cessation of the UK property business;
- Employment Loss Relief against general income– available in certain circumstances where losses or liabilities arise from employment;
- Former Employees Deduction for Liabilities – available for payments made by former employees for which they are entitled to claim a deduction from their general income in the year in which the payment is made;
- Share Loss Relief on non-EIS/SEIS shares – available for capital losses on the disposal (or deemed disposal) of certain qualifying shares;

- Losses on Deeply Discounted Securities – available only for losses on gilt strips and on listed securities held since at least 26 March 2003; and,
- Qualifying Loan Interest – available for interest paid on certain loans. These include loans to buy an interest in certain types of company, or to invest in a partnership.

3. New sections 24A(3) to (5) set out the method of computing the limit.

4. New section 24A(7) lists deductions for amounts of relief that are specifically excluded from the limit.

5. New section 24A(8) explains how to calculate "adjusted total income" for the purposes of the limit.

Consequential Amendments

6. Paragraph 2 provides consequential amendments to step 2 of the income tax calculation in section 23 ITA, and in specific relief provisions.

Commencement and transitional provision

8. Paragraph 3 provides for the limit to take effect for tax year 2013-14 and subsequent tax years.

9. Paragraph 4 provides that the limit will also apply where loss relief is claimed for a tax year before 2013-14 in relation to losses made in 2013-14 or a later year.

10. Paragraph 5 ensures that the limit will not apply to property loss relief arising from a loss made in 2012-13 where the loss is claimed for relief against general income in tax year 2013-14.

BACKGROUND

11. In his Budget Statement of 21 March 2012, the Chancellor announced a limit on previously uncapped income tax reliefs with effect from 6 April 2013. The limit is to ensure that those on higher incomes cannot use reliefs excessively. The limit is set at £50,000 or 25 per cent of an individual's adjusted total income, whichever is the greater.

12. This measure is about fairness: the Government is committed to supporting investment and entrepreneurship – but considers that its support should not be without limit.

13. This measure is not being introduced to address tax avoidance; it will however reduce the scope for exploiting these reliefs for tax avoidance purposes.

14. Following engagement with the charity sector the Government decided to specifically exclude charitable reliefs from the cap. The Government consulted on the delivery of the cap between 13 July and 5 October 2012.

15. If you have any questions about this change, or comments on the legislation, please contact Carolyn Howes on 020 7147 3508 (email: carolyn.howes@hmrc.gsi.gov.uk).

1 Statutory residence test

(1) Schedule 1 contains—
  (a) provision for determining whether individuals are resident in the United Kingdom for the purposes of income tax, capital gains tax and (where relevant) inheritance tax and corporation tax,
  (b) provision about split years, and
  (c) provision about periods when individuals are temporarily non-resident.

(2) The Treasury may by order make any incidental, supplemental, consequential, transitional or saving provision in consequence of Schedule 1.

(3) An order under subsection (2) may—
  (a) make different provision for different purposes, and
  (b) make provision amending, repealing or revoking any provision made by or under an Act (whenever passed or made).

(4) An order under subsection (2) is to be made by statutory instrument.

(5) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 1

Section 1

STATUTORY RESIDENCE TEST

PART 1

THE RULES

Introduction

1 (1) This Part of this Schedule sets out the rules for determining for the purposes of relevant tax whether individuals are resident or not resident in the UK.

(2) The rules are referred to collectively as "the statutory residence test".

(3) The rules do not apply in determining for the purposes of relevant tax whether individuals are resident or not resident in England, Wales, Scotland or Northern Ireland specifically (rather than in the UK as a whole).

(4) "Relevant tax" means—

(a) income tax,

(b) capital gains tax, and

(c) (so far as the residence status of individuals is relevant to them) inheritance tax and corporation tax.

Interpretation of enactments

2 (1) In enactments relating to relevant tax, a reference to being resident (or not resident) in the UK is, in the case of individuals, a reference to being resident (or not resident) in the UK in accordance with the statutory residence test.

(2) Sub-paragraph (1) applies even if the reference relates to the tax liability of an actual or deemed person that is not an individual (for example, where the liability of another person depends on the residence status of an individual).

(3) An individual who, in accordance with the statutory residence test, is resident (or not resident) in the UK "for" a tax year is taken for the purposes of any enactment relating to relevant tax to be resident (or not resident) there at all times in that tax year.

(4) But see Part 3 of this Schedule (split year treatment) for cases where the effect of sub-paragraph (3) is relaxed in certain circumstances.

(5) This Schedule has effect subject to any express provision to the contrary in (or falling to be recognised and acknowledged in law by virtue of) any enactment.

The basic rule

3 An individual ("P") is resident in the UK for a tax year ("year X") if—

(a) the automatic residence test is met for that year, or

(b) the sufficient ties test is met for that year.

4 If neither of those tests is met for that year, P is not resident in the UK for that year.

The automatic residence test

5 The automatic residence test is met for year X if P meets—
(a) at least one of the automatic UK tests, and
(b) none of the automatic overseas tests.

The automatic UK tests

6 There are 4 automatic UK tests.

7 The first automatic UK test is that P spends at least 183 days in the UK in year X.

8 (1) The second automatic UK test is that—
(a) P has a home in the UK for more than 90 days,
(b) P is present at that home (while it is a home of P's) on at least 30 separate days in year X (for no matter how short a time on each day),
(c) while P has that home, there is at least one period of 91 consecutive days throughout which condition A or condition B (or a combination of those conditions) is met, and
(d) at least one day of at least one of those 91-day periods falls within year X.

(2) Condition A is that P has no home overseas.

(3) Condition B is that—
(a) P has one or more homes overseas, but
(b) each of those homes is a home at which P is present on fewer than 30 separate days in year X (for no matter how short a time on each day).

(4) A reference in this paragraph to 30 separate days is to 30 separate days in aggregate, whether the days are consecutive or intermittent.

(5) Sub-paragraph (1)(c) is satisfied so long as there is a period of 91 days throughout which condition A or condition B (or a combination of those conditions) is met, even if the period throughout which one (or a combination) of those conditions is met is in fact longer than that.

(6) If P has more than one home in the UK—
(a) each of those homes must be looked at separately to see if the second automatic UK test is met, and
(b) the second automatic UK test is then met so long as it is met in relation to at least one of those homes.

9 (1) The third automatic UK test is that—
(a) P works full-time in the UK for a period of 365 days,
(b) during that period, there are no significant breaks from UK work,
(c) all or part of that period falls within year X, and
(d) more than 75% of the total number of days in year X when P does more than 3 hours' work are days when P does more than 3 hours' work in the UK.

(2) There is a "significant break from UK work" if at least 31 days go by and not one of those days is—
(a) a day on which P does more than 3 hours' work in the UK, or
(b) a day on which P would have done more than 3 hours' work in the UK but for being on annual leave, sick leave or parenting leave.

(3) Sub-paragraph (1)(a) is satisfied so long as there is a period of 365 days for which P works full-time in the UK, even if P in fact works full-time there for longer than that.

(4) This paragraph does not apply to P if P is an international transportation worker at any time in year X.

10 The fourth automatic UK test is that—
(a) P dies in year X,
(b) for each of the previous 3 tax years, P was resident in the UK by virtue of meeting the automatic residence test,
(c) even assuming P were not resident in the UK for year X, the tax year preceding year X would not be a split year as respects P (see Part 3 of this Schedule), and
(d) when P died, either—
(i) P's home was in the UK, or
(ii) P had more than one home and at least one of them was in the UK.

The automatic overseas tests

11 There are 4 automatic overseas tests.

12 The first automatic overseas test is that—
(a) P was resident in the UK for one or more of the 3 tax years preceding year X,
(b) the number of days in year X that P spends in the UK is less than 16, and
(c) P does not die in year X.

13 The second automatic overseas test is that—
(a) P was resident in the UK for none of the 3 tax years preceding year X, and
(b) the number of days that P spends in the UK in year X is less than 46.

14 (1) The third automatic overseas test is that—
(a) P works full-time overseas for year X,
(b) during year X, there are no significant breaks from overseas work,
(c) the number of days in year X on which P does more than 3 hours' work in the UK is less than 31, and
(d) the number of days in year X falling within sub-paragraph (2) is less than 91.

(2) A day falls within this sub-paragraph if—
(a) it is a day spent by P in the UK, but
(b) it is not a day that is treated under paragraph 22(4) as a day spent by P in the UK.

(3) There is a "significant break from overseas work" if at least 31 days go by and not one of those days is—
(a) a day on which P does more than 3 hours' work overseas, or
(b) a day on which P would have done more than 3 hours' work overseas but for being on annual leave, sick leave or parenting leave.

(4) This paragraph does not apply to P if P is an international transportation worker at any time in year X.

15 (1) The fourth automatic overseas test is that—
(a) P dies in year X,
(b) P was resident in the UK for neither of the 2 tax years preceding year X or, alternatively, P's case falls within sub-paragraph (2), and
(c) the number of days that P spends in the UK in year X is less than 46.

(2) P's case falls within this sub-paragraph if—
(a) P was not resident in the UK for the tax year preceding year X, and
(b) the tax year before that was a split year as respects P because the circumstances of the case fell within Case 1, Case 2 or Case 3 (cases involving departure from the UK).

The sufficient ties test

16 (1) The sufficient ties test is met for year X if—
(a) P meets none of the automatic UK tests and none of the automatic overseas tests, but
(b) P has sufficient UK ties for that year.

(2) "UK ties" is defined in Part 2 of this Schedule.

(3) Whether P has "sufficient" UK ties for year X will depend on—
(a) whether P was resident in the UK for any of the previous 3 tax years, and
(b) the number of days that P spends in the UK in year X.

(4) The Tables in paragraphs 17 and 18 show how many ties are sufficient in each case.

Sufficient UK ties

17 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for one or more of the 3 tax years preceding year X—

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 15 but not more than 45	At least 4
More than 45 but not more than 90	At least 3
More than 90 but not more than 120	At least 2

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 120	At least 1

18 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for none of the 3 tax years preceding year X—

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 45 but not more than 90	All 4
More than 90 but not more than 120	At least 3
More than 120	At least 2

19 (1) If P dies in year X, paragraph 17 has effect as if the words "More than 15 but" were omitted from the first column of the Table.

(2) In addition to that modification, if the death occurs before 1 March in year X, paragraphs 17 and 18 have effect as if each number of days mentioned in the first column of the Table were reduced by the appropriate number.

(3) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in year X after the month in which P dies.

(4) If, for any number of days, the appropriate number is not a whole number, the appropriate number is to be rounded up or down as follows—

(a) if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,

(b) otherwise, round it down to the nearest whole number.

PART 2

KEY CONCEPTS

Introduction

20 This Part of this Schedule defines some key concepts for the purposes of this Schedule.

Days spent

21 (1) If P is present in the UK at the end of a day, that day counts as a day spent by P in the UK.

(2) But it does not do so in the following two cases.

(3) The first case is where—
  (a) P only arrives in the UK as a passenger on that day,
  (b) P leaves the UK the next day, and
  (c) between arrival and departure, P does not engage in activities that are to a substantial extent unrelated to P's passage through the UK.

(4) The second case is where—
  (a) P would not be present in the UK at the end of that day but for exceptional circumstances beyond P's control that prevent P from leaving the UK, and
  (b) P intends to leave the UK as soon as those circumstances permit.

(5) Examples of circumstances that may be "exceptional" are—
  (a) national or local emergencies such as war, civil unrest or natural disasters, and
  (b) a sudden or life-threatening illness or injury.

(6) For a tax year—
  (a) the maximum number of days to which sub-paragraph (2) may apply in reliance on sub-paragraph (4) is limited to 60, and
  (b) accordingly, once the number of days within sub-paragraph (4) reaches 60 (counting forward from the start of the tax year), any subsequent days within that sub-paragraph, whether involving the same or different exceptional circumstances, will count as days spent by P in the UK.

22 (1) If P is not present in the UK at the end of a day, that day does not count as a day spent by P in the UK.

(2) This is subject to the deeming rule.

(3) The deeming rule applies if—
  (a) P has at least 3 UK ties for a tax year,
  (b) the number of days in that tax year when P is present in the UK at some point in the day but not at the end of the day ("qualifying days") is more than 30, and
  (c) P was resident in the UK for at least one of the 3 tax years preceding that tax year.

(4) The deeming rule is that, once the number of qualifying days in the tax year reaches 30 (counting forward from the start of the tax year), each subsequent qualifying day in the tax year is to be treated as a day spent by P in the UK.

(5) The deeming rule does not apply for the purposes of sub-paragraph (3)(a) (so, in deciding for those purposes whether P has a 90-day tie, qualifying days in excess of 30 are not to be treated as days spent by P in the UK).

Days spent "in" a period

23 Any reference to a number of days spent in the UK "in" a given period is a reference to the total number of days spent there (in aggregate) in that period, whether continuously or intermittently.

Home

24 (1) A person's home could be a building or part of a building or, for example, a vehicle, vessel or structure of any kind.

(2) Whether, for a given building, vehicle, vessel, structure or the like, there is a sufficient degree of permanence or stability about P's arrangements there for the place to count as P's home (or one of P's homes) will depend on all the circumstances of the case.

(3) But somewhere that P uses periodically as nothing more than a holiday home or temporary retreat (or something similar) does not count as a home of P's.

(4) A place may count as a home of P's whether or not P holds any estate or interest in it (and references to "having" a home are to be read accordingly).

(5) Somewhere that was P's home does not continue to count as such merely because P continues to hold an estate or interest in it after P has moved out (for example, if P is in the process of selling it or has let or sub-let it, having set up home elsewhere).

Work

25 (1) P is considered to be "working" (or doing "work") at any time when P is doing something—

(a) in the performance of duties of an employment held by P, or

(b) in the course of a trade carried on by P (alone or in partnership).

(2) In deciding whether something is being done in the performance of duties of an employment, regard must be had to whether, if value were received by P for doing the thing, it would fall within the definition of employment income in section 7 of ITEPA 2003.

(3) In deciding whether something is being done in the course of a trade, regard must be had to whether, if expenses were incurred by P in doing the thing, the expenses could be deducted in calculating the profits of the trade for income tax purposes.

(4) Time spent travelling counts as time spent working—

(a) if the cost of the journey could, if it were incurred by P, be deducted in calculating P's earnings from that employment under ITEPA 2003 or, as the case may be, in calculating the profits of the trade under ITTOIA 2005, or

(b) to the extent that P does something else during the journey that would itself count as work in accordance with this paragraph.

(5) Time spent undertaking training counts as time spent working if—

(a) in the case of an employment held by P, the training is provided or paid for by the employer and is undertaken to help P in performing duties of the employment, and

(b) in the case of a trade carried on by P, the cost of the training could be deducted in calculating the profits of the trade for income tax purposes.

(6) Sub-paragraphs (4) and (5) have effect without prejudice to the generality of sub-paragraphs (2) and (3).

(7) Assume for the purposes of sub-paragraphs (2) to (5) that P is someone who is chargeable to income tax under ITEPA 2003 or ITTOIA 2005.

(8) A voluntary post for which P has no contract of service does not count as an employment for the purposes of this Schedule.

Location of work

26 (1) Work is done where it is actually done, regardless of where the employment is held or the trade is carried on by P.

(2) But work done by way of or in the course of travelling to or from the UK by air or sea or via a tunnel under the sea is assumed to be done overseas even during the part of the journey in or over the UK.

(3) For these purposes, travelling to or from the UK is taken to—

(a) begin when P boards the aircraft, ship or train that is bound for a destination in the UK or (as the case may be) overseas, and

(b) end when P disembarks from that aircraft, ship or train.

(4) This paragraph is subject to express provisions in this Schedule about the location of work done by international transportation workers.

Full-time work

27 (1) P works "full-time" in the UK or, as the case may be, overseas "for" a period if the number of hours per week that P works there, on average across the period, is 35 or more.

(2) In determining whether that test is met, the length of the period may be reduced to take account of—

(a) reasonable amounts of annual leave or parenting leave taken by P during the period, and

(b) absences from work at times during the period when P is on sick leave and cannot reasonably be expected to work as a result of the illness or injury.

(3) But no reduction is to be made for week-ends or public holidays.

(4) "Reasonable" amounts of annual leave or parenting leave are to be assessed having regard to (among other things)—

(a) the nature of the work, and

(b) the country or countries where P is working.

(5) If P holds more than one employment or carries on more than one trade during the period (whether consecutively or concurrently), the hours worked in the UK or, as the case may be, overseas with respect to each employment or trade are to be aggregated in determining whether P works there full-time for the period.

(6) If—

(a) P changes employment during the period,
(b) there is a gap between the two employments, and
(c) P does not work at all at any time between the two employments,

the number of days in the gap may be deducted from the length of the period in determining whether the test in sub-paragraph (1) is met, subject to a maximum deduction of 15 days.

International transportation workers

28 (1) An "international transportation worker" is someone who—
(a) holds an employment, the duties of which consist of duties to be performed on board a vehicle, aircraft or ship as it makes international journeys, or
(b) carries on a trade, the activities of which consist of the provision of services on board a vehicle, aircraft or ship as it makes international journeys.

(2) But a person is not an international transportation worker by virtue of sub-paragraph (1)(b) unless, in order to provide the services, he or she has to be present (in person) on board the vehicle, aircraft or ship as it makes those journeys.

(3) In deciding whether the duties of an employment or the activities of a trade consist of duties or activities of a kind described in sub-paragraph (1)(a) or (b)—
(a) it is sufficient that substantially all of the duties or activities consist of duties or activities of that kind (even if, for example, the person occasionally performs duties or provides services on board a vehicle, aircraft or ship as it makes domestic journeys), and
(b) duties or activities of a purely incidental nature are to be ignored.

UK ties

29 (1) What counts as a "UK tie" depends on whether P was resident in the UK for one or more of the 3 tax years preceding year X.

(2) If P was resident in the UK for one or more of those 3 tax years, each of the following types of tie counts as a UK tie—
(a) a family tie,
(b) an accommodation tie,
(c) a work tie,
(d) a 90-day tie, and
(e) a country tie.

(3) Otherwise, each of the following types of tie counts as a UK tie—
(a) a family tie,
(b) an accommodation tie,
(c) a work tie, and
(d) a 90-day tie.

(4) In order to have the requisite number of UK ties for year X, each tie of P's must be of a different type.

Family tie

30 (1) P has a family tie for year X if—
(a) in year X, a relevant relationship exists at any time between P and another person, and
(b) that other person is someone who is resident in the UK for year X.

(2) A relevant relationship exists at any time between P and another person if at the time—
(a) P and the other person are husband and wife or civil partners and, in either case, are not separated,
(b) P and the other person are living together as husband and wife or, if they are of the same sex, as if they were civil partners, or
(c) the other person is a child of P's and is under the age of 18.

(3) P does not have a family tie for year X by virtue of sub-paragraph (2)(c) if P sees the child in the UK on fewer than 61 days (in total) in—
(a) year X, or
(b) if the child turns 18 during year X, the part of year X before the day on which the child turns 18.

(4) A day counts as a day on which P sees the child if P sees the child in person for all or part of the day.

(5) "Separated" means separated—
(a) under an order of a court of competent jurisdiction,
(b) by deed of separation, or
(c) in circumstances where the separation is likely to be permanent.

31 (1) This paragraph applies in deciding for the purposes (only) of paragraph 30(1)(b) whether a person with whom P has a relevant relationship (a "family member") is someone who is resident in the UK for year X.

(2) A family tie based on the fact that a family member has, by the same token, a relevant relationship with P is to be disregarded in deciding whether that family member is someone who is resident in the UK for year X.

(3) A family member falling within sub-paragraph (4) is to be treated as being not resident in the UK for year X if the number of days that he or she spends in the UK in the part of year X outside term-time is less than 21.

(4) A family member falls within this sub-paragraph if he or she—
(a) is a child of P's who is under the age of 18,
(b) is in full-time education in the UK at any time in year X, and
(c) is resident in the UK for year X but would not be so resident if the time spent in full-time education in the UK in that year were disregarded.

(5) In sub-paragraph (4)—
(a) references to full-time education in the UK are to full-time education at a university, college, school or other educational establishment in the UK, and
(b) the reference to the time spent in full-time education in the UK is to the time spent there during term-time.

(6) For the purposes of this paragraph, half-term breaks and other breaks when teaching is not provided during a term are considered to form part of "term-time".

Accommodation tie

32 (1) P has an accommodation tie for year X if—
(a) P has a place to live in the UK,
(b) that place is available to P during year X for a continuous period of at least 91 days, and
(c) P spends at least one night at that place in that year.

(2) If there is a gap of fewer than 16 days between periods in year X when a particular place is available to P, that place is to be treated as continuing to be available to P during the gap.

(3) P is considered to have a "place to live" in the UK if—
(a) P's home or at least one of P's homes (if P has more than one) is in the UK, or
(b) P has a holiday home or temporary retreat (or something similar) in the UK, or
(c) accommodation is otherwise available to P where P can live when P is in the UK.

(4) Accommodation may be "available" to P even if P holds no estate or interest in it and even has no legal right to occupy it.

(5) If the accommodation is the home of a close relative of P's, sub-paragraph (1)(c) has effect as if for "at least one night" there were substituted "a total of at least 16 nights".

(6) A "close relative" is—
(a) a parent or grandparent,
(b) a brother or sister,
(c) a child aged 18 or over, or
(d) a grandchild aged 18 or over,
in each case, whether by blood or half-blood or by marriage or civil partnership.

Work tie

33 (1) P has a work tie for year X if P works in the UK for at least 40 days (whether continuously or intermittently) in year X.

(2) For these purposes, P works in the UK for a day if P does more than 3 hours' work in the UK on that day.

(3) If P is an international transportation worker, P is assumed to do—
(a) more than 3 hours' work in the UK on any day on which P starts an international journey (as such a worker) that begins in the UK, and
(b) fewer than 3 hours' work in the UK on any day on which P completes an international journey (as such a worker) in the UK that began overseas.

(4) The assumptions in sub-paragraph (3)(a) and (b) apply regardless of how late in the day the journey begins or, as the case may be, ends (even if it begins or ends just before midnight).

(5) For the purposes of sub-paragraph (3)(a), it does not matter whether P completes the journey on that same day.

(6) A day that falls within both paragraph (a) and paragraph (b) of sub-paragraph (3) is to be treated as if it fell only within paragraph (a).

(7) In the case of an international journey to or from the UK that is undertaken in stages—
- (a) the day on which P "starts" or, as the case may be, "completes" the journey is the day on which P starts or, as the case may be, completes the stage of the journey that involves crossing the UK border, and
- (b) accordingly, any day on which the stage of the journey undertaken by P is a stage solely within the UK is to be counted separately (if it lasts for more than 3 hours) as a day on which P does more than 3 hours' work in the UK.

90-day tie

34 P has a 90-day tie for year X if P has spent more than 90 days in the UK in—
- (a) the tax year preceding year X,
- (b) the tax year preceding that tax year, or
- (c) each of those tax years separately.

Country tie

35 (1) P has a country tie for year X if the country in which P meets the midnight test for the greatest number of days in year X is the UK.

(2) If—
- (a) P meets the midnight test for the same number of days in year X in two or more countries, and
- (b) that number is the greatest number of days for which P meets the midnight test in any country in year X,

P has a country tie for year X if one of those countries is the UK.

(3) P meets the "midnight test" in a country for a day if P is present in that country at the end of that day.

PART 3

SPLIT YEAR TREATMENT

Introduction

36 This Part of this Schedule—
- (a) explains when, as respects an individual, a tax year is a split year,
- (b) defines the overseas part and the UK part of a split year, and
- (c) amends certain enactments to provide for special charging rules in cases involving split years.

37 (1) The effect of a tax year being a split year is to relax the effect of paragraph 2(3) (which treats individuals who are UK resident "for" a tax year as being UK resident at all times in that year).

(2) When and how the effect of paragraph 2(3) is relaxed is defined in the special charging rules introduced by the amendments made by this Part.

(3) Subject to those special charging rules (and any other special charging rules for split years that may be introduced in the future), nothing in this Part alters an individual's residence status for a tax year or affects his or her liability to tax.

38 This Part—

(a) does not apply in determining the residence status of personal representatives, and

(b) applies to only a limited extent in determining the residence status of the trustees of a settlement (see section 475 of ITA 2007 and section 69 of TCGA 1992, as amended by this Part).

39 The existence of special charging rules for cases involving split years is not intended to affect any question as to whether an individual would fall to be regarded under double taxation arrangements as a resident of the UK.

Definition of a "split year"

40 (1) As respects an individual, a tax year is a "split year" if—

(a) the individual is resident in the UK for that year, and

(b) the circumstances of the case fall within Case 1, Case 2, Case 3, Case 4 or Case 5.

(2) The 5 Cases are described in paragraphs 41 to 45.

(3) In those paragraphs, the individual is referred to as "the taxpayer" and the tax year as "the relevant year".

(4) In applying Part 2 of this Schedule to those paragraphs, for "P" read "the taxpayer".

Case 1: starting full-time work overseas

41 (1) The circumstances of a case fall within Case 1 if they are as described in sub-paragraphs (2) to (5).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) On a day in the relevant year, the taxpayer starts to work full-time overseas for a period that continues to the end of the relevant year (whether or not it also continues beyond that point).

(4) In the part of the relevant year beginning with that day—

(a) the number of days on which the taxpayer does more than 3 hours' work in the UK does not exceed the permitted limit, and

(b) the number of days falling within sub-paragraph (6) does not exceed the permitted limit.

(5) The taxpayer is not resident in the UK for the next tax year because the taxpayer meets the third automatic overseas test for that year (see paragraph 14).

(6) A day falls within this sub-paragraph if—
(a) it is a day spent by the taxpayer in the UK, but
(b) it is not a day that is treated under paragraph 22(4) as a day spent by the taxpayer in the UK.

(7) The permitted limit is—
(a) for sub-paragraph (4)(a), the number found by reducing 30 by the appropriate number, and
(b) for sub-paragraph (4)(b), the number found by reducing 90 by the appropriate number.

(8) The appropriate number is the result of—

$$A \times \frac{B}{12}$$

where—
"A" is—
(a) 30, for sub-paragraph (4)(a), or
(b) 90, for sub-paragraph (4)(b), and
"B" is the number of whole months in the part of the relevant year before the day mentioned in sub-paragraph (3).

Case 2: accompanying spouse etc

42 (1) The circumstances of a case fall within Case 2 if they are as described in sub-paragraphs (2) to (6).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) The taxpayer has a partner whose circumstances fall within Case 1 for the relevant year.

(4) On a day in the relevant year, the taxpayer joins the partner overseas so they can live together while the partner is working full-time overseas.

(5) In the part of the relevant year beginning with the deemed departure day—
(a) the taxpayer has no home in the UK at any time, or has homes in both the UK and overseas but spends the greater part of the time living in the overseas home, and
(b) the number of days that the taxpayer spends in the UK does not exceed the permitted limit.

(6) The taxpayer is not resident in the UK for the next tax year.

(7) The deemed departure day is the later of—
(a) the day mentioned in sub-paragraph (4), and
(b) the day on which the partner starts to work full-time overseas.

(8) "The permitted limit" has the same meaning as it has in paragraph 41(4)(b).

(9) "Partner" means—
(a) a husband or wife or civil partner,

(b) if the taxpayer and another person are living together as husband and wife, that other person, or

(c) if the taxpayer and another person of the same sex are living together as if they were civil partners, that other person.

Case 3: leaving the UK to live abroad

43 (1) The circumstances of a case fall within Case 3 if they are as described in sub-paragraphs (2) to (7).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) At the start of the relevant year the taxpayer had one or more homes in the UK but—

(a) there comes a day in the relevant year when P ceases to have any home in the UK, and

(b) from then on, P has no home in the UK for the rest of that year.

(4) The circumstances of the case do not fall within Case 1 or Case 2 for the relevant year.

(5) In the part of the relevant year beginning with the day mentioned in sub-paragraph (3)(a), the taxpayer spends fewer than 16 days in the UK.

(6) The taxpayer is not resident in the UK for the next tax year.

(7) At the end of the period of 6 months beginning with the day mentioned in sub-paragraph (3)(a), the taxpayer has a sufficient link with a country overseas.

(8) The taxpayer has a "sufficient link" with a country overseas if and only if—

(a) the taxpayer is considered for tax purposes to be a resident of that country in accordance with its domestic laws, or

(b) the taxpayer has been present in that country (in person) at the end of each day of the 6-month period mentioned in sub-paragraph (7), or

(c) the taxpayer's only home is in that country or, if the taxpayer has more than one home, they are all in that country.

Case 4: coming to live or work full-time in the UK

44 (1) The circumstances of a case fall within Case 4 if they are as described in sub-paragraphs (2) to (5).

(2) The taxpayer was not resident in the UK for the previous tax year.

(3) Either or both of the following descriptions apply to the taxpayer—

(a) at the start of the relevant year, the taxpayer did not meet the only home test, but there comes a day in the relevant year when that ceases to be the case and the taxpayer then continues to meet the only home test for the rest of that year, or

(b) on a day in the relevant year the taxpayer starts to work full-time in the UK for a period that continues to the end of that year (whether or not it also continues beyond that point).

(4) For the part of the relevant year before that day (or the earliest of those days if there is more than one), the taxpayer does not have sufficient UK ties.

(5) The taxpayer meets the second or third automatic UK test for the relevant year (see paragraphs 8 and 9).

(6) The "only home test" is met if—
   (a) the taxpayer has only one home and that home is in the UK, or
   (b) the taxpayer has more than one home and all of them are in the UK.

(7) Paragraphs 16 to 19 (and Part 2 of this Schedule so far as it relates to those paragraphs) apply for the purposes of sub-paragraph (4) with the following adjustments—
   (a) references in those paragraphs and that Part to year X are to be read as references to the part of the relevant year mentioned in sub-paragraph (4), and
   (b) each number of days mentioned in the first column of the Table in paragraphs 17 and 18 is to be reduced by the appropriate number.

(8) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in the relevant year after the day (or earliest day) mentioned in sub-paragraph (4).

Case 5: starting to have a home in the UK

45 (1) The circumstances of a case fall within Case 5 if they are as described in sub-paragraphs (2) to (6).

(2) The taxpayer was not resident in the UK for the previous tax year.

(3) At the start of the relevant year, the taxpayer had no home in the UK but—
   (a) there comes a day when, for the first time in that year, the taxpayer does have a home in the UK, and
   (b) from then on, the taxpayer continues to have a home in the UK for the rest of that year and for the whole of the next tax year.

(4) For the part of the relevant year before the day mentioned in sub-paragraph (3)(a), the taxpayer does not have sufficient UK ties.

(5) The circumstances of the case do not fall within Case 4 for the relevant year.

(6) The taxpayer is resident in the UK for the next tax year and that tax year is not a split year as respects the taxpayer.

(7) Paragraphs 16 to 19 (and Part 2 of this Schedule so far as it relates to those paragraphs) apply for the purposes of sub-paragraph (4) with the following adjustments—
   (a) references in those paragraphs and that Part to year X are to be read as references to the part of the relevant year mentioned in sub-paragraph (4), and
   (b) each number of days mentioned in the first column of the Table in paragraphs 17 and 18 is to be reduced by the appropriate number.

(8) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where “A” is the number of whole months in the relevant year after the day mentioned in sub-paragraph (3)(a).

General rules for construing Cases 1 to 5

46 (1) This paragraph applies for the purposes of paragraphs 41 to 45.

(2) A reference to “the previous tax year” is to the tax year preceding the relevant year.

(3) A reference to “the next tax year” is to the tax year following the relevant year.

(4) If calculation of the appropriate number results in a number of days that is not a whole number, the appropriate number is to be rounded up or down as follows—

(a) if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,

(b) otherwise, round it down to the nearest whole number.

The overseas part and the UK part

47 (1) “The overseas part” of a split year is the part of that year—

(a) in Case 1, beginning with the day mentioned in paragraph 41(3),

(b) in Case 2, beginning with the deemed departure day as defined in paragraph 42(7),

(c) in Case 3, beginning with the day mentioned in paragraph 43(3)(a),

(d) in Case 4, before the day (or earliest day) mentioned in paragraph 44(4), and

(e) in Case 5, before the day mentioned in paragraph 45(3)(a).

(2) “The UK part” of a split year is the part of that year that is not the overseas part.

Special charging rules for employment income

48 ITEPA 2003 is amended as follows.

49 (1) In section 15 (earnings for year when employee UK resident), for subsection (1) substitute—

“(1) This section applies to general earnings for a tax year for which the employee is UK resident except that, in the case of a split year, it does not apply to any part of those earnings that is excluded.

(1A) General earnings are “excluded” if they—

(a) are attributable to the overseas part of the split year, and

(b) are neither—

(i) general earnings in respect of duties performed in the United Kingdom, nor

(ii) general earnings from overseas Crown employment subject to United Kingdom tax."

(2) After subsection (3) insert—

"(4) Any attribution required for the purposes of subsection (1A)(a) is to be done on a just and reasonable basis.

(5) The following provisions of Chapter 5 of this Part apply for the purposes of subsection (1A)(b) as for the purposes of section 27(2)—

(a) section 28 (which defines "general earnings from overseas Crown employment subject to United Kingdom tax"), and

(b) sections 38 to 41 (which contain rules for determining the place of performance of duties of employment).

(6) Subject to any provision made in an order under section 28(5) for the purposes of subsection (1A)(b), provisions made in an order under that section for the purposes of section 27(2) apply for the purposes of subsection (1A)(b) too."

50 In section 22 (chargeable overseas earnings for year when remittance basis applies and employee outside section 26), for subsection (7) substitute—

"(7) Section 15(1) does not apply to general earnings within subsection (1)."

51 (1) Section 23 (calculation of "chargeable overseas earnings") is amended as follows.

(2) In subsection (3), for step 1 substitute—

"*Step 1*

Identify—

(a) in the case of a tax year that is not a split year, the full amount of the overseas earnings for that year, and

(b) in the case of a split year, so much of the full amount of the overseas earnings for that year as is attributable to the UK part of the year."

(3) In that subsection, in step 2, for "those earnings" substitute "the earnings identified under step 1".

(4) After that subsection insert—

"(4) Any attribution required for the purposes of step 1 or step 2 in subsection (3) is to be done on a just and reasonable basis."

52 (1) Section 24 (limit on chargeable overseas earnings where duties of associated employment performed in UK) is amended as follows.

(2) After subsection (2) insert—

"(2A) If the tax year is a split year as respects the employee, subsection (2) has effect as if for "the aggregate earnings for that year from all the employments concerned" there were substituted "so much of the aggregate earnings for that year from all the employments concerned as is attributable to the UK part of that year"."

(3) After subsection (3) insert—

"(3A) Any attribution required for the purposes of subsection (2A) is to be done on a just and reasonable basis."

53 (1) Section 26 (foreign earnings for year when remittance basis applies and employee meets section 26A requirement) is amended as follows.

(2) In subsection (1), for the words from "if the general earnings" to the end substitute "if the general earnings meet all of the following conditions—

(a) they are neither—

(i) general earnings in respect of duties performed in the United Kingdom, nor

(ii) general earnings from overseas Crown employment subject to United Kingdom tax, and

(b) if the tax year is a split year as respects the employee, they are attributable to the UK part of the year."

(3) After subsection (5) insert—

"(5A) Any attribution required for the purposes of subsection (1)(b) is to be done on a just and reasonable basis."

(4) For subsection (6) substitute—

"(6) Section 15(1) does not apply to general earnings within subsection (1)."

54 (1) Section 329 (deduction from earnings not to exceed earnings) is amended as follows.

(2) After subsection (1) insert—

"(1A) If the earnings from which a deduction allowed under this Part is deductible include earnings that are "excluded" within the meaning of section 15(1A)—

(a) the amount of the deduction allowed is a proportion of the amount that would be allowed under this Part if the tax year were not a split year, and

(b) that proportion is equal to the proportion that the part of the earnings that is not "excluded" bears to the total earnings."

(3) In subsection (2), after "those earnings" insert "(or, in a case within subsection (1A), the part of those earnings that is not "excluded").

(4) In subsection (3), after "the earnings" insert "(or, in a case within subsection (1A), the part of the earnings that is not "excluded").

55 (1) Section 421E (income relating to securities: exclusions about residence etc) is amended as follows.

(2) For subsection (1) substitute—

"(1) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in a tax year that is not a split year as respects the employee and—

(a) the earnings from the employment are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment, they would not have been general earnings to which any of those sections applied.

(1A) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the UK part of a tax year that is a split year as respects the employee and—

(a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies, or

(b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.

(1B) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee."

(3) After subsection (2) insert—

"(2A) But Chapters 3A to 3D do apply in relation to employment-related securities in relation to which they are disapplied by subsection (2) if—

(a) the acquisition takes place in the overseas part of a tax year that is a split year as respects the employee,

(b) the tax year is a split year because the circumstances of the case fall within Case 1, Case 2 or Case 3 as described in Part 3 of Schedule 1 to FA 2013 (split year treatment: cases involving departure from the United Kingdom), and

(c) had it not been a split year—

(i) the earnings from the employment at the time of the acquisition (or some of them) would have been general earnings to which section 15, 22 or 26 applied, or

(ii) if there had been any earnings from the employment at that time, they (or some of them) would have been general earnings to which any of those sections applied."

56 In section 474 (cases where Chapter 5 of Part 7 does not apply), for subsection (1) substitute—

"(1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in a tax year that is not a split year as respects the employee and—

(a) the earnings from the employment are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment, they would not have been general earnings to which any of those sections applied.

(1A) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition

occurs in the UK part of a tax year that is a split year as respects the employee and—

(a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.

(1B) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee."

57 (1) Section 554Z4 (residence issues) is amended as follows.

(2) For subsections (3) to (5) substitute—

"(3) Subsection (4) applies if the value of the relevant step, or a part of it, is "for"—

(a) a tax year for which A is non-UK resident, or

(b) a tax year that is a split year as respects A.

(4) The value, or the part of it, is to be reduced—

(a) in a case within subsection (3)(a), by so much of the value, or the part of it, as is not in respect of UK duties, and

(b) in a case within subsection (3)(b), by so much of the value, or the part of it, as is both—

(i) attributable to the overseas part of the tax year, and

(ii) not in respect of UK duties.

(5) The extent to which—

(a) the value, or the part of it, is not in respect of UK duties, or

(b) so much of the value, or the part of it, as is attributable to the overseas part of the tax year is not in respect of UK duties,

is to be determined on a just and reasonable basis."

(3) After subsection (5) insert—

"(5A) Any attribution required for the purposes of subsection (4)(b)(i) is to be done on a just and reasonable basis.

(5B) "UK duties" means duties performed in the United Kingdom."

58 In section 554Z6 (overlap with certain earnings), in subsection (1)(a), after "UK resident" insert "(and, in the case of a tax year that is a split year as respects A, are not "excluded" by virtue of section 15(1A)(a) and (b)(i))".

59 In section 554Z9 (remittance basis: A is ordinarily UK resident), in subsection (5)—

(a) in paragraph (b), after "that income" insert "(or of so much of it as is attributable to the UK part of the relevant tax year, if it was a split year as respects A)", and

(b) in paragraph (c), after "tax year" insert "(or the UK part of it)".

60 (1) Section 554Z10 (remittance basis: A is not ordinarily resident) is amended as follows.

(2) In subsection (1), for paragraph (a) substitute—

"(a) the value of the relevant step, or a part of it, is "for" a tax year ("the relevant tax year") as determined under section 554Z4,".

(3) For subsection (2) substitute—

"(2) The overseas portion of (as the case may be)—

(a) A's employment income by virtue of section 554Z2(1), or

(b) the relevant part of A's employment income by virtue of that section,

is "taxable specific income" in a tax year so far as the overseas portion is remitted to the United Kingdom in that year."

(4) After that subsection insert—

"(2A) "The overseas portion" of A's employment income by virtue of section 554Z2(1), or of the relevant part of that income, is so much of that income, or of the relevant part of it, as is not in respect of UK duties.

(2B) "UK duties" means duties performed in the United Kingdom."

(5) In subsection (3), for "this purpose" substitute "the purposes of this section".

(6) For subsection (4) substitute—

"(4) The extent to which—

(a) the employment income, or the relevant part of it, is not in respect of UK duties, or

(b) so much of the employment income, or of the relevant part of it, as is attributable to the UK part of the relevant tax year is not in respect of UK duties,

is to be determined on a just and reasonable basis."

Special charging rules for pension income

61 (1) Section 575 of ITEPA 2003 (foreign pensions: taxable pension income) is amended as follows.

(2) In subsection (1), after "subsections" insert "(1A),".

(3) After that subsection insert—

"(1A) If the person liable for the tax under this Part is an individual and the tax year is a split year as respects that individual, the taxable pension income for the tax year is the full amount of the pension income arising in the UK part of the year, subject to subsections (2) and (3) and section 576A."

(4) In subsection (2), after "tax year" insert "or, as the case may be, the UK part of the tax year".

Special charging rules for trading income

62 ITTOIA 2005 is amended as follows.

63 In section 6 (territorial scope of charge to tax), after subsection (2) insert—

"(2A) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident."

64 (1) Section 17 (effect of becoming or ceasing to be UK resident) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies if—
(a) an individual carries on a trade otherwise than in partnership, and
(b) there is a change of residence.

(1A) For the purposes of this section there is a "change of residence" if—
(a) the individual becomes or ceases to be UK resident, or
(b) a tax year is, as respects the individual, a split year.

(1B) The change of residence occurs—
(a) in a case falling within subsection (1A)(a), at the start of the tax year for which the individual becomes or ceases to be UK resident, and
(b) in a case falling within subsection (1A)(b), at the start of whichever of the UK part or the overseas part of the tax year is the later part."

(3) In subsection (2), at the beginning insert "If this section applies and the individual does not actually cease permanently to carry on the trade immediately before the change of residence occurs,".

65 In section 243 (post-cessation receipts: extent of charge to tax), after subsection (5) insert—

"(6) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident."

66 In section 849 (calculation of firm's profits or losses), after subsection (3) insert—

"(3A) For any tax year that is a split year as respects the partner, this section has effect as if the partner were non-UK resident in the overseas part of the year."

67 (1) Section 852 (carrying on by partner of notional trade) is amended as follows.

(2) For subsection (6) substitute—

"(6) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional trade when that change of residence occurs and starting to carry on another immediately afterwards."

(3) After subsection (7) insert—

"(8) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (6)."

68 (1) Section 854 (carrying on by partner of notional business) is amended as follows.

(2) For subsection (5) substitute—

"(5) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional business when that change of residence occurs and starting to carry on another immediately afterwards."

(3) After that subsection insert—

"(5A) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (5)."

Special charging rules for property income

69 In section 270 of ITTOIA 2005 (profits of property businesses: income charged), after subsection (2) insert—

"(3) If, as respects an individual carrying on an overseas property business, the tax year is a split year—
(a) tax is charged under this Chapter on so much of the profits referred to in subsection (1) as arise in the UK part of the tax year, and
(b) the portion of the profits arising in the overseas part of the tax year is, accordingly, not chargeable to tax under this Chapter.

(4) In determining how much of the profits arise in the UK part of the tax year—
(a) determine first how much of the non-CAA profits arise in the UK part by apportioning the non-CAA profits between the UK part and the overseas part on a just and reasonable basis, and
(b) then adjust the portion of the non-CAA profits arising in the UK part by deducting any CAA allowances for the year and adding any CAA charges for the year.

(5) In subsection (4)—
"CAA allowances" means allowances treated under section 250 or 250A of CAA 2001 (capital allowances for overseas property businesses) as an expense of the business;
"CAA charges" means charges treated under either of those sections as a receipt of the business;
"non-CAA profits" means profits before account is taken of any CAA allowances or CAA charges."

Special charging rules for savings and investment income

70 Part 4 of ITTOIA 2005 (savings and investment income) is amended as follows.

71 In section 368 (territorial scope of charges in respect of savings and investment income), after subsection (2) insert—

"(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident."

72 In section 465 (person liable for tax on gains from life insurance etc: individuals), after subsection (1) insert—

"(1A) But if the tax year is a split year as respects the individual, the individual is not liable for tax under this Chapter in respect of gains arising in the overseas part of that year (subject to section 465B)."

73 In section 467 (person liable: UK resident trustees), in subsection (4), after paragraph (a) insert—

"(aa) is UK resident but the gain arises in the overseas part of a tax year that is, as respects the person who created the trusts, a split year,".

74 (1) Section 528 (reduction in amount charged under Chapter 9 of Part 4: non-UK resident policy holders) is amended as follows.

(2) The amendments made by sub-paragraphs (3) to (5) apply to section 528 as substituted by paragraph 3 of Schedule [ ] to this Act, and have effect in relation to policies and contracts in relation to which that section as so substituted has effect.

(3) In subsection (1)(b), for the words from "on which" to the end substitute "that are foreign days".

(4) After subsection (1) insert—

"(1A) "Foreign days" are—

(a) days falling within any tax year for which the individual is not UK resident, and

(b) days falling within the overseas part of any tax year that is a split year as respects the individual."

(5) In subsection (3), in the definition of "A", for "days falling within subsection (1)(b)" substitute "foreign days".

(6) The amendments made by sub-paragraphs (7) to (9) apply to section 528 as in force immediately before the substitution mentioned in sub-paragraph (2) so far as that section as so in force continues to have effect after the substitution.

(7) In subsection (1), for the words from "the policy holder" to the end substitute "there are one or more days in the policy period that are foreign days."

(8) After that subsection insert—

"(1A) "Foreign days" are—

(a) days on which the policy holder is not UK resident, and

(b) days falling within the overseas part of any tax year that is a split year as respects the policy holder (if the policy holder is an individual)."

(9) In subsection (3), in the definition of "A", for the words from "on which" to the end substitute "in the policy period that are foreign days, and".

75 (1) Section 528A (reduction in amount charged on basis of non-UK residence of deceased person), as inserted by paragraph 3 of Schedule [ ] to this Act, is amended as follows.

(2) In subsection (1)(b), for the words from "on which" to the end substitute "that were foreign days".

(3) In subsection (2)—

(a) in paragraph (b), for the words from "on which" to the end substitute "that were foreign days, and", and

(b) for paragraph (c), substitute—

"(c) the deceased died—

(i) in a tax year for which the deceased was UK resident but not one that was a split year as respects the deceased, or

(ii) in the UK part of a tax year that was a split year as respects the deceased."

(4) After that subsection insert—

"(2A) "Foreign days" are—

(a) days falling within any tax year for which the deceased was not UK resident, and

(b) days falling within the overseas part of any tax year that was a split year as respects the deceased."

(5) In subsection (4), in the definition of "A", for the words from "are days falling" to the end substitute "were foreign days, and".

76 (1) Section 536 (top slicing relieved liability: one chargeable event) is amended as follows.

(2) The amendment made by sub-paragraph (3) applies to section 536 as amended by paragraph 5 of Schedule [ ] to this Act, and has effect in accordance with paragraph 7 of that Schedule.

(3) For subsection (7) substitute—

"(7) If in the case of the individual the gain is reduced under section 528—

(a) divide the number of foreign days in the material interest period (as defined in that section) by 365,

(b) if the result is not a whole number, round it down to the nearest whole number, and

(c) reduce N, for steps 1 and 3 in subsection (1), by the number found by applying paragraphs (a) and (b)."

(4) The amendment made by sub-paragraph (5) applies to section 536 as in force immediately before it is amended by paragraph 5 of Schedule [ ] to this Act, so far as that section as so in force continues to have effect after it is so amended.

(5) For subsection (7) substitute—

"(7) If the gain is from such a policy—

(a) divide the number of foreign days in the policy period (as defined in section 528) by 365,

(b) if the result is not a whole number, round it down to the nearest whole number, and

(c) reduce N, for steps 1 and 3 in subsection (1), by the number found by applying paragraphs (a) and (b)."

Special charging rules for miscellaneous income

77 In section 577 (territorial scope of charges in respect of miscellaneous income), after subsection (2) insert—

"(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident."

Special charging rules for relevant foreign income charged on remittance basis

78 In section 832 of ITTOIA 2005 (relevant foreign income charged on remittance basis), for subsection (2) substitute—

"(2) For any tax year for which the individual is UK resident, income tax is charged on the full amount of so much (if any) of the relevant foreign income as is remitted to the United Kingdom—

(a) in that year, or

(b) in the UK part of that year, if that year is a split year as respects the individual."

79 (1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) is amended as follows in consequence of the amendment made by the preceding paragraph.

(2) In section 726 (non-UK domiciled individuals to whom remittance basis applies), after subsection (4) insert—

"(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b)."

(3) In section 730 (non-UK domiciled individuals to whom remittance basis applies), after subsection (4) insert—

"(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b)."

(4) In section 735 (non-UK domiciled individuals to whom remittance basis applies), as substituted by Part 4 of Schedule [ ] to this Act, after subsection (5) insert—

"(6) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b)."

Special charging rules for capital gains

80 TCGA 1992 is amended as follows.

81 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.

(2) After subsection (1A) (inserted by Schedule [ ] to this Act) insert—

"(1B) If the year is a split year as respects an individual, the individual is not chargeable to capital gains tax in respect of any chargeable gains accruing to the individual in the overseas part of that year.

(1C) But subsection (1B)—
(a) does not apply to chargeable gains in respect of which the individual would have been chargeable to capital gains tax under section 10, had the individual been not resident in the UK for the year, and
(b) is without prejudice to section 10A."

(3) In subsection (2)—
(a) after "the year of assessment" insert "or, where subsection (1B) applies, the UK part of that year", and
(b) in paragraph (a), after "that year of assessment" insert "or that part (as the case may be)".

82 (1) Section 3A (reporting limits) is amended as follows.

(2) In subsection (1)—
(a) in paragraph (a), after "year of assessment" insert "or, if that year is a split year as respects the individual, the UK part of that year", and
(b) in paragraph (b), after "in that year" insert "or, as the case may be, that part of the year".

(3) In subsection (2), after "year of assessment" insert "(or the UK part of such a year)".

83 (1) Section 12 (non-UK domiciled individuals to whom remittance basis applies) is amended as follows.

(2) After subsection (2) insert—

"(2A) If that tax year is a split year as respects the individual, the chargeable gains are treated as accruing to the individual in the part of the year (the overseas part or the UK part) in which the foreign chargeable gains are so remitted."

(3) In subsection (3), after "that year" insert "or, where applicable, that part of the year".

84 In section 13 (attribution of gains to members of non-resident companies), after subsection (3) insert—

"(3A) Subsection (2) does not apply in the case of a participator who is an individual if—
(a) the tax year in which the chargeable gain accrues to the company is a split year as respects the participator, and
(b) the chargeable gain accrues to the company in the overseas part of that year."

85 In section 16 (computation of losses), after subsection (3) insert—

"(3A) If the person is an individual and the year is a split year as respects that individual, subsection (3) also applies to a loss accruing to the individual in the overseas part of that year."

86 In section 16ZB (individual who has made election under section 16ZA: foreign chargeable gains remitted in tax year after tax year in which accrue), in subsection (1)(c), after "tax year" insert "or a part of the applicable tax year".

87 (1) Section 16ZC (individual who has made election under section 16ZA and to whom remittance basis applies) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a), after "that year" insert "or, if that year is a split year as respects the individual, in the UK part of that year", and

(b) in paragraph (b), after "that year" insert "or they are so remitted in that year but it is a split year as respects the individual and they are so remitted in the overseas part of the year".

(3) In subsection (7), in the definiton of "relevant allowable losses", after "tax year" insert "or a part of the tax year".

88 In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), in subsection (4)(a), after "the year" insert "or if, as respects the settlor, the year is a split year, in the UK part of that year".

89 In section 87 (non-UK resident settlements: attribution of gains to beneficiaries), after subsection (6) insert—

"(7) If the relevant tax year is a split year as respects a beneficiary of the settlement—

(a) the amount on which the beneficiary is chargeable to capital gains tax by virtue of this section for that year (in respect of the settlement) is a portion of the amount on which the beneficiary would have been so chargeable if the relevant tax year had not been a split year, and

(b) the portion is the portion attributable to the UK part of the relevant tax year calculated on a time apportionment basis."

90 (1) Paragraph 9 of Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.

(2) In sub-paragraph (1)—

(a) for "sub-paragraphs (2) to (4)" substitute "sub-paragraphs (2) to (5)", and

(b) for "sub-paragraph (4)" substitute "sub-paragraph (4) or (5)".

(3) After sub-paragraph (4) insert—

"(5) This sub-paragraph applies to a capital payment if (and to the extent that)—

(a) the tax year in which it is received (or treated as received) is a split year as respects the beneficiary receiving it, and

(b) it is received (or treated as received) by the beneficiary in the overseas part of that year."

Trustees of a settlement

91 In section 69 of TCGA 1992 (trustees of settlements), after subsection (2D) insert—

"(2DA) A trustee who is resident in the United Kingdom for a tax year is to be treated for the purposes of subsections (2A) and (2B) as if he or she were not resident in the United Kingdom for that year if—

(a) the trustee is an individual,

(b) the individual becomes or ceases to be a trustee of the settlement during the tax year,

(c) that year is a split year as respects the individual, and

(d) in that year, the only period when the individual is a trustee of the settlement falls wholly within the overseas part of the year.

(2DB) Subsection (2DA) is subject to subsection (2D) and, accordingly, an individual who is treated under subsection (2DA) as not resident is, in spite of that, to be regarded as resident whenever the individual acts as mentioned in subsection (2D)."

92 In section 475 of ITA 2007 (residence of trustees), after subsection (6) insert—

"(7) Subsection (8) applies if—

(a) an individual becomes or ceases to be a trustee of the settlement during a tax year,

(b) that year is a split year as respects the individual, and

(c) the only period in that year when the individual is a trustee of the settlement falls wholly within the overseas part of the year.

(8) The individual is to be treated for the purposes of subsections (4) and (5) as if he or she had been non-UK resident for the year (and hence for the period in that year when he or she was a trustee of the settlement).

(9) But subsection (8) is subject to subsection (6) and, accordingly, an individual who is treated under subsection (8) as having been non-UK resident is, in spite of that, to be treated as UK resident whenever the individual acts as mentioned in subsection (6)."

Definitions in enactments relating to income tax and CGT

93 (1) Section 288 of TCGA 1992 (interpretation) is amended as follows.

(2) In subsection (1), insert the following definition in the appropriate place—

""split year", as respects an individual, means a tax year that, as respects that individual, is a split year within the meaning of Part 3 of Schedule 1 to the Finance Act 2013 (statutory residence test: split year treatment);".

(3) After subsection (1ZA) insert—

"(1ZB) A reference in this Act to "the overseas part" or "the UK part" of a split year is to be read in accordance with Part 3 of Schedule 1 to the Finance Act 2013 (statutory residence test: split year treatment)."

94 In Part 2 of Schedule 1 to ITEPA 2003 (index of defined expressions), insert the following entries in the appropriate places—

"the overseas part	section 989 of ITA 2007",
"split year	section 989 of ITA 2007", and

“the UK part	section 989 of ITA 2007”.

95 In Part 2 of Schedule 4 to ITTOIA 2005 (index of defined expressions), insert the following entries in the appropriate places—

“the overseas part	section 989 of ITA 2007”,
“split year	section 989 of ITA 2007”, and
“the UK part	section 989 of ITA 2007”.

96 In section 989 of ITA 2007 (definitions for purposes of Income Tax Acts), insert the following definitions in the appropriate places—

““the overseas part”, in relation to a split year, has the meaning given in Part 3 of Schedule 1 to FA 2013 (statutory residence test: split year treatment);”,

““split year”, in relation to an individual, means a tax year that, as respects that individual, is a split year within the meaning of Part 3 of Schedule 1 to FA 2013 (statutory residence test: split year treatment);”, and

““the UK part”, in relation to a split year, has the meaning given in Part 3 of Schedule 1 to FA 2013 (statutory residence test: split year treatment);”.

97 In Schedule 4 to that Act (index of defined expressions), insert the following entries in the appropriate places—

“the overseas part	section 989”,
“split year	section 989”, and
“the UK part	section 989”.

PART 4

ANTI-AVOIDANCE

Introduction

98 This Part of this Schedule—

(a) explains when an individual is to be regarded for the purposes of certain enactments as temporarily non-resident,

(b) defines the year of departure and the period of return for the purposes of those enactments,

(c) makes consequential amendments to certain enactments containing special rules for temporary non-residents, and

(d) inserts some more special rules for temporary non-residents in certain cases.

Meaning of temporarily non-resident

99 (1) An individual is to be regarded as "temporarily non-resident" if—
(a) the individual has sole UK residence for a residence period,
(b) immediately following that period (referred to as "period A"), one or more residence periods occur for which the individual does not have sole UK residence,
(c) at least 4 out of the 7 tax years immediately preceding the year of departure were either—
(i) a tax year for which the individual had sole UK residence, or
(ii) a split year that included a residence period for which the individual had sole UK residence, and
(d) the temporary period of non-residence is 5 years or less.

(2) Terms used in sub-paragraph (1) are defined below.

Residence periods

100 In relation to an individual, a "residence period" is—
(a) a tax year that, as respects the individual, is not a split year, or
(b) the overseas part or the UK part of a tax year that, as respects the individual, is a split year.

Sole UK residence

101 (1) An individual has "sole UK residence" for a residence period consisting of an entire tax year if—
(a) the individual is resident in the UK for that year, and
(b) there is no time in that year when the individual is Treaty non-resident.

(2) An individual has "sole UK residence" for a residence period consisting of part of a split year if—
(a) the residence period is the UK part of that year, and
(b) there is no time in that part of the year when the individual is Treaty non-resident.

(3) An individual is "Treaty non-resident" at any time if at the time the individual falls to be regarded as resident in a country outside the UK for the purposes of double taxation arrangements having effect at the time.

Temporary period of non-residence

102 In relation to an individual, "the temporary period of non-residence" is the period between—
(a) the end of period A, and
(b) the start of the next residence period after period A for which the individual has sole UK residence.

Year of departure

103 "The year of departure" is the tax year consisting of or including period A.

Period of return

104 "The period of return" is the first residence period after period A for which the individual has sole UK residence.

Consequential amendments: income tax

105 In ITEPA 2003, for section 576A substitute—

"576A Temporary non-residents

(1) This section applies if a person is temporarily non-resident.

(2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 575 as if they arose in the period of return.

(3) A relevant withdrawal is within this subsection if—
(a) it is paid to the person in the temporary period of non-residence, and
(b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).

(4) A "relevant withdrawal" is an amount paid under a relevant non-UK scheme that—
(a) is paid to the person in respect of a flexible drawdown arrangement relating to the person under the scheme, and
(b) would, if the scheme were a registered pension scheme, be "income withdrawal" or "dependants' income withdrawal" within the meaning of paragraphs 7 and 21 of Schedule 28 to FA 2004.

(5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the person for the year of return, any relevant withdrawal within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.

(6) This section does not apply to a relevant withdrawal if—
(a) it is paid to or in respect of a relieved member of the scheme and is not referable to the member's UK tax-relieved fund under the scheme, or
(b) it is paid to or in respect of a transfer member of the scheme and is not referable to the member's relevant transfer fund under the scheme.

(7) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as arising in the period of return (or as preventing a charge to that tax from arising as a result).

(8) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—
(a) when a person is to be regarded as "temporarily non-resident", and
(b) what "the temporary period of non-residence" and "the period of return" mean.

(9) In this section—
"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;
"DTR claim" means a claim for relief under section 6 of that Act;
"flexible drawdown arrangement" means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies;
"remitted to the United Kingdom" has the same meaning as in Chapter A1 of Part 14 of ITA 2007;
"the year of return" means the tax year that consists of or includes the period of return.

(10) The following expressions have the meaning given in Schedule 34 to FA 2004—
"relevant non-UK scheme" (see paragraph 1(5));
"relieved member" (see paragraph 1(7));
"transfer member" (see paragraph 1(8));
"member's UK tax-relieved fund" (see paragraph 3(2));
"member's relevant transfer fund" (see paragraph 4(2))."

106 In ITEPA 2003, for section 579CA substitute—

"579CA Temporary non-residents

(1) This section applies if a person is temporarily non-resident.

(2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 579B as if they accrued in the period of return.

(3) A relevant withdrawal is within this subsection if—
(a) it is paid to the person in the temporary period of non-residence, and
(b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).

(4) A "relevant withdrawal" is any income withdrawal or dependants' income withdrawal paid to the person under a registered pension scheme in respect of a flexible drawdown arrangement relating to the person under the scheme.

(5) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—
(a) when a person is to be regarded as "temporarily non-resident", and
(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—
"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act;

"flexible drawdown arrangement" means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies."

107 In ITTOIA 2005, for section 832A substitute—

"832A Section 832: temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Treat any of the individual's relevant foreign income within subsection (3) that is remitted to the United Kingdom in the temporary period of non-residence as remitted to the United Kingdom in the period of return.

(3) Relevant foreign income is within this subsection if—

(a) it is relevant foreign income for the UK part of the year of departure or an earlier tax year, and

(b) section 832 applies to it.

(4) Any apportionment required for the purposes of subsection (3)(a) is to be done on a just and reasonable basis.

(5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any relevant foreign income treated by virtue of this section as remitted to the United Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section, "double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010."

Consequential amendments: capital gains tax

108 In TCGA 1992, for section 10A substitute—

"10A Temporary non-residents

(1) This section applies if an individual ("the taxpayer") is temporarily non-resident.

(2) The taxpayer is chargeable to capital gains tax as if gains and losses within subsection (3) were chargeable gains or, as the case may be, losses accruing to the taxpayer in the period of return.

(3) The gains and losses within this subsection are—

(a) chargeable gains and losses that accrued to the taxpayer in the temporary period of non-residence,

(b) chargeable gains that would be treated under section 13 as having accrued to the taxpayer in that period if the residence assumption were made,

(c) losses that would be allowable in the taxpayer's case under section 13(8) in that period if that assumption were made, and

(d) chargeable gains that would be treated under section 86 as having accrued to the taxpayer in a tax year falling wholly in that period if the taxpayer had been resident in the United Kingdom for that year.

(4) The residence assumption is—

(a) that the taxpayer had been resident in the United Kingdom for the tax year in which the gain or loss accrued to the company, or

(b) if that tax year was a split year as respects the taxpayer, that the gain or loss had accrued to the company in the UK part of it.

(5) But—

(a) a gain is not within subsection (3) if, ignoring this section, the taxpayer is chargeable to capital gains tax in respect of it (and could not cease to be so chargeable by making a claim under section 6 of TIOPA 2010), and

(b) a loss is not within subsection (3) if the test in paragraph (a) would be met if it were a gain.

(6) Subsection (2) is subject to sections 10AA and 86A.

(7) The reference in subsection (3)(c) to losses that would be allowable in the taxpayer's case is a reference to so much of sum A as does not exceed sum B, where—

"sum A" is the aggregate of the losses that would have been available in accordance with section 13(8) for reducing gains accruing to the taxpayer by virtue of section 13 in the relevant tax year if the residence assumption were made, and

"sum B" is the amount of the gains that would have accrued to the taxpayer by virtue of that section in that tax year if that assumption were made.

(8) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the taxpayer for the year of return, any foreign chargeable gains falling within subsection (3) by virtue of paragraph (a) of that subsection that were remitted to the United Kingdom at any time in the temporary period of non-residence are to be treated as remitted to the United Kingdom in the period of return.

(9) Part 4 of Schedule 1 to the Finance Act 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(10) In this section—

"foreign chargeable gains" has the meaning given by section 12(4);

"remitted to the United Kingdom" has the same meaning as in Chapter A1 of Part 14 of ITA 2007;

"the year of return" means the tax year that consists of or includes the period of return.

10AA Section 10A: supplementary

(1) Section 10A(2) does not apply to a gain or loss accruing on the disposal by the taxpayer of an asset if—

(a) the asset was acquired by the taxpayer in the temporary period of non-residence,

(b) it was so acquired otherwise than by means of a relevant disposal that by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued,

(c) the asset is not an interest created by or arising under a settlement, and

(d) the amount or value of the consideration for the acquisition of the asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 153(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).

(2) "Relevant disposal" means a disposal of an asset acquired by the person making the disposal at a time when that person was resident in the United Kingdom and was not Treaty non-resident.

(3) Subsection (1) does not apply if—

(a) the gain is one that (ignoring section 10A) would fall to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or part of another asset, and

(b) that other asset meets the requirements of paragraphs (a) to (d) of subsection (1), but the asset in respect of which the gain actually accrued or would actually accrue does not.

(4) Nothing in any double taxation relief arrangements is to be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any chargeable gains treated under section 10A as accruing to the taxpayer in the period of return (or as preventing a charge to that tax from arising as a result).

(5) Nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made prevents any assessment for the year of departure from being made in the taxpayer's case at any time before the end of the second anniversary of the 31 January next following the year of return (as defined in section 10A)."

109 For section 86A of TCGA 1992 substitute—

"86A Attribution of gains to settlor in section 10A cases

(1) Subsection (3) applies if—

(a) chargeable gains of an amount equal to the amount referred to in section 86(1)(e) for a tax year ("year A") are treated under section 10A as accruing to a settlor under section 86 in the period of return,

(b) there are amounts on which beneficiaries of the settlement are charged to tax under section 87 or 89(2) for one or more tax years, each of which is earlier than the year of return, and

(c) those amounts are in respect of matched capital payments received by the beneficiaries.

(2) A "matched" capital payment is a capital payment, all or part of which is matched under section 87A with the section 2(2) amount for year A.

(3) The amount of the chargeable gains mentioned in subsection (1)(a) for year A that are treated under section 10A as accruing to the settlor under section 86 in the period of return is to be reduced by the appropriate amount.

(4) The appropriate amount is—

(a) the sum of the amounts mentioned in subsection (1)(c) to the extent that the matched capital payments are matched under section 87A with the section 2(2) amount for year A, or

(b) if the property comprised in the settlement has at any time included property not originating from the settlor, so much (if any) of that sum as, on a just and reasonable apportionment, is properly referable to the settlor.

(5) If a reduction falls to be made under subsection (3) for the year of return, the deduction to be made in accordance with section 87(4)(b) for the settlement for that year must not be made until—

(a) all the reductions to be made under subsection (3) for that year for each settlor have been made, and

(b) those reductions are to be made starting with the year immediately preceding the year of return and working backwards.

(6) Subsection (7) applies if, with respect to year A, an amount remains to be treated under section 10A as accruing to any of the settlors in the period of return after having made the reductions under subsection (3) with respect to year A.

(7) The aggregate of the amounts remaining to be so treated (for all of the settlors) is to be applied in reducing so much of the section 2(2) amount for year A as has not already been matched with a capital payment under section 87A for any year prior to the year of return (but not so as to reduce the section 2(2) amount below zero).

(8) In this section—

(a) "the settlement" means the settlement in relation to which the settlor mentioned in subsection (1)(a) is a settlor,

(b) a reference to "the settlors" or "each settlor" is to the settlors or each settlor in relation to the settlement,

(c) "period of return" and "year of return" have the same meanings as in section 10A, and

(d) paragraph 8 of Schedule 5 applies in construing the reference to property originating from the settlor."

110 In section 96 (payment by and to companies), in subsection (9A), for the words from "which in his case" to the end substitute "for which he or she was not so resident if—
(a) section 10A applies to him or her, and
(b) the year falls within the temporary period of non-residence.".

111 (1) Section 279B (deferred unascertainable consideration: supplementary provisions) is amended as follows.

(2) In subsection (7), for "year of return" substitute "period of return".

(3) In subsection (8)(a) and (b), for "year" substitute "period".

112 (1) Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.

(2) In paragraph 6(1)(b), for "year of return" substitute "period of return".

(3) In sub-paragraph (1) of paragraph 12—
(a) for paragraph (a) substitute—
"(a) by virtue of section 10A, an amount of chargeable gains within section 86(1)(e) that accrued in a tax year ("year A") to the trustees of a settlement would be treated as accruing to a person ("the settlor") in the period of return, and", and
(b) in paragraph (b), for "the intervening year" substitute "year A".

(4) In sub-paragraph (2) of paragraph 12, for "year of return" substitute "period of return".

(5) In paragraph 12A(1)—
(a) for "year of return" substitute "period of return", and
(b) for "an intervening year" substitute "the temporary period of non-residence".

New special rule: lump sum payments under pension schemes etc

113 ITEPA 2003 is amended as follows.

114 In Chapter 2 of Part 6 (employer-financed retirement benefits), after section 394 insert—

"394A Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Any benefits within subsection (3) are to be treated for the purposes of section 394(1) as if they were received by the individual in the period of return.

(3) A benefit is within this subsection if—
(a) this Chapter applies to it,
(b) it is in the form of a lump sum,
(c) it is received by the individual in the temporary period of non-residence, and
(d) ignoring this section—

(i) no charge to tax arises by virtue of section 394(1) in respect of it, but

(ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Subsection (2) does not affect the operation of section 394(1A) (and, accordingly, "the relevant year" for the purposes of section 394(1A) remains the tax year in which the benefit is actually received).

(6) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any benefit treated by virtue of this section as received in the period of return (or as preventing a charge to that tax from arising as a result).

(7) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(8) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act."

115 In Chapter 2 of Part 7A (employment income provided through third parties: treatment of relevant step for income tax purposes), after section 554Z4 insert—

"554Z4A Temporary non-residents

(1) This section applies if A is temporarily non-resident.

(2) Any relevant step within subsection (3) is to be treated for the purposes of section 554Z2 as if it were taken in the period of return.

(3) A relevant step is within this subsection if—

(a) it is the payment of a lump sum to a relevant person (see section 554C(2)),

(b) the lump sum is a relevant benefit provided under a relevant scheme,

(c) the step is taken in the temporary period of non-residence, and

(d) ignoring this section—

(i) no charge to tax arises by virtue of section 554Z2 by reason of the step, but

(ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any relevant step treated by virtue of this section as taken in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—
  (a) when an individual is to be regarded as "temporarily non-resident", and
  (b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—
  "double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;
  "DTR claim" means a claim for relief under section 6 of that Act;
  "relevant benefit" has the same meaning as in Chapter 2 of Part 6;
  "relevant scheme" means an employee-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies."

116 In that Chapter, after section 554Z11 insert—

"554Z11A Temporary non-residents

(1) This section applies if A is temporarily non-resident.

(2) Any amount within subsection (3) is to be treated for the purposes of section 554Z9(2) or (as the case may be) 554Z10(2) as if it were remitted to the United Kingdom in the period of return.

(3) An amount is within this subsection if—
  (a) it is all or part of a relevant benefit provided to a relevant person (see section 554C(2)) under a relevant scheme,
  (b) it is provided in the form of the lump sum,
  (c) it is remitted to the United Kingdom in the temporary period of non-residence, and
  (d) ignoring this section—
    (i) no charge to tax arises by virtue of section 554Z9(2) or 554Z10(2) in respect of it, but
    (ii) such a charge would arise by virtue of one of those sections if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any income treated by virtue of this section as remitted to the United

Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act;

"relevant benefit" has the same meaning as in Chapter 2 of Part 6;

"relevant scheme" means an employee-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies;

"remitted to the United Kingdom" has the same meaning as in Chapter A1 of Part 14 of ITA 2007."

117 In that Chapter, in section 554Z12 (relevant step taken after A's death etc), after subsection (8) insert—

"(9) Section 554Z4A and section 554Z11A apply for the purposes of subsection (4) as for the purposes of section 554Z2 and section 554Z9(2) or 554Z10(2) respectively (reading references in sections 554Z4A and 554Z11A to "A" as references to "the relevant person").

(10) But those sections do not apply for the purposes of subsection (4) if the relevant person's temporary period of non-residence began before A died."

118 In Chapter 3 of Part 9 (United Kingdom pensions: general rules), after section 572 insert—

"572ATemporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Any pension within subsection (3) is to be treated for the purposes of section 571 as if it accrued in the period of return.

(3) A pension is within this subsection if—

(a) section 569 applies to it,

(b) it is in the form of a lump sum,

(c) it accrued in the temporary period of non-residence, and

(d) ignoring this section—

(i) it is not chargeable to tax under this Chapter, but

(ii) it would be so chargeable if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any pension treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act."

119 (1) In Chapter 1 of Part 11 (pay as you earn: introduction), section 683 is amended as follows.

(2) After subsection (3) insert—

"(3ZA) "PAYE employment income" for a tax year does not include any taxable specific income treated as paid or received in that tax year by section 394A or 554Z4A (temporary non-residents)."

(3) For subsection (3B) substitute—

"(3B) "PAYE pension income" for a tax year does not include any taxable pension income that is treated as accruing in that tax year by section 572A or 579CA (temporary non-residents)."

New special rule: distributions to participators in close companies etc

120 Part 4 of ITTOIA 2005 (savings and investment income) is amended as follows.

121 In Chapter 4 (dividends from non-UK resident companies), after section 408 insert—

"Anti-avoidance

408A Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Dividends within subsection (3) are to be treated for the purposes of this Chapter as if they were received by the individual, or as if the individual became entitled to them, in the period of return.

(3) A dividend is within this subsection if—

(a) the individual receives or becomes entitled to it in the temporary period of non-residence,

(b) it is a dividend of a company that would be a close company if the company were UK resident,

(c) the individual receives or becomes entitled to it by virtue of being at a relevant time—
(i) a material participator in the company, or
(ii) an associate of a material participator in the company, and
(d) ignoring this section, the individual—
(i) is not liable for tax under this Chapter in respect of the dividend, but
(ii) would have been so liable if the individual had received the dividend, or become entitled to it, in the period of return.

(4) For the purposes of subsection (3)—
(a) "associate" and "participator" have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
(b) a "material participator" is a participator who has a material interest in the company, as defined in section 457 of that Act,
(c) a "relevant time" is any time in the UK part of the year of departure or in one or more of the 3 tax years preceding that year, and
(d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.

(5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any dividend within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.

(6) This section does not apply to a dividend within subsection (3) to the extent that it is paid in respect of post-departure trade profits.

(7) "Post-departure trade profits" are—
(a) trade profits of the company arising in an accounting period that begins after the start of the temporary period of non-residence, and
(b) so much of any trade profits of the company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.

(8) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.

(9) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to income tax from arising as a result).

(10) If section 406 or 407 applies, references in this section to a dividend being received by the individual are to a cash dividend being paid over to the individual or (as the case may be) a dividend being treated as paid to the individual.

(11) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence", "the year of departure" and "the period of return" mean.

(12) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"remitted to the United Kingdom" has the meaning given in Chapter A1 of Part 14 of ITA 2007;

"year of return" means the tax year consisting of or including the period of return."

122 In Chapter 6 (release of loan to participator in close company), after section 420 insert—

"420A Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Debts within subsection (3) are to be treated for the purposes of this Chapter as if they had been released or written off in the period of return.

(3) A debt is within this subsection if—

(a) it is the debt, or a part of the debt, in respect of a loan or advance made by a company to the individual,

(b) it is released or written off in the temporary period of non-residence, and

(c) ignoring this section, the individual—

(i) is not liable for tax under this Chapter in respect of the release or write-off, but

(ii) would have been so liable, had the release or write-off taken place in the period of return.

(4) For the purposes of subsection (3)—

(a) "associate" and "participator" have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454), and

(b) paragraph (c)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.

(5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section, “double taxation relief arrangements” means arrangements having effect under section 2(1) of TIOPA 2010.”

123 In Chapter 8 of Part 5 of that Act (income not otherwise charged), after section 689 insert—

“689ATemporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Distributions within subsection (3) are to be treated for the purposes of this Chapter as if they had been received by the individual, or as if the individual had become entitled to them, in the period of return.

(3) A distribution is within this subsection if—

(a) the individual receives or becomes entitled to it in the temporary period of non-residence,

(b) it is a distribution of a company that is a close company or that would be a close company if the company were UK resident,

(c) the individual receives or becomes entitled to the distribution by virtue of being at a relevant time—

(i) a material participator in the company, or

(ii) an associate of a material participator in the company, and

(d) ignoring this section, the individual—

(i) is not liable for tax under this Chapter in respect of the distribution, but

(ii) would have been so liable if the individual had received the distribution, or become entitled to it, in the period of return.

(4) For the purposes of subsection (3)—

(a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),

(b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,

(c) a “relevant time” is any time in the UK part of the year of departure or in one or more of the 3 tax years preceding that year, and

(d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.

(5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any distribution within subsection (3) that is relevant foreign income and is remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.

(6) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to that tax from arising as a result).

(7) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence", "the year of departure" and "the period of return" mean.

(8) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"remitted to the United Kingdom" has the meaning given in Chapter A1 of Part 14 of ITA 2007;

"year of return" means the tax year consisting of or including the period of return."

124 In Chapter 1 of Part 14 of ITA 2007 (limits on liability to income tax of non-UK residents), after section 812 insert—

"812A Temporary non-residents

(1) This section applies if—

(a) an individual is temporarily non-resident,

(b) the individual's liability to income tax for a tax year is limited under section 811,

(c) that tax year ("the non-resident year") falls within the temporary period of non-residence, and

(d) the individual's income for that tax year includes relevant investment income.

(2) The total income (see Step 1 of the calculation in section 23) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount of that relevant investment income.

(3) But the notional UK tax on that relevant investment income is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.

(4) Income is "relevant investment income" if—

(a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies),

(b) the distributing company is a close company, and

(c) the income arises or is treated as arising to the individual because the individual was at a relevant time—

(i) a material participator in that company, or

(ii) an associate of a material participator in the company.

(5) But income within subsection (4) in the form of a cash or stock dividend is not "relevant investment income" to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.

(6) "Post-departure trade profits" are—

(a) trade profits of the distributing company arising in an accounting period that begins after the start of the temporary period of non-residence, and

(b) so much of any trade profits of the distributing company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.

(7) The "notional UK tax" on relevant investment income is—

(a) the total of any sums in respect of that income that were included within amount A in determining the limit under section 811, less

(b) any credit for foreign tax paid in respect of that income that was allowed under Chapter 2 of Part 2 of TIOPA 2010 against the individual's liability to income tax for the non-resident year.

(8) The following matters are to be determined on a just and reasonable basis—

(a) the extent to which a dividend is paid, or share capital is issued, in respect of post-departure trade profits, and

(b) the extent to which a sum included within amount A is a sum in respect of relevant investment income.

(9) Nothing in any double taxation arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to that tax from arising as a result).

(10) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence", "the year of departure" and "the period of return" mean.

(11) In this section—

"associate" and "participator" have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);

"the distributing company" means the UK resident company mentioned in section 383(1) or, as the case may be, 410(1) of ITTOIA 2005;

"material participator" means a participator who has a material interest in the company, as defined in section 457 of CTA 2010;

"relevant time" means any time in the UK part of the year of departure or in one or more of the 3 tax years preceding that year;

"year of return" means the tax year consisting of or including the period of return."

New special rule: chargeable event gains

125 Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc) is amended as follows.

126 After section 465A insert—

“465B Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) The individual is liable for tax under this Chapter for the year of return in respect of any gain that meets the conditions in subsection (3).

(3) The conditions are—

(a) the gain arose in the temporary period of non-residence,

(b) it arose from a policy issued in respect of an insurance made, or from a contract made, before the start of that period,

(c) the chargeable event giving rise to it was neither a death nor a chargeable event treated as occurring under section 525(2),

(d) no-one is liable under section 466 or 467 in respect of the gain,

(e) no-one is liable by virtue of section 468 for either the year of return or an earlier tax year as a result of the gain, and

(f) the individual would have been liable under section 465 in respect of the gain, applying the assumptions in subsection (4).

(4) The assumptions are—

(a) the individual was UK resident for the tax year in which the gain arose, and

(b) that tax year was not a split year as respects the individual.

(5) If the individual is liable by virtue of subsection (2) in respect of a gain—

(a) the amount of the gain in respect of which he or she is liable is the amount on which tax would have been charged under this Chapter applying the assumptions in subsection (4), but

(b) in determining that amount, section 528 must be applied ignoring those assumptions.

(6) That amount is treated as income of the individual for the year of return.

(7) If the gain arises from a policy or contract treated under section 473A as a single policy or contract, the date, for the purposes of subsection (3)(b), on which the insurance or contract is made is the date on which the first insurance is made in respect of which the connected policies were issued or, as the case may be, the date on which the first of the connected contracts is made.

(8) This section does not apply to a gain if—

(a) in relation to the policy or contract from which the gain arises, a terminal event occurs in the temporary period of non-residence or in the period of return,

(b) the chargeable event giving rise to the gain occurred before that terminal event,

(c) the chargeable event giving rise to the gain is one that is treated as occurring under section 509(1) as a result of the application of section 498(1)(a),

(d) section 498(1)(a) applies other than by virtue of section 500, and

(e) a person (whether or not the individual) is liable for tax under this Chapter (including by virtue of this section) in respect of any gain resulting from the terminal event.

(9) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being liable for tax under this Chapter in respect of any gain in respect of which the individual is liable for tax by virtue of subsection (2) (or as preventing a charge to tax on that gain from arising under this Chapter).

(10) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(11) In this section—

"terminal event" means an event mentioned in section 499(3);

"year of return" means the tax year that consists of or includes the period of return."

127 In section 468 (non-UK resident trustees and foreign institutions), after subsection (6) insert—

"(7) This section does not apply if someone is liable under section 465B in respect of the gain."

128 In section 514 (chargeable events where transaction-related calculations show gains), after subsection (4) insert—

"(4A) Subsection (3)(b) includes a case where a person would be liable to tax on the gain under section 465B for the tax year in which the transaction occurs (because the transaction occurs in the year of return, as defined in that section)."

129 In section 541 (calculation of deficiencies), in subsection (4)(b), after "that section" insert "or formed part of the total income of that individual by virtue of section 465B for the tax year mentioned in section 539(1)".

130 In section 552 of ICTA (information: duties of insurers), in subsection (13), for "section 541A" substitute "section 465B or 541A".

PART 5

MISCELLANEOUS

Interpretation

131 In this Schedule—

"corporation tax" includes any amount assessable or chargeable as if it were corporation tax;

"country" includes a state or territory;

"double taxation arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"employment"—
(a) has the meaning given in section 4 of ITEPA 2003, and
(b) includes an office within the meaning of section 5(3) of that Act;

"enactment" means an enactment whenever passed (including this Act) and includes—
(a) an Act of the Scottish Parliament,
(b) a Measure or Act of the National Assembly for Wales,
(c) any Northern Ireland legislation as defined by section 24(5) of the Interpretation Act 1978, and
(d) any Orders in Council, orders, rules, regulations, schemes warrants, byelaws and other instruments made under an enactment (including anything mentioned in paragraphs (a) to (c) of this definition);

"individual" means an individual acting in any capacity (including as trustee or personal representative);

"overseas" means anywhere outside the UK;

"parenting leave" means maternity leave, paternity leave, adoption leave or parental leave (whether statutory or otherwise);

"ship" includes any kind of vessel (including a hovercraft);

"split year", as respects an individual, means a tax year that is, as respects that individual, a split year within the meaning of Part 3 of this Schedule;

"trade" also includes—
(a) a profession or vocation,
(b) anything that is treated as a trade for income tax purposes, and
(c) the commercial occupation of woodlands (within the meaning of section 11(2) of ITTOIA 2005);

"UK" means the United Kingdom, including the territorial sea of the United Kingdom;

"whole month" means the whole of January, the whole of February and so on, except that the period from the start of a tax year to the end of April is to count as a whole month.

132 In relation to an individual who carries on a trade—
(a) a reference in this Schedule to annual leave or parenting leave is to reasonable amounts of time off from work for the same purposes as the purposes for which annual leave or parenting leave is taken, and
(b) what are "reasonable amounts" is to be assessed having regard to the annual leave or parenting leave to which an employee might reasonably expect to be entitled if doing similar work.

133 A reference in this Schedule to a number of days being less than a specified number includes a case where the number of days is zero.

Consequential amendments

134 (1) TCGA 1992 is amended as follows.

(2) Omit section 9.

(3) In section 288 (interpretation)—

(a) in subsection (1), insert the following definition at the appropriate place—

"“resident” means resident in accordance with the statutory residence test in Part 1 of Schedule 1 to the Finance Act 2013;", and

(b) in the Table in subsection (8), omit the entry for the expressions “resident” and “ordinarily resident”.

135 In section 27 of ITEPA 2003 (UK-based earnings for year when employee not UK resident), in subsection (1), for “in which” substitute “for which”.

136 In section 465 of ITTOIA 2005 (gains from contracts for life insurance etc: liability of individuals), in subsection (1), for “in the tax year” substitute “for the tax year”.

137 (1) Chapter 4 of Part 2 of FA 2005 (trusts with vulnerable beneficiary) is amended as follows.

(2) In section 28 (vulnerable person’s liability: VQTI), for subsection (4) substitute—

“(4) Where the vulnerable person is non-UK resident for the tax year, his or her income tax liability for the purposes of determining TLV1 and TLV2 is to be computed in accordance with the Income Tax Acts on the assumption that—

(a) he or she is UK resident for the tax year,

(b) that year is not, as respects him or her, a split year within the meaning of Part 3 of Schedule 1 to FA 2013, and

(c) he or she is domiciled in the United Kingdom throughout that year.”

(3) In section 30 (qualifying trusts gains: special capital gains tax treatment)—

(a) in subsection (2)(a) and (b), for “during” substitute “for”, and

(b) omit subsection (5).

(4) In section 31 (UK resident vulnerable persons: amount of relief), in subsection (1), for “during” substitute “for”.

(5) In section 32 (non-UK resident vulnerable persons: amount of relief), in subsection (1), for “during” substitute “for”.

(6) In section 41—

(a) in subsection (1), insert the following definitions in the appropriate places—

"“non-UK resident” means not resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 1 to FA 2013,", and

"“UK resident” means resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 1 to FA 2013.", and

(b) omit subsection (2).

138 (1) ITA 2007 is amended as follows.

(2) Omit sections 829 to 832.

(3) In section 810 (limits on liability to income tax of non-UK residents: overview of Chapter), after subsection (3) insert—

“(4) In relation to an individual—

(a) a reference in this Chapter to a non-UK resident’s liability to income tax is a reference to the liability of someone who is non-UK resident for the tax year for which the liability arises, and

(b) accordingly, enactments under which income arising to a UK resident in the overseas part of a split year is treated as arising to a non-UK resident are of no relevance to this Chapter.”

Commencement

139 (1) Parts 1 and 2 of this Schedule have effect for determining whether individuals are resident or not resident in the UK for the tax year 2013-14 or any subsequent tax year.

(2) Part 3 of this Schedule has effect in calculating an individual’s liability to income tax or capital gains tax for the tax year 2013-14 or any subsequent tax year.

(3) Part 4 of this Schedule has effect if the year of departure (as defined in that Part) is the tax year 2013-14 or a subsequent tax year.

Transitional and saving provision

140 (1) This paragraph applies if—

(a) year X or, in Part 3 of this Schedule, the relevant year is the tax year 2013-14, 2014-15 or 2015-16, and

(b) it is necessary to determine under this Schedule whether an individual was resident or not resident in the UK for a tax year before the tax year 2013-14 (a “pre-commencement tax year”).

(2) The question under this Schedule is to be determined in accordance with the rules in force for determining an individual’s residence for that pre-commencement tax year (and not in accordance with the statutory residence test).

(3) But an individual may by notice in writing to HMRC elect, as respects one or more pre-commencement tax years, for the question under this Schedule to be determined instead in accordance with the statutory residence test.

(4) A notice under sub-paragraph (3)—

(a) must be given no later than the first anniversary of the end of year X or, in a Part 3 case, the relevant year, and

(b) is irrevocable.

(5) Unless an election is made under sub-paragraph (3) as respects the tax year, paragraph 10(b) has effect in relation to a pre-commencement tax year as if the words “by virtue of the automatic residence test” were omitted.

141 (1) This paragraph applies if—

(a) year X or, for Part 3 of this Schedule, the tax year for which an individual’s liability to tax is being calculated is the tax year 2013-14 or a subsequent tax year, and

(b) it is necessary to determine under a provision of this Schedule, or a provision inserted by Part 3 of this Schedule, whether a tax year before the tax year 2013-14 (a "pre-commencement tax year") was a split year as respects the individual.

(2) The provision is to have effect as if—

(a) the reference to a split year were to a tax year to which the relevant ESC applied, and

(b) any reference to the UK part or the overseas part of such a year were to the part corresponding as far as possible, in accordance with the terms of the relevant ESC, to the UK part or the overseas part of a split year.

(3) Where the provision also refers to cases involving departure from the UK, the reference is to be read and given effect so far as possible in accordance with the terms of the relevant ESC.

(4) "The relevant ESC" means whichever of the extra-statutory concessions to which effect is given by Part 3 of this Schedule is relevant in the individual's case.

142 (1) The existing temporary non-resident provisions, as in force immediately before the day on which this Act is passed, continue to have effect on and after that day in any case where the year of departure (as defined in Part 4 of this Schedule) is a tax year before the tax year 2013-14.

(2) Where those provisions continue to have effect by virtue of sub-paragraph (1)—

(a) the question of whether a person is or is not resident in the UK for the tax year 2013-14 or a subsequent tax year is to be determined for the purposes of those provisions in accordance with Part 1 of this Schedule, but

(b) the effect of Part 3 is to be ignored.

(3) The existing temporary non-resident provisions are—

(a) section 10A of TCGA 1992 (chargeable gains),

(b) section 576A of ITEPA 2003 (income withdrawals under certain foreign pensions),

(c) section 579CA of that Act (income withdrawals under registered pension schemes), and

(d) section 832A of ITTOIA (relevant foreign income charged on remittance basis).

143 Section 13 of FA 2012 (Champions League final 2013) is to be read and given effect, on and after the day on which this Act is passed, as if section 1 and this Schedule had not been enacted.

EXPLANATORY NOTE

STATUTORY RESIDENCE TEST

.

SUMMARY

1. This Schedule introduces rules which determine an individual's residence for tax purposes. The rules are referred to collectively as the statutory residence test. The Schedule determines an individual's tax residence status by applying three sets of tests in order of priority: four automatic overseas tests; four automatic UK tests; and the sufficient ties test. An individual who is resident under the test will be resident for a full tax year. The Schedule provides cases in which the rule that a resident individual is taxed on the basis of residence for the whole year is relaxed in certain circumstances; in those circumstances the year is known as a "split year". The Schedule also provides that certain income and gains that arise during a period of temporary non-residence shall be charged to UK tax when the individual resumes UK residence.

DETAILS OF THE CLAUSE

2. This clause introduces the Schedule which contains the statutory residence test and makes related provision. The clause also contains a power allowing the Treasury to make any incidental, supplemental, consequential, transitional or saving provision in consequence of the Schedule. Any such Order is subject to the negative resolution procedure and must be laid before the House of Commons only.

DETAILS OF THE SCHEDULE

PART 1

The Rules

Introduction

3. Paragraph 1 defines the purpose of this Part of the Schedule.

4. Sub-paragraph (3) of paragraph 1 states that the rules do not provide a residence test for parts of the UK but for the UK as a whole.

5. Sub-paragraph (4) of paragraph 1 specifies the different taxes covered by the statutory residence test:

   - income tax;
   - capital gains tax; and
   - inheritance tax and corporation tax (to the extent that the residence status of individuals is relevant to them).

Interpretation of enactments

6. Paragraph 2 specifies how the statutory residence test applies to the interpretation of other enactments.

7. Sub-paragraph (3) of paragraph 2 provides that the tax residence status determined by the statutory residence test applies for a full tax year, so that an individual is resident for every day in a tax year or not at all in that year. Sub-paragraph (4) of paragraph 2 explains that there are rules in Part 3 of the Schedule which relax the effect of that rule (without changing residence status) in certain circumstances.

8. Sub-paragraph (5) of paragraph 2 provides that the effect of this Schedule may be overridden by any express provision to the contrary in, or falling to be recognised and acknowledged by law by virtue of, any other legislation.

9. Examples of such provision include section 41 of the Constitutional Reform and Governance Act 2010 (which treats members of the House of Commons and House of Lords as resident in the UK for tax purposes) and Articles 12 and 13 of the Protocol on the Privileges and Immunities of the European Communities (which provides rules on the tax status of individuals who work for the European Union).

The basic rule

10. Paragraphs 3 and 4 provide that an individual (P) is UK resident if either the automatic residence test (see paragraph 5) or the sufficient ties test (see paragraph 16) is met for a tax year. If neither test is met for a tax year P is non-resident in that year.

The automatic residence test

11. Paragraph 5 sets out the automatic residence test. The automatic residence test is met if P meets at least one of the automatic UK tests (see paragraphs 6 to 10) and none of the automatic overseas tests (see paragraphs 11 to 15).

The automatic UK tests

12. Paragraph 7 specifies the first automatic UK test, which is met for a tax year if P spends 183 days or more in the UK in that year.

13. Paragraph 8 specifies the second automatic UK test.

14. Sub-paragraph (1) of paragraph 8 applies if P has a home in the UK for more than 90 days and is present at that home on at least 30 separate days in the tax year. P will be UK resident for the tax year if, while P has that home, there is at least one period of 91 consecutive days (at least one of which falls within the tax year) throughout which condition A or condition B (or a combination of those conditions) is met.

15. Sub-paragraph (2) of paragraph 8 sets out condition A, which is that P has no home overseas.

16. Sub-paragraph (3) of paragraph 8 sets out condition B, which is that P has one or more homes overseas but each of those homes is a home at which P is present on fewer than 30 separate days in the tax year.

17. Sub-paragraph (4) of paragraph 8 provides that this reference to 30 days is to 30 separate days, whether consecutive or intermittent.

18. Sub-paragraph (5) of paragraph 8 states that the test will be met so long as there is at least one period of 91 days where the conditions are satisfied, even if the period is in fact longer than 91 days.

19. Sub-paragraph (6) of paragraph 8 states that, if P has more than one home in the UK, the test must be applied to each of those homes individually.

20. Paragraph 9 specifies the third automatic UK test, which is that P will be UK resident for a tax year if P works full-time in the UK for a period of at least 365 days without a significant break from work of 31 days or more, and all or part of the 365 day period falls within the tax year. More than 75 per cent of P's working days in that tax year must be UK work days. A UK work day is a day in which the individual does more than 3 hours work in the UK. Days on which P does 3 hours work or less in the UK count towards a significant break from work but days do not count as part of a significant break from work if P is on annual leave, sick leave or parenting leave (as defined in paragraph 131) on that day. Paragraph 9 does not apply if P is an international transportation worker (as defined in paragraph 28).

21. Paragraph 10 specifies the fourth automatic UK test, which is that P is treated as UK resident for a tax year if P dies during the year, P had a home in the UK when P died, for the three preceding years P had met

one of the automatic UK tests set out in paragraphs 5 to 9, and, even assuming P was not resident in the year of death, the preceding year would not be a split year as defined in Part 3 of this Schedule. The broad effect of this provision is that where P has been resident under the automatic tests in each of the previous three tax years and still has a home in the UK, P stays resident in the year of death unless P went abroad in the previous year in circumstances such that split year treatment applied (provided none of the automatic overseas tests is met).

The automatic overseas tests

22. Paragraphs 11 to 15 set out four automatic overseas tests. If P meets the conditions for any one of these, P will be non-UK resident for the tax year for which the test is applied.

23. Paragraph 12 specifies the first automatic overseas test, which is that P will be non-UK resident for a tax year if P spends fewer than 16 days in the UK in that year, does not die during the year, and was resident for one or more of the three years immediately preceding that year. The exclusion for cases of death ensures that P does not automatically become non-resident if P dies early in the tax year.

24. Paragraph 13 specifies the second automatic overseas test, which is that P will be non-UK resident for a tax year if P spends fewer than 46 days in the UK in that year and was resident for none of the three years immediately preceding that year.

25. Paragraph 14 specifies the third automatic overseas test, which is that P will be non-UK resident for a tax year if P works full-time overseas for that year without a significant break from work of 31 days or more, has fewer than 31 work days in the UK in that year, and spends fewer than 91 days in the UK in that year. A UK work day is a day in which P does more than 3 hours work in the UK. Days on which P does 3 hours overseas work or less count towards a significant break from work but days do not count as part of a significant break from work if P is on annual leave, sick leave or parenting leave. Sub-paragraph (2) of paragraph 14 ensures that the special rule in paragraph 22(4) under which certain days of presence (without being in the UK at midnight) count as days spent in the UK does not apply for this test. Sub-paragraph (4) of paragraph 14 provides that this test does not apply if P is an international transportation worker (as defined in paragraph 28).

26. Paragraph 15 specifies the fourth automatic overseas test, which is that P is non-UK resident for a tax year if P dies during the year and spends fewer than 46 days in the UK in that year, and either P was non-UK resident for the two tax years immediately preceding the tax year in which P dies or was non-resident for the tax year immediately preceding that tax year and the tax year before that was a split year by

virtue of Case 1, 2 or 3 of Part 3 of this Schedule (see paragraphs 41 to 43). The effect of this provision is to ensure that an individual who dies without establishing three full years of non-residence may in certain circumstances benefit from a 46-day rule equivalent to that in paragraph 13.

The sufficient ties test

27. Paragraph 16 sets out the sufficient ties test. The sufficient ties test will apply if P meets none of the automatic UK tests and none of the automatic overseas tests and if P has sufficient ties, as defined in Part 2 of this Schedule, for that tax year.

28. Sub-paragraph (3) of paragraph 16 specifies that the number of UK ties sufficient to make P UK resident for a tax year depends on whether P was UK resident for any of the three tax years immediately preceding that year and the number of days P spends in the UK in the year. The number of ties required is set out in paragraphs 17 and 18.

Sufficient UK ties

29. Paragraph 17 sets out how the number of days P spends in the UK in a tax year determines the number of UK ties sufficient to make P resident for that year if P was UK resident in one or more of the three tax years immediately preceding the year.

30. Paragraph 18 sets out how the number of days P spends in the UK in a tax year determines the number of UK ties sufficient to make P resident for that year if P was UK resident in none of the three tax years immediately preceding the year.

31. Paragraph 19 sets out how paragraphs 17 and 18 are modified in order to apply the sufficient ties test to an individual who dies during the year.

32. Sub-paragraph (1) of paragraph 19 specifies that if an individual dies then the lower limit of 15 days spent in the UK is removed when applying paragraph 17.

33. Sub-paragraphs (2) to (4) of paragraph 19 set out how the day counts in paragraphs 17 and 18 are time-apportioned if the individual dies before 1 March in the tax year to which the test is applied.

PART 2

Key concepts

Days spent

34. Paragraph 21 specifies what counts as a day spent in the UK for the purposes of this Schedule.

35. Sub-paragraph (1) of paragraph 21 specifies that if an individual is in the UK at the end of a day, that day will count as a day spent in the UK, subject to the two exceptions set out in sub-paragraphs (3) to (6) of paragraph 21.

36. Sub-paragraph (3) of paragraph 21 specifies that where an individual is in transit through the UK, leaves the UK the day after arrival, and does not engage in any activities substantially unrelated to their transit, then the day of arrival will not count as a day spent in the UK.

37. Sub-paragraphs (4) and (6) of paragraph 21 specify that where P is only present in the UK at the end of a day because of exceptional circumstances beyond P's control that prevented P from leaving, and P intends to leave as soon as those circumstances permit, that day will not count as a day spent in the UK up to a maximum of 60 days in a tax year.

38. Sub-paragraph (5) of paragraph 21 gives examples of circumstances that may be exceptional. HMRC will publish guidance on this area.

39. Paragraph 22 provides that if P is not present in the UK at the end of a day that day does not count as a day spent in the UK, subject to the exception provided by the deeming rule in sub-paragraph (4).

40. Sub-paragraphs (2) to (4) of paragraph 22 provide that even if P is not present in the UK at the end of a day, that day will count as a day spent in the UK if P was UK resident in one or more of the 3 tax years immediately preceding the year in which the days falls, P has 3 or more UK ties for the tax year in which the day falls, and P is present in the UK at some point, but not at the end of the day, on more than 30 days in that year. Where this deeming rule applies, only the excess over 30 such days is added to the tally of days spent in the UK.

41. Sub-paragraph (5) of paragraph 22 provides that in establishing whether P has 3 UK ties for a tax year, the deeming rule in sub-paragraph (4) does not itself apply in calculating whether P has a 90-day tie.

Days spent "in" a period

42. Paragraph 23 specifies the way days spent in the UK are aggregated for any period specified in this Schedule.

Home

43. Paragraph 24 contains provisions to assist in interpreting the word "home". Sub-paragraph (1) of paragraph 24 provides that a person's

home could be a building or part of a building or, for example, a vehicle, vessel or structure of any kind. Sub-paragraph (2) of paragraph 24 states that whether there is a sufficient degree of permanence or stability about P's arrangements for a place to count as P's home will depend on all the circumstances of the case. Sub-paragraph (3) of paragraph 24 provides that somewhere that P uses periodically as nothing more than a holiday home or temporary retreat (or something similar) does not count as a home of P's. Sub-paragraph (4) of paragraph 24 provides that a place may count as a home whether or not P holds any estate or interest in it. This means, for example, that rented property or property which you live in but which is owned by someone else, such as your parents, may still count as a home in appropriate circumstances. Sub-paragraph (5) of paragraph 24 provides that somewhere that was P's home does not continue to count as such merely because P continues to hold an estate or interest in it after P has moved out. This would apply, for example, where P had rented out the property on arms' length commercial terms and was unable to live in the property.

Work

44. Paragraph 25 specifies when an individual is considered to be working for the purposes of this Schedule.

45. Sub-paragraphs (1) to (3) of paragraph 25 specify that P is considered to be working if P is doing something in the performance of duties of an employment held by P or in the course of a trade carried on by P. In deciding whether or not something is being done in the course of duties of an employment, regard must be had to whether, if value were to be received by P for doing that thing, it would be employment income as defined in section 7 of ITEPA. Similarly, in deciding whether or not something is being done in the course of a trade, regard must be had to whether, if expenses were incurred by P, they could be deducted in calculating the profits of the trade for income tax purposes.

46. Sub-paragraph (4) of paragraph 25 specifies that time spent travelling counts as time spent working if the cost of the journey, if met by P, could be deducted in calculating P's earnings from the associated employment or in calculating the profits from the associated trade. Time spent working while travelling also counts as work for the purposes of this Schedule.

47. Sub-paragraph (5) of paragraph 25 specifies that time spent training counts as time spent working if the training is provided or paid for by the employer to help the individual perform the employment, or the cost of the training could be deducted in calculating the profits of the trade for income tax purposes.

48. Sub-paragraph (8) of paragraph 25 provides that a voluntary post where the individual has no contract of service does not count as employment for the purposes of this Schedule.

Location of work

49. Paragraph 26 specifies that, for the purposes of this Schedule, work is considered as being done at the location where it is actually done rather than where an employment is held or a trade is carried on. Apart from the case of international transportation workers (as defined in paragraph 28, see also the special rules for such workers in paragraph 33), work done during travel to or from the UK after embarkation for overseas or before disembarkation from overseas is treated as being done overseas.

Full-time work

50. Paragraph 27 defines full-time work for a period for the purposes of this Schedule as when an individual works an average of at least 35 hours per week, excluding from the period for which the test is applied any reasonable amounts of annual leave (see also paragraph 132), sick leave, and parenting leave but including weekends and public holidays. The hours worked in two or more employments or trades within the period are aggregated in determining the number of hours worked. Gaps between employments where the individual does not work may be deducted from the length of the period when determining whether the individual is considered to work full-time, up to a maximum deduction of 15 days. The 35 hour average test applies only to hours worked in the place (being the UK or overseas) where the individual is working. For example, to meet the third automatic UK test the individual must work an average of 35 hours a week in the UK. Any hours worked overseas do not count.

International transportation workers

51. Paragraph 28 defines an international transportation worker for the purposes of this Schedule as an individual whose duties of employment, or trade, consists of duties to be performed, or services to be provided in person, on board a vehicle, aircraft or ship as it makes international journeys. An individual will be an international transportation worker if substantially all of the duties or activities are performed on board a vehicle, aircraft or ship as it makes international journeys, even if, for example, the individual occasionally performs duties on domestic journeys.

UK ties

52. Paragraph 29 lists what counts as a UK tie for the purposes of this Schedule, depending on whether the individual was UK resident for

one or more of the 3 tax years immediately preceding the tax year for which the test is applied. The UK ties are defined in paragraphs 30 to 35. Paragraph 29 specifies the requisite number of ties set out in paragraphs 17 and 18 must consist of different types of tie. So, for example, a family tie only counts once for a year regardless of the number of relatives that P has in the UK.

Family tie

53. Paragraph 30 specifies that P is considered to have a family tie for a tax year if P has a relevant relationship with another person in that tax year and that other person is someone who is resident in the UK in that tax year. P will have a relevant relationship with another person if that other person is P's husband or wife or civil partner (so long as they are not separated), or, someone P is living together with in that manner. P also has a family tie for a tax year if P has a child under age 18 who is UK resident in that tax year, unless P sees that child on no more than 60 days in that year, or the part of the tax year before the child reaches the age of 18.

54. Paragraph 31 sets out special rules for establishing whether, for the purposes of paragraph 30 only, a person with whom P has a relevant relationship is UK resident for a tax year. Sub-paragraph (2) of paragraph 31 provides that the fact that, in working out whether that other person is resident for the purposes of determining whether P has a family tie, their own family tie to P is disregarded. Sub-paragraphs (3) to (6) of paragraph 31 provide that a child of P's under the age of 18 who is UK resident is to be treated as non-UK resident if they are in full-time education in the UK and would not be UK resident if the time spent in full time education were to be disregarded. This test will only apply if the child spends fewer than 21 days in the tax year in the UK outside term-time. Half-term breaks and other breaks during a term are treated as term-time.

Accommodation tie

55. Paragraph 32 specifies that P is considered to have an accommodation tie for a tax year if P has a place to live in the UK and that place is available to P for a continuous period of 91 days or more during the tax year (ignoring gaps of fewer than 16 days when it is unavailable). P is considered to have a place to live in the UK if P has one or more homes in the UK, a holiday home, temporary retreat or something similar in the UK or if accommodation is otherwise available to P where P can live when P is in the UK. P does not need to own or have an interest in the accommodation, but must spend at least one night in it during the year or, if it is the home of a close relative as defined in sub-paragraph (6) of paragraph 32, P must spend at least 16 nights in it during the year.

Work tie

56. Paragraph 33 specifies that P has a work tie for a tax year if P does more than 3 hours work a day in the UK for at least 40 days in the year.

57. Sub-paragraphs (3) to (7) of paragraph 33 specify that if P is an international transportation worker, as defined in paragraph 28, any day P starts an international journey in the UK, as such a worker, is treated as one on which P did more than 3 hours work in the UK for that day. Any day P completes an international journey, as such a worker, in the UK that began overseas is treated as one on which P did less than 3 hours work in the UK for that day. Any day on which P both starts an international journey in the UK and completes an international journey in the UK is treated as one on which P did more than 3 hours work in the UK. .If an international journey is undertaken in stages across a number of days, the international journey is considered to have started, or to be completed, on the day during which P crosses the UK border. Any day on which a stage of the journey takes place wholly within the UK will, so long as it takes more than 3 hours, be considered to be a UK work day.

90-day tie

58. Paragraph 34 specifies that P is considered to have a 90-day tie for a tax year if P spends more than 90 days in the UK in either or both of the two tax years immediately preceding that year.

Country tie

59. Paragraph 35 specifies that P is considered to have a country tie for a tax year if the country P is in at midnight for the greatest number of days in that year is the UK. P will also have a country tie for a tax year if P is in more than one country at midnight for the same number of days in that tax year if one of those countries is the UK and there is no country in which P has spent a greater number of days in that tax year.

PART 3

Split year treatment

Introduction

60. Paragraph 36 gives an overview of the content of this Part.

61. Paragraph 37 explains that the effect of a tax year being split into a UK part and an overseas part is as specified in the paragraphs in this Part amending the provisions concerned. But the individual’s tax residence status for the whole year is not affected.

62. Paragraph 38 specifies that this Part does not apply when determining the residence status of personal representatives and applies only in a limited way in establishing the residence status of trustees of a settlement. For trustees see also the amendments to section 475 of ITA and section 69 of TCGA made by paragraphs 91 and 92 of this Schedule.

63. Paragraph 39 provides that split year treatment does not affect whether an individual would be regarded as UK resident for the purposes of double taxation arrangements.

Definition of a "split year"

64. Paragraph 40 specifies that a tax year is a split year in relation to an individual if the individual is UK resident for that year and their circumstances fall within Cases 1 to 5 (set out in paragraphs 41 to 45). Split year treatment does not apply if the individual is non-UK resident for the year.

65. Cases 1, 2 and 3 deal, broadly, with individuals going abroad and Cases 4 and 5 deal, broadly, with individuals coming to the UK.

Case 1: starting full-time work overseas

66. Paragraph 41 specifies that an individual (the taxpayer) will fall within Case 1 for a tax year if they were UK resident for the previous tax year, are non-resident for the following tax year because they meet the third automatic overseas test (see paragraph 14) and if at some point during the tax year they start to work full-time (see paragraph 27) overseas for a period that continues until at least the end of the tax year. From when the taxpayer starts full-time work overseas until the end of the year, the number of days in which they do more than 3 hours work in the UK and the number of days they spend in the UK must not exceed the permitted limit. In establishing the number of days the individual spends in the UK, days treated as spent in the UK by virtue of paragraph 22(4) are to be ignored. The permitted limit is found by carrying out the calculation in sub-paragraphs (7) and (8) of paragraph 41.

Case 2: accompanying spouse etc

67. Paragraph 42 specifies that an individual (the taxpayer) will fall within Case 2 for a tax year if they are UK resident for the previous tax year, are non-resident for the following tax year and have a partner who falls within Case 1 for the year. Partner means a husband, wife or civil partner or, if the taxpayer and another person are living together as man and wife, or as civil partners, that other person. The taxpayer must join the partner overseas so they can live together while the partner is working full-time overseas. After their deemed departure day, which is

the later of the date the taxpayer joins the partner and the date the partner starts to work full-time overseas, the taxpayer must either have no UK home or, if they have homes in both the UK and overseas, must spend the greater part of the time living in the overseas home. The number of days the taxpayer spends in the UK after the deemed departure day must not exceed the permitted limit (which has the same meaning as in sub-paragraph (4)(b) of paragraph 41).

Case 3: leaving the UK to live abroad

68. Paragraph 43 specifies that a taxpayer will fall within Case 3 for a tax year if they were UK resident for the previous tax year, are non-resident for the following tax year, and at the start of the tax year had at least one home in the UK but at some point in that year ceased to have any UK home and this continues until the end of that year. In addition, from the date of ceasing to have any UK home the taxpayer must not spend more than 15 days in the UK until the end of the tax year and must, within 6 months of ceasing to have any home in the UK, have a sufficient link with a country overseas (as defined in sub-paragraph (8) of paragraph 43). If the taxpayer also satisfies either Case 1 or Case 2 then those provisions apply instead.

Case 4: coming to live or work full-time in the UK

69. Paragraph 44 specifies that a taxpayer will fall within Case 4 for a tax year if that person was non-resident for the previous tax year and either or both of the following descriptions apply. The first description is that, at the start of the tax year, the taxpayer did not meet the only home test but there comes a point in the year when that ceases to be the case and the taxpayer then continues to meet the only home test for the rest of the tax year. The taxpayer will satisfy the only home test if their only home, or all their homes if they have more than one, is in the UK.

70. The second description is that there is a day in the tax year on which the taxpayer commences full-time work in the UK for a period that continues until at least the end of the tax year.

71. In addition, for the part of the year before the point where the taxpayer meets the only home test or commences full time work in the UK, or the earliest of these points if there is more than one, the taxpayer must not have sufficient UK ties to make them UK resident for that part of the year considered in isolation. The UK ties are determined by applying paragraphs 16 to 19 (and Part 2 to the extent that it applies to these paragraphs) and reducing the numbers of days in the Tables in paragraphs 17 and 18 by the factor specified in sub-paragraph (8) of paragraph 44.

Case 5: starting to have a home in the UK

72. Paragraph 45 specifies that a taxpayer will fall within Case 5 for a tax year if they were non-resident for the previous tax year and are UK resident for the following tax year (and that year is not a split year) and if at a point during the year they have a home located in the UK for the first time in the year and this remains the case for the rest of the year and the whole of the next tax year. In addition, before that point in the year the taxpayer must not have sufficient UK ties to make them UK resident for that part of the year considered in isolation. The UK ties are determined by applying paragraphs 16 to 19, and Part 2 to the extent that it applies to these paragraphs and reducing the numbers of days in the Tables in paragraphs 17 and 18 by the factor specified in sub-paragraph (8) of paragraph 45. If the taxpayer also satisfies Case 4 then those provisions apply instead.

General rules for construing Cases 1 to 5

73. Paragraph 46 defines the meaning of terms used in paragraphs 41 to 45 and sets out how to calculate numbers of days in applying those paragraphs.

The overseas part and the UK part

74. Paragraph 47 defines "the overseas part" and "the UK part" of a split year.

75. Sub-paragraph (1) of paragraph 47 specifies the overseas part of a split year is the part of the year which:

- for Case 1, begins when the individual starts full-time work overseas;
- for Case 2, begins on the later of the date the individual joins their partner overseas and the date their partner starts to work full-time overseas;
- for Case 3, begins when the individual ceases to have any home in the UK;
- for Case 4, falls before the earliest point when the location of the individual's only home, or all their homes if they have more than one, changes to the UK or they commence full-time work in the UK;
- for Case 5, falls before the point when the individual has for the first time in the year a home located in the UK.

Special charging rules for employment income

76. Paragraphs 48 to 60 amend certain provisions in ITEPA that charge various types of employment income to tax where the charge depends on the residence status of the taxpayer. The individual is charged for the overseas part of a year as if non-UK resident.

77. Paragraph 49 amends section 15 of ITEPA so that general earnings attributable to the overseas part of a split year are not charged to tax unless the earnings relate to duties performed in the UK or to overseas Crown employment that is subject to UK tax. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.

78. Paragraph 50 amends section 22 of ITEPA to exclude general earnings taxable as chargeable overseas earnings on the remittance basis (as specified in section 23) from the charge to tax on general earnings set by the amended section 15 of ITEPA. The provisions of section 22 are further amended by the Schedule on ordinary residence.

79. Paragraph 51 amends the definition of chargeable overseas earnings in section 23 of ITEPA to take into account whether a year is a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.

80. Paragraph 52 amends section 24 of ITEPA to take into account whether a year is a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.

81. Paragraph 53 amends section 26 of ITEPA so that it only applies to foreign earnings taxable on the remittance basis that are attributable to the UK part of a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis. The provisions of section 26 are further amended by the Schedule on ordinary residence.

82. Paragraph 54 amends section 329 of ITEPA so that the limit on deductions from earnings allowable for a split year takes into account that overseas earnings for the overseas part of the year may have been excluded from the charge to tax.

83. Paragraph 55 amends section 421E of ITEPA to set out the conditions attaching to the exclusions from charges under Chapters 2, 3 and 4 of Part 7 of ITEPA that apply to employment-related securities respectively acquired in a tax year of residence (new subsection (1)), in the UK part of a split year (new subsection (1A)) and in the overseas part of a split year (new subsection (1B)). It also amends section 421E so that the charges under Chapters 3A to 3D of Part 7 apply to employment-related securities if they were acquired in the overseas part of a year which is split under Case 1, 2 or 3 (as specified in paragraphs 41, 42 and 43) and, had it not been a split year, all or part

of earnings (or if there had been earnings, those earnings) at the time of acquisition would have been general earnings under sections 15, 22 or 26 of ITEPA.

84. Paragraph 56 amends section 474 of ITEPA so that Chapter 5 (apart from sections 473 and 483) of Part 7 does not apply in the circumstances specified to an employment-related securities option respectively acquired in a tax year of residence (new subsection (1)), in the UK part of a split year (new subsection (1A)) and in the overseas part of a split year (new subsection (1B)).

85. Paragraph 57 amends section 554Z4 of ITEPA so that, where a tax year is split, the value of a relevant step is reduced by the amount of the value that is attributable to the overseas part of the year and is not in respect of UK duties. Attribution of value between the two parts of the year is to be done on a just and reasonable basis.

86. Paragraph 58 amends section 554Z6 of ITEPA so that relevant earnings are excluded from the application of section 554Z6 if they are earnings attributable to the overseas part of a split year and are not earnings relating to duties performed in the UK or to overseas Crown employment that is subject to UK tax.

87. Paragraph 59 amends section 554Z9 of ITEPA so that employment income of the UK part of a split year is treated in the same way as employment income of a full year of residence for the purposes of that section. The provisions of section 554Z9 are further amended by the Schedule on ordinary residence.

88. Paragraph 60 makes changes to section 554Z10 of ITEPA that are consequential to the changes made to section 554Z4 and introduces a new term ‘the overseas portion’ to identify the employment income not attributable to UK duties. The provisions of section 554Z10 are further amended by the Schedule on ordinary residence.

Special charging rules for pension income

89. Paragraph 61 amends section 575 of ITEPA so that, in the case of a split year, the taxable foreign pension income for the year is that arising in the UK part of the year.

Special rules for trading income

90. Paragraph 63 amends section 6 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the individual is non-UK resident.

91. Paragraph 64 amends section 17 of ITTOIA so that if an individual is carrying on a trade, profession or vocation wholly or partly outside the

UK other than in partnership, in the case of a split year the individual is treated as ceasing and immediately recommencing a new trade, profession or vocation at the beginning of whichever is the later of the UK part and the overseas part of the year.

92. Paragraph 65 amends section 243 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the individual is non-UK resident.

93. Paragraph 66 amends section 849 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the partner is non-UK resident.

94. Paragraph 67 amends section 852 of ITTOIA so that if a partner has a change of residence the partner is treated as ceasing one notional trade and immediately commencing another and, in the case of a split year, is treated as ceasing and immediately recommencing at the beginning of whichever is the later of the UK part and the overseas part of the year.

95. Paragraph 68 amends section 854 of ITTOIA so that if a partner has a change of residence the partner is treated as ceasing one notional business and immediately commencing another and, in the case of a split year, is treated as ceasing and immediately recommencing at the beginning of whichever is the later of the UK part and the overseas part of the year.

Special charging rules for property income

96. Paragraph 69 amends section 270 of ITTOIA so that where an individual is carrying on an overseas property business, in the case of a split year, tax is charged only on profits of the business that arise in the UK part of the year. Apportionment of profit between the two parts of the year is to be done on a just and reasonable basis.

97. New subsection (4)(b) of section 270 of ITTOIA introduces a rule to determine how capital allowances and balancing charges are taken into account in a split year.

Special charging rules for savings and investment income

98. Paragraph 71 amends section 368 of ITTOIA so that if income within Part 4 of ITTOIA arises to an individual in the overseas part of a split year it is treated as arising to a non-UK resident. Income arising to a non-resident is generally only chargeable if it is UK source income, but this is subject in particular to the rules for temporary non-residents (see Part 4 of this Schedule).

99. Paragraph 72 amends section 465 of ITTOIA so that, in the case of a split year, the individual is not liable to tax under Chapter 9 of Part 4 on gains arising in the overseas part of the year. But see Part 4 of this Schedule in relation to an individual who is temporarily non-resident.

100. Paragraph 73 amends section 467 of ITTOIA to include an additional absent settlor condition under subsection (4), which is that the gain arises in the overseas part of a split tax year applicable to the individual who created the trusts.

101. Paragraph 74 amends section 528 of ITTOIA to take into account days in the overseas part of a split year as well as days in a full year of non-residence in reducing the amount of the gain to be charged. This section is being substituted by the Schedule in this Bill dealing with chargeable event gains but continues in force for policies not covered by the new section. Accordingly, the amendments made by sub-paragraphs (3) to (5) of paragraph 74 apply to the existing section 528 and the amendments made by sub-paragraphs (6) to (9) of paragraph 74 apply to the new section 528. If the period being considered is before 6 April 2013 then the reference to a split year is applied as if it referred to the relevant Extra-Statutory Concession then in force (usually ESC A11) – see paragraph 141 of this Schedule.

102. Paragraph 75 amends section 528A of ITTOIA which is inserted by the Schedule in this Bill dealing with chargeable event gains. It provides relief in respect of a deceased person's policy corresponding to that for individuals in section 528 of ITTOIA. The amendments correspond to those made by paragraph 74.

103. Paragraph 76 amends section 536 of ITTOIA (as itself amended by the Schedule in this Bill dealing with chargeable event gains) to reflect the changes made to section 528 of ITTOIA.

Special charging rules for miscellaneous income

104. Paragraph 77 amends section 577 of ITTOIA so that if income falling under Part 5 arises to an individual in the overseas part of a split year it is treated under this section as arising to a non-UK resident.

Special charging rules for relevant foreign income charged on remittance basis

105. Paragraph 78 amends section 832 of ITTOIA to provide that an individual who is taxed on the remittance basis will be subject to UK tax on all relevant foreign income remitted in a tax year in which they are UK resident, or, if that year is a split year as respects the individual, on all relevant foreign income which they remit in the UK part of that year.

106. Paragraph 79 amends three provisions in Chapter 2 of Part 13 of ITA as a consequence of the amendments made to section 832 of ITTOIA.

Special charging rules for capital gains

107. Paragraph 81 amends section 2 of TCGA so that, in the case of a split year, an individual is not chargeable to capital gains tax on chargeable gains accruing to the individual in the overseas part of the year. This rule does not apply where gains are charged on a non-resident under section 10 of TCGA and is subject to the rules for temporary non-residents in section 10A of TCGA. The provisions of section 2 are further amended by the Schedule on ordinary residence.

108. Paragraph 82 amends section 3A of TCGA so that the period taken into consideration for the purpose of the amount of chargeable gains or chargeable disposals is, in the case of a split year applicable to the individual, the UK part of the year.

109. Paragraph 83 amends section 12 of TCGA so that, in the case of a split year when gains are remitted, they are treated as accruing to the individual in whichever part of the year (overseas part or UK part) in which the foreign gains are actually remitted to the UK. The provisions of section 12 are further amended by the Schedule on ordinary residence.

110. Paragraph 84 amends section 13 of TCGA so that, in the case of a split year for a participator in the company, the chargeable gain that accrues to the company in the overseas part of the year is not treated as accruing to the participator.

111. Paragraph 85 amends section 16 of TCGA so that, in the case of a split year for an individual, the loss accruing to the individual in the overseas part of the year is not an allowable loss under the Act.

112. Paragraph 86 amends section 16ZB of TCGA to reflect the fact that foreign chargeable gains remitted to the UK are treated under section 12 of TCGA as accruing to the individual in whichever part of the year (overseas part or UK part) the gains are remitted to the UK.

113. Paragraph 87 amends section 16ZC of TCGA so that the foreign chargeable gains in subsection (3)(a) and (b) respectively take into account that the relevant year may be a split year.

114. Paragraph 88 amends section 86 of TCGA so that, in the case of a split year for the settlor, the chargeable gains treated as accruing to the settlor are treated as accruing in the UK part of the year. The provisions of section 86 are further amended by the Schedule on ordinary residence.

115. Paragraph 89 amends section 87 of TCGA so that, if the year is a split year for the beneficiary, the amount on which the beneficiary is chargeable to capital gains tax under this section is the portion of the total that would have been chargeable for a full year of residence attributable on a time basis to the UK part of the year. The provisions of section 87 are further amended by the Schedule on ordinary residence.

116. Paragraph 90 amends paragraph 9 of Schedule 4C to TCGA so that, if the year is a split year in respect of the beneficiary receiving a capital payment that falls under this paragraph, the payment is disregarded if it is received by the beneficiary in the overseas part of the year. The provisions of Schedule 4C are further amended by the Schedule on ordinary residence.

Trustees of a settlement

117. Paragraph 91 amends section 69 of TCGA which contains the residence rules of a body of trustees for capital gains tax purposes. Under the statutory residence test, an individual trustee who is resident in the UK for a year is resident for every day in that year, including those days that fall within the overseas part of a split year for that individual. The amendment provides that if the individual is a trustee of a settlement only in the overseas part of a split year then he or she is treated as not resident for that year in applying the residence rules to that settlement. This exception is overridden if the trustee is acting as such in the course of a UK business.

118. Paragraph 92 amends section 475 of ITA which contains the residence rules of a body of trustees for income tax purposes. It makes equivalent changes to those made for capital gains tax by the previous paragraph.

Definitions in enactments relating to income tax and CGT

119. Paragraph 93 amends section 288 of TCGA to insert definitions of a "split year" and "the overseas part" and "the UK part" of a split year.

120. Paragraph 94 amends Part 2 of Schedule 1 to ITEPA to insert cross-references to the ITA definitions of a "split year" and "the overseas part" and "the UK part" of a split year.

121. Paragraph 95 amends Part 2 of Schedule 4 to ITTOIA to insert cross-references to the ITA definitions of a "split year" and "the overseas part" and "the UK part" of a split year.

122. Paragraph 96 amends section 989 of ITA to insert definitions of a "split year" and "the overseas part" and "the UK part" of a split year.

123. Paragraph 97 amends Schedule 4 to ITA to insert entries relating to "split year", "the overseas part" and "the UK part" of a split year.

PART 4

Anti-avoidance

Introduction

124. Paragraph 98 gives an overview of the content of this Part. This Part amends existing rules which apply to income and gains arising during a period of temporary non-residence and introduces new charges for certain income and gains not presently covered by such rules. In addition to the provisions amended or introduced by this Part there are two similar charges in secondary legislation (SI 2006/1958 (pension schemes, taxable property) and SI 2009/3001 (offshore funds)). It is proposed that those provisions will be brought into line with the rules in this Part – a draft statutory instrument will be published in due course.

Meaning of temporarily non-resident

125. Paragraph 99 specifies that an individual is regarded as "temporarily non-resident" if he or she has sole UK residence for a residence period and, immediately following that period (referred to as period A), one or more residence periods occur for which the individual does not have sole UK residence. "Sole UK residence" is defined in paragraph 101 and "residence period" is defined in paragraph 100. In addition, in 4 or more tax years out of the 7 tax years immediately preceding the year of departure (a term defined in paragraph 103), the individual must have had either sole UK residence or the year must have been a split year that included a period when the individual had sole UK residence. Finally, the temporary period of non-residence (see paragraph 102) must be 5 years or less.

126. The provisions in this Part apply if the period of temporary non-residence is 5 years or less. This is a change from the current temporary non-residence provisions which apply if there are no more than 5 tax years ('intervening years') between the year of departure and the year of return.

Residence periods

127. Paragraph 100 defines a "residence period" as a tax year that is not split, or the overseas part or the UK part of a split year.

Sole UK residence

128. Paragraph 101 defines "sole UK residence" for a residence period as the individual being UK resident for an entire tax year and not Treaty

non-resident, or the UK part of a split year and not Treaty non-resident in that part. "Treaty non-resident" is defined in sub-paragraph (3) of paragraph 101.

Temporary period of non-residence

129. Paragraph 102 defines "the temporary period of non-residence" as the period between the end of period A and the start of the next residence after period A for which the individual has sole UK residence.

Year of departure

130. Paragraph 103 defines "the year of departure" as the tax year consisting of or including period A.

Period of return

131. Paragraph 104 defines "the period of return" as the first residence period after period A for which the individual has sole UK residence.

Consequential amendments: income tax

132. Paragraph 105 substitutes a new section 576A of ITEPA. Both the existing and new sections 576A provide that a withdrawal from a flexible drawdown pension fund under a relevant non-UK scheme during a period of temporary non-residence (as defined in paragraph 102) is to be treated as pension income when the individual returns to the UK. The new section 576A ensures the existing provision is made consistent with the other provisions in Part 4 of this Schedule.

133. Subsection (1) of new section 576A provides that the section applies to persons who are "temporarily non-resident" (as defined in paragraph 99).

134. Subsection (2) of new section 576A provides that relevant withdrawals are to be treated as pension income arising in the period of return (as defined in paragraph 104) for the purposes of section 575 of ITEPA. Section 575 provides that the amount of pension arising when a pension is paid by or on behalf of a person outside the UK to a person who is resident in the UK is taxable pension income.

135. Subsections (3) and (4) of new section 576A define a "relevant withdrawal" for the purpose of subsection (2).

136. Subsection (3)(a) of new section 576A provides that a relevant withdrawal must be paid during a period of temporary non-residence.

137. Subsection (3)(b) of new section 576A provides that a relevant withdrawal is a withdrawal that is either not chargeable to tax under

Part 9 of ITEPA or, if it is so chargeable to tax, it would not be if the chargeable person made a claim under a double taxation agreement.

138. Subsection (4) of new section 576A provides that a relevant withdrawal is a withdrawal that is paid under a flexible drawdown arrangement relating to the person under a relevant non-UK scheme and would be an authorised pension or pension death benefit if the scheme paying it were a registered pension scheme. "Relevant non-UK scheme" is defined in paragraph 1 of Schedule 34 to FA 2004. The pension rules and the pension death benefit rules in relation to registered pension schemes are defined in sections 165 and 167 of FA 2004.

139. Subsection (5) of new section 576A provides that when an individual is chargeable to tax on the remittance basis for the year of return and both made a relevant withdrawal and remitted it to the UK during the period of temporary non-residence, the amount remitted is to be treated as having been remitted to the UK in the period of return.

140. Subsection (6) of new section 576A provides that the section does not apply unless the withdrawal from a flexible drawdown pension fund is referable to either the individual's UK tax-relieved fund or their relevant transfer fund. A member's UK tax-relieved fund is created by the accumulation of pension rights supported by UK tax relief. A member's relevant transfer fund is created by the transfer to the relevant non-UK scheme from a registered pension scheme or from another relevant non-UK scheme.

141. Subsection (7) of new section 576A provides that no double taxation relief arrangement is to be read as preventing a charge to tax under section 575 of ITEPA from arising by virtue of section 576A.

142. Subsections (8) to (10) of new section 576A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

143. Paragraph 106 substitutes a new section 579CA of ITEPA. Both the existing and the new sections 579CA provide that a withdrawal from a flexible drawdown pension fund under a registered pension scheme during a period of temporary non-residence is to be treated as pension income when the individual returns to the UK. The new section 579CA ensures the existing provision is made consistent with the other provisions in Part 4 of this Schedule.

144. Subsection (1) of new section 579CA provides that the section applies to persons who are "temporarily non-resident" (as defined in paragraph 99).

145. Subsection (2) of new section 579CA provides that relevant withdrawals are to be treated as pension income arising in the period of return (as defined in paragraph 104) for the purposes of section 579B of ITEPA. Section 579B provides that the amount of pension accruing when a pension is paid under a registered pension scheme is taxable pension income.

146. Subsection (3)(a) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is paid during a period of temporary non-residence (as defined in paragraph 102).

147. Subsection (3)(b) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is either not chargeable to tax under Part 9 of ITEPA or, if it is so chargeable to tax, it would not be if the chargeable person made a claim under a double taxation agreement.

148. Subsection (4) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is paid under a flexible drawdown arrangement relating to the person under a registered pension scheme and is an authorised pension or pension death benefit. The pension rules and the pension death benefit rules in relation to registered pension schemes are defined in sections 165 and 167 of FA 2004.

149. Subsection (5) of new section 579CA provides that no double taxation relief arrangement is to be read as preventing a charge to tax under section 579B of ITEPA from arising by virtue of section 579CA.

150. Subsections (6) and (7) of new section 579CA provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

151. Paragraph 107 substitutes a new section 832A of ITEPA which applies to individuals who are temporarily non-resident and taxed on the remittance basis. It provides that where such individuals remit relevant foreign income to the UK during the period of non-residence, they will be treated as having remitted that relevant foreign income to the UK in the period of return.

152. Subsection (4) of new section 832A provides that any apportionment which is required to determine the amount of relevant foreign income which relates to the UK part of a tax year must be done on a just and reasonable basis.

153. Subsection (5) of new section 832A proves that relevant foreign income which is treated by this section as remitted to the UK in the period of return will be chargeable to UK tax notwithstanding any double taxation arrangements.

154. Subsection (7) of new section 832A provides that the term "double taxation arrangements" means arrangements which have effect under section 2(1) of TIOPA.

Consequential amendments: capital gains tax

155. Paragraph 108 replaces existing section 10A of TCGA with new sections 10A and 10AA. The new section 10A replaces the concepts of intervening year, year of departure and year of return in the existing section with temporary period of non-residence (defined in paragraph 102), year of departure (defined in paragraph 103) and period of return (defined in paragraph 104).

156. The amendment to section 2 of TCGA in paragraph 81 means that gains arising in the overseas part of a split year will not be charged under that section but will instead be charged under new section 10A of TCGA if the individual meets the temporary non-resident conditions set out in this Part.

157. Subsection (1) of new section 10A restricts the scope of the section so that it only applies if an individual is temporarily non-resident (as defined in paragraph 99).

158. Subsection (2) of new section 10A provides that the individual's gains or losses within subsection (3) are chargeable to capital gains tax as if they were chargeable gains or losses accruing to the individual in the period of return.

159. Subsections (3) to (5) of new section 10A replace the existing subsections (2), (5) and (9B) and take into account split years. The more general carve-out in subsection (3) enables the structure of the legislation to be simplified and also corrects a defect in the current legislation which prevents a charge in certain cases of treaty non-residence.

160. Subsection (6) of new section 10A provides that subsection (2) is subject to sections 10AA and 86A of TCGA.

161. Subsection (7) of new section 10A replicates the effect of the existing rules in subsection (6) that limit the losses available in accordance with section 13 of TCGA.

162. Subsection (8) of new section 10A replicates the effect of the existing subsection (9ZA).

163. Subsection (9) of new section 10A provides that the terms temporarily non-resident, temporary period of non-residence and the period of return are as defined in Part 4 of this Schedule.

164. Subsection (10) of new section 10A provides the meanings of foreign chargeable gains, remitted and year of return.

165. New section 10AA of TCGA contains provisions supplementary to new section 10A of TCGA.

166. Subsection (1) of new section 10AA replicates the effect of the existing section 10A paragraphs (3)(a), (b), (c) and (d).

167. Subsection (2) of new section 10AA defines the term "relevant disposal" for the purposes of section 10AA.

168. Subsection (3) of new section 10AA replicates the effect of subsection (4) of the existing section 10A.

169. Subsection (4) of new section 10AA replicates the effect of subsection (9C) of the existing section 10A.

170. Subsection (5) of new section 10AA replicates the effect of subsection (7) of the existing section 10A.

171. Paragraph 109 substitutes a new section 86A of TCGA to make it compatible with new section 10A of TCGA and to correct for consequential amendments that were missed in FA 2008. New section 86A ensures that gains that are taxed under section 86 of TCGA in a period of return because section 10A applies do not include gains that have already been charged to tax under section 87 of TCGA. This may happen if non-UK resident trustees make capital payments to beneficiaries that section 87A of TCGA matches to trustees' gains that accrued in a period of temporary non-residence for the settlor.

172. Subsection (1) of new section 86A gives the conditions for the section to apply.

173. Subsection (2) of new section 86A gives the definition of "matched capital payment".

174. Subsection (3) of new section 86A provides for the amount charged on the returning settlor under section 86 of TGA to be reduced if new section 86A applies.

175. Subsection (4) of new section 86A sets out the amount of the reduction.

176. Subsection (5) of new section 86A sets out the amount by which the trustees' gains available to be matched under section 87 of TCGA are reduced if those gains have been taxed under section 86 of TCGA as modified by new section 86A.

177. Subsections (6) and (7) of new section 86A also deal with the reduction of the trustees' gains. The rules ensure that the reduction cannot take the gains below zero. It will apply if capital payments have been made to which the reduction in new section 86A does not apply because they are not charged to tax.

178. Subsection (8) of new section 86A provides various definitions.

179. Paragraph 110 amends section 96 of TCGA. The changes are consequential to the changes made to section 10A TCGA.

180. Paragraph 111 amends section 279B of TCGA. The changes are consequential to the changes made to section 10A TCGA.

181. Paragraph 112 amends Schedule 4C to TCGA. The changes are consequential to the changes made to section 10A TCGA.

182. The remaining provisions in this Part insert new rules into ITEPA, ITTOIA and ITA concerning the taxation of certain income and gains arising in a temporary period of non-residence.

New special rule: lump sum payments under pension schemes etc

183. Paragraph 113 introduces paragraphs 114 to 119 which amend ITEPA in connection with lump sums paid under pension schemes that are not registered pension schemes.

184. Paragraph 114 amends ITEPA to insert a new section 394A. New section 394A applies to certain lump sums paid under employer-financed retirement benefit schemes ('EFRBS').

185. Subsection (1) of new section 394A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 99).

186. Subsection (2) of new section 394A provides that the benefits described in subsection (3) are to be treated as if they were received in the period of return (as defined in paragraph 104).

187. Subsections (3)(a) to (c) of new section 394A provide that the section applies to relevant benefits provided in the form of a lump sum, when received by an individual during a temporary period of non-residence (as defined in paragraph 102).

188. Subsection (3)(d) of new section 394A provides that the section applies when the lump sum in question is not subject to tax under section 394 but would be subject to tax if the existence of double tax relief arrangements were disregarded.

189. Subsection (4) of new section 394A provides that there will be regarded as being no charge to tax for the purpose of section 394(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

190. Subsection (5) of new section 394A provides that subsection (2) does not affect the operation of section 394(1A).

191. Subsection (6) of new section 394A provides that no double taxation relief arrangement is to be read as preventing the value of the benefit from counting as employment income by virtue of section 394 as a result of section 394A applying.

192. Subsections (7) and (8) of new section 394A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

193. Paragraph 115 amends ITEPA to insert a new section 554Z4A. New section 554Z4A applies to certain relevant steps taken by relevant third persons providing employment income.

194. Subsection (1) of new section 554Z4A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 99).

195. Subsection (2) of new section 554Z4A provides that the relevant steps described in subsection (3) are to be treated as if they were taken in the period of return.

196. Subsection (3)(a) to (c) of new section 554Z4A provide that the section applies to relevant steps comprising payment of a lump sum relevant benefit by a relevant third person under a relevant arrangement, when the step is taken during a temporary period of non-residence (as defined in paragraph 102). The term "relevant benefit" is defined in section 393B of ITEPA. The terms "relevant arrangement" and "relevant third person" are defined in section 554A of ITEPA.

197. Subsection (3)(d) of new section 554Z4A provides that the section applies when the step does not give rise to a charge to tax by virtue of section 554Z2 of ITEPA but such a charge would arise if the existence of double tax relief arrangements were disregarded.

198. Subsection (4) of new section 554Z4A provides that there will be regarded as being no charge to tax for the purpose of section 554Z4A(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

199. Subsection (5) of new section 554Z4A provides that no double taxation relief arrangement is to be read as preventing the value of the relevant

step from counting as employment income by virtue of section 554Z2 of ITEPA.

200. Subsections (6) and (7) of new section 554Z4A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

201. Paragraph 116 amends ITEPA to insert a new section 554Z11A. New section 554Z11A applies to certain amounts remitted to the UK.

202. Subsection (1) of new section 554Z11A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 99).

203. Subsection (2) of new section 554Z11A provides that the amounts described in subsection (3) are to be treated as if they were remitted to the UK in the period of return

204. Subsections (3)(a) to (c) of new section 554Z11A provide that the section applies if all or part of a lump sum relevant benefit provided to a relevant person by a relevant third person under a relevant arrangement is remitted to the UK during a temporary period of non-residence (as defined in paragraph 102). The term "relevant benefit" is defined in section 393B of ITEPA. The terms "relevant arrangement" and "relevant third person" are defined in section 554A of ITEPA. The definition of a "relevant person" is in section 554C of ITEPA.

205. Subsection (3)(d) of new section 554Z11A provides that the section applies when the amount remitted does not give rise to a charge to tax by virtue of section 554Z9 or section 554Z10 of ITEPA but such a charge would arise if the existence of double tax relief arrangements were disregarded.

206. Subsection (4) of new section 554Z11A provides that there will be regarded as being no charge to tax for the purpose of section 554Z11A(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

207. Subsection (5) of new section 554Z11A provides that no double taxation relief arrangement is to be read as preventing the value of the relevant step from giving rise to tax by virtue of Chapter 2 of Part 7A of ITEPA.

208. Subsections (6) and (7) of new section 554Z11A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

209. Paragraph 117 amends section 554Z12 of ITEPA in connection with relevant steps within new sections 554Z4A and 554Z11A when the

steps are taken after A has died during a period for which the relevant person was temporarily non-resident. The amendments provide that the relevant step in question is treated as taken in the relevant person's period of return unless the relevant person's temporary period of non-residence started before A died.

210. Paragraph 118 inserts a new section 572A into ITEPA. New section 572A applies to certain lump sums paid by UK pension schemes.

211. Subsection (1) of new section 572A provides that the section applies to individuals who are temporarily non-resident.

212. Subsection (2) of new section 572A provides that any pension within subsection (3) is to be treated as if it accrued in the period of return

213. Subsection (3) of new section 572A prescribes the conditions that need to be satisfied in order for the section to apply. The conditions are that

- section 569 of ITEPA applies to the lump sum;
- the pension is paid in the form of a lump sum;
- the lump sum accrued during a period in which the individual was temporarily non-resident;
- the lump sum is not chargeable to tax as a United Kingdom pension under Chapter 3 of Part 9 of ITEPA but it would be so chargeable if there were no double tax arrangements under which the individual could claim an exemption from UK tax in respect of the lump sum.

214. Subsection (4) of new section 572A provides that there will be regarded as being no charge to tax for the purpose of subsection (3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

215. Subsection (5) of new section 572A provides that no double taxation relief arrangements are to be read as preventing the pension to which the section applies from giving rise to tax in the period of return.

216. Subsections (6) and (7) of new section 572A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

217. Paragraph 119 amends section 683 of ITEPA (PAYE income) in connection with amounts that are treated as employment income or pension income for a period of return by virtue of new sections 394A, 554Z4A, 572A or 579CA of ITEPA. The amendments provide that

there is no requirement to operate PAYE in respect of any employment income or pension income which is chargeable to tax by virtue of one of those sections.

New special rule: distributions to participators in close companies etc

218. Paragraph 120 introduces paragraphs 121 to 123 which amend Parts 4 and 5 of ITTOIA. They provide new charges on foreign dividends and other distributions received (including loans being released) during a temporary period of non-residence.

219. Paragraph 121 inserts new section 408A in Chapter 4 of Part 4 of ITTOIA (which deals with foreign dividends).

220. Subsection (1) of new section 408A provides that this section applies to an individual who is temporarily non-resident.

221. Subsection (2) of new section 408A provides that dividends are to be treated for the purpose of Chapter 4 as if the individual received or became entitled to them in the period of return.

222. Subsection (3) of new section 408A sets out the conditions that must apply for a dividend to fall within subsection (2). These conditions are that:

- the individual receives or becomes entitled to the dividend in the temporary period of non-residence by virtue of being either a material participator in the company or an associate of such a participator at a relevant time;
- the dividend is from a company which would be a close company if it were UK resident; and,
- in the absence of this section, the individual would not be liable for tax under Chapter 4 in respect of the dividend but would have been so liable if they had received or become entitled to it in the period of return.

223. Subsection (4) of new section 408A defines the terms ‘associate’, ‘participator’, ‘material participator’ and ‘relevant time’ for the purposes of subsection (3) and provides that the subsection also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.

224. Subsection (5) of new section 408A provides that, where an individual is taxed on the remittance basis for the year of return, any dividend within subsection (3) which is remitted to the UK in the temporary

period of non-residence will be treated as remitted to the UK in the period of return.

225. Subsection (6) of new section 408A provides that new section 408A does not apply to dividends within subsection (3) which are paid in respect of post-departure trade profits.

226. Subsection (7) of new section 408A defines the term 'post-departure trade profits' for the purposes of subsection (6) as those arising to the company in an accounting period which begins after the start of the temporary period of non-residence and, where such profits arise in an accounting period straddling the start of that temporary period, so much of those profits which can be attributed, on a just and reasonable basis, to the time after the start of that temporary period.

227. Subsection (8) of new section 408A provides that the extent to which a dividend is paid in respect of post-departure trade profits should be determined on a just and reasonable basis.

228. Subsection (9) of new section 408A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.

229. Subsection (10) of new section 408A provides that, where section 406 or 407 of ITTOIA applies to the dividend, references in this section to a dividend being received by the individual are to a cash dividend being paid to the individual or to a dividend treated as paid to the individual.

230. Subsection (11) of new section 408A provides that the meaning of the terms 'temporarily non-resident', 'the temporary period of non-residence', 'the year of departure' and 'the period of return' is as defined in Part 4 of this Schedule.

231. Subsection (12) of new section 408A defines the terms 'double taxation arrangements', 'remitted to the UK' and 'year of return' for the purposes of this section.

232. Paragraph 122 inserts new section 420A in Chapter 6 of Part 4 of ITTOIA. This provision applies to loans released in a period of temporary non-residence.

233. Subsection (1) of new section 420A provides that this section applies where an individual is temporarily non-resident.

234. Subsection (2) of new section 420A provides that debts within subsection (3) are treated as if they had been released or written off in the period of return.

235. Subsection (3) of new section 420A provides that a debt is within this subsection if:

- the debt is all or part of a debt in respect of a loan or advance made by a company to the individual;

- the debt is released or written off in the temporary period of non-residence; and,

- in the absence of this section, the individual would not be liable for tax under Chapter 6 of Part 4 of ITTOIA in respect of the release or write-off of the debt, but would have been liable if the debt had been released or written off in the period of return.

236. Subsection (4) of new section 420A provides that, for the purposes of subsection (3), the terms 'associate' and 'participator' have the same meaning as in Part 10 of CTA 2010 and that subsection (3) also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.

237. Subsection (5) of new section 420A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.

238. Subsection (6) of new section 420A provides that the meaning of the terms 'temporarily non-resident', 'the temporary period of non-residence', 'the year of departure' and 'the period of return' is as defined in Part 4 of this Schedule.

239. Subsection (7) of new section 420A defines the term 'double taxation arrangements' for the purposes of this section.

240. Paragraph 123 inserts new section 689A in Chapter 8 of Part 5 of ITTOIA 2005 dealing with distributions not charged by other provisions of ITTOIA.

241. Subsection (1) of new section 689A provides that new section 689A applies if an individual is temporarily non-resident.

242. Subsection (2) of new section 689A provides that distributions within subsection (3) are to be treated for the purpose of Chapter 8 of Part 5 of ITTOIA as if the individual received or became entitled to them in the period of return.

243. Subsection (3) of new section 689A defines the conditions in which distributions are to be treated under the rule provided by subsection (2). These conditions are that:

- the individual receives or becomes entitled to the distribution in the temporary period of non-residence by virtue of being either a material participator in the company or an associate of such a participator at a relevant time;
- the distribution is from a close company or from a company which would be a close company if it were UK resident; and
- in the absence of this section, the individual would not be liable for tax under Chapter 8 of Part 5 of ITTOIA in respect of the distribution but would have been so liable if they had received or become entitled to it in the period of return.

244. Subsection (4) of new section 689A defines the terms 'associate', 'participator', 'material participator' and 'relevant time' for the purposes of subsection (3) and provides that the subsection also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.

245. Subsection (5) of new section 689A provides that, where an individual is taxed on the remittance basis for the year of return, any distribution within subsection (3) which is relevant foreign income and is remitted to the UK in the temporary period of non-residence will be treated as remitted to the UK in the period of return.

246. Subsection (6) of new section 689A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.

247. Subsection (7) of new section 689A provides that the meaning of the terms 'temporarily non-resident', 'the temporary period of non-residence', 'the year of departure' and 'the period of return' is as defined in Part 4 of this Schedule.

248. Subsection (8) of new section 689A defines the terms 'double taxation relief arrangements', 'remitted to the UK' and 'years of return' for the purposes of this section.

249. Paragraph 124 inserts new section 812A in Chapter 1 of Part 14 of ITA.

250. Subsection (1) of new section 812A provides that new section 812A applies where:

- an individual is temporarily non-resident;
- the individual's income tax liability is limited under section 811 of ITA;

- the non-resident year falls within the temporary period of non-residence; and
- the individual's income for that tax year includes relevant investment income.

251. Subsection (2) of new section 812A provides that the total income, as defined by Step 1 in section 23 of ITA, on which the individual is taxed for the year of return, is to be increased by amount X which is equal to the amount of the relevant investment income.

252. Subsection (3) of new section 812A provides that a credit is to be allowed for the notional UK tax on relevant investment income against the individual's income tax liability for the year of return to the extent that the relevant investment income does not exceed amount X.

253. Subsection (4) of new section 812A provides that 'relevant investment income' is income where:

- the income is chargeable under either Chapter 3 or Chapter 5 of Part 4 of ITTOIA;
- the distributing company is a close company;
- the income either arises or is treated as arising to the individual because they were a material participator in the company or an associate of such a participator at a relevant time.

254. Subsection (5) of new section 812A provides that income within subsection (4) in the form of a cash or stock dividend is not relevant investment income to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.

255. Subsection (6) of new section 812A defines the terms 'post-departure trade profits' for the purposes of subsection (5) as those arising to the distributing company in an accounting period which begins after the start of the temporary period of non-residence and, where such profits arise in an accounting period straddling the start of that temporary period, so much of those profits which can be attributed, on a just and reasonable basis, to the time after the start of that temporary period.

256. Subsection (7) of new section 812A defines the term 'notional UK tax' on relevant investment income for the purpose of subsection (3) as the total income included within amount A in section 811 of ITA less any credit for foreign tax paid in respect of that income under Chapter 2 of Part 2 of TIOPA for the non-resident year.

257. Subsection (8) of new section 812A provides that the extent to which a dividend is paid, or share capital is issued, in respect of post-departure

trade profits, and the extent to which a sum included within amount A is a sum in respect of relevant investment income should both be determined on a just and reasonable basis.

258. Subsection (9) of new section 812A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.

259. Subsection (10) of new section 812A provides that the meaning of the terms 'temporarily non-resident', 'the temporary period of non-residence', 'the year of departure' and 'the period of return' is as defined in Part 4 of this Schedule.

260. Subsection (11) of new section 812A defines the terms 'associate', 'participator', 'material participator', 'relevant time' and 'year of return' for the purposes of this section.

New special rule: chargeable event gains

261. Paragraph 125 provides for Chapter 9 of Part 4 of ITTOIA to be amended. This provides a new charge on chargeable event gains arising in a temporary period of non-residence and makes related amendments.

262. Paragraph 126 inserts new section 465B into ITTOIA.

263. Subsection (1) of new section 465B provides that the section applies if an individual is temporarily non-resident (as defined in paragraph 99).

264. Subsection (2) of new section 465B provides a charge for the year of return following a temporary period of non-residence if the conditions in subsection (3) are met.

265. Subsection (3) and (4) of new section 465B state the conditions to be met for a gain to be charged under this section. It is necessary that the gain would have been chargeable had the individual been resident in the year in which the gain arose, and assuming that year was not a split year for that individual.

266. Subsections (5) and (6) of new section 465B provide that the amount chargeable in the year of return is the amount that would have been chargeable applying the assumptions in subsection (4).

267. Subsection (7) of new section 465B contains a rule determining the date an insurance or contract is made for the purposes of subsection (3)(b).

268. Subsection (8) of new section 465B provides that in certain circumstances a gain is not chargeable under this section.

269. Subsection (9) of new section 465B provides that nothing in any double taxation arrangements prevents the charge under this section.

270. Subsections (10) and (11) of new section 465B provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

271. Paragraph 127 inserts new subsection (7) into section 468 of ITTOIA ensuring no double charge arises under sections 465B and 468.

272. Paragraph 128 inserts new subsection (4A) into section 514 of ITTOIA and provides that the special rule in subsection (4) charging the gain for the tax year in which the insurance year ends takes precedence over the timing rule in section 465B.

273. Paragraph 129 makes a consequential amendment to section 541 of ITTOIA.

274. Paragraph 130 makes a consequential amendment to section 552 of ICTA.

PART 5

Miscellaneous

Interpretation

275. Paragraph 131 defines terms used in this Schedule.

276. Paragraph 132 specifies the interpretation of annual and parenting leave for an individual carrying on a trade, and what are "reasonable amounts", in relation to the usage in this Schedule.

277. Paragraph 133 provides that a reference to less than a specified number of days includes nil days.

Consequential amendments

278. Paragraph 134 amends TCGA to delete section 9, which defines residence and related expressions for the purposes of that Act, and inserts into section 288 the definition of "resident" given by this Schedule.

279. Paragraph 135 makes a minor consequential amendment to section 27 of ITEPA.

280. Paragraph 136 makes a similar minor consequential amendment to section 465 of ITTOIA.

281. Paragraph 137 amends section 28 of FA 2005 to incorporate the concept of a split year as defined in Part 3 of this Schedule and amends section 41 of FA 2005 to insert the definitions of "non-UK resident" and "UK resident" in accordance with the meaning arising from this Schedule. Minor amendments are also made to sections 30, 31 and 32 of that Act.

282. Paragraph 138 amends ITA to delete sections 829 to 832, which contain provisions about the meaning of residence for income tax purposes. It also makes consequential amendments to section 810 of ITA.

Commencement

283. Paragraph 139 specifies when this Schedule shall have effect. Parts 1 and 2 have effect for determining whether individuals are resident or not resident in the UK for the tax year 2013-14 or any subsequent tax year. Part 3 of the Schedule has effect in calculating an individual's liability to income tax or capital gains tax for the tax year 2013-14 or any subsequent tax year. Part 4 of the Schedule has effect if the year of departure (as defined in paragraph 103) is the tax year 2013-14 or a subsequent tax year.

Transitional and saving provision

284. Paragraph 140 provides that where for the purposes of this Schedule it is necessary to determine for the tax year 2013-14, 2014-15 or 2015-16 whether an individual was UK resident or non-UK resident for a tax year before 2013–14, this will be determined in accordance with the rules then in force unless the individual elects for the determination to be made in accordance with this Schedule. Such an election must be made by notice in writing to HMRC no later than the first anniversary of the tax year to which it applies.

285. Paragraph 141 provides that where for the purposes of this Schedule it is necessary to determine for the tax year 2013-14 or any subsequent year whether a tax year before 2013–14 was a split year with respect to the individual, this will be determined in accordance with the relevant Extra Statutory Concession in place for that pre-commencement year. Those concessions are ESC A11, ESC A78 and ESC D2.

286. Paragraph 142 provides that the temporary non-resident provisions listed in sub-paragraph (3) will continue to have effect where the year of departure (as defined in paragraph 103) is a tax year before 2013-14, and that an individual's residence for the year 2013-14 and after will be determined in accordance with this Schedule with the effect of split-years being disregarded.

287. Paragraph 143 provides that section 13 of FA 2012, which is a tax exemption in relation to the May 2013 Champions League final at Wembley, is applied using the concept of residence without regard to this Schedule.

BACKGROUND

288. At Budget 2011, the Government announced that it would introduce a statutory definition of tax residence for individuals. Following extensive consultation, rules have been formulated which are contained within Parts 1 and 2 of the Schedule. The test makes an individual resident or not resident in the UK for a whole tax year. It applies for 2013-14 and following years.

289. Under a number of extra-statutory concessions, an individual could be taxed as if resident and non-resident for parts of the same tax year provided certain conditions were met. Part 3 of the Schedule replaces those concessions by giving statutory effect to 'split year' treatment and the concessions will be withdrawn with effect from 6 April 2013.

290. There are already several provisions (including two in secondary legislation) which charge certain income and gains when an individual resumes UK residence after a temporary period of non-residence. Those rules in primary legislation are aligned and updated by Part 4 of the Schedule which also extends the scope of the temporary non-resident rules to certain other income and gains. It is proposed that the two provisions in secondary legislation will be brought into line through a Statutory Instrument made after Royal Assent but taking effect on 6 April 2013. A draft statutory instrument will be published in due course.

291. If you have any questions or comments on the legislation, please contact Paul Jefferies on 020 7147 2580 (email: offshorepersonal.taxteam @hmrc.gsi.gov.uk).

1 Ordinary residence

(1) Schedule 1 contains provision removing or replacing rules relating to ordinary residence.

(2) The Treasury may by order make further provision removing or replacing rules relating to ordinary residence with respect to—

(a) income tax,

(b) capital gains tax, and

(c) (so far as the ordinary residence status of individuals is relevant to them) inheritance tax and corporation tax.

(3) An order under subsection (2) may take effect from the start of the tax year in which the order is made.

(4) The Treasury may by order make any incidental, supplemental, consequential, transitional or saving provision in consequence of Schedule 1 or in consequence of any further provision made under subsection (2).

(5) An order under this section may—

(a) make different provision for different purposes, and

(b) make provision amending, repealing or revoking any provision made by or under an Act (whenever passed or made).

(6) An order under this section is to be made by statutory instrument.

(7) A statutory instrument containing an order under subsection (2) (whether alone or with other provisions) 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) Subject to subsection (7), a statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 1

Section 1

Ordinary residence

Part 1

Income tax and capital gains tax: remittance basis of taxation

Remittance basis restricted to non-doms

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

2 In section 809A (overview of Chapter), omit "or are not ordinarily UK resident".

3 In section 809B (claim for remittance basis to apply)—
(a) in subsection (1)(b), omit "or is not ordinarily UK resident in that year", and
(b) omit subsection (2).

4 In section 809D (application of remittance basis without claim where unremitted foreign income and gains under £2,000)—
(a) in subsection (1)(b), omit "or is not ordinarily UK resident in that year", and
(b) in subsection (1A), omit "the individual is not domiciled in the United Kingdom in that year and".

5 In section 809E (application of remittance basis without claim: other cases), in subsection (1)(b), omit "or is not ordinarily UK resident in that year".

Treatment of relevant foreign earnings

6 ITEPA 2003 is amended as follows.

7 (1) In section 22 (chargeable overseas earnings for year where remittance basis applies and employee ordinarily UK resident), in subsection (1), for paragraph (b) substitute—
"(b) the employee does not meet the requirement of section 26A for that year."

(2) Accordingly—
(a) in the heading of that section, for "**ordinarily UK resident**" substitute "**outside section 26**", and
(b) in the italicised heading before that section, for "*UK ordinarily resident employees*" substitute "*employees outside section 26*".

8 In section 23 (calculation of "chargeable overseas earnings"), in subsection (2), for paragraph (aa) substitute—
"(aa) the employee does not meet the requirement of section 26A for that year,".

9 (1) In section 26 (foreign earnings for year when remittance basis applies and employee not ordinarily UK resident), in subsection (1), for "is not ordinarily UK resident in" substitute "meets the requirement of section 26A for".

(2) Accordingly—

(a) in the heading of that section, for "**not ordinarily UK resident**" substitute "**meets section 26A requirement**", and

(b) in the italicised heading before that section, for "*not UK ordinarily resident*" substitute "*employees who meet section 26A requirement*".

10 After that section insert—

"26A Section 26: requirement for 3-year period of non-residence

(1) An employee meets the requirement of this section for a tax year if the employee was—

(a) non-UK resident for the previous 3 tax years, or

(b) UK resident for the previous tax year but non-UK resident for the 3 tax years before that, or

(c) UK resident for the previous 2 tax years but non-UK resident for the 3 tax years before that, or

(d) non-UK resident for the previous tax year, UK resident for the tax year before that and non-UK resident for the 3 tax years before that.

(2) The residence status of the employee before the 3 years of non-UK residence is not relevant for these purposes."

11 (1) Section 41C (foreign securities income) is amended as follows.

(2) In subsection (4), for paragraph (b) substitute—

"(b) the individual does not meet the requirement of section 26A for the year (reading references there to the employee as references to the individual),".

(3) In subsection (6), for paragraph (b) substitute—

"(b) the individual meets the requirement of section 26A for the year (reading references there to the employee as references to the individual), and".

12 In section 271 (limited exemption of removal benefits and expenses: general), in subsection (2)—

(a) in paragraph (a), for "ordinarily UK resident" substitute "outside section 26", and

(b) in paragraph (b), for "not ordinarily UK resident" substitute "meets section 26A requirement".

13 (1) In section 554Z9 (remittance basis: A is ordinarily UK resident), in subsection (1), for paragraph (c) substitute—

"(c) A does not meet the requirement of section 26A for the relevant tax year (reading references there to the employee as references to A),".

(2) Accordingly, in the heading of that section, for "**A is ordinarily UK resident**" substitute "**A does not meet section 26A requirement**".

14 (1) In section 554Z10 (remittance basis: A is not ordinarily resident), in subsection (1), for paragraph (c) substitute—

"(c) A meets the requirement of section 26A for the relevant tax year (reading references there to the employee as references to A)."

(2) Accordingly, in the heading of that section, for "**A is not ordinarily resident**" substitute "**A meets section 26A requirement**".

15 (1) Section 690 (employee non-resident etc) is amended as follows.

(2) In subsection (1), for paragraph (a) substitute—

"(a) is either non-UK resident for the tax year or is UK resident but meets the requirement of section 26A for the tax year, and".

(3) In subsection (2A), for "not ordinarily resident in" substitute "meets the requirement of section 26A for".

Consequential amendments

16 In section 266A of ICTA (life assurance premiums paid by employer), in subsection (8)—

(a) in paragraph (a), for "employee resident and ordinarily resident, but not domiciled, in UK" substitute "remittance basis applies and employee outside section 26", and

(b) in paragraph (b), for "employee resident, but not ordinarily resident, in UK" substitute "remittance basis applies and employee meets section 26A requirement".

17 In section 12 of TCGA 1992 (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—

"(1) This section applies to foreign chargeable gains accruing to an individual in a tax year ("the foreign chargeable gains") if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year."

18 In section 87B of that Act (section 87: remittance basis), in subsection (1)—

(a) insert "and" at the end of paragraph (a),

(b) omit "and" at the end of paragraph (b), and

(c) omit paragraph (c).

19 In section 726 of ITA 2007 (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—

"(1) This section applies in relation to income treated under section 721 as arising to an individual in a tax year ("the deemed income") if section 809B, 809D or 809E (remittance basis) applies to the individual for that year."

20 In section 730 of that Act (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—

"(1) This section applies in relation to income treated under section 728 as arising to an individual in a tax year ("the deemed income") if section 809B, 809D or 809E (remittance basis) applies to the individual for that year."

21 In section 735 of that Act (non-UK domiciled individuals to whom remittance basis applies), as substituted by Part 4 of Schedule [ ] to this Act, for subsection (1) substitute—

"(1) This section applies to an individual for the relevant tax year if section 809B, 809D or 809E (remittance basis) applies to the individual for that year."

22 In section 809F of that Act (effect on what is chargeable), in subsection (4), for "If the individual is not domiciled in the United Kingdom in that year, the" substitute "The".

23 In section 809YD of that Act (chargeable gains accruing on sales of exempt property), in subsection (3), omit "and P is not domiciled in the United Kingdom in that year".

24 In section 809Z7 of that Act (interpretation of Chapter)—
(a) in subsection (2)(d), omit "if the individual is not domiciled in the United Kingdom in that year,", and
(b) in subsection (3)(a), for "is ordinarily UK resident in" substitute "does not meet the requirement of section 26A of ITEPA 2003 for".

Commencement

25 The amendments made by this Part of this Schedule have effect in relation to an individual's foreign income and gains for the tax year 2013-14 or any subsequent tax year.

Savings

26 (1) This paragraph applies to an individual who—
(a) was not resident in the United Kingdom for the tax year 2010-11,
(b) is resident there for the tax year 2012-13, but
(c) is not ordinarily resident there at the end of the tax year 2012-13.

(2) Enactments relating to income tax or capital gains tax have effect, in relation to any eligible foreign income and gains of the individual, as if the amendments made by this Part of this Schedule had not been made.

(3) "Eligible foreign income and gains" means—
(a) if the individual was resident in the United Kingdom for the tax year 2011-12, foreign income and gains for the tax year 2013-14,
(b) otherwise, foreign income and gains for the tax year 2013-14 and the tax year 2014-15.

(4) Where, by virtue of this paragraph, it is necessary to determine whether an individual is (or is not) ordinarily resident in the United Kingdom at a time on or after 6 April 2013, the question is to be determined as it would have been in the absence of this Schedule.

Interpretation

27 References in this Part of this Schedule to an individual's "foreign income and gains" for a tax year are to be read in accordance with section 809Z7 of ITA 2007 (interpretation of remittance basis rules).

PART 2

INCOME TAX: ARISING BASIS OF TAXATION

ICTA

28 In section 614 of ICTA (exemptions and reliefs in respect of income from investments etc of certain pension schemes)—
(a) in subsection (4), for "not domiciled, ordinarily resident or resident" substitute "not domiciled and not resident", and
(b) in subsection (5), for "not domiciled, ordinarily resident or resident" substitute "not domiciled and not resident".

ITEPA 2003

29 ITEPA 2003 is amended as follows.

30 In section 56 (application of Income Tax Acts in relation to deemed employment), in subsection (5)—
(a) for paragraph (a) substitute—
"(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,", and
(b) in paragraph (b), omit "or ordinarily resident".

31 In section 61G (application of Income Tax Acts in relation to deemed employment), in subsection (5)—
(a) for paragraph (a) substitute—
"(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,", and
(b) in paragraph (b), omit "or ordinarily resident".

32 In section 328 (the income from which deductions may be made), in subsection (5), omit the entry for Chapter 6 of Part 5 and the word "and" immediately preceding it.

33 In section 341 (travel at start or finish of overseas employment), in subsection (3), for "resident and ordinarily resident in the United Kingdom" substitute "UK resident".

34 In section 342 (travel between employments where duties performed abroad), in subsection (6), for "resident and ordinarily resident in the United Kingdom" substitute "UK resident".

35 In section 370 (travel costs where duties performed abroad: employee's travel), in subsection (6), omit "in which the employee is ordinarily UK resident".

36 In section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)), in subsection (1)(b), for "resident and ordinarily resident in the United Kingdom" substitute "UK resident".

37 (1) Section 378 (deductions from seafarers' earnings: eligibility) is amended as follows.

(2) In subsection (1), for "relevant taxable earnings or EEA-resident earnings" substitute "relevant general earnings".

(3) For subsection (5) substitute—

"(5) "Relevant general earnings" means—
(a) taxable earnings under section 15, 22 or 26, or
(b) general earnings—
(i) to which section 27 applies, and
(ii) which are for a period in which the employee is liable under the law of an EEA State (other than the United Kingdom) to tax in that State by reason of domicile or residence."

(4) Omit subsection (6).

38 In section 413 (exception in certain cases of foreign service), in subsection (3A), before paragraph (a) insert—

"(za) for service in or after the tax year 2013-14, earnings for a tax year that are earnings to which section 15 applies and to which that section would apply even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year,".

39 (1) In section 681A (foreign benefits of consular employees), for subsection (4) substitute—

"(4) Condition C is that—
(a) the officer or employee is a permanent employee of that state, or
(b) the officer or employee was non-UK resident for each of the 2 tax years preceding the tax year in which the officer or employee became a consular officer or employee in the United Kingdom of that state."

(2) The amendment made by this paragraph does not apply to a person who became a consular officer or employee in the United Kingdom before 6 April 2013.

40 (1) In Schedule 2 (approved share incentive plans), in paragraph 8(2), omit paragraph (b) and the "and" immediately before it.

(2) The amendments made by this paragraph do not apply to plans that have been approved before the day on which this Act is passed.

41 (1) In Schedule 3 (approved SAYE option schemes), in paragraph 6(2)—
(a) insert "and" at the end of paragraph (c), and
(b) omit paragraph (ca), including the "and" at the end of it.

(2) The amendments made by this paragraph do not apply to schemes that have been approved before the day on which this Act is passed.

42 In Schedule 5 (enterprise management incentives), in paragraph 27(3)(b), omit "and ordinarily resident".

ITTOIA 2005

43 ITTOIA 2005 is amended as follows.

44 In section 154A (certain non-UK residents with interest on 3½% War Loan 1952 Or After), in subsection (1)(a), omit "ordinarily".

45 In section 459 (transfer of assets abroad), in subsection (2), for "an individual ordinarily UK resident" substitute "a UK resident individual".

46 In section 468 (non-UK resident trustees and foreign institutions), for subsection (2) substitute—

"(2) Chapter 2 of Part 13 of ITA 2007 (which prevents avoidance of tax where a UK resident individual benefits from a transfer of assets) applies with the modifications specified in subsection (3) or (4)."

47 In section 569 (anti-avoidance: transfer of assets abroad), in subsection (2), for "an individual ordinarily UK resident" substitute "a UK resident individual".

48 (1) In section 636 (calculation of undistributed income), in subsection (2)(b), for ", resident and ordinarily resident" substitute "and resident".

(2) The amendment made by this paragraph does not apply in calculating income arising under a settlement in tax years ending before 6 April 2013.

49 In section 648 (income arising under a settlement), in subsection (1)(b), for ", resident and ordinarily resident" substitute "and resident".

50 In section 651 (meaning of "UK estate" and "foreign estate"), in subsection (3), omit "or not ordinarily UK resident".

51 In section 664 (the aggregate income of the estate), in subsection (2)(b)(i), omit "who was ordinarily UK resident".

52 (1) Section 715 (interest from FOTRA securities held on trust) is amended as follows.

(2) In subsection (1)(b), for "person not ordinarily UK resident" substitute "non-UK resident person".

(3) In subsection (2)—

(a) for "person not ordinarily UK resident" substitute "non-UK resident person", and

(b) for "is ordinarily UK resident at the time when" substitute "is UK resident for the tax year in which".

(4) In relation to a FOTRA security issued before 6 April 2013, the amendments made by this paragraph apply only if the security was acquired by the trust on or after that date.

53 (1) In section 771 (relevant foreign income of consular officers and employees), for subsection (4) substitute—

"(4) Condition C is that—

(a) the officer or employee is a permanent employee of that state, or

(b) the officer or employee was non-UK resident for each of the 2 tax years preceding the tax year in which the officer or employee became a consular officer or employee in the United Kingdom of that state."

(2) The amendment made by this paragraph does not apply to a person who became a consular officer or employee in the United Kingdom before 6 April 2013.

ITA 2007

54 ITA 2007 is amended as follows.

55 In section 465 (overview of Chapter 2 and interpretation), in subsection (4), omit "and ordinary residence".

56 (1) Section 475 (residence of trustees) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies for income tax purposes and explains how to work out, in relation to the trustees of a settlement, whether or not the single person mentioned in section 474(1) is UK resident."

(3) In subsection (2), for "both UK resident and ordinarily UK resident" substitute "UK resident".

(4) In subsection (3), for "both non-UK resident and not ordinarily UK resident" substitute "non-UK resident".

57 (1) Section 476 (how to work out whether settlor meets condition C) is amended as follows.

(2) In subsection (2)(b), omit ", ordinarily UK resident".

(3) In subsection (3)(b), omit ", ordinarily UK resident".

(4) The amendment made by sub-paragraph (2) does not apply if the person died before 6 April 2013.

(5) The amendment made by sub-paragraph (3) does not apply if the settlement was made before 6 April 2013.

58 In section 643 (non-residents), in subsection (1), omit "and is not ordinarily UK resident during that year".

59 In section 718 (meaning of "person abroad" etc), in subsection (2)(b), for "neither UK resident nor ordinarily UK resident" substitute "non-UK resident".

60 In section 720 (charge to tax on income treated as arising under section 721), in subsection (1), omit "ordinarily".

61 (1) Section 721 (individuals with power to enjoy income as a result of relevant transactions) is amended as follows.

(2) In subsection (1), for "conditions A and B" substitute "conditions A to C".

(3) After subsection (3) insert—

"(3A) Condition C is that the individual is UK resident for the tax year."

(4) In subsection (5), for paragraph (b) substitute—

"(b) whether the individual is UK resident for the tax year in which the relevant transfer is made (if different from the tax year mentioned in subsection (1)), or".

62 In section 727 (charge to tax on income treated as arising under section 728), in subsection (1), omit “ordinarily”.

63 (1) Section 728 (individuals receiving capital sums as a result of relevant transactions) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), omit the “and” at the end of sub-paragraph (iii), and

(b) at the end of paragraph (b) insert “, and

(c) the individual is UK resident for the tax year.”

(3) In subsection (3), for paragraph (b) substitute—

“(b) whether the individual is UK resident for the tax year in which the relevant transfer abroad is made (if different from the tax year mentioned in subsection (1)), or”.

64 In section 732 (non-transferors receiving benefit as a result of relevant transactions), as substituted by Part 4 of Schedule [ ] to this Act, in subsection (4), for paragraph (a) substitute—

“(a) the individual is UK resident for the tax year in which the benefit is received,”.

65 (1) In section 749 (restrictions on particulars to be provided by relevant lawyers), in subsection (2), omit “ordinarily”.

(2) The amendment made by this paragraph applies only if the transfer is made or, in the case of an associated operation, the transfer is made and the associated operation is effected on or after 6 April 2013.

66 In section 812 (case where limit on liability of non-UK residents is not to apply), in subsection (1)(a), omit “ordinarily”.

67 (1) In section 834 (residence of personal representatives), in subsection (3), omit “, ordinarily UK resident”.

(2) The amendment made by this paragraph does not apply if D died before 6 April 2013.

68 (1) In section 858 (declarations of non-UK residence: individuals)—

(a) in subsection (3)(a) and (b), for “not ordinarily UK resident” substitute “non-UK resident”, and

(b) in subsection (4), omit “ordinarily”.

(2) The amendments made by this paragraph apply to the making of declarations on or after 6 April 2014, and any declarations made before that date continue to have effect in respect of interest paid on or after that date as if those amendments had not been made.

69 (1) In section 859 (declarations of non-UK residence: Scottish partnerships)—

(a) in subsection (3), for “not ordinarily UK resident” substitute “non-UK resident”, and

(b) in subsection (4), omit “ordinarily”.

(2) The amendments made by this paragraph apply to the making of declarations on or after 6 April 2014, and any declarations made before that date continue to have effect in respect of interest paid on or after that date as if those amendments had not been made.

70 (1) In section 860 (declarations of non-UK residence: personal representatives), in subsection (3), for "not ordinarily UK resident" substitute "non-UK resident".

(2) The amendment made by this paragraph applies only if the deceased died on or after 6 April 2014.

71 (1) Section 861 (declarations of non-UK residence: settlements) is amended as follows.

(2) In subsection (3)(b)(i) and (iii), omit "ordinarily".

(3) In subsection (4)—
(a) in paragraphs (b) and (d), omit "ordinarily", and
(b) in paragraph (f), for "an ordinarily" substitute "a".

(4) The amendments made by this paragraph apply to the making of declarations on or after 6 April 2014, and any declarations made before that date continue to have effect in respect of interest paid on or after that date as if those amendments had not been made.

Commencement

72 (1) The amendments made by this Part of this Schedule have effect for the purposes of a person's liability to income tax for the tax year 2013-14 or any subsequent tax year.

(2) Sub-paragraph (1) is without prejudice to any provision in this Part of the Schedule about the application of a particular amendment.

Savings

73 (1) This paragraph applies to an individual who—
(a) was not resident in the United Kingdom for the tax year 2010-11,
(b) is resident there for the tax year 2012-13, but
(c) is not ordinarily resident there at the end of the tax year 2012-13.

(2) The provisions listed in sub-paragraph (3) have effect, in relation to such an individual and a qualifying tax year, as if the amendments made to or with respect to those provisions by this Part of this Schedule had not been made.

(3) The provisions are—
(a) section 413 of ITEPA 2003 (exception for payments and benefits on termination of employment etc in certain cases involving foreign service),
(b) section 414 of that Act (reduction in other cases of foreign service), and
(c) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad).

(4) But, in the case of provisions within paragraph (a) or (b) of sub-paragraph (3), this paragraph applies only if service in the employment in question began before the start of the tax year 2013-14.

(5) "Qualifying tax year" means—
(a) if the individual was resident in the United Kingdom for the tax year 2011-12, the tax year 2013-14,
(b) otherwise, each of the tax year 2013-14 and the tax year 2014-15.

(6) Where, by virtue of this paragraph, it is necessary to determine whether an individual is (or is not) ordinarily resident in the United Kingdom at a time on or after 6 April 2013, the question is to be determined as it would have been in the absence of this Schedule.

PART 3

CAPITAL GAINS TAX: ACCRUALS BASIS OF TAXATION

TCGA 1992

74 TCGA 1992 is amended as follows.

75 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.

(2) In subsection (1), for the words from "during any part" to the end substitute "if the residence condition is met".

(3) After that subsection insert—

"(1A) The residence condition is—

(a) in the case of an individual, that the individual is resident in the United Kingdom for the year in question,

(b) in the case of personal representatives of a deceased person, that the single and continuing body 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 year in question, and

(d) in any other case, that the person is resident in the United Kingdom when the gain accrues."

76 In section 10 (non-resident with United Kingdom branch or agency), in subsection (1), for "in which he is not resident and not ordinarily resident in the United Kingdom but" substitute "if the residence condition is not met (see section 2(1A)) but the person".

77 (1) Section 13 (attribution of gains to members of non-resident companies) is amended as follows.

(2) In subsection (2), omit "or ordinarily resident".

(3) In subsection (10), for "neither resident nor ordinarily resident" substitute "not resident".

(4) In subsection (13)(b), omit "or ordinarily resident".

78 In section 16 (computation of losses), in subsection (3), for "during no part of which he is resident or ordinarily resident in the United Kingdom" substitute "where the residence condition is not met (see section 2(1A))".

79 In section 62 (death: general provisions), in subsection (3), omit ", ordinary residence,".

80 In section 65 (liability for tax of trustees or personal representatives), in subsection (3)(b), for "become neither resident nor ordinarily resident" substitute "cease to be resident".

81 In section 67 (provisions applicable where section 79 of the Finance Act 1980 has applied), in subsection (6)(a), in paragraph (b) of the substituted subsection (1), for "becomes neither resident nor ordinarily resident" substitute "ceases to be resident".

82 (1) Section 69 (trustees of settlements) is amended as follows.

(2) In subsection (2), omit "and ordinarily resident".

(3) In subsection (2B)(c), omit ", ordinarily resident".

(4) In subsection (2E), for the words from "and ordinarily resident" to the end substitute "in the United Kingdom, then for the purposes of this Act it is treated as being not resident in the United Kingdom".

83 In section 76 (disposal of interests in settled property), in subsection (1B)(a), for "neither resident nor ordinarily resident" substitute "not resident".

84 In section 80 (trustees ceasing to be resident in UK), in subsection (1), for "neither resident nor ordinarily resident" substitute "not resident".

85 (1) Section 81 (death of trustee: special rules) is amended as follows.

(2) In subsection (1)(b), omit "and ordinarily resident".

(3) In subsection (3)(b), omit "and ordinarily resident".

(4) In subsection (4)(b), omit "and ordinarily resident".

(5) In subsection (5)(a), omit "and ordinarily resident".

86 In section 82 (past trustees: liability for tax), in subsection (3)(b), for "become neither resident nor ordinarily resident" substitute "cease to be resident".

87 In section 83 (trustees ceasing to be liable to UK tax), in subsection (1), omit "and ordinarily resident".

88 (1) Section 83A (trustees both resident and non-resident in a year of assessment) is amended as follows.

(2) In subsection (3)(a), omit "and ordinarily resident".

(3) In subsection (4)—

(a) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and

(b) in paragraph (b), omit "and ordinarily resident".

89 In section 84 (acquisition by dual resident trustees), in subsection (1)(b), omit "and ordinarily resident".

90 In section 85 (disposal of interests in non-resident settlements), in subsection (1), for "neither resident nor ordinarily resident" substitute "not resident".

91 (1) Section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements) is amended as follows.

(2) In subsection (1)(c), for the words from "either resident" to the end substitute "resident in the United Kingdom for the year".

(3) For subsection (2) substitute—

"(2) The condition as to residence is that—

(a) there is no time in the year when the trustees are resident in the United Kingdom, or

(b) there is such a time but, whenever the trustees are resident in the United Kingdom during the year, they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom."

(4) In subsection (3), omit "and ordinarily resident".

92 (1) Section 87 (non-UK resident settlements: attribution of gains to beneficiaries) is amended as follows.

(2) In subsection (1), for the words from "the trustees" to the end substitute "there is no time in that year when the trustees are resident in the United Kingdom".

(3) In subsection (4)(a), omit "and ordinarily resident".

93 In section 88(1) (gains of dual resident settlements)—

(a) in paragraph (a), omit "and ordinarily resident", and

(b) in paragraph (b), omit "and ordinary residence".

94 (1) Section 96 (payments by and to companies) is amended as follows.

(2) In subsection (3), omit "or ordinarily resident".

(3) In subsection (4), in each of paragraphs (a) and (b), omit "or ordinarily resident".

(4) In subsection (5)(b), omit "or ordinary residence".

95 In section 97 (supplementary provisions), in subsection (1)(a), for "neither resident nor ordinarily resident" substitute "not resident".

96 In section 99 (application of Act to unit trust schemes), in subsection (1)(c), omit "and ordinarily resident".

97 In section 106A(5A) (identification of securities: capital gains tax)—

(a) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and

(b) in paragraph (b), omit "or ordinarily resident".

98 (1) Section 159 (non-residents: roll-over relief) is amended as follows.

(2) In subsection (2)(b), omit "or ordinarily resident".

(3) In subsection (5), in the definition of "dual resident", omit "or ordinarily resident".

99 (1) Section 166 (gifts to non-residents) is amended as follows.

(2) In subsection (1), for "neither resident nor ordinarily resident" substitute "not resident".

(3) In subsection (2)(a), omit "or ordinarily resident".

100 (1) Section 167 (gifts to foreign-controlled companies) is amended as follows.

(2) In subsection (2)(a), for "neither resident nor ordinarily resident" substitute "not resident".

(3) In subsection (3), for the words from “or ordinarily resident” to “nor ordinarily resident” substitute “in the United Kingdom is to be regarded as not resident”.

101 (1) Section 168 (emigration of donee) is amended as follows.

(2) In subsection (1)(b), for “becomes neither resident nor ordinarily resident” substitute “ceases to be resident”.

(3) In subsection (4), for “becoming neither resident nor ordinarily resident” substitute “ceasing to be resident”.

(4) In subsection (5)—

(a) in paragraph (a), for “becoming neither resident nor ordinarily resident” substitute “ceasing to be resident”, and

(b) in paragraph (b), omit “or ordinarily resident”.

102 In section 169 (gifts into dual resident trusts), in subsection (3)(a), omit “and ordinarily resident”.

103 In section 199 (exploration or exploitation assets: deemed disposals), in subsection (2), for “who is not resident and not ordinarily resident in the United Kingdom” substitute “in respect of whom the residence condition (see section 2(1A)) is not met”.

104 (1) Section 261 (section 260 relief: gifts to non-residents) is amended as follows.

(2) In subsection (1), for “neither resident nor ordinarily resident” substitute “not resident”.

(3) In subsection (2)(a), omit “or ordinarily resident”.

105 In Schedule 1 (application of exempt amount and reporting limits in cases involving settled property), in paragraph 2(7)(a), omit “and ordinarily resident”.

106 (1) Schedule 4A (disposal of interest in settled property: deemed disposal of underlying assets) is amended as follows.

(2) In paragraph 5(1) and (2), omit “and ordinarily resident”.

(3) In paragraph 6(1)—

(a) for “in the relevant” substitute “as respects the relevant”, and

(b) for the words from “either” to the end substitute “met the residence condition set out in section 2(1A)”.

(4) If any of the previous 5 years of assessment mentioned in paragraph 6(1) of Schedule 4A ends before 6 April 2013, the test in that paragraph is to be applied, as respects any such year ending before that date, as if that paragraph had not been amended by sub-paragraph (3).

107 (1) Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.

(2) In paragraph 1A(3), for the words from “the beneficiary” to the end substitute “, as respects that year, the beneficiary meets the residence condition set out in section 2(1A)”.

(3) In paragraph 4—

(a) in sub-paragraph (1), omit “and ordinarily resident”, and

(b) in sub-paragraph (2), omit "and ordinarily resident".

(4) In paragraph 5(1)—
(a) in paragraph (a), omit "and ordinarily resident", and
(b) in paragraph (b), omit "and ordinary residence".

(5) In paragraph 9(3)(a)(i), omit "and ordinarily resident".

(6) In paragraph 10(1), omit "and ordinarily resident".

108 (1) Schedule 5 (attribution of gains to settlors with interest in non-resident or dual resident settlement) is amended as follows.

(2) In paragraph 2A(4)—
(a) in paragraph (a), for "become on or after 17th March 1998 neither resident nor ordinarily resident" substitute "cease on or after 17 March 1998 to be resident", and
(b) in paragraph (b), omit "and ordinarily resident".

(3) In paragraph 9(4)—
(a) in paragraph (a), for "become on or after 19th March 1991 neither resident nor ordinarily resident" substitute "cease on or after 19 March 1991 to be resident", and
(b) in paragraph (b), omit "and ordinarily resident".

(4) The amendments made by this paragraph apply to changes in the residence status of trustees on or after 6 April 2013.

109 (1) Schedule 5A (settlements with foreign element: information) is amended as follows.

(2) In paragraph 2(1)—
(a) in paragraph (c), for "neither resident nor ordinarily resident" substitute "not resident", and
(b) in paragraph (d), omit "and ordinarily resident".

(3) In paragraph 3—
(a) in sub-paragraph (1)—
(i) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and
(ii) in paragraph (b), omit "and ordinarily resident", and
(b) in sub-paragraph (3), for "either resident or ordinarily resident" substitute "resident".

(4) In paragraph 4—
(a) in sub-paragraph (1)—
(i) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and
(ii) in paragraph (b), omit "and ordinarily resident", and
(b) in sub-paragraph (3), for "either resident or ordinarily resident" substitute "resident".

(5) In paragraph 5(1)—
(a) in paragraph (a), for the words from "become" to "ordinarily resident" substitute "cease at any time (the relevant time) on or after the commencement day to be resident", and

(b) in paragraph (b), omit "and ordinarily resident".

(6) The amendments made by this paragraph apply as follows—
(a) the amendments made by sub-paragraph (2) apply in relation to transfers of property made on or after 6 April 2013,
(b) the amendments made by sub-paragraphs (3) and (4) apply in relation to settlements created on or after that date, and
(c) the amendments made by sub-paragraph (5) apply to changes in the residence status of trustees on or after that date.

110 (1) Schedule 5B (enterprise investment scheme: re-investment) is amended as follows.

(2) In paragraph 1—
(a) in sub-paragraph (1)(d), omit "or ordinarily resident", and
(b) in sub-paragraph (4)(a), omit "or ordinarily resident".

(3) In paragraph 3(3)(b), omit "or ordinarily resident".

(4) In paragraph 19(1), in the definition of "non-resident", for "neither resident nor ordinarily resident" substitute "not resident".

(5) The amendments made by this paragraph apply in cases where the accrual time is on or after 6 April 2013 (even if the qualifying investment was made before that date).

111 In Schedule 7C (reliefs for transfers to approved share plans), in paragraph 8, for paragraph (a) substitute—
"(a) the claimant would be chargeable to capital gains tax under section 2(1) (persons and gains chargeable to capital gains tax) in respect of the gain, or".

Commencement

112 (1) The amendments made by this Part of this Schedule have effect in relation to a person's liability to capital gains tax for the tax year 2013-14 or any subsequent tax year.

(2) Sub-paragraph (1) is without prejudice to any provision in this Part of this Schedule about the application of a particular amendment.

PART 4

OTHER AMENDMENTS

FA 1916

113 In FA 1916, omit section 63 (exemption from taxation of municipal securities issued in America).

F(No.2)A 1931

114 (1) In section 22 of F(No.2)A 1931 (provisions in cases where Treasury has power to borrow money), in subsection (1)(a) and (b), omit "ordinarily".

(2) Nothing in sub-paragraph (1) limits the power conferred by section 60(1) of FA 1940.

(3) Subject to sub-paragraph (5), the amendment made by sub-paragraph (1) does not affect a pre-commencement security (nor the availability of the relevant exemption).

(4) Sub-paragraph (5) applies to a person who becomes the beneficial owner of a pre-commencement security (or an interest in such a security) on or after 6 April 2013.

(5) If obtaining the relevant exemption is conditional on being not ordinarily resident in the United Kingdom, any enactment conferring the exemption is to have effect (in relation to a person to whom this sub-paragraph applies) as if obtaining the exemption were conditional instead on being not resident in the United Kingdom.

(6) In this paragraph—

"pre-commencement security" means a FOTRA security (as defined in section 713 of ITTOIA 2005) issued before the day on which this Act is passed;

"the relevant exemption", in relation to a pre-commencement security, means the exemption for which provision is made in the exemption condition (as defined in that section).

TMA 1970

115 In section 98 (special returns etc), in subsection (4E)(d), omit "ordinarily".

116 In Schedule 1A (claims etc not included in returns), in paragraph 2(6), omit "or not ordinarily resident".

IHTA 1984

117 (1) Section 157 of IHTA 1984 (non-residents' bank accounts) is amended as follows.

(2) For subsection (2) substitute—

"(2) This section applies to a person who is not domiciled and not resident in the United Kingdom immediately before his death."

(3) In subsection (3), for ", resident or ordinarily resident" substitute "or resident".

(4) In subsection (4)—

(a) in paragraph (a), omit "or ordinarily resident", and
(b) in paragraph (b), omit "or ordinarily resident" and "and ordinarily resident".

(5) The amendments made by this paragraph do not apply if the person dies before 6 April 2013.

FA 2004

118 FA 2004 is amended as follows.

119 In section 185G (disposal by person holding directly), in subsection (3)(a), omit ", ordinarily resident".

120 In section 205 (short service refund lump sum charge), in subsection (3), omit “, ordinarily resident”.

121 In section 205A (serious ill-health lump sum charge), in subsection (3), omit “, ordinarily resident”.

122 In section 206 (special lump sum death benefits charge), in subsection (3), omit “, ordinarily resident”.

123 In section 207 (authorised surplus payments charge), in subsection (3), omit “, ordinarily resident”.

124 In section 208 (unauthorised payments charge), in subsection (4), omit “, ordinarily resident”.

125 In section 209 (unauthorised payments surcharge), in subsection (5), omit “, ordinarily resident”.

126 In section 217 (persons liable to lifetime allowance charge), in subsection (5), omit “, ordinarily resident”.

127 In section 237A (liability of individual to annual allowance charge), in subsection (2), omit “, ordinarily resident”.

128 In section 237B (liability of scheme administrator), in subsection (8), omit “, ordinarily resident”.

129 In section 239 (scheme sanction charge), in subsection (4), omit “, ordinarily resident”.

130 In section 242 (de-registration charge), in subsection (3), omit “, ordinarily resident”.

FA 2005

131 In section 30 of FA 2005 (qualifying trust gains: special capital gains tax treatment), in subsection (1), for paragraph (c) substitute—

“(c) the trustees are resident in the United Kingdom during any part of the tax year, and”.

F(No.2)A 2005

132 (1) F(No.2)A 2005 is amended as follows.

(2) In section 7 (charge to income tax on lump sum), in subsection (3), omit “, ordinarily resident”.

(3) In section 18 (section 17(3): specific powers), in subsection (1)(f) and (g), omit “ordinarily”.

CTA 2009

133 CTA 2009 is amended as follows.

134 (1) In section 900 (which relates to roll-over relief for disposals of pre-FA 2002 assets), in subsection (2), omit “or ordinarily UK resident”.

(2) The amendment made by this paragraph applies in relation to gains accruing or treated as accruing on or after 6 April 2013.

135 (1) In section 936 (meaning of "UK estate" and "foreign estate"), in subsection (3), omit "or not ordinarily UK resident".

(2) The amendment made by this paragraph applies if the tax year in question begins on or after 6 April 2013.

136 (1) In section 947 (aggregate income of the estate), in subsection (2)(b)(i), omit "who was ordinarily UK resident".

(2) The amendment made by this paragraph applies if the tax year in question begins on or after 6 April 2013.

137 (1) In section 1009 (conditions relating to employee's income tax position), in subsection (5)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to shares acquired on or after 6 April 2013.

138 (1) In section 1017 (condition relating to employee's income tax position), in subsection (4)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to options obtained on or after 6 April 2013.

139 (1) In section 1025 (additional relief available if shares acquired are restricted shares), in subsection (5)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to restricted shares acquired on or after 6 April 2013.

140 (1) In section 1032 (meaning of "chargeable event"), in subsection (5)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to convertible shares acquired on or after 6 April 2013.

CTA 2010

141 (1) Section 1034 of CTA 2010 (purchase by unquoted trading company of own shares: requirements as to residence) is amended as follows.

(2) In subsections (1) and (2), omit "and ordinarily resident".

(3) In subsection (3), omit "and ordinary residence" in both places.

(4) Omit subsection (4).

(5) The amendments made by this paragraph do not apply in relation to a purchase by an unquoted trading company of its own shares if the purchase takes place before 6 April 2013.

TIOPA 2010

142 In section 363A of TIOPA 2010 (residence of offshore funds which are undertakings for collective investment in transferable securities), in subsection (3), for "neither resident nor ordinarily resident" substitute "not resident".

Constitutional Reform and Governance Act 2010

143 (1) In section 41 of the Constitutional Reform and Governance Act 2010 (tax status of MPs and members of the House of Lords), in subsection (2), omit ", ordinarily resident".

(2) The amendment made by this paragraph has effect for the purposes of a member's liability to income tax or capital gains tax for the tax year 2013-14 or any subsequent tax year.

EXPLANATORY NOTE

ORDINARY RESIDENCE

SUMMARY

1. This clause and Schedule remove the concept of 'ordinary residence' from nearly all primary tax legislation (see Background for details of references retained). In many provisions, where the term 'ordinarily resident' is used on its own it is replaced by 'resident'. And, where there is a requirement to be both resident and ordinarily resident, the requirement will be simply 'resident'. Ordinary residence is important in relation to the taxation of individuals claiming the remittance basis. That basis of taxation will no longer be available on the grounds of being not ordinarily resident in the UK. With the abolition of ordinary residence, availability of the special relief in respect of overseas earnings due to remittance basis claimants (commonly called 'overseas workday relief') will depend on how long the individual has been resident in the UK. For several reliefs that depend on the individual being not ordinarily resident, transitional provisions ensure that an individual will retain relief for so long as he or she would have done so under current law.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces the Schedule.

3. Subsections (2), (3), (6) and (7) provide that the Treasury may by statutory instrument make further provision removing or replacing rules relating to ordinary residence which may be retrospective back to the start of the year in which the order is made. Such an order is subject to the affirmative resolution procedure, so is subject to debate in the House of Commons.

4. Subsections (4), (5), (6) and (8) provide that the Treasury may by statutory instrument make other provision which is incidental to provisions in the Schedule or in an order under subsection (2). Such an order is subject to the negative resolution procedure.

DETAILS OF THE SCHEDULE

Part 1

Income tax and capital gains tax: remittance basis of taxation

Remittance basis restricted to non-doms

5. Paragraph 2 amends section 809A of ITA. The remittance basis of taxation in Chapter A1 of Part 14 of ITA will be available only to an individual who is not domiciled in the UK. An individual who is domiciled in the UK, but not ordinarily resident, will not be able to claim the remittance basis for 2013-14 onwards (subject to transitional provisions).

6. Paragraph 3 makes amendments to section 809B of ITA to restrict the remittance basis to non-domiciled individuals. Section 809B(2) is repealed because a claim to the remittance basis can be made only on the basis of being non-domiciled.

7. Paragraphs 4 and 5 make corresponding changes to sections 809D and 809E of ITA.

Treatment of relevant foreign earnings

8. Paragraph 7 amends section 22 of ITEPA. That section provides that where the remittance basis applies and the employee is ordinarily resident in the UK, 'chargeable overseas earnings' are taxed only to the extent to that they are remitted to the UK. With the abolition of ordinary residence, section 22 will apply where the employee does not meet the requirement of new section 26A of ITEPA (see paragraph 13 below).

9. Paragraph 8 amends section 23 of ITEPA which defines 'chargeable overseas earnings' for the purposes of section 22. The condition that an employee is ordinarily resident is replaced by a condition that the employee is outside new section 26A.

10. Paragraph 9 amends section 26 of ITEPA. That section provides that where the remittance basis applies and the employee is not ordinarily resident in the UK, earnings in respect of overseas duties (other than from Crown employments) are taxed only to the extent that they are remitted to the UK. With the abolition of ordinary residence, section 26 will apply where the employee meets the requirement of new section 26A.

11. Paragraph 10 inserts new section 26A into ITEPA. A UK resident employee is within this section for a tax year X if he or she has been non-resident for three consecutive tax years and that year X is any of the three years immediately following that spell of non-residence.

12. Paragraph 11 replaces the references to being ordinarily resident in section 41C(4) of ITEPA and not ordinarily resident in section 41C(6) with requirements to be outside or within section 26A respectively.

13. Paragraph 12 replaces the references to being ordinarily resident in section 271(2)(a) of ITEPA and not ordinarily resident in section 271(2)(b) with requirements to be outside or within section 26A respectively.

14. Paragraph 13 replaces the reference to being ordinarily resident in section 554Z9(1)(c) of ITEPA with a reference to being outside section 26A.

15. Paragraph 14 replaces the reference to being not ordinarily resident in section 554Z10(1)(c) of ITEPA with a reference to being within section 26A.

16. Paragraph 15 replaces the references to being not ordinarily resident in section 690(1)(a) and (2A) of ITEPA with references to being within section 26A.

Consequential amendments

17. Paragraph 16 replaces the references to being ordinarily resident in section 266A(8)(a) of ICTA and not ordinarily resident in section 266A(8)(b) with requirements to be outside or within section 26A respectively.

18. Paragraph 17 substitutes section 12(1) of TCGA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

19. Paragraph 18 amends section 87B of TCGA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

20. Paragraph 19 substitutes section 726(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

21. Paragraph 20 substitutes section 730(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

22. Paragraph 21 amends section 735(1) of ITA as substituted by the Schedule in this Bill amending the transfer of assets abroad legislation to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

23. Paragraph 22 amends section 809F(4) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

24. Paragraph 23 amends section 809YD(3) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

25. Paragraph 24 amends section 809Z7(2)(d) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual and replaces the reference to being ordinarily resident in section 809Z7(3)(a) with a reference to being outside section 26A.

Commencement

26. Paragraph 25 provides that the amendments made by Part 1 of this Schedule apply to an individual's foreign income and gains for 2013-14 onwards.

Savings

27. Paragraph 26 contains transitional provisions which apply where an individual is not ordinarily resident at the end of the tax year 2012-13 and that year is the first or second year of residence. It reflects the fact that an individual, unless having established an intention to settle in the UK, would have been regarded as not ordinarily resident for a maximum of three years of residence. So provisions amended by this Part will continue to apply on the basis of current law for 2013-14 (where that is the third year of residence) or for 2013-14 and 2014-15 (where they are the second and third years of residence).

Interpretation

28. Paragraph 27 attracts the meaning of 'foreign income and gains' in section 809Z7 of ITA to provisions in this Part.

Part 2

Income tax: arising basis of taxation

ICTA 1988

29. Paragraph 28 removes references to 'ordinarily resident' from section 614 of ICTA.

ITEPA 2003

30. Paragraph 30 amends a reference in section 56(5)(a) of ITEPA to being ordinarily resident outside the UK to a reference to being within section 26A and removes a similar reference from section 56(5)(b).

31. Paragraph 31 amends a reference in section 61G(5)(a) of ITEPA to being ordinarily resident outside the UK to a reference to being

within section 26A and removes a similar reference from section 61G(5)(b).

32. Paragraph 32 amends section 328(5) of ITEPA as a consequence of changes made to section 378 of ITEPA (see paragraph 39 below).

33. Paragraph 33 removes a reference to ordinarily resident from section 341(3) of ITEPA.

34. Paragraph 34 removes a reference to ordinarily resident from section 342(6) of ITEPA.

35. Paragraph 35 removes a reference to ordinarily resident from section 370(6) of ITEPA.

36. Paragraph 36 removes a reference to ordinarily resident from section 376(1)(b) of ITEPA.

37. Paragraph 37 amends section 378 of ITEPA which, in conjunction with the other provisions in Chapter 6, provides an exemption for certain earnings of seafarers who are ordinarily resident in the UK or resident in an EEA State provided that various conditions are met. The exemption will now apply on the basis of residence in the UK or in an EEA State which allows the structure of section 378 to be simplified. As part of the simplification of section 378, the provision in subsection (5)(b) which means that remittance basis claimants are not entitled to seafarers' earnings deduction, is omitted.

38. Paragraph 38 inserts a new paragraph (za) into section 413(3A) of ITEPA. The exemption for termination payments under this section is geared to periods of employment ('foreign service') for which earnings are not 'relevant earnings'. Subsection (3A) defines 'relevant earnings' and for years up to 2012-13 the reference to being 'ordinarily UK resident' in that definition is retained. With the abolition of ordinary residence 'relevant earnings' are defined for 2013-14 onwards in terms of earnings within section 15 of ITEPA either directly or earnings which would fall within that section even if a remittance basis claim under section 809B of ITA were made. The savings provisions in paragraph 73 apply for the purposes of sections 413 and 414 of ITEPA. The definition of 'relevant earnings' applying for 2013-14 onwards corrects an anomaly with the current provision under which UK duties could count as foreign service where the individual was not ordinarily resident and claiming the remittance basis.

39. Paragraph 39 substitutes section 681A(4) of ITEPA which concerns the conditions for exemption from tax in respect of certain foreign state benefits paid to consular officers and employees. The reference to the individual being not ordinarily resident prior to taking up duty

in the UK is replaced by a reference to being not UK resident for the two preceding years.

40. Paragraph 40 omits paragraph 8(2)(b) of Schedule 2 to ITEPA. In order for a share incentive plan to be an approved plan it must be open to all individuals who are both resident and ordinarily resident (as well as the individuals meeting other conditions). The amendment removes the ordinary residence condition in respect of plans approved after Royal Assent to the Finance Bill.

41. Paragraph 41 omits paragraph 6(2)(ca) of Schedule 3 to ITEPA. In order for a SAYE option scheme to be approved it must be open to all individuals who are ordinarily resident (as well as the individuals meeting other conditions). The amendment removes the ordinary residence condition in respect of option schemes approved after Royal Assent to the Finance Bill.

42. Paragraph 42 removes a reference to ordinarily resident from paragraph 27(3)(b) of Schedule 5 to ITEPA.

ITTOIA 2005

43. Paragraph 44 amends section 154A(1) of ITTOIA so that the exemption for profits on War Loan securities operates on the basis of the holder being non-resident rather than being not ordinarily resident. This does not affect the way in which the exemption applies to existing holders of War Loan securities (see paragraph 118 below).

44. Paragraph 45 amends section 459(2) of ITTOIA so that it refers to an individual who is resident rather than ordinarily resident in the UK. This reflects changes made to the basis on which the provisions of Chapter 2 of Part 13 of ITA (transfer of assets abroad) operate.

45. Paragraph 46 substitutes section 468(2) of ITTOIA so that the reference to an individual who is ordinarily resident is changed to one who is UK resident, reflecting changes to the transfer of assets abroad regime. The amendment also corrects an error – the words 'of ICTA' should have been repealed by ITA 2007.

46. Paragraph 47 amends section 569(2) of ITTOIA so that it refers to an individual who is resident rather than ordinarily resident in the UK. This reflects changes to the transfer of assets abroad regime.

47. Paragraph 48 removes a reference to ordinarily resident from section 636(2)(b) of ITTOIA in respect of income arising from 6 April 2013.

48. Paragraph 49 removes a reference to ordinarily resident from section 648(1)(b) of ITTOIA.

49. Paragraph 50 removes a reference to ordinarily resident from section 651(3) of ITTOIA.

50. Paragraph 51 removes a reference to ordinarily resident from section 664(2)(b)(i) of ITTOIA.

51. Paragraph 52 amends section 715 of ITTOIA to reflect the fact that the exemption condition attaching to FOTRA securities (as set out in section 713(2)(a) of ITTOIA) will change to the holder being non-resident rather than being not ordinarily resident for securities issued on or after 6 April 2013. Where the security was acquired by the trust before 6 April 2013 the existing references to the ordinary residence status of the beneficiaries remain in force.

52. Paragraph 53 substitutes section 771(4) of ITTOIA which concerns the conditions for exemption from tax in respect of relevant foreign income of consular officers and employees. The reference to the individual being not ordinarily resident prior to taking up duty in the UK is replaced by a reference to being not UK resident for the two preceding years.

ITA 2007

53. Paragraph 55 removes a reference to ordinarily residence from section 465(4) of ITA.

54. Paragraph 56 substitutes section 475(1) of ITA to remove reference to the ordinary residence status of the body of trustees. There are corresponding changes to section 475(2) and (3). Section 475 is further amended by Part 3 of the statutory residence test.

55. Paragraph 57 removes references to the ordinary residence status of a settlor from section 476(2)(b) and (3)(b) of ITA. In the case of a settlement arising on the settlor's death the change only applies to deaths on or after 6 April 2013. In the case of other settlements the change only applies where the settlement is made on or after 6 April 2013.

56. Paragraph 58 removes a reference to ordinarily resident from section 643(1) of ITA.

57. Paragraph 59 removes a reference to ordinarily resident from section 718(2)(b) of ITA.

58. Paragraph 60 removes the word 'ordinarily' from section 720(1) of ITA. This is the first of a number of amendments to the transfer of assets abroad provisions in Chapter 2 of Part 13 of ITA which ensure that the provisions will apply in future where the individual subject to the charge is resident rather than ordinarily resident.

59. The savings provisions in paragraph 73 apply for the purposes of the transfer of assets abroad provisions in Chapter 2 of Part 13 of ITA.

60. Paragraph 61 amends section 721 of ITA to reflect the fact that the provision applies to a UK resident individual.

61. Paragraph 62 amends section 727 of ITA to reflect the fact that the provision applies to a UK resident individual.

62. Paragraph 63 amends section 728 of ITA to reflect the fact that the provision applies to a UK resident individual.

63. Paragraph 64 amends section 732 of ITA as substituted by the Schedule in this Bill amending the transfer of assets abroad legislation so that the provision applies where the individual receiving the benefit is resident rather than ordinarily resident.

64. Paragraph 65 removes a reference to ordinarily resident from section 749(2) of ITA. The change only applies to a transfer or associated operation made on or after 6 April 2013.

65. Paragraph 66 removes a reference to ordinarily resident from section 812(1)(a) of ITA.

66. Paragraph 67 removes a reference to ordinarily resident from section 834(3) of ITA which determines the residence status of an individual's personal representatives. The change only applies where the deceased dies on or after 6 April 2013.

67. Paragraph 68 amends section 858 of ITA so that a declaration made by an individual to enable a deposit taker or building society to pay interest without deduction of tax is that the person entitled to the interest is not resident rather than not ordinarily resident. Similarly, the undertaking given to notify becoming ordinarily resident will be an undertaking to notify becoming UK resident. This is the first in a number of similar provisions and they all come into force on 6 April 2014 instead of the general commencement date for this Schedule of 6 April 2013.

68. Paragraphs 68 to 71 do not affect declarations and undertakings given before 6 April 2014 which will continue to operate on the basis of declaring and notify changes to ordinary residence status.

69. Paragraph 69 makes corresponding amendments to section 859 of ITA in respect of a declaration and undertaking given in respect of members of a Scottish partnership.

70. Paragraph 70 makes corresponding amendments to section 860 of ITA in respect of a declaration made by a personal representative of

an individual who was not ordinary resident immediately before death.

71. Paragraph 71 makes corresponding amendments to section 861 of ITA in respect of a declaration and undertaking given by the trustees of a settlement in respect of the beneficiaries of the settlement.

72. Paragraph 72 provides that the amendments made by Part 2 have effect for 2013-14 onwards unless otherwise stated.

73. Paragraph 73 provides transitional provisions for sections 413 and 414 of ITEPA (foreign service termination payments) and Chapter 2 of Part 13 of ITA (transfer of assets abroad). They apply where an individual is not ordinarily resident at the end of the tax year 2012-13 and that year is the first or second year of residence. It reflects the fact that an individual, unless having established an intention to settle in the UK would have been regarded as not ordinarily resident for a maximum of 3 years of residence. So the provisions specified will continue to apply on the basis of current law for 2013-14 (where that is the third year of residence) or for 2013-14 and 2014-15 (where they are the second and third years of residence), provided in the case of termination payments that the employment in question began before 6 April 2013.

Part 3

Capital gains tax: accruals basis of taxation

TCGA 1992

74. Paragraph 75 amends section 2 of TCGA. At present the charge to capital gains tax is on all gains for a year during any part of which the person is resident or ordinarily resident. From 2013-14 ordinary residence ceases to be a factor and the charge is on gains arising if the residence condition is met. In new subsection (1A) the residence condition is expressed separately for the various categories of person chargeable to capital gains tax. In particular, the condition for an individual is based on residence status for the tax year so as to be consistent with the wording of the statutory residence test. Section 2 is further amended by Part 3 of the statutory residence test to provide that for an individual a year of residence may be split into a UK part and overseas part in certain circumstances with the charge restricted according to the period in which the gains accrue.

75. Paragraph 76 amends section 10(1) of TCGA so that instead of a reference to being not resident and not ordinarily resident there is a reference to the residence condition in section 2(1A) not being met.

76. Paragraph 77 removes references to ordinarily resident from section 13 of TCGA.

77. Paragraph 78 amends section 16(3) of TCGA so that instead of a reference to being not resident and not ordinarily resident there is a reference to the residence condition in section 2(1A) not being met.

78. Paragraphs 79 to 81 remove references to ordinarily resident from sections 62(3), 65(3)(b) and 67(6)(a) of TCGA.

79. Paragraph 82 removes references to ordinarily resident from section 69 of TCGA. Section 69 is further amended by Part 3 of the statutory residence test.

80. Paragraphs 83 to 92 remove references to ordinarily resident from sections 76(1B)(a), 80(1), 81, 82(3)(b), 83(1), 83A, 84(1)(b), 85(1), 86 and 87 of TCGA.

81. Paragraph 93 removes references to ordinarily resident and ordinary residence from section 88(1) of TCGA.

82. Paragraph 94 removes references to ordinarily resident and ordinary residence from section 96 of TCGA.

83. Paragraph 95 removes a reference to ordinarily resident from section 97(1)(a) of TCGA.

84. Paragraph 96 removes a reference to ordinarily resident from section 99(1)(c) of TCGA. The ordinary residence status of a company is considered to be equivalent to its residence status.

85. Paragraphs 97 to 102 remove references to ordinarily resident from section 106(5A), 159, 166, 167, 168 and 169(3)(a) of TCGA.

86. Paragraph 103 amends section 199(2) of TCGA so that instead of a reference to being not resident and not ordinarily resident there is a reference to the residence condition in section 2(1A) not being met.

87. Paragraph 104 removes references to ordinarily resident from section 261 of TCGA.

88. Paragraph 105 removes a reference to ordinarily resident from paragraph 2(7)(a) of Schedule 1 to TCGA.

89. Paragraph 106 removes references to ordinarily resident from paragraph 5 of Schedule 4A to TCGA and amends the language of paragraph 6 to refer to the residence condition in section 2(1A). Since the condition in paragraph 6 looks back to the residence and ordinary residence status of the five previous years that condition is applied to

years before 2013-14 as if the amendments in this paragraph had not been made.

90. Paragraph 107 removes references to ordinarily resident from paragraphs 4, 5, 9 and 10 of Schedule 4C to TCGA and amends the language of paragraph 1A(3) to refer to the residence condition in section 2(1A).

91. Paragraph 108 removes references to ordinarily resident from paragraphs 2A and 9 of Schedule 5 to TCGA.

92. Paragraph 109 removes references to ordinarily resident from paragraphs 2, 3, 4 and 5 of Schedule 5A to TCGA.

93. Paragraph 110 removes references to ordinarily resident from paragraphs 1, 3 and 19 of Schedule 5B to TCGA.

94. Paragraph 111 removes a reference to ordinarily resident from paragraph 8 of Schedule 7C to TCGA by substituting paragraph (a).

95. Paragraph 112 provides that the amendments made by Part 3 have effect for 2013-14 onwards unless otherwise stated.

Part 4

Other amendments

FA 1916

96. Paragraph 113 repeals section 63 FA 1916 which is obsolete.

F(No.2)A 1931

97. Paragraph 114 amends section 22 of F(No.2)A 1931 so that with effect from Royal Assent FOTRA securities may be issued with the condition for exemption based on the beneficial owner being not resident in the UK rather than being not ordinarily resident in the UK. This change does not affect the taxation treatment of any securities which are issued before Royal Assent (for which the exemption continues to be based on being not ordinarily resident) except where the beneficial owner acquired the security on or after 6 April 2013. So, for example, the inheritance tax provisions in sections 6(2) and 48(4) of IHTA 1984 will continue to apply to securities issued on the basis of exemption for persons not ordinarily resident provided that the beneficial owner acquired them before 6 April 2013.

98. The other exemptions for FOTRA securities are contained in section 714 of ITTOIA for income tax, section 1279 of CTA 2009 for corporation tax and section 115 of TCGA (a wider general gilts

exemption) for capital gains tax._Where a person acquires a FOTRA security on or after 6 April 2013 paragraph 114(5) provides that the exemption is based on being non-resident in the UK even though the exemption stated in the terms of issue was based on being not ordinarily resident.

TMA 1970

99. Paragraph 115 removes a reference to ordinarily resident from section 98(4E)(d) of TMA reflecting the change made to section 18 F(No.2)A 2005 by paragraph 132(3) of this Schedule and the proposed change that will be made after Royal Assent to the supporting Authorised Investment Funds (Tax) Regulations 2006.

100. Paragraph 116 removes a reference to ordinarily resident from paragraph 2(6) of Schedule 1A to TMA.

IHTA 1984

101. Paragraph 117 removes references to ordinarily resident from section 157 of IHTA 1984 in cases of death on or after 6 April 2013.

FA 2004

102. Paragraphs 118 to 130 remove references to ordinarily resident from pensions provisions in sections 185G(3)(a), 205(3), 205A(3), 206(3), 207(3), 208(4), 209(5), 217(5), 237A(2), 237B(8), 239(4) and 242(3) of FA 2004.

FA 2005

103. Paragraph 131 removes a reference to ordinarily resident from section 30(1) of FA 2005 by substituting paragraph (c).

F(No.2)A 2005

104. Paragraph 132 removes references to ordinarily resident from sections 7(3) and 18(1)(f) and (g) of F(No.2)A 2005.

CTA 2009

105. Paragraph 134 removes a reference to ordinarily resident from section 900(2) of CTA 2009. The ordinary residence status of a company is considered to be equivalent to its residence status.

106. Paragraphs 135 to 140 remove references to ordinarily resident as applied to personal representatives and individuals in the context of corporation tax provisions concerning estate income and shares or options acquired by employees. The provisions concerned are

sections 936(3), 947(2)(b)(i), 1009(5)(a), 1017(4)(a), 1025(5)(a) and 1032(5)(a) of CTA 2009.

CTA 2010

107. Paragraph 141 removes references to ordinarily resident and ordinary residence from section 1034 of CTA 2010.

TIOPA 2010

108. Paragraph 142 removes a reference to ordinarily resident from section 363A(3) of TIOPA. The ordinary residence status of a company is considered to be equivalent to its residence status.

Constitutional Reform and Governance Act 2010

109. Paragraph 143 removes a reference to ordinarily resident from section 41(2) of the Constitutional Reform and Governance Act 2010.

BACKGROUND

110. At Budget 2012, the Government announced that it would abolish the concept of ordinary residence. This represents a major simplification to the UK tax system which has been welcomed by those who have responded to HM Treasury consultations in June 2011 and June 2012. The second consultation included draft legislation which is substantially the same as that in this draft Schedule except for the simplified new rules relating to overseas workday relief.

111. Three references to ordinary residence have been retained in primary (direct) tax legislation. They are in section 693 of ITTOIA 2005 (Ulster Savings Certificates, which refers to ordinary residence in Northern Ireland), section 38 of ITA 2007 (blind person's allowance which refers to ordinary residence in Scotland or Northern Ireland) and section 841 of ITA 2007 (which concerns the certification of ordinary residence outside the UK by a High Commissioner or Agent-General). The Government does not want to change the scope or application of any of these provisions. In addition, a fourth reference in section 228(6) of TCGA 1992 has been left alone on the basis that the provision is no longer of relevance.

112. The concept of ordinary residence will continue to apply for the time being in circumstances where transitional rules are in point, for example in relation to FOTRA securities issued on the basis that the holder is not ordinarily resident.

113. There are a number of places in secondary legislation where the term ordinary residence is used. Where the term is clearly being used in an income tax context the Government intends to abolish the reference.

A draft statutory instrument is published alongside these draft provisions and work continues on identifying other amendments which will be published as draft Statutory Instruments in due course.

114. If you have any questions or comments on the legislation, please contact Richard Davey on 020 7147 2391 (email: offshorepersonal.taxteam@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No. X

INCOME TAX

The Income Tax (Removal of Ordinary Residence) Regulations 2013

Made - - - -	***
Laid before House of Commons	***
Coming into force - -	*6th April 2013*

The Treasury in exercise of the powers conferred by sections 966(6) and 970(5) of the Income Tax Act 2007(**a**); sections 694, 695, 695A and 701 of the Income Tax (Trading and Other Income) Act 2005(**b**) and section 151 of the Trading and Capital Gains Act 1992(**c**); and section 45 of the Finance Act 2009(**d**); make the following Regulations:

Citation, commencement and effect

1. These regulations may be cited as the Income Tax (Removal of Ordinary Residence) Regulations and come into force on 6 April 2013.

2. The amendments made—

(a) by regulations 3 and 4 have effect for the purposes of a person's liability to income tax for the tax year 2013-14 or any subsequent tax years;

(b) by regulations 5(2) and 5(3) have effect in relation to interest distributions made on or after 6 April 2014; and

(c) by regulations 5(4), 5(5) and 5(6) have effect in relation to the making of declarations on or after 6 April 2014. Any declarations made before that date continue to have effect in respect of interest distributions made on or after that date as if those amendments had not been made.

Amendment of the Income Tax (Entertainers and Sportsmen) Regulations 1987

3. In the Income Tax (Entertainers and Sportsmen) Regulations 1987(**e**) in regulation 3 (payments or transfers with prescribed connection), in paragraph (3)(b)(i) omit "and ordinarily resident".

(**a**) 2007 c. 3.

(**b**) 2005 c. 5; sections 694(1A), 695A and 701(6) were inserted by section 40 of the Finance Act 2008 (c. 9); sections 695(3) and (4) were amended by paragraphs 131 and 132 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11).

(**c**) 1992 c. 12; subsection (2) was substituted by section 64(2) of the Finance Act 1995 (c. 4) which also inserted subsection (2A); the substituted subsection (2) and inserted subsection (2A) were substituted by a further subsection (2) by paragraph 436 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5); the substituted subsection (2) was amended by paragraph 40 of the Finance Act 2011 (c. 11); section 151(4) was inserted by section 85 of the Finance Act 1993 (c. 34).

(**d**) 2009 c.10. Section 45 was amended by paragraphs 706 and 710 of Schedule 1 to the Corporation Tax Act 2010 (c. 4).

(**e**) S.I. 1987/530, to which there are amendments not relevant to these Regulations.

Amendment of the Individual Savings Account Regulations 1998

4.—(1) The Individual Savings Account Regulations 1998(**a**) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)(a) in the definition of 'eligible child', omit the words "and ordinarily resident" from paragraph (b)(i).

(3) In regulation 10 (qualifying individuals who may invest under an account that is not a junior ISA account), in paragraph 2(d)(i) omit the words "and ordinarily resident".

(4) In regulation 12 (conditions for application to open an account that is not a junior ISA account), in paragraphs (3)(f) and (3)(f)(i), omit the words "and ordinarily resident".

(5) In regulation 12A (conditions for application to open an account that is a junior ISA account), in paragraph (7)(d)(i) omit the words "and ordinarily resident".

Amendment of the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009

5.—(1) The Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009(**b**) are amended as follows.

(2) In regulation 14 (the reputable intermediary condition), in paragraph (3) omit "ordinarily".

(3) In regulation 16 (the reputable intermediary condition: consequences of reasonable but incorrect belief), in paragraph (5) omit "ordinarily".

(4) In regulation 17 (the residence condition)—

(a) in paragraphs (2), (3)(b) and 4(b) omit "ordinarily",

(b) in paragraph (5) omit "either not ordinarily resident or, in the case of a company,",

(c) in paragraph 6(b) omit "either not ordinarily resident or, in the case of a beneficiary which is a company,".

(5) In regulation 18 (the residence condition: declarations)—

(a) in paragraph 2(b) omit "ordinarily", and

(b) in paragraphs (4)(c)(ii) and (iii) omit "ordinarily resident or, the case of a company,".

(6) In regulation 20 (interest distributions: declarations and position of investment trust or prospective investment trust), in paragraph (3) and (4) omit "or ordinarily resident".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Income Tax (Entertainers and Sportsmen) Regulations 1987 (S.I. 1987/530) (the Entertainers Regulations), the Individual Savings Account Regulations 1998 (S.I 1998/1870) (the ISA Regulations) and Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 (S.I. 2009/2034) (the Investment Trust Regulations).

The effect of these regulations is to remove references to 'ordinary' residence and 'ordinarily' resident from the three above mentioned regulations.

These regulations come into force on 6 April 2013. The amendments to the Entertainers Regulations and the ISA Regulations have effect for the purposes of a person's liability to income tax for the tax year 2013-14 or any subsequent tax years. The amendments to the Investment Trust Regulations have effect have effect in relation to interest distributions made on or after 6 April 2014, and in relation to the making of declarations on or after 6 April 2014. The amendments do not affect declarations or undertakings made before that date, which will continue to operate on the basis of declaring and notifying changes to ordinary residence status

---

(**a**) SI 1998/1870. Relevant amending instruments are S.I. 2001/908, S.I. 2005/3230, S.I. 2008/704 and S.I. 2011/1780.

(**b**) S.I. 2009/2034, to which there are amendments not relevant to these Regulations.

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

STATUTORY INSTRUMENTS

2013 No. X

INCOME TAX

The Income Tax (Removal of Ordinary Residence) Regulations 2013

Made - - - -	*****
Laid before House of Commons	*****
Coming into force - -	*6th April 2013*

The Treasury in exercise of the powers conferred by sections 966(6) and 970(5) of the Income Tax Act 2007(**a**); sections 694, 695, 695A and 701 of the Income Tax (Trading and Other Income) Act 2005(**b**) and section 151 of the Trading and Capital Gains Act 1992(**c**); and section 45 of the Finance Act 2009(**d**); make the following Regulations:

Citation, commencement and effect

1. These regulations may be cited as the Income Tax (Removal of Ordinary Residence) Regulations and come into force on 6 April 2013.

2. The amendments made—

(a) by regulations 3 and 4 have effect for the purposes of a person's liability to income tax for the tax year 2013-14 or any subsequent tax years;

(b) by regulations 5(2) and 5(3) have effect in relation to interest distributions made on or after 6 April 2014; and

(c) by regulations 5(4), 5(5) and 5(6) have effect in relation to the making of declarations on or after 6 April 2014. Any declarations made before that date continue to have effect in respect of interest distributions made on or after that date as if those amendments had not been made.

Amendment of the Income Tax (Entertainers and Sportsmen) Regulations 1987

3. In the Income Tax (Entertainers and Sportsmen) Regulations 1987(**e**) in regulation 3 (payments or transfers with prescribed connection), in paragraph (3)(b)(i) omit "and ordinarily resident".

(**a**) 2007 c. 3.

(**b**) 2005 c. 5; sections 694(1A), 695A and 701(6) were inserted by section 40 of the Finance Act 2008 (c. 9); sections 695(3) and (4) were amended by paragraphs 131 and 132 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11).

(**c**) 1992 c. 12; subsection (2) was substituted by section 64(2) of the Finance Act 1995 (c. 4) which also inserted subsection (2A); the substituted subsection (2) and inserted subsection (2A) were substituted by a further subsection (2) by paragraph 436 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5); the substituted subsection (2) was amended by paragraph 40 of the Finance Act 2011 (c. 11); section 151(4) was inserted by section 85 of the Finance Act 1993 (c. 34).

(**d**) 2009 c.10. Section 45 was amended by paragraphs 706 and 710 of Schedule 1 to the Corporation Tax Act 2010 (c. 4).

(**e**) S.I. 1987/530, to which there are amendments not relevant to these Regulations.

Amendment of the Individual Savings Account Regulations 1998

4.—(1) The Individual Savings Account Regulations 1998(**a**) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)(a) in the definition of ‘eligible child’, omit the words “and ordinarily resident” from paragraph (b)(i).

(3) In regulation 10 (qualifying individuals who may invest under an account that is not a junior ISA account), in paragraph 2(d)(i) omit the words “and ordinarily resident”.

(4) In regulation 12 (conditions for application to open an account that is not a junior ISA account), in paragraphs (3)(f) and (3)(f)(i), omit the words “and ordinarily resident”.

(5) In regulation 12A (conditions for application to open an account that is a junior ISA account), in paragraph (7)(d)(i) omit the words “and ordinarily resident”.

Amendment of the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009

5.—(1) The Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009(**b**) are amended as follows.

(2) In regulation 14 (the reputable intermediary condition), in paragraph (3) omit “ordinarily”.

(3) In regulation 16 (the reputable intermediary condition: consequences of reasonable but incorrect belief), in paragraph (5) omit “ordinarily”.

(4) In regulation 17 (the residence condition)—

(a) in paragraphs (2), (3)(b) and 4(b) omit “ordinarily”,

(b) in paragraph (5) omit “either not ordinarily resident or, in the case of a company,”,

(c) in paragraph 6(b) omit “either not ordinarily resident or, in the case of a beneficiary which is a company,”.

(5) In regulation 18 (the residence condition: declarations)—

(a) in paragraph 2(b) omit “ordinarily”, and

(b) in paragraphs (4)(c)(ii) and (iii) omit “ordinarily resident or, the case of a company,”.

(6) In regulation 20 (interest distributions: declarations and position of investment trust or prospective investment trust), in paragraph (3) and (4) omit “or ordinarily resident”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Income Tax (Entertainers and Sportsmen) Regulations 1987 (S.I. 1987/530) (the Entertainers Regulations), the Individual Savings Account Regulations 1998 (S.I 1998/1870) (the ISA Regulations) and Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 (S.I. 2009/2034) (the Investment Trust Regulations).

The effect of these regulations is to remove references to ‘ordinary’ residence and ‘ordinarily’ resident from the three above mentioned regulations.

These regulations come into force on 6 April 2013. The amendments to the Entertainers Regulations and the ISA Regulations have effect for the purposes of a person’s liability to income tax for the tax year 2013-14 or any subsequent tax years. The amendments to the Investment Trust Regulations have effect have effect in relation to interest distributions made on or after 6 April 2014, and in relation to the making of declarations on or after 6 April 2014. The amendments do not affect declarations or undertakings made before that date, which will continue to operate on the basis of declaring and notifying changes to ordinary residence status.

(**a**) SI 1998/1870. Relevant amending instruments are S.I. 2001/908, S.I. 2005/3230, S.I. 2008/704 and S.I. 2011/1780.
(**b**) S.I. 2009/2034, to which there are amendments not relevant to these Regulations.

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

1 Exemption for employee shareholder shares

(1) After section 236A of the TCGA 1992 insert—

"Employee shareholders

236B Exemption for employee shareholder shares

(1) A gain which accrues on the disposal of exempt employee shareholder shares is not a chargeable gain.

(2) Shares are exempt employee shareholder shares if—
 (a) they are employee shareholder shares, and
 (b) the requirements of sections 236C and 236D are met in relation to them.

(3) But an employee shareholder share ceases to be exempt when the employee disposes of it.

(4) In this section and sections 236C to 236G—
 "employee shareholder share" means a share issued or allotted in consideration of an employee shareholder agreement;
 "employee shareholder agreement" means an agreement such as is mentioned in section 205A(1)(a) of the Employment Rights Act 2006 (employee shareholders);
 "employee" and "employer company", in relation to an employee shareholder agreement, mean the individual and the company which enter into the agreement.

236C Only first £50,000 of shares under each agreement to be exempt

(1) An employee shareholder share is exempt under section 236B only if, immediately after its issue or allotment in consideration of an employee shareholder agreement ("the relevant agreement"), the total value of qualifying shares which have been issued or allotted to the employee does not exceed £50,000.

(2) "Qualifying share" means an employee shareholder share in—
 (a) the employer company in relation to the relevant agreement, or
 (b) an associated company of that company,
which is issued or allotted to the employee in consideration of an agreement within subsection (3).

(3) The agreements are—
 (a) the relevant agreement,
 (b) another employee shareholder agreement with the same employer company, and
 (c) an employee shareholder agreement with an associated company of that company.

(4) For the purposes of this section—
 (a) a company is an "associated company" of another if—
  (i) one of the two has control of the other, or
  (ii) both are under the control of the same person or persons, and

(b) if a company controls another when an employee shareholder agreement is entered into with the employee, paragraph (a) applies as if that continued to be the case (in addition to any other circumstances) when any subsequent employee shareholder agreement is entered into with that employee.

(5) But subsection (4)(b) does not apply as between two companies if—

(a) one of the companies has been dissolved, and

(b) the period of two years beginning with the date of the dissolution has passed and the employee has not been engaged in any office or employment (including engagement under a contract for services) with any company which is an associated company of the dissolved company.

(6) If a number of qualifying shares are issued or allotted to an employee on a day and—

(a) before that day, the value of qualifying shares issued or allotted to the employee does not exceed £50,000, and

(b) at the end of that day, that value does exceed that sum,

the appropriate proportion of the shares (rounded down, if necessary, to the nearest share) is to be treated for the purposes of subsection (1) as having been issued or allotted separately and before the others.

(7) The "appropriate proportion" is the following —

$$\frac{50000 - B}{T}$$

where—

B is the value of qualifying shares issued or allotted before the day;

T is the total value of qualifying shares issued or allotted on the day.

(8) For the purposes of this section, the value of a share (at any time) is its unrestricted market value at the time when it was issued or allotted.

(9) The unrestricted market value of a share when it is issued or allotted is what the market value of the share would be immediately after the issue or allotment, but for any restriction.

For this purpose "restriction" has the meaning given by section 432(8) of ITEPA 2003 (restricted securities for the purposes of Chapter 2 of Part 7 of that Act).

236D Shares not exempt if shareholder or connected person has material interest in company

(1) An employee shareholder share is not exempt if—

(a) at the time the share is issued or alloted, the employee has a material interest in the employer company or its parent undertaking, or

(b) at any time in the period of 1 year ending with the date on which the share is issued or alloted, the employee had a material interest in the company or parent undertaking.

(2) An employee shareholder share is not exempt if, at the time the share is issued or allotted, the employee is connected with an individual who

has a material interest in the employer company or its parent undertaking.

(3) An individual ("A") has a material interest in a company if at least 25% of the voting rights in the company are exercisable—
  (a) by A,
  (b) by persons connected with A, or
  (c) by A and persons connected with A together.

236E Identification of exempt employee shareholder shares

(1) Sections 104 (share pooling), 105 (disposal on or before acquisition) and 106A (identification of securities) do not apply to exempt employee shareholder shares.

(2) Subsection (3) applies where—
  (a) an employee holds shares of the same class in a company,
  (b) some, but not all, of the shares are exempt employee shareholder shares, and
  (c) the employee disposes of some, but not all, of the shares in that holding.

(3) Where this subsection applies—
  (a) the employee may determine what proportion of the shares disposed of are to be treated as exempt employee shareholder shares (up to the number of such shares which the employee holds), and
  (b) the consideration received for the shares disposed of is to be apportioned accordingly.

(4) For the purposes of this section shares in a company are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

236F Reorganisation of share capital involving employee shareholder shares

(1) Section 127 (equation of original shares and new holding on reorganisation) does not apply to exempt employee shareholder shares.

(2) The reference in subsection (1) to section 127 includes that section as applied by sections 135 and 136 (other company reconstructions).

236G Relinquishment of employment rights is not disposal of an asset or consideration for shares

(1) This section applies, for the purposes of this Act, where an employee has the rights mentioned in section 205A(2) of the Employment Rights Act 2006 (rights which an employee shareholder does not have) before entering into an employee shareholder agreement.

(2) The employee is not to be regarded as disposing of an asset by entering into the agreement.

(3) The consideration for the acquisition of the employee shareholder shares is to be treated as being nil."

(2) In section 58(2) of that Act (spouses and civil partners: disposals excepted from the usual rule)—

(a) omit "or" at the end of paragraph (a), and

(b) after paragraph (b) insert ", or

(c) if the disposal is of exempt employee shareholder shares (see sections 236B to 236D),".

(3) This section comes into force in accordance with provision made by the Treasury by order made by statutory instrument.

EXPLANATORY NOTE

EXEMPTION FROM CGT FOR EMPLOYEE SHAREHOLDER SHARES

SUMMARY

1. This clause provides for gains on disposals of 'employee shareholder shares' which were worth up to £50,000 on receipt, to be exempt from capital gains tax (CGT). 'Employee shareholder shares' are shares received by a person in return for agreeing to accept the new employee shareholder employment status.

DETAILS OF THE CLAUSE

2. Subparagraph 1 introduces six new sections into Part 7 of the Taxation of Chargeable Gains Act 1992 (TCGA). These new sections provide for the exemption and impose an upper limit on the value of the shares to which the exemption applies.

3. New section 236B states that gains on exempt employee shareholder shares are not chargeable gains and defines exempt employee shareholder shares as employee shareholder shares which meet the further requirements in new sections 236C to 236D.

4. Subsection (3) states that an exempt employee shareholder share ceases to be exempt when its owner disposes of it, by selling it or otherwise.

5. Subsection (4) defines 'employee shareholder share' and other terms used in the clause.

6. New section 236C sets limits on the value of shares that can be exempt.

7. Subsection (1) provides that an employee shareholder share is exempt if, when it is received, the total value of the shares received under the relevant employee shareholder agreement does not exceed £50,000.

8. Subsections (2) and (3) provide that, for the purpose of applying the £50,000 limit, employee shareholder shares received in connection with previous employment agreements with the same company or with associated companies, are taken into account.

9. Subsection (4)(a) defines two companies as associated if either one has control of the other or both are under the control of the same person or persons.

10. Subsection (4)(b) provides that where one company controls another at the time an employee shareholder agreement is made with an individual, that control is treated as persisting when any subsequent employee shareholder agreement is entered into with that individual.

11. Subsection (5) states that subsection (4)(b) does not apply where one of the two companies has been dissolved and two years have passed between the dissolution and the subsequent employee shareholder agreement, during which time the individual has not been employed by a company associated with the dissolved company.

12. Subsections (6) and (7) provide a means of determining which employee shareholder shares are treated as exempt where the number of shares issued or allotted on a day takes the recipient over the £50,000 limit. The shares are deemed to be issued or allotted in two tranches, one of which consists of the maximum number which may be received without breaching the £50,000 limit.

13. Subsections (8) and (9) define ‘unrestricted market value’ as the value the share would have were it not for any restrictions which apply to it (that is to say, any provision relating to the shares made by any contract, agreement, arrangement or condition).

14. New section 236D prevents an employee shareholder share received by an individual from being an exempt share in certain circumstances.

15. Subsection (1) applies where, when the share is issued or allotted, the employee has a material interest in either the employer company or its parent company, or has had such an interest in the year preceding the issue or allotment. In these cases, the share will not be an exempt employee shareholder share.

16. Subsection (2) applies where, when the share is issued or allotted, a person connected with the employee has a material interest in the employer company. In these cases also, the share will not be an exempt employee shareholder share.

17. Subsection (3) defines a material interest by providing that an individual has a material interest in a company if at least 25% of the voting rights in the company are exercisable by that individual, by persons connected with that individual, or by the individual and persons connected with him or her together.

18. New section 236E disapplies the special share pooling and share identification rules in the TCGA which would normally apply both to exempt employee shareholder shares and to non-exempt employee shareholder shares taken together.

19. Subsections (2) and (3) permit a person who holds both exempt and non-exempt employee shareholder shares of the same class in a company and who disposes of shares of that class to specify how many exempt shares he or she has sold (up to number they held).

20. Subsection (4) defines what is meant by shares in a company being 'of the same class'.

21. New section 236F prevents the special rules at section 127 TCGA (which apply to shares which are involved in reorganisations of share capital, or schemes of reconstruction, or in share exchanges) from applying to exempt employee shareholder shares.

22. New section 236G ensures that for capital gains tax purposes where an individual ceases to have certain employment rights by virtue of becoming an employee shareholder, this is not to be treated as the disposal of an asset for chargeable gains purposes, and for the same purposes no consideration is deemed to have been given to acquire the employee shareholder shares.

BACKGROUND

23. A new employment status, known as 'employee owner status' is being created by the Growth and Infrastructure Bill. As an incentive to employees to agree to this new status, employers will be required to give employee owners shares worth at least £2,000. As a further incentive, capital gains on those shares will not be subject to capital gains tax, whenever the shares are disposed of. There will be limits on the shares which qualify for this exemption, imposed by reference to the value of employee shareholder shares at the time they are received.

24. 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 EMI options and entrepreneurs' relief etc

Schedule 1 makes provision about the treatment for capital gains tax purposes of shares acquired under options which are qualifying options under the EMI code.

SCHEDULES

SCHEDULE 1

Section 1

EMI OPTIONS AND ENTREPRENEURS' RELIEF ETC

Entrepreneurs' relief to apply to shares acquired under EMI option

1 (1) In Chapter 3 of Part 5 of TCGA 1992 (entrepreneurs' relief) section 169I (material disposal of business assets) is amended as follows.

(2) In subsection (5) for "or B" substitute ", B, C or D".

(3) After subsection (7) insert—

"(7A) Condition C is that—

(a) the assets disposed of are relevant EMI shares,

(b) the option grant date falls before the beginning of the period of 1 year ending with the date of the disposal, and

(c) throughout that period—

(i) the company is either a trading company or the holding company of a trading group, and

(ii) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

(7B) Condition D is that—

(a) the assets disposed of are relevant EMI shares acquired by the individual before the cessation date,

(b) the option grant date falls before the beginning of the period of 1 year ending with the cessation date,

(c) the conditions in paragraph (c) of subsection (7A) are met throughout that period, and

(d) the cessation date is within the period of 3 years ending with the date of the disposal.

(7C) In subsections (7A)(a) and (7B)(a) "relevant EMI shares"—

(a) means shares of a company acquired by an individual on or after 6 April 2013 as a result of the exercise of a qualifying option within the meaning given by section 527(4) of ITEPA 2003 (enterprise management incentives) in circumstances where section 530 or 531 of that Act (exercise of option to acquire shares) applies, but

(b) does not include anything comprised in an asset resulting from the application of section 127 (company reorganisation: equation of original shares and new holding).

(7D) Subject to what follows, in subsections (7A)(b) and (7B)(b) "the option grant date" means the date on which the qualifying option in question was granted.

(7E) Subsections (7F) and (7G) apply if the qualifying option is a replacement option for the purposes of the EMI code (see paragraph 41 of Schedule 5 to ITEPA 2003).

(7F) In subsections (7A)(b) and (7B)(b) "the option grant date" means—
(a) the date on which the old option was granted, or
(b) if the old option was also a replacement option, the date on which the earlier old option was granted,

and so on.

(7G) In relation to any time during the currency of an old option taken into account under subsection (7F), in subsection (7A)(c) references to the company are to be read as references to the company whose shares were the subject of the old option.

(7H) In subsection (7B) "the cessation date" means the date on which the company—
(a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or
(b) ceases to be a member of a trading group without continuing to be or becoming a trading company."

Identification of shares acquired under EMI option

2 Chapter 1 of Part 4 of TCGA 1992 (general provision relating to shares etc) is amended as follows.

3 In section 105 (disposal on or before day of acquisition of shares etc) after subsection (3) insert—

"(4) Subsection (5) applies if an individual—
(a) acquires shares ("the relevant shares") of the same class, on the same day and in the same capacity, and
(b) some of the relevant shares are relevant EMI shares (as defined in section 169I(7C)).

(5) This section has effect as if—
(a) paragraph (a) of subsection (1) required the relevant EMI shares to be treated as acquired by the individual by a single transaction separate from the remainder of the relevant shares (which are also to be treated by virtue of that paragraph as acquired by the individual by a single transaction), and
(b) subsection (1) required the relevant EMI shares to be treated as disposed of after the remainder of the relevant shares."

4 (1) Section 106A (identification of securities for capital gains tax purposes) is amended as follows.

(2) In subsection (5)—
(a) omit the "and" after paragraph (a),
(b) after paragraph (a) insert—

"(aa) with securities acquired by him within that period which are not relevant EMI shares, rather than with securities acquired by him within that period which are relevant EMI shares; and", and

(c) at the beginning of paragraph (b) insert "subject to paragraph (aa),".

(3) After subsection (6) insert—

"(6A) Subject to subsections (4) and (5) above, a company's shares which are disposed of shall be identified—

(a) with relevant EMI shares, rather than with other shares, and

(b) with relevant EMI shares acquired at an earlier time rather than with relevant EMI shares acquired at a later time.

(6B) No shares identified with relevant EMI shares by virtue of subsection (6A)(a) or (b) above shall be regarded as forming part of an existing section 104 holding or as constituting a section 104 holding."

(4) In subsection (10), before the definition of "securities", insert—

"relevant EMI shares" has the meaning given by section 169I(7C),".

Commencement and transitional provision

5 (1) The amendments made by paragraphs 1 to 4 above have effect in relation to disposals of shares on or after 6 April 2013.

(2) In the case of the amendments made by paragraphs 2 to 4 above, sub-paragraph (1) is subject to paragraph 6(4) below.

6 (1) This paragraph applies if, during the tax year 2012-13, an individual acquires shares of a class in a company ("the relevant shares") which would be relevant EMI shares were the reference to 6 April 2013 in section 169I(7C)(a) of TCGA 1992 (as inserted by paragraph 1 above) a reference to 6 April 2012 instead.

(2) If the individual makes no disposals of shares of that class in that company during that tax year, the relevant shares are to be treated as if they were relevant EMI shares.

(3) If the individual disposes of shares of that class in that company during that tax year, the individual may elect for the relevant shares to be treated as if they were relevant EMI shares.

(4) If the individual makes an election under sub-paragraph (3)—

(a) the amendments made by paragraphs 2 to 4 above also have effect, in the case of the individual, in relation to disposals of shares of that class in that company during that tax year, but

(b) for this purpose, the amendment made by sub-paragraph (5) has effect instead of the amendment made by paragraph 4(3) above.

(5) In section 106A of TCGA 1992 after subsection (6) insert—

"(6A) Subject to subsections (4) and (5) above, a company's shares which are disposed of shall be identified—

(a) with shares which are not relevant EMI shares, rather than with relevant EMI shares, and

(b) with relevant EMI shares acquired at a later time rather than with relevant EMI shares acquired at an earlier time.

(6B) No shares identified with relevant EMI shares by virtue of subsection (6A)(b) above shall be regarded as forming part of an existing section 104 holding or as constituting a section 104 holding."

(6) An election under sub-paragraph (3) may not be made or revoked after 31 January 2014 (and paragraph 3(1)(b) of Schedule 1A to TMA 1970 does not apply in relation to such an election).

(7) For the purposes of this paragraph shares in a company are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

(8) "Recognised stock exchange" has the meaning given by section 1005 of ITA 2007.

EXPLANATORY NOTE

ENTERPRISE MANAGEMENT INCENTIVE OPTIONS AND ENTREPRENEURS' RELIEF ETC

SUMMARY

1. This clause and Schedule extend entrepreneurs' relief to the disposal by an employee or officer of a company, on or after 6 April 2013, of shares in that company or a company in the same trading group when the shares meet the requirements of the enterprise management incentive (EMI) scheme, they were acquired on or after 6 April 2012 as a result of that person exercising a qualifying option over them, and the qualifying option had been granted at least one year before the date of the share disposal. The individual disposing of the shares must have been an employee or officer of the company (or a company in the same trading group) throughout the year ending with the date of disposal. The relief is also extended to similar disposals that take place within three years of the company ceasing to be a trading company.

DETAILS OF THE SCHEDULE

2. Paragraph 1 of the Schedule widens section 169I of the Taxation of Chargeable Gains Act (TCGA) 1992, which, amongst other things, defines the conditions when the disposal by an individual of an asset consisting of (or consisting of interests in) shares in or securities of a company is a "material disposal" that qualifies for entrepreneurs' relief. There are currently two conditions, A and B, provided in subsections (6) and (7) of section 169I.

3. New subsection (7A) of section 169I provides for an additional Condition C that must be met for there to be a material disposal for the purposes of section 169I(2)(c).

4. New subsection (7B) provides for an additional Condition D that must be met for there to be a material disposal for the purposes of section 169I(2)(c).

5. New subsection (7C) defines "relevant EMI shares" for the purposes of subsections (7A)(a) and (7B)(a).

6. New subsection (7D) defines "the option grant date" for the purposes of subsections (7A)(b) and (7B)(b) as the date on which the qualifying option was granted.

7. New subsections (7E) to (7G) deal with the replacement of a qualifying option as part of a company reorganisation.

8. New subsection (7E) states that subsections (7F) and (7G) will apply where the option is a "replacement option" as defined in the EMI code.

9. New subsection (7F) provides a 'look-through' to the earliest option granted, where the qualifying option is a replacement option, in order to arrive at the "option grant date".

10. New subsection (7G) requires that in any time period of an "old option" that is taken into account in new subsection (7F), "the company" in new subsection (7A)(c), is the company whose shares were the subject of the old option.

11. New subsection (7H) defines "the cessation date", for the purposes of subsection (7B).

12. Paragraphs 2 to 4 of the Schedule amend the share identification rules at sections 105 and 106A of TCGA 1992.

13. Paragraph 2 introduces the amendments.

14. Paragraph 3 introduces the following additional subsections to section 105 of TCGA 1992, which deals with acquisitions and disposals of shares on the same day.

15. New subsection 105(4) applies new subsection 105(5) where an individual acquires shares of the same class on the same day and only some of those are "relevant EMI shares".

16. New subsection 105(5) sets out the treatment of the relevant EMI shares separate from other relevant shares.

17. Subparagraph 4(1) introduces amendments to section 106A of TCGA 1992 which makes general provision for share identification for capital gains tax purposes.

18. Subparagraph 4(2) amends the rule in subsection 106A(5) that matches share disposals with share acquisitions within a 30 day period following the disposal, known as the "bed and breakfast rule". New subsection 106A(5)(aa) means that shares that are not relevant EMI shares are to be identified first when applying the rule in section 106A(5) and in conjunction with the conditions in paragraphs (a) and (b).

19. Subparagraph 4(3) introduces two additional subsections to section 106A of TCGA 1992.

20. New subsection (6A) provides that on disposal of a company's shares any relevant EMI shares are to regarded as being disposed of before other shares and the relevant EMI shares are to regarded as being disposed of on a "first in, first out" basis.

21. New subsection (6B) provides that those shares identified with relevant EMI shares by virtue of subsection (6A) shall not be regarded as forming part of an existing holding, or constituting a holding, that is regarded as a single asset for the purposes of the TCGA.

22. Subparagraph 4(4) amends subsection 106A(10) of TCGA 1992 to define "relevant EMI shares" in the same way as section 169I(7C).

23. Paragraph 5 of the Schedule provides that the amendments made by paragraphs 1 to 4 have effect in relation to disposals of shares on or after 6 April 2013, subject to paragraph 6(4).

24. Paragraph 6 applies the changes in the preceding paragraphs to disposals on or after 6 April 2013. The changes may apply earlier where the transitional provisions set out in paragraph 6 apply.

25. Subparagraph 6(1) applies the changes for shares acquired during the 2012-13 tax year that would have qualified as "relevant EMI shares" if acquired on 6 April 2013.

26. Subparagraph 6(2) treats such shares as "relevant EMI shares" where the individual makes no disposals of shares of that class in the 2012-13 tax year.

27. Subparagraph 6(3) provides that where the individual does make a disposal of such shares in that period, they may elect for them to be treated as "relevant EMI shares".

28. Subparagraphs 6(4) and 6(5) provide for the treatment of the timing of disposals of any relevant EMI shares.

29. Subparagraphs 6(6) provides that the election must be made (or revoked after it has been made) by 31 January 2014.

30. Subparagraphs 6(7) and (8) provide that shares in a company are not to be treated as being of the same class unless they would be treated as such by a relevant stock exchange (as defined in section 1005 Income Taxes Act 2007).

BACKGROUND NOTE

31. Since 23 June 2010 capital gains tax for individuals has been charged at the rate of either 18 per cent or, for those paying the higher rate of income tax, 28 per cent.

32. Individuals may claim entrepreneurs' relief, under which qualifying chargeable gains are taxed at 10 per cent, on gains on disposals of shares in or securities of a company provided that throughout the period of one year immediately preceding the disposal (a) the claimant held a minimum five per cent stake in the company, (b) the company was either a trading company or the holding company of a trading group, and (c) the claimant was an officer or employee of the company or of one or more companies of a trading group to which the company is a member. There is a lifetime limit to the relief, which was increased to £10 million from 6 April 2011.

33. Entrepreneurs' relief is also available on the disposal of shares of a business where the conditions (a) to (c) at paragraph 32 above were met throughout the period of one year immediately preceding the company ceasing to be a trading company without continuing to be or becoming a member of a trading group, or ceasing to be a member of a trading group without continuing to be or becoming a trading company and that date is within the period of three years immediately preceding the disposal. The relief may apply, for example, to the deemed disposal by a shareholder of his interest in shares when he receives a capital distribution on the liquidation or winding-up of a trading company.

34. The Enterprise Management Incentives (EMI) scheme provides tax and National Insurance contributions advantages for qualifying share options granted by companies with gross assets not exceeding £30 million, to help them recruit and retain employees. In addition to the gross assets test, EMI is limited to companies or groups which are independent and whose trade does not consist in excluded trading activities.

35. Budget 2012 announced the Government's intention to allow EMI shares to qualify for Entrepreneurs' Relief on disposal by the employee/officer. A number of representations were made to Government that the ER rule, which requires ownership of the qualifying shares for one year prior to disposal, would limit the ability of EMI shares to qualify. This was because EMI options would typically be exercised just before the employing company was taken over, meaning that they would then not be owned by the employee for one year.

36. The Budget further announced that the measure would apply to shares acquired under the EMI scheme from 6 April 2012, but the one year share holding period meant it would have no effect for disposals made before 6 April 2013.

37. The legislation similarly applies to shares acquired on or after 6 April 2012 and disposed of on or after 6 April 2013 but allows the period the share option is held to be included towards the one year holding period requirement.

38. The legislation includes rules that modify the usual operation of the share identification rules in order to treat shares issued under the EMI scheme separately.

39. The inclusion of shares acquired from 6 April 2012 will affect the computation of gains on any disposal of shares of the same class during the 2012-13 tax year. Therefore the new legislation will apply where there were such disposals only on the making of an election.

40. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 020 7147 2766 (email: alan.mcguinness@hmrc.gsi.gov.uk).

1 Tax advantaged employee share schemes

Schedule 1 amends the SIP code, the SAYE code, the CSOP code and the EMI code.

SCHEDULES

SCHEDULE 1

Section 1

TAX ADVANTAGED EMPLOYEE SHARE SCHEMES

PART 1

RETIREMENT OF PARTICIPANTS

Introduction

1 Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities) is amended as follows.

Share incentive plans

2 In section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) in subsection (2)(e) omit the words from "on" to "2)".

3 In Part 4 of Schedule 2 (types of shares that may be awarded) in paragraph 32 (provision for forfeiture) in sub-paragraph (2)(e) omit the words from "on" to "98)".

4 Part 11 of Schedule 2 (supplementary provisions) is amended as follows.

5 Omit paragraph 98 (meaning of "specified retirement age").

6 In paragraph 100 (index of defined expressions) omit the entry for "the specified retirement age".

SAYE option schemes

7 Part 6 of Schedule 3 (requirements etc relating to share options) is amended as follows.

8 In paragraph 27 (introduction) in sub-paragraph (1)—
(a) omit the entry for paragraph 31,
(b) after the entry for paragraph 32 insert "and", and
(c) omit the entry for paragraph 33 and the "and" after it.

9 In paragraph 30 (time for exercising options) in sub-paragraph (2)(a)—
(a) for "32 to" substitute "32,", and
(b) omit "reaching the specified age without retiring,".

10 Omit paragraph 31 (requirement to have a "specified age").

11 Omit paragraph 33 (exercise of options: reaching specified age without retiring).

12 In paragraph 34 (exercise of options: scheme-related employment ends) in sub-paragraph (2)(b) omit the words from "on" to "employment".

13 In Part 9 of Schedule 3 (supplementary provisions) in paragraph 49 (index of defined expressions) omit the entry for "specified age".

CSOP schemes

14 In section 524 (no charge in respect of exercise of option) in subsection (2C) omit the definition of "retirement" and the "and" before it.

15 In Part 8 of Schedule 4 (supplementary provisions) omit paragraph 35A (retirement age).

Transitional provision

16 (1) A SIP, SAYE option scheme or CSOP scheme approved before the day on which this Act is passed has effect with any modifications needed to reflect the amendments made by this Part of this Schedule.

(2) In relation to any shares awarded under a SIP before that day which are subject to provision for forfeiture, that provision has effect with any modifications needed to reflect the amendment made by paragraph 3 above.

(3) Because of paragraphs 45 and 54 below, that amendment is not relevant to shares awarded under a SIP on or after that day.

PART 2

"GOOD LEAVERS" (OTHER THAN RETIREES)

Introduction

17 Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities) is amended as follows.

Share incentive plans

18 In section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) after subsection (2) insert—

"(3) A participant is not liable to income tax on shares in a company ("the target company") being withdrawn from the plan if—

(a) the shares—

(i) are withdrawn from the plan to enable the acceptance of an offer of cash (with or without other assets) for the shares, and

(ii) once withdrawn from the plan, are dealt with accordingly as soon as practicable,

(b) the offer formed part of a general offer falling within subsection (5) made after the shares were awarded to the participant,

(c) the acceptance of the offer does not give rise to a transaction in relation to the shares to which paragraph 86 of Schedule 2 applies and no alternative offer in relation to the shares

falling within subsection (6) was made as part of the general offer, and

(d) at the time the shares were awarded to the participant, no arrangements for the making of any type of general offer in relation to shares in the target company were in place or under consideration.

(4) In subsection (3)(d) "arrangements" includes any plan, scheme, agreement or understanding, whether or not legally enforceable.

(5) A general offer falls within this subsection if it is a general offer to acquire—

(a) the whole of the issued ordinary share capital of the target company, or

(b) all the shares in the target company which are of the same class as the participant's shares,

which is made on a condition such that, if it is satisfied, the person making the offer will have control of the target company.

(6) An alternative offer in relation to the shares falls within this subsection if, had it been accepted, it would have given rise to a transaction in relation to the shares to which paragraph 86 of Schedule 2 would have applied."

SAYE option schemes

19 (1) Section 519 (no charge in respect of exercise of option) is amended as follows.

(2) In subsection (1)(b) after "B" insert "or C".

(3) In subsection (3)(b) in the entry for paragraph 37 after "37" insert "or 37A".

(4) After subsection (3) insert—

"(3A) Condition C is that—

(a) the option—

(i) is exercised before the third anniversary of the date on which it was granted, and

(ii) is so exercised following the making of a general offer by virtue of a provision included in the scheme under paragraph 37A of Schedule 3,

(b) as soon as practicable following the exercise of the option—

(i) the participant accepts an offer of cash (with or without other assets) for all the shares to which the option related, and

(ii) the shares are dealt with accordingly,

(c) that offer formed part of the general offer,

(d) when the option was granted, no arrangements for the making of any type of general offer in relation to shares in the target company were in place or under consideration, and

(e) if the scheme includes a provision under paragraph 38 of Schedule 3, no offer was made in connection with the general offer the acceptance of which by the participant would have involved the participant agreeing under that provision to

release the share option in consideration for being granted a new share option.

(3B) In subsection (3A)(d) "arrangements" includes any plan, scheme, agreement or understanding, whether or not legally enforceable."

20 Part 6 of Schedule 3 (requirements etc relating to share options) is amended as follows.

21 In paragraph 27 (introduction) in sub-paragraph (2) in the entry for paragraph 37 for "paragraph 37" substitute "paragraphs 37 and 37A".

22 In paragraph 30 (time for exercising options) in sub-paragraph (2)(a) for "and 37" substitute ", 37 and 37A".

23 (1) Paragraph 34 (exercise of options: scheme-related employment ends) is amended as follows.

(2) In sub-paragraph (2)—

(a) omit the "or" after paragraph (a), and

(b) after paragraph (b) insert—

"(c) a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, or

(d) if P holds office or is employed in a company which is an associated company (as defined in paragraph 35(4)) of the scheme organiser, that company ceasing to be an associated company of the scheme organiser by reason of a change of control (as determined in accordance with sections 450 and 451 of CTA 2010),".

(3) In sub-paragraphs (4) and (5A)(b) for "or (b)" substitute "to (d)".

(4) A SAYE option scheme approved before the day on which this Act is passed has effect with any modifications needed to reflect the amendments made by this paragraph.

24 After paragraph 37 insert—

"37A(1) The scheme may provide that a share option relating to shares in a company ("the target company") may be exercised within 6 months after the date on which a general offer falling within sub-paragraph (2) is made but only if the option was granted before the offer is made.

(2) A general offer falls within this sub-paragraph if it is a general offer to acquire—

(a) the whole of the issued ordinary share capital of the target company, or

(b) all the shares in the target company which are of the same class as the shares to which the share option relates,

which is made on a condition such that, if it is satisfied, the person making the offer will have control of the target company.

(3) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date)."

CSOP schemes

25 (1) Section 524 (no charge in respect of exercise of option) is amended as follows.

(2) In subsection (1)(b) after "B" insert "or C".

(3) In subsection (2B) for paragraph (a) substitute—

"(a) has ceased to be in qualifying employment because of—

(i) injury, disability, redundancy or retirement,

(ii) a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, or

(iii) in the case of a group scheme where the qualifying employment is as a director or employee of a constituent company, that company ceasing to be controlled by the scheme organiser, and".

(4) After subsection (2B) insert—

"(2BA) For the purposes of subsection (2B) an individual is in "qualifying employment" if the individual is a full-time director or qualifying employee (as defined in paragraph 8(2) of Schedule 4) of—

(a) the scheme organiser, or

(b) in the case of a group scheme, a constituent company."

(5) In subsection (2C) for "(2B)" substitute "(2B)(a)(i)".

(6) After subsection (2C) insert—

"(2D) Subsection (2B)(a)(iii) does not cover a case where the constituent company was controlled by the scheme organiser by virtue of paragraph 34 of Schedule 4 (jointly owned companies).

(2E) Condition C is that—

(a) the option—

(i) is exercised before the third anniversary of the date on which it was granted, and

(ii) is so exercised following the making of a general offer by virtue of a provision included in the scheme under paragraph 25A of Schedule 4,

(b) as soon as practicable following the exercise of the option—

(i) the participant accepts an offer of cash (with or without other assets) for all the shares to which the option related, and

(ii) the shares are dealt with accordingly,

(c) that offer formed part of the general offer,

(d) when the option was granted, no arrangements for the making of any type of general offer in relation to shares in the target company were in place or under consideration, and

(e) if the scheme includes a provision under paragraph 26 of Schedule 4, no offer was made in connection with the general offer the acceptance of which by the participant would have involved the participant agreeing under that provision to

release the share option in consideration for being granted a new share option.

(2F) In subsection (2E)(d) "arrangements" includes any plan, scheme, agreement or understanding, whether or not legally enforceable."

26 Part 5 of Schedule 4 (requirements etc relating to share options) is amended as follows.

27 In paragraph 21 (introduction) in sub-paragraph (2)—

(a) after the entry for paragraph 24 omit "or", and

(b) after the entry for paragraph 25 insert ", or

paragraph 25A (exercise of options: company events)".

28 After paragraph 25 insert—

"Exercise of options: company events

25A (1) The scheme may provide that a share option relating to shares in a company ("the target company") may be exercised within 6 months after the date on which a general offer falling within sub-paragraph (2) is made but only if the option was granted before the offer is made.

(2) A general offer falls within this sub-paragraph if it is a general offer to acquire—

(a) the whole of the issued ordinary share capital of the target company, or

(b) all the shares in the target company which are of the same class as the shares to which the share option relates,

which is made on a condition such that, if it is satisfied, the person making the offer will have control of the target company."

PART 3

MATERIAL INTEREST RULES

Introduction

29 Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities) is amended as follows.

Share incentive plans

30 Part 3 of Schedule 2 (eligibility of individuals) is amended as follows.

31 In paragraph 13 (introduction)—

(a) after the entry for paragraph 18 insert "and", and

(b) omit the entry for paragraph 19 and the "and" before it.

32 In paragraph 14 (time of eligibility to participate) in sub-paragraph (7)—

(a) after paragraph (b) insert "and", and

(b) omit paragraph (c) and the "and" before it.

33 Omit paragraphs 19 to 24 (the "no material interest" requirement).

34 In Part 11 of Schedule 2 (supplementary provisions) in paragraph 100 (index of defined expressions), in the entry for "close company", omit "(and see paragraph 20(4))".

35 (1) The amendments made by paragraphs 30 to 34 above have effect for the purpose of determining whether an individual is eligible to participate in an award of shares on the day on which this Act is passed or any later day.

(2) A SIP approved before the day on which this Act is passed has effect accordingly with the omission of any provision falling within a provision of Schedule 2 to ITEPA 2003 omitted by those paragraphs.

SAYE option schemes

36 Part 3 of Schedule 3 (eligibility of individuals) is amended as follows.

37 In paragraph 9 (introduction) omit the entry for paragraph 11 and the "and" before it.

38 Omit paragraphs 11 to 16 (the "no material interest" requirement).

39 In Part 9 of Schedule 3 (supplementary provisions) in paragraph 49 (index of defined expressions), in the entry for "close company", omit "(and see paragraph 11(4))".

40 (1) The amendments made by paragraphs 36 to 39 above have effect for the purpose of determining whether an individual is eligible to participate in a scheme on the day on which this Act is passed or any later day.

(2) A SAYE option scheme approved before the day on which this Act is passed has effect accordingly with the omission of any provision falling within a provision of Schedule 3 to ITEPA 2003 omitted by those paragraphs.

CSOP schemes

41 (1) In Part 3 of Schedule 4 (eligibility of individuals) in paragraphs 10(2) and (3), 11(3) and (4) and 13(2) (which relate to the "no material interest" requirement) for "25%" substitute "30%".

(2) The amendments made by this paragraph have effect for the purpose of determining whether a person is eligible to participate in a scheme on the day on which this Act is passed or any later day (by altering what constitutes a material interest on that day and within the 12 months preceding that day).

(3) A CSOP scheme approved before the day on which this Act is passed has effect with any modifications needed to reflect the amendments made by this paragraph.

PART 4

RESTRICTED SHARES

Introduction

42 Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities) is amended as follows.

Share incentive plans

43 Part 4 of Schedule 2 (types of shares that may be awarded) is amended as follows.

44 In paragraph 25 (introduction) in sub-paragraph (1)—
(a) after the entry for paragraph 28 insert "and", and
(b) omit the entry for paragraph 30 and the "and" before it.

45 Omit paragraphs 30 to 33 (only certain kinds of restrictions allowed).

46 In Part 5 of Schedule 2 (free shares) in paragraph 35 (maximum annual award) omit sub-paragraphs (3) and (4).

47 In Part 7 of Schedule 2 (matching shares) in paragraph 59 (general requirement for matching shares) omit sub-paragraph (2).

48 In Part 9 of Schedule 2 (trustees) in paragraph 75 (duty to give notice of award of shares etc) in sub-paragraphs (2) and (3) after paragraph (a) insert—
"(aa) if the shares are subject to any restriction, giving details of the restriction,".

49 (1) In Part 10 of Schedule 2 (approval of plans) paragraph 84 (disqualifying events) is amended as follows.

(2) In sub-paragraph (3)—
(a) after paragraph (b) insert "or", and
(b) omit paragraph (c) and the "or" after it.

(3) In sub-paragraph (4) before paragraph (a) insert—
"(za) from any shares being subject to a restriction,".

50 Part 11 of Schedule 2 (supplementary provision) is amended as follows.

51 In paragraph 92 (determination of market value) for sub-paragraph (2) substitute—

"(2) For the purposes of the SIP code the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction."

52 In paragraph 99 (minor definitions) after sub-paragraph (3) insert—

"(4) For the purposes of the SIP code—
(a) shares are subject to a "restriction" if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and
(b) the "restriction" is that provision."

53 In paragraph 100 (index of defined expressions) at the appropriate place insert—

"restriction (in relation to shares)	paragraph 99(4)".

54 (1) The amendments made by paragraphs 43 to 45, 47 and 48 above have effect in relation to awards of shares made on or after the day on which this Act is passed.

(2) A SIP approved, or a trust instrument made, before that day has effect with any modifications needed to reflect the amendments made by paragraphs 43 to 53 above.

(3) In particular, in relation to awards of shares on or after that day, such a SIP has effect with the omission of any provision falling within a provision of Schedule 2 to ITEPA 2003 omitted by paragraph 45 above.

SAYE option schemes

55 Part 4 of Schedule 3 (shares to which schemes can apply) is amended as follows.

56 In paragraph 17 (introduction) in sub-paragraph (1)—

(a) after the entry for paragraph 20 insert "and", and

(b) omit the entry for paragraph 21 and the "and" after it.

57 Omit paragraph 21 (only certain kinds of restrictions allowed).

58 In Part 6 of Schedule 3 (requirements etc relating to share options) in paragraph 28 (requirements as to price of acquisition of shares) after sub-paragraph (4) insert—

"(5) At the time a share option is granted—

(a) it must be stated whether or not the shares which may be acquired by the exercise of the option may be subject to any restriction, and

(b) if so, the details of the restriction must also be stated.

(6) For the purposes of this paragraph the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction."

59 In Part 7 of Schedule 3 (exchange of share options) in paragraph 39 (requirements about share options granted in exchange) after sub-paragraph (6) insert—

"(7) For the purposes of this paragraph the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction."

60 Part 9 of Schedule 3 (supplementary provisions) is amended as follows.

61 In paragraph 48 (minor definitions) after sub-paragraph (2) insert—

"(3) For the purposes of the SAYE code—

(a) shares are subject to a "restriction" if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section

423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and

(b) the "restriction" is that provision."

62 In paragraph 49 (index of defined expressions) at the appropriate place insert—

"restriction (in relation to shares)	paragraph 48(3)".

63 (1) The amendments made by paragraphs 55 to 58 above have effect in relation to options granted on or after the day on which this Act is passed.

(2) The amendment made by paragraph 59 above has effect for cases where the old options are granted on or after that day.

(3) A SAYE option scheme approved before that day has effect with any modifications needed to reflect the amendments made by paragraphs 55 to 62 above.

(4) In particular, in relation to options granted on or after that day, such a SAYE option scheme has effect with the omission of any provision falling within a provision of Schedule 3 to ITEPA 2003 omitted by paragraph 57 above.

CSOP schemes

64 In Part 2 of Schedule 4 (general requirements for approval) in paragraph 6 (limit on value of shares subject to options) after sub-paragraph (3) insert—

"(4) For the purposes of this paragraph the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction."

65 Part 4 of Schedule 4 (shares to which schemes can apply) is amended as follows.

66 In paragraph 15 (introduction)—

(a) after the entry for paragraph 18 insert "and", and

(b) omit the entry relating to paragraph 19 and the "and" after it.

67 Omit paragraph 19 (only certain kinds of restrictions allowed).

68 In Part 5 of Schedule 4 (requirements etc relating to share options) in paragraph 22 after sub-paragraph (4) insert—

"(5) At the time a share option is granted—

(a) it must be stated whether or not the shares which may be acquired by the exercise of the option may be subject to any restriction, and

(b) if so, the details of the restriction must also be stated.

(6) For the purposes of this paragraph the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction."

69 In Part 6 of Schedule 4 (exchange of share options) in paragraph 27 (requirements about share options granted in exchange) after sub-paragraph (6) insert—

"(7) For the purposes of this paragraph the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction."

70 Part 8 of Schedule 4 (supplementary provisions) is amended as follows.

71 In paragraph 36 (minor definitions) after sub-paragraph (2) insert—

"(3) For the purposes of the CSOP code—

(a) shares are subject to a "restriction" if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and

(b) the "restriction" is that provision."

72 In paragraph 37 (index of defined expressions) at the appropriate place insert—

"restriction (in relation to shares)	paragraph 36(3)".

73 (1) The amendment made by paragraph 64 above has effect for the purpose of determining whether options may be granted to an individual on or after the day on which this Act is passed; but the amendment is to be ignored in determining the market value of any shares to which an option granted before that day relates.

(2) The amendments made by paragraphs 65 to 68 above have effect in relation to options granted on or after that day.

(3) The amendment made by paragraph 69 above has effect for cases where the old options are granted on or after that day.

(4) A CSOP scheme approved before that day has effect with any modifications needed to reflect the amendments made by paragraphs 64 to 72 above.

(5) In particular, in relation to options granted on or after that day, such a CSOP scheme has effect with the omission of any provision falling within a provision of Schedule 4 to ITEPA 2003 omitted by paragraph 67 above.

PART 5

SHARE INCENTIVE PLANS: PARTNERSHIP SHARES

74 (1) In Part 6 of Schedule 2 to ITEPA 2003 (partnership shares) paragraph 52 (application of money deducted in accumulation period) is amended as follows.

(2) After sub-paragraph (2) insert—

"(2A) The number of shares awarded to the employee must be determined in accordance with one of sub-paragraphs (3), (3A) and (3B) and the partnership share agreement must specify which one of those sub-paragraphs is to apply for the purposes of the agreement."

(3) In sub-paragraph (3) for "The number of shares awarded to each" substitute "If the agreement specifies that this sub-paragraph is to apply, the number of shares awarded to the".

(4) After sub-paragraph (3) insert—

"(3A) If the agreement specifies that this sub-paragraph is to apply, the number of shares awarded to the employee must be determined in accordance with the market value of the shares at the beginning of the accumulation period.

(3B) If the agreement specifies that this sub-paragraph is to apply, the number of shares awarded to the employee must be determined in accordance with the market value of the shares on the acquisition date."

(5) In sub-paragraphs (4) and (5) for "and (3)" substitute "to (3B)".

(6) The amendments made by this paragraph have effect in relation to partnership share agreements made on or after the day on which this Act is passed.

PART 6

SHARE INCENTIVE PLANS: DIVIDEND SHARES

Introduction

75 Part 8 of Schedule 2 to ITEPA 2003 (cash dividends and dividend shares) is amended as follows.

Removal of limit on amount reinvested

76 In paragraph 63 (requirements to be met as regards cash dividends) in sub-paragraph (1) omit the entry for paragraph 64.

77 Omit paragraph 64 (limit on amount reinvested).

78 (1) The amendments made by paragraphs 76 and 77 above have effect in relation to the tax year 2013-14 and subsequent tax years.

(2) A SIP approved before 6 April 2013 has effect accordingly with the omission of any provision falling within a provision of Schedule 2 to ITEPA 2003 omitted by paragraph 77 above.

Amounts to be carried forward

79 (1) Paragraph 68 (reinvestment: amounts to be carried forward) is amended as follows.

(2) In sub-paragraph (4)—

(a) omit paragraph (a) and the "or" after it, and

(b) in paragraphs (b) and (c) omit "during that period".

(3) Omit sub-paragraph (6).

(4) The amendments made by this paragraph have effect in relation to amounts held by trustees on or after 6 April 2013 (including amounts originally retained before that date in relation to which an event falling within paragraph 68(4)(a) to (c) of Schedule 2 to ITEPA 2003 did not occur before that date).

(5) A SIP approved before 6 April 2013 has effect accordingly with the omission of any provision falling within a provision of Schedule 2 to ITEPA 2003 omitted by this paragraph.

PART 7

SHARE INCENTIVE PLANS: EMPLOYEE SHARE OWNERSHIP TRUSTS

80 Part 9 of Schedule 2 to ITEPA 2003 (trustees) is amended as follows.

81 In paragraph 70 (introduction) in sub-paragraph (1)—

(a) after the entry for paragraph 77 insert "and", and

(b) omit the entry for paragraph 78.

82 (1) Omit paragraph 78 (acquisition of shares from employee share ownership trusts).

(2) A trust instrument made before the day on which this Act is passed has effect with the omission of any provision falling within a provision of Schedule 2 to ITEPA 2003 omitted by this paragraph.

PART 8

ENTERPRISE MANAGEMENT INCENTIVES: CONSEQUENCES OF DISQUALIFYING EVENTS

83 (1) In section 532 of ITEPA 2003 (modified tax consequences following disqualifying events) in subsection (1)(b) for "40" substitute "90".

(2) The amendment made by this paragraph has effect in relation to disqualifying events occurring on or after the day on which this Act is passed.

EXPLANATORY NOTE

TAX ADVANTAGED EMPLOYEE SHARE SCHEMES - OFFICE OF TAX SIMPLIFICATION RECOMMENDATIONS

SUMMARY

1. This clause and Schedule amend the legislation relating to the four tax advantaged employee share schemes - Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE), Company Share Option Plans (CSOP) and Enterprise Management Incentives (EMI). These changes give effect to recommendations of the Office of Tax Simplification (OTS). They aim to simplify the employee share scheme rules where these may create undue complexities or unnecessary administrative burdens for scheme users. They support the Government's objective to simplify the tax system. Most of the changes will take effect on the date Finance Bill 2013 receives Royal Assent. The changes under Part 6 of the Schedule relating to the reinvestment of cash dividends paid on SIP shares come into effect on 6 April 2013.

DETAILS OF THE SCHEDULE

2. The Schedule implements a series of changes across the four tax advantaged schemes.

3. The current legislation is set out in Income Tax (Earnings and Pensions) Act 2003 (ITEPA). The provisions on SIP are in sections 488 - 515 and Schedule 2 to ITEPA; on SAYE in sections 516 - 519 and Schedule 3; on CSOP in sections 521 - 526 and Schedule 4; and on EMI in sections 527 - 541 and Schedule 5. All statutory references in this Note are to provisions in ITEPA.

PART 1

Retirement of Participants

4. Paragraph 1 introduces amendments to the rules in Part 7 of ITEPA governing when employees are entitled to favourable tax treatment when they leave employment on retirement or after reaching a specified age. The changes will harmonise retirement rules across SIP, SAYE and CSOP, to allow businesses offering these schemes to align the definition of 'retirement' with their broader policy in this area.

5. Paragraphs 2 - 6 remove the requirement for a SIP scheme to include a 'specified retirement age' in the scheme rules, and make consequential changes. Under the current SIP rules (paragraph 98 of

Schedule 2) this specified retirement age must be the same for men and women, and not less than 50.

6. Paragraphs 7 - 13 remove the requirement for an SAYE scheme to include a 'specified age' for retirement in the scheme rules, and repeal the current provision allowing exercise of options by those who reach the 'specified age' without retiring. Under the current SAYE rules (paragraph 31 of Schedule 3) this specified age must be the same for men and women, and between 60 and 75.

7. Paragraphs 14 - 15 remove the requirement for a CSOP scheme to specify a retirement age in the scheme rules, where the rules provide for exercise of the CSOP options on retirement. Under the current CSOP rules (paragraph 35A of Schedule 4) this retirement age must be the same for men and women, and not less than 55.

8. Paragraph 16 provides that the changes have effect from the date the legislation receives Royal Assent, and SIP, SAYE and CSOP schemes approved before the present changes take effect are to be treated as if any such provision included the modifications made by these paragraphs.

9. Sub-paragraphs (2) and (3) of paragraph 16 introduce a modification in the case of free and matching SIP shares awarded before the date the present changes take effect. Where the scheme contains a provision allowing forfeiture of these shares in permitted circumstances, the current rules (paragraph 32 of Schedule 2) do not allow the forfeiture provisions to apply where the participant ceases to be in employment on retirement or after reaching the specified retirement age. This will continue to be the case under the new legislation in relation to free and matching SIP shares awarded before the date this Act receives Royal Assent, but with the modification made by paragraph 3 of this Schedule.

PART 2

'Good Leavers' (other than Retirees)

10. Paragraph 17 introduces amendments to the rules in Part 7 of ITEPA that govern when those leaving employment other than on retirement before these tests are met can qualify for favourable tax treatment as 'good leavers' under SIP, SAYE and CSOP.

11. Paragraphs 18 - 28 address two issues across the three schemes. First, they lay down simpler and more consistent rules for SAYE and CSOP to govern when employees who leave employment other than on retirement are entitled to favourable tax treatment under the schemes. Second, they set out new rules for SIP, SAYE and CSOP

for certain cases where there is a cash takeover of the company whose shares are scheme shares.

12. Paragraph 18 amends section 498 by inserting new subsections (3) - (6), to provide that there will be no income tax liability where shares are withdrawn from a SIP on certain cash takeovers of companies. Various conditions have to be satisfied as to the circumstances in which the shares are withdrawn and the nature of the offer that constitutes the cash takeover.

13. Paragraph 19 amends section 519 and inserts new subsections (3A) and (3B), which provide that there will be no income tax liability where an SAYE option is exercised before the third anniversary of grant on certain cash takeovers of companies. Various conditions have to be met as to the circumstances in which the option is exercised and the nature of the offer that constitutes the cash takeover.

14. Paragraphs 20 - 22 make consequential changes to Part 6 of Schedule 3.

15. Paragraph 23 inserts new sub-paragraphs (2)(c) and (d) into paragraph 34 of Schedule 3, to provide that the scheme rules must allow for exercise of SAYE options when employment ceases in relation to a transfer within the meaning of Transfer of Undertakings (Protection of Employment) Regulations, and certain cases of companies ceasing to be associated with the company organising the scheme on a change of control. SAYE schemes approved before these changes come into force are to be treated as if any such provision included the modifications made by this paragraph.

16. Paragraph 24 inserts new paragraph 37A into Schedule 3. This provides that where certain conditions are met, an SAYE scheme may allow for the exercise of share options relating to shares in a company subject to a cash takeover under a general offer, which is a good leaver circumstance within new section 519(3A). The options may be exercised within 6 months of the general offer.

17. Paragraph 25 amends section 524 concerning CSOP.

18. Sub-paragraphs (2) - (5) make amendments around subsection (2B) of section 524, which serve to extend the circumstances in which favourable tax treatment is available where CSOP options are exercised before the third anniversary of the date on which they were granted. New subsections (2B)(a)(ii) and (a)(iii) apply to those exercising CSOP options when employment ceases in relation to a transfer within the meaning of Transfer of Undertakings (Protection of Employment) Regulations; and in the case of group schemes where the company employing an individual ceases to be controlled by the

company organising the scheme. Several consequential changes are also made.

19. Sub-paragraph (6) of paragraph 25 inserts new subsections (2D) - (2F) in section 524, which provide that there will be no income tax liability where a CSOP option is exercised before the third anniversary of grant on certain cash takeovers of constituent companies. Various conditions have to be met as to the circumstances in which the option is exercised and the nature of the offer that constitutes the cash takeover.

20. Paragraphs 26 and 27 make consequential changes to Part 5 of Schedule 4.

21. Paragraph 28 inserts a new paragraph 25A into Schedule 4. This provides that where certain conditions are met, a CSOP may allow for the exercise of share options relating to shares in a company which is the subject of a cash takeover under a general offer. The options may be exercised within 6 months of the general offer.

PART 3

Material Interest Rules

22. Paragraph 29 introduces amendments to the present rules on 'material interest' in Part 7 of ITEPA for SIP, SAYE and CSOP. Employees are not currently allowed to participate in these schemes if, broadly, they own more than 25 per cent of the ordinary share capital of a company (or in some cases the assets of the business).

23. Paragraphs 30 - 35 remove the requirement that a SIP plan must provide that employees are ineligible to participate if they hold a material interest in a close company whose shares are subject to the plan, or a company which has control of that company. They also make consequential amendments. The changes have effect from the date the legislation receives Royal Assent, and SIP schemes approved before the present changes take effect are to be treated as if any such provision included the modifications made by these paragraphs.

24. Paragraphs 36 - 40 remove the material interest requirement for determining whether an employee is eligible to participate in an SAYE option scheme, and make consequential changes. These changes have effect from the date the legislation receives Royal Assent, and SAYE schemes approved before the present changes take effect are to be treated as if any such provision included the modifications made by these paragraphs.

25. Paragraph 41 amends the CSOP legislation by adjusting from 25 to 30 per cent the figure for determining whether an individual has a

material interest. The change has effect from the date the legislation receives Royal Assent, and CSOP schemes approved before the present changes take effect are to be treated as if any such provision included the modifications made by this paragraph.

PART 4

Restricted Shares

26. Paragraph 42 introduces changes to Part 7 of ITEPA as it relates to the use of restricted shares in SIP, SAYE and CSOP. The present legislation specifies that only certain types of restrictions may be applied to shares used in the three schemes. These include for example 'employee pre-emption' provisions, whereby employees may be compelled to transfer shares back to the company on ceasing employment.

27. Paragraphs 44 - 47 amend Schedule 2 to omit the requirement that shares awarded under a SIP may be subject to only certain kinds of restrictions, and make consequential changes.

28. Paragraph 48 sets out a requirement at new sub-paragraphs (2)(aa) and (3)(aa) of paragraph 75 of Schedule 2 for employees to be provided with details of any restrictions applying to SIP shares at the time they are awarded.

29. Paragraph 49 makes consequential changes to paragraph 84 of Schedule 2.

30. Paragraph 51 amends paragraph 92 of Schedule 2 to provide that SIP shares subject to restrictions are to be valued as if they were not restricted.

31. Paragraphs 52 and 53 set out a definition of a 'restriction' in relation to shares for the purposes of the SIP code.

32. Paragraph 54 provides that the changes take effect from the date the legislation receives Royal Assent and apply only to shares awarded after that date. SIP schemes approved before the present changes take effect, whose scheme rules contain provisions of the type that are now modified by paragraphs 43 - 53, are treated as if any such modification had been made.

33. Paragraphs 55 - 57 amend Schedule 3 to remove the requirement that shares to which an SAYE scheme can apply may be subject to only certain kinds of restrictions, and make consequential changes.

34. Paragraph 58 sets out requirements at new sub-paragraphs (5) and (6) of paragraph 28 of Schedule 3 for employees to be notified of the detail of restrictions applying to SAYE shares at the time options are

granted; and for restricted shares to be valued as if they were not restricted.

35. Paragraph 59 introduces a rule at new sub-paragraph (7) of paragraph 39 of Schedule 3 in relation to exchanges of SAYE share options, requiring restricted shares to be valued as if they were not restricted.

36. Paragraphs 61 - 62 amend paragraph 48 of Schedule 3 to provide a definition of a 'restriction' in relation to shares for the purposes of the SAYE code, and make consequential amendments.

37. Paragraph 63 provides that the amendments take effect from the date the legislation receives Royal Assent in relation to options granted after that date, and that SAYE schemes approved before the present changes take effect, whose scheme rules contain provisions of the type that are now modified by paragraphs 55 - 62, are treated as if any such modification had been made.

38. Paragraph 64 amends paragraph 6 of Schedule 4, to provide at new sub-paragraph (4) that when calculating the limit on the value of shares subject to a CSOP, shares subject to restrictions are valued as if they were not restricted.

39. Paragraphs 65 - 67 amend Part 4 of Schedule 4 to remove the requirement that shares to which a CSOP can apply may be subject to only certain kinds of restriction, and make consequential changes.

40. Paragraph 68 sets out requirements at new sub-paragraphs (5) and (6) of paragraph 22 of Schedule 4 for employees to be notified of the detail of restrictions applying to CSOP shares at the time options are granted; and for restricted shares to be valued as if they were not restricted.

41. Paragraph 69 introduces a rule at new sub-paragraph (7) of paragraph 27 of Schedule 4 in relation to exchanges of share options, requiring restricted shares to be valued as if they were not restricted.

42. Paragraphs 71 - 72 amend paragraph 36 of Schedule 4 to provide a definition of a 'restriction' in relation to shares for the purposes of the CSOP code, and make consequential amendments.

43. Paragraph 73 provides that the new rule for valuing restricted CSOP shares as if they were not restricted (paragraph 64 of this Schedule) does not apply in relation to options granted before Royal Assent. All other changes to the CSOP code take effect from the date the legislation receives Royal Assent, and CSOP schemes approved before the present changes take effect, whose scheme rules contain provisions of the type that are now modified by paragraphs 64 - 72, are treated as if any such modification had been made.

PART 5

Share Incentive Plans: Partnership Shares

44. Paragraph 74 introduces amendments to paragraph 52 of Schedule 2 of ITEPA, and the present rules on allocation of SIP shares where a company allows employees to purchase SIP partnership shares by deduction from salary over a period of time not exceeding 12 months, referred to in the legislation as an 'accumulation period'. Where an accumulation period is used, current rules require that the number of partnership shares awarded to employees in respect of salary deductions is based on the lower of the market value of the shares at the start of the accumulation period, and their market value on the date the shares are acquired by the employee.

45. New sub-paragraphs (2A), (3A) and (3B) of paragraph 52 of Schedule 2 introduce a revised method for determining the number of shares awarded to an employee when applying money deducted in an accumulation period. Companies are allowed to make a choice between three possible methods of valuing the shares in these cases; and whichever method is chosen must be specified in the company's partnership share agreement. These changes take effect from the date the legislation receives Royal Assent.

PART 6

Share Incentive Plans: Dividend Shares

46. Paragraph 75 introduces amendments to Part 8 of Schedule 2 of ITEPA to simplify and relax the current rules on SIP 'dividend shares'. Current rules at paragraphs 62 - 69 of Schedule 2 allow cash dividends paid on SIP shares to be reinvested in 'dividend shares' - further tax advantaged shares held under the SIP. There is a limit of £1,500 per tax year on reinvestment of cash dividends in dividend shares by an employee (paragraph 64 of Schedule 2); and reinvestment must take place within three years of cash dividends arising (paragraph 68 of Schedule 2).

47. Paragraphs 76 - 78 remove the £1,500 annual limit on reinvestment of dividends and make consequential changes.

48. Paragraph 79 removes the three year time limit for reinvestment and makes consequential changes. In each case the change applies for the tax year 2013-14 onwards. SIP schemes approved before the present changes take effect, and whose scheme rules provide for the reinvestment of dividend shares, are treated as if any such modifications had been made.

PART 7

Share Incentive Plans: Employee Share Ownership Trusts

49. Paragraph 80 introduces amendments to Part 9 of Schedule 2 of ITEPA and certain requirements relating to SIP trustees.

50. Paragraphs 81 and 82 remove the requirement in paragraph 78 of Schedule 2 for the SIP trust instrument to include a provision in relation to the acquisition by the SIP trustees of shares from qualifying employee share ownership trusts, and make consequential changes. The change takes effect from the date the legislation receives Royal Assent. Any SIP trust instrument in force at the date the legislation takes effect has effect with the omission of the provision deleted by paragraph 82.

PART 8

Enterprise Management Incentives: Consequences of Disqualifying Events

51. Paragraph 83 amends section 532 ITEPA to extend from 40 to 90 days the time available for those holding qualifying EMI options to exercise them with favourable tax treatment after a 'disqualifying event' occurs. The change takes effect from the date the legislation receives Royal Assent.

BACKGROUND

52. SIP is an 'all employee' scheme under which employees may purchase 'partnership' shares out of their pre-tax (gross) salary; be awarded 'matching' or 'free' shares by their employer; or reinvest dividends earned on SIP shares into 'dividend' shares.

53. SAYE is an 'all employee' share option scheme under which employees save out of taxed earnings and can use their savings to purchase shares in their company at a discounted price.

54. CSOP is a scheme under which selected employees may be awarded options to purchase shares in their company.

55. EMI is a scheme targeted on small and medium sized businesses carrying out certain trades, under which selected employees may be awarded share options in their company.

56. The Government asked the OTS in 2011 to evaluate the four tax advantaged employee share schemes, identify areas where they created undue complexities or disproportionate administrative burdens for scheme users, and make recommendations on how the schemes could be simplified.

57. The OTS report was published on the HM Treasury website on 6 March 2012. It contained a series of recommended changes to the underlying legislation and related provisions.

58. The Government issued a consultation document on 27 June 2012 available on the HMRC website. This set out the Government's response to the OTS report, and invited views and evidence on the detailed implementation of the OTS recommendations it proposed to take forward.

59. A document setting out a detailed summary of the responses to the consultation was published on 11 December 2012 and is available on the HMRC website. This includes a detailed analysis of changes the Government has decided to make to the original proposals in the light of the responses.

60. The clause and Schedule take account of responses received to the consultation, and address the OTS recommendations the Government plans to implement.

61. If you have any questions about these changes, or comments on the legislation, please contact Andrew Ellis, 020 7147 2658 (email: andrew.ellis1@hmrc.gsi.gov.uk).

1 Arrangements made by intermediaries

(1) In Chapter 8 of Part 2 of ITEPA 2003 (application of provisions to workers under arrangements made by intermediaries), in section 49 (engagements to which Chapter applies), in subsection (1), for paragraph (c) substitute—

"(c) the circumstances are such that—

(i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or

(ii) the worker is an office-holder who holds that office under the client and the services relate to the office."

(2) This section has effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

APPLICATION OF PROVISIONS TO WORKERS UNDER ARRANGEMENTS MADE BY INTERMEDIARIES

SUMMARY

1. This clause amends Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 – the intermediaries legislation (commonly known as IR35) to extend the application of this chapter to office holders. Prior to this amendment an office holder would not be considered to be an employee so an office holder engaged via an intermediary would not come within this legislation.

DETAILS OF THE CLAUSE

2. Subsection (1) replaces subsection 49 (1)(c) of Part 2 of ITEPA 2003. It extends Chapter 8 of Part 2 of ITEPA 2003 so that it applies to office holders when they are engaged through a third party intermediary. The extension applies both where the worker is named as an office holder of the client but paid through an intermediary and where the intermediary (third party) is named as the office holder of the client. It applies in each case where the worker would be considered as an office holder of the client if the services were provided directly under a contract between the worker and the client. In the situations described above, providing there is also a requirement for the personal service of the worker, this clause brings into charge for income tax, as the worker's deemed earnings from employment, any payment made to the worker via an intermediary (third party).

BACKGROUND

3. The intermediaries legislation in Chapter 8 of Part 2 of ITEPA 2003 considers the underlying nature of the relationship between the worker and the engager; if this relationship would be considered to be employment, if it were not for the interposition of the intermediary, then the legislation applies. Where the intermediaries legislation applies, the income received by the intermediary (third party) is deemed to be employment earnings of the worker and the worker is liable for income tax on it, calculated in accordance with Chapter 8.

4. This change equalises the tax treatment of office holders engaged through third parties with the treatment under the relevant National Insurance legislation, under which they are already in the same

position as individuals who would be in an employment relationship if engaged directly.

5. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 020 7147 2414 (email: sarah.radford@hmrc.gsi.gov.uk).

1 Glasgow Commonwealth Games

(1) An accredited competitor who performs a Commonwealth Games activity is not liable to income tax in respect of any income arising from the activity if the non-residence condition is met.

(2) The following are Commonwealth Games activities—
  (a) competing at the Glasgow Commonwealth Games, and
  (b) any activity that is performed during the games period the main purpose of which is to support or promote the Glasgow Commonwealth Games or any future Commonwealth Games.

(3) The non-residence condition is that—
  (a) the accredited competitor is non-UK resident for the tax year in which the Commonwealth Games activity is performed, or
  (b) the accredited competitor is UK resident for the tax year in which the activity is performed but the year is a split year as respects the competitor and the activity is performed in the overseas part of the year.

(4) Section 966 of ITA 2007 (deduction of sums representing income tax) does not apply to any payment or transfer which gives rise to income benefiting from the exemption under subsection (1).

(5) In this section—
"accredited competitor" means a person to whom a Glasgow 2014 accreditation card in the athletes category has been issued by the company named Glasgow 2014 Limited which was incorporated on 11 June 2007;
"the games period" means the period—
  (a) beginning with 4 March 2014, and
  (b) ending with 3 September 2014;
"the Glasgow Commonwealth Games" means the Commonwealth Games held in Scotland in 2014;
"income" means employment income or profits of a trade, profession or vocation (including profits treated as arising as a result of section 13 of ITTOIA 2005).

EXPLANATORY NOTE

GLASGOW COMMONWEALTH GAMES

SUMMARY

1. This clause provides for an exemption from income tax for non-UK resident competitors in the Glasgow 2014 Commonwealth Games.

DETAILS OF THE CLAUSE

2. Paragraph (1) provides that accredited competitors at the Glasgow 2014 Commonwealth Games who meet the non-residence condition will be exempt from UK tax on any income arising from Commonwealth Games activities.

3. Paragraph (2) defines Commonwealth Games activities for the purposes of paragraph (1) as both competing at the Glasgow 2014 Commonwealth Games and performing any activity during the games period where the main purpose is to support or promote the Glasgow 2014 Commonwealth Games or any future Commonwealth Games.

4. Paragraph (3) defines the non-residence condition for the purpose of paragraph (1). To meet the non-residence condition, an accredited competitor must be non-UK resident for the tax year in which the Commonwealth Games activity is performed, or, where that year is a split year as regards the competitor, the Commonwealth Games activity must be performed in the overseas part of the year.

5. Paragraph (4) provides that withholding obligations under section 966 of the Income Tax Act 2007 do not apply to any payment or transfer that gives rise to income which benefits from the exemption provided by paragraph (1).

6. Paragraph (5) defines the terms “accredited competitor”, “the games period”, “the Glasgow Commonwealth Games” and “income” for the purpose of this clause.

BACKGROUND

7. As announced by the Chief Secretary to the Treasury on 26 January 2012, any income arising to non-resident competitors from the 2014 Commonwealth Games will be exempt from UK tax. A similar exemption was provided for non-resident competitors in the London 2012 Olympic and Paralympic Games.

8. Neither employment nor self-employment income arising to non-UK resident accredited competitors from competing in or carrying out activities primarily to support the Glasgow 2014 Commonwealth Games will be subject to UK income tax. This exemption only applies where the competitor holds a Glasgow 2014 accreditation card in the athletes' category which has been issued by Glasgow 2014 Ltd and where the activities take place within the games period.

9. If you have any questions about this change, or comments on the legislation, please contact the HMRC Foreign Entertainers Unit on 0151 472 6488 or email John Pay (john.pay@hmrc.gsi.gov.uk).

1 Expenses of elected representatives

(1) After section 293A of ITEPA 2003 insert—

“293B UK travel expenses of other elected representatives

(1) No liability to income tax arises in respect of a payment to which this section applies if it is expressed to be made in respect of relevant UK travel expenses.

(2) This section applies to payments—

(a) made to members of the Scottish Parliament under section 81(2) of the Scotland Act 1998,

(b) made to members of the National Assembly for Wales under section 20(2) of the Government of Wales Act 2006 or to a member of the Welsh Assembly Government under section 53(2) of that Act, or

(c) made to members of the Northern Ireland Assembly under section 47(2) of the Northern Ireland Act 1998.

(3) In this section “relevant UK travel expenses” means expenses necessarily incurred on journeys of the following kinds within the United Kingdom—

(a) journeys within subsection (4) made by the member that are necessary for the performance of his or her duties as a member;

(b) if the member shares caring responsibilities with a spouse or partner, journeys made by the spouse or partner between the constituency or region and the member’s parliamentary home.

(4) The journeys referred to in subsection (3)(a) are those—

(a) between the constituency or region and the Parliament or Assembly to which the member belongs,

(b) between the constituency or region and the member’s parliamentary home, or

(c) within the constituency or region, but not excluded by subsection (5).

(5) A journey is excluded if—

(a) in the case of a member who has only one local office, it is between the member’s local home and that office, and

(b) in any other case, it is between the member’s local home and the principal local office.

(6) In this section—

“constituency or region”, in relation to a member, means the constituency or region which the member represents and the area within 20 miles of the boundary of that constituency or region;

“local office”, in relation to a member, means an office which is situated in the constituency or region and occupied by the member for the purposes of performing duties as a member;

“the member’s local home” means a residence of the member situated in the constituency or region;

“the member’s parliamentary home” means the member’s only or main residence in the area comprising—

(a) the main site of the Parliament or Assembly to which the member belongs, and

(b) the area within 20 miles of that site;

"principal local office", in relation to a member, means the local office most frequently occupied by the member for the purposes of performing duties as a member.

(7) A person has "caring responsibilities" if the person—

(a) has parental responsibility for a dependent child aged under 17 or for a child aged 17 or 18 who is in full-time education, or

(b) is the primary carer for a family member in receipt of—

(i) attendance allowance,

(ii) disability living allowance at the middle or highest rate for personal care, or

(iii) constant attendance allowance at or above the maximum rate with an industrial injuries disablement benefit, or the basic (full day) rate with a war disablement pension.

(8) The Treasury may by order amend the definition of "caring responsibilities" in subsection (7)."

(2) The amendment made by this section has effect in relation to payments made on or after 6 April 2013.

EXPLANATORY NOTE

EXPENSES OF ELECTED REPRESENTATIVES

SUMMARY

1. This clause introduces a new income tax exemption for certain travel expenses paid or reimbursed to Members of the Scottish Parliament, Members of the National Assembly for Wales, and Members of the Legislative Assembly in Northern Ireland. This will broadly have the effect of maintaining the tax treatment that applies to similar expenses paid under a long-standing concessionary arrangement.

DETAILS OF THE CLAUSE

2. Clause 0624(1) inserts new section 293B into the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

3. New section 293B(1) provides for payments to which new section 293B applies to be exempt from income tax if they are expressed to be made in respect of relevant UK travel expenses.

4. New section 293B(2) defines the payments to which new section 293B applies.

5. New section 293B(3) defines 'relevant UK travel expenses' as expenses necessarily incurred on the kinds of journeys made by the member listed in new section 293B(4) and journeys made by the member's spouse or partner with whom they share caring responsibilities.

6. New section 293B(4) lists the qualifying journeys for the purposes of new section 293B(3)(a), including journeys within the member's constituency or region which are not excluded journeys.

7. New section 293B(5) sets out the circumstances in which journeys within the member's constituency or region are excluded journeys .

8. New section 293B(6) defines the terms 'constituency or region', 'local office', 'the member's local home', 'the member's parliamentary home', and 'principal local office', for the purposes of new section 293B.

9. New section 293B(7) defines the term 'caring responsibilities' for the purpose of new section 293B(3)(b).

10. New section 293B(8) provides an order-making power to amend the definition of ‘caring responsibilities’.

11. Clause 0624(2) provides that the amendments made to ITEPA by this clause have effect in relation to payments made on or after 6 April 2013.

BACKGROUND

12. Members of the three devolved administrations (DAs) are reimbursed in accordance with the respective allowances schemes administered by the DAs. The current tax treatment of travel expenses paid to members of the DAs is subject to certain long standing concessions which need to be formalised or ended.

13. To recognise the requirement of elected members having to carry out their duties in both their constituencies and their respective Parliament or Assembly headquarters, the general rules which allow tax relief for expenses incurred on work-related travel have, under long standing concessions, been extended in the case of members of the DAs.

14. Following the creation of the Independent Parliamentary Standards Authority (IPSA) and the introduction of the new MPs’ Expenses Scheme, legislation was enacted in Finance (No.2) Act 2010 to formalise aspects of these concessions as they previously applied to MPs. Similar legislation was not introduced at the same time in relation to members of the DAs because, at that time, new allowances schemes were not in place for all of the DAs.

15. The concessionary treatment applying to travel expenses paid to members of the DAs will end from 6 April 2013 and instead these amendments to ITEPA will provide a statutory exemption for certain relevant UK travel expenses paid to members by the respective authority, as expenses necessarily incurred in the performance of their Parliamentary or Assembly functions. This will bring the tax treatment of these members’ expenses broadly into line with their Westminster counterparts.

16. From 6 April 2013, expenses incurred by members of the DAs on travel between their home and their sole or most frequently occupied office in their constituency or region will become taxable.

17. The new exemption will apply to relevant expenses paid or reimbursed on or after 6 April 2013.

18. If you have any questions about this change, or comments on the legislation, please contact Basil Rajamanie on 020 7147 2384 (email: basil.rajamanie@hmrc.gsi.gov.uk).

1 Lifetime allowance charge: new standard lifetime allowance for the tax year 2014-15 and subsequent tax years

(1) Section 218 of FA 2004 (standard lifetime allowance etc) is amended as follows.

(2) For subsection (2) substitute—

"(2) The standard lifetime allowance for the tax year 2014-15 and, subject to subsection (3), subsequent tax years is £1,250,000."

(3) In subsection (3) for "the tax year 2012-13" substitute "the tax year 2014-15".

(4) After subsection (5C) insert—

"(5D) Where benefit crystallisation event 7 occurs on or after 6 April 2014 by reason of the payment of a relevant lump sum death benefit in respect of the death of the individual during the relevant period, the standard lifetime allowance at the time of the benefit crystallisation event is £1,500,000.

"The relevant period" means the period consisting of the tax year 2012-13 and the tax year 2013-14."

(5) The amendments made by the subsections above have effect for the tax year 2014-15 and subsequent tax years.

(6) Schedule 1 contains transitional provision.

2 Lifetime allowance charge: power to amend to the transitional provision in Part 2 of Schedule 18 to FA 2011 etc

(1) Part 2 of Schedule 18 to FA 2011 (lifetime allowance charge: commencement and transitional provision relating to changes made for the tax year 2012-13 and onwards) is amended as follows.

(2) In paragraph 14 omit sub-paragraphs (2) and (15) to (17) (which confer power on the HMRC Commissioners to make provision specifying how notices under paragraph 14 are to be given).

(3) After paragraph 14 insert—

"15 (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend paragraph 14.

(2) Regulations under this paragraph may (for example) add to the cases in which paragraph 14 is to apply or is to cease to apply.

(3) Regulations under this paragraph may include provision having effect in relation to a time before the regulations are made; but—

(a) the time must be no earlier than 6 April 2012, and

(b) the provision must not increase any person's liability to tax.

(4) In relation to regulations under this paragraph made during 2013, sub-paragraph (3) has effect with the omission of paragraph (b) so long as the time in question is no earlier than 6 April 2013.

16 (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision specifying how any notice required to be given to an officer of Revenue and Customs under paragraph 14 is to be given.

(2) In sub-paragraph (1) the reference to paragraph 14 is to that paragraph as amended from time to time by regulations under paragraph 15.

17 (1) Regulations under paragraph 15 or 16 may include supplementary or incidental provision.

(2) The powers to make regulations under paragraphs 15 and 16 are exercisable by statutory instrument.

(3) A statutory instrument containing regulations under paragraph 15 or 16 is subject to annulment in pursuance of a resolution of the House of Commons."

(4) The Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 (S.I. 2011/1752) are to continue to have effect and, so far as they were made under paragraph 14(2) and (15) of Schedule 18 to FA 2011, are to be treated as if they were made under paragraphs 16 and 17(1) of that Schedule (as inserted by subsection (3) above).

3 Annual allowance: new annual allowance for the tax year 2014-15 and subsequent tax years

(1) Section 228 of FA 2004 (annual allowance) is amended as follows.

(2) For subsection (1) substitute—

"(1) The annual allowance for the tax year 2014-15 and, subject to subsection (2), each subsequent tax year is £40,000."

(3) In subsection (2) for "2011-12" substitute "2014-15".

(4) The amendments made by this section have effect for the tax year 2014-15 and subsequent tax years.

SCHEDULES

SCHEDULE 1

Section 1

TRANSITIONAL PROVISION RELATING TO NEW STANDARD LIFETIME ALLOWANCE: "FIXED PROTECTION 2014"

1 (1) This paragraph applies on or after 6 April 2014 in the case of an individual—

(a) who, on that date, has one or more arrangements under—

(i) a registered pension scheme, or

(ii) a relieved non-UK pension scheme of which the individual is a relieved member,

(b) in relation to whom paragraph 7 of Schedule 36 to FA 2004 (primary protection) does not make provision for a lifetime allowance enhancement factor,

(c) in relation to whom paragraph 12 of that Schedule (enhanced protection) does not apply on that date, and

(d) in whose case paragraph 14 of Schedule 18 to FA 2011 (transitional provision relating to new standard lifetime allowance for the tax year 2012-13) does not apply on that date,

if notice of intention to rely on it is given to an officer of Revenue and Customs.

(2) Part 4 of FA 2004 has effect in relation to the individual as if the standard lifetime allowance were the greater of the standard lifetime allowance and £1,500,000.

(3) But this paragraph ceases to apply if on or after 6 April 2014—

(a) there is benefit accrual in relation to the individual under an arrangement under a registered pension scheme,

(b) there is an impermissible transfer into any arrangement under a registered pension scheme relating to the individual,

(c) a transfer of sums or assets held for the purposes of, or representing accrued rights under, any such arrangement is made that is not a permitted transfer, or

(d) an arrangement relating to the individual is made under a registered pension scheme otherwise than in permitted circumstances.

(4) For the purposes of sub-paragraph (3)(a) there is benefit accrual in relation to the individual under an arrangement—

(a) in the case of a money purchase arrangement that is not a cash balance arrangement, if a relevant contribution is paid under the arrangement on or after 6 April 2014,

(b) in the case of a cash balance arrangement or a defined benefits arrangement, if there is an increase in the value of the individual's

rights under the arrangement at any time on or after that date (but subject to sub-paragraphs (14) and (11)),

(c) in the case of a hybrid arrangement—

(i) where the benefits that may be provided to or in respect of the individual under the arrangement include money purchase benefits other than cash balance benefits, if a relevant contribution is paid under the arrangement on or after 6 April 2014, and

(ii) in any case, if there is an increase in the value of the individual's rights under the arrangement at any time on or after that date (but subject to sub-paragraphs (14) and (11)).

(5) For the purposes of sub-paragraphs (4)(b) and (c)(ii) and (11) to (17) whether there is an increase in the value of the individual's rights under the arrangement (and its amount if there is) is to be determined—

(a) in the case of a cash balance arrangement (or a hybrid arrangement under which cash balance benefits may be provided to or in respect of the individual under the arrangement), by reference to whether there is an increase in the amount that would, on the valuation assumptions, be available for the provision of benefits to or in respect of the member (and, if there is, the amount of the increase), and

(b) in the case of a defined benefits arrangement (or a hybrid arrangement under which defined benefits may be provided to or in respect of the individual under the arrangement), by reference to whether there is an increase in the benefits amount.

(6) For the purposes of sub-paragraph (5)(b) "the benefits amount" is—

$$(P \times RVF) + LS$$

where—

LS is the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension);

P is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement;

RVF is the relevant valuation factor.

(7) Paragraph 17A of Schedule 36 to FA 2004 (impermissible transfers) applies for the purposes of sub-paragraph (3)(b) but as if the references to a relevant existing arrangement were to the arrangement and the reference in sub-paragraph (2) to 5 April 2006 were to 5 April 2014.

(8) Sub-paragraphs (7) to (8B) of paragraph 12 of Schedule 36 to FA 2004 (when there is a permitted transfer) apply for the purposes of sub-paragraph (3)(c); and where there is a permitted transfer—

(a) if it is a permitted transfer by virtue of sub-paragraph (8)(a) of paragraph 12, this paragraph applies in relation to the arrangement to which the transfer is made,

(b) if it is a permitted transfer by virtue of sub-paragraph (8)(b) of that paragraph, this paragraph applies in relation to the arrangement to which the transfer is made as if it were the same as that from which it is made, and

(c) if it is a permitted transfer by virtue of sub-paragraph (8)(c) of that paragraph, this paragraph applies in relation to the arrangement to which the transfer is made as if it were the same as that from which

it is made and (if the employment is transferred) as if the employment with the transferee were the employment with the transferor.

(9) Sub-paragraphs (2A) to (2C) of paragraph 12 of Schedule 36 to FA 2004 ("permitted circumstances") apply for the purposes of sub-paragraph (3)(d).

(10) Paragraph 14 of Schedule 36 to FA 2004 (when a relevant contribution is paid under an arrangement) applies for the purposes of sub-paragraph (4)(a) and (c)(i).

(11) Increases in the value of the individual's rights under the arrangement are to be ignored for the purposes of sub-paragraph (4)(b) or (c)(ii) if in no tax year do they exceed the relevant percentage.

(12) The relevant percentage, in relation to a tax year, means—

(a) where the arrangement (or a predecessor arrangement) includes provision for the value of the rights of the individual to increase during the tax year at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 11 December 2012—

(i) that percentage (or, where more than one arrangement includes such provision, the higher or highest of the percentages specified), plus

(ii) the relevant statutory increase percentage;

(b) otherwise—

(i) the percentage by which the consumer prices index for the month of September in the previous tax year is higher than it was for the September before that (or nil per cent if it is not higher), or

(ii) if higher, the relevant statutory increase percentage.

(13) In sub-paragraph (12)(a)—

"predecessor arrangement", in relation to an arrangement, means another arrangement (under the same or another registered pension scheme) from which some or all of the sums or assets held for the purposes of the arrangement directly or indirectly derive;

"predecessor registered pension scheme", in relation to a pension scheme, means another registered pension scheme from which some or all of the sums or assets held for the purposes of the arrangement under the pension scheme directly or indirectly derive.

(14) In sub-paragraph (12) "the relevant statutory increase percentage", in relation to a tax year, means the percentage increase in the value of the individual's rights under the arrangement during the tax year so far as it is attributable solely to—

(a) a revaluation in accordance with section 16 of the Pension Schemes Act 1993 or section 12 of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earnings factors),

(b) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of accrued benefits), or

(c) the application of section 67 of the Equality Act 2010 (sex equality rule for occupational pension schemes).

(15) Sub-paragraph (16) applies in relation to a tax year if—

(a) the arrangement is a defined benefits arrangement which is an annuity contract treated as a registered pension scheme under section 153(8) of FA 2004,

(b) the contract provides for the value of the rights of the individual to be increased during the tax year at an annual rate specified in the contract, and

(c) the contract limits the annual rate to the percentage increase in the retail prices index over a 12 month period specified in the contract.

(16) Sub-paragraph (12)(b)(i) applies as if it referred instead to the annual rate of the increase in the value of the rights during the tax year.

(17) For the purposes of sub-paragraph (15)(c) the 12 month period must end during the 12 month period preceding the month in which the increase in the value of the rights occurs.

(18) Subject to sub-paragraph (19), sub-paragraph (3) applies in relation to an individual who is a relieved member of a relieved non-UK pension scheme as if the relieved non-UK pension scheme were a registered pension scheme; and the other sub-paragraphs of this paragraph apply accordingly.

(19) For the purposes of sub-paragraph (3)(a) there is benefit accrual in relation to an individual under an arrangement under a relieved non-UK pension scheme if there is a pension input amount under sections 230 to 237 of FA 2004 (as applied by Schedule 34 to that Act) greater than nil in respect of the arrangement for any tax year.

This sub-paragraph applies instead of sub-paragraph (4).

(20) Expressions used in this paragraph and Part 4 of FA 2004 have the same meaning in this paragraph as in that Part.

(21) In particular, references to a relieved non-UK pension scheme or a relieved member of such a scheme are to be read in accordance with paragraphs 13(3) and (4) and 18 of Schedule 34 to FA 2004 (application of lifetime allowance charge provisions to members of overseas pension schemes).

2 (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend paragraph 1.

(2) Regulations under this paragraph may (for example) add to the cases in which paragraph 1 is to apply or is to cease to apply.

(3) Regulations under this paragraph may include provision having effect in relation to a time before the regulations are made; but—

(a) the time must be no earlier than 6 April 2014, and

(b) the provision must not increase any person's liability to tax.

3 (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision specifying how any notice required to be given to an officer of Revenue and Customs under paragraph 1 is to be given.

(2) In sub-paragraph (1) the reference to paragraph 1 is to that paragraph as amended from time to time by regulations under paragraph 2.

4 (1) Regulations under paragraph 2 or 3 may include supplementary or incidental provision.

(2) The powers to make regulations under paragraphs 2 and 3 are exercisable by statutory instrument.

(3) A statutory instrument containing regulations under paragraph 2 or 3 is subject to annulment in pursuance of a resolution of the House of Commons.

EXPLANATORY NOTE

PENSIONS: LIFETIME ALLOWANCE AND ANNUAL ALLOWANCE

SUMMARY

1. Clause 1 amends Finance Act 2004, as it relates to the lifetime allowance for UK tax relieved pension savings which is lowered to £1,250,000 from 2014-15 onwards. The Schedule introduces transitional provisions to protect pension savers affected by this reduction in the lifetime allowance. Clause 2 amends Finance Act 2011 to introduce a power to amend the transitional provisions in FA 2011 in relation to the lifetime allowance. Clause 3 amends Finance Act 2004 as it relates to the annual allowance for UK tax relieved pensions which is lowered to £40,000 from 2014-15 onwards.

DETAILS OF CLAUSE 1

2. Subsection (2) provides for the standard lifetime allowance to be £1,250,000 for the tax year 2014-15 onwards.

3. Subsection (3) amends section 218(3) to provide that the power to increase the lifetime allowance by Treasury Order applies for any tax year subsequent to 2014-15.

4. Subsection (4) provides for the reference to the standard lifetime allowance to be replaced by a figure of £1,500,000 where certain lump sum death benefits are paid (a 'benefit crystallisation event 7' occurs) on or after 6 April 2014 in respect the death of the individual in either tax year 2012-13 or 2013-14.

5. Subsection (5) provides that amendments made by subsections (2) to (4) have effect for the tax year 2014-15 onwards.

DETAILS OF CLAUSE 2

6. Subsection (3) inserts new paragraphs 15 to 17 into Part 2 of Schedule 18 to FA 2011. Part 2 of Schedule 18 provides for transitional protection for pension savers following changes to the lifetime allowance in Part 1 of Schedule 18.

7. New paragraph 15(1) provides a power for HMRC to amend paragraph 14 of Schedule 18 by regulations.

8. New paragraph 15(2) provides that the regulations under new paragraph 15 may add to the cases when paragraph 14 of Schedule 18 is to apply or cease to apply.

9. New paragraph 15(3) provides that regulations under new paragraph 15 may have effect before they are made, but not before 6 April 2012, provided that they do not increase any person's liability to tax.

10. New paragraph 15(4) provides that regulations made during 2013 under this paragraph may increase a person's liability to tax but not before 6 April 2013.

11. New paragraph 16 provides a power for HM Revenue & Customs to make regulations specifying how a notice of intention to rely on the transitional protection under paragraph 14 of Schedule 18 should be given.

12. New paragraph 17 provides that regulations made under new paragraphs 15 or 16 may include supplementary or incidental provision, are to be made by statutory instrument and are subject to the negative procedure.

13. Subsection (4) provides that the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 (SI 2011/1752) will continue to have effect.

DETAILS OF CLAUSE 3

14. Subsection 2 amends section 228(1) to reduce the level of the annual allowance to £40,000 from 2014-15.

15. Subsection 3 amends section 228(2) so that the power to vary the level of the annual allowance can only apply for 2015-16 and subsequent tax years.

DETAILS OF THE SCHEDULE

16. Paragraph 1(1) provides for transitional protection ("fixed protection 2014") against the lifetime allowance charge from 6 April 2014 for those who do not have primary protection, enhanced protection or fixed protection under paragraph 14 of Schedule 18 to FA 2011.

17. Paragraph 1(2) provides for the greater of £1,500,000 and the standard lifetime allowance to apply to those who are relying on fixed protection 2014 when applying the provisions of Part 4 of FA 2004.

18. Paragraph 1(3) provides for fixed protection 2014 to be lost if:

- there is a benefit accrual (as defined in paragraph 1(4));
- there is an impermissible transfer;
- there is a transfer of sums or assets that is not a permitted transfer; or
- a new pension arrangement relating to the individual is made otherwise than in permitted circumstances.

19. Paragraphs 1(5) and (6) provide how to determine the increase in the value of the individual's rights under a cash balance or defined benefit arrangement and a hybrid arrangement under which cash balance or defined benefits may be provided.

20. Paragraphs 1(7) to (10) provide definitions of impermissible transfers, permitted transfers, permitted circumstances and when a relevant contribution is paid.

21. Paragraph 1(11) provides that increases in an individual's rights are to be ignored for the purposes of determining whether benefit accrual has occurred if they don't exceed the relevant percentage in a tax year. This applies for defined benefit and cash balance arrangements as well as hybrid arrangements where the benefits to be provided may be defined benefit or cash balance benefits.

22. Paragraph 1(12) provides that the relevant percentage is the annual rate of increase specified in the scheme rules (or predecessor scheme rules if this is more favourable to the individual) as at 11 December 2012, if there is one, plus the relevant statutory increase percentage or where there isn't a rate of increase in the scheme rules, the annual percentage increase in the consumer prices index for September in the previous tax year or where it is higher, the relevant statutory increase percentage.

23. Paragraph 1(13) defines predecessor arrangement and predecessor registered pension scheme.

24. Paragraph 1(14) defines the relevant statutory increase percentage for the purposes of paragraph 1(12).

25. Paragraph 1(15) provides that paragraph 1(16) applies when the individuals rights are under a deferred annuity contract and that contract limits increases in rights to annual increases in the retail prices index.

26. Paragraph 1(16) provides that where paragraph 1(15) applies, the relevant percentage for in paragraph 1(12)(b)(i), which allows for

CPI increases, is replaced by the annual rate of increase in the value of the individual's rights during the tax year.

27. Paragraph 1(17) provides further detail on the calculation of the annual increase in the retail prices index for the purposes of paragraph 1(15).

28. Paragraph 1(18) provides that paragraph 1(3) applies in relation to individuals who receive UK tax relief on pension savings in non-UK schemes, as if the non-UK scheme were a registered pension scheme, but that this is subject to paragraph 1(19).

29. Paragraph 1(19) provides that where the individual has an arrangement under a non-UK pension scheme, benefit accrual for the purposes of paragraph 1(3)(a) occurs if the pension input amount is greater than nil, and paragraph 1(4) does not apply.

30. Paragraphs 1(20) and (21) provide for expressions used in paragraph 1 to have the same meaning as in Part 4 of FA 2004.

31. Paragraph 2 provides a power for HMRC to amend paragraph 1 by regulations. These regulations may:

- add to the cases when paragraph 1 is to apply or cease to apply;
- have effect before they are made, but not before 6 April 2014, provided that they do not increase any person's liability to tax.

32. Paragraph 3 provides a power for HM Revenue & Customs to make regulations specifying how a notice of intention to rely on the transitional protection under paragraph 1 should be given.

33. Paragraph 4(3) provides that the regulations and are to be made by statutory instrument and are to be subject to the negative procedure.

BACKGROUND

34. Individuals can save as much as they like in a registered pension scheme subject to overall limits on the amount of tax relief their pension savings can benefit from. These limits are the lifetime and annual allowances. The Government announced on 5 December 2012 that tax relief for pension savings was to be restricted through a reduction in the lifetime and annual allowances.

35. The lifetime allowance is the maximum amount of pension and/or lump sum that an individual can take from their pension schemes that benefit from UK tax relief.

36. When an individual becomes entitled to their pension benefits, these benefits are tested to see if they exceed the individual's lifetime allowance. If they do exceed this, then there is a tax charge on the amount over their lifetime allowance. This tax charge is called the lifetime allowance charge. The rate of the lifetime allowance charge will depend on how the individual takes their benefits. Any amount over the lifetime allowance taken as a lump sum is taxable at 55 per cent whilst any amount as a pension is taxable at 25 per cent.

37. Clause 1 and Schedule 1 restrict tax relief for pension savings by reducing the level of the lifetime allowance provided for in section 218 of FA 2004.

38. The level of the standard lifetime allowance is reduced to £1,250,000 with effect from 6 April 2014. A new transitional protection ('fixed protection 2014') comes into force on the same date. Individuals with fixed protection 2014 have a lifetime allowance of the greater of £1,500,000 and the standard lifetime allowance.

39. Clause 2 provides a power to amend Part 2 of Schedule 18 to FA 2011 in relation to fixed protection. FA 2011 reduced the standard lifetime allowance from £1,800,000 to £1,500,000 with effect from 6 April 2012. A transitional protection regime, known as 'fixed protection' was introduced in Part 2 of Schedule 18. Individuals with fixed protection have a lifetime allowance of the greater of £1,800,000 and the standard lifetime allowance. The new power will be used to ensure individuals do not lose fixed protection in circumstances outside their control.

40. Clause 3 reduces the level of the annual allowance provided for in section 228 of FA 2004. The annual allowance is the maximum amount of pension savings for a tax year that can attract income tax relief. The level of the annual allowance is reduced from £50,000 to £40,000, which will reduce the amount of annual pension savings that benefit from UK tax relief.

41. The new level of annual allowance will apply for the tax year 2014-15 and subsequent tax years. This will affect pension contributions made in pension input periods that end in 2014-15. A pension input period usually covers 12 months and may end on 5 April each year or on other dates nominated by the scheme administrator or the individual.

42. If you have any questions about this change, or comments on the legislation, please contact Paul Cottis on 03000 564209 (email: pensions.policy@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No. 0000

INCOME TAX

The Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Amendment) Regulations 2013

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of powers conferred by paragraphs 15, 16 (1) and 17(1) of Schedule 18 to the Finance Act 2011(**a**):

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Amendment) Regulations 2013 and come into force on [].

(2) Regulations 2(2), 2(4), 2(5), 2(6), 2(7) and 2(8) have effect for the tax year 2012 – 13 and subsequent tax years.

(3) Regulation 2(3) has effect for the tax year 2013 – 14 and subsequent tax years.

Amendments to Schedule 18 to the Finance Act 2011

2.—(1) Paragraph 14 of Schedule 18 to the Finance Act 2011 (transitional provisions) is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) This paragraph also applies on or after 6 April 2012 in the case of an individual—

(a) who, on that date,—

(i) has one or more arrangements under a relieved non-UK pension scheme of which the individual is a relieved member, and

(ii) is not a member of a registered pension scheme, and

(b) in relation to whom paragraph 7 of Schedule 36 to FA 2004(**b**) (primary protection) does not make provision for a lifetime allowance enhancement factor, and

(**a**) 2011 c. 11; paragraphs 15, 16 and 17 of Schedule 18 were inserted by section [ ] of the Finance Act 2013 (c. XX).

(**b**) 2004 c 12; relevant amendments are made by paragraph 2 of Schedule 10 to the Finance Act 2005 (c. 7), and paragraphs 19(1), (2) and (3) of Schedule 29 to, the Finance Act 2008 (c. 9), and paragraphs 7, 9, 10, 11, 12, 13, 14 and 21(1), (2), (3), and (4) of Schedule 17 to, the Finance Act 2011, and S.I. 2011/[XX].

(c) in relation to whom paragraph 12 of that Schedule(**a**) (enhanced protection) does not apply on that date,

if notice of intention to rely on it is given to an officer of Revenue and Customs.".

(3) (a) After sub-paragraph (4) insert—

"(4A) Subject to sub-paragraph (4B), sub-paragraph (4) applies in relation to an individual who is a relieved member of a relieved non-UK pension scheme with the following amendments—

(i) the reference to 6 April 2012 is to be read (insofar as it applies only to a relieved non-UK pension scheme) as a reference to 6 April 2013;

(ii) "registered pension scheme" includes a relieved non-UK pension scheme of which the individual is a relieved member.

Other sub-paragraphs of this paragraph apply accordingly.".

(b) After sub-paragraph (4A) insert—

"(4B) For the purposes of sub-paragraph (4)(a) there is a benefit accrual in relation to an individual under an arrangement under a relieved non-UK pension scheme if there is a pension input amount under sections 230 to 237 of FA 2004 (as applied by Schedule 34 to that Act) greater than nil in respect of the arrangement for any tax year.

This sub-paragraph applies instead of sub-paragraph (5).".

(4) In sub-paragraph (7) after "LS is the" omit "annual rate of the".

(5) In sub-paragraph (11) after "(5)(a)" insert "and (c)(i)".

(6) (a) For sub-paragraph (13) substitute—

"(13) The relevant percentage, in relation to a tax year, means—

(a) where the arrangement (or a predecessor arrangement) includes provision for the value of the rights of the individual to increase during the tax year at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 9 December 2010—

(i) that percentage (or, where more than one arrangement does so the higher or highest of the percentages so specified), plus

(ii) the relevant statutory increase percentage;

(b) where the arrangement (or a predecessor arrangement) includes provision for the value of the rights of the individual to increase during the tax year at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 6 April 2012 and does not exceed an increase in the retail prices index—

(i) an increase in the retail prices index, plus

(ii) the relevant statutory increase percentage; or

(d) otherwise—

(i) an increase in the consumer prices index, or

(ii) if higher, the relevant statutory increase percentage.".

(b) For sub-paragraph (14) substitute—

"(14) In sub-paragraph 13—

"predecessor arrangement", in relation to an arrangement, means another arrangement (under the same or another registered pension scheme) from which some or all of the sums or assets held for the purposes of the arrangement directly or indirectly derive;

(**a**) Paragraph 12 has been amended by paragraph 53(2) to (6) of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 17 of Schedule 20 and Part 3(2) of Schedule 27 to the Finance Act 2007 (c. 11), paragraph 432(2) of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 59 of Schedule 26 to the Equality Act 2010 (c. 15).

"predecessor registered pension scheme", in relation to a pension scheme, means another registered pension scheme from which some or all of the sums or assets held for the purposes of the arrangement under the pension scheme directly or indirectly derive;

"an increase in the retail prices index" means the percentage by which the retail prices index for a month specified in the scheme rules is higher than it was for the same month in the year before (or nil per cent if it is not higher);

"an increase in the consumer prices index" means the percentage by which the consumer prices index for the month of September in the previous tax year is higher than it was for the same month in the year before (or nil per cent if it is not higher).".

(7) After sub-paragraph (14) insert—

"(14A) In sub-paragraph (13) "the relevant statutory increase percentage", in relation to a tax year, means the percentage increase in the value of the individual's rights under the arrangement during the tax year so far as it attributable solely to—

(a) a revaluation in accordance with section 16 of the Pensions Schemes Act 1993(**a**) or section 12 of the Pension Schemes (Northern Ireland) Act 1993(**b**) (early leavers: revaluation of earnings factors),

(b) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993 or Chapter 2 of Part 4 of the Pensions Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of accrued benefits), or

(c) the application of section 67 of the Equality Act 2010(**c**) (sex equality rule for occupational pension schemes).

(14B) Sub-paragraph (14C) applies in relation to a tax year if—

(a) the arrangement is a defined benefits arrangement which is under an annuity contract treated as a registered pension scheme under section 153(8) of FA 2004,

(b) the contract provides for the value of the rights of the individual to be increased during the tax year at an annual rate specified in the contract, and

(c) the contract limits the annual rate to the percentage increase in the retail prices index over a 12 month period specified in the contract.

(14C) Sub-paragraph (13)(d)(i) applies as if it referred instead to the annual rate of the increase in the value of the rights during the tax year.

(14D) For the purposes of sub-paragraph (14B)(c) the 12 month period must end during the 12 month period preceding the month in which the increase in the value of the rights occurs.".

(8) After sub-paragraph (18) insert—

"(19) In particular, references to a relieved non-UK pension scheme or a relieved member of such a scheme are to be read in accordance with paragraphs 13(3) and (4) and 18 of Schedule 34 to FA 2004 (application of lifetime allowance charge provisions to members of overseas pension schemes).".

(**a**) 1993 c. 48; relevant amendments are made by paragraphs 28(a), 28(b) and 62 of Schedule 5 and Part 3 of Schedule 7 to the Pensions Act 1995 (c. 26) and paragraph 4 of Schedule 2 and paragraphs 31(1), 31(2) and 32 of Part 1 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30), and sections 281(1) and 281(2) of the Pensions Act 2004 (c. 35), and Part 3 of the Schedule to the Civil Partnerships (Pensions and Benefits Payments) (Consequential, etc. Provisions) Order 2005 (S.I. 2005/2053), and sections 19(2) and 19(3) of the Pensions Act 2011 (c. 19).

(**b**) 1993 c. 49; relevant amendments are made by paragraphs 21(a), 21(b) and 52 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213) (N.I. 22), and paragraphs 3, 20(2) and 21 of Schedule 9 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147) (N.I. 11).

(**c**) 2010 c. 15.

Amendment to the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011

3.—(1) Regulation 4(2) of the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011(**a**) is amended as follows.

(2) For paragraph (b) substitute—

"(b) received by Her Majesty's Revenue and Customs on or before the following dates—

(i) if it relates to an individual described in paragraph 14(1), 5 April 2012; or

(ii) if it relates to an individual described in paragraph 14(1A), 5 April 2014."

Signatory text

Name
Name

Address — Two of the Commissioners for Her Majesty's Revenue and Customs
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Finance Act 2011 (c. 11) made changes to the Lifetime Allowance Charge applied to pensions by reducing the Lifetime Allowance. Paragraph 14 of Schedule 18 to that Act provided for transitional protection for the Lifetime Allowance provided that conditions contained within that paragraph are met and a person has served notice on the Commissioners for Her Majesty's Revenue and Customs of intention to rely on the protection provided by that paragraph (a "paragraph 14 notice").

These Regulations amend that paragraph to remove restrictions in the transitional protection for the Lifetime Allowance Charge, and modify the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 (S.I. 2001/1752) to enable relieved members of relieved non-UK pension schemes to serve a paragraph 14 notice.

Regulation 1 provides for the citation, commencement and effect of these Regulations. Regulations 2(2), 2(4), 2(5), 2(6), 2(7) and 2(8) have retrospective effect from 6th April 2012. Regulation 2(3) has retrospective effect inform 6th April 2013. Paragraphs 15(3) and (4) of Schedule 18 to the Finance Act 2011 provide that regulations made under paragraph 15 may include provisions having effect in relation to a time before the regulations are made provided that that time is no earlier than 6th April 2012 where those provisions do not increase a person's liability to tax or 6th April 2013 where they do.

Regulation 2(2) inserts a new sub-paragraph (1A) into paragraph 14 of Schedule 18 to the Finance Act 2011 in order to extend the transitional protection to relieved members of relieved non-UK pension schemes who are not also members of a registered pension scheme.

Regulation 2(3) inserts a new sub-paragraph (4A) to apply the relevant provisions in paragraph 14(4) of that Schedule to relieved non-UK pension schemes from 6th April 2013.

Regulation 2(4) corrects an error in the definition of "LS" in sub-paragraph 7.

Regulation 2(5) inserts an omitted cross-reference.

(**a**) S.I.2011/1752. The Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 ("the Regulations") were made under section 251(1) of the Finance Act 2004 and paragraphs 14(2) and 15 of Schedule 18 to the Finance Act 2011. Paragraphs 14(2) and 15 of Schedule 18 to the Finance Act 2011 were omitted, and a new paragraph 15 inserted by sections [ ](2) and (3) of the Finance Act 2013; the Regulations, however, by virtue of section [](4) of the Finance Act 2013 continue to have effect so far as made under paragraphs 14(2) and 15 as though they were made under paragraphs 16 and 17(1) of that Schedule.

Regulation 2(6) substitutes new sub-paragraphs (13) and (14). The new sub-paragraph (13) expands the definition of "relevant percentage" in order to provide that certain increases in the value of an individual's rights are ignored for the purposes of determining if there has been a benefit accrual and calculating the value of it. The new sub-paragraph (14) inserts definitions necessary for the operation of the new sub-paragraph (13).

Regulation 2(7) inserts new sub-paragraphs (14A) to (14D). New sub-paragraph (14A) secures that, in relation to certain schemes, increases in value which are as a result of revaluations under the Pensions Schemes Act 1993 (c. 48), the Pensions Schemes Act (Northern Ireland) Act 1993 (c. 49) or the application of the Equality Act 2010 (c. 15) are ignored for the purposes of calculating a benefit accrual. New sub-paragraphs (14B) to (14D) secure that certain increases in value in annuity contracts are ignored for the purposes of calculating a benefit accrual. This corrects a consequence of the Act whereby people would have lost fixed protection in cases where they should not have done so.

Regulation 2(8) inserts new sub-paragraph 19 to make it clear that references to a relieved non-UK pension scheme or a relieved member of such a scheme are to be read in accordance with the provisions of the Finance Act 2004 which applies lifetime allowance provisions to members of overseas pension schemes.

Regulation 3 amends regulation 4(2)(b) of the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 to provide that in the case of relieved members of relieved non-UK pension schemes the deadline for serving a paragraph 14 notice is the 5th April 2014.

A Tax Information and Impact Note covering this instrument was published on 3rd March 2011 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.

STATUTORY INSTRUMENTS

2013 No.

INCOME TAX

The Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection Notification) Regulations 2013

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by paragraphs 3 and 4(1) of Schedule [XX] to the Finance Act 2013(**a**) and section 251(1) of the Finance Act 2004(**b**) and now exercisable by them(**c**).

Citation, commencement and interpretation

1. These Regulations may be cited as the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection Notification) Regulations 2013 and come into force on [XX].

2. In these Regulations—

"HMRC" means Her Majesty's Revenue and Customs;

"paragraph 1" means paragraph 1 of Schedule [XX] to the Finance Act 2013;

"paragraph 1(3) event" means an event described in sub-paragraph (3) of paragraph 1;

"paragraph 1 notice" means a notice of intention to rely upon paragraph 1; and

"tribunal" means the First-tier Tribunal or, where determined in accordance with the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009(**d**), the Upper Tribunal.

Reliance on paragraph 1

3.—(1) Subject to paragraph (2), an individual may rely on paragraph 1 if—

(a) the individual has given a paragraph 1 notice to HMRC, and

(b) HMRC have accepted that notice by issuing a certificate to the individual.

(**a**) 2013 c. [XX].

(**b**) 2004 c. 12. Subsection (2) of section 251 sets out the matters referred to in subsection (1)(a) in respect of which regulations may require persons to provide information of a prescribed description and to preserve documents for a prescribed period. Subsection (6) states that "prescribed" means prescribed by regulations.

(**c**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that insofar as it is appropriate in consequence of section 5, a reference in an enactment, however expressed, to the Commissioners of Inland Revenue is to be treated as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**d**) S.I. 2009/273 (L. 1).

(2) An individual may not rely on paragraph 1 if—

(a) HMRC have refused to accept a paragraph 1 notice in accordance with regulation 6,

(b) HMRC have revoked the certificate in accordance with regulation 11, or

(c) a paragraph 1(3) event has occurred.

The paragraph 1 notice

4.—(1) A paragraph 1 notice must include the following information—

(a) the title, full name, address (including post code, if applicable) and date of birth of the individual submitting the paragraph 1 notice,

(b) the national insurance number of the individual or, where the individual does not qualify for a national insurance number, the reasons for this,

(c) a declaration that paragraph 7 of Schedule 36 to the Finance Act 2004 (primary protection) does not make provision for a lifetime allowance enhancement factor in the case of the individual,

(d) a declaration that paragraph 12 of that Schedule(**a**) (enhanced protection) will not apply in relation to the individual on and after 6th April 2014, and

(e) a declaration that paragraph 14 of Schedule 18 to the Finance Act 2011(**b**) (transitional provision relating to new standard lifetime allowance for the tax year 2012-13) will not apply in relation to the individual on and after 6th April 2014.

(2) A paragraph 1 notice must be—

(a) in a form prescribed by HMRC, and

(b) received by HMRC on or before 5th April 2014.

(3) The individual must sign and date the paragraph 1 notice.

Issue of certificate by HMRC

5.—(1) If HMRC accept the paragraph 1 notice, they must issue a certificate to the individual.

(2) The certificate must have a unique reference number.

Refusal by HMRC to accept notice

6.—(1) HMRC may refuse to accept the paragraph 1 notice if it does not satisfy the requirements in regulation 4.

(2) If HMRC refuse to accept the paragraph 1 notice the individual may require that HMRC provide reasons for the refusal.

Appeal against refusal to accept notice

7.—(1) The individual may appeal against a refusal by HMRC to accept the paragraph 1 notice.

(2) The notice of appeal must be given to HMRC before the end of the period of 30 days beginning with the day on which the refusal to accept the paragraph 1 notice was given.

(3) Where an appeal under this regulation is notified to the tribunal, the tribunal must determine whether HMRC were entitled to take the view that the notice did not satisfy the requirements in regulation 4.

(**a**) Paragraph 12 has been amended by paragraph 53(2) to (6) of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 17 of Schedule 20 and Part 3(2) of Schedule 27 to the Finance Act 2007 (c. 11), paragraph 432(2) of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 59 of Schedule 26 to the Equality Act 2010 (c. 15).

(**b**) 2011 c. 11; paragraph 14 was amended by [XX] of the Finance Act 2013 (c. [XX]) and S.I. 2013/[XX].

(4) If the tribunal allows the appeal, the tribunal may direct HMRC to accept the paragraph 1 notice and issue a certificate to the individual.

Incorrect information given in, or in connection with, the paragraph 1 notice

8. If the individual realises that any information given in the paragraph 1 notice or given to HMRC in connection with that notice was incorrect or has become incorrect, the individual must provide HMRC with the correct information without undue delay.

Requirement to inform HMRC of a paragraph 1(3) event

9. Where HMRC have issued a certificate the individual must—

(a) inform HMRC when a paragraph 1(3) event occurs, and

(b) provide that information before the end of the period of 90 days beginning with the day on which the individual could first reasonably be expected to have known that a paragraph 1(3) event had occurred.

Replacement of a certificate by HMRC

10.—(1) HMRC may issue a certificate, replacing the previous certificate, if they have reason to believe that information given in, or in connection with, the paragraph 1 notice was incorrect or has become incorrect.

(2) A certificate issued in accordance with regulation 10(1) must have a unique reference number.

Revocation of a certificate by HMRC

11. HMRC may revoke a certificate if they—

(a) have reason to believe that a paragraph 1(3) event has occurred,

(b) have reason to believe that any of the conditions in paragraph 1(1) of Schedule [XX] to the Finance Act 2013 have not been met, or

(c) have given a taxpayer notice to the individual under Part 1 of Schedule 36 to the Finance Act 2008(**a**) (power to obtain information and documents from taxpayer) in connection with paragraph 1 and the individual does not reply to that notice within the time specified in the notice.

Appeal against replacement or revocation of a certificate

12.—(1) The individual may require HMRC to provide reasons for replacing or revoking the certificate.

(2) Paragraphs (1) and (2) of regulation 7 apply to a decision to replace or revoke the certificate as they apply to a refusal to accept the paragraph 1 notice.

(3) Where an appeal under this regulation is notified to the tribunal, the tribunal must determine whether HMRC replaced or revoked the certificate in accordance with regulations 10(1) or 11.

(4) If the tribunal allows the appeal, the tribunal may direct HMRC to issue a certificate to the individual.

Preservation of documents

13.—(1) Where HMRC have issued a certificate the individual must preserve the certificate until no further benefit crystallisation event(**b**) can occur in relation to the individual.

(**a**) 2008 c. 9; taxpayer notice is defined in paragraph 1(2) of Schedule 36.

(**b**) Benefit crystallisation event is defined in section 216 of the Finance Act 2004.

(2) The requirement to preserve the certificate ceases where the certificate has been revoked.

[Name]
[Name]
Date Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 214 to 226 of the Finance Act 2004 (c. 12) provide for the application of the lifetime allowance charge. Section [XX] of the Finance Act 2013 (c. [XX]) has reduced the level of the lifetime allowance, which applies to determine whether the lifetime allowance charge is applicable, to £[XX] from tax year 2014-15 onwards.

Schedule [XX] to the Finance Act 2013 introduces transitional provisions which provide protection from the lifetime allowance charge for those who may already have built up pension savings in the expectation that the lifetime allowance would remain at the current level of £1,500,000. These Regulations provide how individuals may give notice to Her Majesty's Revenue and Customs ("HMRC") that they intend to rely on that transitional protection and make provision for supplementary and incidental matters.

Regulations 3 and 4 make provision about giving that notice. If HMRC accept a notice they must issue a certificate (regulation 5). Regulation 6 sets out the circumstances in which HMRC may refuse to accept a notice and regulation 7 sets out how the individual may appeal against that decision.

Regulations 8 and 9 require that individuals inform HMRC if incorrect information has been given in a notice, or an event occurs which means that the individual is no longer entitled to rely upon the transitional protection.

Regulations 10 and 11 set out the circumstances in which, following acceptance of a notice, HMRC may replace or revoke a certificate. Regulation 12 sets out how the individual may appeal against replacement or revocation. Regulation 13 deals with the preservation of documents.

A Tax Information Impact Note was published on 11 December 2012 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.

1 Exemption from income tax of contributions to pension schemes

(1) In Chapter 9 of Part 4 of ITEPA 2003 (exemptions from income tax for pension provision), in section 308 (exemption of contributions to registered pension scheme), at the end insert "in respect of the employee".

(2) The amendment made by this section has effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

EXEMPTION FROM INCOME TAX OF CONTRIBUTIONS TO PENSION SCHEMES

SUMMARY

1. This clause restricts an employee's exemption from income tax on pension contributions made by their employer to a registered pension scheme. The restriction ensures that the exemption will only apply to such contributions made by an employer to their employee's arrangements under a registered pension scheme.

DETAILS OF THE CLAUSE

2. Section 1 of the clause inserts the words "in respect of the employee" at the end of Section 308 of Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"). This means that an employee's exemption from income tax on an employer's contribution to a registered pension scheme will not apply where the contribution is made in respect of someone other than the employee.

3. Section 2 provides that the restriction has effect for the tax year 2013/14 and for subsequent tax years.

BACKGROUND NOTE

4. Employees are exempt from income tax on contributions paid into registered pension schemes by their employers. This income tax exemption is provided by Section 308 ITEPA 2003.

5. Where employer pension contributions are exempt from income tax in this way, they are also excluded from earnings for the purposes of earnings-related National Insurance contributions (NICs).

6. The amount of pension contributions that benefit from tax relief is limited to an annual allowance. This allowance was reduced from £255,000 to £50,000 from the tax year 2011-12 and to £40,000 for the tax year 2014-15 onwards.

7. In response to the introduction of the lower limit in 2011-12, certain arrangements (referred to as Family Pension Plans) have been developed to side step the new rules for employees who would

otherwise face an income tax charge on contributions in excess of the £50,000 limit.

8. Under these arrangements, an employer pays pension contributions into a registered pension scheme of an employee’s family member as part of the employee's flexible remuneration package. The effect is that the employee is still exempt from income tax and NICs on the employer contributions into the family member’s pension scheme. Furthermore, these contributions do not count towards the £50,000 limit for the employee, avoiding the income tax that would otherwise be due on the employee for contributions in excess of the limit.

9. This clause ensures that employees will not enjoy exemption from income tax and NICs on such contributions into the family member’s pension scheme, to protect against attempts to sidestep the Annual Allowance limit.

10. If you have any questions about this change, or comments on the legislation, please contact Jon Prothero on 020 7147 2785 (email: jon.prothero@hmrc.gsi.gov.uk).

1 Abolition of contracting out of state second pension: consequential amendments

(1) FA 2004 is amended as follows.

(2) In section 188 (relief for contributions) in subsection (3) (contributions excluded from relief) omit paragraph (c) and the word "and" immediately preceding that paragraph.

(3) In that section omit subsection (6) (which treats certain amounts recovered by individual's employer as contributions paid by individual).

(4) Omit section 190(5) (certain reliefs not to count towards annual limit for relief).

(5) Omit section 196(5) (references to contributions to include references to minimum payments when determining relief for employers).

(6) Omit section 202 (minimum contributions under pensions legislation).

(7) Omit section 233(2) (references to contributions not to include references to minimum payments when determining pension input amount).

(8) In paragraph 5 of Schedule 29 (short service refund lump sum) after sub-paragraph (2) insert—

"(2A) In sub-paragraph (2) the reference to the member's contributions includes—

(a) any amount paid by the Commissioners for Her Majesty's Revenue and Customs under section 42A(3) of the Pension Schemes Act 1993 or section 38A(3) of the Pension Schemes (Northern Ireland) Act 1993 (rebates), and

(b) any amount recovered by the member's employer under regulations falling within sub-paragraph (2B) in respect of minimum payments made to the scheme in relation to any period before 6 April 2012.

(2B) Those regulations are regulations which were made under—

(a) section 8(3) of the Pension Schemes Act 1993 (recovery of minimum payments), or

(b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993 (corresponding provision for Northern Ireland)."

(9) Omit paragraph 14(2) of Schedule 36 (which excludes minimum payments from being relevant contributions for the purposes of enhanced protection from lifetime allowance charge).

(10) Subsections (1), (3) to (5) and (7) to (9) come into force on 6 April 2013.

(11) Subsection (2) comes into force on 6 April 2015.

(12) Subsection (6) comes into force on 6 April 2016, except that the repeal of section 202(5) of FA 2004 comes into force on such day as the Treasury may appoint by order made by statutory instrument.

EXPLANATORY NOTE

ABOLITION OF CONTRACTING OUT OF STATE SECOND PENSION: CONSEQUENTIAL AMENDMENTS

SUMMARY

1. This clause repeals the specified provisions of the pensions tax legislation to reflect that contracting out of the state second pension through a defined contribution (money purchase) pension scheme was abolished from 6 April 2012. Following on from one of the repeals, the clause also sets out an amendment to a further provision of the pensions tax legislation.

DETAILS OF THE CLAUSE

2. Subsection (2) repeals subsection 188(3)(c) Finance Act 2004 (FA 2004) which provides that age-related rebates and minimum contributions paid to pension schemes by Her Majesty's Revenue & Customs (HMRC) are not eligible for tax relief as member contributions. As no such payments will be made by HMRC to pension schemes after 6 April 2015, this provision is repealed from that date.

3. Subsection (3) repeals subsection 188(6) FA 2004 which provides that for the purposes of sections 188 and 191 to 194 FA 2004, any part of the employer's minimum payments that is recovered from the employee is treated as a member contribution and is relievable. Because no employers' minimum payments have been paid since before 6 April 2012, no amounts will have been recovered from the employee, and this provision is no longer needed and is repealed from 6 April 2013.

4. Subsection (4) repeals subsection 190(5) FA 2004 which provides that the part of the employer's minimum payments that is recovered from the employee is not to be included when calculating whether the individual has exceeded the annual limit for relief which is set out in the remainder of that section. Because no employers' minimum payments have been paid since before 6 April 2012, no amounts will have been recovered from the employee, and this provision is no longer needed and is repealed from 6 April 2013.

5. Subsection (5) repeals subsection 196(5) FA 2004 which provides that employers' minimum payments (other than any part recovered from the employee) are included as employer contributions for the purposes of that section, which covers tax relief for employer

contributions. Because no employer will have paid a minimum payment since before 6 April 2012, this provision is no longer needed and is repealed from 6 April 2013.

6. Subsection (6) repeals section 202 FA 2004 which provides that HMRC will gross-up the minimum contributions it pays in respect of an individual who is contracted out of the state second pension through a personal pension scheme and will pay a specified amount into the National Insurance Fund. The amount payable to that fund is the difference between the grossed up amount of the minimum contributions to the personal pension scheme and the amount of the minimum contributions. HMRC will no longer pay minimum contributions to pension schemes from 6 April 2015. To be able to deal with payments that are made on or just before 5 April 2015, the provision for HMRC to make payments to the National Insurance Fund under section 202(6) FA 2004 (and those in sections 202(1) to (4) which are used to calculate those payments) is extended to 6 April 2016. It will however not be needed from that date. Whilst section 202 FA 2004 is largely repealed from 6 April 2016, HMRC will continue to need the ability to recover overpaid minimum contributions that could be made sometime after 5 April 2016. Subsection 202(5) engages the powers of recovery contained in section 30 of the Taxes Management Act 1970, by way of regulation SI2005/3450. As a result, section 202(5) is to be repealed by Treasury Order.

7. Subsection (7) repeals subsection 233(2) FA 2004 which provides that minimum payments including any amounts recovered from the employee are not included when calculating the individual's pension input amount for the purposes of the annual limit on pension contributions tax relief. As no minimum payments have been made since before 6 April 2012, this provision is no longer needed and is repealed from 6 April 2013.

8. Subsection (8) inserts new subparagraphs (2A) and (2B) into paragraph 5 of Schedule 29 FA 2004 (short service refund lump sum). Under the short service refund rules, where a lump sum which exceeds the total of the member's contributions to the scheme is paid the excess is an unauthorised payment on which the member and the scheme administrator are liable for tax charges. The wording inserted into paragraph 5 Schedule 29 by this subsection ensures that age-related rebates of National Insurance contributions paid to schemes by HMRC and amounts of minimum payments recovered by the employer from the member prior to abolition continue to qualify as member contributions. As sections 188(3)(c) and (6) are repealed (see paragraphs 2 and 3 above), these amendments are necessary to clarify the position in relation to the limit on a short service refund lump sum paid after 6 April 2013 where the relevant contributions

were paid before 6 April 2012. These provisions take effect from 6 April 2013.

9. Subsection (9) repeals paragraph 14(2) of Schedule 36 FA 2004 which provides that minimum payments, including any amounts recovered from the employee, do not count as relevant benefit accrual under paragraph 13(a) of Schedule 36. Relevant benefit accrual results in loss of enhanced protection. Because no minimum payments will have been made since before 6 April 2012, this provision is no longer needed and is repealed from 6 April 2013.

BACKGROUND

10. Pensions Act 2007 and Pensions Act 2008 amended the legislation governing contracting out of the state second pension to bring into effect the abolition of contracting out through a defined contribution (money purchase) pension scheme from 6 April 2012.

11. The pensions tax legislation, which is mainly contained in FA 2004, takes account of the fact that contracting out through a defined contribution pension scheme is possible.

12. The pensions tax legislation is now being amended to remove the provisions which are no longer needed and make any further consequential changes. This keeps the tax legislation up to date and removes any possible cause for misunderstanding or confusion.

13. The pensions tax provisions which relate to contracting out through a defined benefit (salary related) scheme are not affected by this clause.

14. Some of the provisions take effect from 6 April 2013, as explained above. Other provisions will continue to have effect until 5 April 2015 or 5 April 2016. This ensures a sufficient period of time to deal with adjustments to an individual's tax relief where these necessarily have to be made at a later date. From 6 April 2015, any outstanding adjusting payments will be made to the individual rather than the scheme. By 6 April 2016, HMRC will have made all necessary payments to the National Insurance Fund in respect of minimum contribution payments that are made on or soon before 5 April 2015. The relevant pensions tax provisions will therefore be switched off accordingly.

15. If you have any questions about this change, or comments on the legislation, please contact Sue Marsh on 03000 564182 (email: susan.marsh@hmrc.gsi.gov.uk).

1 Bridging pensions

(1) The FA 2004 is amended as follows.

(2) In paragraph 2 of Schedule 28 (pension rules: meaning of scheme pension)—

(a) in sub-paragraph (4)(c)—

(i) for the words from "not earlier" to "65" substitute "during the permitted period", and

(ii) after "which" insert "together with any previous reductions under this paragraph (c)", and

(b) after sub-paragraph (4A) insert—

"(4B) In sub-paragraph (4)(c) "the permitted period" means the period beginning with the day on which the member reaches the age of 60 and ending with the day on which the member reaches the age of 65 or, if later, reaches pensionable age."

(3) In paragraph 1 of Schedule 29 (pension commencement lump sums), in sub-paragraph (4)(a), omit the words from "at a time" to "65".

(4) In consequence of subsection (3), paragraph 21 of Schedule 23 to the FA 2006 is repealed.

(5) The amendments made by this section have effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

BRIDGING PENSIONS

SUMMARY

1. The clause enables a registered pension scheme to continue to pay a bridging pension until a member's state pension age. Previously, a bridging pension had to be reduced by age 65.

DETAILS OF THE CLAUSE

2. Subsection (1) explains that the clause is amending the provisions of Finance Act (FA) 2004.

3. Subsection (2) amends paragraph 2 of Schedule 28 to FA 2004 to provide that the age at which a bridging pension must be reduced is 65 or, if later, state retirement age (referred to as "pensionable age", which is defined in section 279(1) of FA 2004). It also ensures that if multiple reductions take place, those reductions when aggregated must not exceed the maximum reduction allowed.

4. Subsection (3) amends paragraph 1 of Schedule 29 to FA 2004 to remove the reference to age 65 from the description of an excluded pension commencement lump sum. This reflects the amendments made by subsection (2) and means that bridging pensions which reduce after the age of 65 will not be excluded lump sums as a result and will not be subject to unauthorised payments tax charges.

5. Subsection (4) repeals paragraph 21 of Schedule 23 to FA 2006, which inserted the wording omitted by subsection (3).

6. Subsection (5) brings the clause into force for the tax year 2013-14 and subsequent tax years.

BACKGROUND NOTE

7. A pension from a registered pension scheme is not normally allowed to be reduced when in payment.

8. There are some exceptions to this rule, one of which is where a 'bridging pension' is being paid.

9. A 'bridging pension' is the term used to describe a pension that is higher at the outset and then reduced at the age at which the individual can claim for the state pension.

10. If a pension is reduced at any time other than when permitted under paragraph 2(4) Schedule 28 FA 2004, all future payments of that pension are unauthorised payments and subject to the unauthorised payments tax charges.

11. The existing legislation meant that the bridging pension had to be reduced by the age of 65. However, changes to the age at which state pension is paid meant that this reduction might occur before the member could receive their state pension.

12. The changes made by this clause will mean that pension schemes can continue to pay a bridging pension up to a member's state pension age without incurring unauthorised payments tax charges. The legislation will remain in line with the policy intention.

13. The Government announced at Budget 2012 that changes would be introduced with effect from 6 April 2013 to align tax rules with changes to state pension age being introduced by the Department for Work and Pensions.

14. If you have any questions about this change, or comments on the legislation, please contact Samantha Skill on 03000 564149 (email: samantha.skill@hmrc.gsi.gov.uk).

1 Overseas pension schemes: general

(1) In section 150(8) of FA 2004 (meaning of "recognised overseas pension scheme"), for the words from "which" to the end substitute "which satisfies any requirements prescribed for the purposes of this subsection by regulations made by the Commissioners for Her Majesty's Revenue and Customs."

(2) Section 169 of that Act (pension schemes: recognised transfers) is amended as follows.

(3) In subsection (2)(c), for "any prescribed information requirements imposed on the scheme manager" substitute "any requirements imposed under subsection (4)".

(4) For subsection (4) substitute—

"(4) Regulations may require the scheme manager of a QROPS or former QROPS to—

(a) give the Commissioners information of a prescribed description,

(b) give the Commissioners such evidence as they may require of a prescribed matter, and

(c) give a prescribed authority, in prescribed circumstances, information of a prescribed description.

(4A) Regulations under subsection (4) may make provision as to—

(a) the way and form in which information or evidence is to be given, and

(b) the times or intervals at which information or evidence is to be given.

(4B) The regulations may apply any provision of Part 7 of Schedule 36 to FA 2008 (penalties), with or without modifications, in relation to requirements imposed under the regulations on a former QROPS."

(5) In subsection (5)—

(a) for "the Inland Revenue has" substitute "the Commissioners have";

(b) for paragraph (a) (but not the "and" at the end of it) substitute—

"(a) any of the following conditions is met in relation to the scheme—

(i) there has been a failure to comply with a requirement imposed by regulations under subsection (4) and the failure is significant,

(ii) any information given pursuant to such a requirement is incorrect in a material respect,

(iii) any declaration given pursuant to such a requirement is false in a material respect,

(iv) there is no scheme manager,";

(c) in paragraph (b), for "the failure" substitute "that condition being met".

(6) For subsection (6) substitute—

"(6) A failure to comply with a requirement is significant if—

(a) it is a failure to give information or evidence that is (or may be) of significance, or

(b) there are reasonable grounds for believing that the failure prejudices (or might prejudice) the assessment or collection of tax by the Commissioners."

(7) After subsection (7) insert—

"(8) In subsections (4) to (6) and this subsection—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"prescribed" means prescribed by regulations;

"QROPS" means a qualifying recognised overseas pension scheme, and "former QROPS" means a scheme that has at any time been a QROPS;

"regulations" means regulations made by the Commissioners."

EXPLANATORY NOTE

OVERSEAS PENSION SCHEMES: GENERAL

SUMMARY

1. This clause makes changes to the provisions for qualifying recognised overseas pension schemes (QROPS) in Part 4 of Finance Act 2004. The changes enable HMRC to require overseas pension schemes to provide information which is necessary to ensure the proper operation of the legislation relating to QROPS. In addition there are some new rules about when a pension scheme may be excluded from being a QROPS.

DETAILS OF THE CLAUSE

2. Subsection 1 amends section 150 of Finance Act 2004 to clarify the power to make regulations setting out conditions that apply to a "recognised overseas pension scheme".

3. Subsection 4 substitutes a new section 169(4) of Finance Act 2004 and introduces new sections 169(4A) and (4B). These provisions contain powers enabling HMRC to make regulations setting out information requirements.

4. New subsection 4 enables HMRC to require additional information from a new or existing qualifying recognised overseas pension scheme (QROPS) and will also allow HMRC to obtain information from a pension scheme that has been a QROPS.

5. New subsection 4B provides a power to apply the penalties set out in Part 7 of Schedule 36 to FA 2008 to a failure by a former QROPS to comply with the information requirements mentioned in paragraph 4 of this note.

6. Subsection 5 substitutes a new section 169(5)(a) of Finance Act 2004 to set out the circumstances in which it can be appropriate for a pension scheme to be excluded from being a QROPS.

BACKGROUND

7. The UK allows pension savings that have received UK tax relief to be transferred free of UK tax to overseas pension schemes, providing they are within an individual's lifetime allowance.

8. Pension schemes established outside the UK must meet statutory requirements before they are able to receive these tax-free transfers. Pension schemes that meet these requirements are known as qualifying recognised overseas pension schemes (QROPS).

9. Changes were made to the QROPS regime by secondary legislation on 6 April 2012 and 23 May 2012.

10. In Budget 2012 the Chancellor announced changes to strengthen reporting requirements and powers of exclusion relating to QROPS to support the changes made in secondary legislation.

11. The changes brought about by the clause ensure, for example, that all payments made out of transferred UK pension savings can be required in regulations to be reported to HM Revenue and Customs even when the pension scheme is no longer a QROPS.

12. In addition to the type of information that is currently set out in regulations, the power can, for example, be used to provide that QROPS must provide, at intervals, confirmation that they continue to meet conditions set out in section 169 of Finance Act 2004.

13. The clause also provides for additional cases in which a QROPS may be excluded. These cases are where there is no scheme manager and where there are other particular types of omission to provide information..

14. If you have any questions about these changes or comments on the legislation, please contact Beverley Davies on 020 7147 2869 (email: pensions.policy@hmrc.gsi.gov.uk).

2 Overseas pension schemes: information and inspection powers

(1) Part 6 of Schedule 36 to FA 2008 (information and inspection powers: special cases) is amended as follows.

(2) In paragraph 34B (registered pension schemes etc)—

(a) in sub-paragraph (2), omit the "or" at the end of paragraph (b) and, at the end of paragraph (c) insert—

"(d) a QROPS or former QROPS, or

(e) an annuity purchased with sums or assets held for the purposes of a QROPS or former QROPS.";

(b) after sub-paragraph (4) insert—

"(4A) In relation to a notice to which this paragraph applies that refers only to information or documents relating to a matter within sub-paragraph (2)(d) or (e), paragraph 20 (old documents) has effect as if the reference to 6 years were to 10 years.";

(c) after sub-paragraph (7) insert—

"(7A) Where the notice relates to a matter within sub-paragraph (2)(d) or (e), the officer of Revenue and Customs who gives the notice must give a copy of the notice to the scheme manager in relation to the pension scheme.";

(d) in sub-paragraph (8), for "and (7)" substitute "to (7A)".

(3) In paragraph 34C (registered pension schemes etc: interpretation), insert in the appropriate places—

""QROPS" and "former QROPS" have the meanings given by 169(8) of FA 2004;";

""scheme manager", in relation to a pension scheme, has the meaning given by section 169(3) of FA 2004."

(4) In paragraphs 34B and 34C of Schedule 36 to FA 2008, references to a former QROPS include a scheme that ceased to be a QROPS before this Act was passed.

EXPLANATORY NOTE

OVERSEAS PENSION SCHEMES: INFORMATION AND INSPECTION POWERS

SUMMARY

1. This clause makes changes to the provisions for qualifying recognised overseas pension schemes (QROPS) and former QROPS in Schedule 36 to Finance Act 2008. The changes ensure that the information and inspection powers for these pension schemes are similar to those for UK pension matters.

DETAILS OF THE CLAUSE

2. Subsection 2 amends paragraph 34B of Schedule 36 to Finance Act 2008 to ensure that a notice requiring information or a document in connection with a QROPS or former QROPS may be made in the same way as it is for UK pension matters.

3. New sub-paragraph (4A) provides that a notice requiring old documents in relation to QROPS and former QROPS is extended to documents that originate up 10 years before the date of the notice.

4. Subsection 4 confirms that any change in the application of the information powers in paragraph 34B and 34C of Schedule 36 to Finance Act 2008 to former QROPS will affect all former QROPS, including those that ceased to be a QROPS before this paragraph is enacted.

BACKGROUND

5. The information and inspection powers set out in Schedule 36 to Finance Act 2008 apply both to pension schemes established in the UK and those established outside the UK.

6. UK pension schemes are a special case and particular rules apply when HMRC issues a notice to require information or documents from a third party or a person who is not known.

7. The change brought about by the clause ensures that the same rules in relation to inspection and requiring information apply for all pension matters, whether the pension scheme is registered in the UK or is a QROPS or former QROPS.

8. If you have any questions about these changes or comments on the legislation, please contact Beverley Davies on 020 7147 2869 (email: pensions.policy@hmrc.gsi.gov.uk).

1 Attribution of gains to members of non-resident companies

(1) TCGA 1992 is amended as follows.

(2) In subsection (4) of section 13 (members to whom rule for attributing gains to members of non-resident companies does not apply), for "one tenth" substitute "one quarter".

(3) In subsection (5) of that section (cases where rule for attributing gains to members of non-resident companies does not apply), after the "or" at the end of paragraph (b) insert—

"(ca) a chargeable gain accruing on the disposal of an asset used, and used only, for the purposes of economically significant activities carried on outside the United Kingdom by the company through a business establishment in a territory outside the United Kingdom, or

(cb) a chargeable gain accruing to the company on a disposal of an asset where it is shown that neither—

(i) the disposal of the asset by the company, nor

(ii) the acquisition or holding of the asset by the company,

formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was avoidance of liability to capital gains tax or corporation tax, or".

(4) After section 13 insert—

"13A Section 13(5): interpretation

(1) For the purposes of section 13(5)(b) a disposal of an asset is to be regarded as a disposal of an asset used for the purposes of a trade carried on wholly outside the United Kingdom by a company if—

(a) the asset is accommodation, or an interest or right in accommodation, which is situated outside the United Kingdom, and

(b) the accommodation has for each relevant period been furnished holiday accommodation of which a person has made a commercial letting.

(2) For the purposes of subsection (1)(b) each of the following is "a relevant period"—

(a) the period of 12 months ending with the date of the disposal and each of the two preceding periods of 12 months, or

(b) if the company has been the beneficial owner of the accommodation (or interest or right) for a period longer than 36 months, the period of 12 months ending with the date of the disposal and each of the preceding periods of 12 months throughout which the company has been the beneficial owner of the accommodation (or interest or right).

(3) The reference in subsection (1)(b) to the commercial letting of furnished holiday accommodation is to be read in accordance with Chapter 6 of Part 4 of CTA 2009, but—

(a) as if sections 266, 268 and 268A were omitted, and

(b) as if, in section 267(1), the reference to an accounting period were a reference to a relevant period as defined by subsection (2) above.

(4) For the purposes of section 13(5)(ca) activities carried on by a company through a business establishment are “economically significant activities” if they are activities which consist of the provision by the company of goods or services to others on a commercial basis and involve—

(a) the use of staff in numbers, and with competence and authority,

(b) the use of premises and equipment, and

(c) the addition of economic value, by the company, to those to whom the goods or services are provided,

commensurate with the size and nature of those activities.

(5) In subsection (4) “staff” means employees, agents or contractors of the company.

(6) For the purposes of section 13(5)(ca) “business establishment” means a permanent establishment as defined by sections 1141 to 1144 of CTA 2010.”

(5) The amendments made by this section have effect in relation to disposals made on or after 6 April 2012.

(6) But, in the case of a disposal made on or after that date but before 6 April 2013, a person to whom a part of a chargeable gain or allowable loss would (but for the amendments made by this section) have accrued on the disposal may make an election in writing for section 13 of TCGA 1992 to apply in relation to the disposal without those amendments.

(7) An election under subsection (6) in respect of a disposal must be made—

(a) in the case of a person within the charge to capital gains tax, within 4 years from the end of the tax year in which the disposal was made, and

(b) in the case of a person within the charge to corporation tax, within 4 years from the end of the accounting period in which the disposal was made.

EXPLANATORY NOTE

ATTRIBUTION OF GAINS TO MEMBERS OF NON-RESIDENT COMPANIES

SUMMARY

1. The clause modifies section 13 of the Taxation of Chargeable Gains Act (TCGA) 1992, an anti-avoidance provision dealing with assets held through non UK-resident closely controlled companies. It aims to secure compatibility with European Union law. It does this by introducing an exclusion from the scope of charge gains arising from assets used in genuine business activities overseas, clarifying the treatment of furnished holiday accommodation for the purposes of the provision, and raises the threshold at which the charge applies to unconnected minority participators.

DETAILS OF THE CLAUSE

2. Subsection (1) is introductory.

3. Subsection (2) amends section 13(4) of TCGA 1992 and raises the maximum proportion of gains which are not required to be apportioned to a participator (and persons connected with him) from one tenth to one quarter.

4. Subsection (3) inserts two new paragraphs (ca) and (cb) into section 13(5) of the TCGA 1992.

5. New paragraph (ca) excludes from the charge gains on assets used for the purposes of "economically significant activities" outside the UK by a company or business establishment.

6. New paragraph (cb) introduces an exemption for gains where neither the acquisition nor the disposal of the asset formed part of arrangements put in place for the purpose of avoiding tax.

7. Subsection (4) introduces a new section 13A into TCGA 1992.

8. New section 13A(1) clarifies the meaning of assets wholly outside the United Kingdom used for the purposes of furnished letting in relation to section 13(5)(b).

9. New section 13A(2) defines the meaning of "relevant period" for the purposes of assets used for the purposes of furnished lettings.

10. New section 13A(3) applies the rules governing furnished holiday lettings set out in Chapter 6 of Part 4 of the Corporation Tax Act 2009 with certain modifications.

11. New section 13A(4) defines the term “economically significant activities” for the purposes of section 13(5)(ca) and (cb).

12. New section 13A(5) defines “staff” for the purposes of the economically significant activities test.

13. New section 13A(6) provides a definition of the term “business establishment” used in section 13(5)(ca).

14. Subsection (5) provides that the amendments made by the clause have effect for disposals made on or after 6 April 2012.

15. Subsections (6) and (7) permit an election to be made to disapply the amendments for disposals made between 6 April 2012 and 5 April 2013.

BACKGROUND

16. Section 13 TCGA 1992 is designed to prevent avoidance of tax on capital gains by sheltering them in an overseas closely controlled company. These are gains on which UK resident individuals or companies would otherwise be taxed had they disposed of the asset and realised the gain directly.

17. An infraction notice (Reasoned Opinion) was issued to the United Kingdom by the European Commission on 16 February 2011. The Commission argued that section 13 breaches the freedoms of establishment and movement of capital established by Articles 49 and 63 of the Treaty on the Functioning of the European Union.

18. These changes aim to ensure that the legislation is compatible with the Treaty while maintaining effective protection against tax avoidance.

19. If you have any questions about this change, or comments on the legislation, please contact Adrian Cooper on 020 7147 2347 (email: adrian.cooper@hmrc.gsi.gov.uk).

1 Transfer of assets abroad

Schedule 1 amends Chapter 2 of Part 13 of ITA 2007 (tax avoidance: transfer of assets abroad).

SCHEDULES

SCHEDULE 1

Section 1

TRANSFER OF ASSETS ABROAD

PART 1

INTRODUCTION

1 Chapter 2 of Part 13 of ITA 2007 (tax avoidance: transfer of assets abroad) is amended as follows.

PART 2

NEW EXEMPTION FOR GENUINE TRANSACTIONS ETC

2 In section 718 (meaning of "person abroad" etc) in subsection (2) omit paragraph (a) (UK resident body corporate incorporated outside UK treated as resident outside UK).

3 In section 720 (charge to tax on income treated as arising under section 721) in subsection (7)—
  (a) for "742" substitute "742A", and
  (b) after "transaction" insert ", etc".

4 In section 727 (charge to tax on income treated as arising under section 728) in subsection (5)—
  (a) for "742" substitute "742A", and
  (b) after "transaction" insert ", etc".

5 In section 731 (charge to tax on income treated as arising under section 732) in subsection (4)—
  (a) for "742" substitute "742A", and
  (b) after "transaction" insert ", etc".

6 (1) Section 736 (exemptions: introduction) is amended as follows.

(2) In subsection (1) for "742" substitute "742A".

(3) After subsection (2) insert—

"(2A) The exemption given by section 742A applies only in the case of a relevant transaction effected on or after 6 April 2012."

7 After section 742 insert—

"742A Post-5 April 2012 transactions: exemption for genuine transactions

(1) Subsection (2) applies for the purpose of determining the liability of an individual to tax under this Chapter by reference to a relevant transaction if—
  (a) the transaction is effected on or after 6 April 2012, and
  (b) conditions A and B are met.

(2) Income is to be left out of account so far as the individual satisfies an officer of Revenue and Customs that it is attributable to the transaction.

(3) Condition A is that—
  (a) were, viewed objectively, the transaction to be considered to be a genuine transaction having regard to any arrangements under which it is effected and any other relevant circumstances, and
  (b) were the individual to be liable to tax under this Chapter by reference to the transaction,

the individual's liability to tax would, in contravention of Title II or IV of the Treaty on the Functioning of the European Union, constitute an unjustified and disproportionate restriction on a freedom protected under that Title.

(4) Condition B is that the individual satisfies an officer of Revenue and Customs that, viewed objectively, the transaction must be considered to be a genuine transaction having regard to any arrangements under which it is effected and any other relevant circumstances.

(5) Without prejudice to the generality of subsection (3)(a) or (4), in order for the transaction to be considered to be a genuine transaction the transaction must not—
  (a) be on terms other than those that would have been made between persons not connected with each other dealing at arm's length, or
  (b) be a transaction that would not have been entered into between such persons so dealing,

having regard to any arrangements under which the transaction is effected and any other relevant circumstances.

(6) Subsection (7) applies if any asset or income falling within subsection (11) is used for the purposes of, or is received in the course of, activities carried on in a territory outside the United Kingdom by a person ("the relevant person") through a business establishment which the relevant person has in that territory.

(7) Without prejudice to the generality of subsection (3)(a) or (4), in order for the transaction to be considered to be a genuine transaction the activities mentioned in subsection (6) must consist of the provision by the relevant person of goods or services to others on a commercial basis and involve—
  (a) the use of staff in numbers, and with competence and authority,
  (b) the use of premises and equipment, and

(c) the addition of economic value, by the relevant person, to those to whom the goods or services are provided,

commensurate with the size and nature of those activities.

(8) In subsection (7)(a) "staff" means employees, agents or contractors of the relevant person.

(9) To determine if a person has a "business establishment" in a territory outside the United Kingdom, apply sections 1141, 1142(1) and 1143 of CTA 2010 as if in those provisions—

(a) references to a company were to a person, and

(b) references to a permanent establishment were to a business establishment.

(10) Subsection (5) does not apply if—

(a) the relevant transfer is made by an individual who makes it wholly—

(i) for personal reasons (and not commercial reasons), and

(ii) for the personal benefit (and not the commercial benefit) of other individuals, and

(b) no consideration is given (directly or indirectly) for the relevant transfer or otherwise for any benefit received by any individual mentioned in paragraph (a)(ii),

and all assets and income falling within subsection (11) are dealt with accordingly.

(11) The assets and income falling within this subsection are—

(a) any of the assets transferred by the relevant transfer;

(b) any assets directly or indirectly representing any of the assets transferred;

(c) any income arising from any assets within paragraph (a) or (b);

(d) any assets directly or indirectly representing the accumulations of income arising from any assets within paragraph (a) or (b).

(12) In subsections (10) and (11) references to the relevant transfer are to—

(a) if the transaction mentioned in subsection (1) is a relevant transfer, the transfer, or

(b) if the transaction so mentioned is an associated operation, the relevant transfer to which it relates."

8 In section 751 (the Tribunal's jurisdiction on appeals) after paragraph (d) insert—

"(da) section 742A (post-5 April 2012 transactions: exemption for genuine transactions),".

9 (1) The amendment made by paragraph 2 above has effect in relation to times on or after 6 April 2012.

(2) The amendments made by paragraphs 3 to 8 above have effect for the tax year 2012-13 and subsequent tax years.

PART 3

AMENDMENTS RELATING TO THE CHARGES UNDER SECTIONS 720 AND 727

Main provision

10 (1) Section 721 (individuals with power to enjoy income as a result of a relevant transaction) is amended as follows.

(2) In subsection (3) after "the income" insert "of the person abroad".

(3) After subsection (3) insert—

"(3A) The amount of the income treated as arising under subsection (1) is equal to the amount of the income of the person abroad (subject to sections 724 and 725).

(3B) Subsection (1) does not apply if—

(a) the individual is liable for income tax charged on the income of the person abroad by virtue of a charge not contained in this Chapter, and

(b) all income tax for which the individual is liable has been paid."

(4) In subsection (4) after "the income" insert "of the person abroad".

(5) Omit subsection (5)(a).

11 (1) Section 724 (special rules where benefit provided out of income of person abroad) is amended as follows.

(2) In subsection (2) after "on" insert "an amount equal to".

(3) In subsection (3)—

(a) for "on" substitute "by reference to", and

(b) after "previous tax year" insert "under this Chapter".

12 (1) Section 725 (reduction in amount charged where controlled foreign company involved) is amended as follows.

(2) In subsection (1), as substituted by paragraph 22 of Schedule 20 to FA 2012, for paragraph (b) and the "and" before it substitute—

"(b) an amount of income is treated as arising to an individual under section 721 for a tax year, and

(c) the income mentioned in section 721(2) is or includes a sum forming part of the CFC's chargeable profits for that accounting period."

(3) After subsection (2) insert—

"(2A) In a case in which section 724 applies, the reference to S in the formula in subsection (2) is to be read as a reference to X% of S.

(2B) "X%" is determined as follows—

$$100\% \times \frac{A}{I}$$

where—

A is the amount on which the individual is liable as determined under section 724(2), and

I is the amount of the income mentioned in section 721(2)."

(4) In relation to cases in which the amendments made by paragraph 22 of Schedule 20 to FA 2012 are to be ignored in accordance with paragraph 50(9) of that Schedule, the amendment made by sub-paragraph (5) below has effect instead of the amendment made by sub-paragraph (2) above.

(5) In subsection (1) for paragraph (c) and the "and" before it substitute—

"(c) an amount of income is treated as arising to an individual under section 721 for a tax year, and

(d) the income mentioned in section 721(2) is or includes a sum forming part of the controlled foreign company's chargeable profits for that accounting period."

13 In section 726 (non-UK domiciled individuals to whom remittance basis applies) in subsection (2) for "the extent" substitute "the corresponding extent".

14 (1) Section 728 (individuals receiving capital sums as a result of a relevant transaction) is amended as follows.

(2) After subsection (1) insert—

"(1A) The amount of the income treated as arising under subsection (1) is equal to the amount of the income of the person abroad (subject to subsection (2))."

(3) In subsection (2) for the words from "it applies" to the end substitute "if—

(a) in subsection (1) of that section—

(i) the reference to section 721 were a reference to this section, and

(ii) the reference to section 721(2) were a reference to subsection (1)(a) of this section, and

(b) subsections (2A) and (2B) of that section were omitted."

(4) After subsection (2) insert—

"(2A) Subsection (1) does not apply if—

(a) the individual is liable for income tax charged on the income of the person abroad by virtue of a charge not contained in this Chapter, and

(b) all income tax for which the individual is liable has been paid."

(5) Omit subsection (3)(a).

15 In section 730 (non-UK domiciled individuals to whom remittance basis applies) in subsection (2) for "the extent" substitute "the corresponding extent".

16 (1) Section 743 (no duplication of charges) is amended as follows.

(2) After subsection (2) insert—

"(2A) Subsection (2B) applies if—

(a) in the case of an individual, an amount of income is taken into account in charging income tax under section 720 or 727, and

(b) the individual subsequently receives that income.

(2B) The income received is treated as not being the individual's income for income tax purposes."

(3) In subsection (3) for "subsections (1) and (2)" substitute "this section".

(4) Omit subsection (4).

17 (1) Section 744 (meaning of taking income into account in charging income tax for section 743) is amended as follows.

(2) In subsection (1) for "743(1) and (2)" substitute "743".

(3) In subsection (2)—

(a) in paragraph (a) omit "or value of the benefit", and

(b) in paragraph (b) for "income charged" substitute "the income mentioned in section 721(2)".

(4) In subsection (3) for "that income" substitute "the income mentioned in section 728(1)(a)".

18 (1) Section 745 (rates of tax applicable to income charged under sections 720 and 727 etc) is amended as follows.

(2) In subsection (1) for "so far as it" substitute "if (and to the corresponding extent that) the income mentioned in section 721(2) or 728(1)(a)".

(3) For subsections (3) and (4) substitute—

"(3) Subsection (4) applies to income treated as arising to an individual under section 721 or 728 so far as subsection (1) does not apply to it.

(4) The charge to income tax under section 720 or 727 operates by treating the income as if it were income within section 19(2) (meaning of "dividend income") if the income mentioned in section 721(2) or 728(1)(a) would be dividend income were it the income of the individual."

19 In section 746 (deductions and reliefs where individual charged under section 720 or 727) in subsection (2)—

(a) after "if" insert "the amount by reference to which", and

(b) after "728" insert "is determined".

Commencement and transitional provision

20 (1) The amendments made by this Part of this Schedule have effect for the tax year 2013-14 and subsequent tax years.

(2) They have effect in relation to relevant transfers occurring before 6 April 2013 as well as relevant transfers occurring on or after that date.

21 (1) Sections 721(3B) and 728(2A) of ITA 2007 (as inserted by paragraphs 10(3) and 14(4) above) have effect only if the income of the person abroad arises to that person on or after 6 April 2013.

(2) The amendments made by paragraphs 10(5) and 14(5) above have no effect in relation to income arising to a person abroad before 6 April 2013.

PART 4

NEW BASIS FOR DETERMINING INCOME UNDER SECTION 732

Main provision

22 For sections 732 to 735A substitute—

"732 Non-transferors receiving a benefit as a result of relevant transactions

(1) This section applies if a relevant transfer occurs.

(2) Income is treated as arising to an individual in a tax year ("the relevant tax year") for income tax purposes if—
(a) in the relevant tax year or any earlier tax year, the individual receives a relevant benefit, and
(b) all or part of the relevant benefit is matched (under section 733 as it applies for the relevant tax year) with the relevant income amount for the relevant tax year or any earlier tax year.

(3) The amount of the income treated as arising is equal to—
(a) the amount or value of the relevant benefit, or
(b) if only part of the relevant benefit is matched, the amount or value of that part.

(4) A benefit received by an individual is "relevant" if—
(a) the individual is ordinarily UK resident when the benefit is received,
(b) the benefit is provided out of assets which are available for the purpose as a result of—
(i) the relevant transfer, or
(ii) one or more associated operations,
(c) the individual is not liable to income tax under section 720 or 727 by reference to the relevant transfer and would not be so liable if the effect of sections 726 and 730 were ignored, and
(d) the individual is not liable to income tax on the amount or value of the benefit (apart from section 731).

(5) The "relevant income amount" for a tax year is the total amount of income arising in the year to persons abroad which, as a result of the relevant transfer or associated operations, can be used directly or indirectly for providing benefits to individuals.

(6) Income which arises to a person abroad is to be left out of account for the purposes of subsection (5) if it is required to be left out of account because of section 743(1) and (2).

(7) Income which arises to a person abroad is also to be left out of account for the purposes of subsection (5) if—
(a) an individual to whom the income can be used for providing benefits is liable for income tax charged on the income by virtue of a charge not contained in this Chapter, and
(b) all income tax for which the individual is liable has been paid.

733 Matching relevant benefits with relevant income amounts

(1) Take the following steps in order to match relevant benefits with relevant income amounts for the purposes of section 732(2).

Step 1
Find the relevant income amount for the relevant tax year.

Step 2
Find the total amount of relevant benefits received by individuals in the relevant tax year.

Step 3
The relevant income amount for the relevant tax year is matched with—

(a) if the total amount of the relevant benefits received in the relevant tax year does not exceed the relevant income amount, each relevant benefit so received, and

(b) otherwise, the relevant proportion of each of those relevant benefits.

"The relevant proportion" is the relevant income amount for the relevant tax year divided by the total amount of the relevant benefits received in the relevant tax year.

Step 4
If paragraph (a) of Step 3 applies—

(a) reduce the relevant income amount for the relevant tax year by the total amount of the relevant benefits referred to there, and

(b) reduce the amount of those relevant benefits to nil.

If paragraph (b) of Step 3 applies—

(a) reduce the relevant income amount for the relevant tax year to nil, and

(b) reduce the amount of each of the relevant benefits referred to there by the relevant proportion of that relevant benefit.

Step 5
Start again at Step 1 (unless subsection (2) applies).

If the relevant income amount for the relevant tax year (as reduced at Step 4) is not nil, read references to relevant benefits received in the relevant tax year as references to relevant benefits received in the latest tax year which—

(a) is before the last tax year for which Steps 1 to 4 have been taken, and

(b) is a tax year in which relevant benefits (the amounts of which have not been reduced to nil) were received by individuals.

If the relevant income amount for the relevant tax year (as so reduced) is nil, read references to the relevant income amount for the relevant tax year as the relevant income amount for the latest tax year—

(a) which is before the last tax year for which Steps 1 to 4 have been taken, and

(b) for which the relevant income amount is not nil.

(2) This subsection applies if—

(a) all relevant benefits received by individuals in the relevant tax year and earlier tax years have been reduced to nil, or

(b) the relevant income amounts for the relevant tax year and all earlier tax years have all been reduced to nil.

(3) The effect of any reduction under Step 4 in subsection (1) is to be taken into account in any subsequent application of this section.

734 Reduction in relevant income amount: previous capital gains charge

(1) This section applies if—

(a) a relevant benefit is received by an individual in the relevant tax year,

(b) for that tax year the whole or a part of the relevant benefit is a capital payment to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 applies (chargeable gains: gains attributed to beneficiaries),

(c) it is such a payment because it is not matched with the relevant income amount for the relevant tax year or any earlier tax year, and

(d) because of that capital payment, chargeable gains are treated as accruing to the individual in the relevant tax year or a subsequent tax year under any of the provisions referred to in paragraph (b).

(2) In applying section 732 (and section 733) for any tax year after the relevant tax year, the relevant benefit is to be reduced by the amount of those gains.

(3) References in this section to chargeable gains treated as accruing to an individual include offshore income gains treated as arising to the individual (see regulations 20 and 22 to 24 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)).

734A Further provision about matching

(1) This section applies where the relevant benefits received in a tax year are to be matched with the relevant income amount for a tax year at Step 3 in section 733(1) as it applies for the relevant tax year.

(2) Take the following steps to determine how the relevant benefits are matched with the income included in the relevant income amount; and the reductions in the relevant benefits and the relevant income amount which are then to be made at Step 4 in section 733(1) are to be made accordingly.

Step 1

Determine which (if any) of the relevant benefits are benefits received by an individual to whom section 735 applies for the relevant tax year.

Such benefits are referred to below as “section 735 benefits”.

Benefits which are not section 735 benefits are referred to below as “non-section 735 benefits”.

If there are no section 735 benefits, go straight to Step 4.

Step 2

Match the section 735 benefits with UK income included in the relevant income amount.

For this purpose, if the total amount of the section 735 benefits exceeds the total amount of the UK income included in the relevant income amount, apportion the UK income between the section 735 benefits in proportion to their amounts.

If paragraph (b) of Step 3 in section 733(1) applies, references above and at Step 3 below to the section 735 benefits are to be read as references to the relevant proportion of each of the section 735 benefits.

Step 3

So far as the section 735 benefits are not matched at Step 2, match them with non-UK income included in the relevant income amount.

Step 4

Match the non-section 735 benefits with non-UK income included in the relevant income amount that is unmatched after Step 3.

For this purpose, if the total amount of the non-section 735 benefits exceeds the total amount of the unmatched non-UK income, apportion the unmatched non-UK income between the non-section 735 benefits in proportion to their amounts.

If paragraph (b) of Step 3 in section 733(1) applies, references above and at Step 5 below to the non-section 735 benefits are to be read as references to the relevant proportion of each of the non-section 735 benefits.

Step 5

So far as the non-section 735 benefits are not matched at Step 4, match them with UK income included in the relevant income amount that is unmatched after Step 2.

(3) In this section "UK income" means income which is not non-UK income.

(4) In this section and section 735 "non-UK income" means income which would be relevant foreign income of the person abroad to whom it arises were that person a UK resident individual.

735 Non-UK domiciled individuals to whom remittance basis applies

(1) This section applies to an individual for the relevant tax year if—

(a) section 809B, 809D or 809E (remittance basis) applies to the individual for the relevant tax year, and

(b) the individual is not domiciled in the United Kingdom in the relevant tax year.

(2) The following subsections apply if—

(a) income ("the deemed income") is treated under section 732 as arising to the individual in the relevant tax year by virtue of a relevant benefit ("the matched benefit") received by the individual in a tax year being matched with income ("the matched income") included in a relevant income amount for a tax year, and

(b) the matched income includes non-UK income.

(3) For the purposes of this section the deemed income is "foreign" to the corresponding extent that the matched income is non-UK income.

(4) Treat the foreign deemed income as relevant foreign income of the individual.

(5) For the purposes of Chapter A1 of Part 14 (remittance basis) the following are treated as deriving from the foreign deemed income—

(a) the matched benefit so far as it is matched with non-UK income, and

(b) the matched income so far as it is non-UK income."

23 (1) Section 740 (exemption: relevant transactions include both pre-5 December 2005 and post-4 December 2005 transactions) is amended as follows.

(2) In subsection (3) for "subsections (4) to (6)" substitute "subsection (4)".

(3) Omit subsections (5) to (7).

24 In section 744 (meaning of taking income into account in charging income tax for section 743) in subsection (4) for the words from "relevant income" to the end substitute "any income included in a relevant income amount for a tax year (see section 732(5))."

Commencement and transitional provision

25 (1) The amendments made by this Part of this Schedule have effect for the tax year 2013-14 and subsequent tax years.

(2) They have effect in relation to relevant transfers occurring before 6 April 2013 as well as relevant transfers occurring on or after that date.

26 (1) Paragraphs 27 and 28 below apply for the purposes of section 732 of ITA 2007 (as inserted by paragraph 22 above) in its application for a tax year in relation to a relevant transfer.

(2) In those paragraphs references to provisions of ITA 2007 are to be read ignoring the amendments made by this Part of this Schedule.

27 (1) Subject to what follows, benefits received by an individual are not "relevant" if received in a tax year which is earlier than the tax year 2013-14.

(2) An individual who has a pre-2013-14 untaxed benefits amount in relation to the relevant transfer is treated as having received a relevant benefit equal to that amount on 5 April 2013.

(3) Take the following steps to determine if an individual has a "pre-2013-14 untaxed benefits amount" in relation to the relevant transfer.

Step 1
Find the amount of the total untaxed benefits of the individual in relation to the relevant transfer for the tax year 2012-13 by taking Steps 1 and 2 in section 733(1) of ITA 2007.

Step 2
Deduct the following from the amount determined at step 1—

(a) the amount of any income treated as arising to the individual in relation to the relevant transfer under section 732 of ITA 2007 for the tax year 2012-13, and

(b) the amount of any chargeable gains relating to the relevant transfer treated as mentioned in section 734(1)(d) of ITA 2007 in the tax year 2012-13.

The result is the individual's pre-2013-14 untaxed benefits amount.

28 (1) Subject to what follows, a tax year (an "early tax year") which is earlier than the tax year 2013-14 is not to have a relevant income amount.

(2) The tax year 2012-13 is to have a relevant income amount which is to be determined by taking the following steps.

Step 1

Find all amounts of income—

(a) which arise in early tax years to persons abroad, and

(a) which, as a result of the relevant transfer or associated operations, can be used directly or indirectly for providing a benefit to an individual (a "relevant individual").

Step 2

For every relevant individual, find the available relevant income in relation to the relevant transfer for the tax year 2012-13 by taking Steps 3 to 5 in section 733(1) of ITA 2007.

Step 3

For each relevant individual, deduct from the available relevant income the amount of any income treated as arising to the individual in relation to the relevant transfer under section 732 of ITA 2007 for the tax year 2012-13.

Step 4

Add together all the results from step 3 to give the relevant income amount for the tax year 2012-13.

29 Section 732(7) of ITA 2007 (as inserted by paragraph 22 above) has effect only if the income arises to the person abroad on or after 6 April 2013.

EXPLANATORY NOTE

TRANSFER OF ASSETS ABROAD

SUMMARY

1. This Schedule makes changes to the "transfer of assets" anti-avoidance legislation in Chapter 2 of Part 13 of the Income Tax Act 2007 (ITA 2007). This legislation applies to UK resident individuals who have transferred assets so that income has become payable to an overseas person, while the UK resident individual continues to be able to enjoy the income of the person abroad, or receive a capital sum directly or indirectly from the income. The legislation also applies to UK resident individuals who have not made the transfer which results in the income arising to the person abroad , but who can benefit directly or indirectly from the income arising. The changes do two things. They provide a new exemption from charge for "genuine transactions" where European Union treaty freedoms are engaged, and they make a series of other changes to the transfer of assets provisions aimed at clarifying the way certain aspects operate.

DETAILS OF THE SCHEDULE

Part 1

2. Paragraph 1 is introductory and provides for Chapter 2 of Part 13 of ITA 2007 (the transfer of assets abroad provisions) to be amended.

Part 2

3. Paragraph 2 removes from the description of "person abroad" in section 718 ITA 2007 UK resident companies that are incorporated outside the UK as being resident outside the UK. Such companies will now be treated as resident in the UK for the purposes of this legislation.

4. Paragraphs 3, 4 and 5 make amendments to section 720 ITA 2007 consequential to the introduction of new section 742A.

5. Paragraph 6 makes further amendments, in this case to section 736 ITA 2007, consequential to the introduction of new section 742A. It also provides for new section 742A to exempt relevant transactions effected on or after 6 April 2012.

6. Paragraph 7 inserts new section 742A (a new exemption for genuine transactions) into Chapter 2 Part 13 of ITA 2007.

7. Subsections (1) and (2) of new section 742A provide that income is to be left out of account (that is, it will be exempt from charge) if an officer of HM Revenue & Customs (HMRC) is satisfied that it is attributable to a transaction that takes place on or after 6 April 2012 and which meets Conditions A and B.

8. Subsection (3) of new section 742A sets out Condition A. Condition A is met where, if the transaction in question were to be considered to be a genuine one (when viewed objectively, having regard to the circumstances under which it was effected and any other relevant circumstances), and gave rise to a transfer of assets charge, that liability would constitute an unjustified and disproportionate restriction on an EU treaty freedom.

9. Subsection (4) of new section 742A sets out Condition B. Condition B is met where an officer of HMRC is satisfied that the transaction in question should be considered genuine when viewed objectively, having regard to the circumstances under which it was effected and any other relevant circumstances.

10. Subsection (5) of new section 742A makes further provision, about what constitutes a "genuine" transaction for the purposes of meeting Conditions A and B. A transaction will not be considered genuine where it is made other than on arm's length terms. A transaction is not on arm's length terms if either:

    - it is on terms other than those that would have been made between persons not connected with each other dealing at arm's length, or

    - it would not have been entered into at all between persons not connected with each other dealing at arm's length.

    When considering whether a transaction is on arm's length terms regard must be had to all arrangements and relevant circumstances in connection with which the transaction is carried out.

11. Subsection (6), (7) and (12) of new section 742A make further provision about what constitutes a "genuine" transaction. These provisions concern the use of the assets transferred; any assets directly or indirectly representing those assets; any income arising from the assets transferred and any assets representing the accumulation of income arising in relation to the transaction being considered. That transaction may be a relevant transfer (as defined in section 716), or an associated operation (as defined in section 719). Where such assets are used for the purposes of, or received in

the course of, activities carried out in a territory outside the UK, by a person who has a business establishment in that territory, in order for the transaction to be considered to be a genuine transaction, those activities must consist of the provision, by the person who has the business establishment in the overseas territory, of goods or services to others on a commercial basis. The activities must involve the use of sufficient staff with the appropriate level of competence and authority to carry out them out. The activities must involve the use of premises and equipment commensurate with their size and nature. And the activities must involve the person who has the business establishment adding a commensurate level of economic value to the customers to whom the goods or services are provided.

12. Subsection (8) of new section 742A defines "staff" as employees, agents or contractors engaged by the person who has the overseas business establishment.

13. Subsection (9) of new section 742A explains how to determine whether a person has a "business establishment" in a territory, by analogy with the provisions at sections 1141, 1142(1) and 1143 of the Corporation Tax Act 2010 which define a permanent establishment of a company.

14. Subsection (10) of new Section 742A sets out circumstances where the arm's length test in subsection (5) does not apply to a transaction. This will be the case where:

- the relevant transfer is made by an individual wholly for personal (not commercial) reasons, for the personal benefit (not commercial) benefit of other individuals,
- no consideration is given (whether directly or indirectly) for the relevant transfer or otherwise for any benefit received by the other individuals, and
- all the assets and income described in subsection (11) in relation to the transaction being considered, are used only in this respect.

This may be the case where, for example, an individual settles assets into a non-resident trust for the benefit of his family.

15. Subsection (11) of new section 742A defines assets and income for the purposes of subsections (6) and (10) as:

(a) any of the assets transferred by the relevant transfer;

(b) any assets representing any of the assets transferred;

(c) any income arising from the assets within (a) or (b);

(d) any assets representing the accumulation of income arising from any assets within paragraph (a) or (b).

16. Paragraph 8 inserts a provision into section 751 of ITA 2007 to extend the jurisdiction of the tribunal on any appeal to cover the new section 742A.

17. Paragraph 9 sets out the dates from which the changes in Part 2 of the Schedule take effect. Sub-paragraph (1) provides for resident companies which are incorporated abroad to be treated as resident with effect from 6 April 2012. Subparagraph 2 provides for all other amendments set out in part 2 to take effect for the 2012-13 and subsequent tax years.

Part 3

18. Paragraph 10 sub-paragraph (1) provides that amendments will be made to section 721 (individuals with power to enjoy income as a result of a relevant transaction).

19. Paragraph 10 sub-paragraph (2) clarifies that the income that would be chargeable to income tax if it were the individual's in Condition B in section 721(3) is the income of the person abroad.

20. Paragraph 10 sub-paragraph (3) inserts new subsection (3A) and new subsection (3B) into section 721.

21. New subsection 721(3A) clarifies that the income that is treated as arising to the individual in subsection 721(1) is not the income that the individual abroad receives, but an amount that is equal to it. This is subject to the provisions in section 724 (where benefit is provided out of the income of a person abroad) and 725 (where the income that the individual can enjoy form part of the profits of a controlled foreign company).

22. New subsection 721(3B) provides that where the individual has been charged to tax on the deemed income in subsection 721(1) under provisions other than those in Chapter 2 of Part 13 ITA 2007 and that income tax liability on the deemed income has actually been paid then there is no further charge under section 721.

23. Paragraph 10 sub-paragraph (4) clarifies that the income referred to in subsection 721(4) is the income of the person abroad and achieves consistency of drafting in the section as a whole.

24. Paragraph 10 sub-paragraph (5) removes the provision which allows section 721 to apply even where income might be chargeable under other provisions. It is an amendment consistent with new subsection 721(3B).

25. Paragraph 11 sub-paragraphs (1) to (3) make amendments to section 724 in order to make it clear that where this section applies the tax charge under section 720 is on an amount which is equal to the amount or value of the benefit that the individual can enjoy rather than on the benefit itself.

26. Paragraph 12 amends section 725 which provides for a reduction in the amount charged under section 721 where there is a controlled foreign company involved.

27. Sub-paragraph (2) of paragraph 12 amends subsection 725(1), which is amended by paragraph 22 of Schedule 20 to FA 2012. Subsection 725(1) provides that section 725 applies where an amount of income is treated as arising to an individual under section 721 and the income arising to a person abroad includes an amount forming part of a controlled foreign company's (CFC) chargeable profit.

28. Sub-paragraph (3) of paragraph 12 inserts new subsections (2A) and (2B) into section 725. These provide a formula to determine the reduction in the amount of income to be treated as arising to an individual where (i) there is a CFC involved and the amount of income treated as arising to the individual is reduced under section 725 as a result and (ii) the special rules in section 724 apply to determine the amount on which an individual is chargeable rather than section 721.

29. Sub-paragraph (4) of paragraph 12 provides that where the amendments made to section 725(1) by paragraph 22 of Schedule 20 to FA 2012 are to be ignored then sub-paragraph (2) does not apply. Instead subsection 725(2) is amended by sub-paragraph (5).

30. Sub-paragraph (5) of paragraph 12 amends subsection 725(1) where paragraph 22 of Schedule 20 to FA 2012 is to be ignored. The amendments to subsection 725(1) are to provide clarification.

31. Paragraph 13 amends section 726 to reflect that the income treated as arising to an individual under section 721 is an amount equal to the income of the person abroad.

32. Paragraph 14 sub-paragraphs (1) to (5) makes amendments to section 728.

33. Sub-paragraph (2) inserts new subsection 728(1A) which provides that the amount of income treated as arising to an individual under this section is equal to the amount of the income of the person abroad (subject to subsection728(2)).

34. Sub-paragraph (3) makes consequential amendments to subsection 728(2) as a result of the amendments to section 725 which applies in

determining the amount of income treated as arising to an individual under section 728.

35. Sub-paragraph (4) inserts new subsection 728(2A) which_provides that where an individual has been charged to tax on income that is treated as arising to them (under subsection 728(1)) under provisions other than those in Chapter 2 of Part 13 ITA 2007 and that income tax liability on the deemed income has actually been paid then there is no further charge under section 728.

36. Sub-paragraph (5) deletes subsection 728(3)(a).

37. Paragraph 15 amends subsection 730(2) to reflect that the income treated as arising to an individual under section 728 is an amount equal to the income of the person abroad.

38. Paragraph 16 amends section 743.

39. Sub-paragraph (2) inserts new subsection 743(2A) and (2B) which provide that where an amount of income is taken into account in charging an individual to income tax under section 720 or 727 and that income is subsequently received by the individual then it will not be charged to tax again. Subsection 743(4) is consequently deleted.

40. Paragraph 17 makes consequential amendments to section 744 to reflect the various amendments in Part 3 of this schedule.

41. Paragraph 18 makes consequential amendments to section 745 to reflect that sections 721 and 728 have been amended to provide that the income treated as arising under these sections is an amount equal to the amount of the income of the person abroad.

42. Paragraph 19 makes consequential amendments to subsection 746(2) to reflect that sections 721 and 728 have been amended to provide that the income treated as arising under these sections is an amount equal to the amount of the income of the person abroad.

43. Paragraph 20 provides for the amendments made by paragraphs 10 to 19 to take effect for 2013-14 and subsequent tax years and to apply to all relevant transfers whether they occurred before, on or after 6th April 2013.

44. Paragraph 21 provides that the new sections 721(3B) and 728(2A) only take effect only where the income abroad arises to the person abroad after 6 April 2013.

Part 4

45. Paragraph 22 substitutes new section 732, new section 733, new section 734, new section 734A, and new section 735, for the current provisions in sections 732 to 735A inclusive.

46. Subsection (1) of new section 732 notes that this section only applies if a relevant transfer occurs.

47. New subsection (2) provides that income is treated as arising to an individual in a tax year (the 'relevant tax year') where the individual receives a relevant benefit in that tax year or any earlier tax year, and all or part of the relevant benefit is matched (under section 733) with the relevant income amount for the relevant tax year or any earlier tax year.

48. New subsection (3) provides that the amount of the income treated as arising is equal to the amount or value of the relevant benefit, or part of it should only part of the relevant benefit be matched.

49. New subsection (4) defines the conditions to be fulfilled for a benefit received by an individual to be considered 'relevant':

    (a) the individual must be ordinarily UK resident when the benefit is received (although from 2013-2014 the individual must be UK resident),

    (b) the benefit must be provided out of assets available for that purpose as a result of the relevant transfer or an associated operation.

    (c) the individual could not liable to tax under section 720 or 727 as a result of the relevant transfer, and

    (d) the individual is not otherwise liable to income tax on the benefit.

50. New subsection (5) defines 'relevant income amount' as the amount of income arising to persons abroad in a year which, as a result of the relevant transfer or associated operations, can be used to provide benefits to individuals.

51. New subsection (6) provides that any amount which is required to be left out of account because of section 743(1) and (2) should be excluded from the relevant income amount.

52. New subsection (7) provides that income which arises to a person abroad is to be left out of account for the purposes of subsection (5) if the individual who may be provided with benefits is liable for income tax on that income other than under Chapter 2 Part 13 ITA 2007, and has paid that tax in full.

53. Subsection (1) of new section 733 provides the five steps to be taken in order to match relevant benefits with relevant income amounts in order to ascertain the amount of income to be treated as arising to an individual in a tax year in accordance with subsection 732(2). It also defines 'relevant proportion'.

Step 1 is to find the relevant income amount for the tax year (as defined in section 732(5)).

Step 2 is to find the total relevant benefits received by all individuals in that tax year.

Step 3 is to match the relevant income for the year with the total relevant benefits for the year. If the amount of the relevant benefits is greater than the amount of the relevant income then the relevant income is matched with the relevant proportion of the each of the relevant benefits. The relevant proportion is calculated by dividing the relevant income amount for the tax year by the total amount of the relevant benefits received in that tax year.

Matched income is charged to tax under section 732(2).

Step 4 is carried out to establish the relevant benefits or relevant income that is not matched after step 3.

- If the relevant benefits in the year are not greater than the amount of the relevant income then (i) the amount of the relevant income is reduced by the amount of the relevant benefits matched and (ii) the amount of the relevant benefits is reduced to nil, or

- If the relevant benefits in the year are greater than the amount of the relevant income then (i) the amount of the relevant income is reduced to nil and (ii) the amount of each of the relevant benefits is reduced by the benefits that have been matched under step 3 (the relevant proportion).

Step 5 requires that if there is unmatched relevant income or unmatched relevant benefits for a tax year after steps1 to 4 are completed then those steps are to be repeated with reference to unmatched relevant income or unmatched relevant income from earlier years. The effect of this is that unmatched relevant income of the year is matched with unmatched relevant benefits of earlier year(s) or unmatched relevant benefits of the year are matched with unmatched relevant income of earlier year(s). The matching is done with relevant income or relevant benefits of a later year in priority to those of an earlier year. Once relevant benefits are matched with relevant income there is a charge to tax under section 732(2).

These steps are repeated unless subsection 733(2) applies.

54. New subsection (2) applies if either (a) all the relevant benefits received by individuals or (b) all the relevant income amounts in the relevant tax year and earlier years have been reduced to nil.

55. New subsection (3) notes that the effect of any reduction under Step 4 in subsection (1) is to taken into account in any subsequent applications of this section.

56. New section 734 provides for relief where a relevant benefit is received by an individual in a tax year and all or part of it has been treated as a chargeable gain in that or a subsequent tax year because section 87 or 89(2) TCGA 1992 or paragraph 8 of Schedule 4C to TCGA 1992 applies. New subsection 734(1) sets out when the section applies

57. New subsection (2) provides that in the application of section 732 and section 733 for any tax year after the relevant tax year, the relevant benefit is to be reduced by the amount of the gains.

58. New subsection (3) provides that the chargeable gains mentioned in this section include offshore income gains as defined by the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001).

59. New section 734A provides further matching rules to take into account the rules in section 735 for non-domiciled individuals to whom remittance basis applies.

60. Subsection (1) of new section 734A provides that the section applies when relevant benefits are to be matched with the relevant income amount for the tax year at step 3 in section 733(1).

61. New subsection (2) sets out the 5 steps which should be taken to determine how relevant benefits are matched with income included in the relevant income amount and how the reductions at Step 4 of section 733(1) are to be made.

Step 1 is to determine the 'section 735 benefits' which are benefits received by an individual to whom section 735 applies (broadly an individual to whom remittance basis applies) for the relevant year. Benefits which are not section 735 benefits are referred to as non-section 735 benefits in this section.

Step 2 is to match section 735 benefits with UK income (as defined in subsection 734(3)) in the relevant income amount, apportioning the UK income between the section 735 benefits if the total amount of the section 735 benefits exceeds the UK income.

If the relevant benefits in the relevant year exceeds the relevant income amount then the 'section 735 benefits' are the relevant proportions of each of the section 735 benefits.

Step 3 is to match any section 735 benefits unmatched after step 2 with non-UK income in the relevant income amount.

Step 4 is to match non-section 735 benefits with unmatched (after step 3) non-UK income in the relevant income amount that is unmatched after step 3, making necessary apportionments described if the amount of the non-section 735 benefits exceeds the unmatched non-UK income.

Step 5 is to match non-section 735 benefits not matched at Step 4 with UK income unmatched after step 2.

62. New subsection (3) defines UK income as income which is not non-UK income.

63. New subsection (4) defines non-UK income as income which would be relevant foreign income of the person abroad to whom it arises if that person was UK resident.

64. Subsection (1) of new section 735 provides that the section applies to individuals who are non-domiciled in the UK and who pay tax on a remittance basis in the relevant year.

65. New subsection (2) provides that subsections (3) to (5) apply if income ('deemed income') is treated as arising to an individual under section 732 by virtue of a relevant benefit being matched with any non-UK income.

66. New subsection (3) provides that deemed income is treated as 'foreign' income to the extent that it can be matched with non-UK income.

67. New subsection (4) provides that foreign deemed income is treated as the individual's relevant foreign income.

68. New subsection (5) provides for certain amounts to be treated as deriving from the foreign deemed income for the purposes of the remittance basis provisions in Chapter A1 of Part 14.

69. Paragraph 23 subparagraphs (1) to (3) provides for consequential amendments to section 740.

70. Paragraph 24 provides a consequential amendment to subsection 744(4) to reflect substituted section 732.

71. Paragraph 25 subparagraph (1) provides that the amendments made by paragraphs 22 to 29 apply for the 2013 – 14 tax year and all later years. Subparagraph (2) provides that the legislation has effect for relevant transfers whether those transfers took place before, on or after 6th April 2013.

72. Paragraph 26 provide that in the transitional provisions for section 732 set out in paragraphs 27 and 28 references to ITA 2007 are to be read disregarding the amendments made by this Part of this Schedule.

73. Paragraphs 27 and 28 provide transitional rules for the new matching rules in this Schedule where the old matching rules in section 733 ITA 2007 also applied. This is so that untaxed benefits and available relevant income unmatched under the old rules are taken into account under the new matching rules.

74. Paragraph 27 sub-paragraph (1) provides that, subject to subsequent subparagraphs, the benefits that an individual receives are not 'relevant' benefits if they are received prior to 2013-14 tax year.

75. Sub-paragraph (2) provides that an individual who has any pre-2013-2014 untaxed benefits in relation to the relevant transfer is treated as having received that amount of relevant benefit on 5 April 2013.

76. Sub-paragraph (3) sets out the steps that need to be taken to determine the quantum of an individual's pre 2013-14 untaxed benefits amount. Broadly, this is by taking the untaxed benefits for 2012-2013 by following the steps in section 733 ITA 2007 and deducting any income treated as arising to the individual together with any chargeable gains within section 734(1)(d) ITA 2007 for 2013-2014.

77. Paragraph 28 sub-paragraph (1) says that subject to the provisions in subparagraph (2) a year earlier that 2013-14 must not have a relevant income amount.

78. Subparagraph (2) provides for 2012-13 to have a relevant income amount and sets out the four steps to be taken to calculate it. Broadly, for each relevant individual the available relevant income for 2012- 2013 is found by following the steps in section 733(1) ITA 2007. The amount of any income treated as arising to that individual under section 732 ITA 2007 for 2012-2013 is then deducted from the available relevant income. The net amounts for each relevant individual are then added and the total is the relevant income amount for 2012-2013.

79. Paragraph 29 provides for new section 732(7) to apply only if the income arises to a person abroad after 6th April 2013.

BACKGROUND

80. This legislation updates this anti-avoidance provision to maintain its compatibility with EU law, and makes certain other amendments to improve the clarity of the rules.

81. Broadly, the "transfer of assets" rules impose a charge to income tax on an individual who is ordinarily resident in the UK (or, from 6 April 2013, an individual who is resident in the UK) where there has been a transfer of assets and, as a result of the transfer (and/or any associated operations), income becomes payable to a person abroad, but an individual can still enjoy income, or receive or have entitlement to receive a capital sum or other benefits from the arrangements.

82. An infraction notice (Reasoned Opinion) was issued by the European Commission on 16 February 2011. The Commission argued that the transfer of assets legislation breaches the treaty freedoms of establishment and movement of capital.

83. On 30 July 2012 the Government published a consultation document proposing a way of reforming the legislation to ensure EU compatibility, and also certain other changes to improve the clarity of the provisions. The Government's response to the consultation was published on 11 December 2012, together with this draft legislation.

84. The legislation adds a new exemption which operates where the EU treaty freedoms are engaged and which focuses on whether the nature of transactions is genuine and whether they serve the purpose of the freedoms. (There is an existing exemption where there is no tax avoidance purpose, or where the transactions are genuine commercial transactions, and any tax avoidance purpose was incidental.) Business transactions will not be regarded as genuine unless they are on arm's length terms and, in the case of transactions for the purposes of a business establishment, give rise to income attributable to economically significant activity that takes place overseas.

85. These changes will provide exemption for genuine commercial business activities overseas and also for transactions that do not involve commercial activities but that are nevertheless genuine transactions that are protected by the single market.

86. This legislation also makes a series of other changes to the transfer of assets provisions aimed at clarifying the way certain aspects operate. There is an amendment to provide more certainty about how benefits received by an individual are matched to the 'relevant income' arising to the person abroad, in circumstances when an individual other than the transferor is the chargeable person.

87. There is also an amendment to provide greater clarity around the prevention of double charging, in circumstances where the same income could be the subject of both a transfer of assets charge and also a charge under another part of the Taxes Acts.

88. Finally there is a change that clarifies how the transfer of assets rules operate in relation to reliefs under double taxation agreements. This will ensure that neither treaty provisions nor the transfer of assets legislation is applied in an unintended way to allow a relief that would not otherwise be due.

89. If you have any questions about these changes or comments on the legislation, please contact Sue Pennicott on 020 7147 2627 (email: sue.pennicott@hmrc.gsi.gov.uk).

1 Disguised interest

(1) Schedule 1 contains provision about returns which are economically equivalent to interest.

(2) References in this section to paragraphs are to paragraphs of that Schedule.

(3) The amendments made by paragraph 1 (in so far as it relates to paragraphs 2(a) and 3) and paragraphs 2(a) and 3 have effect in relation to any arrangement which produces a return for a person which is economically equivalent to interest if the person becomes a party to the arrangement on or after 6 April 2013.

(4) The amendments made by paragraph 1 (in so far as it relates to paragraph 2(b)), paragraph 2(b) and paragraphs 4 to 14 come into force on 6 April 2013.

(5) Subsection (6) applies where any of the provisions repealed by paragraph 10(2) or 12(2) applies in relation to anything done by a person before 6 April 2013 which amounts to becoming party to an arrangement (within the meaning given by section 381A of ITTOIA 2005).

(6) The person is to be treated for the purposes of Chapter 2A of Part 4 of ITTOIA 2005 as having become party to the arrangement on 6 April 2013 and tax is to be charged on the return accordingly (whether or not any part of the return was produced before 6 April 2013).

SCHEDULE 1

Section 1

DISGUISED INTEREST

Key amendments to Part 4 of ITTOIA 2005

1 Part 4 of ITTOIA 2005 (savings and investment income) is amended as set out in paragraphs 2 and 3.

2 In section 365(1) (overview of Part 4)—
(a) after paragraph (a) insert—
"(aa) Chapter 2A (disguised interest),", and
(b) omit paragraph (k).

3 After Chapter 2 insert—

"CHAPTER 2A

DISGUISED INTEREST

381A Charge to tax on disguised interest

(1) This Chapter applies where a person is party to an arrangement which produces for the person a return in relation to any amount which is economically equivalent to interest.

(2) Income tax is charged on the return if the return is not charged to income tax under or as a result of any other provision of this Act or any other Act.

(3) Subsection (2) does not apply to a return that would be charged to income tax under or as a result of another provision but for an exemption.

(4) For the purposes of this Chapter a return produced for a person by an arrangement in relation to any amount is "economically equivalent to interest" if (and only if)—
(a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
(b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
(c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.

(5) In subsection (4)(c) "the relevant time" means the time when the person becomes party to the arrangement or, if later, when the arrangement begins to produce a return for the person.

(6) In this Chapter "arrangement" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

381B Income charged

Tax is charged under this Chapter on the full amount of the return, or any part of the return, arising in the tax year.

381C Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the return or the part of the return.

381D Avoidance of double taxation

(1) This section applies if at any time a tax other than income tax ("the other tax") is charged in relation to a return on which income tax is charged under this Chapter.

(2) In order to avoid a double charge to tax in respect of the return, a person may make a claim for one or more consequential adjustments to be made in respect of the other tax.

(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, amending a claim, or otherwise, and
(c) despite any time limit imposed by or under any enactment."

Consequential amendments

4 The following amendments are in consequence of the amendments made by paragraphs 2(a) and 3.

TCGA 1992

5 TCGA 1992 is amended as follows.

6 (1) Section 263A (agreements for sale and repurchase of securities) is amended as follows.

(2) Before subsection (1) insert—

"(A1) For the purposes of this section there is a repo in respect of securities if—
(a) a person ("the original owner") has agreed to sell the securities to another person ("the interim holder"), and
(b) the original owner or a person connected with the original owner—
(i) is required to buy back the securities by the agreement or a related agreement,

(ii) is required to buy back the securities as a result of the exercise of an option acquired under the agreement or a related agreement, or

(iii) exercises an option to buy back the securities which was acquired under agreement or related agreement."

(3) In subsection (1) for the words from "falling" to "repos" substitute "where under a repo in respect of securities the original owner has transferred the securities to the interim holder".

(4) Omit subsection (5).

7 After section 263A insert—

"263AA Section 263A: interpretation

(1) Subsections (2) to (7) apply for the purposes of section 263A.

(2) References to buying back securities include references to—

(a) buying similar securities, and

(b) in the case of a person connected with the person who is the original owner under the repo, buying the securities sold by the original owner or similar securities.

(3) Subsection (2) applies even if the person buying the securities has not held them before.

(4) References to repurchase or a repurchaser are to be read accordingly.

(5) For the purposes of subsection (2) securities are similar if they give their holders—

(a) the same rights against the same persons as to capital and distributions, interest and dividends, and

(b) the same remedies to enforce those rights.

(6) Subsection (5) applies even if there is a difference in—

(a) the total nominal amounts of the securities,

(b) the form in which they are held, or

(c) the manner in which they can be transferred.

(7) Agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(8) In section 263A and this section "securities" means—

(a) shares in a company wherever resident,

(b) loan stock or other securities of—

(i) the government of the United Kingdom,

(ii) a local authority in the United Kingdom,

(iii) another public authority in the United Kingdom,

(iv) a company resident in the United Kingdom or other body resident in the United Kingdom, or

(c) shares, loan stock, stock or other securities issued by—

(i) a government, local authority or other public authority of a territory outside the United Kingdom, or

(ii) another body of persons not resident in the United Kingdom."

8 (1) Section 263F (power to modify repo provisions: non-standard repo cases) is amended as follows.

(2) In subsection (2) for the words from "cases" to the end substitute "any case mentioned in section 263A(1)."

(3) For subsection (9) substitute—

"(9) "Post-agreement fluctuations" are fluctuations in the value of—

(a) securities transferred in pursuance of the original sale, or

(b) representative securities,

which occur in the period after the making of the agreement for the original sale.

(10) "Representative securities" are securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale."

9 In section 263G (power to modify repo provisions: redemption arrangements)—

(a) in subsection (2) for the words from "cases" to the end substitute "any case mentioned in section 263A(1).", and

(b) omit subsection (4).

ITTOIA 2005

10 (1) ITTOIA 2005 is amended as follows.

(2) Omit Chapter 12 of Part 4 (disposals of futures and options involving guaranteed returns).

(3) In section 687(2) (application of charge to tax) at the end insert "or to income falling within Chapter 2A of Part 4".

(4) In Schedule 2 (transitionals and savings), omit paragraph 95.

(5) In Schedule 4 (abbreviations and defined expressions) omit the entry for "future (in Chapter 12 of Part 4)".

FA 2007

11 In FA 2007 in Schedule 14 (sale and repurchase of securities: minor and consequential amendments) omit paragraphs 22 and 23.

ITA 2007

12 (1) ITA 2007 is amended as follows.

(2) Omit the following provisions (which deal with deemed manufactured payments and repos)—

(a) section 596(5),

(b) sections 597 to 605,
(c) section 606(1) to (7) and (9) and (10), and
(d) sections 607 to 614.

(3) In Schedule 1 (minor and consequential amendments), omit paragraphs 543 and 544.

(4) In Schedule 2 (transitionals and savings) omit paragraphs 112 to 124.

(5) In Schedule 4 (index of defined expressions)—
(a) omit the entries for—
"company UK REIT (in Chapter 4 of Part 11)",
"distribution (in Chapter 4 of Part 11)",
"gross amount (in Chapter 4 of Part 11)",
"group (in Chapter 4 of Part 11)",
"group UK REIT (in Chapter 4 of Part 11)",
"manufactured dividend (in Chapter 4 of Part 11)",
"principal company (in Chapter 4 of Part 11)",
"property rental business (in Chapter 4 of Part 11)", and
"the repurchase price of the securities (in Chapter 4 of Part 11)", and
(b) in the entry for distribution (except in Chapter 4 of Part 11), omit "(except in Chapter 4 of Part 11)".

CTA 2010

13 In CTA 2010 in Schedule 1 (minor and consequential amendments) omit paragraphs 540 to 543 and 544(a), (c) and (d).

FA 2010

14 In FA 2010 in Schedule 6 (charities etc) omit paragraph 21(4).

EXPLANATORY NOTE

DISGUISED INTEREST

SUMMARY

1. This clause and Schedule make provision for amounts from arrangements that produce returns that are economically equivalent to interest (disguised interest) to be taxed as income.

DETAILS OF THE CLAUSE

2. Subsection (3) of the clause provides that the changes made by the Schedule apply to returns from arrangements to which a person becomes party on or after 6 April 2013. This is subject to transitional rules that provide that where a person is party to arrangements before 6 April 2013 and those arrangements would have been within any of the provisions repealed as a consequence of the introduction of the new rules on disguised interest, returns arising from those arrangements on or after that date are taxable as disguised interest.

DETAILS OF THE SCHEDULE

3. Paragraph 1 of the Schedule provides for the amendment of Part 4 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), which contains the income tax rules on savings and investment income.

4. Paragraph 2 amends section 365 of ITTOIA by adding disguised interest to the list of savings and investment income that is charged to income tax under the rules in Part 4 of ITTOIA.

5. Paragraph 3 inserts new Chapter 2A, which contains the charge to income tax on disguised interest, into Part 4 of ITTOIA.

6. New section 381A defines the charge to tax on disguised interest. New subsection (1) establishes the scope of the income tax charge on disguised interest. It applies to an ‘arrangement’ that produces for the person who is party to it a return in relation to which an amount is ‘economically equivalent to interest’. The legislation applies to any return that is economically equivalent to interest, which is produced by the arrangement in any way. This includes anything done in relation to the arrangement from which a return will be produced, such as disposing of an instrument before maturity, or a person otherwise ceasing to be party to the arrangement.

7. New subsection (2) provides that the charge under new section 381A applies only where the return is not taxed under any other income tax provision. Hence, where a return is taxable both as disguised interest and (for example) as a profit from a deeply discounted security, the latter rules take priority. Subsection (3) ensures that this also applies where the return chargeable under that other provision is exempt from income tax.

8. New subsection (4) provides that for the purposes of the legislation, a return is 'economically equivalent to interest' where it is reasonable to assume that it refers to the 'time value of that amount of money', is reasonably comparable to a commercial rate of interest, and where at the 'relevant time' there is 'no practical likelihood' that the return will be cease to be produced. 'The time value of that amount of money' takes its meaning from case law on the meaning of interest. In *Bennett v. Ogston* (15TC374) Rowlatt J described interest as 'payment by time for the use of money'. 'Practical likelihood' takes its meaning from cases involving the *Ramsay* principle, and is to be interpreted in the light of the judgment of the House of Lords in *Scottish Provident Institution* (76TC538) as precluding attempts to manufacture a 'falsifying' arrangement.

9. New subsection (5) defines 'relevant time' to mean the later of when the person becomes party to the arrangement or when the return begins to be produced. The combined effect of these provisions is that it must be clear at the outset that the return will be produced.

10. New subsection (6) defines the term 'arrangement' to include any agreement, understanding, scheme, transaction or series of transactions whether or not legally enforceable. It will include combinations of contracts or transactions that produce amounts that are economically equivalent to interest, such as box option schemes that are currently subject to rules under Chapter 12 of Part 4 of ITTOIA on guaranteed returns from disposals of futures and options. It will also include the manufactured payments and price differences that arise on stock lending and sale and repurchase arrangements (repos).

11. New section 381B charges the full amount of the return, or any part of the return, arising in the tax year. The charge on disguised interest is thus the same as that on interest taxable under Chapter 2 of Part 4 ITTOIA. 'Full amount' means the gross amount without deductions, and the term 'arising' takes its meaning from case law. In *Dunmore v McGowan* (52TC307) it was held that interest was taxable when it 'enured to the benefit' of the taxpayer. The charge on the amount arising in the tax year includes any part of the return that arises in that tax year. For example, where the arrangement is not undertaken or completed as originally envisaged, and only part of the return from the arrangement materialises, the amount taxable as having arisen is

the disguised interest at that point – that is, that part of the return actually produced.

12. New section 381C establishes that the person liable for income tax on disguised interest is the person receiving or entitled to the return, or any part of the return. As with section 381B, this replicates the position that applies to a person who receives or is entitled to interest under Chapter 2 of Part 4 of ITTOIA.

13. New section 381D prevents double taxation where the same income is taxable as disguised interest and under other tax provisions. It provides for HMRC to make 'just and reasonable' amendments to any other tax liabilities, where a person makes a claim.

14. Paragraphs 5 to 10 make consequential amendments, including the repeal of Chapter 12 of Part 4 of ITTOIA (guaranteed returns from disposals of futures and options) and Chapters 4 to 6 of Part 11 of the Income Tax Act 2007 (ITA 2007), (amounts arising under stock lending and sale and repurchase arrangements (repos)). Other consequential amendments are made to related legislation under the Taxation of Chargeable Gains Act 1992, the Corporation Tax Act 2010 and the Finance Act 2010.

BACKGROUND

15. Current income tax rules contain a number of provisions under which interest-like returns are charged to income tax in the same way as interest.

16. The new legislation provides a comprehensive income tax charge on disguised interest. It enables the repeal of existing anti-avoidance legislation on guaranteed returns from futures and options (which are a form of disguised interest arrangement), and allows for the simplification of income tax rules that treat certain amounts arising on stock lending and repos as payments of interest.

17. The legislation follows consultation in 2012 on a number of possible changes to income tax rules on interest. It is based on the disguised interest rule for corporates in Chapter 2A of Part 6 of the Corporation Tax Act 2009 and follows a similar principle-based approach to the drafting of legislation on financial products.

18. In due course it is anticipated that the legislation will facilitate the simplification of other income tax rules that tax returns from interest-like arrangements, such as legislation on deeply discounted securities and accrued income.

19. If you have any questions about this change, or comments on the legislation, please contact Tony Sadler on 020 7147 2608 (email: tony.sadler@hmrc.gsi.gov.uk).

1 Payments of interest

(1) Schedule 1 contains provision in connection with the payment of interest for the purposes of income tax.

(2) The amendments made by that Schedule have effect in relation to any payment of interest which is made on or after the day on which this Act is passed.

SCHEDULE 1

Section 1

DEDUCTION OF INCOME TAX AT SOURCE ETC

Deduction from interest payable on compensation

1 Chapter 3 of Part 15 of ITA 2007 (deduction from certain payments of yearly interest) is amended as follows.

2 In section 874 (duty to deduct from certain payments of yearly interest) after subsection (5) insert—

"(5A) For the purposes of subsection (1) a payment of interest which is payable to an individual in respect of compensation is to be treated as a payment of yearly interest (irrespective of the period in respect of which the interest is paid).

(5B) But the Commissioners for Her Majesty's Revenue and Customs may make regulations which provide that subsection (5A) does not apply in the circumstances prescribed in the regulations."

3 In section 875 (interest paid by building societies) at the end insert "unless it is treated as a payment of yearly interest by virtue of section 874(5A)."

4 In section 878 (interest paid by banks) after subsection (1) insert—

"(1A) But that duty does apply to such a payment if it is treated as a payment of yearly interest by virtue of section 874(5A)."

Deduction from yearly interest: specialties

5 In section 874 of ITA 2007 (duty to deduct from certain payments of yearly interest) after subsection (6) insert—

"(6A) In determining for the purposes of subsection (1) whether a payment of interest arises in the United Kingdom no account is to be taken of the location of any deed which records the obligation to pay the interest."

Payment of interest in kind

6 After section 370 of ITTOIA 2005 insert—

"370A Valuation of interest not paid in cash

(1) This section applies to the payment of an amount of interest in the form of—
  (a) goods or services, or
  (b) a voucher.

(2) Where this section applies by virtue of subsection (1)(a), the amount of the payment is to be taken to be equal to the market value, at the time the payment is made, of the goods or services.

(3) Where this section applies by virtue of subsection (1)(b), the amount of the payment is to be taken to be equal to whichever is the higher of—

(a) the face value of the voucher,

(b) the amount of money for which the voucher is capable of being exchanged, or

(c) the market value, at the time the payment is made, of any goods or services for which the voucher is capable of being exchanged.

(4) In this section references to a voucher are to a voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services."

7 In section 380 of that Act (funding bonds) in subsection (3) at the end insert "(but does not include any instrument providing for payment in the form of goods or services or a voucher)".

8 In section 939 of ITA 2007 (duty to retain bonds where issue treated as payment of interest) in subsection (6) at the end insert "(but does not include any instrument providing for payment in the form of goods or services or a voucher)".

9 After section 975 of that Act insert—

"975A Statements about certain payments of interest

(1) This section applies if a person makes—

(a) a payment of interest of which the whole or part is in the form of goods or services or a voucher, or

(b) a payment which is treated as a payment of interest by virtue of section 413 of CTA 2009 or section 380 of ITTOIA 2005 (funding bonds).

(2) The person making the payment must provide the recipient with a statement showing—

(a) the gross amount of the payment,

(b) the amount of the sum deducted under any provision of Chapters 2 to 7 or under section 919 or 928 (if any),

(c) the actual amount paid, and

(d) the date on which the payment was made

(3) Where this section applies by virtue of subsection (1)(a), the amounts mentioned in paragraphs (a) to (c) of subsection (2) are to be calculated in accordance with section 370A of ITTOIA 2005.

(4) Where this section applies by virtue of subsection (1)(b), the amounts mentioned in paragraphs (a) to (c) of subsection (2) are to be calculated in accordance with section 413 of CTA 2009 or section 380 of ITTOIA 2005, as the case may require.

(5) A statement under this section must be—

(a) provided to the recipient on the date that the payment is made, and

(b) in writing.

(6) The duty to comply with this section is enforceable by the recipient.

(7) In this section references to a voucher are to a voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services.”

10 In section 413 of CTA 2009 (issue of funding bonds) in subsection (3) at the end insert “(but does not include any instrument providing for payment in the form of goods or services or a voucher)”.

EXPLANATORY NOTE

DEDUCTIONS OF INCOME TAX AT SOURCE ETC

SUMMARY

1. This clause and Schedule make changes to tax rules on deduction of income tax from interest relating to compensation payments, interest in kind and specialty debt.

DETAILS OF THE CLAUSE

2. Subsection (2) of the clause provides that the changes made by the Schedule apply to interest paid on or after Royal Assent.

DETAILS OF THE SCHEDULE

Interest payable on compensation

3. Paragraph 1 of the schedule provides for Chapter 3 of Part 15 of the Income Tax Act 2007 (ITA 2007) to be amended. Chapter 3 sets out the tax rules on deducting income tax from payments of 'yearly interest'. The meaning of 'yearly interest' is derived from case law and refers, broadly, to interest on a debt where the debtor and creditor intend that the debt should exist for more than a year, or where it is mutually accepted that the interest may be paid from year to year.

4. Paragraph 2 amends section 874 of ITA 2007 by inserting new subsections (5A) and (5B). The new subsections provide that interest that is payable to an individual in respect of compensation is to be treated as a payment of yearly interest. As a consequence, the person paying the interest will be required to deduct income tax at source from it. This is subject to a regulation-making power to allow for this requirement not to apply in circumstances prescribed by the Commissioners for HM Revenue and Customs.

5. Paragraph 3 amends section 875 of ITA 2007, to disapply the exception from the duty to deduct income tax from yearly interest that currently applies to a building society, where interest is treated as yearly interest because it is payable in respect of compensation.

6. Paragraph 4 similarly amends the equivalent exception in section 878 of ITA 2007 that applies to yearly interest paid by a bank in the ordinary course of its business, by inserting new subsection 878(1A) of ITA. Building societies and banks will therefore have to deduct income

tax from interest payable in respect of compensation, where otherwise they would have been able to reply on the relevant exception.

Specialty debt

7. Paragraph 5 amends section 874 of ITA 2007 by inserting a new subsection (6A) to provide that in determining whether yearly interest arises in the UK for the purposes of the duty to deduct income tax at source, no account is to be taken of the location of a deed under the terms of which interest is payable. The amendment clarifies the position on the obligation to deduct income tax from yearly interest arising on ‘specialty debt’ (that is, debt paid under a deed).

Interest in kind

8. Paragraph 6 inserts a new section 370A into the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005). The new section provides a rule to determine how interest paid in kind in the form of goods, services or vouchers is to be valued. This value is to be the market value of the goods or services at the time the interest is paid, or in the case of vouchers, the greater of the face value of the voucher, the amount of money for which it can be exchanged or the market value, at the time of the payment, of the goods or services for which it can be exchanged.

9. Paragraphs 7, 8 and 10 amend section 380 of ITTOIA 2005, section 939 ITA 2007 and section 413 of the Corporation Tax Act 2009 (CTA 2009) respectively to exclude interest in kind from the definition of a funding bond for income tax and corporation tax. The amendments make it clear that the legislative provisions applying to funding bonds and interest in kind are mutually exclusive.

10. Paragraph 9 provides for a new section 975A to be inserted into ITA 2007. The new section requires a person who pays interest in kind, or in the form of a funding bond within section 380 of ITTOIA or section 413 of CTA 2009, to provide the recipient with a statement in writing. The statement must show the amount of the interest paid in kind or as a funding bond, the amount of tax deducted (if any), the net amount paid, and the date of payment. Unlike the similar requirement in section 975 ITA where interest is paid in cash, a certificate under new section 975A will be required in any case when any interest is paid in kind or as a funding bond, not just if the recipient requests it.

BACKGROUND

11. This legislation follows consultation in 2012 on a number of possible changes to income tax rules on interest and on deduction of income tax from interest.

12. The application of the current rules on deducting income tax from interest can be unclear and inconsistent in certain situations. For example, tax is required to be deducted from interest on compensation payments if it is 'yearly interest', but not if it is 'short interest'; and, even if it is yearly interest, no tax is required to be deducted if the institution paying it is a building society or a bank paying it in the ordinary course of its business. A common example of interest paid on such compensation is that paid by financial institutions in cases of financial mis-selling.

13. Similarly, the amount of tax to be deducted when any interest is paid in kind can be difficult to ascertain in the absence of a clear rule providing how the interest is to be valued.

14. The changes clarify the application of the legislation and ensure that the rules on deduction of income tax operate in a consistent manner.

15. If you have any questions about this change, or comments on the legislation, please contact Tony Sadler on 020 7147 2608 (email: tony.sadler@hmrc.gsi.gov.uk).

1 Qualifying insurance policies

Schedule 1 amends Schedule 15 to ICTA (qualifying insurance policies) and makes other provision relating to qualifying policies under Schedule 15 to ICTA.

SCHEDULES

SCHEDULE 1

Section 1

QUALIFYING INSURANCE POLICIES

PART 1

AMENDMENTS OF SCHEDULE 15 TO ICTA

1 Schedule 15 to ICTA (qualifying insurance policies) is amended as follows.

2 Before Part 1 insert—

"PART A1

PREMIUM LIMIT ON QUALIFYING POLICIES

A1 (1) Sub-paragraph (2) applies if—
(a) an event falling within sub-paragraph (3) occurs,
(b) apart from sub-paragraph (2), the policy to which the event relates would be a qualifying policy after the event, and
(c) an individual who is a beneficiary under that policy is in breach of the premium limit for qualifying policies.

(2) That policy is not to be a qualifying policy after the event.

(3) The events falling within this sub-paragraph are—
(a) the issue of a policy in respect of an insurance made on or after 6 April 2013;
(b) the variation of a policy on or after 6 April 2013;
(c) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a policy where the assignment falls within paragraph B2(3) below.

(4) An event does not fall within sub-paragraph (3) if—
(a) the policy to which the event relates is—
(i) a protected policy,
(ii) a restricted relief qualifying policy, or
(iii) a pure protection policy,
(b) the event is the issue of a policy ("the re-issued policy") in substitution for another policy ("the original policy") where—
(i) the life assured under the re-issued policy is different to the life assured under the original policy, but

(ii) that is the only difference to what the position would have been had the original policy continued to run,

(c) paragraph 20ZA below applies to a policy and the event is the reinstatement or replacement of the policy as mentioned in paragraph 20ZA(4), or

(d) the event is the issue or variation of a policy in relation to which paragraph 29 of Schedule 39 to the Finance Act 2012 applies.

(5) A variation is to be ignored for the purposes of sub-paragraph (3)(b) if its effect is nullified before the end of the period of 3 months after the day on which the variation occurs; and if the nullification is achieved by a variation, that variation is also to be ignored for those purposes.

(6) In the case of a variation of a policy, sub-paragraph (4)(a)(iii) applies only if the policy is a pure protection policy both before and after the variation.

(7) This paragraph is to be applied after all other provisions of this Schedule relevant to the question of whether a policy is a qualifying policy after an event have been applied.

A2 (1) Sub-paragraph (2) applies if—

(a) an event falling within sub-paragraph (3) occurs,

(b) the policy to which the event relates is a qualifying policy after the event, and

(c) an individual who is a beneficiary under that policy is in breach of the premium limit for qualifying policies.

(2) That policy is to be a restricted relief qualifying policy after the event.

(3) The events falling within this sub-paragraph are—

(a) a premium limit event in relation to a protected policy on or after 21 March 2012;

(b) the issue of a policy as mentioned in paragraph A4(2)(b) below if, assuming that the substitution of the protected policy were instead a variation of that policy, there would be a premium limit event in relation to that policy;

(c) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a protected policy where the assignment falls within paragraph B2(3) below;

(d) the issue of a policy in respect of an insurance made on or after 21 March 2012 but before 6 April 2013 otherwise than as mentioned in paragraph A4(2)(b) below;

(e) the variation of a policy, other than a protected policy, on or after 21 March 2012 but before 6 April 2013.

(4) An event does not fall within sub-paragraph (3) if—

(a) the policy to which the event relates is a pure protection policy,

(b) the event is the issue of a policy ("the re-issued policy") in substitution for another policy ("the original policy") where—

(i) the life assured under the re-issued policy is different to the life assured under the original policy, but

(ii) that is the only difference to what the position would have been had the original policy continued to run,

(c) paragraph 20ZA below applies to a policy and the event is the reinstatement or replacement of the policy as mentioned in paragraph 20ZA(4), or

(d) the event is the issue or variation of a policy in relation to which paragraph 29 of Schedule 39 to the Finance Act 2012 applies.

(5) A premium limit event or variation is to be ignored for the purposes of sub-paragraph (3)(a) or (e) if its effect is nullified before 6 July 2013; and if the nullification is achieved by a variation, that variation is also to be ignored for those purposes and for the purposes of paragraph A1(3)(b) above.

(6) In the case of a premium limit event which occurs on or after 6 April 2013, in sub-paragraph (5) the reference to 6 July 2013 is to be read as a reference to the end of the period of 3 months after the day on which the premium limit event occurs.

(7) In the case of a premium limit event in relation to a protected policy or a variation of a policy, sub-paragraph (4)(a) applies only if the policy is a pure protection policy both before and after the event or variation.

(8) A "premium limit event" occurs in relation to a protected policy if—

(a) the policy is varied or a relevant option is exercised so as to change the terms of the policy, and

(b) as a result of the variation or exercise of the relevant option—

(i) the period over which premiums are payable under the policy is lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is increased,

or both.

(9) In sub-paragraph (8)(b)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation or exercise of the relevant option.

(10) The variation of, or exercise of a relevant option under, a protected policy is not a premium limit event in relation to the policy if—

(a) the policy secures a capital sum payable either—

(i) on survival for a specified term, or

(ii) on earlier death or on earlier death or disability,

(b) the policy is issued and maintained for the sole purpose of ensuring that the borrower under an interest-only

mortgage will have sufficient funds to repay the principal lent under the mortgage, and

(c) the policy is varied, or the relevant option is exercised, for that sole purpose.

(11) A qualifying policy which is a new policy (as defined in paragraph 17 below) in relation to a restricted relief qualifying policy is to be a restricted relief qualifying policy.

(12) A policy which is a restricted relief qualifying policy remains a restricted relief qualifying policy so long as it is a qualifying policy.

(13) Paragraph A1 above is to be ignored in determining for the purposes of sub-paragraph (11) or (12) if a policy is a qualifying policy.

(14) For further provision about restricted relief qualifying policies, see section 463A of ITTOIA 2005.

A3 (1) For the purposes of paragraphs A1(1)(c) and A2(1)(c) above an individual is in breach of the premium limit for qualifying policies if the total amount of the premiums payable under relevant policies in any relevant period—

(a) exceeds £3,600, or

(b) could exceed £3,600 as a result of—

(i) the exercise of any one or more relevant options conferred by one or more relevant policies, or

(ii) so far as not covered by sub-paragraph (i), the application of one or more terms of one or more relevant policies relating to increases in premiums.

(2) For the purposes of sub-paragraph (1)—

(a) the following are to be left out of account in determining the premiums payable under a relevant policy—

(i) so much of a premium as is charged on the grounds that an exceptional risk of death or disability is involved;

(ii) if the liability for the payment of the first premium is discharged in accordance with paragraph 15(2) below, so much of that premium the liability for the payment of which is so discharged (subject to sub-paragraph (3)).

(b) "relevant period" means any period of 12 months beginning at or after the time when the event falling within paragraph A1(3) or A2(3) above occurs.

(3) The maximum amount that may be left out of account under sub-paragraph (2)(a)(ii) in the case of a relevant policy is—

$$£3,600 \times N$$

where N is the number of complete years for which the policy mentioned in paragraph 15(2) below ran.

(4) For the purposes of this paragraph the following are "relevant policies"—

(a) the policy to which the event falling within paragraph A1(3) or A2(3) above relates;

(b) any other policy—

(i) which is a qualifying policy, and

(ii) under which the individual is a beneficiary.

(5) But neither a protected policy nor a pure protection policy is to be a relevant policy by virtue of sub-paragraph (4)(b).

A4 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) A policy is "protected" if—

(a) it is issued in respect of an insurance made before 21 March 2012, or

(b) it is issued in respect of an insurance made on or after 21 March 2012 in substitution for a protected policy.

(3) A policy which is protected ceases to be protected if it becomes a restricted relief qualifying policy.

(4) A policy issued as mentioned in sub-paragraph (2)(b) is not protected if—

(a) its issue is an event falling within paragraph A2(3) above, and

(b) after that event it is a restricted relief qualifying policy.

A5 (1) This paragraph applies for the purposes of this Part of this Schedule in determining if an individual is a beneficiary under a policy.

(2) An individual is a beneficiary under a policy if the individual beneficially owns—

(a) any rights under the policy, or

(b) any share in any rights under the policy.

(3) An individual is a beneficiary under a policy if—

(a) any rights under the policy are, or any share in any rights under the policy is, held on non-charitable trusts created by the individual, and

(b) those rights are, or that share is, not beneficially owned by any individual.

(4) The following provisions of ITTOIA 2005 apply for the purposes of sub-paragraph (3)(a)—

(a) section 465(6), and

(b) the definition of "non-charitable trust" in section 545(1).

(5) An individual is a beneficiary under a policy if—

(a) any rights under the policy are, or any share in any rights under the policy is, held as security for a debt of the individual, and

(b) those rights are, or that share is, not beneficially owned by any individual.

A6 In this Part of this Schedule—

(a) references to the variation of a policy are to a variation in relation to which paragraph 18 below applies,

(b) "pure protection policy" means a policy—

(i) which has no surrender value and is not capable of acquiring a surrender value, or

(ii) under which the benefits payable cannot exceed the amount of the premiums paid except on death or in respect of disability, and

(c) "relevant option", in relation to a policy, means an option conferred by the policy on the person to whom it is issued to have another policy substituted for it or to have any of its terms changed.

A7 (1) Sub-paragraph (2) applies for the purposes of this Part of this Schedule if—

(a) events relating to two or more policies issued by the same issuer occur at the same time, and

(b) each policy has an unique identifier in a series of unique identifiers which the issuer gives to policies issued by it.

(2) An event relating to a policy ("policy A") is treated as occurring before an event relating to another policy ("policy B") if, in the issuer's series of unique identifiers, policy A's unique identifier comes before policy B's unique identifier."

3 At the beginning of Part 1 insert—

"RULES FOR QUALIFYING POLICIES

Rights to be beneficially owned by individuals only

B1 (1) This paragraph applies in relation to a policy issued in respect of an insurance made on or after 6 April 2013.

(2) In order for the policy to be a qualifying policy, when it is issued all the rights under it must be beneficially owned by (and only by)—

(a) one individual, or

(b) two or more individuals taken together.

(3) This paragraph does not apply if the policy is protected for the purposes of Part A1 of this Schedule by virtue of paragraph A4(2)(b) or would be so protected but for paragraph A4(4).

The no assignment rule

B2 (1) Sub-paragraph (2) applies if any rights under a qualifying policy are, or any share in any rights under a qualifying policy is, assigned on or after 6 April 2013.

(2) The policy is not to be a qualifying policy after the assignment (regardless of any subsequent variation to which paragraph 18 below applies).

(3) Sub-paragraph (2) does not apply if—

(a) the assignor is an individual and the assignment is by way of security for a debt of the individual,

(b) the assignment is to an individual on the discharge of a debt of the individual secured by the rights or share,

(c) the assignee is the spouse or civil partner of the assignor,

(d) the assignment is to an individual in pursuance of an order made by a court,

(e) the assignment is to an individual in pursuance of a legally enforceable obligation relating to a divorce or the dissolution of a civil partnership, or

(f) the assignor is an individual and, as a result of the assignment, the rights assigned are, or the share assigned is, held on trusts created by the individual.

The statutory declaration rule

B3 (1) Sub-paragraph (2) applies if any of the following events occurs—

(a) the issue of a policy in respect of an insurance made on or after 6 April 2013;

(b) the variation of a policy on or after 6 April 2013 where paragraph 18 below applies in relation to the variation;

(c) a premium limit event in relation to a protected policy on or after 6 April 2013 (see paragraph A2(8) to (10) above);

(d) an event on or after 6 April 2013 which would be a premium limit event in relation to a protected policy but for paragraph A2(10) above;

(e) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a policy where the assignment falls within paragraph B2(3) above.

(2) In order for the policy to be a qualifying policy after the event, each individual who is a beneficiary under the policy must, before the end of the relevant period—

(a) make and sign a statutory declaration dealing with the prescribed matters, and

(b) provide the declaration to the issuer of the policy.

(3) In sub-paragraph (2)—

(a) the reference to an individual who is a beneficiary under the policy is to be read in accordance with paragraph A5 above,

(b) "the relevant period" means—

(i) the period of 3 months after the day on which the event occurs, or

(ii) if the event occurs on or before the day on which the Finance Act 2013 is passed, the period of 3 months after that day,

or such longer period as an officer of Revenue and Customs may allow, and

(c) "prescribed" means prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(4) Regulations under sub-paragraph (3)(c) may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(5) Sub-paragraph (2)—

(a) does not apply by virtue of sub-paragraph (1)(a) or (e) if the policy is a pure protection policy, and

(b) does not apply by virtue of sub-paragraph (1)(b), (c) or (d) if the policy is a pure protection policy both before and after the event.

"Pure protection policy" has the meaning given by paragraph A6(b) above."

4 (1) Paragraph 17 (substitutions) is amended as follows.

(2) In sub-paragraph (2) omit "this Part of".

(3) In sub-paragraph (2) before paragraph (a) insert—

"(za) if the new policy is issued in respect of an insurance made on or after 6 April 2013, the new policy cannot be a qualifying policy if the old policy was not a qualifying policy by virtue of—

(i) paragraph A1(2) above, or

(ii) sub-paragraph (i) above or this sub-paragraph;".

(4) In sub-paragraph (2)(a) after the first "not" insert "and paragraph (za) above does not apply".

(5) After sub-paragraph (4) insert—

"(5) Sub-paragraph (6) applies if the new policy is issued in respect of an insurance made on or after 6 April 2013.

(6) In determining under sub-paragraph (2) above whether the new policy would apart from this paragraph be a qualifying policy, paragraph A1 above is not to be applied in relation to the issue of the new policy; but this does not stop that paragraph being applied in relation to the issue of the new policy after this paragraph has been applied."

PART 2

RESTRICTED RELIEF QUALIFYING POLICIES

5 Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc) is amended as follows.

6 After section 463 insert—

"463A Restricted relief qualifying policies: disapplication of section 485 etc

(1) This section applies in the application of this Chapter to individuals.

(2) In relation to an event occurring on or after 6 April 2013, section 485 (disregard of certain events in relation to qualifying policies) does not apply in relation to a policy ("policy X") which is a restricted relief qualifying policy (see paragraph A2 of Schedule 15 to ICTA).

(3) If an individual is liable for tax charged under this Chapter as a result of subsection (2), the gain on which the tax is charged in the case of the individual is reduced by the following amount—

$$G \times \frac{TAP}{TP}$$

where—

G is the amount of the gain (apart from this subsection),

TAP is the total amount of premiums payable under policy X during the policy X period so far as they are allowable premiums as determined in accordance with section 463B, and

TP is the total amount of premiums payable under policy X during the policy X period.

(4) The following subsections apply for the purposes of this section (except subsection (2)) and section 463B.

(5) "The policy X period" means the period for which policy X has run before the chargeable event occurs.

(6) Subsections (7) and (8) apply if policy X is a new policy in relation to another policy.

(7) For the purposes of subsection (5) policy X is to be taken to have run—

(a) from the issue of the other policy, or

(b) if the other policy was also a new policy in relation to an earlier policy, from the issue of the earlier policy,

and so on.

(8) References to premiums payable under policy X are to be read as including references to premiums payable under any earlier policy taken into account under subsection (7).

(9) The following are to be left out of account in determining the premiums payable under a policy—

(a) so much of a premium as is charged on the grounds that an exceptional risk of death or disability is involved;

(b) if the liability for the payment of the first premium is discharged in accordance with paragraph 15(2) of Schedule 15 to ICTA, so much of that premium the liability for the payment of which is so discharged (subject to subsection (10)).

(10) The maximum amount that may be left out of account under subsection (9)(b) in the case of a policy is—

$$£3,600 \times N$$

where N is the number of complete years for which the policy mentioned in paragraph 15(2) of Schedule 15 to ICTA ran.

(11) "New policy" has the meaning given in paragraph 17 of Schedule 15 to ICTA.

463B Restricted relief qualifying polices: allowable premiums

(1) This section sets out how to determine the extent to which premiums payable under policy X during the policy X period are allowable premiums for the purposes of section 463A(3).

(2) A premium payable under policy X is allowable if it is payable before the restricted relief date.

(3) In this section “the restricted relief date” means—
  (a) 6 April 2013, or
  (b) if later, the date on which policy X became a restricted relief qualifying policy.

(4) Premiums payable under policy X in a relevant premium period are allowable so far as they do not exceed in total the premium limit for the period.

(5) In subsection (4) “relevant premium period” means—
  (a) any period of one year which—
    (i) begins with a relevant date, and
    (ii) ends in the policy X period, and
  (b) if it is not covered by paragraph (a), the period which—
    (i) begins with the last relevant date to fall within the policy X period, and
    (ii) ends at the end of the policy X period.

(6) In subsection (5) “relevant date” means—
  (a) the restricted relief date, or
  (b) any anniversary of the restricted relief date.

(7) For the purposes of subsection (4) “the premium limit” for a relevant premium period is determined in accordance with subsections (8) to (10).

(8) Determine the premiums payable in the relevant premium period under policies related to policy X.

(9) If the total of those premiums is £3,600 or more, the premium limit is nil (and, accordingly, no premiums payable under policy X in the relevant premium period are allowable).

(10) If the total of those premiums is less than £3,600, the premium limit is the difference between that total and £3,600.

(11) Subsection (4) does not apply if, at the time policy X became a restricted relief qualifying policy, any policy related to policy X was itself a restricted relief qualifying policy.

(12) For the purposes of this section a policy is “related” to policy X if it met the following requirements at the time policy X became a restricted relief qualifying policy—
  (a) the policy is a qualifying policy under which the individual is a beneficiary (as determined in accordance with paragraph A5 of Schedule 15 to ICTA);
  (b) the policy is neither a protected policy nor a pure protection policy (as defined in Part A1 of Schedule 15 to ICTA).

(13) A policy which is a new policy in relation to a policy related to policy X is also "related" to policy X if it meets those requirements when issued.

(14) A policy ceases to be "related" to policy X if it ceases to meet those requirements.

(15) If policy X is a restricted relief qualifying policy by virtue of paragraph A2(11) of Schedule 15 to ICTA, references in this section to policy X becoming a restricted relief qualifying policy are to be read as references to the policy determined under subsection (16) becoming a restricted relief qualifying policy.

(16) The policy is—

(a) the policy ("policy Y") in relation to which policy X was the new policy, or

(b) if policy Y was also a restricted relief qualifying policy by virtue of paragraph A2(11) of Schedule 15 to ICTA, the policy in relation to which policy Y was the new policy,

and so on.

(17) The following subsections apply for the purposes of this section if—

(a) a premium ("premium A") is payable under policy X on a day ("day A") which is on or after 21 March 2012 but before 6 April 2013, and

(b) the next premium payable under policy X is payable on a day ("day B") which is—

(i) on or after 6 April 2013, and

(ii) more than one month after day A.

(18) Premium A is to be treated as if, instead of being one premium payable on day A, it were a series of premiums payable at monthly intervals with the first premium in the series payable on day A.

(19) The number of premiums in the series is equal to the number of complete months falling within the period beginning with day A and ending with day B.

(20) The amount of each premium in the series is the amount of premium A divided by the number of premiums in the series."

7 In section 485 (disregard of certain events in relation to qualifying policies) after subsection (7) insert—

"(8) This section is subject to section 463A."

PART 3

INFORMATION POWERS

8 After section 552ZA of ICTA insert—

"552ZB Regulations in relation to qualifying policies

(1) The Commissioners for Her Majesty's Revenue and Customs may make regulations requiring relevant persons—

(a) to require the provision to them of prescribed information in connection with applications for the issue of qualifying policies, and

(b) to provide to an officer of Revenue and Customs prescribed information about qualifying policies issued by them.

(2) The regulations may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(3) In this section—

"information" includes certificates issued by prescribed persons certifying prescribed matters,

"prescribed" means prescribed by the regulations,

"qualifying policy" includes a policy which would be a qualifying policy apart from paragraph A1(2) of Schedule 15 or paragraph 17(3)(za) of that Schedule (including as applied by paragraph 18), and

"relevant person", in relation to a qualifying policy, means the the person who issues, or is proposing to issue, the policy."

EXPLANATORY NOTE

QUALIFYING INSURANCE POLICIES

SUMMARY

1. This clause and Schedule provide for the implementation of a new annual premium limit on qualifying life insurance policies (QPs). The amount of premiums payable into QPs for an individual will be limited to no more than £3,600 in any 12 month period for QPs issued on or after 6 April 2013. Transitional rules will apply for policies issued from 21 March 2012 to 5 April 2013 inclusive. Policies issued in this period will be restricted so that full relief is available in relation to premiums payable or treated as payable in the transitional period, but the £3,600 annual limit will apply to premiums payable thereafter. Policies issued before 21 March 2012 will only be affected by the new rules where there is substitution, variation or the exercise of an existing option within the policy on or after 21 March 2012 which results in:

    a) the premium paying term being extended and the premiums payable exceed the £3,600 limit on their own or when taking into account other policies after that date or

    b) the premiums payable are increased, and although satisfying all other QP criteria as set out in Schedule 15 to the Income and Corporation Taxes Act 1988, the premiums payable exceed the £3,600 limit on their own or when taking into account other policies after that date.

Where either of these two events occurs, the relief will still be granted for premiums payable or treated as payable up to the modification of the policy but will be restricted to the £3,600 annual limit for premiums payable thereafter.

DETAILS OF THE SCHEDULE

2. Paragraph 1 of Schedule 1 announces amendments to Schedule 15 to the Income and Corporation Taxes Act 1988 (ICTA) (qualifying insurance policies).

3. Paragraph 2 of Schedule 1 introduces a new Part A1 entitled "Premium limit on qualifying policies" into Schedule 15 to ICTA which will precede the existing Part1.

Details of the new Part A1 of Schedule 15 to ICTA

4. Sub-paragraphs (1) to (3) of new paragraph A1(1) set out the events and conditions which will make a policy a non-qualifying policy after the issue, variation or assignment of a policy after 6 April 2013.

5. Sub-paragraph (4) of new paragraph A1 sets out exceptions to events that would normally make a policy non-qualifying.

6. Sub-paragraph (5) of new paragraph A1 sets out the circumstances where a variation to a policy can be ignored.

7. Sub-paragraph (6) of new paragraph A1 provides that a variation to a 'pure protection' policy is only excluded where the policy is a pure protection policy before and after the variation.

8. Sub-paragraph (7) of new paragraph A1 provides that this paragraph will apply to the question of whether a policy is a qualifying policy only after other provisions in Schedule 15 to ICTA relevant to that question have been applied.

9. Sub-paragraphs (1) to (3) of new paragraph A2 set out the events and conditions which will make a policy a restricted relief qualifying policy.

10. Sub-paragraph (4) of new paragraph A2 sets out exceptions to events that would otherwise make a policy a restricted relief qualifying policy.

11. Sub-paragraph (5) of new paragraph A2 sets out the circumstances where a variation or premium limit event can be ignored.

12. Sub-paragraph (6) of new paragraph A2 sets out the relevant date for the purposes of sub-paragraph (5).

13. Sub-paragraph (7) of new paragraph A2 provides that a variation to a 'pure protection' policy is only excluded where the policy is a pure protection policy before and after the premium limit event or variation.

14. Sub-paragraph (8) of new paragraph A2 defines a premium limit event.

15. Sub-paragraph (9) of new paragraph A2 defines a 'relevant period' for the purposes of sub-paragraph (8)(b)(ii).

16. Sub-paragraph (10) of new paragraph A2 sets out the circumstances where a variation of, or an exercise of an option under, a protected policy is excluded from being a premium limit event.

17. Sub-paragraph (11) of new paragraph A2 provides that a qualifying policy which is a new policy, as defined in paragraph 17 of Schedule 15 to ICTA, in relation to a restricted relief qualifying policy will itself be a restricted relief qualifying policy.

18. Sub-paragraph (12) of new paragraph A2 provides that once a policy is designated a restricted relief qualifying policy it will remain a restricted relief qualifying policy provided it continues to meet the other qualifying policy requirements in Schedule 15 to ICTA for a qualifying policy.

19. Sub-paragraph (13) of new paragraph A2 provides that new paragraph A1 will not apply to restricted relief qualifying policies for the purposes of new sub-paragraphs (11) or (12).

20. Sub-paragraph (14) of new paragraph A2 advises that further provisions concerning restricted relief qualifying policies are contained in section 463A of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

21. Sub-paragraph (1) of new paragraph A3 defines the circumstances in which an individual is in breach of the premium limit for relevant policies.

22. Sub-paragraph (2) of new paragraph A3 sets out exceptions to the calculation of premiums payable and defines 'relevant period' in relation to sub-paragraph (1).

23. Sub-paragraph (3) of new paragraph A3 sets out the maximum amount that may be left out of account where payment of the first premium is met out of sums due to the beneficiary under previous policies in accordance with paragraph 15 of Schedule 15 to ICTA.

24. Sub-paragraph (4) of new paragraph A3 defines a 'relevant policy'.

25. Sub-paragraph (5) of new paragraph A3 explains that a protected policy and a pure protection policy are not relevant policies.

26. Sub-paragraphs (1) to (2) of new paragraph A4 define 'protected policies' for the purposes of new Part A1.

27. Sub-paragraphs (3) to (4) of new paragraph A4 set out when a policy is no longer to be regarded as a 'protected policy'.

28. Sub-paragraphs (1) – (3) of new paragraph A5 define 'beneficiary under a policy' for the purposes of new Part A1.

29. Sub-paragraph (4) of new paragraph A5 provides that the definition of non-charitable trust for the purposes of this paragraph follows that set out in section 545(1) of ITTOIA. It also clarifies that trusts

created by an individual include those trusts set out in section 465(6) of that Act.

30. Sub-paragraph (5) of new paragraph A5 provides that an individual is a beneficiary under a policy where the rights, or any share in the rights, of a policy are held by someone else as security for a debt of that individual and the rights, or share in the rights, are not beneficially owned by any individual.

31. Paragraph (a) of new paragraph A6 ensures that a variation of a policy is a variation to which paragraph 18 of Schedule 15 to ICTA applies.

32. Paragraph (b) of new paragraph A6 defines a 'pure protection policy'.

33. Paragraph (c) of new paragraph A6 defines a 'relevant option' in relation to a policy.

34. New paragraph A7 sets out how to determine the order in which policies are issued where two or more policies are issued at the same time but have unique policy numbers.

35. Paragraph 3 of Schedule 1 inserts a new section at the beginning of Part 1 of Schedule 15 to ICTA entitled "Rules for qualifying policies".

Details of new rules for qualifying policies

36. Sub-paragraphs (1) and (2) of new paragraph B1 provide that for policies issued on or after 6 April 2013 only individuals may have beneficial ownership of all the rights.

37. Sub-paragraph (3) of new paragraph B1 disapplies the paragraph to policies protected for the purposes of new Paragraph A1.

38. Sub-paragraphs (1) & (2) of new paragraph B2 provide that if any rights under a policy are assigned on or after 6 April 2013 the policy will become a non-qualifying policy after assignment.

39. Sub-paragraph (3) of new paragraph B2 sets out exceptions to sub-paragraph (2).

40. Sub-paragraph (1) of new paragraph B3 sets out which events occurring on or after 6 April 2013 will require production of a statutory declaration to enable qualifying policy status either to come into existence or continue.

41. Sub-paragraph (2) of new paragraph B3 explains that the statutory declaration must be signed by each individual who is a beneficiary and must be provided to the issuer of the policy before the end of the

relevant period if the policy is to remain a qualifying policy after one of the events specified in new sub-paragraph (1) takes place.

42. Paragraph (a) of sub-paragraph (3) of new paragraph B3 provides that the reference to an individual who is a beneficiary under the policy is to be read in accordance with new paragraph A5.

43. Paragraph (b) of sub-paragraph (3) of new paragraph B3 defines the relevant period for the purposes of new sub-paragraph (2) above.

44. Paragraph (c) of sub-paragraph (3) of new paragraph B3 provides the Commissioners for Her Majesty's Revenue and Customs the power to make regulations for the purposes of new sub-paragraph (2).

45. Sub-paragraph (4) of new paragraph B3 sets out the provisions that the regulations may cover.

46. Sub-paragraph (5) of new paragraph B3 explains that the statutory declaration is not required for policies that are pure protection policies upon issue or when assigned where the assignment is one listed in sub-paragraph (3) of new paragraph B2. A statutory declaration will also not be required for all other events listed in sub-paragraph (1) of new paragraph B3 where the policy is a pure protection policy both before and after the event.

47. Paragraph 4 of Schedule 1 amends Paragraph 17 of Schedule 15 to ICTA applying to substitutions.

48. Paragraph 4(2) amends paragraph 17(2) so that paragraph 17 applies to other parts of Schedule 15 to ICTA other than Part 1.

49. Paragraph 4(3) inserts a new subsection (za) in paragraph 17(2) before subsection (a).

50. New paragraph 17(2)(za) provides that a policy issued in substitution for another policy on or after 6 April 2013 cannot be a qualifying policy if the old policy was not a qualifying policy by virtue of new paragraph A1 or because it was itself a substitute policy refused qualifying policy status by virtue of this provision.

51. Paragraph 4(4) makes a consequential amendment to paragraph 17(2)(a) as a result of new paragraph 17(2)(za).

52. Paragraph 4(5) inserts new sub paragraphs (5) and (6) in paragraph 17.

53. New paragraph 17(5) provides that new paragraph 17(6) applies where a new policy is issued on or after 6 April 2013.

54. New paragraph 17(6) provides that whilst new paragraph A1 is not to be applied in determining whether a new policy issued in substitution is a qualifying policy for the purposes of paragraph 17, new paragraph A1 may instead be applied after paragraph 17 has been applied.

55. Paragraph 5 of Schedule 1 announces amendments to Chapter 9 of Part 4 of ITTOIA (gains from contracts for life insurance etc.).

56. Paragraph 6 of Schedule 1 inserts new sections 463A (restricted relief qualifying policies: disapplication of section 485 etc.) and 463B (restricted relief qualifying policies: allowable premiums) into ITTOIA after section 463.

57. New section 463A(1) provides that this section applies this Chapter to individuals.

58. New section 463A(2) provides that where an event occurs on or after 6 April 2013 section 485 does not apply in relation to a restricted relief qualifying policy.

59. New section 463A(3) provides the formula for reducing the gain chargeable to tax in respect of a restricted relief qualifying policy.

60. New section 463A(4) introduces subsections that apply for the purposes of this section.

61. New section 463A(5) defines the policy period for the restricted relief qualifying policy in question.

62. New section 463A(6) introduces new sections 463A (7) and (8) if the restricted relief qualifying policy in question is a new policy in relation to another policy.

63. New section 463A(7) sets out the period from which the restricted relief qualifying policy is to have run for the purposes of new section 463A (5).

64. New section 463A(8) sets out what the premiums payable under the restricted relief qualifying policy in question include.

65. New section 463A(9) (a) and (b) sets out which premiums are to be excluded in determining the premiums payable under a policy.

66. New section 463A(10) sets out the maximum amount that may be left out of account under new section 463A (9) (b).

67. New section 463A(11) defines new policy as having the meaning given in paragraph 17 of Schedule 15 to ICTA.

68. New section 463B(1) sets out how to determine the extent to which premiums payable under the restricted relief qualifying policy in question during the period of that policy are allowable premiums for the purposes of new section 463A(3).

69. New section 463B(2) states that a premium payable under the restricted relief qualifying policy in question is allowable if it is payable before the restricted relief date.

70. New section 463B(3) defines 'restricted relief date'.

71. New section 463B(4) sets out that premiums payable under the restricted relief qualifying policy in question in a relevant premium period are allowable so far as they do not exceed in total the premium limit for the period.

72. New section 463B(5) defines 'relevant premium period.'

73. New section 463B(6) defines 'relevant date' for the purposes of new section 463B (5).

74. New section 463B(7) to (10) sets out how to determine the 'premium limit' for a relevant premium period for the purposes of new section 463B(4).

75. New section 463B(11) confirms that new section 463B(4) does not apply if at the time the restricted relief qualifying policy became a restricted relief qualifying policy, it was not the individual's first restricted relief qualifying policy.

76. New section 463B(12) and (13) sets out the conditions for a policy, other than the restricted relief qualifying policy in question, to be a related policy for the purposes of new section 463B.

77. New section 463B(14) confirms that a policy ceases to be a related policy if it no longer meets the conditions of new section 463B(12) and (13) .

78. New section 463B(15) states that if the restricted relief qualifying policy in question is a restricted relief qualifying policy by virtue of new paragraph A2(11) of Schedule 15 to ICTA then references in this section to the restricted relief qualifying policy in question becoming a restricted relief qualifying policy are to be read as references to the policy determined under new section 463B(16) becoming a restricted relief qualifying policy.

79. New section 463B(16) defines "the qualifying policy in question becoming a restricted relief qualifying policy" for the purposes of new section 463B(15). The qualifying policy in question will be the original policy in respect of which the new policy has been issued.

Where a series of new policies have been issued under paragraph 17 of Schedule 15 to ICTA, the qualifying policy in question is the first original policy in that series.

80. New section 463B(17) to (20) provides a rule where a premium payable in the period from 21 March 2012 to 5 April 2013 inclusive (P1) and the next premium payable after that (P2) is payable more than one month after the date on which P1 is payable and on or after 6 April 2013. In this situation P1 is treated as if it were a series of monthly premiums instead of one single premium. The series will run from the day P1 is payable (day A) to the date P2 is payable (day B). The number of premiums due will equate to the number of complete months in the period beginning on day A and ending on day B. The amount of each monthly premium will be the amount of P1 divided by the number of complete months in the series.

81. Paragraph 7 of Schedule 1 amends section 485 to ensure that this section is subject to new section 463A.

82. Paragraph 8 of Schedule 1 inserts a new section 552ZB (regulations in relation to qualifying policies) in ICTA after section 552ZA.

83. New section 552ZB(1) provides the power to make regulations in relation to the provision of information to the Commissioners for Her Majesty's Revenue and Customs in respect of qualifying policies.

84. New section 552ZB(2) sets out the provisions that the regulations may cover.

85. New section 552ZB(3) defines 'information', 'prescribed', 'qualifying policy' and 'relevant person' for the purposes of this section.

BACKGROUND

86. The qualifying policy (QP) regime was introduced in 1968 to preserve pre-existing tax treatment for traditional moderate value, long term, regular premium savings policies that contain a significant element of life insurance.

87. No upper limit was set for the investment premiums that could be paid into a QP which allowed individuals to obtain unlimited relief from higher rates of income tax.

88. The Government announced in Budget 2012 a restriction to the tax relief available for QPs. This restriction will limit the amount of premiums payable into QPs for an individual to no more than £3,600 in any 12 month period with effect from 6 April 2013.

89. This Schedule introduces changes to legislation, following consultation, which implements the new annual premium limit of £3,600.

90. If you have any questions about this change, or comments on the legislation, please contact David Moran on 020 7147 2612 (email: david.moran@hmrc.gsi.gov.uk) or Elizabeth Ward-Penny on 020 7147 3037 (email: elizabeth.ward-penny@hmrc.gsi.gov.uk).

1 Gains from contracts for life insurance etc

Schedule 1 amends Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc).

SCHEDULES

SCHEDULE 1

Section 1

GAINS FROM CONTRACTS FOR LIFE INSURANCE ETC

1 Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc) is amended as follows.

2 In section 476 (special rules: foreign policies) in subsection (2)—

(a) after the entry relating to section 474(3) to (5) insert "and",

(b) omit the entry relating to section 528,

(c) omit the "and" after the entry relating to sections 531 to 534, and

(d) omit the entry relating to section 536(6).

3 For section 528 substitute—

"528 Reduction in amount charged on basis of non-UK residence where individual liable for tax

(1) This section applies if—

(a) an individual is liable for tax charged on a gain from a policy of life insurance or a capital redemption policy, and

(b) there are one or more days in the material interest period on which the individual is not UK resident.

(2) In determining the individual's liability for tax, the gain on which the tax is charged in the case of the individual is to be reduced by the appropriate fraction.

(3) The appropriate fraction is—

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

where—

A is the number of days in the material interest period which are days falling within subsection (1)(b), and

B is the number of days in the policy period.

(4) In this section "the material interest period" means so much of the policy period as during which the individual meets condition A, B or C in section 465 in relation to the policy.

(5) For this purpose, in section 465(2) to (4) references to the rights under the policy are to be read as including references to a share of those rights.

(6) In this section "the policy period" means the period for which the policy has run before the chargeable event occurs.

(7) If the policy is a policy of life insurance which is a new policy in relation to another policy, for the purposes of subsection (6) the new policy is to be taken to have run—

(a) from the issue of the other policy, or

(b) if it also was a new policy in relation to an earlier policy, from the issue of the earlier policy,

and so on; and in subsections (4) and (5) references to the policy are to be read accordingly as including any relevant earlier policy.

(8) In subsection (7) "new policy" has the meaning given in paragraph 17 of Schedule 15 to ICTA.

(9) Subsection (10) applies if—

(a) the individual would not have been liable for any tax charged under this Chapter as a result of the chargeable event but for having been assigned rights, or a share of rights, under the policy,

(b) the assignor was the individual's spouse or civil partner with whom the individual was living when the assignment occurred, and

(c) no consideration was given by the individual for the assignment.

(10) In relation to times before the assignment occurred, in subsections (1)(b) and (4) references to the individual are to be read as references to the assignor.

528A Reduction in amount charged on basis of non-UK residence of deceased person

(1) This section applies if—

(a) personal representatives are liable for tax charged on a gain from a policy of life insurance or a capital redemption policy, and

(b) there were one or more days in the material interest period on which the deceased was not UK resident.

(2) This section also applies if—

(a) by virtue of section 467(4)(b) (deceased settlor), trustees are liable for tax charged on a gain from a policy of life insurance or a capital redemption policy,

(b) there were one or more days in the material interest period on which the deceased was not UK resident, and

(c) the deceased was UK resident when the deceased died.

(3) In determining the liability for tax of the personal representatives or trustees, the gain on which the tax is charged in the case of the personal representatives or trustees is to be reduced by the appropriate fraction.

(4) The appropriate fraction is—

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

where—

A is the number of days in the material interest period which are days falling within subsection (1)(b) or (2)(b) (as the case may be), and

B is the number of days in the policy period.

(5) In this section "the material interest period" means so much of the policy period falling before the deceased's death as during which the deceased met condition A, B or C in section 465 in relation to the policy.

(6) For this purpose, in section 465(2) to (4) references to the rights under the policy are to be read as including references to a share of those rights.

(7) In this section "the policy period" means the period for which the policy has run before the chargeable event occurs.

(8) If the policy is a policy of life insurance which is a new policy in relation to another policy, for the purposes of subsection (7) the new policy is to be taken to have run—

(a) from the issue of the other policy, or

(b) if it also was a new policy in relation to an earlier policy, from the issue of the earlier policy,

and so on; and in subsections (5) and (6) references to the policy are to be read accordingly as including any relevant earlier policy.

(9) In subsection (8) "new policy" has the meaning given in paragraph 17 of Schedule 15 to ICTA."

4 Omit section 529 (exceptions to section 528).

5 (1) Section 536 (top slicing relieved liability: one chargeable event) is amended as follows.

(2) In subsection (6) for the words from "from" to the end substitute "reduced under section 528 in the case of the individual."

(3) For subsection (7) substitute—

"(7) If in the case of the individual the gain is reduced under section 528, for steps 1 and 3 in subsection (1) N is reduced by the number of complete years in the material interest period during which the individual was non-UK resident.

"The material interest period" has the same meaning as in section 528."

6 In section 552 of ICTA (information: duty of insurers) after subsection (13) insert—

"(14) For the purposes of this section no account is to be taken of the effect of sections 528 and 528A of ITTOIA 2005."

7 (1) The amendment made by paragraph 3 above has effect in relation to—

(a) any policy of life insurance issued in respect of an insurance made on or after 6 April 2013, or

(b) any contract constituting a capital redemption policy made on or after that date,

and the other amendments made by this Schedule have effect accordingly.

(2) The amendment made by paragraph 3 above has effect in relation to any insurance or contract made before 6 April 2013 if on or after that date—

(a) the policy or contract is varied so as to increase the benefits secured,

(b) there is or was an assignment (or assignation) of rights, or a share of the rights, conferred by the policy or contract (whether or not for money's worth) to the individual or deceased, or

(c) some or all of the rights conferred by the policy or contract become or became held as a security for a debt of the individual or deceased,

and the other amendments made by this Schedule have effect accordingly.

(3) For the purposes of sub-paragraph (2)(a)—

(a) an exercise of rights conferred by a policy or contract is to count as a variation of the policy or contract, and

(b) the reference to an increase in the benefits secured by a policy or contract includes an increase in the benefits secured by another policy or contract with which the policy or contract is connected (within the meaning given by section 473A of ITTOIA 2005).

EXPLANATORY NOTE

GAINS FROM CONTRACTS FOR LIFE INSURANCE

SUMMARY

1. This clause and Schedule amend the rules for time apportioned reductions from gains made on life insurance policies for periods when the policyholder is resident outside the UK. Current rules only provide for time apportioned reductions where a life insurance policy has been issued by a foreign insurer. Time apportioned reductions will be extended to life insurance policies issued by UK insurers. Time apportioned reductions will be calculated by reference to the residence history of the person liable to income tax on the gains and not by reference to the residence history of the legal owner of the policy.

DETAILS OF THE SCHEDULE

2. Paragraph 1 of Schedule 1 amends Chapter 9 of Part 4 of Income Tax (Trading and Other Income) Act 2005 (ITTOIA) (gains from contracts for life insurance etc).

3. Paragraph 2 of Schedule 1 amends section 476 ITTOIA by removing references to section 528 and section 536 (6) ITTOIA.

4. Paragraph 3 of Schedule 1 replaces section 528 ITTOIA with new sections 528 and 528A.

New section 528 Reduction in amount charged on basis of non-UK residence where individual liable for tax

5. New section 528(1) provides that this section applies to individuals who are liable to chargeable event gains and who have not been resident in the UK during the material interest period (defined in new section 528(4)). From 6 April 2013, when the statutory residence test applies, a day will only fall in new subsection (1)(b) if the individual is not resident in the UK for the whole of the relevant tax year. For information on how new section 528 applies to a year that, for the individual, is split between a UK part and an overseas part, see the Explanatory Notes on the Statutory Residence Test.

6. New section 528(2) provides that an individual's liability to tax on a gain on life insurance policy is to be reduced by the appropriate fraction.

7. New section 528(3) provides details of that fraction.

8. New section 528(4) defines 'material interest period' for the purposes of this section.

9. New section 528(5) provides that references to rights in section 465(2) to (4) ITTOIA include references to a share of those rights.

10. New section 528(6) defines the term 'policy period' for the purposes of new section 528.

11. New section 528(7) and (8) provides that where a new policy is issued for another policy (policy 'A') the 'policy period' in subsection (6) includes the period for which (A) was in existence. If A itself is a new policy issued for another policy (policy 'B') the 'policy period' in subsection (6) includes the period for which both A and B are in existence.

12. New section 528(9) and (10) explains how time apportioned reductions are to apply where a policy is assigned between spouses or civil partners and the individual assigning the policy is living with the spouse or civil partner when the assignment is made. When a chargeable event crystallises, the material interest period is extended to take into account the residence histories of both the assignor and the assignee for that part of the material interest period in which they, respectively, met the conditions of new section 528(1).

New 528A Reduction in amount charged on basis of non-UK residence of deceased person

13. New section 528A(1) applies to reduce the amount of a personal representative's or trustee's tax liability on a chargeable event gain where the deceased has not been resident in the UK during the material interest period.

14. New section 528A(2) applies to reduce trustee's liability to tax on a chargeable event gain under section 467 ITTOIA in respect of a deceased settlor where the deceased was not resident in the UK during the material interest period.

15. New section 528A(3) explains that the liability to tax of personal representatives or trustees on a gain on a life insurance policy is to be reduced by the appropriate fraction.

16. New section 528A(4) provides details of the fraction for new section 528A.

17. New section 528A(5) defines 'material interest period' for the purposes of new section 528A.

18. New section 528A(6) provides that references to rights in section 465(2) to (4) ITTOIA include references to a share of those rights.

19. New section 528A(7) defines the term 'policy period' for the purposes of new section 528A.

20. New sub-sections 528A(8) and (9) provides that where a new policy is issued for another policy (policy 'A') the 'policy period' in new sub-section (7) includes the period for which (A) was in existence. If A itself were a new policy issued for another policy (policy 'B') the 'policy period' in new sub-section (7) will include the period for which both A and B are in existence.

21. Paragraph 4 of Schedule 1 repeals section 529 ITTOIA.

22. Paragraph 5(1) of Schedule 1 amends section 536 ITTOIA (top slicing relief).

23. Paragraph 5(2) of Schedule 1 amends section 536(6) to ensure that time apportioned reductions are available to policies issued by UK insurers as well as policies issued by foreign insurers.

24. Paragraph 5(3) of Schedule 1 amends section 536(7).

25. New section 536(7) ensures that time apportioned reductions are available both to policies issued by foreign insurers and policies issued by UK insurers. It also provides that in computing top-slicing relief the number of complete years for which the policy has run before the chargeable event gain arises will be reduced by the number of complete years in the material interest period during which the individual was non-UK resident.

26. Paragraph 6 of Schedule 1 inserts a new sub-paragraph (14) into section 552 of ICTA (information: duty of insurers).

27. Paragraph 7(1) and (2) of Schedule 1 sets out the effective dates for the changes made to Schedule 1.

28. Paragraph 7(3) of Schedule 1 defines 'variation' and 'increase in the benefits secured' for the purposes of new sub-paragraph (2)(a).

BACKGROUND

32. Special rules apply income tax to investment profits (gains) realised by individuals from life insurance policies and capital redemption policies. The rules are known as the chargeable event gain regime.

33. Provision is made within the regime to ensure that chargeable event gains arising on policies issued by foreign insurers are reduced in proportion to the policyholder's period of residence outside the UK at any time during the life of the policy. Very broadly, this means that

gains accruing during an individual's period of residence outside the UK are excluded from the charge to UK tax.

34. Time apportioned reductions are currently not available to policies issued by UK insurers even though individuals with such policies may also have periods of residence outside the UK.

35. In addition, the amount of the reduction provided by the current rules may be inappropriate in some circumstances. For example, relief is given by reference to the residence history of the legal owner of the policy rather than the person liable to income tax on the gains (generally the beneficial owner).

36. A consultation document was issued 13 August 2012 to invite views on reforming the rules to allow time apportioned reductions to be made available to individuals with policies issued in the UK, who have a period of residence outside the UK and to develop a more appropriate method to calculate time apportioned reductions that also interacts effectively with the new statutory residence rules.

37. If you have any questions about this change, or comments on the legislation, please contact David Moran on 020 7147 2612 (email: david.moran@hmrc.gsi.gov.uk), or Elizabeth Ward-Penny on 020 7147 3037 (email: elizabeth.ward-penny@hmrc.gsi.gov.uk).

1 Election to be treated as domiciled in United Kingdom

(1) IHTA 1984 is amended as follows.

(2) In section 267 (persons treated as domiciled in United Kingdom), at the end insert—

"(5) In determining for the purposes of this section whether a person is, or at any time was, domiciled in the United Kingdom, sections 267ZA and 267ZB are to be ignored."

(3) After that section insert—

"267ZA Election to be treated as domiciled in United Kingdom

(1) A person may elect to be treated for the purposes of this Act as domiciled in the United Kingdom (and not elsewhere) if condition A or B is met.

(2) Condition A is that—

(a) the person's spouse or civil partner is domiciled in the United Kingdom at the time the election is made, and

(b) the person is not domiciled in the United Kingdom at that time.

(3) Condition B is that—

(a) the person's spouse or civil partner died on or after 6 April 2013 and was domiciled in the United Kingdom at the time of death, and

(b) the person was not domiciled in the United Kingdom at that time.

(4) An election under this section does not affect a person's domicile for the purposes of section 6(2) or (3) or 48(4).

(5) An election under this section is to be ignored—

(a) in interpreting any such provision as is mentioned in section 158(6), and

(b) in determining the effect of any qualifying double taxation relief arrangements in relation to a transfer of value by the person making the election.

(6) For the purposes of subsection (5)(b) a qualifying double taxation relief arrangement is an arrangement which is specified in an Order in Council made under section 158 before the coming into force of this section (other than by way of amendment by an Order made on or after the coming into force of this section).

(7) In determining for the purposes of this section whether a person making an election under this section is or was domiciled in the United Kingdom, section 267 is to be ignored.

267ZB Section 267ZA: further provision about election

(1) For the purposes of this section—
   (a) references to a lifetime election are to an election made by virtue of section 267ZA(2), and
   (b) references to a death election are to an election made by virtue of section 267ZA(3).

(2) A lifetime or death election is to be made by notice in writing to HMRC.

(3) A lifetime election takes effect from the day on which it is made.

(4) A death election—
   (a) must be made within 2 years of the death of the spouse or civil partner, and
   (b) is treated as having taken effect from immediately before any transfer treated as made by section 4 immediately before the death of the spouse or civil partner.

(5) Subsection (6) applies if—
   (a) a death election is made,
   (b) a disposition is made, or another event occurs, between the time when the election is treated by virtue of subsection (4)(b) as having taken effect and the time when the election is made, and
   (c) the effect of the election being treated as having taken effect from that time is that the disposition or event gives rise to a transfer of value by the person making the election.

(6) This Act applies with the following modifications—
   (a) subsections (1) and (6)(c) of section 216 have effect as if the period specified in subsection (6)(c) were the period of 12 months from the end of the month in which the election is made, and
   (b) sections 226 and 233 have effect as if the transfer were made at the time when the election is made.

(7) A lifetime or death election cannot be revoked.

(8) If a person who made a lifetime or death election is not resident in the United Kingdom for the purposes of income tax for the whole of any period specified in subsection (9), the election ceases to have effect at the end of that period.

(9) That period is any period of three successive tax years, beginning—
   (a) (in the case of a lifetime election) at any time after the election takes effect, or
   (b) (in the case of a death election) at any time after the election is treated by subsection (4)(b) as having taken effect."

2 Transfer to spouse or civil partner not domiciled in United Kingdom

(1) Section 18 of IHTA 1984 (transfer to spouse or civil partner not domiciled in United Kingdom) is amended as follows.

(2) In subsection (2), for "£55,000" substitute "the exemption limit at the time of the transfer,".

(3) After subsection (2) insert—

"(2A) For the purposes of subsection (2), the exemption limit is the amount shown in the second column of the first row of the Table in Schedule 1 (upper limit of portion of value charged at rate of nil per cent)."

(4) The amendments made by this section have effect in relation to transfers of value made on or after 6 April 2013.

EXPLANATORY NOTE

INHERITANCE TAX: SPOUSES AND CIVIL PARTNERS DOMICILED OVERSEAS

SUMMARY

1. This clause introduces provisions by which an individual who is not domiciled in the UK but who is, or has been, married to, or in a civil partnership with, someone who is domiciled in the UK can elect to be treated as domiciled in the UK for the purposes of inheritance tax (IHT). While transfers from one spouse or civil partner to another are generally exempt from inheritance tax (IHT), there is a lifetime limit on the amount that can be transferred on an IHT-exempt basis from an individual who is domiciled in the UK to a spouse or civil partner who is domiciled elsewhere. Clause 0784b increases that limit to the level of the prevailing IHT nil-rate band.

DETAILS OF THE CLAUSES

Clause 1

2. Subsection (1) provides for the amendment of the Inheritance Tax Act 1984 (IHTA).

3. Subsection (2) adds a new subsection (5) to section 267 of IHTA. To apply section 267 it is necessary to determine the domicile status of an individual. New subsection (5) provides that any such determination is to be made without regard to new sections 267ZA and 267ZB (inserted by subsection (3)).

4. Subsection (3) inserts new section 267ZA and 267ZB into IHTA.

5. New subsection 267ZA(1) provides for a person to elect to be treated as domiciled in the UK for the purposes of inheritance tax (IHT) if one of two conditions is met.

6. Condition A in new subsection 267ZA(2) is that the person's spouse or civil partner is domiciled in the UK at the time the election is made and the person is not domiciled in the UK at that time.

7. Condition B in new subsection 267ZA(3) is that the person's spouse or civil partner died on or after 6 April 2013 and was, at the time of death, domiciled in the UK and the person was not domiciled in the UK.

8. New subsection 267ZA(4) specifies that the election in new subsection (1) does not affect a person's domicile for the purpose of Government securities free of tax while in foreign ownership and certain other types of savings.

9. New subsection 267ZA(5) provides that an election is to be ignored when interpreting or applying Estate Duty Conventions and Double Taxation Agreements which determine the domicile of an individual.

10. New subsection 267ZA(6) explains that for the purposes of new subsection 267ZA(5)(b), a qualifying double taxation relief arrangement is an arrangement which was made before this section comes into force and is specified under section 158 in an Order in Council but does not include arrangements which were subsequently specified by way of amendment to an existing Order in Council following the coming into force of the subsection.

11. New subsection 267ZA(7) provides that in determining whether or not a person is qualified to make an election, their domicile status is to be determined without regard to any deemed domicile treatment which occurs by virtue of section 267 IHTA.

12. New Subsection 267ZB(1) explains that references to a lifetime election are to an election which meets the criteria of Z67ZA(2) and references to a death election are to an election which meets the criteria of section 267ZA(3).

13. New subsection 267ZB(2) provides that such an election must be made in writing to HM Revenue & Customs.

14. New subsection 267ZB(3) specifies that where an election takes place prior to the death of the UK-domiciled spouse or civil partner, the election shall take effect from the date the election is made.

15. New subsection 267ZB(4) sets out the conditions under which an election may be made after the death of the UK-domiciled spouse or civil partner, and the effects of such an election. The election must be made within two years of the death and is treated as taking effect immediately before any transfer that arises as a result of the death of the spouse or civil partner.

16. New subsection 267ZB(5) sets out the conditions that must be met in order for the modifications contained in new subsection 267ZB(6) to apply. The modifications will apply if a death election is made and in the period between the date on which the election is deemed to take effect by virtue of new subsection 267ZB(4)(b) and the date on which it is made, a disposition or other event occurs which due to the election having been made results in a transfer of value by the person making the election.

17. New subsection 267ZB(6) contains modifications which revise the time limits that are to apply when, as the result of a death election a transfer or other event leads to the person making the election becoming liable to IHT. The time limits in subsections (1) and (6)(c) of section 216 (delivery of an IHT account), section 226 (payment of tax) and section 223 (due date for interest) are all to apply as if the transfer concerned was made at the time when the election was made.

18. New subsection 267ZB(7) provides that an election made under the new provisions cannot be revoked.

19. New subsections 267B (8) and (9) set out that if a person who has previously made an election is not resident in the UK for income tax purposes for three successive tax years beginning any time after the election has, or is deemed to have, taken effect then the election will cease to have effect at the end of the three-year period.

Clause 2

20. Subsection (1) provides for an amendment to section 18 of the Inheritance Tax Act 1984 (IHTA).

21. Subsection (2) amends section 18(2) of IHTA, altering the amount that can be transferred on an IHT-exempt basis from an individual who is domiciled in the UK to a spouse or civil partner who is domiciled elsewhere from its existing level of £55,000 to an amount defined by reference to the prevailing IHT exemption limit at the time of the transfer.

22. Subsection (3) adds a new subsection 2A to section 18 IHTA. New subsection 2A provides that for the purposes of subsection 2, the exemption limit is defined by reference to the table of rates of tax in Schedule 1 IHTA.

23. Subsection (4) provides that the amendments will apply in respect of transfers of value made on or after 6 April 2013.

BACKGROUND

24. IHT charge is based on domicile status. UK-domiciles pay IHT on their worldwide assets, whereas non-domiciles only pay IHT on their UK assets.

25. Transfers between spouses and civil partners, whether gifts made during a person's lifetime or transfers on the death of one of the couple, are generally exempt from IHT.

26. Where the spouse or civil partner to whom assets are transferred does not have a UK domicile, transfers are capped at £55,000. This cap is

intended to address the risk that an individual whose domicile is outside of the UK, could remove assets abroad following an IHT-exempt transfer from their UK-domiciled spouse or civil partner to escape any IHT on their subsequent disposal.

27. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 020 7147 2861 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Heritage maintenance settlements

(1) In section 169D of TCGA 1992 (gifts to settlor-interested settlements etc: exceptions to sections 169B and 169C), in subsection (1), after "elected" insert ", or could have elected,".

(2) The amendment made by this section has effect for the tax year 2012-13 and subsequent tax years.

EXPLANATORY NOTE

HERITAGE MAINTENANCE SETTLEMENTS

SUMMARY

1. This clause amends existing anti-avoidance provisions to remove an anomaly. Settlors of certain types of heritage maintenance funds (HMFs) (also known as heritage maintenance settlements) are currently only eligible for a targeted relief from capital gains tax in respect of transfers of property into the trust if the trustees make an election under a statutory procedure. This can result in payments by the trust effectively being charged to income tax twice. The amendment made by the clause prevents this happening.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 169D(1) of the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Section 169D(1) TCGA 1992specifies the circumstances where anti-avoidance provisions at sections 169B and 169C do not apply. The effect of the amendment is to extend the circumstances specified by section 169D(1) TCGA 1992, to include not only those cases where trustees have made an election under section 508 of the Income Tax Act 2007, for that year, but also any case where the trustees could have made such an election, irrespective of whether they in fact did so.

BACKGROUND NOTE

3. HMFs are a statutory device enabling property to be held in trust so that the income from that property can be used for the repair and maintenance of historic buildings which are open to the public. Subject to a number of prescribed conditions being met, there is relief from capital gains tax on transfers of such property into an HMF.

4. The relief is subject to a number of anti-avoidance provisions. One of these limits eligibility to those trusts that have elected that income from trust property is to be treated as accruing to the trust rather than the settler ("the election"); however the effect of the election is that payments to a settlor for use on the upkeep of the historic property triggers a further charge to tax upon the settlor.

5. The amendment made by this clause retains a restriction upon eligibility for the relief; however, so long as the trust satisfies the conditions for making the election, the requirement that it actually have done so is removed.

6. If you have any questions about this change, or comments on the draft legislation, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).

1 Open- ended investment companies and authorised unit trusts

(1) In section 65 of IHTA 1984 (settlements without interests in possession etc: charge when property ceases to be relevant property etc), after subsection (7) insert—

"(7A) Tax shall not be charged under this section by reason only that property comprised in a settlement becomes excluded property by virtue of section 48(3A)(a) (holding in an authorised unit trust or a share in an open-ended investment company is excluded property unless settlor domiciled in UK when settlement made)."

(2) The amendment made by this section is treated as having come into force on 16 October 2002.

EXPLANATORY NOTE

INHERITANCE TAX: INVESTMENTS IN OPEN ENDED INVESTMENT COMPANIES AND AUTHORISED UNIT TRUSTS

SUMMARY

1. This clause provides for an amendment to existing legislation which will allow trustees to switch UK assets held in settlement made by non-UK domiciled individuals to investments in Open Ended Investment Companies (OEICs) and Authorised Unit Trusts (AUTs) without incurring inheritance tax. The changes made by this clause will have retroactive effect so that no tax will have arisen in those trusts which already held AUTs or OEICs when changes introduced in section 186 to Finance Act (FA) 2003 came into effect. Nor will any tax have arisen in those trusts where UK assets were invested in OEICs and AUTs since the coming into effect of FA 2003.

DETAILS OF THE CLAUSE

2. Subsection 1 adds new section 65(7A) to Inheritance Tax Act 1984 (IHTA) which exempts investments in OEICs and AUTs from a charge under that section.

3. Subsection 2 provides for the new section 65(7A) to have retroactive effect for investments made on and after 16 October 2002.

BACKGROUND

4. Section 186 of Finance Act 2003 introduced Section 6(1A) to Inheritance Act 1984 (IHTA) which treats investments in OEICs and AUTs owned by non-UK domiciled individuals as excluded property. This has the effect of exempting such investments from the charge to inheritance tax under Section 1 of IHTA.

5. The same Act introduced an equivalent provision, Section 48(3A), to provide a similar exemption for holdings in authorised unit trusts or open ended investment companies held in trust provided the settlor was domiciled outside the UK when the settlement was made. The new provisions came into effect for transfers of value or events occurring on or after 16 October 2002.

6. Section 65 IHTA provides for a charge to tax where the property comprised in a settlement ceases to be relevant property. Excluded property is not relevant property and therefore by making investments in OEICs and AUTs excluded property, it automatically created a

charge under section 65 on those investments. Section 65(7) provides for an exception to this charge where property comprised in a settlement ceases to be relevant property "by reason only that property comprised in a settlement ceases to be situated in the UK and thereby becomes excluded property by virtue of section 48(3)(a)".

7. The above clause provides for a further exception to the s65 charge, similar to s65(7), in respect of property that is invested in AUTs and OEIC's and thereby becomes excluded property by virtue of section 48(3A)(a).

8. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 020 7147 2861 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Community investment tax relief

Schedule 1 makes provision about community investment tax relief.

SCHEDULES

SCHEDULE 1

Section 1

COMMUNITY INVESTMENT TAX RELIEF

Income tax: carry forward of relief

1 Part 7 of ITA 2007 (community investment tax relief) is amended as follows.

2 In section 335 (form and amount of CITR) in subsection (3) for "this purpose" substitute "the purposes of this section and section 335A".

3 After section 335 insert—

"335A Carry forward of CITR

(1) This section applies if—

(a) the investor is entitled to a tax reduction for a relevant tax year under section 335 in respect of the investment, but

(b) the amount of the tax reduction is not fully deducted at Step 6 for that relevant tax year.

(2) The amount ("the excess amount") not deducted is treated as follows.

(3) For each subsequent relevant tax year for which the investor—

(a) is entitled to a tax reduction under section 335 in respect of the investment, and

(b) makes a claim under this subsection,

the investor is also entitled to a tax reduction under this subsection which is given effect at Step 6.

(4) The amount of the tax reduction under subsection (3) for any relevant tax year is the excess amount so far as it has not been deducted at Step 6 for any earlier relevant tax year by virtue of that subsection.

(5) In this section "Step 6" means Step 6 of the calculation in section 23."

4 In section 357 (attribution of CITR) after subsection (4) insert—

"(4A) In the case of CITR under section 335A, in subsection (4)(a) the reference to the year is to be read as a reference to the year mentioned in section 335A(1)(a)."

5 (1) Section 361 (disposal of securities or shares during 5 year period) is amended as follows.

(2) For subsection (3) substitute—

"(3) Subsections (3A) to (3H) apply if—

(a) the disposal is a qualifying disposal, and
(b) the investor has made a claim under section 335 in respect of the former investment for a tax year ("tax year X").

(3A) Subsection (3B) applies if the total of the following CITR does not exceed A—
(a) any CITR attributable to the former investment in respect of tax year X given under section 335, and
(b) any CITR attributable to the former investment in respect of later tax years given under section 335A where tax year X is the tax year mentioned in section 335A(1)(a).

(3B) All CITR falling within subsection (3A)(a) or (b) must be withdrawn.

(3C) If the total of the CITR falling within subsection (3A)(a) or (b) exceeds A, that total must be reduced by A.

(3D) For the purposes of subsection (3C) CITR given in a later tax year must be reduced before CITR given in an earlier tax year.

(3E) For the purposes of subsections (3A) and (3C) "A" is an amount equal to 5% of the amount or value of the consideration (if any) which the investor receives for the former investment.

(3F) If—
(a) the total of the CITR falling within subsection (3A)(a) or (b) ("B") is less than
(b) the amount ("C") which is equal to 5% of the invested amount in respect of the former investment for tax year X,

"A" is to be reduced by multiplying it by the fraction—

$$\frac{B}{C}$$

(3G) If the amount of CITR attributable to the former investment in respect of a tax year has been reduced before the CITR is obtained, the amount referred to in subsection (3F) as B is to be treated for the purposes of that subsection as the amount it would have been without the reduction.

(3H) Subsection (3G) does not apply to a reduction by virtue of section 358 (attribution: bonus shares)."

(3) Omit subsections (5) to (7).

6 The amendments made by paragraphs 1 to 5 above have effect in relation to investments made on or after 6 April 2013.

Corporation tax: carry forward of relief

7 Part 7 of CTA 2010 (community investment tax relief) is amended as follows.

8 (1) Section 220 (form and amount of CITR) is amended as follows.

(2) For subsection (3) substitute—

"(3) The amount of that reduction for the relevant accounting period is 5% of the invested amount in respect of the investment for the period."

(3) In subsection (4) for "this purpose" substitute "the purposes of this section and section 220A".

9 After section 220 insert—

"220A Carry forward of CITR

(1) This section applies if—

(a) the investor is entitled to a reduction in its liability for corporation tax for a relevant accounting period under section 220 in respect of the investment, but

(b) the amount of the reduction is not fully deducted at Step 2 for that relevant accounting period.

(2) The amount ("the excess amount") not deducted is treated as follows.

(3) For each subsequent relevant accounting period for which the investor—

(a) is entitled to a reduction in its liability for corporation tax under section 220 in respect of the investment, and

(b) makes a claim under this subsection,

the investor is also entitled to a reduction in its liability for corporation tax under this subsection.

(4) The amount of the reduction under subsection (3) for any relevant accounting period is the excess amount so far as it has not been deducted at Step 2 for any earlier relevant accounting period by virtue of that subsection.

(5) In this section "Step 2" means the second step in paragraph 8(1) of Schedule 18 to FA 1998 (calculation of tax payable)."

10 In section 240 (attribution of CITR) after subsection (4) insert—

"(4A) In the case of CITR under section 220A, in subsection (4)(a) the reference to the period is to be read as a reference to the period mentioned in section 220A(1)(a)."

11 (1) Section 244 (disposal of securities or shares during 5 year period) is amended as follows.

(2) For subsection (3) substitute—

"(3) Subsections (3A) to (3H) apply if—

(a) the disposal is a qualifying disposal, and

(b) the investor has made a claim under section 220 in respect of the former investment for an accounting period ("period X").

(3A) Subsection (3B) applies if the total of the following CITR does not exceed A—

(a) any CITR attributable to the former investment in respect of period X given under section 220, and

(b) any CITR attributable to the former investment in respect of later accounting periods given under section 220A where period X is the accounting period mentioned in section 220A(1)(a).

(3B) All CITR falling within subsection (3A)(a) or (b) must be withdrawn.

(3C) If the total of the CITR falling within subsection (3A)(a) or (b) exceeds A, that total must be reduced by A.

(3D) For the purposes of subsection (3C) CITR given in a later accounting period must be reduced before CITR given in an earlier accounting period.

(3E) For the purposes of subsections (3A) and (3C) "A" is an amount equal to 5% of the amount or value of the consideration (if any) which the investor receives for the former investment.

(3F) If—

(a) the total of the CITR falling within subsection (3A)(a) or (b) ("B") is less than

(b) the amount ("C") which is equal to 5% of the invested amount in respect of the former investment for period X,

"A" is to be reduced by multiplying it by the fraction—

$$\frac{B}{C}$$

(3G) If the amount of CITR attributable to the former investment in respect of an accounting period has been reduced before the CITR is obtained, the amount referred to in subsection (3F) as B is to be treated for the purposes of that subsection as the amount it would have been without the reduction.

(3H) Subsection (3G) does not apply to a reduction by virtue of section 241 (attribution: bonus shares)."

(3) Omit subsections (5) to (7).

12 The amendments made by paragraphs 7 to 11 above have effect in relation to investments made in accounting periods beginning on or after 1 April 2013.

Corporation tax: limit on State aid

13 (1) In Part 7 of CTA 2010 (community investment tax relief) after section 220A (as inserted by paragraph 9 above) insert—

"220B Limit on State aid

(1) The reductions that may be made in the amount of the investor's liability for corporation tax under section 220 or 220A for an accounting period ("the current accounting period") are limited as follows.

(2) The sum of the following amounts must not exceed €200,000—

(a) so far as it represents aid granted to the investor, the total amount of reductions made in the amount of the investor's liability for corporation tax under section 220 or 220A—

(i) for the current accounting period, or

(ii) any earlier accounting period which ends during the relevant 3-year period, and

(b) the total of any de minimis aid granted to the investor during the relevant 3-year period which does not fall within paragraph (a).

(3) In subsection (2) "the relevant 3-year period" means the period of 3 years ending at the end of the current accounting period.

(4) Subsection (2) is to be read as if it were contained in Article 2 of Commission Regulation (EC) No. 1998/2006 (de minimis aid)."

(2) The amendment made by this paragraph has effect for the purpose of limiting CITR in respect of investments made on or after 1 April 2013.

(3) CITR in respect of investments made before that date is to be ignored for the purposes of section 220B(2) of CTA 2010.

EXPLANATORY NOTE

COMMUNITY INVESTMENT TAX RELIEF

SUMMARY

1. This clause and Schedule make provision for carry forward provisions for community investment tax relief (CITR), for both individuals and corporate investors. They introduce a restriction for corporate investors of the amounts of relief they can receive under the scheme. This restriction is to ensure that the scheme comes within EU rules authorising unnotified State aid if it meets de minimis criteria.

DETAILS OF THE SCHEDULE

2. Paragraph 1 amends Part 7 Income Tax Act 2007 (ITA 2007) (dealing with CITR for investors that are not companies) as set out in the paragraphs following.

3. Paragraph 2 amends section 335 ITA 2007 as a consequence of the introduction of the new section 335A.

4. Paragraph 3 introduces a new section 335A. This section allows the carried forward of any unused relief to a later year in which the investor is entitled to relief in respect of the investment.

5. Paragraph 4 amends the attribution rules in s357 ITA 2007 in relation to any loans, securities or shares.

6. Paragraph 5 amends the rules for the withdrawal of relief to include the new carry forward provisions where a reduction is withdrawn under section 335 (5) ITA. It amends s361 substituting new subsections (3) and (3A) to (3H) for existing subsections (3) to (7).

7. Paragraph 6 provides that the commencement date applicable to the changes in Paragraphs 1 to 5 is 6 April 2013 and provides that those changes are only to take effect from that date for investments made on or after 6 April 2013.

8. Paragraph 7 amends Part 7 of Corporation Tax Act 2010 (CTA 2010) (CITR for company investors) as set out in the paragraphs following.

9. Paragraph 8 amends s220 CTA 2010 as a consequence of the new section 220A carry forward provision.

10. Paragraph 9 introduces a new section 220A. This section allows the carry forward of any unused relief to a later year in which the investor is entitled to relief in respect of the investment.

11. Paragraph 10 amends the attribution rules in s240 CTA 2010 in relation to any loans, securities or shares.

12. Paragraph 11 amends the rules for the withdrawal of relief to include the new carry forward provisions where a reduction is withdrawn under s220 (5) CTA 2010. It amends section 244 CTA 2010 substituting new subsections (3) and (3A) to (3H) for existing subsections (3) to (7).

13. Paragraph 12 provides that the commencement date for these changes will be 1 April 2013 and provides that the changes to CTA 2010 will only take effect in relation to investments made in accounting periods beginning on or after 1 April 2013.

14. Paragraph 13 introduces a new section 220B in Part 7 CTA 2010. This section places limits on the amounts of CITR tax relief an investor company can obtain in any 3 year period. That limit is the difference between the total aid in that period from CITR and any carry forward relief (s220B (2)(a) plus de minimis aid from other sources (s220 (2)(b), and €200,000. Aid from CITR is only relevant if it results from investments made on or after 1 April 2013, although de minimis aid received by the company in the period prior to April 2013 will be included under subsection (2) (b). HM Revenue & Customs will issue separate guidance on how companies should calculate aid received by way of CITR.

BACKGROUND

15. CITR was introduced in 2002 to encourage investment in disadvantaged communities.

16. To date it has raised in excess of £72 million from individual and corporate investors.

17. Investors invest into Community Development Finance Institutions which, in turn, invest in businesses in disadvantaged communities.

18. Previously a notified State aid, the scheme will become a de minimis aid within the meaning of Article 2 of the Commission Regulation (EC) No 1998/2006 as a result of these changes.

19. If you have any questions about this change, or comments on the draft legislation, please contact Des Ryan on 020 7147 0618 (email: des.ryan@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No. xx

INCOME TAX

CORPORATION TAX

The Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) (Amendment) Regulations 2013

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make these Regulations in exercise of the powers conferred by sections 340(2)(b), (4), (5) and (6) and 341 of the Income Tax Act 2007(**a**).

Citation, commencement and effect

1. These Regulations may be cited as the Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) (Amendment) Regulations 2013.

2. These Regulations come into force on 1 April 2013.

3. Regulations 6 to 10 and 11(3) and (4) take effect only in relation to a CDFI whose current accreditation period starts on or after 1 April 2013, and regulation 11(1) takes effect only in relation to investments made in a CDFI on or after 1 April 2013.

Amendment of S.1. 2003/96

4. The Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) Regulations 2003(**b**) are amended as follows.

5. In regulation 2(**c**)—

(a) omit the definition of "the Director of Enterprise Environment",

(b) before the definition of "investment", insert—

""the first investment" in relation to an investment made in a CDFI means the first investment made in the CDFI in its current period of accreditation;",

(**a**) 2007 c.3.
(**b**) S.I. 2003/96; relevant amending instruments are S.I. 2008/383 and 2009/2748.
(**c**) Regulation 2 was amended by S.I. 2008/383 and S.I. 2009/2748.

(c) in the definition of "investment", for "paragraph 2 of Schedule 16 to the Finance Act 2002" substitute "section 221 of the Corporation Tax Act 2010", and

(d) in the definition of "qualifying investment", for "paragraph 8 of Schedule 16 to the Finance Act 2002" substitute "section 225 of the Corporation Tax Act 2010".

6. In regulation 8(1)(a)—

(a) in sub-paragraph (a) for "the date the CDFI was first granted accreditation ("the accreditation date")" substitute "the date the first investment was made in the CDFI", and

(b) in each of sub-paragraphs (b), (c) and (d) for "the accreditation date" substitute "the date the first investment was made in the CDFI".

7. After regulation 12 insert—

"Notice of first investment in a CDFI

12A.—(1) A CDFI must notify the Secretary of State in writing of the date the first investment is made in the CDFI, no later than three months after that date.

(2) A CDFI that does not comply with paragraph (1) is liable to a penalty of £500 payable to the Department for Business, Innovation and Skills.

(3) But paragraph (2) does not apply if in the opinion of the Secretary of State the CDFI had a reasonable excuse for failing to comply with paragraph (1)."

8. In regulation 13(**b**)—

(a) in paragraph (1)(a), for "the date on which the CDFI was last granted accreditation" substitute "the date the first investment was made in the CDFI", and

(b) in paragraph (2), for "the date accreditation was granted" substitute "the date the first investment was made in the CDFI".

9. In regulation 15A(1)(**c**), for "the date that the CDFI was first granted accreditation", substitute "the date the first investment was made in the CDFI".

10. In regulation 15B(1)(**d**), for "the date a CDFI was first granted accreditation" substitute "the date the first investment was made in a CDFI".

11.—(1) Schedule 1 is amended as follows.

(2) In paragraph 4(**e**)—

(a) in sub-paragraph (1) omit the words "or equity investment in", and

(b) in sub-paragraph (3)—

(i) in paragraph (a) omit "or equity investments",

(ii) in paragraph (b) omit "or investment", and

(iii) for "shall determine which of those loans or investments shall not" substitute "shall determine which of those loans shall not".

(3) In paragraph 9—

(a) For sub-paragraph (a), substitute—

"(a) for the first year following the date the first investment is made in the CDFI, the date the investment is made by that CDFI, and", and

(b) in sub-paragraph (b) for "accreditation date" substitute "date the first investment is made in the CDFI".

(**a**) Regulation 8 was amended by S.I. 2008/383.
(**b**) Regulation 13 was relevantly amended by S.I. 2008/383.
(**c**) Regulation 15A was inserted by S.I. 2008/383.
(**d**) Regulation 15B was inserted by S.I. 2008/383.
(**e**) Paragraph 4 of Schedule 1 was amended by S.I. 2008/383.

(4) In paragraph 11(1)(a)—

(a) for paragraph (i), substitute—

"(i) for the first year following the date the first investment is made in the CDFI, the date the investment is made by that CDFI, and", and

(b) in paragraph (ii), for "accreditation date" substitute "date the first investment is made in the CDFI".

12. In the following provisions, for "Director of Enterprise Environment" substitute "Secretary of State"—

(a) regulation 7(4);

(b) regulation 12(1), (2) and in each place in (3);

(c) regulation 13(5);

(d) regulation 15(3);

(e) regulation 16(2)(c) and (3); and

(f) paragraphs 2(2) and 4(3) of Schedule 1(**a**).

Signed
Signed
Date Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 7 of each of the Income Tax Act 2007 and the Corporation Tax Act 2010 provide for community investment tax relief for investments made by individuals and companies in any body which is accredited as a community development finance institution ("CDFI") under the Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) Regulations 2003 ("the 2003 regulations").

These Regulations amend the 2003 regulations as follows. A new concept of the "first investment" in a CDFI is introduced (regulation 5(b)), together with a new obligation to report the date of the first investment in a CDFI (regulation 7). The CDFI's onward lending requirements are amended so as to be calculated by reference to the anniversary of the first investment date (regulation 6). The requirement for a CDFI to report periodically on certain matters is realigned, so that the reporting date is calculated by reference to anniversaries of the first investment (regulations 8 to 10). Amendments are made to the description of some of the circumstances in which an investment made by a CDFI is not a "relevant investment" for the purpose of the onward lending requirements at regulation 8 of the 2003 regulations (regulation 11). Finally, references to "Secretary of State" are substituted for "Director of Enterprise Environment" (regulations 5(a) and 12), and legislative references to the Finance Act 2002 are updated to references to the Corporation Tax Act 2010 (regulation 5(c) and (d)).

A Tax Information and Impact Note covering this instrument was published on 11 December alongside amendments to community investment tax relief and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

(**a**) These provisions were relevantly amended by S.I. 2008/383.

EXPLANATORY MEMORANDUM TO

THE COMMUNITY INVESTMENT TAX RELIEF (ACCREDITATION OF COMMUNITY DEVELOPMENT FINANCE INSTITUTIONS) (AMENEDMENT) REGULATIONS 2013

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Instrument amends the Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) Regulations 2003 S.I. 2003/96 ("the 2003 regulations"). The new Regulations come into force on 1 April 2013, with changes to the relevant anniversary dates taking effect only for Community Development Finance Institutions accredited on or after that date, and a change the rules about what is a "relevant investment" taking effect only in respect of investments made on or after that date.

It introduces new investment terms for a Community Development Finance Institution (CDFI), allowing 12 months from the date of the first investment is received to meet the onward investment criteria, and anniversaries therefrom, as opposed to the current 12 months from accreditation and anniversaries therefrom. It also introduces a requirement that a CDFI notify the Secretary of State of the first investment date.

The annual reporting dates are also changed from the accreditation date anniversaries to the investment date anniversaries.

The description of some of the circumstances in which an investment made by a CDFI is not a "relevant investment" for the purpose of the onward lending requirements at regulation 8 of the 2003 regulations, by removing one such circumstance

The Instrument also removes references to the Director of Enterprise Environment and replaces these with Secretary of State, and updates legislative references to the Finance Act 2002 to references to those provisions as rewritten to the Corporation Tax Act 2010.

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

3.1 By virtue of paragraph 5 of Schedule 2 to the Corporation Tax Ac 2010 references in the 2003 regulations to the Finance Act 2002 are already to be read as references to the provisions as rewritten to the Corporation Tax 2010. The updating amendments in this Instrument makes the position clear from the face of the 2003 regulations.

4. Legislative Context

4.1 The instrument is being made as a result of an informal consultation with industry in which the restrictive nature of the accreditation date anniversary for onward lending was an issue raised. The instrument extends the period and gives CDFIs a full 12 months to meet the criteria. The reporting dates have been amended to coincide with these new periods.

4.2 Community Investment Tax Relief was an approved State aid but following discussions with the European Commission is now a de minimis State aid. Included in the consequent changes to CTIR is a new limits as to the amount of equity investment that can be made by a CDFI into a qualifying enterprise. That is being imposed under the accreditation rules issued by the Department for Business, Innovation and Skills (BIS). Schedule 1 is amended to reflect the changes in these rules.

4.3 The instrument updates legislative references from Finance Act 2002 to Corporation Tax Act 2010 to reflect the rewriting of the relevant legislation.

4.4 The Secretary of State requested that references to the Director of Enterprise be amended to references to the Secretary of State as all powers are delegated through him.

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 Community Investment Tax Relief (CITR) is given to investors investing in accredited CDFIs which invest in small or medium sized enterprises in disadvantaged areas. CDFIs are accredited by the Department for Business, Innovation and Skills (BIS) and their operation is governed by the Statutory Instrument now amended.

CDFIs previously had one year from the accreditation date to meet the onward lending criteria of at least 25% of the investment fund being invested in relevant enterprises. This became 50% at the second anniversary of accreditation and 75% at anniversaries thereafter. As CDFIs could not raise investments qualifying for CITR until they had been accredited this meant that the first period could often be significantly shorter than 12

months. By changing the criteria to 12 months from the first investment this will allow CDFIs greater flexibility to meet the onward lending requirements.

CDFIs have to make an annual return to BIS detailing the investments made. Previously the return date was the anniversaries of the accreditation date, these will now be aligned with the first investment date.

7.2 De minimis State aid guidelines restrict the amount of aid that can be given to a maximum of €200,000 in any three year period. BIS are issuing revised accreditation rules which affect the amount of equity investment a CDFI can make. Consequently the reference to equity investments as relevant investments must meet these rules and the part of paragraph 4 of Schedule 1 that deals with equity investments will no longer apply.

7.3 To ensure the Instrument reflects current legislation and powers the rewritten legislation is now referenced and the Secretary of State given the roles previously assigned to the Director for Enterprise Investment.

8. Consultation outcome

8.1 CDFIs represent a small community within the social investment sector, in total around 70 CDFIs of which 20 are accredited. An informal consultation was undertaken with both accredited and unaccredited CDFIs, their representative body and other social enterprises on the authorisation of the Exchequer Secretary to the Treasury. 28 responses were received (20 from CDFIs, 6 from other social enterprises and 2 from other Government Departments). The changes proposed in the amendments to this instrument arise from that consultation.

The proposal to amend the anniversary dates for complying with the onward investment limits was widely suggested and agreed within the industry.

8.2 The amendments to the legislative references and the Secretary of State are tidying up exercises and have not been consulted on.

8.3 The amendments in respect of the de minimis State aid requirements have not been consulted on as they are being undertaken to ensure that the UK continues to meet its obligations under European Community law..

9. Guidance

9.1 The monitoring of investments and the annual returns by CDFIs is undertaken by BIS who will be issuing relevant guidance.

10. Impact

A Tax Information and Impact Note covering this instrument was published on 11 December 2012 alongside amendments to community investment tax relief and is

available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm . [xxxxx] 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 The amendments are being undertaken on behalf of BIS who administer the regulations in relation to CDFIs. BIS will continue to monitor and review the outcomes in the normal manner

13. Contact

Des Ryan at HM Revenue and Customs Tel: 020 7147 0818 or email: des.ryan@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Remittance basis: exempt property

Schedule 1 contains provision about the application of the remittance basis in relation to exempt property.

SCHEDULE 1

Section 1

REMITTANCE BASIS: EXEMPT PROPERTY

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

2 In section 809X(3) (exempt property: public access rule), for "sections 809Z and 809Z1)" substitute "section 809Z)".

3 (1) Section 809Y (property that ceases to be exempt property treated as remitted) is amended as follows.

(2) In subsection (2), for "either" substitute "any".

(3) After subsection (4) insert—

"(4A) Where exempt property has been lost, stolen or destroyed, the first and second cases do not apply in relation to the property during any period—

(a) beginning with the time at which it was lost, stolen or destroyed, and

(b) (if lost or stolen) ending with the time at which it is recovered.

(4B) The third case is where a compensation payment is released in respect of exempt property that has been lost, stolen or destroyed."

(4) In subsection (6), after "exempt property" insert "by virtue of the first or second case".

4 After section 809YE insert—

"809YF Exception to section 809Y: compensation taken offshore or invested

(1) Section 809Y(1) does not apply to property if—

(a) it ceases to be exempt property because a compensation payment in respect of it is released, and

(b) conditions A and B are met.

(2) Condition A is that the whole of the compensation payment is taken offshore or used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which the payment is released.

(3) Condition B is that, if Condition A is satisfied wholly or in part by using the compensation payment to make a qualifying investment, the remittance basis user makes a claim for relief under subsection (4) on or before the first anniversary of the 31 January following the tax year in which the payment is released.

(4) If section 809Y(1) does not apply to property by virtue of subsection (1), the income and gains treated under section 809X as not remitted to the United Kingdom continue to be treated after the compensation payment is released as not remitted to the United Kingdom even though the property has ceased to be exempt property.

(5) But nothing in subsection (4) prevents anything done in relation to any part of the compensation payment after that payment is taken offshore (or used to make a qualifying investment) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is done.

(6) Treat the compensation payment as containing or deriving from an amount of each kind of income and gain mentioned in section 809Q(4)(a) to (h) equal to the amount of that kind of income or gain contained in the exempt property when it was brought to, or received or used in, the United Kingdom (as mentioned in section 809X).

(7) Where Condition A was met by using the compensation payment to make a qualifying investment—

(a) the business investment provisions apply to the income and gains that continue, by virtue of subsection (4), to be treated as not remitted as they apply to income or gains that are treated under section 809VA(2) as not remitted, and

(b) if the investment was made using more than just the compensation payment, treat only the part of the investment made using the payment as "the investment" for the purposes of those provisions."

5 (1) Section 809Z (public access rule: general) is amended as follows.

(2) In subsection (1), for "A to D" substitute "B and C".

(3) Omit subsection (2).

(4) In subsection (7) for "the relevant period," substitute "all the periods that are relevant periods in relation to the property,".

(5) For subsection (8) substitute—

"(8) For the purposes of this section and section 809Z3, a "relevant period" in relation to the property is any period which—

(a) begins with either—

(i) the importation of the property, or

(ii) the recovery of the property after it has been lost or stolen, and

(b) ends with the first of the following—

(i) the property ceasing to be in the United Kingdom following that importation or recovery, and

(ii) the property being lost or stolen."

(6) Omit subsection (10).

6 Omit section 809Z1 (public access rule: relevant VAT relief).

7 (1) Section 809Z3 (repair rule) is amended as follows.

(2) In subsections (1) and (2), for "the relevant period" substitute "any period which is a relevant period in relation to the property".

(3) Omit subsection (7).

8 (1) Section 809Z4 (temporary importation rule) is amended as follows.

(2) In subsection (1), after “days” insert “(subject to any increase under subsection (3B))”.

(3) In subsection (3)—

(a) before paragraph (a) insert—

“(za) the property meets the public access rule,”,

(b) after paragraph (b) insert—

“(ba) subsection (3A) applies to the property,”, and

(c) in paragrah (d) for “or 809YC(2)” substitute “, 809YC(2) or 809YF(4)”.

(4) After that subsection insert—

“(3A) This subsection applies to the property if—

(a) it is not available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person because it has been lost, stolen or destroyed,

(b) (if lost or stolen) it has not been recovered, and

(c) no compensation payment has been released in respect of it.

(3B) If—

(a) property that has been lost or stolen is recovered,

(b) the first day after the day on which it is recovered is a countable day, and

(c) excluding that countable day there have already been 231 or more countable days in relation to the property,

the number of countable days specified in subsection (1) is read as being increased by the number necessary for there to be 45 countable days beginning with the countable day mentioned in paragraph (b).”

(5) Omit subsections (4) to (10).

9 In section 809Z6 (exempt property: other interpretation), after subsection (4) insert—

“(5) References to property being lost, stolen or destroyed are to the property being lost, stolen or destroyed whilst in the United Kingdom.

(6) “Compensation payment”, in relation to property that has been lost, stolen or destroyed, means any payment of compensation (whether under an insurance policy or otherwise) in respect of the property.

(7) A compensation payment is “released” on the day on which it first becomes available for use in the United Kingdom by or for the benefit of any relevant person.

(8) Property that has been lost or stolen is “recovered” on the day on which it becomes available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person.”

10 The amendments made by this Schedule have effect in relation to property that is brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) applies on or after 6 April 2013.

EXPLANATORY NOTE

REMITTANCE BASIS: EXEMPT PROPERTY

SUMMARY

1. This clause and Schedule amend the rules which apply to exempt property in sections 809X to 809Z6 of the Income Tax Act (ITA) 2007.

DETAILS OF THE SCHEDULE

2. Paragraph 1 introduces the changes to the exempt property rules.

3. Paragraph 2 of the Schedule removes the reference to a relevant VAT relief in section 809X(3) for the purposes of the public access rule in section 809Z.

4. Paragraph 3 of the Schedule amends section 809Y ITA to provide that, where exempt property is lost, stolen or destroyed, the rules which treat such property as remitted when it ceases to be exempt property do not apply during the period beginning with the loss, theft or destruction and ending with the recovery of the property (in cases where the property has been lost or stolen). It also provides that property which has been lost, stolen or destroyed will be treated as remitted where a compensation payment is released with respect to that property.

5. Paragraph 4 of the Schedule inserts new section 809YF ITA, which provides that, where a compensation payment is released with respect to exempt property which is lost, stolen or destroyed, that property will not be treated as remitted to the UK provided the following conditions are met:

   - the whole of the compensation payment is taken offshore or used to make a qualifying investment as defined in section 809VC ITA within 45 days of being released; and,

   - where the payment is used, wholly or in part, to make a qualifying investment, the remittance basis user makes a claim for relief under subsection 809YF(4) within one year from the 31 January following the tax year in which the payment was released.

   New section 809YF also provides that, where subsection (1) applies to the property, the foreign income and gains treated as not remitted to the UK by virtue of subsection 809X continue to be treated as not remitted to the UK after the compensation payment is released, even

though the property has ceased to be exempt property. It further provides that a compensation payment will be subject to the normal remittance basis rules once all or part of such a payment has been taken offshore, or used to make a qualifying investment. A compensation payment will be treated as containing the same amounts of income and gain as were contained in the property when it was brought to, or received or used in the UK, in accordance with the rules set out in section 809Q ITA. Where a compensation payment is used to make a qualifying investment, the business investment provisions will apply to the income and gains so invested.

6. Paragraph 5 of the Schedule amends section 809Z by removing condition A (that the property is a work of art, collector's item or antique within the meaning of Council Directive 2006/112/EC) and condition D (that the property attracts a relevant VAT relief) from the public access rule. It also inserts a new definition of a relevant period for the purposes of the public access rule and the repair rule. The relevant period is one which begins either when the property is brought to the UK or when property which has been lost or stolen or destroyed is recovered. The relevant period ends on the earlier of the date on which the property ceases to be in the UK after being brought to the UK or recovered and the date on which the property is lost or stolen.

7. Paragraph 6 of the Schedule removes section 809Z1 which defined relevant VAT relief for the purposes of the public access rule.

8. Paragraph 7 of the Schedule makes consequential amendments to the repair rule in section 809Z3 as a result of the new definition of a relevant period.

9. Paragraph 8 of the Schedule amends section 809Z4 which applies to property which is exempt property by virtue of the temporary importation rule. It provides that property will meet that rule where the total number of countable days is 275 or fewer, subject to any increase under new subsection (3B). It also provides that any day, or part of a day, on which property meets the public access rule or meets new subsection (3A) are not treated as countable days. New subsection (3A) applies to property which is not available to be used or enjoyed in the UK by any relevant person, has not been recovered (in the case of property which has been lost or stolen) and where no compensation payment has been released with respect to that property.

10. Paragraph 8 of the Schedule also introduces new subsection (3B), which applies where property has been recovered after having been lost or stolen. It provides that if the first day following the day on which the property is recovered is a countable day and where, apart from that day, there have been at least 231 countable days in relation

to the property, the number of countable days is increased by the number of days such that there are 45 countable days beginning with the day following the day on which the property is recovered. This will ensure there will be 45 days in which property will have to be taken offshore after it is recovered to prevent a taxable remittance.

11. Paragraph 9 of the Schedule inserts new subsections 809Z6(5) to (8) which define the terms 'lost, stolen or destroyed', 'compensation payment', 'released' and 'recovered' for the purposes of the changes introduced by this Schedule.

12. Paragraph 10 of the Schedule provides commencement and transitional provisions. The amendments made by this Schedule will have effect in relation to property brought to, or received or used in the UK in circumstances which section 809L(2)(a) ITA (which defines what is meant by remitted to the UK) applies on or after 6 April 2013.

BACKGROUND

13. Section 47 and Schedule 12 of Finance Act 2012 introduced a number of changes to the remittance basis of taxation. These changes followed Government consultation which was carried out in 2011.

14. In their formal response to that consultation in December 2011, the Government said further consideration would be given to a number of further issues with a view to possible legislation in Finance Bill 2013. These included changes to the rules on exempt property which are set out in this Schedule. Further legislation setting out new rules which will apply to inadvertent remittances will be published in January 2013.

15. If you have any questions about this change, or comments on the legislation, please contact Craig Mason on 020 7147 2599 (email: craig.mason@hmrc.gsi.gov.uk).

2 Charge and main rate for financial year 2014

(1) Corporation tax is charged for the financial year 2014.

(2) For that year the rate of corporation tax is—

(a) 21% on profits of companies other than ring fence profits, and

(b) 30% on ring fence profits of companies.

(3) In subsection (2) "ring fence profits" has the same meaning as in Part 8 of CTA 2010 (see section 276 of that Act).

EXPLANATORY NOTE

CORPORATION TAX: CHARGE AND MAIN RATE FOR FINANCIAL YEAR 2014

SUMMARY

1. This clause charges corporation tax (CT) for the financial year beginning 1 April 2014 and sets the main rate of CT at 30 per cent on oil and gas ring fence profits and 21 per cent on non-ring fence profits.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) set the charge and the main rate of CT for the financial year beginning 1 April 2014.

BACKGROUND NOTE

3. The main rate of CT is paid by companies with profits of more than £1,500,000 (the upper profits limit).

4. Where two or more companies are associated with one another, the profits limit is reduced. This is done by dividing the limit by the number of associated companies.

5. Profits from oil extraction and oil rights in the UK and the UK Continental Shelf (“ring fence profits”) will continue to be subject to a separate main rate of CT applicable to those ring fenced profits. Profits from activities which are not ring fenced will continue to be charged at the main rate of CT applicable to all other profits.

6. If you have any questions about this change, or comments on the legislation, please contact Ellen Milner on 020 7147 3961 (email: ellen.milner@hmrc.gsi.gov.uk).

1 Small profits rate and fractions for financial year 2013

(1) For the financial year 2013 the small profits rate is—
 (a) 20% on profits of companies other than ring fence profits, and
 (b) 19% on ring fence profits of companies.

(2) For the purposes of Part 3 of CTA 2010, for that year—
 (a) the standard fraction is 3/400ths, and
 (b) the ring fence fraction is 11/400ths.

(3) In subsection (1) "ring fence profits" has the same meaning as in Part 8 of that Act (see section 276 of that Act).

EXPLANATORY NOTE

CORPORATION TAX: SMALL PROFITS RATE AND FRACTIONS FOR FINANCIAL YEAR 2013

SUMMARY

1. This clause sets the small profits rate of corporation tax (CT) for the financial year beginning 1 April 2013 at 20 per cent for all profits apart from "ring fence profits" of North Sea oil companies, where the rate is set at 19 per cent. Additionally, it sets the fraction used in calculating marginal relief from the main rate at 3/400 for all profits apart from "ring fence profits", where the fraction is set at 11/400.

DETAILS OF THE CLAUSE

2. Subsection (1) sets the small profits rate of CT for the financial year beginning 1 April 2013.

3. Subsection (2) sets the marginal relief standard and ring fence fractions.

BACKGROUND

4. Companies with profits up to £300,000 pay CT at the small profits rate.

5. Companies with profits between £300,000 and £1,500,000 (the lower and upper limits) benefit from marginal relief from the main rate.

6. Marginal relief has the effect of gradually increasing the rate of tax for a company as its profits move from the lower to the upper profits limit.

7. The example below illustrates the effect of marginal relief for a company with taxable non-ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 23 per cent	£115,000
minus 3/400 of £1,000,000*	£7,500
Tax payable:	£107,500

* £1,000,000 is the difference between the upper limit and the profit.

8. The example below illustrates the effect of marginal relief for a company with taxable ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 30 per cent	£150,000
minus 11/400 of £1,000,000*	£27,500
Tax payable:	£122,500

* £1,000,000 is the difference between the upper limit and the profit.

9. Where two or more companies are associated with one another, the profits limits are divided by the number of associated companies.

10. If you have any questions about this change, or comments on the legislation, please contact Ellen Milner on 020 7147 3961 (email: ellen.milner@hmrc.gsi.gov.uk).

1 Bank levy rates from 1 January 2013

(1) Schedule 19 to FA 2011 (bank levy) is amended as follows.

(2) In paragraph 6 (steps for determining the amount of the bank levy), in sub-paragraph (2)—

(a) for “0.044%” substitute “0.065%”, and

(b) for “0.088%” substitute “0.130%”.

(3) In paragraph 7 (special provision for chargeable periods falling wholly or partly before 1 January 2013), in sub-paragraph (2) (as substituted by paragraph 6 of Schedule 34 to FA 2012), in the table in the substituted Step 7—

(a) in the second column for “0.0525%” substitute “0.065%”, and

(b) in the third column for “0.105%” substitute “0.130%”.

(4) In Schedule 34 to FA 2012 (bank levy)—

(a) omit paragraph 5 (which substituted new rates from 1 January 2013), and

(b) in paragraph 7 for “paragraphs 5 and” substitute “paragraph”.

(5) The amendments made by subsections (2) to (4) are treated as having come into force on 1 January 2013 (and accordingly the paragraph repealed by subsection (4) is treated as never having come into force).

(6) Subsections (7) to (13) apply where—

(a) an amount of the bank levy is treated as if it were an amount of corporation tax chargeable on an entity (“E”) for an accounting period of E,

(b) the chargeable period in respect of which the amount of the bank levy is charged falls (or partly falls) on or after 1 January 2013, and

(c) under the Instalment Payment Regulations, one or more instalment payments, in respect of the total liability of E for the accounting period, were treated as becoming due and payable before the commencement date (“pre-commencement instalment payments”).

(7) Subsections (1) to (5) are to be ignored for the purpose of determining the amount of any pre-commencement instalment payment.

(8) If there is at least one instalment payment, in respect of the total liability of E for the accounting period, which under the Instalment Payment Regulations is treated as becoming due and payable on or after the commencement date (“post-commencement instalment payments”), the amount of that instalment payment, or the first of them, is to be increased by the adjustment amount.

(9) If there are no post-commencement instalment payments, a further instalment payment, in respect of the total liability of E for the accounting period, of an amount equal to the adjustment amount is to be treated as becoming due and payable at the end of the period of 30 days beginning with the commencement date.

(10) “The adjustment amount” is the difference between—

(a) the aggregate amount of the pre-commencement instalments determined in accordance with subsection (7), and

(b) the aggregate amount of those instalment payments determined ignoring subsection (7) (and so taking account of subsections (1) to (5)).

(11) In the Instalment Payment Regulations—

(a) in regulations 6(1)(a), 7(2), 8(1)(a) and (2)(a), 9(5), 10(1), 11(1) and 13, references to regulation 4A, 4B, 4C, 4D, 5, 5A or 5B of those Regulations are to be read as including a reference to subsections (6) to (10) (and in regulation 7(2) "the regulation in question", and in regulation 8(2) "that regulation", are to be read accordingly), and

(b) in regulation 9(3), the reference to those Regulations is to be read as including a reference to subsections (6) to (10).

(12) In section 59D of TMA 1970 (general rule as to when corporation tax is due and payable), in subsection (5), the reference to section 59E is to be read as including a reference to subsections (6) to (11).

(13) In this section—

"the chargeable period" is to be construed in accordance with paragraph 4 or (as the case may be) 5 of Schedule 19 to FA 2011;

"the commencement date" means the day on which this Act is passed;

"the Instalment Payment Regulations" means the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175);

and references to the total liability of E for an accounting period are to be construed in accordance with regulation 2(3) of the Instalment Payment Regulations.

EXPLANATORY NOTE

BANK LEVY RATES FROM 1 JANUARY 2013

SUMMARY

1. This clause amends the rates at which the bank levy is charged from 1 January 2013 onwards.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces amendments to the bank levy legislation.

3. Subsection (2) increases the bank levy rates from 1 January 2013.

4. Subsection (3) amends Paragraph 7, Schedule 19, Finance Act 2011 so that it applies where some or all of the chargeable period falls before 1 January 2013. It introduces into the table of rates at paragraph 7(2) the new bank levy rates for the period 1 January 2013 onwards.

5. Subsection (4) removes the rates shown in Paragraph 5, Schedule 34, Finance Act 2012 (old rates) which have been superseded by the new rates.

6. Subsection (5) provides that the new rate changes made by subsections (2) to (4) are treated as having come into force on 1 January 2013.

7. Subsections (6) to (12) provide transitional provisions for collecting the additional amounts of bank levy that arise from the introduction of the new rates.

8. Subsection (6) states that transitional provisions apply where an entity (E) is charged to the bank levy for an accounting period in respect of a chargeable period that falls wholly or partly on or after 1 January 2013 and one, or more, of the instalment payments for the accounting period in question are due and payable before Royal Assent of Finance Bill 2013.

9. Subsection (7) provides that the new rates are to be ignored when determining the amount of any instalment payment that is due before Royal Assent (pre-commencement instalment payments). These continue to be paid at the old rates.

10. Subsection (8) provides that where there is at least one instalment payment for the accounting period of E which is due and payable on or after Royal Assent (post-commencement instalment payments), the

amount of the first such instalment payment is increased by the adjustment amount.

11. Subsection (9) provides that where E does not have any post-commencement instalment payments, the adjustment amount will be due and payable 30 days after Royal Assent.

12. Subsection (10) explains how to determine the "adjustment amount" for the purposes of subsections (8) and (9). The adjustment amount is the difference between the pre-commencement instalment payments calculated firstly on the basis that the new rates are ignored (i.e. using the old rates) and then on the basis that the new rates are not ignored.

13. Subsection (11) ensures that references within the provisions of Corporation Tax (Instalment Payment) Regulations 1998 (S.I. 1998/3175) to regulations 4A to 4D, 5, 5A or 5B of those Regulations are to be read as including references to subsections (6) to (10).

14. Subsection (12) ensures that section 59D of the Taxes Management Act 1970, which provides the general rule for the collection of corporation tax, is also subject to subsections (6) to (11).

15. Subsection (13) provides definitions of terms used in this clause.

BACKGROUND NOTE

16. The bank levy is an annual balance sheet charge based upon the chargeable equities and liabilities of all UK banks and building society groups, foreign banks and banking groups operating in the UK and UK banks in non-banking groups from 1 January 2011 onwards.

17. Bank levy is treated as if it is corporation tax, and the relevant entity or, in the case of a banking group, the "the responsible member" (see paragraph 54, Schedule 19) is required to both make a return of the bank levy (as part of its company tax return) and to pay the bank levy.

18. Entities that pay the bank levy are required to do so under the provisions of The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175).

19. If you have any questions about this change, or comments on the legislation, please contact Anthony Fawcett on 020 7147 0654 (email: anthony.c.fawectt@hmrc.gsi.gov.uk).

1 R&D expenditure credits

Schedule 1 contains provision about R&D expenditure credits.

SCHEDULE 1

Section 1

R&D EXPENDITURE CREDITS

PART 1

MAIN PROVISIONS

1 In Part 3 of CTA 2009 (trading income), after Chapter 6 insert—

“CHAPTER 6A

TRADE PROFITS: R&D EXPENDITURE CREDITS

Claims for credits

104A R&D expenditure credits

(1) A company carrying on a trade may make a claim for an amount (an “R&D expenditure credit”) to be brought into account as a receipt in calculating the profits of the trade for an accounting period.

(2) The company is entitled to an R&D expenditure credit for the accounting period if the company has qualifying R&D expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the accounting period.

(3) In the case of a company that is a small or medium-sized enterprise in the accounting period, the company’s “qualifying R&D expenditure” means—

(a) its qualifying expenditure on sub-contracted R&D (see section 104C),

(b) its subsidised qualifying expenditure (see section 104F), and

(c) its capped R&D expenditure (see section 104I).

(4) In the case of a company that is a large company throughout the accounting period, the company’s “qualifying R&D expenditure” means—

(a) its qualifying expenditure on in-house direct research and development (see section 104J),

(b) its qualifying expenditure on contracted out research and development (see section 104K), and

(c) its qualifying expenditure on contributions to independent research and development (see section 104L).

(5) The amount of an R&D expenditure credit to which a company is entitled is determined in accordance with section 104M.

(6) Section 104N contains provision about the effect of a successful claim for an R&D expenditure credit.

(7) Sections 104T and 104U contain supplementary provision.

(8) Section 104V contains anti-avoidance provision.

(9) Section 104W contains definitions.

(10) For information about the procedure for making claims under this Chapter, see Schedule 18 to FA 1998, in particular Part 9A of that Schedule.

104B Restriction on claiming credit and relief in respect of same expenditure

A company may not make a claim for an R&D expenditure credit and for relief under Part 13 (additional relief for expenditure on research and development) in respect of the same expenditure.

SMEs: qualifying expenditure on sub-contracted R&D

104C Qualifying expenditure on sub-contracted R&D

(1) For the purposes of this Chapter a company's "qualifying expenditure on sub-contracted R&D" means expenditure incurred by it that meets conditions A and B.

(2) Condition A is that the expenditure is incurred on research and development contracted out to the company by—
  (a) a large company, or
  (b) any person otherwise than in the course of carrying on a chargeable trade.

(3) A "chargeable trade" is—
  (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
  (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of this Part.

(4) Condition B is that the expenditure is expenditure to which section 104D or 104E applies.

104D Expenditure on sub-contracted R&D undertaken in-house

(1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.

(2) Condition A is that the research and development is undertaken by the company itself.

(3) Condition B is that the expenditure is—
  (a) incurred on staffing costs (see section 1123),
  (b) incurred on software or consumable items (see section 1125),
  (c) qualifying expenditure on externally provided workers (see section 1127), or
  (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).

(4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.

(5) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

104E Expenditure on sub-contracted R&D not undertaken in-house

(1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.

(2) Condition A is that the expenditure is incurred in making payments to—

(a) a qualifying body,

(b) an individual, or

(c) a firm, each member of which is an individual,

in respect of research and development contracted out by the company to the body, individual or firm.

(3) Condition B is that the research and development is undertaken by the body, individual or firm itself.

(4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.

(5) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

SMEs: subsidised qualifying expenditure

104F Subsidised qualifying expenditure

For the purposes of this Chapter a company's "subsidised qualifying expenditure" means—

(a) its subsidised qualifying expenditure on in-house direct research and development (see section 104G), and

(b) its subsidised qualifying expenditure on contracted out research and development (see section 104H).

104G Subsidised qualifying expenditure on in-house direct R&D

(1) A company's "subsidised qualifying expenditure on in-house direct research and development" means expenditure incurred by it in relation to which each of conditions A to D is met.

(2) Condition A is that the expenditure is subsidised.

(3) Condition B is that the expenditure is—

(a) incurred on staffing costs (see section 1123),

(b) incurred on software or consumable items (see section 1125),

(c) qualifying expenditure on externally provided workers (see section 1127), or

(d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).

(4) Condition C is that the expenditure is attributable to relevant research and development undertaken by the company itself.

(5) Condition D is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.

(6) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

104H Subsidised qualifying expenditure on contracted out R&D

(1) A company's "subsidised qualifying expenditure on contracted out research and development" means expenditure—

(a) which is incurred by it in making the qualifying element of a sub-contractor payment (see sections 1134 to 1136), and

(b) in relation to which each of conditions A to E is met.

(2) Condition A is that the expenditure is subsidised.

(3) Condition B is that the sub-contractor is—

(a) a qualifying body,

(b) an individual, or

(c) a firm, each member of which is an individual.

(4) Condition C is that the body, individual or firm concerned undertakes the contracted out research and development itself.

(5) Condition D is that the expenditure is attributable to relevant research and development in relation to the company.

(6) Condition E is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.

(7) Sections 1124, 1126 and 1132 contain provision about when particular kinds of expenditure are attributable to relevant research and development.

SMEs: capped R&D expenditure

104I Capped R&D expenditure

For the purposes of this Chapter a company's "capped R&D expenditure" means any expenditure—

(a) in respect of which the company is not entitled to relief under Chapter 2 of Part 13 merely because of section 1113 (cap on R&D aid),

(b) which is not qualifying expenditure on sub-contracted R&D, and

(c) which would have been qualifying R&D expenditure had the company been a large company throughout the accounting period in question.

Large companies: qualifying R&D expenditure

104J Qualifying expenditure on in-house direct R&D

(1) A company's "qualifying expenditure on in-house direct research and development" means expenditure incurred by it in relation to which conditions A, B and C are met.

(2) Condition A is that the expenditure is—
- (a) incurred on staffing costs (see section 1123),
- (b) incurred on software or consumable items (see section 1125),
- (c) qualifying expenditure on externally provided workers (see section 1127), or
- (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).

(3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.

(4) Condition C is that, if the expenditure is incurred in carrying on activities contracted out to the company, the activities are contracted out by—
- (a) a large company, or
- (b) any person otherwise than in the course of carrying on a chargeable trade.

(5) A "chargeable trade" is—
- (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
- (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of this Part.

(6) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (2)(a), (b) or (c) is attributable to relevant research and development.

104K Qualifying expenditure on contracted out R&D

(1) A company's "qualifying expenditure on contracted out research and development" means expenditure incurred by it in relation to which each of conditions A to D is met.

(2) Condition A is that the expenditure is incurred in making payments to—
- (a) a qualifying body,
- (b) an individual, or
- (c) a firm, each member of which is an individual,

in respect of research and development contracted out by the company to the body, individual or firm concerned ("the contracted out R&D").

(3) Condition B is that the body, individual or firm concerned undertakes the contracted out R&D itself.

(4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.

(5) Condition D is that, if the contracted out R&D is itself contracted out to the company, it is contracted out by—

(a) a large company, or

(b) any person otherwise than in the course of carrying on a chargeable trade.

(6) A "chargeable trade" is—

(a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or

(b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of this Part.

(7) Sections 1124, 1126 and 1132 contain provision about when particular kinds of expenditure are attributable to relevant research and development.

104L Qualifying expenditure on contributions to independent R&D

(1) A company's "qualifying expenditure on contributions to independent research and development" means expenditure incurred by it in relation to which each of conditions A to E is met.

(2) Condition A is that the expenditure is incurred in making payments to—

(a) a qualifying body,

(b) an individual, or

(c) a firm, each member of which is an individual,

for the purpose of funding research and development carried on by the body, individual or firm concerned ("the funded R&D").

(3) Condition B is that the funded R&D is relevant research and development in relation to the company.

(4) Condition C is that the funded R&D is not contracted out to the qualifying body, individual or firm concerned by another person.

(5) Condition D is that, if the payment is made to an individual, the company is not connected with the individual when the payment is made.

(6) Condition E is that, if the payment is made to a firm (other than a qualifying body), the company is not connected with any member of the firm when the payment is made.

Amount of credit

104M Amount of R&D expenditure credit

(1) The amount of the R&D expenditure credit to which a company is entitled for an accounting period is the relevant percentage of the amount of the qualifying R&D expenditure for the period.

(2) In the case of a company carrying on a ring fence trade, the relevant percentage is 49%.

In this subsection "ring fence trade" has the meaning given by section 277 of CTA 2010.

(3) In any other case, the relevant percentage is 9.1%.

(4) The Treasury may by order replace the percentage for the time being specified in subsection (2) or (3) with a different percentage.

(5) An order under subsection (4) may contain incidental, supplemental, consequential and transitional provision and savings.

Payment of credit

104N Payment of R&D expenditure credit

(1) This section applies if a company is entitled to an R&D expenditure credit for an accounting period under this Chapter.

(2) The amount to which the company is entitled in respect of the R&D expenditure credit ("the set-off amount") is to be treated in the following way—

Step 1

The set-off amount is to be applied in discharging any liability of the company to pay corporation tax for the accounting period.

If any of the set-off amount is remaining, go to step 2.

Step 2

If the amount remaining after step 1 is greater than the relevant portion of the company's staffing costs for the accounting period (see subsection (3))—

(a) that amount is to be reduced to the amount of the relevant portion of those costs (which may be nil), and

(b) so much of the amount remaining after step 1 as is greater than the relevant portion of those costs is to be treated as an amount of R&D expenditure credit to which the company is entitled for its next accounting period.

If any of the set-off amount is remaining, go to step 3.

Step 3

The amount remaining after step 2 is to be applied in discharging any liability of the company to pay corporation tax for any other accounting period.

If any of the set-off amount is remaining, go to step 4.

Step 4

If the company is a member of a group, it may surrender the whole or any part of the amount remaining after step 3 to any other member of the group (see section 104O).

If no such surrender is made, or any of the set-off amount is otherwise remaining, go to step 5.

Step 5

Deduct from the amount remaining after step 4 the following amounts—

(a) an amount equal to the corporation tax that would be chargeable on the amount if it was an amount of profits of the company for the accounting period and corporation tax on such profits was chargeable at the main rate, and

(b) in the case of a company carrying on a ring fence trade, an amount equal to the supplementary charge that would be chargeable on the amount if it was an amount of adjusted ring fence profits for the accounting period.

For provision about the treatment of any amount so deducted, see section 104P.

Step 6

The amount remaining after step 5 is to be applied in discharging any other liability of the company to pay a sum to the Commissioners under or by virtue of an enactment or under a contract settlement.

If any of the set-off amount is remaining, go to step 7.

Step 7

The amount remaining after step 6 is payable to the company by an officer of Revenue and Customs.

But this is subject to section 104Q (restrictions on payment of R&D expenditure credit).

(3) The "relevant portion" of the company's staffing costs for an accounting period is the amount of staffing costs of the company that—

(a) are taken into account in calculating the amount of the qualifying R&D expenditure for the period, and

(b) form part of the total amount of the company's PAYE and NIC liabilities for payment periods ending in the accounting period (see section 104S).

(4) In this section—

"adjusted ring fence profits" has the meaning given by section 330(2) of CTA 2010,

"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, and

"ring fence trade" has the meaning given by section 277 of CTA 2010.

104O Surrender of credit to other group companies

(1) This section applies if—

(a) a company is entitled to an R&D expenditure credit under this Chapter for an accounting period ("the surrender period"), and

(b) the company surrenders the whole or any part of the credit to another member of the group (the "relevant group member") under step 4 in section 104N(2).

(2) In this section an accounting period of a relevant group member is a "relevant accounting period" if there is a period ("the overlapping period") that is common to the accounting period and the surrender period.

(3) The amount surrendered is to be applied in discharging any liability of the relevant group member to pay corporation tax for any relevant accounting period as follows—

Step 1

Take the proportion of the relevant accounting period included in the overlapping period.

Apply that proportion to the amount of corporation tax payable by the relevant group member for the relevant accounting period.

Step 2

Take the proportion of the surrender period included in the overlapping period.

Apply that proportion to the amount surrendered to the relevant group member.

Step 3

The amount given by step 2 is to be applied in discharging the amount given by step 1.

(4) If any of the amount surrendered is remaining after the operation of step 3 in subsection (3), it is to be treated for the purposes of section 104N as if it had not been surrendered to the relevant group member.

104P Payment of credit net of tax

(1) This section applies if—

(a) a company is entitled to an R&D expenditure credit for an accounting period under this Chapter, and

(b) an amount ("the step 5 amount") is deducted in respect of the credit under step 5 in section 104N(2).

(2) The step 5 amount is to be applied in discharging any liability of the company to pay corporation tax for any subsequent accounting period.

This is subject to subsection (3).

(3) If the company is a member of a group, it may surrender the whole or any part of the step 5 amount to any other member of the group.

In such a case, section 104O(3) applies to the amount surrendered as it applies to an amount of R&D expenditure credit surrendered under step 4 in section 104N(2).

(4) If any of the amount surrendered under subsection (3) is remaining after the operation of step 3 in section 104O(3), it is to be treated for the purposes of this section as if it had not been surrendered to the relevant group member.

(5) Any amounts to be applied under subsection (2) or (3) in discharging any liability of a company to pay corporation tax for an accounting period are to be so applied before any amounts that may be so applied under step 1, 3 or 4 in section 104N(2).

104Q Restrictions on payment of R&D expenditure credit

(1) This section applies if—
 (a) a company is entitled to an R&D expenditure credit for an accounting period under this Chapter, and
 (b) an amount of the R&D expenditure credit is payable to the company under step 7 of section 104N(2).

(2) If at the time of claiming the credit the company was not a going concern (see section 104R)—
 (a) the company is not entitled to be paid that amount, and
 (b) that amount is extinguished.

(3) But if the company becomes a going concern on or before the last day on which an amendment of the company's tax return for the accounting period could be made under paragraph 15 of Schedule 18 to FA 1998, the company is entitled to be paid that amount.

(4) If the company's tax return for the accounting period is enquired into by an officer of Revenue and Customs—
 (a) no payment of that amount need be made before the officer's enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998), but
 (b) the officer may make a payment on a provisional basis of such amount as the officer thinks fit.

(5) No payment of that amount need be made if the company has outstanding PAYE and NIC liabilities for the period.

(6) A company has outstanding PAYE and NIC liabilities for an accounting period if it has not paid to an officer of Revenue and Customs any amount that it is required to pay—
 (a) under PAYE regulations, or
 (b) in respect of Class 1 national insurance contributions,
for payment periods ending in the accounting period.

104R "Going concern"

(1) For the purposes of section 104Q(2) and (3) a company is a going concern if—
 (a) its latest published accounts were prepared on a going concern basis, and
 (b) nothing in those accounts indicates that they were only prepared on that basis because of an expectation that the company would receive R&D expenditure credits under this Chapter.
This is subject to subsection (2).

(2) A company is not a going concern at any time if it is in administration or liquidation at that time.

(3) For the purposes of this section a company is in administration if—

(a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(4) For the purposes of this section a company is in liquidation if—

(a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or

(b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(5) Section 436(2) of the Companies Act 2006 (meaning of "publication" of documents) has effect for the purposes of this section.

104S Total amount of company's PAYE and NIC liabilities

(1) For the purposes of section 104N(3) the total amount of the company's PAYE and NIC liabilities for a payment period is the sum of—

(a) amount A, and

(b) amount B.

(2) Amount A is the amount of income tax for which the company is required to account to an officer of Revenue and Customs for the payment period under PAYE regulations.

(3) In calculating amount A disregard any deduction the company is authorised to make in respect of child tax credit or working tax credit.

(4) Amount B is the amount of Class 1 national insurance contributions for which the company is required to account to an officer of Revenue and Customs for the payment period.

(5) In calculating amount B disregard any deduction the company is authorised to make in respect of payments of statutory sick pay, statutory maternity pay, child tax credit or working tax credit.

Supplementary

104T Insurance companies treated as large companies

(1) This section applies if an insurance company—

(a) carries on life assurance business in an accounting period, and

(b) is a small or medium-sized enterprise in the period.

(2) For the purposes of this Chapter the company is to be treated as if it were not such an enterprise in the period (and accordingly is to be treated as a large company for the purposes of this Chapter).

(3) Section 1119 (meaning of "small or medium-sized enterprise"), as it has effect for the purposes of this Chapter (see section 104W), is to be read subject to this section.

104U R&D expenditure of group companies

(1) This section applies if—
   (a) a company ("A") incurs expenditure on making a payment to another company ("B") in respect of activities contracted out by A to B,
   (b) the activities would, if carried out by A, be research and development of A (taken together with A's other activities), and
   (c) A and B are members of the same group at the time the payment is made.

(2) If the activities are undertaken by B itself, they are to be treated for the purposes of this Chapter (so far as it would not otherwise be the case) as research and development undertaken by B itself.

(3) If B makes a payment to a third party ("C"), any of the activities—
   (a) contracted out by B to C, and
   (b) undertaken by C itself,

are to be treated for the purposes of this Chapter (so far as it would not otherwise be the case) as research and development contracted out by B to C.

Tax avoidance

104V Artificially inflated claims for credit

(1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be disregarded for the purpose of determining for an accounting period R&D expenditure credits to which a company is entitled under this Chapter.

(2) Arrangements are entered into wholly or mainly for a "disqualifying purpose" if their main object, or one of their main objects, is to enable a company to obtain—
   (a) an R&D expenditure credit under this Chapter to which it would not otherwise be entitled, or
   (b) an R&D expenditure credit under this Chapter of a greater amount than that to which it would otherwise be entitled.

(3) In this section "arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.

Interpretation

104W Interpretation

(1) In this Chapter the following terms have the same meaning as they have in Part 13 (additional relief for expenditure on R&D)—

"large company" (see section 1122),
"payment period" (see section 1141),
"qualifying body" (see section 1142),
"relevant research and development" (see section 1042),
"research and development" (see section 1041),

"small or medium-sized enterprise" (see section 1119).

(2) The following sections apply for the purposes of this Chapter as they apply for the purposes of Part 13—

sections 1123 and 1124 (staffing costs),

sections 1125 and 1126 (software or consumable items),

sections 1127 to 1132 (qualifying expenditure on externally provided workers),

sections 1133 to 1136 (sub-contractor payments),

section 1138 ("subsidised expenditure"),

section 1140 (relevant payments to the subjects of a clinical trial).

(3) For the purposes of this Chapter two companies are members of the same group if they are members of the same group of companies for the purposes of Part 5 of CTA 2010 (group relief)."

PART 2

CONSEQUENTIAL AMENDMENTS

FA 1998

2 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.

3 In paragraph 10(2) (other claims and elections to be included in return), after "first-year tax credits" insert ", R&D expenditure credits".

4 (1) Paragraph 52 (recovery of excessive repayments etc) is amended as follows.

(2) In sub-paragraph (2), after paragraph (b) insert—

"(bza) R&D expenditure credit under Chapter 6A of Part 3 of the Corporation Tax Act 2009,".

(3) In sub-paragraph (5)—

(a) after paragraph (a) insert—

"(aa) an amount of R&D expenditure credit paid to a company for an accounting period,";

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

5 (1) Part 9A (claims for R&D tax relief) is amended as follows.

(2) In paragraph 83A (introduction), for the words after "applies" substitute "to—

(a) claims for R&D expenditure credits under Chapter 6A of Part 3 of the Corporation Tax Act 2009, and

(b) claims for R&D tax relief under Part 13 of that Act."

(3) In paragraph 83C (content of claim), before "relief" insert "credit or".

(4) Accordingly, the heading of the Part becomes "CLAIMS FOR R&D EXPENDITURE CREDITS OR R&D TAX RELIEF".

FA 2007

6 In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa) (definition of “corporation tax credit”), after sub-paragraph (i) insert—

“(ia) an R&D expenditure credit under Chapter 6A of Part 3 of CTA 2009,”.

CTA 2009

7 (1) Part 13 of CTA 2009 (additional relief for expenditure on research and development) is amended as follows.

(2) After section 1040 insert—

“1040A R&D expenditure credits

(1) For provision enabling a company carrying on a trade to make a claim for an amount in respect of expenditure on research and development (an “R&D expenditure credit”) to be brought into account as a receipt in calculating the profits of the trade for an accounting period, see Chapter 6A of Part 3.

(2) For provision prohibiting a company from making a claim for an R&D expenditure credit and for relief under this Part in respect of the same expenditure, see section 104B.”

(3) In section 1138 (meaning of “subsidised expenditure”), in subsection (3), omit the “and” at the end of paragraph (a) and after paragraph (b) insert—

“(c) R&D expenditure credits under Chapter 6A of Part 3.”

8 In Schedule 4 to CTA 2009 (index of defined expressions), at the appropriate place insert—

“capped R&D expenditure (in Chapter 6A of Part 3)	section 104I”;
“large company (in Chapter 6A of Part 3)	section 1122 (as applied by section 104W)”;
“payment period (in Chapter 6A of Part 3)	section 1141 (as applied by section 104W)”;
“qualifying body (in Chapter 6A of Part 3)	section 1142 (as applied by section 104W)”;
“qualifying expenditure on sub-contracted R&D (in Chapter 6A of Part 3)	section 104C”;
“qualifying R&D expenditure (in Chapter 6A of Part 3)	section 104A”;
“relevant payment to the subject of a clinical trial (in Chapter 6A of Part 3)	section 1140 (as applied by section 104W)”;

"relevant research and development (in Chapter 6A of Part 3)	section 1042 (as applied by section 104W)";
"research and development (in Chapter 6A of Part 3)	section 1041 (as applied by section 104W)";
"small or medium-sized enterprise (in Chapter 6A of Part 3)	section 1119 (as applied by section 104W)";
"software or consumable items (in Chapter 6A of Part 3)	section 1125 (as applied by section 104W)";
"staffing costs (in Chapter 6A of Part 3)	section 1123 (as applied by section 104W)";
"subsidised qualifying expenditure (in Chapter 6A of Part 3)	section 104F".

CTA 2010

9 Part 8A of CTA 2010 (profits arising from the exploitation of patents etc) is amended as follows.

10 (1) Section 357CG (adjustments in calculating profits of trade) is amended as follows.

(2) In subsection (4), after "amounts to be deducted are" insert "—

(a) the amount of any R&D expenditure credits (within the meaning of Chapter 6A of Part 3 of CTA 2009) brought into account in calculating the profits of the trade for the accounting period, and

(b) ".

11 (1) Section 357CK (deductions that are not routine deductions) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a), the words from "for which" to the end become sub-paragraph (i);

(b) after that sub-paragraph insert ", or

(ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009,";

(c) at the beginning of paragraph (b) insert "where the company obtains an additional deduction as mentioned in paragraph (a)(i),".

PART 3

ABOLITION OF CERTAIN RELIEF UNDER PART 13 OF CTA 2009

12 Part 13 of CTA 2009 (additional relief for expenditure on research and development) is amended as follows.

13 (1) Section 1039 (overview of Part) is amended as follows.

(2) In subsection (3)—
 (a) for "Chapters 2 to 4" substitute "Chapter 2";
 (b) omit paragraphs (b) and (c).

(3) Omit subsection (4).

(4) In subsection (5)—
 (a) for "Chapters 2 to 5" substitute "Chapter 2";
 (b) omit paragraphs (b) and (c).

14 Omit Chapter 3 (relief for SMEs: R&D sub-contracted to SME).

15 Omit Chapter 4 (relief for SMEs: subsidised and capped expenditure on R&D).

16 Omit Chapter 5 (relief for large companies).

17 (1) Section 1081 (insurance companies treated as large companies) is amended as follows.

(2) In subsection (2), for "Chapters 2 to 5" substitute "Chapter 2".

(3) Omit subsection (3).

18 Omit section 1082 (R&D expenditure of group companies).

19 Omit section 1083 (refunds of expenditure treated as income chargeable to tax).

20 (1) Section 1084 (artificially inflated claims for relief or tax credit) is amended as follows.

(2) In subsection (2)(a), for "Chapters 2 to 5" substitute "Chapter 2".

(3) In subsection (3)(a) and (b), for "Chapters 2 to 5" substitute "Chapter 2".

21 In section 1119 (meaning of "small or medium-sized enterprise"), in subsection (3), for "Chapters 2 to 5" substitute "Chapter 2".

PART 4

COMMENCEMENT AND TRANSITIONAL PROVISION

22 The amendments made by Parts 1 and 2 of this Schedule have effect in relation to expenditure incurred on or after 1 April 2013.

23 Subject to paragraph 24, the amendments made by Part 3 of this Schedule have effect in relation to expenditure incurred on or after 1 April 2016.

24 (1) If a company claims an R&D expenditure credit under section 104A of CTA 2009 for an accounting period beginning before 1 April 2016, the

amendments made by Part 3 of this Schedule are treated as having effect in relation to expenditure incurred by the company on or after the first day of that accounting period.

(2) But in a case where the accounting period includes 1 April 2013, those amendments are treated as having effect in relation to expenditure incurred by the company on or after that day.

EXPLANATORY NOTE

'ABOVE THE LINE' (ATL) CREDIT FOR RESEARCH AND DEVELOPMENT (R&D)

SUMMARY

1. This clause introduces an 'Above the Line' (ATL) credit for research and development expenditure incurred on or after 1 April 2013. The ATL credit is introduced alongside the existing additional relief for expenditure on research and development under Part 13 of CTA 2009 (known as the super-deduction) but will replace the super-deduction from 1 April 2016.

DETAILS OF THE CLAUSE

2. Part 1 and paragraph 1 introduce a new Chapter 6A of Part 3 CTA 2009 (trading income).

3. Section 104A signposts various definitions and provisions relating to claims and confirms that the credit is a taxable profit of the trade.

4. Section 104B provides that a company cannot make a claim under Chapter 6A and Part 13 of CTA 2009 in relation to the same expenditure.

5. Section 104C sets out the meaning of "qualifying expenditure on sub-contracted R&D" for SME companies.

6. Section 104D applies to SME companies and sets out what is qualifying expenditure on R&D contracted out to a company.

7. Section 104E applies to SME companies and defines the conditions applying to expenditure on R&D contracted out to a company.

8. Section 104F defines the meaning of "subsidised qualifying expenditure" for SME companies.

9. Section 104G defines the meaning of "subsidised qualifying expenditure on in-house direct research and development" for SME companies.

10. Section 104H defines the meaning of "subsidised qualifying expenditure on contracted out research and development" for SME companies.

11. Section 104I defines the meaning of "capped R&D expenditure" for SME companies.

12. Section 104J defines the meaning of "qualifying expenditure on in-house direct research and development" for large companies.

13. Section 104K defines the meaning of “qualifying expenditure on contracted out research and development” for large companies.

14. Section 104L defines the meaning of “qualifying expenditure on contributions to independent research and development” for large companies.

15. Section 104M sets out the amount of the credit as a percentage of qualifying expenditure and that the percentage may be replaced by Treasury Order. It also provides for a different percentage for companies carrying on a “ring fence trade”.

16. Section 104N outlines how the payment of credit is calculated and the order in which the various set-offs and restrictions should be applied. It also sets out how the payment of the credit will be taxed.

17. Section 104O outlines how a credit can be surrendered to other group companies.

18. Section 104P outlines how tax deducted on the payment of a credit can be utilised including the order of set off.

19. Section 104Q sets out restrictions to the payment of a credit if the company is not a “going concern”, has outstanding PAYE or NIC liabilities or where the company’s tax return is being enquired into. It also sets out that a company will become entitled to the credit where it becomes a going concern again within the time limits for amending the tax return.

20. Section 104R defines the meaning of “going concern”.

21. Section 104S defines the meaning of the total amount of a company’s PAYE and NIC liabilities.

22. Section 104T applies so as to treat SME insurance companies as large companies for the purposes of Chapter 6A.

23. Section 104U relates to inter group payments made for research and development activities carried out.

24. Section 104V is an anti-avoidance provision which prevents artificially inflated claims for credit.

25. Section 104W provides for various definitions.

26. Part 2 provides for consequential amendments.

27. Part 3 of the Schedule provides for the abolition of R&D relief given by way of a super-deduction from April 2016.

28. Part 4 and paragraphs 22 to 23 provide that amendments made by Parts 1 and 2 have effect in relation to expenditure incurred on or after 1 April 2013 and amendments made by Part 3 have effect in relation to expenditure incurred on or after 1 April 2016.

29. Paragraph 24 provides that where a company elects to claim an R&D expenditure credit for accounting periods beginning before 1 April 2016 (or for expenditure incurred on or after 1 April 2013 where the accounting period straddles that date), then that company will no longer able to claim relief by way of a super-deduction under the large company scheme.

BACKGROUND

30. Additional relief for expenditure by a large company on research and development is currently given as a super-deduction against corporation tax profits reducing the amount of tax payable.

31. To encourage more research and development by large companies it is proposed to replace the current deduction system with a payable credit (the ATL credit) to all large companies including those who have no liability to corporation tax. This will make the benefits more visible and certain.

32. The ATL credit applies for qualifying expenditure incurred on or after 1 April 2013 and will be introduced along side the existing super-deduction and will replace it in April 2016.

33. The underlying rules for identifying qualifying activity and calculating qualifying expenditure remain unchanged and the new credit will be calculated as a percentage by reference to the amount of qualifying expenditure on R&D.

34. The ATL credit will be a taxable receipt and will be paid net of tax to companies with no corporation tax liability.

35. The ATL credit will be paid at a higher percentage rate to companies in the ring fence to reflect the higher rate of tax paid by those companies and to reflect the current levels received under the super-deduction.

36. In calculating the payable element, the credit will be used firstly to reduce the corporation tax liability of the claimant company for the same accounting period.

37. Any payable element will then be limited by the PAYE/NIC liabilities of the company's R&D staff. Any amount above the cap may be carried forward to be treated as a credit for the following year.

38. If a claim is made, the payable element (after the PAYE/NIC cap has been applied) will be available to discharge any corporation tax

liabilities of other accounting periods of the claimant company or the corporation tax liability of other group companies.

39. The balance after the cap and discharging of liability will be payable but under deduction of an amount equal to corporation tax at the full company rate applying for the accounting period (including the supplementary charge for ring fence trades) but subject to discharging any other liability of the company to the Commissioners.

40. Any notional tax retained will be carried forward and be available to discharge the claimant company's liability in preference to any ATL credit for the following year.

41. If you have any questions about this change or comments on the legislation please contact Carol Johnson on 020 7147 3252 (email: carol.johnson4@hmrc.gsi.gov.uk) or Neil Smillie on 020 7147 0864 (email: neil.smillie@hmrc.gsi.gov.uk).

1 Relief for television production and video games development

(1) Schedule 1 contains provision about television production.

(2) Schedule 2 contains provision about video games development.

(3) Schedule 3 contains consequential amendments.

SCHEDULES

SCHEDULE 1

Section 1

TAX RELIEF FOR TELEVISION PRODUCTION

PART 1

AMENDMENTS OF CTA 2009

1 After Part 15 of CTA 2009 insert—

"PART 15A

TELEVISION PRODUCTION

CHAPTER 1

INTRODUCTION

Introductory

1216A Overview of Part

(1) This Part is about television production.

(2) Sections 1216AA to 1216AJ contain definitions and other provisions about interpretation that apply for the purposes of this Part.
See, in particular—
(a) section 1216AB, which explains what is meant by a "relevant programme", and
(b) section 1216AE, which explains how a company comes to be treated as the television production company in relation to a relevant programme.

(3) Chapter 2 is about the taxation of the activities of a television production company and includes—
(a) provision for the company's activities in relation to its relevant programme to be treated as a separate trade, and
(b) provision about the calculation of the profits and losses of that trade.

(4) Chapter 3 is about relief (called "television tax relief") which can be given to a television production company—
(a) by way of additional deductions to be made in calculating the profits or losses of the company's separate trade, or

(b) by way of a payment (a "television tax credit") to be made on the company's surrender of losses from that trade.

(5) Chapter 4 is about the relief which can be given for losses made by a television production company in its separate trade, including provision for certain such losses to be transferred to other separate trades.

(6) Chapter 5 provides—
(a) for relief under Chapters 3 and 4 to be given on a provisional basis, and
(b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Meaning of "television programme", "relevant programme" etc

1216AA "Television programme"

(1) This section applies for the purposes of this Part.

(2) "Television programme" means any programme (with or without sounds) which—
(a) is produced wholly or partly to be seen on television, and
(b) consists of moving or still images or of legible text or of a combination of those things.

(3) In subsection (1) "television" includes the internet.

(4) Any television programmes that are commissioned together under the same agreement are treated as a single television programme.

(5) A television programme is completed when it is first in a form in which it can reasonably be regarded as ready for broadcast to the general public.

1216AB "Relevant programme"

(1) This section applies for the purposes of this Part.

(2) A television programme is a "relevant programme" if—
(a) conditions A and B are met, and
(b) in the case of a television programme that is not animation, conditions C and D are met.

(3) Condition A is that the programme is—
(a) a drama,
(b) a documentary, or
(c) animation.
For further provision about these terms, see section 1216AC.

(4) Condition B is that the programme is not an excluded programme (see section 1216AD).

(5) Condition C is that the slot length in relation to the programme is greater than 30 minutes.

(6) Condition D is that the average core expenditure per hour of slot length in relation to the programme is not less than £1 million.

For the meaning of "core expenditure", see section 1216AG.

(7) "Slot length", in relation to a television programme, means the period of time which the programme is commissioned to fill.

1216AC Types of programme eligible to be relevant programmes

(1) This section applies for the purposes of this Part.

(2) A programme is a "drama" if—
  (a) it consists wholly or mainly of a depiction of events,
  (b) the events are depicted (wholly or mainly) by one or more persons performing, and
  (c) the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, acting, singing or dancing, involves the playing of a role,

and for these purposes "drama" includes comedy.

(3) A drama or documentary that includes animation is to be treated as animation if the core expenditure on the completed animation constitutes at least 51% of the total core expenditure on the completed programme.

1216AD Excluded programmes

(1) For the purposes of this Part a television programme is an excluded programme if it falls within any of the Heads set out in the following subsections—
  (a) subsection (2) (advertisements etc),
  (b) subsection (3) (current affairs etc),
  (c) subsection (4) (entertainment shows),
  (d) subsection (5) (competitions),
  (e) subsection (6) (live performances),
  (f) subsection (7) (training programmes).

(2) Head 1 is any advertisement or other promotional programme.

(3) Head 2 is any news or current affairs programme or discussion programme.

(4) Head 3 is any quiz show, game show, panel show, variety show, chat show or similar entertainment.

(5) Head 4 is any programme consisting of or including—
  (a) a competition or contest, or
  (b) the results of a competition or contest.

(6) Head 5 is any broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed.

(7) Head 6 is any programme produced for training purposes.

Other interpretation

1216AE Television production company

(1) For the purposes of this Part "television production company" is to be read in accordance with this section.

(2) There cannot be more than one television production company in relation to a relevant programme.

(3) A company is the television production company in relation to a relevant programme if the company (otherwise than in partnership)—
  (a) is responsible—
    (i) for pre-production, principal photography and post production of the programme, and
    (ii) for delivery of the programme,
  (b) is actively engaged in production planning and decision-making during pre-production, principal photography and post production, and
  (c) directly negotiates, contracts and pays for rights, goods and services in relation to the programme.

(4) A company is the television production company in relation to a relevant programme that is a qualifying co-production if the company (otherwise than in partnership)—
  (a) is a co-producer, and
  (b) makes an effective creative, technical and artistic contribution to the programme.

(5) If there is more than one company meeting the description in subsection (3) or (4), the company that is most directly engaged in the activities referred to in that subsection is the television production company in relation to the relevant programme.

(6) If there is no company meeting the description in subsection (3) or (4), there is no television production company in relation to the relevant programme.

(7) A company may elect to be regarded as a company which does not meet the description in subsection (3) or (4).

(8) The election—
  (a) must be made by the company by being included in its company tax return for an accounting period (and may be included in the return originally made or by amendment), and
  (b) may be withdrawn by the company only by amending its company tax return for that accounting period.

(9) The election has effect in relation to relevant programmes which commence principal photography in that or any subsequent accounting period.

1216AF "Television production activities" etc

(1) In this Part "television production activities", in relation to a relevant programme, means the activities involved in development, pre-

production, principal photography and post production of the programme.

(2) If all or any of the images in a relevant programme are generated by computer, references in this Part to principal photography are to be read as references to, or as including, the generation of those images.

(3) The Treasury may by regulations—

(a) amend subsections (1) and (2),

(b) provide that specified activities are or are not to be regarded as television production activities or as television production activities of a particular description, and

(c) provide that, in relation to a specified description of relevant programme, references to television production activities of a particular description are to be read as references to such activities as may be specified.

"Specified" means specified in the regulations.

1216AG "Production expenditure" and "core expenditure"

(1) This section applies for the purposes of this Part.

(2) "Production expenditure", in relation to a relevant programme, means expenditure on television production activities in connection with the programme.

(3) "Core expenditure", in relation to a relevant programme, means production expenditure on pre-production, principal photography and post production of the programme.

1216AH "UK expenditure" etc

(1) In this Part "UK expenditure", in relation to a relevant programme, means expenditure on goods or services that are used or consumed in the United Kingdom.

(2) Any apportionment of expenditure as between UK expenditure and non-UK expenditure for the purposes of this Part is to be made on a just and reasonable basis.

(3) The Treasury may by regulations amend subsection (1).

1216AI "Qualifying co-production" and "co-producer"

In this Part—

(a) "qualifying co-production" means a relevant programme that is eligible to be certified as a British programme under section 1216CB as a result of an agreement between Her Majesty's Government in the United Kingdom and any other government, international organisation or authority, and

(b) "co-producer" means a person who is a co-producer for the purposes of the agreement mentioned in paragraph (a).

1216AJ "Company tax return"

In this Part "company tax return" has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1)).

CHAPTER 2

TAXATION OF ACTIVITIES OF TELEVISION PRODUCTION COMPANY

Separate programme trade

1216B Activities of television production company treated as a separate trade

(1) This Chapter applies for corporation tax purposes to a company that is the television production company in relation to a relevant programme.

(2) The company's activities in relation to the programme are treated as a trade separate from any other activities of the company (including any activities in relation to any other television programme).

(3) In this Chapter the separate trade is called "the separate programme trade".

(4) The company is treated as beginning to carry on the separate programme trade—
   (a) when pre-production begins, or
   (b) if earlier, when any income from the relevant programme is received by the company.

1216BA Calculation of profits or losses of separate programme trade

(1) This section applies for the purpose of calculating the profits or losses of the separate programme trade.

(2) For the first period of account the following are brought into account—
   (a) as a debit, the costs of the relevant programme incurred (and represented in work done) to date, and
   (b) as a credit, the proportion of the estimated total income from the relevant programme treated as earned at the end of that period.

(3) For subsequent periods of account the following are brought into account—
   (a) as a debit, the difference between the amount of the costs of the relevant programme incurred (and represented in work done) to date and the corresponding amount for the previous period, and
   (b) as a credit, the difference between the proportion of the estimated total income from the relevant programme treated as earned at the end of that period and the corresponding amount for the previous period.

(4) The proportion of the estimated total income treated as earned at the end of a period of account is given by—

$$\frac{C}{T} \times I$$

where—

C is the total to date of costs incurred (and represented in work done),

T is the estimated total cost of the relevant programme, and
I is the estimated total income from the relevant programme.

Supplementary

1216BB Income from the relevant programme

(1) References in this Chapter to income from the relevant programme are to any receipts by the company in connection with the making or exploitation of the programme.

(2) This includes—
 (a) receipts from the sale of the programme or rights in it,
 (b) royalties or other payments for use of the programme or aspects of it (for example, characters or music),
 (c) payments for rights to produce games or other merchandise, and
 (d) receipts by the company by way of a profit share agreement.

(3) Receipts that (apart from this subsection) would be regarded as of a capital nature are treated as being of a revenue nature.

1216BC Costs of the relevant programme

(1) References in this Chapter to the costs of the relevant programme are to expenditure incurred by the company on—
 (a) television production activities in connection with the programme, or
 (b) activities with a view to exploiting the programme.

(2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.

(3) Expenditure that (apart from this subsection) would be regarded as of a capital nature by reason only of being incurred on the creation of an asset (the relevant programme) is treated as being of a revenue nature.

1216BD When costs are taken to be incurred

(1) For the purposes of this Chapter costs are incurred when they are represented in the state of completion of the work in progress.

(2) Accordingly—
 (a) payments in advance for work to be done are ignored until the work has been carried out, and
 (b) deferred payments are recognised to the extent that the work is represented in the state of completion.

(3) The costs incurred on the relevant programme are taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay.

(4) If an obligation is linked to income being earned from the relevant programme, no amount is to be brought into account in respect of the

costs of the obligation unless an appropriate amount of income is or has been brought into account.

1216BE Pre-trading expenditure

(1) This section applies if, before the company began to carry on the separate programme trade, it incurred expenditure on development of the relevant programme.

(2) The expenditure may be treated as expenditure of the separate programme trade and as if incurred immediately after the company began to carry on that trade.

(3) If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return accordingly.

(4) Any amendment or assessment necessary to give effect to subsection (3) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1216BF Estimates

Estimates for the purposes of this Chapter must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

CHAPTER 3

TELEVISION TAX RELIEF

Introductory

1216C Availability and overview of television tax relief

(1) This Chapter applies for corporation tax purposes to a company that is the television production company in relation to a relevant programme.

(2) Relief under this Chapter ("television tax relief") is available to the company if the conditions specified in the following sections are met in relation to the programme—
  (a) section 1216CA (intended for broadcast),
  (b) section 1216CB (British programme), and
  (c) section 1216CE (UK expenditure).

(3) Television tax relief is given by way of—
  (a) additional deductions (see sections 1216CF and 1216CG), and
  (b) television tax credits (see sections 1216CH to 1216CJ).

(4) But television tax relief is not available in respect of any expenditure if—
  (a) the company is entitled to an R&D expenditure credit under Chapter 6A of Part 3 in respect of the expenditure, or
  (b) the company has obtained relief under Part 13 (additional relief for expenditure on research and development) in respect of the expenditure.

(5) Sections 1216CK to 1216CN contain provision about unpaid costs, artificially inflated claims and confidentiality of information.

(6) In this Chapter "the separate programme trade" means the company's separate trade in relation to the relevant programme (see section 1216B).

(7) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for television tax relief.

"Intended for broadcast"

1216CA Intended for broadcast

(1) The relevant programme must be intended for broadcast to the general public.

(2) Whether this condition is met is determined when television production activities begin, so that—

  (a) where a relevant programme is originally intended for broadcast, this condition continues to be met even if that ceases to be the intention, and

  (b) where a relevant programme is not originally intended for broadcast, this condition is not met even if that becomes the intention.

British programmes

1216CB British programme

(1) The relevant programme must be certified by the Secretary of State as a British programme.

(2) The Secretary of State, with the approval of the Treasury, may by regulations specify conditions which must be met by a relevant programme before it may be certified as a British programme.

These conditions are known as the "cultural test".

(3) Regulations under subsection (2) may—

  (a) specify different conditions in relation to different descriptions of relevant programme,

  (b) provide that specified descriptions of programme may not be certified as a British programme, and

  (c) enable the Secretary of State to direct that any provision made by virtue of paragraph (b) does not apply to a programme that meets specified conditions.

"Specified" means specified in the regulations.

(4) Regulations under subsection (2) are to be made by statutory instrument.

(5) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

(6) Sections 1216CC and 1216CD contain further provision about certification of programmes as British programmes, including provision about applications for, and withdrawal of, certification.

1216CC Applications for certification

(1) An application for certification of a relevant programme as a British programme is to be made to the Secretary of State by the television production company.

(2) The application may be for an interim or final certificate.

(3) An interim certificate is a certificate that—
(a) is granted before the programme is completed, and
(b) states that the programme, if completed in accordance with the proposals set out in the application, will be a British programme.

(4) A final certificate is a certificate that—
(a) is granted after the programme is completed, and
(b) states that the programme is a British programme.

(5) The applicant must provide the Secretary of State with any documents or information which the Secretary of State requires in order to determine the application.

(6) The Secretary of State may require information provided for the purposes of the application to be accompanied by a statutory declaration, made by the person providing it, as to the truth of the information.

(7) The Secretary of State may by regulations make provision supplementing this section, including—
(a) provision about the form of applications,
(b) provision about the particulars and evidence necessary for satisfying the Secretary of State that a programme is a British programme for the purposes of this Part, and
(c) provision that any statutory declaration which is required by subsection (6) to be made by any person may be made on the person's behalf by such person as is specified in the regulations.

(8) Regulations under subsection (7) are to be made by statutory instrument.

(9) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of the House of Commons.

1216CD Certification and withdrawal of certification

(1) If the Secretary of State is satisfied that the requirements are met for interim or final certification of a relevant programme as a British programme, the Secretary of State must certify the programme accordingly.

(2) If the Secretary of State is not satisfied that those requirements are met, the Secretary of State must refuse the application.

(3) An interim certificate—
  (a) may be given subject to conditions, and (unless the Secretary of State directs otherwise) is of no effect if the conditions are not met, and
  (b) may be expressed to expire after a specified period, and (unless the Secretary of State directs otherwise) ceases to have effect at the end of that period.

(4) An interim certificate ceases to have effect when a final certificate is issued.

(5) If it appears to the Secretary of State that a relevant programme certified under this Part ought not to have been certified, the Secretary of State may revoke its certification.

(6) Unless the Secretary of State directs otherwise, a certificate that is revoked is treated as never having had effect.

UK expenditure

1216CE UK expenditure

(1) At least 25% of the core expenditure on the relevant programme incurred—
  (a) in the case of a British programme that is not a qualifying co-production, by the company, and
  (b) in the case of a qualifying co-production, by the co-producers,

must be UK expenditure.

(2) The Treasury may by regulations amend the percentage specified in subsection (1).

Additional deductions

1216CF Additional deduction for qualifying expenditure

(1) If television tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the relevant programme.

(2) The deduction is made in calculating the profit or loss of the separate programme trade.

(3) In this Chapter “qualifying expenditure” means core expenditure on the relevant programme that falls to be taken into account under Chapter 2 in calculating the profit or loss of the separate programme trade for tax purposes.

(4) The Treasury may by regulations—
  (a) amend subsection (3), and
  (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

1216CG Amount of additional deduction

(1) For the first period of account during which the separate programme trade is carried on, the amount of the additional deduction is given by—

$$0.8 \times E$$

where E is—

(a) so much of the qualifying expenditure as is UK expenditure, or

(b) if less, 80% of the total amount of qualifying expenditure.

(2) For any period of account after the first, the amount of the additional deduction is given by—

$$(0.8 \times E) - P$$

where—

E is—

(a) so much of the qualifying expenditure incurred to date as is UK expenditure, or

(b) if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

(3) The Treasury may by regulations amend the percentage specified in the definition of "E" in subsection (1) or (2).

Television tax credits

1216CH Television tax credit claimable if company has surrenderable loss

(1) If television tax relief is available to the company, it may claim a television tax credit for an accounting period in which it has a surrenderable loss.

(2) The company's surrenderable loss in an accounting period is—

(a) the company's available loss for the period in the separate programme trade (see subsection (3)), or

(b) if less, the available qualifying expenditure for the period (see subsections (5) and (6)).

(3) The company's available loss for an accounting period is given by—

$$L + RUL$$

where—

L is the amount of the company's loss for the period in the separate programme trade, and

RUL is the amount of any relevant unused loss of the company (see subsection (4)).

(4) The "relevant unused loss" of a company is so much of any available loss of the company for the previous accounting period as has not been—

(a) surrendered under section 1216CI(1), or

(b) carried forward under section 45 of CTA 2010 and set against profits of the separate programme trade.

(5) For the first period of account during which the separate programme trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1216CG(1).

(6) For any period of account after the first, the available qualifying expenditure is given by—

$$E - S$$

where—

E is the amount that is E for that period for the purposes of section 1216CG(2), and

S is the total amount previously surrendered under section 1216CI(1).

(7) If a period of account of the separate programme trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

1216CI Surrendering of loss and amount of television tax credit

(1) The company may surrender the whole or part of its surrenderable loss in an accounting period.

(2) If the company surrenders the whole or part of that loss, the amount of the television tax credit to which it is entitled for the accounting period is 25% of the amount of the loss surrendered.

(3) The company's available loss for the accounting period is reduced by the amount surrendered.

1216CJ Payment in respect of television tax credit

(1) If the company—

(a) is entitled to a television tax credit for a period, and

(b) makes a claim,

the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") must pay to the company the amount of the credit.

(2) An amount payable in respect of—

(a) a television tax credit, or

(b) interest on a television tax credit under section 826 of ICTA,

may be applied in discharging any liability of the company to pay corporation tax.

To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.

(3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a television tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).

In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.

(4) No payment need be made in respect of a television tax credit for an accounting period before the company has paid to the

Commissioners any amount that it is required to pay for payment periods ending in that accounting period—

(a) under PAYE regulations,

(b) under section 966 of ITA 2007 (visiting performers), or

(c) in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(5) A payment in respect of a television tax credit is not income of the company for any tax purpose.

Miscellaneous

1216CK No account to be taken of amount if unpaid

(1) In determining for the purposes of this Chapter the amount of costs incurred on a relevant programme at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.

(2) This is without prejudice to the operation of section 1216BD (when costs are taken to be incurred).

1216CL Artificially inflated claims for additional deduction or tax credit

(1) So far as a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be ignored in determining for any period—

(a) any additional deduction which a company may make under this Chapter, and

(b) any television tax credit to be given to a company.

(2) Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain—

(a) an additional deduction under this Chapter to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or

(b) a television tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.

(3) "Arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.

1216CM Confidentiality of information

(1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of the Secretary of State's functions under any of the provisions listed in subsection (2).

(2) The provisions referred to in subsection (1) are—

(a) sections 1216CB to 1216CD (certification of relevant programmes as British),

(b) sections 1217CB to 1217CD (certification of video games as British), and

(c) Schedule 1 to the Films Act 1985 (certification of films as British).

(3) Information so disclosed may be disclosed to the British Film Institute.

(4) The Treasury may by order amend subsection (3)—

(a) so as to substitute for the person or body specified in that subsection a different person or body, or

(b) in consequence of a change in the name of the person or body so specified.

(5) A person to whom information is disclosed under subsection (1) or (3) may not otherwise disclose it except—

(a) for the purposes of the Secretary of State's functions under any of the provisions listed in subsection (2),

(b) if the disclosure is authorised by an enactment,

(c) in pursuance of an order of a court,

(d) for the purposes of a criminal investigation or legal proceedings (whether civil or criminal) connected with the operation of any of Parts 15 to 15B of this Act or Schedule 1 to the Films Act 1985,

(e) with the consent of the Commissioners for Her Majesty's Revenue and Customs, or

(f) with the consent of each person to whom the information relates.

1216CN Wrongful disclosure

(1) A person ("X") commits an offence if—

(a) X discloses revenue and customs information relating to a person (as defined in section 19(2) of the Commissioners for Revenue and Customs Act 2005),

(b) the identity of the person to whom the information relates is specified in the disclosure or can be deduced from it, and

(c) the disclosure contravenes section 1216CM(5).

(2) If a person ("Y") is charged with an offence under subsection (1), it is a defence for Y to prove that Y reasonably believed—

(a) that the disclosure was lawful, or

(b) that the information had already and lawfully been made available to the public.

(3) A person guilty of an offence under subsection (1) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.

(4) A prosecution for an offence under subsection (1) may be brought in England and Wales only—

(a) by the Director of Revenue and Customs Prosecutions, or

(b) with the consent of the Director of Public Prosecutions.

(5) A prosecution for an offence under subsection (1) may be brought in Northern Ireland only—

(a) by the Commissioners for Her Majesty's Revenue and Customs, or

(b) with the consent of the Director of Public Prosecutions for Northern Ireland.

(6) In the application of this section—

(a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003, or

(b) in Northern Ireland,

the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

CHAPTER 4

PROGRAMME LOSSES

1216D Application of sections 1216DA and 1216DB

(1) Sections 1216DA and 1216DB apply to a company that is the television production company in relation to a relevant programme.

(2) In those sections—

"the completion period" means the accounting period of the company—

(a) in which the relevant programme is completed, or

(b) if the company does not complete the relevant programme, in which it abandons television production activities in relation to the programme,

"loss relief" includes any means by which a loss might be used to reduce the amount in respect of which the company, or any other person, is chargeable to tax,

"pre-completion period" means an accounting period of the company before the completion period, and

"the separate programme trade" means the company's separate trade in relation to the relevant programme (see section 1216B).

1216DA Restriction on use of losses while programme in production

(1) This section applies if in a pre-completion period a loss is made in the separate programme trade.

(2) The loss is not available for loss relief except to the extent that it may be carried forward under section 45 of CTA 2010 to be set against profits of the separate programme trade in a subsequent period.

1216DB Use of losses in later periods

(1) This section applies to the following accounting periods of the company ("relevant later periods")—

(a) the completion period, and

(b) any subsequent accounting period during which the separate programme trade continues.

(2) Subsection (3) applies if a loss made in the separate programme trade is carried forward under section 45 of CTA 2010 from a pre-completion period to a relevant later period.

(3) So much (if any) of the loss as is not attributable to television tax relief (see subsection (6)) may be treated for the purposes of loss relief as if it were a loss made in the period to which it is carried forward.

(4) Subsection (5) applies if in a relevant later period a loss is made in the separate programme trade.

(5) The amount of the loss that may be—

(a) deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or

(b) surrendered as group relief under Part 5 of that Act,

is restricted to the amount (if any) that is not attributable to television tax relief (see subsection (6)).

(6) The amount of a loss in any period that is attributable to television tax relief is calculated by deducting from the total amount of the loss the amount there would have been if there had been no additional deduction under Chapter 3 in that or any earlier period.

(7) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 1216DC.

1216DC Terminal losses

(1) This section applies if—

(a) a company ("company A") is the television production company in relation to a qualifying programme,

(b) company A ceases to carry on its separate trade in relation to that programme ("trade X") (see section 1216B), and

(c) if company A had not ceased to carry on trade X, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of trade X in a later period ("the terminal loss").

(2) If on cessation of trade X company A—

(a) is the television production company in relation to another qualifying programme, and

(b) is carrying on its separate trade in relation to that programme ("trade Y"),

it may (on making a claim) make an election under subsection (3).

(3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade Y in the first accounting period beginning after the cessation and so on.

(4) Subsection (5) applies if on cessation of trade X—

(a) there is another company ("company B") that is the television production company in relation to a qualifying programme,

(b) company B is carrying on its separate trade in relation to that programme ("trade Z"), and

(c) company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).

(5) Company A may surrender the terminal loss (or a part of it) to company B.

(6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of trade Z of the first accounting period of that company beginning after the cessation and so on.

(7) The Treasury may, in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6), make provision by regulations corresponding, subject to such adaptations or other modifications as appear to them to be appropriate, to that made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).

(8) "Qualifying programme" means a relevant programme in relation to which the conditions for television tax relief are met (see 1216C(2)).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

1216E Introduction

(1) In this Chapter—

"the company" means the television production company in relation to a relevant programme,

"the completion period" means the accounting period of the company—

(a) in which the relevant programme is completed, or

(b) if the company does not complete the relevant programme, in which it abandons television production activities in relation to it,

"interim accounting period" means any earlier accounting period of the company during which television production activities are carried on in relation to the relevant programme,

"interim certificate" and "final certificate" have the meaning given by section 1216CC,

"the separate programme trade" means the company's separate trade in relation to the relevant programme (see section 1216B), and

"special television relief" means—

(a) television tax relief, or

(b) relief under section 1216DC (transfer of terminal losses from one relevant programme to another).

(2) The company's company tax return for the completion period must state that the relevant programme has been completed or that the

company has abandoned television production activities in relation to it (as the case may be).

1216EA Certification as a British programme

(1) The company is not entitled to special television relief for an interim accounting period unless its company tax return for the period is accompanied by an interim certificate.

(2) If an interim certificate ceases to be in force (otherwise than on being superseded by a final certificate) or is revoked, the company—

(a) is not entitled to special television relief for any period for which its entitlement depended on the certificate, and

(b) must amend accordingly its company tax return for any such period.

(3) If the relevant programme is completed by the company—

(a) its company tax return for the completion period must be accompanied by a final certificate,

(b) if that requirement is met, the final certificate has effect for the completion period and for any interim accounting period, and

(c) if that requirement is not met, the company—

(i) is not entitled to special television relief for any period, and

(ii) must amend accordingly its company tax return for any period for which such relief was claimed.

(4) If the company abandons television production activities in relation to the relevant programme—

(a) its company tax return for the completion period may be accompanied by an interim certificate, and

(b) the abandonment of television production activities does not affect any entitlement to special television relief in that or any previous accounting period.

(5) If a final certificate is revoked, the company—

(a) is not entitled to special television relief for any period, and

(b) must amend accordingly its company tax return for any period for which such relief was claimed.

1216EB The UK expenditure condition

(1) The company is not entitled to special television relief for an interim accounting period unless—

(a) its company tax return for the period states the amount of planned core expenditure on the relevant programme that is UK expenditure, and

(b) that amount is such as to indicate that the condition in section 1216CE (the UK expenditure condition) will be met on completion of the programme.

If those requirements are met, the company is provisionally treated in relation to that period as if that condition was met.

(2) If such a statement is made but it subsequently appears that the condition will not be met on completion of the programme, the company—

(a) is not entitled to special television relief for any period for which its entitlement depended on such a statement, and

(b) must amend accordingly its company tax return for any such period.

(3) When the relevant programme is completed or the company abandons television production activities in relation to it (as the case may be), the company's company tax return for the completion period must be accompanied by a final statement of the amount of core expenditure on the programme that is UK expenditure.

(4) If that statement shows that the condition in section 1216CE is not met, the company—

(a) is not entitled to special television relief for any period, and

(b) must amend accordingly its company tax return for any period for which such relief was claimed.

1216EC Time limit for amendments and assessments

Any amendment or assessment necessary to give effect to the provisions of this Chapter may be made despite any limitation on the time within which an amendment or assessment may normally be made."

PART 2

COMMENCEMENT

2 (1) The amendments made by this Schedule come into force in accordance with provision contained in an order made by the Treasury.

(2) An order under this paragraph—

(a) may make different provision for different cases;

(b) may make such adaptations of Part 15A of CTA 2009 as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.

3 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013.

(2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2013 and ending on or after that date ("the straddling period").

(3) For the purposes of Part 15A of CTA 2009—

(a) so much of the straddling period as falls before 1 April 2013, and so much of that period as falls on or after that date, are treated as separate accounting periods, and

(b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

SCHEDULE 2

Section 1

TAX RELIEF FOR VIDEO GAMES DEVELOPMENT

PART 1

AMENDMENTS OF CTA 2009

1 After Part 15A of CTA 2009 (inserted by Schedule 1 above) insert—

"PART 15B

VIDEO GAMES DEVELOPMENT

CHAPTER 1

INTRODUCTION

Introductory

1217A Overview of Part

(1) This Part is about video games development.

(2) Sections 1217AA to 1217AF contain definitions and other provisions about interpretation that apply for the purposes of this Part.
See, in particular—
(a) section 1217AA, which contains provision about the meaning of "video game", and
(b) section 1217AB, which explains how a company comes to be treated as the video games development company in relation to a video game.

(3) Chapter 2 is about the taxation of the activities of a video games development company and includes—
(a) provision for the company's activities in relation to its video game to be treated as a separate trade, and
(b) provision about the calculation of the profits and losses of that trade.

(4) Chapter 3 is about relief (called "video games tax relief") which can be given to a video games development company—
(a) by way of additional deductions to be made in calculating the profits or losses of the company's separate trade, or
(b) by way of a payment (a "video game tax credit") to be made on the company's surrender of losses from that trade.

(5) Chapter 4 is about the relief which can be given for losses made by a video games development company in its separate trade, including provision for certain such losses to be transferred to other separate trades.

(6) Chapter 5 provides—
(a) for relief under Chapters 3 and 4 to be given on a provisional basis, and

(b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Interpretation

1217AA "Video game" etc

(1) This section applies for the purposes of this Part.

(2) "Video game" does not include—
(a) anything produced for advertising or promotional purposes, or
(b) anything produced for the purposes of gambling (within the meaning of the Gambling Act 2005).

(3) References to a video game include the game's soundtrack.

(4) A video game is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and made available to the general public.

1217AB Video games development company

(1) For the purposes of this Part "video games development company" is to be read in accordance with this section.

(2) There cannot be more than one video games development company in relation to a video game.

(3) A company is the video games development company in relation to a video game if the company (otherwise than in partnership)—
(a) is responsible for designing, producing and testing the video game,
(b) is actively engaged in planning and decision-making during the design, production and testing of the video game, and
(c) directly negotiates, contracts and pays for rights, goods and services in relation to the video game.

(4) If there is more than one company meeting the description in subsection (3), the company that is most directly engaged in the activities referred to in that subsection is the video games development company in relation to the video game.

(5) If there is no company meeting the description in subsection (3), there is no video games development company in relation to the video game.

(6) A company may elect to be regarded as a company which does not meet the description in subsection (3).

(7) The election—
(a) must be made by the company by being included in its company tax return for an accounting period (and may be included in the return originally made or by amendment), and
(b) may be withdrawn by the company only by amending its company tax return for that accounting period.

(8) The election has effect in relation to video games which begin to be produced in that or any subsequent accounting period.

1217AC "Video game development activities" etc

(1) In this Part "video game development activities", in relation to a video game, means the activities involved in designing, producing and testing the video game.

(2) The Treasury may by regulations—
 (a) amend subsection (1),
 (b) provide that specified activities are or are not to be regarded as video game development activities or as video game development activities of a particular description, and
 (c) provide that, in relation to a specified description of video game, references to video game development activities of a particular description are to be read as references to such activities as may be specified.

"Specified" means specified in the regulations.

1217AD "Core expenditure"

(1) In this Part "core expenditure", in relation to a video game, means expenditure on designing, producing and testing the video game.

(2) But the following descriptions of expenditure are not to be regarded as core expenditure for the purposes of this Part—
 (a) any expenditure incurred in designing the initial concept for a video game;
 (b) any expenditure incurred in debugging a completed video game or carrying out any maintenance in connection with such a video game.

1217AE "UK expenditure" etc

(1) In this Part "UK expenditure", in relation to a video game, means expenditure on goods or services that are used or consumed in the United Kingdom.

(2) Any apportionment of expenditure as between UK expenditure and non-UK expenditure for the purposes of this Part is to be made on a just and reasonable basis.

(3) The Treasury may by regulations amend subsection (1).

1217AF "Company tax return"

In this Part "company tax return" has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1)).

CHAPTER 2

TAXATION OF ACTIVITIES OF VIDEO GAMES DEVELOPMENT COMPANY

Separate video game trade

1217B Activities of video games development company treated as a separate trade

(1) This Chapter applies for corporation tax purposes to a company that is the video games development company in relation to a video game.

(2) The company's activities in relation to the video game are treated as a trade separate from any other activities of the company (including any activities in relation to any other video game).

(3) In this Chapter the separate trade is called "the separate video game trade".

(4) The company is treated as beginning to carry on the separate video game trade—

(a) when the design of the video game begins, or

(b) if earlier, when any income from the video game is received by the company.

1217BA Calculation of profits or losses of separate video game trade

(1) This section applies for the purpose of calculating the profits or losses of the separate video game trade.

(2) For the first period of account the following are brought into account—

(a) as a debit, the costs of the video game incurred (and represented in work done) to date, and

(b) as a credit, the proportion of the estimated total income from the video game treated as earned at the end of that period.

(3) For subsequent periods of account the following are brought into account—

(a) as a debit, the difference between the amount of the costs of the video game incurred (and represented in work done) to date and the corresponding amount for the previous period, and

(b) as a credit, the difference between the proportion of the estimated total income from the video game treated as earned at the end of that period and the corresponding amount for the previous period.

(4) The proportion of the estimated total income treated as earned at the end of a period of account is given by—

$$\frac{C}{T} \times I$$

where—

C is the total to date of costs incurred (and represented in work done),

T is the estimated total cost of the video game, and
I is the estimated total income from the video game.

Supplementary

1217BB Income from the video game

(1) References in this Chapter to income from the video game are to any receipts by the company in connection with the production or exploitation of the video game.

(2) This includes—
  (a) receipts from the sale of the video game or rights in it,
  (b) royalties or other payments for use of the video game or aspects of it (for example, characters or music),
  (c) payments for rights to produce games or other merchandise, and
  (d) receipts by the company by way of a profit share agreement.

(3) Receipts that (apart from this subsection) would be regarded as of a capital nature are treated as being of a revenue nature.

1217BC Costs of the video game

(1) References in this Chapter to the costs of the video game are to expenditure incurred by the company on—
  (a) video game development activities in connection with the video game, or
  (b) activities with a view to exploiting the video game.

(2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.

(3) Expenditure that (apart from this subsection) would be regarded as of a capital nature by reason only of being incurred on the creation of an asset (the video game) is treated as being of a revenue nature.

1217BD When costs are taken to be incurred

(1) For the purposes of this Chapter costs are incurred when they are represented in the state of completion of the work in progress.

(2) Accordingly—
  (a) payments in advance for work to be done are ignored until the work has been carried out, and
  (b) deferred payments are recognised to the extent that the work is represented in the state of completion.

(3) The costs incurred on the video game are taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay.

(4) If an obligation is linked to income being earned from the video game, no amount is to be brought into account in respect of the costs of the obligation unless an appropriate amount of income is or has been brought into account.

1217BE Estimates

Estimates for the purposes of this Chapter must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

CHAPTER 3

VIDEO GAMES TAX RELIEF

Introductory

1217C Availability and overview of video games tax relief

(1) This Chapter applies for corporation tax purposes to a company that is the video games development company in relation to a video game.

(2) Relief under this Chapter ("video games tax relief") is available to the company if the conditions specified in the following sections are met in relation to the video game—

(a) section 1217CA (intended for supply),

(b) section 1217CB (British video game), and

(c) section 1217CE (UK expenditure).

(3) Video games tax relief is given by way of—

(a) additional deductions (see sections 1217CF and 1217CG), and

(b) video game tax credits (see sections 1217CH to 1217CJ).

(4) But video games tax relief is not available in respect of any expenditure if—

(a) the company is entitled to an R&D expenditure credit under Chapter 6A of Part 3 in respect of the expenditure, or

(b) the company has obtained relief under Part 13 (additional relief for expenditure on research and development) in respect of the expenditure.

(5) Sections 1217CK to 1217CN contain provision about unpaid costs, artificially inflated claims and confidentiality of information.

(6) In this Chapter "the separate video game trade" means the company's separate trade in relation to the video game (see section 1217B).

(7) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for video games tax relief.

"Intended for supply"

1217CA Intended for supply

(1) The video game must be intended for supply to the general public.

(2) Whether this condition is met is determined when video game production activities begin, so that—

(a) where a video game is originally intended for supply, this condition continues to be met even if that ceases to be the intention, and

(b) where a video game is not originally intended for supply, this condition is not met even if that becomes the intention.

British video games

1217CB British video game

(1) The video game must be certified by the Secretary of State as a British video game.

(2) The Secretary of State, with the approval of the Treasury, may by regulations specify conditions which must be met by a video game before it may be certified as a British video game.
These conditions are known as the "cultural test".

(3) Regulations under subsection (2) may—

(a) specify different conditions in relation to different descriptions of video game,

(b) provide that specified descriptions of video game may not be certified as a British video game, and

(c) enable the Secretary of State to direct that any provision made by virtue of paragraph (b) does not apply to a video game that meets specified conditions.

"Specified" means specified in the regulations.

(4) Regulations under subsection (2) are to be made by statutory instrument.

(5) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

(6) Sections 1217CC and 1217CD contain further provision about certification of video games as British video games, including provision about applications for, and withdrawal of, certification.

1217CC Applications for certification

(1) An application for certification of a video game as a British video game is to be made to the Secretary of State by the video games development company.

(2) The application may be for an interim or final certificate.

(3) An interim certificate is a certificate that—

(a) is granted before the video game is completed, and

(b) states that the video game, if completed in accordance with the proposals set out in the application, will be a British video game.

(4) A final certificate is a certificate that—

(a) is granted after the video game is completed, and

(b) states that the video game is a British video game.

(5) The applicant must provide the Secretary of State with any documents or information which the Secretary of State requires in order to determine the application.

(6) The Secretary of State may require information provided for the purposes of the application to be accompanied by a statutory declaration, made by the person providing it, as to the truth of the information.

(7) The Secretary of State may by regulations make provision supplementing this section, including—

(a) provision about the form of applications,

(b) provision about the particulars and evidence necessary for satisfying the Secretary of State that a video game is a British video game for the purposes of this Part, and

(c) provision that any statutory declaration which is required by subsection (6) to be made by any person may be made on the person's behalf by such person as is specified in the regulations.

(8) Regulations under subsection (7) are to be made by statutory instrument.

(9) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of the House of Commons.

1217CD Certification and withdrawal of certification

(1) If the Secretary of State is satisfied that the requirements are met for interim or final certification of a video game as a British video game, the Secretary of State must certify the video game accordingly.

(2) If the Secretary of State is not satisfied that those requirements are met, the Secretary of State must refuse the application.

(3) An interim certificate—

(a) may be given subject to conditions, and (unless the Secretary of State directs otherwise) is of no effect if the conditions are not met, and

(b) may be expressed to expire after a specified period, and (unless the Secretary of State directs otherwise) ceases to have effect at the end of that period.

(4) An interim certificate ceases to have effect when a final certificate is issued.

(5) If it appears to the Secretary of State that a video game certified under this Part ought not to have been certified, the Secretary of State may revoke its certification.

(6) Unless the Secretary of State directs otherwise, a certificate that is revoked is treated as never having had effect.

UK expenditure

1217CE UK expenditure

(1) At least 25% of the core expenditure on the video game incurred by the company must be UK expenditure.

(2) The Treasury may by regulations amend the percentage specified in subsection (1).

Additional deductions

1217CF Additional deduction for qualifying expenditure

(1) If video games tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the video game.

(2) The deduction is made in calculating the profit or loss of the separate video game trade.

(3) In this Chapter "qualifying expenditure" means core expenditure on the video game that falls to be taken into account under Chapter 2 in calculating the profit or loss of the separate video game trade for tax purposes.

(4) The Treasury may by regulations—
- (a) amend subsection (3), and
- (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

1217CG Amount of additional deduction

(1) For the first period of account during which the separate video game trade is carried on, the amount of the additional deduction is given by—

$$0.8 \times E$$

where E is—
- (a) so much of the qualifying expenditure as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure.

(2) For any period of account after the first, the amount of the additional deduction is given by—

$$(0.8 \times E) - P$$

where—

E is—
- (a) so much of the qualifying expenditure incurred to date as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

(3) The Treasury may by regulations amend the percentage specified in the definition of "E" in subsection (1) or (2).

Video game tax credits

1217CH Video game tax credit claimable if company has surrenderable loss

(1) If video games tax relief is available to the company, it may claim a video game tax credit for an accounting period in which it has a surrenderable loss.

(2) The company's surrenderable loss in an accounting period is—
  (a) the company's available loss for the period in the separate video game trade (see subsection (3)), or
  (b) if less, the available qualifying expenditure for the period (see subsections (5) and (6)).

(3) The company's available loss for an accounting period is given by—

$$L + RUL$$

where—

L is the amount of the company's loss for the period in the separate video game trade, and

RUL is the amount of any relevant unused loss of the company (see subsection (4)).

(4) The "relevant unused loss" of a company is so much of any available loss of the company for the previous accounting period as has not been—
  (a) surrendered under section 1217CI(1), or
  (b) carried forward under section 45 of CTA 2010 and set against profits of the separate video game trade.

(5) For the first period of account during which the separate video game trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1217CG(1).

(6) For any period of account after the first, the available qualifying expenditure is given by—

$$E - S$$

where—

E is the amount that is E for that period for the purposes of section 1217CG(2), and

S is the total amount previously surrendered under section 1217CI(1).

(7) If a period of account of the separate video game trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

1217CI Surrendering of loss and amount of video game tax credit

(1) The company may surrender the whole or part of its surrenderable loss in an accounting period.

(2) If the company surrenders the whole or part of that loss, the amount of the video game tax credit to which it is entitled for the accounting period is 25% of the amount of the loss surrendered.

(3) The company's available loss for the accounting period is reduced by the amount surrendered.

1217CJ Payment in respect of video game tax credit

(1) If the company—

(a) is entitled to a video game tax credit for a period, and

(b) makes a claim,

the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") must pay to the company the amount of the credit.

(2) An amount payable in respect of—

(a) a video game tax credit, or

(b) interest on a video game tax credit under section 826 of ICTA,

may be applied in discharging any liability of the company to pay corporation tax.

To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.

(3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a video game tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).

In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.

(4) No payment need be made in respect of a video game tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period—

(a) under PAYE regulations,

(b) under section 966 of ITA 2007 (visiting performers), or

(c) in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(5) A payment in respect of a video game tax credit is not income of the company for any tax purpose.

Miscellaneous

1217CK No account to be taken of amount if unpaid

(1) In determining for the purposes of this Chapter the amount of costs incurred on a video game at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.

(2) This is without prejudice to the operation of section 1217BD (when costs are taken to be incurred).

1217CL Artificially inflated claims for additional deduction or tax credit

(1) So far as a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be ignored in determining for any period—

(a) any additional deduction which a company may make under this Chapter, and

(b) any video game tax credit to be given to a company.

(2) Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain—

(a) an additional deduction under this Chapter to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or

(b) a video game tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.

(3) "Arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.

1217CM Confidentiality of information

(1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of the Secretary of State's functions under any of the provisions listed in subsection (2).

(2) The provisions referred to in subsection (1) are—

(a) sections 1216CB to 1216CD (certification of relevant programmes as British),

(b) sections 1217CB to 1217CD (certification of video games as British), and

(c) Schedule 1 to the Films Act 1985 (certification of films as British).

(3) Information so disclosed may be disclosed to the British Film Institute.

(4) The Treasury may by order amend subsection (3)—

(a) so as to substitute for the person or body specified in that subsection a different person or body, or

(b) in consequence of a change in the name of the person or body so specified.

(5) A person to whom information is disclosed under subsection (1) or (3) may not otherwise disclose it except—

(a) for the purposes of the Secretary of State's functions under any of the provisions listed in subsection (2),

(b) if the disclosure is authorised by an enactment,

(c) in pursuance of an order of a court,

(d) for the purposes of a criminal investigation or legal proceedings (whether civil or criminal) connected with the

operation of any of Parts 15 to 15B of this Act or Schedule 1 to the Films Act 1985,

(e) with the consent of the Commissioners for Her Majesty's Revenue and Customs, or

(f) with the consent of each person to whom the information relates.

1217CN Wrongful disclosure

(1) A person ("X") commits an offence if—

(a) X discloses revenue and customs information relating to a person (as defined in section 19(2) of the Commissioners for Revenue and Customs Act 2005),

(b) the identity of the person to whom the information relates is specified in the disclosure or can be deduced from it, and

(c) the disclosure contravenes section 1217CM(5).

(2) If a person ("Y") is charged with an offence under subsection (1), it is a defence for Y to prove that Y reasonably believed—

(a) that the disclosure was lawful, or

(b) that the information had already and lawfully been made available to the public.

(3) A person guilty of an offence under subsection (1) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.

(4) A prosecution for an offence under subsection (1) may be brought in England and Wales only—

(a) by the Director of Revenue and Customs Prosecutions, or

(b) with the consent of the Director of Public Prosecutions.

(5) A prosecution for an offence under subsection (1) may be brought in Northern Ireland only—

(a) by the Commissioners for Her Majesty's Revenue and Customs, or

(b) with the consent of the Director of Public Prosecutions for Northern Ireland.

(6) In the application of this section—

(a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003, or

(b) in Northern Ireland,

the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

CHAPTER 4

VIDEO GAME LOSSES

1217D Application of sections 1217DA and 1217DB

(1) Sections 1217DA and 1217DB apply to a company that is the video games development company in relation to a video game.

(2) In those sections—

“the completion period” means the accounting period of the company—

(a) in which the video game is completed, or

(b) if the company does not complete the video game, in which it abandons video game development activities in relation to the video game,

“loss relief” includes any means by which a loss might be used to reduce the amount in respect of which the company, or any other person, is chargeable to tax,

“pre-completion period” means an accounting period of the company before the completion period, and

“the separate video game trade” means the company’s separate trade in relation to the video game (see section 1217B).

1217DA Restriction on use of losses while video game in development

(1) This section applies if in a pre-completion period a loss is made in the separate video game trade.

(2) The loss is not available for loss relief except to the extent that it may be carried forward under section 45 of CTA 2010 to be set against profits of the separate video game trade in a subsequent period.

1217DB Use of losses in later periods

(1) This section applies to the following accounting periods of the company (“relevant later periods”)—

(a) the completion period, and

(b) any subsequent accounting period during which the separate video game trade continues.

(2) Subsection (3) applies if a loss made in the separate video game trade is carried forward under section 45 of CTA 2010 from a pre-completion period to a relevant later period.

(3) So much (if any) of the loss as is not attributable to video games tax relief (see subsection (6)) may be treated for the purposes of loss relief as if it were a loss made in the period to which it is carried forward.

(4) Subsection (5) applies if in a relevant later period a loss is made in the separate video game trade.

(5) The amount of the loss that may be—

(a) deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or

(b) surrendered as group relief under Part 5 of that Act,

is restricted to the amount (if any) that is not attributable to video games tax relief (see subsection (6)).

(6) The amount of a loss in any period that is attributable to video games tax relief is calculated by deducting from the total amount of the loss the amount there would have been if there had been no additional deduction under Chapter 3 in that or any earlier period.

(7) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 1217DC.

1217DC Terminal losses

(1) This section applies if—

(a) a company ("company A") is the video games development company in relation to a qualifying video game,

(b) company A ceases to carry on its separate trade in relation to that video game ("trade X") (see section 1217B), and

(c) if company A had not ceased to carry on trade X, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of trade X in a later period ("the terminal loss").

(2) If on cessation of trade X company A—

(a) is the video games development company in relation to another qualifying video game, and

(b) is carrying on its separate trade in relation to that video game ("trade Y"),

it may (on making a claim) make an election under subsection (3).

(3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade Y in the first accounting period beginning after the cessation and so on.

(4) Subsection (5) applies if on cessation of trade X—

(a) there is another company ("company B") that is the video games development company in relation to a qualifying video game,

(b) company B is carrying on its separate trade in relation to that video game ("trade Z"), and

(c) company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).

(5) Company A may surrender the terminal loss (or a part of it) to company B.

(6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of trade Z of the first accounting period of that company beginning after the cessation and so on.

(7) The Treasury may, in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6), make provision by regulations corresponding, subject to such adaptations or other modifications as appear to them to be appropriate, to that

made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).

(8) "Qualifying video game" means a video game in relation to which the conditions for video games tax relief are met (see 1217C(2)).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

1217E Introduction

(1) In this Chapter—

"the company" means the video games development company in relation to a video game,

"the completion period" means the accounting period of the company—

(a) in which the video game is completed, or

(b) if the company does not complete the video game, in which it abandons video game development activities in relation to it,

"interim accounting period" means any earlier accounting period of the company during which video game development activities are carried on in relation to the video game,

"interim certificate" and "final certificate" have the meaning given by section 1217CC,

"the separate video game trade" means the company's separate trade in relation to the video game (see section 1217B), and

"special video games relief" means—

(a) video games tax relief, or

(b) relief under section 1217DC (transfer of terminal losses from one video game to another).

(2) The company's company tax return for the completion period must state that the video game has been completed or that the company has abandoned video game development activities in relation to it (as the case may be).

1217EA Certification as a British video game

(1) The company is not entitled to special video games relief for an interim accounting period unless its company tax return for the period is accompanied by an interim certificate.

(2) If an interim certificate ceases to be in force (otherwise than on being superseded by a final certificate) or is revoked, the company—

(a) is not entitled to special video games relief for any period for which its entitlement depended on the certificate, and

(b) must amend accordingly its company tax return for any such period.

(3) If the video game is completed by the company—

(a) its company tax return for the completion period must be accompanied by a final certificate,

(b) if that requirement is met, the final certificate has effect for the completion period and for any interim accounting period, and

(c) if that requirement is not met, the company—

(i) is not entitled to special video games relief for any period, and

(ii) must amend accordingly its company tax return for any period for which such relief was claimed.

(4) If the company abandons video game development activities in relation to the video game—

(a) its company tax return for the completion period may be accompanied by an interim certificate, and

(b) the abandonment of video game development activities does not affect any entitlement to special video games relief in that or any previous accounting period.

(5) If a final certificate is revoked, the company—

(a) is not entitled to special video games relief for any period, and

(b) must amend accordingly its company tax return for any period for which such relief was claimed.

1217EB The UK expenditure condition

(1) The company is not entitled to special video games relief for an interim accounting period unless—

(a) its company tax return for the period states the amount of planned core expenditure on the video game that is UK expenditure, and

(b) that amount is such as to indicate that the condition in section 1217CE (the UK expenditure condition) will be met on completion of the video game.

If those requirements are met, the company is provisionally treated in relation to that period as if that condition was met.

(2) If such a statement is made but it subsequently appears that the condition will not be met on completion of the video game, the company—

(a) is not entitled to special video games relief for any period for which its entitlement depended on such a statement, and

(b) must amend accordingly its company tax return for any such period.

(3) When the video game is completed or the company abandons video game development activities in relation to it (as the case may be), the company's company tax return for the completion period must be accompanied by a final statement of the amount of core expenditure on the video game that is UK expenditure.

(4) If that statement shows that the condition in section 1217CE is not met, the company—

(a) is not entitled to special video games relief for any period, and

(b) must amend accordingly its company tax return for any period for which such relief was claimed.

1217EC Time limit for amendments and assessments

Any amendment or assessment necessary to give effect to the provisions of this Chapter may be made despite any limitation on the time within which an amendment or assessment may normally be made."

PART 2

COMMENCEMENT

2 (1) The amendments made by this Schedule come into force in accordance with provision contained in an order made by the Treasury.

(2) An order under this paragraph—

(a) may make different provision for different cases;

(b) may make such adaptations of Part 15B of CTA 2009 as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.

3 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013.

(2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2013 and ending on or after that date ("the straddling period").

(3) For the purposes of Part 15B of CTA 2009—

(a) so much of the straddling period as falls before 1 April 2013, and so much of that period as falls on or after that date, are treated as separate accounting periods, and

(b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

SCHEDULE 3 — Section 1

TELEVISION AND VIDEO GAMES TAX RELIEF: CONSEQUENTIAL AMENDMENTS

ICTA

1 (1) Section 826 of ICTA (interest on tax overpaid) is amended as follows.

(2) In subsection (1), after paragraph (f) insert—

"(fa) a payment of television tax credit falls to be made to a company; or

(fb) a payment of video game tax credit falls to be made to a company; or".

(3) In subsection (3C), after "film tax credit" insert ", television tax credit or video game tax credit".

(4) In subsection (8A)(b)(ii), after "film tax credit" insert "or television tax credit or video game tax credit".

(5) In subsection (8BA), after "film tax credit" insert "or television tax credit or video game tax credit".

FA 1998

2 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.

3 (1) Paragraph 10 (other claims and elections to be included in return) is amended as follows.

(2) In sub-paragraph (4), for "film tax relief" substitute "tax relief under Part 15, 15A or 15B of the Corporation Tax Act 2009".

(3) After sub-paragraph (5) insert—

"(6) An election under section 1216AE(7) of the Corporation Tax Act 2009 (election not to be a television production company) can only be made by being included in a company tax return (see section 1216AE(8)(a) of that Act).

(7) An election under section 1217AB(6) of the Corporation Tax Act 2009 (election not to be a video games development company) can only be made by being included in a company tax return (see section 1217AB(7)(a) of that Act)."

4 (1) Paragraph 52 (recovery of excessive overpayments etc) is amended as follows.

(2) In sub-paragraph (2), after paragraph (bd) insert—

"(be) television tax credit under Part 15A of that Act,

(bf) video game tax credit under Part 15B of that Act,".

(3) In sub-paragraph (5)—

(a) after paragraph (af) insert—

"(ag) an amount of television tax credit paid to a company for an accounting period,

(ah) an amount of video game tax credit paid to a company for an accounting period,";

(b) after "(ae)" insert ", (ag), (ah)".

5 (1) Part 9D (claims for film tax relief) is amended as follows.

(2) In paragraph 83S (introduction), for "film tax relief" substitute "the following reliefs—

(a) film tax relief,

(b) television tax relief,

(c) video games tax relief."

(3) The heading of that Part becomes "CLAIMS FOR TAX RELIEF UNDER PART 15, 15A OR 15B OF THE CORPORATION TAX ACT 2009".

CAA 2001

6 In Schedule A1 to CAA 2001 (first-year tax credits), in paragraph 11(4), omit

the "and" at the end of paragraph (b) and after paragraph (c) insert—

"(d) Chapter 3 of Part 15A of that Act (television tax credits), and

(e) Chapter 3 of Part 15B of that Act (video game tax credits)."

FA 2007

7 In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa) (meaning of "corporation tax credit"), omit the "or" at the end of sub-paragraph (iv) and after that sub-paragraph insert—

"(iva) a television tax credit under Chapter 3 of Part 15A of that Act,

(ivb) a video game tax credit under Chapter 3 of Part 15B of that Act, or".

CTA 2009

8 In Chapter 6A of Part 3 of CTA 2009 (trade profits: R&D expenditure credits), after section 104B insert—

"104BA Restriction on claiming other tax reliefs

(1) For provision prohibiting an R&D expenditure credit being given under this Chapter and relief being given under Chapter 3 of Part 15 (film tax relief), see section 1195(3A).

(2) For provision prohibiting an R&D expenditure credit being given under this Chapter and relief being given under Chapter 3 of Part 15A (television tax relief), see section 1216C(4).

(3) For provision prohibiting an R&D expenditure credit being given under this Chapter and relief being given under Chapter 3 of Part 15B (video games tax relief), see section 1217C(4)."

9 In Part 8 of CTA 2009 (intangible fixed assets), in Chapter 10 (excluded assets), after section 808 insert—

"808A Assets representing production expenditure on certain TV programmes

(1) This Part does not apply to an intangible fixed asset held by a television production company so far as it represents production expenditure on a television programme to which Chapter 2 of Part 15A (taxation of activities of television production company) applies.

(2) In this section—

(a) "television programme" has the same meaning as in Part 15A (see section 1216AA),

(b) "television production company" has the same meaning as in that Part (see section 1216AE), and

(c) "production expenditure" has the same meaning as in that Part (see section 1216AG(2)).

808B Assets representing core expenditure on video games

(1) This Part does not apply to an intangible fixed asset held by a video games development company so far as it represents core expenditure

on a video game to which Chapter 2 of Part 15B (taxation of activities of video games development company) applies.

(2) In this section—

(a) "video game" has the same meaning as in Part 15B (see section 1217AA),

(b) "video games development company" has the same meaning as in that Part (see section 1217AB), and

(c) "core expenditure" has the same meaning as in that Part (see section 1217AD)."

10 In Part 13 of CTA 2009 (additional relief for expenditure on research and development), after section 1040 insert—

"1040ZA Restriction on claiming other tax reliefs

(1) For provision prohibiting relief being given under this Part and under Chapter 3 of Part 15 (film tax relief), see section 1195(3A).

(2) For provision prohibiting relief being given under this Part and under Chapter 3 of Part 15A (television tax relief), see section 1216C(4).

(3) For provision prohibiting relief being given under this Part and under Chapter 3 of Part 15B (video games tax relief), see section 1217C(4)."

11 Part 15 of CTA 2009 (film tax relief) is amended as follows.

12 In section 1195 (availability and overview of film tax relief), after subsection (3) insert—

"(3A) But film tax relief is not available in respect of any expenditure if—

(a) the company is entitled to an R&D expenditure credit under Chapter 6A of Part 3 in respect of the expenditure, or

(b) the company has obtained relief under Part 13 (additional relief for expenditure on research and development) in respect of the expenditure."

13 (1) Section 1206 (confidentiality of information) is amended as follows.

(2) In subsection (1), for the words from "Schedule 1" to the end substitute "any of the provisions listed in subsection (1A)".

(3) After subsection (1) insert—

"(1A) The provisions referred to in subsection (1) are—

(a) sections 1216CB to 1216CD (certification of relevant programmes as British programmes for the purposes of television tax relief),

(b) sections 1217CB to 1217CD (certification of video games as British video games for the purposes of video games tax relief), and

(c) Schedule 1 to the Films Act 1985 (certification of films as British films for the purposes of film tax relief)."

(4) In subsection (2), for "UK Film Council" substitute "British Film Institute".

(5) After that subsection insert—

"(2A) The Treasury may by order amend subsection (2)—

(a) so as to substitute for the person or body specified in that subsection a different person or body, or

(b) in consequence of a change in the name of the person or body so specified."

(6) In subsection (3)—

(a) in paragraph (a), for the words from "Schedule 1" to the end substitute "any of the provisions listed in subsection (1A)";

(b) in paragraph (d), for "that Schedule or this Part" substitute "any of Parts 15 to 15B of this Act or Schedule 1 to the Films Act 1985".

14 (1) In section 1310 of CTA 2009 (orders and regulations), subsection (4) is amended as follows.

(2) Omit the "or" at the end of paragraph (e) and after that paragraph insert—

"(ea) section 1216AF(3) (meaning of "television production activities" etc),

(eb) section 1216AH(3) (meaning of "UK expenditure" etc),

(ec) section 1216CE(2) (UK expenditure),

(ed) section 1216CF(4) (additional deduction for qualifying expenditure),

(ee) section 1216CG(3) (amount of additional deduction),

(ef) section 1217AC(2) (meaning of "video games development activities" etc),

(eg) section 1217AE(3) (meaning of "UK expenditure" etc),

(eh) section 1217CE(2) (UK expenditure),

(ei) section 1217CF(4) (additional deduction for qualifying expenditure),

(ej) section 1217CG(3) (amount of additional deduction),".

15 (1) Schedule 4 to CTA 2009 (index of defined expressions) is amended as follows.

(2) At the appropriate place insert—

"the company (in Chapter 5 of Part 15A)	section 1216E(1)";
"company tax return (in Part 15A)	section 1216AJ";
"the completion period (in Chapter 5 of Part 15A)	section 1216E(1)";
"co-producer (in Part 15A)	section 1216AI";
"core expenditure (in Part 15A)	section 1216AG(3)";

"costs of the relevant programme (in Chapter 2 of Part 15A)	section 1216BC";
"final certificate (in Chapter 5 of Part 15A)	section 1216CC";
"income from the relevant programme (in Chapter 2 of Part 15A)	section 1216BB";
"interim accounting period (in Chapter 5 of Part 15A)	section 1216E(1)";
"interim certificate (in Chapter 5 of Part 15A)	section 1216CC";
"principal photography (in Part 15A)	section 1216AF(2)";
"production expenditure (in Part 15A)	section 1216AG(2)";
"qualifying co-production (in Part 15A)	section 1216AI";
"qualifying expenditure (in Chapter 3 of Part 15A)	section 1216CF(3)";
"relevant programme (in Part 15A)	section 1216AB";
"the separate programme trade (in Chapters 2, 3 and 5 of Part 15A)	section 1216B(3)";
"special television relief (in Chapter 5 of Part 15A)	section 1216E(1)";
"television production activities (in Part 15A)	section 1216AF";
"television production company (in Part 15A)	section 1216AE";
"television programme (in Part 15A)	section 1216AA";
"television tax relief (in Part 15A)	section 1216C(2)";
"UK expenditure (in Part 15A)	section 1216AH".

(3) At the appropriate place insert—

“the company (in Chapter 5 of Part 15B)	section 1217E(1)”;
“company tax return (in Part 15B)	section 1217AF”;
“the completion period (in Chapter 5 of Part 15B)	section 1217E(1)”;
“core expenditure (in Part 15B)	section 1217AD”;
“costs of the video game (in Chapter 2 of Part 15B)	section 1217BC”;
“final certificate (in Chapter 5 of Part 15B)	section 1217CC”;
“income from the video game (in Chapter 2 of Part 15B)	section 1217BB”;
“interim accounting period (in Chapter 5 of Part 15B)	section 1217E(1)”;
“interim certificate (in Chapter 5 of Part 15B)	section 1217CC”;
“qualifying expenditure (in Chapter 3 of Part 15B)	section 1217CF(3)”;
“the separate video game trade (in Chapters 2, 3 and 5 of Part 15B)	section 1217B(3)”;
“special video games relief (in Chapter 5 of Part 15B)	section 1217E(1)”;
“UK expenditure (in Part 15B)	section 1217AE”;
“video game (in Part 15B)	section 1217AA”;
“video games development activities (in Part 15B)	section 1217AC”;
“video games development company (in Part 15B)	section 1217AB”;
“video games tax relief (in Part 15B)	section 1217C(2)”.

FA 2009

16 In Schedule 54A to FA 2009 (further provision as to late payment interest and repayment interest), in paragraph 2(2), omit the "or" at the end of paragraph (d) and after paragraph (e) insert—

"(f) a payment of television tax credit under Chapter 3 of Part 15 of CTA 2009 for an accounting period, or

(g) a payment of video game tax credit under Chapter 3 of Part 15B of CTA 2009 for an accounting period."

CTA 2010

17 Part 8A of CTA 2010 (profits arising from the exploitation of patents etc) is amended as follows.

18 (1) Section 357CG (adjustments in calculating profits of trade) is amended as follows.

(2) In subsection (3), omit the "and" at the end of paragraph (a) and after paragraph (b) insert—

"(c) the amount of any additional deduction for the accounting period obtained by the company under Part 15A of CTA 2009 in respect of qualifying expenditure on a television programme, and

(d) the amount of any additional deduction for the accounting period obtained by the company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game."

(3) After subsection (5) insert—

"(5A) In a case where—

(a) the company is—

(i) a television production company in relation to a television programme, or

(ii) a video games development company in relation to a video game, and

(b) there is a shortfall in qualifying expenditure in relation to the separate programme trade or (as the case may be) the separate video game trade for a relevant accounting period (see section 357CHA),

the amount of qualifying expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CHA(2)."

(4) In subsection (6)—

(a) for "subsection (5)" substitute "subsections (5) and (5A)";

(b) before the definition of "R&D expenditure" insert—

""qualifying expenditure"—

(a) in relation to a company that is a television production company, has the same meaning as in Chapter 3 of Part 15A of CTA 2009, and

(b) in relation to a company that is a video games development company, has the same meaning as in Chapter 3 of Part 15B of that Act,";

(c) omit the "and" before the definition of "research and development";

(d) after that definition insert—

""the separate programme trade", in relation to a television production company, has the same meaning as in Chapter 2 of Part 15A of CTA 2009 (see section 1216B),

"the separate video game trade", in relation to a video games development company, has the same meaning as in Chapter 2 of Part 15B of CTA 2009 (see section 1217B),

"television production company" has the same meaning as in Part 15A of CTA 2009 (see section 1216AE),

"video games development company" has the same meaning as in Part 15B of CTA 2009 (see section 1217AB)."

19 After section 357CH insert—

"357CHA Shortfall in qualifying expenditure

(1) There is a shortfall in qualifying expenditure in relation to the separate programme trade of a television production company or (as the case may be) the separate video game trade of a video games development company for a relevant accounting period if the actual qualifying expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of qualifying expenditure.

(2) The amount that is to be added to the actual qualifying expenditure for the purposes of section 357CG(5A) is an amount equal to the difference between—

(a) 75% of the average amount of qualifying expenditure, and

(b) the actual qualifying expenditure, as adjusted under subsections (8) to (11).

(3) In this section—

(a) the "actual qualifying expenditure" of a trade of a company for an accounting period is the amount of qualifying expenditure that (ignoring section 357CG(5A)) is brought into account in calculating the profits of the trade for the accounting period, and

(b) the following terms have the meaning given by section 357CG(6)—

"qualifying expenditure",

"relevant accounting period",

"the separate programme trade",

"the separate video game trade",

"television production company",

"video games development company".

(4) The average amount of qualifying expenditure is—

$$\frac{E}{N} \times 365$$

where—

E is the amount of qualifying expenditure that—

(a) has been incurred by the company during the relevant period, and

(b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

N is the number of days in the relevant period.

(5) The relevant period is the shorter of—

(a) the period of 4 years ending immediately before the first relevant accounting period, and

(b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.

(6) For a relevant accounting period of less than 12 months, the average amount of qualifying expenditure is proportionately reduced.

(7) Subsections (8) to (11) apply for the purposes of determining—

(a) whether there is a shortfall in qualifying expenditure for a relevant accounting period, and

(b) if there is such a shortfall, the amount to be added by virtue of subsection (2).

(8) If the amount of the actual qualifying expenditure in a relevant accounting period is greater than the average amount of qualifying expenditure, the difference between the two amounts is to be added to the actual qualifying expenditure for the next relevant accounting period.

(9) If—

(a) there is not a shortfall in qualifying expenditure for a relevant accounting period, but

(b) in the absence of any additional amount, there would be a shortfall in qualifying expenditure for that accounting period,

the remaining portion of the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period.

(10) For the purposes of this section—

"additional amount", in relation to a relevant accounting period, means any amount added to the actual qualifying expenditure for that accounting period by virtue of subsection (8), (9) or (11), and

"the remaining portion" of an additional amount is so much of that amount as exceeds the difference between—

(a) the actual qualifying expenditure for the relevant accounting period in the absence of the additional amount, and

(b) 75% of the average amount of qualifying expenditure.

(11) If—

(a) there is not a shortfall in qualifying expenditure for a relevant accounting period, and

(b) there would not be a shortfall in qualifying expenditure for that accounting period in the absence of any additional amount,

the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).”

20 (1) Section 357CK (deductions that are not routine deductions) is amended as follows.

(2) In subsection (1), at the end insert—

“(e) subsection (7A) (television production expenditure),

(f) subsection (7B) (video games development expenditure).”

(3) After subsection (7) insert—

“(7A) Head 5 is—

(a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and

(b) the amount of that additional deduction.

(7B) Head 6 is—

(a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and

(b) the amount of that additional deduction.”

Consequential renumbering

21 (1) Sections 1217 and 1218 of CTA 2009 are renumbered as follows—

(a) section 1217 becomes section 1218A, and

(b) section 1218 becomes section 1218B.

(2) In the following provisions of CTA 2009, for “section 1218” substitute “section 1218B”—

section 985(3),
section 999(4),
section 1000(3),
section 1013(3), and
section 1021(3).

(3) In Schedule 4 to CTA 2009—

(a) in the entry for “company with investment business (in Part 16)”, for “section 1218(1) and (2)” substitute “section 1218B(1) and (2)”, and

(b) in the entry for “investment business in a company (in Part 16)”, for “section 1218(3)” substitute “section 1218B(3)”.

(4) In section 18 of CAA 2001, for “section 1218” substitute “section 1218B”.

Commencement

22 (1) The amendments made by this Schedule come into force in accordance with provision contained in an order made by the Treasury.

(2) An order under this paragraph—

(a) may make different provision for different cases;

(b) may make such adaptations of provisions of this Schedule brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.

23 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013.

(2) For provision about the case where a company has an accounting period beginning before 1 April 2013 and ending on or after that date, see paragraph 3(3) of Schedule 1 or (as the case may be) Schedule 2.

EXPLANATORY NOTE

TAX RELIEF FOR TELEVISION PRODUCTION AND VIDEO GAMES DEVELOPMENT

SUMMARY

1. The clauses and Schedules introduce three new reliefs from corporation tax for animation and high-end television production and for video games development.

DETAILS OF THE CLAUSE

2. The clauses bring in three Schedules which in turn;

   - introduce two new reliefs for animation and high-end television production;
   - introduce a new relief for video game development; and
   - provide for the consequential amendments to other parts of the Taxes Acts as a result of the new reliefs.

DETAILS OF SCHEDULE 1

3. This Schedule introduces two new tax reliefs for high-end television and animation television production.

4. There are two parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

5. Paragraph 1 introduces a new part 15A to CTA 2009 concerning the new reliefs for animation and high-end television production. It also explains that there are 5 chapters in part 1 covering the introduction to the two reliefs, how activities are taxed, British programmes, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

6. New sections 1216A (1) to 1216A (6) set out the scope and basic concepts of the legislation contained within each Chapter.

7. New section 1216AA (2) defines the meaning of 'television programme' for the purposes of the Chapter.

8. New section 1216AA (3) clarifies that the definition at 1216AA (1) includes the internet.

9. New section 1216AA (4) provides that where qualifying programmes are commissioned as an individual series or serial that series or serial is treated as a single television programme.

10. New section 1216AA(5) provides that a programme is treated as being complete when it is first in a form in which it can be reasonably regarded as ready for broadcast to the general public.

11. New section 1216AB (2) provides that a 'relevant programme' for the purposes of the legislation is one which meets certain conditions of A and B, and C and D.

12. New section 1216AB (3) sets out condition A which is that the programme is: a drama, a documentary, or animation. These terms are further defined at new section 1216AC.

13. New section 1216AB (4) sets out condition B which is that the programme is not an excluded programme as defined in section 1216AD.

14. New section 1216AB (5) sets out condition C, which is that a programme slot length must be greater than 30 minutes.

15. New sections 1216AB (6) sets out condition D which is that the average core expenditure, as defined by new section 1216AG, per hour of slot length, as defined by 1216AB (8), is not less than £1 million (one million pounds sterling).

16. New section 1216AB (7) defines 'slot length' for the purposes of new section 1216AB (6).

17. New section 1216AC(2) provides that for the purposes of new section 1216AB(3) a programme is a 'drama' if it consists:

    - wholly or mainly of a depiction of events;
    - the events are depicted (wholly or mainly) by one or more persons performing; and

- the whole or major proportion of what is done by the person or persons performing, whether by way of speech, acting, singing, or dancing, involves the playing of a role.

For the purposes of new section 1216AC (2) 'drama' also includes comedy.

18. New section 1216AC (3) provides that a relevant programme is to be treated as animation if at least 51% of total core expenditure is on animation.

19. New section 1216AD (1) provides that a television programme is an excluded programme (i.e. it is not within the scope of the reliefs) if it falls within any of the Heads set out in new sub sections 1216AD (2) to 1216AD (7).

20. New section 1216AD (2) provides that any advertisement or other promotional programme is an excluded programme.

21. New section 1216AD (3) provides that any news, current affairs or discussion programme is an excluded programme.

22. New section 1216AD(4) provides that quiz shows, game shows, panel shows, variety shows, chat shows or similar entertainment are excluded programmes.

23. New section 1216AD (5) provides that any programme consisting of or including a competition or contest, or the results of a competition or contest is an excluded programme.

24. New section 1216AD (6) provides that any broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed is an excluded programme.

25. New section 1216AD (7) provides that any programmes produced for training purposes is an excluded programme.

26. New section 1216AE (2) provides that there can only be one television production company in relation to a relevant programme.

27. New section 1216AE (3) sets out the general rule that governs whether a company is a television production company in relation to a relevant programme. The company must be responsible for pre-production, principal photography and post production of the relevant programme, as well as for delivery of the completed programme. The company must be actively engaged in planning and decision taking during those stages of a programme's production; and it must directly negotiate, contract and pay for rights, goods and services.

28. New section 1216AE (4) sets out a special rule for qualifying co-productions as defined in new section 1216AI. A company, which is a co-producer, in relation to a relevant programme must make an effective creative, technical and artistic contribution to the programme (so long as it does not do this in partnership). Co-producers who only provide finance are excluded.

29. New section 1216AE(5) recognises that there may be more than one company meeting the conditions of 1216AE(3) and (4) and provides that where this is the case, the company most directly engaged in the activities referred to is the television production company in relation to the relevant programme.

30. New sections 1216AE (6) makes it clear that it is possible that there may be no television production company in relation to the relevant programme.

31. New sections 1216AE (7) to (9) allows for a company to be regarded as a company not meeting the description in 1216AE (3) and (4) provided it makes an election in its company tax return for an accounting period. That election has effect in relation to relevant programmes which commence principal photography in that or any subsequent accounting period.

32. New sections 1216AF (1) provides that 'television production activities' includes work on development, pre-production, principal photography and post production of the programme.

33. New section 1216AF (2) provides that where any of the programme is computer generated, references to principal photography include computer generation of the images.

34. New section 1216AF (3) provides that HM Treasury may, by regulations amend subsections 1216AF (1) and (2) and in particular provide that certain activities are not television production activities.

35. New sections 1216AG (2) to (3) define what is meant by 'production expenditure' and 'core expenditure' in relation to the relevant programme.

36. New sections 1216AH(1) to (2) provide that for the purposes of the legislation "UK expenditure" means expenditure on goods or services that are used or consumed in the United Kingdom. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies. The 'used or consumed' test does not focus on the supplier of goods and services, but instead concentrates on the recipient or customer as the means of determining UK qualifying

expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.

37. New section 1216AH (3) provides that HM Treasury may, by regulations amend subsection (1).

38. New section 1216AI defines 'qualifying co-producer' and 'co-producer' for the purposes of new section 1216AE (4).

Chapter 2: Taxation of Activities of Television Production Company.

39. New section 1216B(2) to (3) provides that the activities of a television production company in relation to each programme will be treated as a separate trade, ("the separate programme trade") so that where a television production company makes more than one programme it will have more than one trade unless new section 1216AA(3) applies.

40. New section 1216B (4) sets out that a trade is treated as starting when pre-production begins or when any income is received from the relevant programme, whichever is earlier.

41. New section 1216BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.

42. New section 1216BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).

43. New section 1216BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and, as a credit, the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.

44. New section 1216BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.

45. New section 1216BB (1) to (3) set out that income from a relevant programme constitutes any receipts in connection with its making or from its exploitation. This includes:

- receipts from the sale of the programme or rights in it;

- royalties or other payments for use of the programme or aspects of it (for example characters or music);
- payments for rights to produce games or other merchandise;
- receipts received by the company by way of a profit share agreement; and
- income from relevant programmes held as capital assets (the income will be treated as revenue in nature).

46. New sections 1216BC (1) to (2) provide the basic rules for when costs on the relevant programme are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.

47. New section 1216BC Section (3) addresses the situation where a company is making a relevant programme that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. (3) ensures that such expenditure will instead be treated as being of a revenue nature.

48. New section 1216BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.

49. New section 1216BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.

50. New section 1216BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.

51. New section 1216BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.

52. New section1216BE (1) addresses the case where a company incurs expenditure on development of the relevant programme and this expenditure pre-dates the commencement.

53. New section 1216BE (2) treats such development expenditure as if it were expenditure incurred immediately after the company begins to carry on the trade.

54. New sections 1216BE(3) to (4) require the company to amend its tax return if it has previously taken such expenditure into account and

allows any such amendment of a return to be made regardless of the normal time limits.

55. New section 1216BF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Television Tax Relief

56. New sections 1216C(1) to (7) provide that for a relief to be available a relevant programme must satisfy a number of criteria and also set out how relief will be given and the procedure for making claims. The criteria include:

- being intended for broadcast;
- being a British programme as required by new section 1216CB; and
- having the required level of core expenditure as required by new section 1216CE.

57. New section 1216C (4) provides that where relief has already been given for R&D on the same expenditure then relief is not available for animation or high-end television. This is to prevent double claims on the same expenditure.

58. New section 1216CA (1) provides that a relevant programme must be intended for broadcast to the general public.

59. New section 1216CA (2) provides that the question of whether this condition is met is to be determined when the television production activities begin. And also provides for circumstances where a programme starts out being intended for broadcast even if subsequently the intention changes. However, where the original intention is not to broadcast the programme to the general public the condition will not be met.

60. New sections 1216CB(1) provides that a television production company must apply to the Secretary of State for a relevant programme to be certified as British and that certain conditions must be met in a 'cultural test'.

61. New section 1216CB (2) to (5) provide further details on the operation of the regulations.

62. New section 1216CB (6) provides that further details on certification of programmes is contained at new sections 1216CC and 1216CD.

63. New sections 1216CC(1) to (2) provide that applications for certification of the relevant television programme as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.

64. New sections 1216CC (3) and (4) define what is meant by an 'interim' certificate and a 'final' certificate'.

65. New sections 1216CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information provided for the purposes of the application and a declaration as to its truth.

66. New section 1216CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.

67. New section 1216CD (1) to (2) provide that the Secretary of State shall certify a relevant programme if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the relevant programme.

68. New sections 1216CD(3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.

69. New sections 1216CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).

70. New sections 1216CE (1) to (2) impose another condition for relief; that not less that 25 per cent of the core production expenditure on the relevant programme must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.

71. New sections 1216CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the relevant programme to be taken into account in calculating its profit or loss from its separate programme trade. The additional deduction and the payable tax credit together make up the new tax relief.

72. New section 1216CF (3) defines 'qualifying expenditure' for this purpose.

73. New section 1216CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.

74. New section 1216CG (1) applies for the first period of account in which the trade of producing the relevant programme is carried out. For this period, the additional deduction is given by 0.8 x E where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.

75. New section 1216CG (2) applies in the subsequent periods of account. In such periods the additional deduction is (0.8 x E) – P where E is now either the lesser of the amount of qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which is UK expenditure and 80 per cent of that amount. P is the total amount of additional deduction for all previous periods.

76. New section 1216CG (3) allows HM Treasury to amend the percentage specified in E by regulations.

77. New section 1216CH(1) provides that a television production company (as defined in new section 1216AE) may claim a television tax credit in an accounting period for which it has a surrenderable loss.

78. New section 1216CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.

79. New section 1216CH(3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company's loss for the period and RUL is the amount of any relevant unused loss. RUL is defined further in new section 1216CH (4).

80. New section 1216CH(4) defines "relevant unused loss" of a company as that part of a loss neither surrendered for tax credit nor carried forward under section 45 of the Corporation Tax Act 2010.

81. New section 1216CH (5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1216CG (1).

82. New section 1216CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1216CG(2) and S is the aggregate of the amounts

surrendered for television tax credit in previous periods as defined by new section 1216CI(1).

83. New section 1216CH (7) provides for any necessary apportionments where a period of account of the separate programme trade does not coincide with an accounting period.

84. New section 1216CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.

85. New section 1216CI (2) sets the payable tax credit rate as 25%.

86. New section 1216CI (3) provides that where part of the loss is surrendered a company's available loss will be reduced by the surrendered amount.

87. New section 1216CJ(1) provides that where a company is entitled to a television tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.

88. New section 1216CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set, the Commissioners' obligation under new section 1216CJ(1) is met.

89. New section 1216CJ (3) overrules new section 1216CJ (1) when the company's tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.

90. New section 1216CJ(4) overrules new section 1216CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due, no payment need to be made to the company.

91. New section 1216CJ (5) provides that a payment of a television tax credit is not income for the company for any tax purpose.

92. New section 1216CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.

93. New section 1216CK (2) provides that new section 1216CK (1) does not override the normal operation of new section 1216BD (when costs are taken to be incurred).

94. New section 1216CL is a general anti avoidance provision, which denies television production tax relief to the extent that it arises from artificially inflated claims.

95. New section 1216CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or television tax credit due.

96. New section 1216CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a television tax credit that it would not otherwise be entitled to, or a larger deduction or greater amount of television tax credit than it would otherwise be entitled to.

97. New section 1216CL (3) defines "arrangements".

98. New sections 1216CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.

99. New section 1216CM (5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1216CM (1) and (3).

100. New section 1216CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1216CM.

101. New section 1216CN (2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.

102. New sections 1216CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.

103. New section 1216CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.

104. New section 1216CN(5) provides that a prosecution may only be brought in Northern Ireland by the Commissioners for HM Revenue and Customs or with the consent of the Director of Public Prosecutions for Northern Ireland.

Chapter 4: Programme losses

105. New section 1216D (2) sets out definitions used later in the section.

106. New sections 1216DA(1) to (2) provide for a restriction to losses arising while a programme is in production to the extent that they may only be carried forward to be set against profits of the separate programme trade in a subsequent period.

107. New section 1216DB (1) provides that the clause applies to the accounting period during which a qualifying programme is completed or abandoned and to any subsequent accounting periods if the trade continues.

108. New section 1216DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period to a later accounting period is to be treated as a loss for the purposes of loss relief of the accounting period into which it is carried forward. This is subject to the restriction in new section 1216DB (3).

109. New section 1216DB(3) restricts the amount of any loss available to set sideways against other profits of the same or an earlier period, and to be surrendered as group relief, to the amount that is not attributable to television tax relief (see subsection (6)).

110. New section 1216DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to television tax relief.

111. New section 1216DB (6) explains how the loss for television tax relief is calculated. This loss is the amount of the total loss less the amount of loss that there would have been without the additional deduction under Chapter 3.

112. New section 1216DB (7) provides that 1216DB does not apply to losses carried forward or surrendered under new section 1216DC (terminal losses).

113. New section 1216DC(1) provides that this section applies when a television production company ceases to carry on a separate trade in relation to a relevant programme and has an amount of loss that remains to be carried forward (a terminal loss).

114. New sections 1216DC(2) and (3) provide that where a television production company with a terminal loss carries on another trade in relation to another qualifying programme it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.

115. New sections 1216DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a television production company in relation to another qualifying programme. The company with the terminal loss may surrender this loss to another television production company within the same group provided that that company makes a claim for the loss.

116. New section 1216DC (7) provides that HM Treasury may, by regulations, make adaptations or such modifications as appear to be appropriate to this section.

117. New section 1216DC (8) defines a 'qualifying programme'.

Chapter 5: Provisional Entitlement to Relief

118. New section 1216E (1) defines certain expressions for the purposes of Chapter 5.

119. New section 1216E (2) sets out a requirement for reporting in a company's return whether a relevant programme has been completed or abandoned.

120. New section 1216EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.

121. New section 1216EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which the interim certificate has been provided and must amend its return(s) accordingly.

122. New section 1216EA(3) provides that where a relevant programme is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend its return(s) accordingly.

123. New section 1216EA (4) deals with the abandonment of a relevant programme. If the company abandons television production activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.

124. New section 1216EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.

125. New section 1216EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the relevant programme, and that amount indicates that the condition in new section 1216CE will be met on completion.

126. New section 1216EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.

127. New sections 1216EB (3) and (4) deal with the completion of the relevant programme. If the relevant programme is completed or abandoned, its company tax return for the final accounting period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant programme. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.

128. New section 1216EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

129. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.

130. Paragraph 3 (1) provides that the amendments in the Schedule will have effect from 1 April 2013 (subject to State aid approval).

131. Paragraphs 3 (2) and (3) provides that where a company has an accounting period which straddles 1 April 2013 then periods before or after that date are, for the purposes of Part 15A, treated as separate accounting periods.

DETAILS OF SCHEDULE 2

132. This Schedule introduces a new relief for video games development.

133. There are 2 parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

134. Paragraph 1 introduces a new part 15B to CTA 2009 concerning the new relief for video games development. It also explains that there are 5 chapters in part 1 covering the introduction to the relief, how activities are taxed, British video games, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

135. New sections 1217A (1) to (6) set out the scope and basic concepts of the legislation contained within each Chapter.

136. New section 1217AA (2) provides that 'video game' does not include anything produced for advertising or promotional purposes or gambling.

137. New section 1217AA (3) provides that references to a video games includes the game's soundtrack.

138. New section 1217AA (4) provides that a video game is regarded as being completed when copies of it can be made and these are made available to the general public.

139. New section 1217AB(2) provides that there can only be one video games development company in relation to a video game

140. New section 1217AB(3) sets out the general rule that governs whether a company is a video games development company in relation to a video game. The company must be responsible for developing the game and it must be actively engaged in planning and decision making during the design, production and testing of the game; and it must directly negotiate, contract and pay for rights, goods and services.

141. New section 1217AB(4) recognises that there may be more than one company meeting the conditions of 1217AB(3) and provides that where this is the case, the company most directly engaged in the activities referred to is the video games development company in relation to the relevant game.

142. New section 1217AB(5) makes it clear that it is possible that there may be no video games development company in relation to the relevant game.

143. New sections 1217AB (6) to (8) allow for a company not be regarded as a company not meeting the description in 1217AB (3) provided it makes an election in its company tax return for an accounting period. That election has effect in relation to relevant

games which begin to be produced in that or any subsequent accounting period.

144. New section 1217AC(1) provides that 'video game development activities' include work involved in designing, producing and testing the video game.

145. New section 1217AC (2) provides that HM Treasury may, by regulations, amend subsection (1) and provide that certain activities are or are not video game development activities.

146. New section 1217AD (1) defines what is meant by 'core expenditure' in relation to the video game.

147. New section 1217AD(2) provides that any expenditure incurred in designing the initial concept for the video game (e.g. setting out the business case for making a game) and on further debugging a completed video game or carrying out maintenance in connection with a video game is not regarded as core expenditure.

148. New sections 1217AE(1) to (2) provide that for the purposes of the legislation "UK expenditure" means expenditure on goods or services that are used or consumed in the United Kingdom. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies. The 'used or consumed' test does not focus on the supplier of goods and services, but instead concentrates on the recipient or customer as the means of determining UK qualifying expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.

149. New section 1217AE (3) provides that HM Treasury may, by regulations amend subsection (1).

Chapter 2: Taxation of Activities of Video Games development Company

150. New sections 1217B(2) to (3) provides that the activities of a video games development company in relation to each game will be treated as a separate trade, ("the separate video game trade") so that where a video games development company makes more than one game it will have more than one trade.

151. New section 1217B(4) sets out when a company is treated as beginning a video game trade which is the earlier of when income is received or the design starts.

152. New section 1217BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.

153. New section 1217BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).

154. New section 1217BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and as a credit the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.

155. New section 1217BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.

156. New sections 1217BB(1) to (3) set out that income from a video game constitutes any receipts in connection with its making or from its exploitation. This includes:

- receipts from the sale of the video game or rights in it;
- royalties or other payments for use of the video game or aspects of it (for example characters or music);
- payments for rights to produce games or other merchandise;
- receipts received by the company by way of a profit share agreement;
- income from games held as capital assets (the income will be treated as revenue in nature).

157. New section 1217BC (1) to (2) provide the basic rules for when costs on the video game are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.

158. New section 1217BC (3) addresses the situation where a company is making a video game that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. Section (3) ensures that such expenditure will instead be treated as being of a revenue nature.

159. New section 1217BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.

160. New section 1217BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.

161. New section 1217BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.

162. New section 1217BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.

163. New section 1217BE provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Video Games Tax Relief

164. New section 1217C(1) to (6) provide that for a relief to be available a video game must satisfy a number of criteria and also sets out how relief will be given and the procedure for making claims. The criteria include:

- being intended for supply;
- being a British video game as required by new section 1217CB; and,
- having the required level of core expenditure as required by new section 1217CE.

165. New section 1217C (4) provides that where relief has already been given for R&D tax credits on the same expenditure then relief is not available for animation or high-end television. This is to prevent double claims on the same expenditure.

166. New section 1217CA (1) provides that a video game must be intended for release supply to the general public.

167. New section 1217CA (2) provides that the question of whether this condition is met is to be determined when the video game development activities begin. And also provides for circumstances where a game starts out being intended for supply even if subsequently the intention changes. However, where the original intention is not to supply the game to the general public the condition will not be met.

168. New sections 1217CB(1) to (6) provide that a video game development company must apply to the Secretary of State for a

video game to be certified as British and that certain conditions must be met in a 'cultural test'.

169. New sections 1217CC(1) to (2) provide that for applications for certification of the video game as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.

170. New sections 1217CC (3) and (4) define what is meant by an 'interim' certificate and a 'final' certificate'.

171. New sections 1217CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information to be provided for the purposes of the application and a declaration as to its truth.

172. New sections 1217CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.

173. New section 1217CD(1) to (2) provide that the Secretary of State shall certify a video game if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the video game.

174. New sections 1217CD(3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.

175. New sections 1217CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).

176. New sections 1217CE(1) and (2) impose another condition for relief; that not less that 25 per cent of the core expenditure on the video game must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.

177. New sections 1217CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the video game to be taken into account in calculating its profit or loss from its separate video game trade. The additional deduction and the payable tax credit together make up the new tax relief.

178. New section 1217CF (3) defines 'qualifying expenditure' for this purpose.

179. New section 1217CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.

180. New section 1217CG (1) applies in the first period of account in which the separate video game trade is carried on. For this period, the additional deduction is given by 0.8 x E where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.

181. New section 1217CG (2) applies in the subsequent periods of account. In such periods the, the additional deduction is (0.8 x E) – P where E is now either the lesser of the qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which is UK expenditure or 80 per cent of that amount, which ever is less. P is the total amount of additional deduction for all previous periods.

182. New section 1217CG (3) allows HM Treasury to amend the percentage specified in subsections (1) and (2).

183. New section 1217CH(1) provides that a video games development company (as defined in new section 1217AB) may claim a video games tax credit in an accounting period for which it has a surrenderable loss.

184. New section 1217CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.

185. New section 1217CH(3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company's loss for the period and, RUL is the amount of any relevant unused loss. RUL is defined further in new section 1217CH (4).

186. New section 1217CH (4) defines "relevant unused loss" of a company as that part of a loss neither surrendered for tax credit under new section 1217CI (1) nor carried forward under section 45 of the Corporation Tax Act 2010.

187. New section 1217CH (5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1217CG (1).

188. New section 1217CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1217CG(2) and S is the aggregate of the amounts

surrendered for video games tax credit in previous periods as defined by new section 1217CI(1).

189. New section 1217CH (7) provides for any necessary apportionments where a period of account of the separate video game trade does not coincide with an accounting period.

190. New section 1217CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.

191. New section 1217CI (2) sets the payable tax credit rate as 25%.

192. New section 1217CI (3) provides that where part of the loss is surrendered a company's available loss will be reduced by the surrendered amount.

193. New section 1217CJ(1) provides that where a company is entitled to a video games tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.

194. New section 1217CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set. The Commissioners' obligation under new section 1217CJ (1) is met.

195. New section 1217CJ (3) overrules new section 1217CJ (1) when the company's tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.

196. New section 1217CJ(4) overrules new section 1217CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due no payment need to be made to the company.

197. New section 1217CJ (5) provides that a payment of a video games tax credit is not income for the company for any tax purpose.

198. New section1217CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.

199. New section 1217CK (2) provides that new section 1217CK (1) does not override the normal operation of new section 1217BD (when costs are taken to be incurred).

200. New section 1217CL is a general anti avoidance provision, which denies video games development tax relief to the extent that it arises from artificially inflated claims.

201. New section 1217CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or video games tax credit due.

202. New section 1217CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a video games tax credit that it would otherwise not be entitled to, or a larger deduction or greater amount of video games tax credit than it would otherwise be entitled to.

203. New section 1217CL (3) defines “arrangements”.

204. New section 1217CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.

205. New section 1217CM5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1217CM (1) and (3).

206. New section 1217CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1217CM.

207. New section 1217CN2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.

208. New section 1217CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.

209. New section 1217CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.

210. New section 1217CN(5) provides that a prosecution may only be brought in Northern Ireland by the Commissioners for HM Revenue and Customs or with the consent of the Director of Public Prosecutions for Northern Ireland.

Chapter 4: Video Game Losses

211. New section 1217D (2) sets out definitions used later in the section.

212. New section 1217DA(1) to (2) provide for a restriction to losses arising in while a video game is in development to the extent that they may only be carried forward to be set against profits of the separate video games trade in a subsequent period.

213. New section 1217DB (1) applies the clause to the accounting period when a qualifying video game is completed or abandoned and to any subsequent accounting periods, if the trade continues.

214. New section 1217DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period may be treated as a loss, for the purposes of loss relief, of the accounting period into which it is carried forward. This is subject to the restriction in new section 1217DB (3).

215. New section 1217DB(3) restricts the amount of any loss available to be set sideways against other profits of the same, or an earlier period, and to be surrendered as group relief to the amount that is not attributable to video games tax relief (see subsection (6).

216. New section 1217DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to video games tax relief.

217. New section 1217DB (6) explains how the loss for video games tax relief is calculated. This loss is the amount of the total loss less the amount of loss there would have been without the additional deduction under Chapter 3.

218. New section 1217DB (7) provides that 1217DB does not apply to losses carried forward or surrendered under new section 1217DC (terminal losses).

219. New section 1217DC(1) provides that this section applies when a video games development company ceases to carry on a separate trade in relation to the video game and has an amount of loss that remains to be carried forward (a terminal loss).

220. New section1217DC(2) and (3) provide that where a video games development company with a terminal loss carries on a another trade in relation to another qualifying video game it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.

221. New section 1217DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a video games development company in relation to another qualifying video game. The company with the terminal loss may surrender this loss to another video games development company within the same group provided that company makes a claim for the loss.

222. New section 1217DC (7) provides that HM Treasury may, by regulations make adaptations or such modifications as appear to be appropriate to this section.

223. New section 1217DC (8) defines a ‘qualifying video game’.

Chapter 5: Provisional Entitlement to Relief

224. New section 1217E (1) defines certain expressions for the purposes of Chapter 5.

225. New section 1217E (2) sets out a requirement for reporting in a company’s return whether a video game has been completed or abandoned.

226. New section 1217EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.

227. New section 1217EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which a certificate has been provided must amend its return(s) accordingly.

228. New section 1217EA(3) provides that where a video game is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend it return(s) accordingly.

229. New section 1217EA (4) deals with the abandonment of a video game. If the company abandons video game development activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.

230. New section 1217EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.

231. New section 1217EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the video game, and that amount indicates the condition in new section 1217CE will be met on completion.

232. New section 1217EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.

233. New section 1217EB (3) and (4) deal with the completion of the video game. If the video game is completed, or abandoned, its company tax return for the final accounting period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant video game. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.

234. New section 1217EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

235. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.

236. Paragraph 3 (1) provides that the amendments in the Schedule will have effect from 1 April 2013 (subject to State aid approval).

237. Paragraph 3 (2) and (3) provides that where a company has an accounting period which straddles 1 April 2013 then periods before or after that date are for the purposes of Part 15B treated as separate accounting periods.

DETAILS OF SCHEDULE 3

238. Paragraph 1 covers the necessary consequential amendments to ICTA 1988.

239. Paragraphs 2 to 5 cover the necessary consequential amendments to FA 1998.

240. Paragraph 6 covers the consequential amendments to CAA 2001.

241. Paragraph 7 cover the necessary consequential amendments to FA 2007.

242. Paragraphs 8 to 15 cover the necessary consequential amendments to CTA 2009.

243. Paragraph 16 covers the necessary consequential amendments to FA 2009.

244. Paragraphs 17 to 20 covers the consequential amendments to Part 8A CTA 2010.

245. Paragraph 21 provides for the consequential renumbering to CTA 2009.

246. Paragraphs 22 to 23 provide for commencement of the new reliefs.

BACKGROUND

247. The new tax reliefs for animation and high-end television production will allow qualifying companies engaged in the production of animation and high-end 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 those losses for a payable tax credit. Similarly the new video games development relief will allow eligible companies engaged in the production of qualifying video games to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.

248. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered.

249. For all three new reliefs the credit is based on the company's qualifying expenditure on the production of a qualifying animation, high-end television programme or video game of which at least 25% of the qualifying expenditure must be on goods or services used or consumed in the UK.

250. The animation or high-end television programme or game must be certified as a culturally British product to qualify for the tax credit.

251. The three new tax reliefs are part of the Government's growth agenda (as detailed in the Plan for Growth document published in March 2011). The aim is to help support technological innovation and ensure that animation, high-end television and video game production companies continue to contribute to UK economic growth and to British culture.

252. In June 2012 a stage 2 consultation document: 'Consultation on creative sector tax reliefs' was published giving more detail on the design proposals.

253. If you have any questions about this change, or comments on the legislation, please contact Kerry Pope on 020 7147 2617 (email kerry.pope@hmrc.gsi.gov.uk) or Des Ryan on 020 7147 0818 (email des.ryan@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No.

CORPORATION TAX

The Cultural Test (Programmes and Video Games) Regulations 2013

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

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1216CB, 1216CC(7), 1217CB and 1217CC(7) of the Corporation Tax Act 2009(**a**).

The regulations made under sections 1216CB and 1217CB of the Act are made with the approval of the Treasury.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Cultural Test (Programmes and Video Games) Regulations 2013.

(2) These Regulations come into force on [*date*].

Interpretation

2.—(1) In these Regulations—

"the Act" means the Corporation Tax Act 2009;

"EEA state" has the meaning prescribed by Schedule 1 to the Interpretation Act 1978(**b**);

"cast" means all the actors and performers but not the extras who appear in a drama or animation;

"co-production programme" means a programme which passes the cultural test(**c**) by satisfying the condition in regulation 3(2)(b) or 4(2)(b);

(**a**) 2009 c. 4. Parts 15A and 15B of the Act, which contain sections 1216CB and 1216CC(7) and sections 1217CB and 1217CC(7) respectively, were inserted by sections [j2390] and [j2060] of and Schedules [j2390sTV] and [j2060sVG] to the Finance Act 2013 (c. [ ]).

(**b**) 1978 c. 30.

(**c**) The meaning of "cultural test" in relation to a programme is set out in section 1216CB(2) of the Act.

"development team" means all the persons directly involved in the development of a video game;

"group of companies" means a company and all other companies which are its subsidiaries within the meaning of section 1159 of the Companies Act 2006(**a**);

"heads of department" has the meaning given by paragraph (2);

"member State" has the meaning prescribed by section 1 of and Schedule 1 to the European Communities Act 1972(**b**);

"other expenditure" means all the expenditure on the work carried out in the making of the programme or the video game which is not core expenditure(**c**);

"participant" means a presenter, narrator, subject or other person who participates and appears in a documentary;

"production crew" means all the persons directly involved in the production of a programme who do not appear in the programme;

"programme" means a drama(**d**), a documentary or animation;

"qualifying person" means a citizen of, or a person ordinarily resident in, an EEA state;

"recognised regional or minority language" means Welsh, Scottish-Gaelic, Irish, Scots, Ulster Scots or Cornish;

"special effects" means artificial techniques or processes, which are not visual effects, used to create an illusion in a programme;

"visual effects" means digital alterations to a programme's images;

(2) "Heads of department" means—

(a) in relation to a drama, lead cinematographer, lead production designer, lead costume designer, lead editor, lead sound designer, lead visual effects supervisor, and lead hair and makeup supervisor;

(b) in relation to a documentary, lead camera operator, lead sound recordist, lead editor, and lead researcher;

(c) in relation to animation, lead layout supervisor, lead production designer, lead character designer, lead editor, lead sound designer, lead visual effects supervisor and lead modelling supervisor;

(d) in relation to a video game, lead layout supervisor, lead production designer, lead character designer, lead editor and lead sound designer;

PART 2

Programmes - Dramas and Documentaries

Cultural test: dramas and documentaries

3.—(1) A drama or documentary may be certified as a British programme under section 1216CB(1) of the Act only if it passes the following cultural test.

(2) A drama or documentary passes the cultural test if it meets either of the following conditions—

(a) it is awarded at least 16 points in total under paragraphs (3) to (6);

(**a**) 2006 c. 46.
(**b**) 1972 c. 68.
(**c**) "Core expenditure" is defined in relation to a programme in section 1216AG(3) of the Act and in relation to a video game is section 1217AG(3) of the Act.
(**d**) "Drama" is defined in section 1216AC(2) of the Act.

(b) it is made in accordance with the respective agreements made between the Government of the United Kingdom and the international organisations, authorities or the Governments of the countries set out in Schedule 1.

(3) Up to 16 points shall be awarded in respect of the content of the drama or documentary as follows—

(a) up to 4 points depending on the percentage of the drama or documentary that is set in the United Kingdom or another EEA state as follows–

(i) 4 points for at least 75%;

(ii) 3 points for at least 66%;

(iii) 2 points for at least 50%;

(iv) 1 point for at least 25%;

(b) up to 4 points depending on the number of the characters depicted in the drama or documentary that are from the United Kingdom or another EEA state as follows–

(i) if there are more than three characters depicted in the drama or documentary, 4 points if two or three of the three lead characters are from the United Kingdom or another EEA state or, if only one of the three lead characters is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, 1 point if that character is the third lead;

(ii) if there are only three characters depicted in the drama or documentary, 4 points if two or three of them are from the United Kingdom or another EEA state or, if only one of them is from the United Kingdom or another EEA state, 2 points if that character is the first or second lead, 1 point if that character is the third lead;

(iii) if there are only two characters depicted in the drama or documentary, 4 points if both of them are from the United Kingdom or another EEA state, 2 points if one of them is;

(iv) if there is only one character depicted in the drama or documentary, 4 points if that character is from the United Kingdom or another EEA state;

(c) 4 points if the drama or documentary depicts a British story or a story which relates to an EEA state;

(d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—

(i) 4 points for at least 75%;

(ii) 3 points for at least 66%;

(iii) 2 points for at least 50%;

(iv) 1 point for at least 25%.

(4) Up to 4 points may be awarded in respect of the contribution of the drama or documentary to the promotion, development and enhancement of British culture.

(5) Up to 3 points shall be awarded in respect of work carried out in the making of the drama or documentary as follows—

(a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom–

(i) in relation to a drama–

(aa) principle photography;

(bb) visual effects;

(cc) special effects;

(ii) in relation to a documentary–

(aa) shooting;

(bb) visual effects;

(cc) research and development;

(dd) special effects;

(b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom–

(i) performing and recording the music score created for the drama or documentary;

(ii) audio post production;

(iii) picture post production.

(6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the drama or documentary as follows–

(a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;

(b) 1 point if at least one of the scriptwriters (or, if there are more than three, one of the three lead scriptwriters) is a qualifying person;

(c) 1 point if at least one of the producers (or, if there are more than three, one of the three lead producers) is a qualifying person;

(d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;

(e) 1 point if at least one of the actors or participants (as the case may be) (or, if there are more than three, one of the three lead actors or participants) is a qualifying person;

(f) 1 point if at least 50% of the cast or participants (as the case may be) are qualifying persons;

(g) 1 point if at least one of the heads of department is a qualifying person;

(h) 1 point if at least 50% of the production crew are qualifying persons.

PART 3

Programmes - Animation

Cultural test: animation

4.—(1) Animation may be certified as a British programme under section 1216CB(1) of the Act only if it passes the following cultural test.

(2) Animation passes the cultural test if it meets either of the following conditions—

(a) it is awarded at least 16 points in total under paragraphs (3) to (6);

(b) it is made in accordance with the respective agreements made between the Government of the United Kingdom and the international organisations, authorities or the Governments of the countries set out in Schedule 1.

(3) Up to 16 points shall be awarded in respect of the content of the animation as follows—

(a) up to 4 points depending on the percentage of the animation that is set in the following locations–

(i) 4 points if at least 75% is set in the United Kingdom or another EEA state;

(ii) 3 points if at least 66% is set in the United Kingdom or another EEA state or set in an undetermined location;

(iii) 2 points if at least 50% is set in the United Kingdom or another EEA state or set in an undetermined location;

(iv) 1 point if at least 25% is set in the United Kingdom or another EEA state or set in an undetermined location;

(b) up to 4 points depending on the number of the characters depicted in the animation with the following characteristics–

  (i) if there are more than three characters depicted in the animation, 4 points if two or three of the three lead characters are from the United Kingdom or another EEA state or from an undetermined location or, if only one of the three lead characters is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;

  (ii) if there are only three characters depicted in the animation, 4 points if two or three of them are from the United Kingdom or another EEA state or from an undetermined location or, if only one of them is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;

  (iii) if there are only two characters depicted in the animation, 4 points if both of them are from the United Kingdom or another EEA state or from an undetermined location, 2 points if one of them is;

  (iv) if there is only one character depicted in the animation, 4 points if that character is from the United Kingdom or another EEA state or from an undetermined location;

(c) 4 points if the animation depicts a British story or a story which relates to an EEA state;

(d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—

  (i) 4 points for at least 75%;

  (ii) 3 points for at least 66%;

  (iii) 2 points for at least 50%;

  (iv) 1 point for at least 25%.

(4) Up to 4 points may be awarded in respect of the contribution of the animation to the promotion, development and enhancement of British culture**.**

(5) Up to 3 points shall be awarded in respect of work carried out in the making of the animation as follows—

(a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom–

  (i) shooting;

  (ii) visual design;

  (iii) layout and storyboarding;

  (iv) visual effects;

  (v) special effects;

(b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom–

  (i) performing and recording the music score created for the animation;

  (ii) voice recording;

  (iii) audio post production;

  (iv) picture post production.

(6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the animation as follows–

(a) 1 point if the director (or, if there is more than one, the lead director) is a qualifying person;

(b) 1 point if at least one of the scriptwriters (or, if there are more than three, one of the three lead scriptwriters) is a qualifying person;

(c) 1 point if at least one of the producers (or, if there are more than three, one of the three lead producers) is a qualifying person;

(d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;

(e) 1 point if at least one of the actors (or, if there are more than three, one of the three lead actors) is a qualifying person;

(f) 1 point if at least 50% of the cast are qualifying persons;

(g) 1 point if at least one of the heads of department is a qualifying person;

(h) 1 point if at least 50% of the production crew are qualifying persons.

PART 4

Video Games

Cultural test: video games

5.—(1) A video game may be certified as a British video game under section 1217CB(1) of the Act only if it passes the following cultural test.

(2) A video game passes the cultural test if it is awarded at least 16 points in total under paragraphs (3) to (6).

(3) Up to 16 points shall be awarded in respect of the content of the video game as follows—

(a) up to 4 points depending on the percentage of the video game that is set in the following locations–

(i) 4 points if at least 75% is set in the United Kingdom or another EEA state;

(ii) 3 points if at least 66% is set in the United Kingdom or another EEA state or set in an undetermined location;

(iii) 2 points if at least 50% is set in the United Kingdom or another EEA state or set in an undetermined location;

(iv) 1 point if at least 25% is set in the United Kingdom or another EEA state or set in an undetermined location;

(b) up to 4 points depending on the number of the characters depicted in the video game with the following characteristics–

(i) if there are more than three characters depicted in the video game, 4 points if two or three of the three lead characters are from the United Kingdom or another EEA state or from an undetermined location or, if only one of the three lead characters is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;

(ii) if there are only three characters depicted in the video game, 4 points if two or three of them are from the United Kingdom or another EEA state or from an undetermined location or, if only one of them is from the United Kingdom or another EEA state or from an undetermined location, 2 points if that character is the first or second lead, 1 point if that character is the third lead;

(iii) if there are only two characters depicted in the video game, 4 points if both of them are from the United Kingdom or another EEA state or from an undetermined location, 2 points if one of them is;

(iv) if there is only one character depicted in the video game, 4 points if that character is from the United Kingdom or another EEA state or from an undetermined location;

(c) 4 points if the video game depicts a British story or a story which relates to an EEA state;

(d) up to 4 points depending on the percentage of the original dialogue that is recorded in the English language or in a recognised regional or minority language as follows—

(i) 4 points for at least 75%;

(ii) 3 points for at least 66%;

(iii) 2 points for at least 50%;

(iv) 1 point for at least 25%.

(4) Up to 4 points may be awarded in respect of the contribution of the video game to the promotion, development and enhancement of British culture.

(5) Up to 3 points shall be awarded in respect of work carried out in the making of the video game as follows—

(a) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom–

(i) conceptual development;

(ii) layout and storyboarding;

(iii) programming;

(iv) visual design;

(b) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom–

(i) performing and recording the music score created for the video game;

(ii) voice recording;

(iii) audio production;

(iv) picture production.

(6) Up to 8 points shall be awarded in respect of the personnel involved in the making of the video game as follows–

(a) 1 point if the project leader (or, if there is more than one, the main project leader) is a qualifying person;

(b) 1 point if at least one of the scriptwriters (or, if there are more than three, one of the three lead scriptwriters) is a qualifying person;

(c) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;

(d) 1 point if the artist (or, if there is more than one, the lead artist) is a qualifying person;

(e) 1 point if the programmer (or, if there is more than one, the lead programmer) is a qualifying person;

(f) 1 point if the designer (or, if there is more than one, the lead designer) is a qualifying person;

(g) 1 point if at least one of the heads of department is a qualifying person;

(h) 1 point if at least 50% of the development team are qualifying persons.

PART 5

Excluded Programmes

6.—(1) A programme must not be certified as a British programme under these Regulations if parts of the programme whose playing time exceeds 10% of the total playing time are derived from a previous programme, unless—

(a) the two programmes have the same television production company(**a**) or producer, and

(b) the previous programme has not been certified under these Regulations.

(2) The Secretary of State may direct that paragraph (1) shall not apply in relation to a programme if in the opinion of the Secretary of State—

(a) it is a documentary within the meaning of section 1216AC of the Act; and

(b) its subject matter makes it appropriate for paragraph (1) not to be applied.

(3) For the purposes of this regulation—

(a) the programme soundtrack shall be left out of account;

(b) "producer" means the person by whom the arrangements necessary for the making of a programme are undertaken.

PART 6

Applications for Certification

Applications

7.—(1) An application under section 1216CC(1) or 1217CC(1) of the Act (as the case may be) for the certification of a relevant programme(**b**) (other than a co-production programme) as a British programme or the certification of a video game as a British video game must be made in writing to the Secretary of State.

(2) For the purposes of this regulation, "in writing" includes text which is—

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference.

Particulars

8. An application must set out the particulars (where applicable) of the programme or video game described in Schedule 2.

Evidence

9.—(1) An application must be accompanied by a statutory declaration made by the applicant as to the truth of the particulars given in the application.

(2) A statutory declaration will be deemed to be properly made by the applicant if it has been made on behalf of the company by the secretary or one of the directors of the company or by any person duly authorised by the company to make the declaration on its behalf.

10.—(1) Where an application for final certification seeks to rely on any point that may be awarded under regulation 3(5), 4(5), 5(5), 3(6), 4(6) or 5(6) the application must be accompanied by a report prepared by a person referred to in paragraph (2) verifying the particulars in paragraphs 17 to 19 of Schedule 2.

(2) The person referred to in this paragraph is a person who is eligible for appointment as a statutory auditor under section 1212 of the Companies Act 2006 and is not and was not at any time while the programme or video game was being made—

(a) in partnership with the applicant or any officer or servant of the applicant;

(b) in the employment of the applicant or any officer or servant of the applicant; or

---

(**a**) The meaning of "television production company" is set out in section 1216AE of the Act.
(**b**) "Relevant programme" is defined in section 1216AB of the Act.

(c) an officer or servant of the applicant or, if the applicant is a member of a group of companies, of any other company in that group.

PART 7

General

11. For the purposes of these Regulations—

(a) a programme or video game is set in the United Kingdom or another EEA state if it is set in a country which is now part of the United Kingdom or another EEA state;

(b) a programme or video game depicts a British story or a story which relates to an EEA state if the subject matter of the programme or video game or the underlying material on which the programme or video game is based is British or relates to an EEA state;

(c) a person or a character in a programme or video game is from the United Kingdom or another EEA state if the person or character is a citizen or resident of the United Kingdom or another EEA state;

(d) a state shall be treated as if it were a member State if—

(i) it is a party to an agreement under Article 217 of the Treaty on the Functioning of the European Union, and

(ii) the agreement requires a maker of a programme or video game who is ordinarily resident or registered in that state to be treated for the purposes of these Regulations in the same way as a maker of a programme or video game who is ordinarily resident or registered in a member State.

12. The amount of work that is carried out in the United Kingdom or elsewhere shall be determined—

(a) for the purposes of regulation 3(5)(a)(i)(aa) (principal photography), by reference to the number of days spent on the work;

(b) for the purposes of the rest of regulation 3(5) and regulations 4(5) and 5(5) (other matters), by reference to the amount of expenditure on the work.

13. No points shall be awarded under any provision of regulation 3(5), 4(5) or 5(5) (where work carried out) in respect of work the expenditure on which is, in the opinion of the Secretary of State, insignificant in relation to the expenditure on all the work carried out in the making of the programme or video game.

Signatory text

Name
Address — Parliamentary Under Secretary of State
Date — Department

SCHEDULE 1

Regulation 3(2)(b), 4(2)(b)f

INTERNATIONAL AGREEMENTS

Country/International Organisation/Authority	*Date of Agreement*	*Command Paper*
Australia	12th June 1990	Cm 1758
Canada	12th September 1975	Cmnd 6380
	9th July 1985	Cmnd 9887

	5th July 1991	Cm 1807
France	8th November 1994	Cm 2992
Israel	3rd November 2010	Cm 7994
New Zealand	14th April 1993	Cm 2638
Palestine Liberation Organisation for the benefit of the Palestinian Authority	3rd November 2010	Cm 7995

SCHEDULE 2

Regulation 8

PARTICULARS

1. Title of the programme or video game or, in the case of a series of television programmes(**a**) that are to be treated as a single television programme under section 1216AA of the Act, the title of the series.

2. Whether the application relates to a drama, a documentary, animation or a video game.

3. Total playing time in minutes and seconds of the programme, including credits and titles.

4. Whether the application is for interim or final certification.

5. Whether the programme or video game is intended for broadcast or supply to the general public (as the case may be).

6. Name of the applicant.

7. Address of the applicant's principal place of business.

8. Address of the applicant's registered office.

9. Registered number of the applicant.

10. Date of registration of the applicant.

11. In relation to a drama, the date of the first day of principal photography.

12. Date on which the programme was completed for the purposes of section 1216AB(9) of the Act or the video game was completed for the purposes of section 1217AA(4) of the Act.

13. In relation to a programme, a copy of the commissioning agreement.

14. If the application relates to a drama, documentary, or animation the reasons why it should be considered to be a drama, documentary or animation (as the case may be).

15. The reasons why any point should be awarded under regulation 3(3) (drama or documentary), 4(3) (animation) or 5(3) (video game) (as the case may be).

16. The reasons why any point should be awarded under regulation 3(4) (drama or documentary), 4(4) (animation) or 5(4) (video game) (as the case may be).

17. If the applicant seeks to rely on regulation 3(5)(a)(i)(aa), the total number of days of principal photography and the number of days of principal photography carried out in the United Kingdom.

18. If the applicant seeks to rely on the rest of regulation 3(5) or on regulation 4(5) or 5(5), the total expenditure of the work in relation to which the applicant is applying for points to be awarded and the expenditure of such work carried out in the United Kingdom.

(**a**) "Television programme" is defined in section 1216AA of the Act.

19. The nationality or ordinary residence of all the persons mentioned in regulation 3(6), 4(6) or 5(6) in relation to whom the applicant is applying for a point to be awarded.

20. Total core expenditure(**a**).

21. Total UK expenditure(**b**).

22. Total non-UK expenditure by each country the expenditure is carried out in.

23. Other expenditure.

24. Shooting script (programme) or script (video game) in the English language.

25. A complete synopsis or treatment of the screenplay (programme) or of the video game in the English language.

26. Shooting schedule (programme) or production schedule (video game).

27. Production budget.

28. Copy of the chain of title.

29. The following particulars—

(a) if any part of the programme that is the subject of the application is derived from any previous programme, the playing time in minutes and seconds of that part (the "derived part") and the combined playing time in minutes and seconds of all derived parts;

(b) the particulars in paragraph (a) are only required in relation to any derived parts which–

   (i) do not have the same television production company or producer as the programme that is the subject of the application; or

   (ii) are derived from a previous programme that has been certified under these Regulations;

(c) if the applicant seeks to rely on regulation 6(2) the reasons why the subject matter of the programme makes it appropriate for regulation 6(1) not to be applied;

(d) for the purposes of paragraph (b)(i), "producer" has the same meaning as in regulation 6(3)(b).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce points-based "cultural tests" for programmes (dramas, documentaries, and animation) and video games. The purpose of the tests is to determine whether a programme or video game may be certified as a "British" programme or video game by the Secretary of State under the Corporation Tax Act 2009. Points under the tests are awarded on the basis of the content of the programme or video game, where certain work on the programme or video game is carried out, and the residence or citizenship of the personnel involved in the making of the programme or video game. Certification as a British programme or video game is a condition of eligibility for television tax relief or video games tax relief under that Act.

These Regulations also prescribe the particulars and evidence that must be provided to the Secretary of State in support of an application for certification. They also make provision for the making of a statutory declaration on behalf of a company.

An impact assessment has not been prepared for this instrument.

(**a**) "Core expenditure" is defined in relation to a programme in section 1216AG(3) of the Act and in relation to a video game in section 1217AD(3) of the Act.

(**b**) "UK expenditure" is defined in relation to a programme in section 1216AH of the Act and in relation to a video game in section 1217AE of the Act.

EXPLANATORY MEMORANDUM TO

THE CULTURAL TEST (PROGRAMMES AND VIDEO GAMES) REGULATIONS 2013

1. This explanatory memorandum has been prepared by the Department for Culture, Media & Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations introduce points-based tests for television programmes (which may be a drama, documentary or animation) and video games in connection with qualification for tax relief for television production or video games development. The purpose of the tests is to allow the Secretary of State to assess whether the attributes of a television programme or video game (such as its content, where it was made and the persons involved in its production or development) are sufficiently culturally British or European in order to qualify for the reliefs. These Regulations also set out the information and evidence that applicants must provide in relation to these cultural tests.

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 The Finance Act 2013 introduced into the Corporation Tax Act 2009 new tax reliefs for television programmes and video games (see Parts 15A and 15B of the 2009 Act). One of the requirements that must be satisfied in order to qualify for the reliefs is that the television programme or the video game must be certified by the Secretary of State as a 'British' programme or a video game in accordance with conditions specified by the Secretary of State in regulations. These Regulations set out the conditions that must be satisfied in order that the Secretary of State may certify a programme or a video game as 'British'.

4.2 In addition, the provisions introduced into the Corporation Tax Act 2009 by the Finance Act 2013 allow the Secretary of State to make regulations setting out the information and the evidence required in connection with an application for certification as a 'British' programme or video game. These Regulations also include regulations made under these provisions.

4.3. As the tax reliefs for television programmes and video games are new reliefs, this is the first time that these regulation-making powers have been used.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 As with the existing corporation tax relief for film production, the new creative sector reliefs for television programmes and video games require State aid approval from the European Commission. Article 107 of the Treaty on the Functioning of the European Union prohibits Member States from providing aid, such as tax relief, to selected industries or businesses if such aid has the potential to distort competition and affect trade between Member States. There is an exemption, however, for aid to promote culture. The European Commission may approve such aid if such aid does not affect trading conditions and competition in the European Union to an extent that is contrary to the common interest.

7.2 The Department is currently seeking approval from the European Commission that the cultural tests set out in these Regulations provide verifiable national criteria to identify culturally British productions. A television programme or a video game will have to pass the relevant cultural test in order to be certified as a British programme or video game for the purpose of the tax relief.

7.3 The cultural tests award points in four sections: in relation to the British or European content of the programme or video game; the cultural contribution of the programme or video game; the extent to which the programme or video game was developed in the United Kingdom; and the extent the programme or video game was made by nationals or residents of the European Economic Area.

7.3. The cultural tests do not stipulate content, location of production, or selection of practitioners, but the tests do ask for a reasonable amount of production activity to take place in the UK in order for a drama, documentary, or animation programme, or a video game to qualify as 'British'.

8. Consultation Outcome

8.1 The Department worked with stakeholders – through sector based working groups - to design separate cultural tests for television programmes and video games in line with the European Commission's rules on State aid. The Department subsequently issued consultation papers on the proposed cultural tests on 1 October 2012 and invited responses by 29 October 2012. The Department considers that the consultation period was sufficient because the Department has good existing links and working relationships with those, such as television producers and video games developers, who are likely to be most affected by the policy. A total of 41 responses were received. All respondents were broadly supportive of the cultural tests, but adjustments were made post-consultation to the terminology used in the cultural tests

and the distribution of points in Section A of the tests (in relation to British or European content). The final versions of the cultural tests are available from [link].

9. Guidance

9.1 The [British Film Institute (BFI) - *to be confirmed*] Certification Unit will be responsible for assessing applications for the certification of British programmes and video games. The department and the BFI have developed guidance on the cultural tests (which is similar to the current guidance for British film certification). The Department has deposited a copy of the guidance in the Libraries of both Houses.

10. Impact

10.1 The impact on business, charities or voluntary bodies is as set out in the Tax impact assessment published by HM Treasury in June 2012 as part of the consultation on the design of these creative sector tax reliefs – Annex B at http://www.hm-treasury.gov.uk/consult_creative_sector_tax_reliefs.htm. Businesses will have to complete a cultural test application for each production in order to qualify for the relief, as well as making the claim for the relief through their tax returns. These regulations are necessary for the administration of the reliefs.

10.2 The impact on the public sector, chiefly the [BFI] and the Department, is beneath the financial threshold that would indicate that a Regulatory Impact Assessment should be prepared. The exiting Certification Unit for the Film Tax Relief has an administration budget of £120k per annum and the BFI estimate that an additional *c.* £300-350k per annum will be required to provide this function for the three new reliefs. This additional cost will be met from existing budgets.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business. The views of small businesses were taken into account before the consultation and during the consultation period. The cultural test is a mandatory requirement for any programme or video game wishing to qualify for the tax relief.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to seek to minimise the particulars required to apply for tax relief. The Department is satisfied that the impact on small businesses is not disproportionate to that on other businesses.

11.3 The basis for the decision on what action to take to assist small business is that the cultural test will benefit the UK's creative content sector by encouraging the use of British content and practitioners.

12. Monitoring & review

12.1 The UK is required to submit an annual report to the European Commission on the implementation of the cultural test measure to ensure it is consistent with the original State aid notification.

12.2 This cultural measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

13. Contact

Tim Scott at the Department for Culture, Media and Sport Tel: 020 7211 6148 or e-mail Tim.Scott@culture.gsi.gov.uk can answer any queries regarding the instrument.

1 Temporary increase in annual investment allowance

(1) In relation to expenditure incurred during the period of two years beginning with 1 January 2013, section 51A of CAA 2001 (entitlement to annual investment allowance) has effect as if in subsection (5) for "£25,000" there were substituted "£250,000".

(2) Schedule 1 contains provision about chargeable periods which straddle 1 January 2013 or 1 January 2015.

SCHEDULE 1

Section 1

ANNUAL INVESTMENT ALLOWANCE: PERIODS STRADDLING 1 JANUARY 2013 OR 1 JANUARY 2015

Chargeable periods which straddle 1 January 2013

1 (1) This paragraph applies in relation to a chargeable period which begins before 1 January 2013 and ends on or after that date ("the first straddling period").

(2) The maximum allowance under section 51A of CAA 2001 for the first straddling period is the sum of each maximum allowance that would be found if—

(a) so much (if any) of the first straddling period as falls before the relevant date,

(b) so much of the first straddling period as falls on or after the relevant date but before 1 January 2013, and

(c) so much of the first straddling period as falls on or after 1 January 2013,

were each treated as separate chargeable periods.

(3) But this is subject to paragraphs 2 and 3.

(4) In this Schedule "the relevant date" means—

(a) for the purposes of corporation tax, 1 April 2012;

(b) for the purposes of income tax, 6 April 2012.

Straddling period beginning before the relevant date

2 (1) This paragraph applies where the first straddling period begins before the relevant date.

(2) So far as concerns expenditure incurred before the relevant date, the maximum allowance under section 51A of CAA 2001 for the first straddling period is what would have been the maximum allowance for that period if the amendment made by section 1(1) had not been made.

(3) So far as concerns expenditure incurred on or after the relevant date but before 1 January 2013, the maximum allowance under section 51A of CAA 2001 for the first straddling period is—

$$A - B$$

(4) In sub-paragraph (3)—

(a) "A" means the amount that would have been the maximum allowance for the period beginning on the relevant date and ending at the end of the first straddling period if—
(i) that period had been a separate chargeable period, and
(ii) the amendment made by section 1(1) had not been made;
(b) "B" means the amount (if any) by which—
(i) the AIA expenditure incurred in the period mentioned in paragraph 1(2)(a) in respect of which a claim for an annual investment allowance is made, exceeds
(ii) the maximum allowance under section 51A of CAA 2001 for that period if it were treated as a separate chargeable period.

(5) So far as concerns expenditure incurred on or after 1 January 2013, the maximum allowance under section 51A of CAA 2001 for the first straddling period is the sum of each maximum allowance that would be found if the period mentioned in paragraph 1(2)(b) and the period mentioned in paragraph 1(2)(c) were each treated as separate chargeable periods.

First straddling period beginning on or after the relevant date

3 (1) This paragraph applies where no part of the first straddling period falls within paragraph 1(2)(a).

(2) So far as concerns expenditure incurred before 1 January 2013, the maximum allowance under section 51A of CAA 2001 for the first straddling period is to be calculated as if the amendment made by section 1(1) had not been made.

Chargeable periods which straddle 1 January 2015

4 (1) This paragraph applies in relation to a chargeable period ("the second straddling period") which begins before 1 January 2015 and ends on or after that date.

(2) The maximum allowance under section 51A of CAA 2001 for the second straddling period is the sum of each maximum allowance that would be found if—
(a) the period beginning with the first day of the chargeable period and ending with the day before 1 January 2015, and
(b) the period beginning with 1 January 2015 and ending with the last day of the chargeable period,
were treated as separate chargeable periods.

(3) But, so far as concerns expenditure incurred on or after 1 January 2015, the maximum allowance under section 51A of CAA 2001 for the second straddling period is the maximum allowance, calculated in accordance with sub-paragraph (2), for the period mentioned in paragraph (b) of that sub-paragraph.

Operation of annual investment allowance where restrictions apply

5 (1) Paragraphs 1 to 4 also apply for the purpose of determining the maximum allowance under section 51K of CAA 2001 (operation of annual investment allowance where restrictions apply) in a case where one or more chargeable

periods in which the relevant AIA qualifying expenditure is incurred are chargeable periods within paragraph 1(1) or 4(1).

This is subject to sub-paragraphs (2) and (3).

(2) There is to be taken into account for those purposes only chargeable periods of one year or less (whether or not they are chargeable periods within paragraph 1(1) or 4(1)), and, if there is more than one such period, only that period which gives rise to the greatest maximum allowance.

(3) For the purposes of sub-paragraph (2) any chargeable period which—

(a) is longer than a year, and

(b) ends in the tax year 2012-13, 2013-14, 2014-15, 2015-16 or 2016-17,

is to be treated as being a chargeable period of one year ending at the same time as it actually ends.

(4) Section 11(11) of FA 2011 is repealed.

(5) That repeal has effect in relation to cases where one or more chargeable periods in which the relevant AIA qualifying expenditure is incurred are chargeable periods within paragraph 1(1).

(6) Nothing in this paragraph affects the operation of sections 51M and 51N of that Act.

EXPLANATORY NOTE

TEMPORARY INCREASE IN ANNUAL INVESTMENT ALLOWANCE

SUMMARY

1. This clause introduces provisions to increase the maximum amount of the annual investment allowance (AIA) from £25,000 to £250,000 for a temporary period of two years. The increase is effective for expenditure incurred on or after 1 January 2013 and before 1 January 2015. Schedule 1 contains provisions about chargeable periods which straddle 1 January 2013 or 1 January 2015. The schedule may be seen as falling into three main parts: the first gives the rules for chargeable periods that straddle 1 January 2013; the second gives the rules for chargeable periods that straddle 1 January 2015; and the third explains how the rules relating to a shared AIA are modified.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 51A(5) of the Capital Allowances Act 2001 (CAA) so that the maximum AIA that can be claimed for a 12 month chargeable period is increased from £25,000 to £250,000, but only in relation to expenditure incurred during the two-year period beginning on 1 January 2013. For expenditure incurred on or after 1 January 2015, the maximum AIA returns to its previous limit of £25,000.

3. Subsection (2) introduces Schedule 1, which contains provisions about chargeable periods that straddle 1 January 2013 or 1 January 2015.

DETAILS OF THE SCHEDULE

4. Paragraph 1(1) explains that the paragraph applies to a chargeable period that begins before 1 January 2013 and ends on or after that date. Such a period is referred to as "the first straddling period".

5. Paragraph 1(2) provides that the maximum allowance for such a period will be the sum of each maximum allowance that would be found if the actual chargeable period were split into separate chargeable periods by reference to the 'relevant date' and the date of the temporary increase. The 'relevant date' is given by paragraph 1(4) and is the date of the last change in the maximum amount of the AIA (when the maximum amount was reduced from £100,000 to £25,000).

For the purposes of corporation tax (CT) this date was 1 April 2012 and, for the purposes of income tax, this date was 6 April 2012.

The first period

Because some business may have a chargeable period that began before "the relevant date" of 1 (or 6) April 2012, and so may be affected by the changes enacted by section 11 of Finance Act 2011, the first period is so much of the actual chargeable period as falls before 1 (or 6) April 2012. The legislation does not require that there has to be such a period, but where the chargeable period starts before 1 (or 6) April 2012 that period must be separately considered.

The second period

The second period is so much of the actual chargeable period as falls on or after 1 (or 6) Aril 2012, but before 1 January 2013.

The third or last period

The third period is so much of the actual chargeable period as falls on or after 1 January 2013.

6. So, where a business has a chargeable period of a year that straddles 1 January 2013, the maximum allowance for that period is the sum of:

   (a) (if appropriate) the maximum AIA entitlement based on the £100,000 annual cap that applied before 1 (or 6) April 2012, for the portion of a year falling before that date; and

   (b) the maximum AIA entitlement based on the £25,000 cap that applied for the portion of a year falling on or after 1 (or 6) April 2012, but before 1 January 2013; and

   (c) the maximum AIA entitlement based on the new temporary £250,000 cap for the portion of a year falling on or after 1 January 2013.

7. Paragraph 1(3) provides that this calculation of the maximum allowance for "the first straddling period" is subject to paragraphs 2 and 3, which contain some additional rules about the maximum allowance for expenditure actually incurred in each of the three potential periods identified in paragraph 1(2). Paragraph 2 gives the additional rules for straddling periods beginning before 1 (or 6) April, and paragraph 3 gives the additional rules for straddling periods beginning on or after that date.

8. Paragraph 2(1) explains that the paragraph applies where the first straddling period begins before the relevant date of 1 (or 6) April.

For example, a company with a chargeable period from 1 March 2012 to 28 February 2013 would calculate its maximum AIA entitlement based on:

(a) the proportion of a year from 1 March 2012 to 31 March 2012, that is 1/12 x £100,000 = £8,333;

(b) the proportion of a year from 1 April 2012 to 31 December 2012, that is, 9/12 x £25,000 = £18,750; and

(c) the proportion of a year from 1 January 2013 to 28 February 2013, that is, 2/12 x £250,000 = £41,667.

So, the company's maximum AIA for this first straddling period would be the total of (a) + (b) + (c) = £8,333 + £18,750 + £41,667 = £68,750.

9. Paragraph 2(2) effectively provides that in the part of the chargeable period falling before 1 (or 6) April 2012, the maximum allowance for expenditure actually incurred in this period, is the amount that would have been the maximum allowance for the first straddling period, if the temporary increase in the AIA to £250,000 had not been made. So, for expenditure incurred in period (a) of the example in paragraph 8 above, the maximum allowance would be:

$1/12^{th}$ x £100,000	=	£8,333, and
11/12ths x £25,000	=	£22,917
Total		£31,250

10. Paragraph 2(3) provides that for expenditure actually incurred in the part of the chargeable period falling on or after 1(or 6) April 2012, but before 1 January 2013, the maximum allowance is the difference between two amounts, called 'A' and 'B.' 'A' and 'B' are defined in the next subparagraph 2(4).

11. Paragraph 2(4)(a) defines 'A', and paragraph 2(4)(b) defines 'B'.

'A' means the amount that would have been the maximum allowance for the period beginning on the relevant date and ending at the end of the first straddling period, assuming that the temporary increase in the AIA to £250,000 had not been made. In other words, applying this to our example at paragraph 8 above, the maximum allowance for expenditure incurred for the period beginning on 1 (or 6) April 2012 and ending on 28 February 2013 would have been (11/12 x £25,000) = £22,917. So, based on our example, the value of 'A' would be £22,917.

'B' means the amount (if any) by which:

(i) the AIA expenditure incurred in the period in paragraph 1(2)(a) of the Schedule (that is, in the period before the relevant date) in respect of which an AIA claim is made, exceeds

(ii) the maximum allowance for that period, if it were to be treated as a separate chargeable period.

So, returning to our example in paragraph 8 above, the two elements of 'B' may be seen as:

(i) an amount in the range between £31,250 and nil for the first element. For example:

- if the business had actually incurred the maximum AIA expenditure it could in that part period, and was making a claim in respect of that expenditure, the maximum it could claim would be £31,250 (as already calculated at paragraph 9 above); or

- if the business had decided to work out its AIA entitlement on a strict time-apportioned basis, and to spend no more than that amount prior to 'the relevant date', the first element of 'B' would be £8,333 (in our above example at paragraph 9 above); or

- the business might, of course, decide to spend a lesser amount than either of the two possibilities just mentioned, or it might, indeed, have incurred no relevant expenditure at all, in which case the first element of 'B' would be nil.

From this first element of 'B' the following, second element falls to be deducted:

(ii) The second element of 'B' is, based on our example, £8,333, that is, the maximum allowance the business could have claimed for that part period before the relevant date (i.e. 1/12 x £100,000 = £8,333) as if that period were treated as a separate chargeable period.

12. The rule, then, for expenditure actually incurred on or after 1 (or 6) April 2012, but before 1 January 2013, is that the maximum allowance for this expenditure cannot exceed ('A' – 'B'). Applying this formula to our example would mean that the maximum

allowance could not exceed 'A' or £22,917, less the extent to which the first element of 'B' exceeded the second element. So, for example:

- If the business had spent the maximum it could before 1 (or 6) April 2012, that is, £31,250, 'B' would equal (£31,250 – £8,333) = £22,917, and ('A'- 'B') would equal (£22,917 - £22,917) = nil. In other words, the business would already have used up its maximum allowance for this part period, and would not be entitled to any further AIA in relation to further expenditure incurred on or after the relevant date, but before 1 January 2013.

- If, however, the business had spent and would be claiming on £8,333 before 1 (or 6) April 2012, 'B' would equal (£8,333 - £8,333) = nil, and ('A' – 'B') would equal (£22,917 – nil) = £22,917. In other words, the business's maximum allowance, in relation to expenditure incurred on or after 1(or 6) April and before 1 January 2013, would be £22,917, although if it claimed on those two amounts (£8,333 + £22,917 = £31,250) in respect of expenditure incurred before 1 January 2013, it would only have £37,500 of its maximum entitlement (£68,750 - £31,250 = £37,500) left to cover its expenditure incurred on or after 1 January 2013. (See the calculation of the overall maximum entitlement at paragraph 8).

- Alternatively, if the business had incurred no qualifying expenditure in the part period before 1 (or 6) April 2012, 'B' would equal (£nil - £8,333) = nil (because no part of the expenditure actually incurred exceeded the second element of 'B') and ('A' – 'B') would equal (£22,917-nil) = £22,917. This means, in effect, that the entitlement for the part period to the relevant date would have been lost, to the extent that it had not been utilised by that date, observing the transitional provision already legislated in section 11(7) of Finance Act 2011 (when the maximum AIA was reduced from £100,000 to £25,000 from 1 (or 6) April 2012).

13. Paragraph 2(5) provides that, in relation to expenditure actually incurred in the part of the chargeable period falling on or after 1 January 2013, the maximum allowance is the sum of each maximum allowance that would be found if the periods mentioned in paragraph 1(2)(b) and 1(2)(c) of the schedule were each treated as separate chargeable periods. In other words, returning to the example at paragraph 8 above, in relation to expenditure incurred on or after 1 January 2013, a maximum total of (b) + (c) = £18,750 + £41,667 =

£60,417 could be covered. But if, for example, no qualifying expenditure had been incurred before 1 (or 6) April 2012 (period (a) at paragraph 8 above), that part of the business's potential maximum entitlement could not be effectively "regained" in relation to expenditure incurred on or after 1 January 2013. (Once again, this observes the rule legislated in section 11(7) of Finance Act 2011, in relation to the reduction in the AIA, effective from 1 (or 6) April 2012.)

14. Paragraph 3 gives the additional rule about the maximum allowance for expenditure incurred in straddling periods beginning on or after the relevant date of 1 (or 6) April 2012. For example, a company with such a straddling period might have a chargeable period that ran from 1 April 2012 to 31 March 2013. It would calculate its maximum AIA entitlement based on:

   (a) the portion of a year from 1 April 2012 to 31 December 2012, that is, 9/12 x £25,000 = £18,750; and

   (b) the portion of a year from 1 January 2013 to 31 March 2013, that is, 3/12 x £250,000 = £62,600.

   The company's maximum AIA for its first straddling period would therefore be the total of (a) + (b) = £81,250.

15. Paragraph 3(2) provides that so far as expenditure is incurred in the part of the chargeable period falling before 1 January 2013, the maximum allowance is to be calculated as if the increase in the maximum AIA to £250,000 had not been made. In other words, for expenditure incurred before 1 January 2013, only expenditure up to the maximum amount of the £25,000 cap can be covered. Or, to look at this from another perspective, the company in our example would need to incur qualifying expenditure of between £56,250 [i.e. £81,250 - £25,000 = £56,250, if it had already spent the maximum of £25,000 in 2012] and £81,250 on or after 1 January 2013, if it wanted to benefit from the maximum AIA available to it for this first straddling period.

16. Paragraph (4) provides the transitional rules for chargeable periods that straddle 1 January 2015, when the maximum amount of the AIA is to return to its previous maximum of £25,000. This rule is identical in its operation to section 11(6) and (7) of Finance Act 2011, when the AIA was reduced from £100,000 to £25,000.

17. Paragraph 4(1) explains that the paragraph applies to a chargeable period that begins before 1 January 2015 and ends on or after that date. Such a period is referred to as "the second straddling period".

18. Paragraph 4(2) provides that the maximum allowance for the second straddling period is the sum of each maximum allowance that would be found if:

    (a) the period beginning with the first day of the chargeable period and ending with the day before 1 January 2015, and,

    (b) the period beginning with 1 January 2015 and ending with the last day of the chargeable period,

    were treated as separate chargeable periods.

    So a company with a financial year chargeable period, from 1 April 2014 to 31 March 2015, would calculate its maximum AIA entitlement for its 'second straddling period' based on:

    (a) the proportion of a year from 1 April 2014 to 31 December 2014, that is, 9/12 x £250,000 = £187,500, and

    (b) the portion of a year from 1 January 2015 to 31 March 2015, that is, 3/12 x £25,000 = £6,250.

    The company's maximum AIA for this straddling period would, therefore, be the sum of (a) + (b) = £193,750.

19. Paragraph 4(3) provides that, for expenditure incurred in the part of the chargeable period falling on or after 1 January 2015, the maximum allowance is the maximum calculated in accordance with (b) above, that is, £6,250 in our example. This rule does not affect the business's maximum AIA entitlement for the chargeable period as a whole (which is £193,750), simply the amount of expenditure incurred on or after 1 January 2015 that may be covered.

20. For example, if the company in our example at paragraph 18 above, incurred no qualifying expenditure in the period 1 April 2014 to 31 December 2014 and then spent, say, £30,000 in the period 1 January 2015 to 31 March 2015, the maximum AIA available to that company for expenditure in that particular part period would be limited to £6,250.

21. Paragraph 5 provides the rules explaining the operation of the AIA where businesses have to share a single AIA (where restrictions apply).

22. Paragraph 5(1) provides that paragraphs 1 to 4 also apply for the purposes of determining the maximum allowance in relation to businesses that are required by CAA to share a single AIA, in a case where one or more of those businesses has a chargeable period that

straddles either the start or end date of the temporary increase. This provision is stated to be subject to sub-paragraphs (2) and (3).

23. Paragraphs 5(2) provides that, for the purposes of determining the maximum allowance in cases where businesses must share a single AIA, and one or more of the affected businesses has a straddling chargeable period, only chargeable periods of one year or less may be taken into account, and, if there is more than one such period, only that period which gives rise to the maximum allowance.

24. For example, four companies in a company group with different chargeable periods ending in the financial year 2012-2013 would be required to share a single AIA. In the following example, their individual maximum amounts are as shown in the third column of the table. However, their overall maximum, single AIA (to be shared amongst the group) would be the greatest maximum allowance, in this example, £93,750. So if, say, £93,750 were allocated to Company A, nothing further could be allocated to other companies in the group in this particular year. Alternatively, if, say, £43,750 were allocated to Company C, and the balance of the greatest maximum was to be allocated to Company D, no more than (£93,750 - £43,750)= £50,000 could be allocated to D in this particular year.

Example: a related group of companies with chargeable periods ending in the transitional year: 1.04.12 to 31.03.13		
Company	**Chargeable period (CP) ending on**	**Maximum time-apportioned AIA £**
A	30 April 2012	93,750
B	30 September 2012	62,500
C	31 December 2012	43,750
D	31 March 2013	81,250

25. Paragraph 5(3) contains a special rule which relates only to businesses carrying on a trade, profession or vocation within the charge to income tax, as these businesses can have a chargeable period of up to (but no more than) 18 months. Limiting a business's chargeable period to a year ending at the same time as it actually ends, stops an increased AIA being shared with related businesses. Paragraph 5(6) preserves the right of the business with the long chargeable period to see if it is entitled to look back to an earlier chargeable period to see if there is potentially an unused AIA entitlement in that earlier chargeable period.

26. Paragraphs 5(4) & (5) repeal section 11(11) of Finance Act 2011, but only in relation to cases where one or more of the chargeable periods, in which relevant AIA qualifying expenditure is incurred, is a chargeable period which straddles 1 January 2013.

27. Paragraph 5(6) provides that where an AIA has to be shared the special rules in relation to unincorporated businesses with chargeable periods longer than 12 months are not affected by the transitional provisions in paragraph 5.

BACKGROUND

28. Since 1 April 2008 (CT) and 6 April 2008 (income tax) most businesses, regardless of size, have been able to claim the AIA on their expenditure on plant or machinery, up to a specified annual amount each year (subject to certain conditions mentioned below). With effect from 1 April 2012 (CT) or 6 April 2012 (income tax) the maximum amount of the AIA was reduced from £100,000 to £25,000 for qualifying expenditure incurred on or after those dates.

29. At the Autumn Statement, on 5 December 2012, the Chancellor announced that legislation would be introduced in Finance Bill 2013 to increase the maximum amount of the AIA from £25,000 to £250,000 from 1 January 2013, for a temporary period of two years.

30. The temporary increase is designed to stimulate growth in the economy by providing an additional, time-limited incentive for businesses (particularly small and medium-sized businesses) to increase, or bring forward, their capital expenditure on plant or machinery.

31. Businesses are able to claim the AIA in respect of their expenditure on both general and “special rate” plant and machinery. The AIA is effectively a 100 per cent allowance that applies to most qualifying expenditure (with expenditure on cars being the most important exception) up to an annual limit or cap. Where businesses spend more than the annual limit, any additional qualifying expenditure is dealt with in the normal capital allowances regime, entering either the main rate or the special rate pool, where it will attract writing-down allowances (WDAs) at the 18 per cent or 8 per cent rates respectively.

32. Because the AIA is a generous relief there are certain restrictions

It is available to:

- any individual carrying on a qualifying activity (this includes trades, professions, vocations, ordinary property businesses and individuals having an employment or office);
- any partnership consisting only of individuals; and,
- any company (subject to certain restriction).

33. In the case of companies in a group there is one AIA available to all the companies in the group.

34. In the case of singleton companies, each receives its own AIA unless, for example, it and another company are under common control. In cases where companies are under common control (for example, two companies owned by the same individual) each company will still be entitled to a separate AIA, unless they are engaged in "similar activities" or share the same premises in a financial year.

35. The rules provide that a company is related to another company in a financial year and, separately, that an unincorporated qualifying activity is related to another qualifying activity in a tax year, if either or both of:

    - the shared premises condition; and/or,
    - the similar activities condition,

    are met in relation to the companies or the qualifying activities with chargeable periods ending in that financial year, or that tax year, as the case may be.

36. The rules provide businesses with almost complete freedom to allocate the AIA between different types of expenditure. For example, they may allocate it first against any expenditure on "integral features", qualifying for the lower 8 per cent "special rate" of WDA.

37. If you have any questions about this change or comments on the legislation, please contact Joy Guthrie (email: joy.guthrie@hmrc.gsi.gov.uk) or Malcolm Smith (email: malcolm.smith3@hmrc.gsi.gov.uk) or telephone 020 7147 2610.

1 Gas refuelling stations: extension of time limit for capital allowance

In section 45E(1)(a) of CAA 2001 (time limit for incurring of expenditure qualifying for first-year allowance) for "2013" substitute "2015".

EXPLANATORY NOTE

GAS REFUELLING STATIONS: EXTENSION OF TIME LIMIT FOR CAPITAL ALLOWANCES

SUMMARY

1. This clause extends the scheme for 100 per cent first-year allowance (FYA) for expenditure incurred on natural gas, biogas and hydrogen refuelling equipment, which is due to expire on 31 March 2013, for an additional two years to 31 March 2015.

DETAILS OF THE CLAUSE

2. This clause provides for the amendment of section 45E Capital Allowances Act 2001 by substituting "2015" for "2013" in section 45E(1)(a) as the new end date for the allowance.

BACKGROUND NOTE

3. 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. Most businesses are entitled to an annual 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most plant or machinery up to an annual limit of £25,000. For expenditure above that limit, writing-down allowances (WDA) are available, which are given at the main rate of eighteen per cent or the special rate of eight per cent per annum.

4. FYAs may be available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA. FYAs, currently available at a rate of 100 per cent, 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.

5. This allowance, which was introduced by the Finance Act 2002, aims to encourage the up-take of natural gas, hydrogen and biogas as fuels for vehicles by providing a tax incentive for businesses to invest in the necessary refuelling infrastructure. It also complements wider measures to encourage the up-take of alternatively fuelled vehicles, including 100 per cent FYAs for cars with low carbon dioxide emissions which is also being extended to 31 March 2015.

6. If you have any questions about this change, or comments on the legislation, please contact Nick Williams on 020 7147 2541 (email: Nicholas.williams@hmrc.gsi.gov.uk).

1 Cars with low carbon dioxide emissions

(1) In section 45D of CAA 2001 (first year qualifying expenditure on cars with low carbon dioxide emissions)—

(a) in subsection (1)(a), for “2013” substitute “2015”, and

(b) in subsection (4), for “110” substitute “95”.

(2) In section 46 of that Act (general exclusions), in subsection (5) omit “section 45D”.

(3) In section 104AA of that Act (special rate expenditure: meaning of “main rate car”), in subsection (4) for “160” substitute “130”.

(4) Accordingly, in section 77 of FA 2008 omit—

(a) subsection (2), and

(b) subsection (3).

(5) The amendments made by subsection (1)(b), (2) and (4)(b) have effect in relation to expenditure incurred on or after 1 April 2013.

(6) The amendment made by subsection (3) has effect in relation to expenditure incurred on or after the relevant date.

(7) But in relation to expenditure incurred on the hiring of a car—

(a) for a period of hire which begins before the relevant date, and

(b) under a contract entered into before that date,

section 49(1A) of ITTOIA 2005 and section 57(1A) of CTA 2009 apply on or after the relevant date as if the amendment made by subsection (3) did not have effect.

(8) “The relevant date” means—

(a) in the case of income tax, 6 April 2013, and

(b) in the case of corporation tax, 1 April 2013.

EXPLANATORY NOTE

CARS WITH LOW CARBON DIOXIDE EMISSIONS

SUMMARY

1. This clause extends the 100 per cent first-year allowance (FYA) for expenditure incurred on cars with low carbon dioxide (CO_2) emissions and electric cars, which is due to expire on 31 March 2013, for an additional two years to 31 March 2015. In addition, the clause reduces the emission thresholds that determine the rates of capital allowances available on cars and the restriction of lease rentals. It also aligns the treatment of cars with other assets provided for leasing by excluding expenditure on cars provided for leasing from qualifying for FYAs.

DETAILS OF THE CLAUSE

2. Subsection (1)(a) extends the period in which FYAs are available on cars with low CO_2 emissions, including electric cars, by two years to 31 March 2015.

3. Subsection (1)(b) reduces the emissions threshold so that only cars emitting no more than 95 grams of CO_2 per kilometre driven qualify for FYAs.

4. Subsection (2) makes a change so that cars provided for leasing no longer qualify for FYAs. It does this by repealing the override contained in section 46(5) Capital Allowances Act 2001 (CAA 2001) to General Exclusion 6 in section 46(2).

5. Subsection (3) amends the definition of a main rate car in section 104AA(4) CAA 2001 to those cars emitting no more than 130 grams of CO_2 per kilometre driven. This means that cars emitting more than that amount only qualify for the special rate of writing down allowances (currently eight per cent per annum) rather than the main rate of writing down allowances (currently 18 per cent per annum). It also means that the lease rental restriction will apply to cars emitting more than 130 grams of CO_2 per kilometre driven.

6. Subsection (4) removes subsections (2) and (3) from section 77 Finance Act 2008 which set the previous emission thresholds.

7. Subsection (7) provides that the revised threshold for the lease rental restriction will only apply to those lease contracts entered into after the date given by subsection (8).

BACKGROUND

8. 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. Most businesses are entitled to an annual 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most plant and machinery (excluding cars) up to an annual limit of £25,000. For expenditure above that limit, writing-down allowances (WDA) are available, which are given at the main rate of 18 per cent or the special rate of eight per cent per annum.

9. FYAs, currently available at a rate of 100 per cent, are available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA.

10. Whilst cars are plant and machinery, there are special capital allowances rules that only apply to expenditure incurred on cars.

   - Expenditure on electric cars or cars with very low CO_2 emissions (up to 95g/km driven from 1 April 2013) qualify for 100 per cent FYAs. This allowance aims to encourage investment in cleaner cars by providing a tax incentive for businesses to invest in those cars with the lowest CO_2 emissions. It is complemented by wider measures including 100 per cent FYA for expenditure incurred on natural gas and hydrogen refuelling equipment which is also being extended to 31 March 2015.

   - Following the changes made by this measure, expenditure on 'main rate cars' (those with CO_2 emissions over the 95g/km threshold for FYA but no more than 130g/km) will be allocated to the main rate pool and qualify for 18 per cent writing down allowances on the reducing balance of expenditure.

   - Expenditure on cars with CO_2 emissions exceeding 130 g/km will be allocated to the special rate pool and qualify for eight per cent writing down allowances on the reducing balance of expenditure.

11. In addition, whilst expenditure on the provision of plant or machinery for leasing has been, and continues to be, excluded from being first-year qualifying expenditure this exclusion has not applied to cars with low emissions. This measure aligns the treatment of low emission cars with all other plant and machinery provided for leasing.

12. Some businesses hire or lease their cars rather than buy them. There are rules that restrict the tax deduction for hire expenses where the car has emissions equivalent to those that would be allocated to the special rate pool. This "lease rental restriction" reduces the amount of the rental payments that would otherwise be allowed in calculating a

business's taxable profits by a flat rate disallowance of 15 per cent. For leases commencing on or after 1 April (corporation tax) or 6 April 2013 (income tax) the lease rental restriction will apply to cars over the 130g/km threshold.

13. If you have any questions about this change, or comments on the legislation, please contact Andrew Donaldson on 020 7147 2282 (email: andrew.s.donaldson@hmrc.gsi.gov.uk).

1 Cash basis for small businesses

Schedule 1 contains provision enabling the profits of a trade, profession or vocation to be calculated on the cash basis.

SCHEDULE 1

Section 1

CASH BASIS FOR SMALL BUSINESSES

PART 1

MAIN PROVISIONS

Introductory

1 Part 2 of ITTOIA 2005 (trading income) is amended as follows.

Eligibility to calculate profits on cash basis

2 Chapter 3 (trade profits: basic rules) is amended as follows.

3 In section 25(3) (exception to requirement to use generally accepted accounting practice), for "section 160 (barristers and advocates in early years of practice)" substitute "section 25A (cash basis for small businesses)".

4 After section 25 insert—

"25A Cash basis for small businesses

(1) A person who is or has been carrying on a trade may elect for the profits of the trade to be calculated on the cash basis (instead of in accordance with generally accepted accounting practice).

(2) References in this Part to calculating the profits of a trade on the cash basis are references to doing so in accordance with this section.

(3) Chapter 3A contains provision about—
  (a) when a person may make an election under this section, and
  (b) the effect of such an election.

(4) Where an election under this section has effect in relation to a trade, sections 27, 28 and 30 do not apply in relation to the calculation of the profits of the trade."

5 After Chapter 3 insert—

"CHAPTER 3A

TRADE PROFITS: CASH BASIS

Eligibility

31A Conditions to be met for profits to be calculated on cash basis

(1) A person may make an election under section 25A (cash basis for small businesses) for a tax year if conditions A to C are met.

(2) Condition A is that the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the person during that tax year does not exceed any relevant maximum applicable for that tax year (see section 31B).

(3) Condition B is that, in a case where the person is either an individual who controls a firm or a firm controlled by an individual—

(a) the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the individual or the firm during that tax year does not exceed any relevant maximum applicable for that tax year, and

(b) the firm or the individual (as the case may be) has also made an election under section 25A for that tax year.

(4) Condition C is that the person is not an excluded person in relation to the tax year (see section 31C).

(5) For the purposes of this section, the "cash basis receipts" of a trade, profession or vocation, in relation to a tax year, are any receipts that—

(a) are received during the basis period for the tax year, and

(b) would be brought into account in calculating the profits of the trade, profession or vocation for that tax year on the cash basis.

31B Relevant maximum

(1) For the purposes of section 31A there is a "relevant maximum" applicable for a tax year in relation to a trade, profession or vocation carried on by a person if any of conditions A to C is met.

(2) Condition A is that an election under section 25A did not have effect in relation to the trade, profession or vocation for the previous tax year.

(3) Condition B is that the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the person during the previous tax year is greater than an amount equal to twice the VAT threshold for that previous tax year.

(4) Condition C is that, in a case where the person is either an individual who controls a firm or a firm controlled by an individual, the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the individual or the firm during the previous tax year is greater than an amount equal to twice the VAT threshold for that previous tax year.

(5) If there is a relevant maximum applicable for a tax year, the amount of the relevant maximum is—

(a) the VAT threshold, or

(b) in the case where the person is an individual who is a universal credit claimant in the tax year, an amount equal to twice the VAT threshold.

(6) For the purposes of this section, where the basis period for a tax year is less than 12 months, the VAT threshold is proportionately reduced.

(7) In this section—

"universal credit claimant", in relation to a tax year, means a person who is entitled to universal credit under Part 1 of the Welfare Reform Act 2012 for an assessment period (within the meaning of that Part) that falls within the basis period for the tax year, and

"the VAT threshold", in relation to a tax year, means the amount specified at the end of that tax year in paragraph 1(1)(a) of Schedule 1 to VATA 1994.

(8) The Treasury may by order amend this section.

(9) A statutory instrument containing an order under subsection (8) that restricts the circumstances in which an election may be made under section 25A may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons.

31C Excluded persons

(1) A person is an excluded person in relation to a tax year if the person meets any of conditions A to E.

(2) Condition A is that—
 (a) the person is a firm, and
 (b) one or more of the persons who have been partners in the firm at any time during the basis period for the tax year was not an individual at that time.

(3) Condition B is that the person was a limited liability partnership at any time during the basis period for the tax year.

(4) Condition C is that the person is an individual who has been a Lloyd's underwriter at any time during the basis period for the tax year.

(5) Condition D is that the person has made an election under Chapter 8 (trade profits: herd basis rules) that has effect in relation to the tax year.

(6) Condition E is that the person has made a claim under section 221 (claim for averaging of fluctuating profits) in relation to the tax year.

(7) The Treasury may by order amend this section.

(8) A statutory instrument containing an order under subsection (7) that restricts the circumstances in which an election may be made under section 25A may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons.

Elections under section 25A

31D Effect of election under section 25A

(1) An election made by a person under section 25A has effect—
 (a) for the tax year for which it is made, and

(b) in relation to every trade, profession or vocation carried on by the person during that tax year.

(2) For provision prohibiting a person who has made an election under section 25A from claiming any capital allowances, see section 1(4) of CAA 2001.

Calculation of profits on cash basis

31E Calculation of profits on cash basis

(1) This section applies to professions and vocations as it applies to trades.

(2) To determine the profits of a trade for a tax year on the cash basis—

Step 1

Calculate the total amount of receipts of the trade received during the basis period for the tax year.

Step 2

Deduct from that amount the total amount of expenses of the trade paid during the basis period for the tax year.

(3) Subsection (2) is subject to any adjustment required or authorised by law in calculating profits for income tax purposes."

Rules restricting deductions

6 Chapter 4 (trade profits: rules restricting deductions) is amended as follows.

7 After section 32 insert—

"Cash basis accounting

32A Overview of rules for calculating profits on cash basis

(1) The following sections do not apply in calculating the profits of a trade on the cash basis—

section 33 (capital expenditure),
section 35 (bad and doubtful debts),
sections 36 and 37 (unpaid remuneration),
section 43 (employee benefit contributions: profits calculated before end of 9 month period),
sections 48 to 50B (car hire).

(2) For rules restricting deductions that apply only where profits are calculated on the cash basis, see the following—

section 33A (cash basis: capital expenditure),
section 51A (cash basis: interest payments on loans),
section 55C (cash basis: rental payments)."

8 After section 33 insert—

“33A Cash basis: capital expenditure

(1) In calculating the profits of a trade on the cash basis, no deduction is allowed for items of a capital nature falling within any of the Heads set out in—
(a) subsection (2) (land),
(b) subsection (4) (cars and motor cycles),
(c) subsection (5) (intellectual property),
(d) subsection (7) (shares etc),
(e) subsection (8) (other businesses),
(f) subsection (10) (investment assets),
(g) subsection (11) (non-depreciating assets).

(2) Head 1 is expenditure on—
(a) acquiring or improving any land, and
(b) acquiring or improving any fixture acquired at the same time as, and as part of, any land.

(3) In subsection (2) “fixture”, in relation to any land—
(a) means anything that is so installed or otherwise fixed in or to the land as to become, in law, part of that land, and
(b) includes any boiler or water-filled radiator installed in a building as part of a space or water heating system.

(4) Head 2 is expenditure on acquiring or improving cars or motor cycles.

(5) Head 3 is expenditure on acquiring, creating or improving intellectual property.

(6) In subsection (5) “intellectual property” has the same meaning as in section 579 (charge to tax on royalties and other income from intellectual property).

(7) Head 4 is expenditure on acquiring shares or other securities.

(8) Head 5 is expenditure on acquiring another business.

(9) In subsection (8) “business” means something which is—
(a) a trade, profession or vocation for the purposes of the Income Tax Acts or the Corporation Tax Acts,
(b) a property business (within the meaning of section 263(6)), or
(c) an investment business (that is, a business consisting wholly or partly of making investments).

(10) Head 6 is expenditure on acquiring, creating or improving any asset which—
(a) is acquired or created as an investment, or
(b) generates income that is chargeable to tax under Part 4 (savings and investment income).

(11) Head 7 is expenditure on acquiring, creating or improving any asset which, at the time of its acquisition or creation, could not reasonably be expected to decrease significantly in value with the passage of time.”

9 In section 38 (restriction of deductions in respect of employee benefit contributions), after subsection (2) insert—

"(2A) In calculating for income tax purposes the profits of a trade on the cash basis, this section has effect as if—
(a) in subsection (1), the words "or to be made" were omitted, and
(b) in subsection (2), the words "or within 9 months from the end of it" were omitted (in both places)."

10 Before section 52 (and after the heading "*Interest payments*") insert—

"51A Cash basis: interest payments on loans

(1) In calculating the profits of a trade on the cash basis, no deduction is allowed for the interest paid on a loan.

(2) This is subject to section 57B."

11 (1) Section 55A (expenditure on integral features) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) After that subsection insert—

"(2) But section 33A(3) of CAA 2001 does not apply in calculating the profits of a trade on the cash basis."

12 After section 55B insert—

"Cash basis: rental payments

55C Cash basis: rental payments

(1) This section applies if, in calculating the profits of a trade on the cash basis for the basis period for a tax year, a deduction would otherwise be allowable for the period in respect of any expenses paid in renting, leasing or hiring an asset that is used for the purposes of the trade.

(2) No deduction is allowed for the expenses unless condition A or condition B is met.

(3) Condition A is that, if the asset had been acquired for the purposes of the trade, the expenditure on acquiring the asset would have been allowable as a deduction in calculating the profits of the trade on the cash basis.

(4) Condition B is that the expenses relate to the use of the asset in—
(a) the basis period mentioned in subsection (1), or
(b) the period of 3 months beginning immediately after the end of that basis period."

Rules allowing deductions

13 Chapter 5 (trade profits: rules allowing deductions) is amended as follows.

14 After section 56 insert—

"Cash basis accounting

56A Overview of rules for calculating profits on cash basis

(1) The following sections do not apply in calculating the profits of a trade on the cash basis—

sections 60 to 67 (tenants under taxed leases),

section 68 (replacement and alteration of trade tools).

(2) For rules allowing deductions that apply only where profits are calculated on the cash basis, see the following—

section 57B (cash basis: interest payments on loans),

section 94B (cash basis: VAT payments).

(3) In calculating the profits of a trade on the cash basis—

(a) any reference in this Chapter to the incurring of expenses is to be read as a reference to the paying of expenses, and

(b) any reference in this Chapter to a period of account is to be read as a reference to a basis period."

15 After section 57A insert—

"Cash basis: interest payments

57B Cash basis: interest payments on loans

(1) This section applies if a person carrying on a trade in a period pays any interest on a loan during the period and—

(a) a deduction for the interest would not otherwise be allowable in calculating the profits of the trade because of section 51A, or

(b) in the absence of section 51A, a deduction for the interest would not otherwise be allowable in calculating the profits of the trade because (and only because) it was not an expense incurred wholly and exclusively for the purposes of the trade.

(2) In calculating the profits of the trade on the cash basis, a deduction is allowed for the interest.

(3) But the maximum amount that may be deducted by virtue of this section or section 58 (incidental costs of obtaining finance) in calculating the profits of a trade for any period is £500.

(4) The Treasury may by order amend the figure for the time being specified in subsection (3).

(5) A statutory instrument containing an order under this section that amends that figure so as to substitute a lower figure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons."

16 In section 58 (incidental costs of obtaining finance), in subsection (5), after "with" insert "—

(a) section 57B(3) (which imposes a limit on the total amount that may be deducted by virtue of this section or section 57B), and

(b) ".

17 In section 72 (payroll deduction schemes: contributions to agents' expenses), after subsection (2) insert—

"(2A) In calculating the profits of the employer's trade on the cash basis, subsection (2) has effect as if paragraph (b) were omitted."

18 In section 94A (costs of setting up SAYE option scheme or CSOP scheme), after subsection (4) insert—

"(5) But subsection (4) does not apply in calculating the profits of a trade on the cash basis."

19 After section 94A insert—

"Cash basis: VAT payments

94B Cash basis: VAT payments

(1) This section applies if a person carrying on a trade in a period is a taxable person for the purposes of VATA 1994.

(2) In calculating the profits of the trade for the period on the cash basis, a deduction is allowed for any amount of value added tax paid by the person.

(3) This section is subject to section 34 (no deduction allowed for expenses not incurred wholly and exclusively for the purposes of a trade).
Accordingly, section 31 (relationship between rules prohibiting and allowing deductions) is subject to this subsection."

Receipts

20 Chapter 6 (trade profits: receipts) is amended as follows.

21 After section 95 insert—

"Cash basis accounting

95A Overview of rules for calculating profits on cash basis

For rules about receipts that apply only for the purpose of calculating profits on the cash basis, see the following—
section 96A (cash basis: capital receipts),
section 97A (cash basis: value of trading stock on cessation of trade),
section 106A (cash basis: VAT receipts),
section 106B (cash basis: repayments of rent etc)."

22 After section 96 insert—

"96A Cash basis: capital receipts

(1) This section applies if the cost of acquiring, creating or improving an asset has been brought into account in calculating the profits of a trade of a person on the cash basis (or would have been so brought into account if an election under section 25A had had effect in relation to the trade at the time the asset was acquired or created).

(2) The following amounts are to be brought into account as a receipt in calculating the profits of the trade on the cash basis—

(a) any proceeds arising from the disposal of the asset or any part of it;

(b) any proceeds arising from the grant of any right in respect of, or any interest in, the asset;

(c) any amount of damages, proceeds of insurance or other compensation received in respect of the asset.

(3) In a case where the amount of any proceeds within subsection (2)(a) or (b) is less than the market value amount, the amount to be brought into account under subsection (2) is an amount equal to the market value amount.

(4) If—

(a) at any time the person ceases to use the asset or any part of it for the purposes of the trade, but

(b) the person does not dispose of the asset (or that part) at that time,

the person is to be regarded for the purposes of this section as disposing of the asset (or that part) at that time for an amount equal to the market value amount.

(5) If at any time there is an increase in the person's non-business use of the asset or any part of it, the person is to be regarded for the purposes of this section as disposing of the asset (or that part) at that time for an amount equal to the relevant proportion of the market value amount.

(6) For the purposes of subsection (5)—

(a) there is an increase in a person's non-business use of an asset (or part of an asset) if the person's use of the asset (or that part) for the purposes of the trade decreases and the person's use of the asset (or that part) for other purposes (the "non-business use") increases, and

(b) "the relevant proportion" is the difference between—

(i) the proportion of the person's use of the asset (or part of the asset) that is non-business use, and

(ii) the proportion of the person's use of the asset (or that part) that was non-business use before the increase mentioned in subsection (5).

(7) In this section "the market value amount" means the amount that would be regarded as normal and reasonable—

(a) in the market conditions then prevailing, and

(b) between persons dealing with each other at arm's length in the open market.

(8) In a case where only part of the cost of acquiring, creating or improving an asset has been brought into account as mentioned in subsection (1), the amount brought into account under subsection (2) is proportionately reduced."

23 After section 97 insert—

"Cash basis: value of trading stock on cessation

97A Cash basis: value of trading stock on cessation of trade

(1) This section applies if—

(a) a person permanently ceases to carry on a trade in a tax year, and

(b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade for the tax year.

(2) The value of any trading stock belonging to the trade at the time of the cessation is brought into account as a receipt in calculating the profits of the trade for the tax year.

(3) The value is the value determined in accordance with sections 175 to 178.

(4) In this section "trading stock" has the meaning given by section 174(1)."

24 In section 98 (acquisition of trade: receipts from transferor's trade), after subsection (2) insert—

"(2A) For the purpose of calculating the profits of the transferee's trade on the cash basis, the reference in subsection (2) to the period of account in which the sums mentioned in that subsection are received is to be read as a reference to the basis period in which those sums are received."

25 In section 102 (reverse premiums: arrangements not at arm's length), after subsection (5) insert—

"(6) In calculating the profits of a trade on the cash basis, this section has effect as if any reference to a period of account were a reference to a basis period."

26 (1) Section 105 (industrial development grants) is amended as follows.

(2) In subsection (2), at the end of paragraph (a) insert "(but see subsection (2A))".

(3) After that subsection insert—

"(2A) Subsection (2)(a) is to be disregarded in calculating the profits of a trade on the cash basis."

27 After section 106 insert—

"Cash basis: VAT receipts

106A Cash basis: VAT receipts

(1) In calculating the profits of a trade for a period on the cash basis, the following amounts are to be brought into account as receipts of the trade—

(a) any amount of VAT paid to the person carrying on the trade,

(b) any amount received by the person by way of a refund of VAT, and

(c) where the person has paid any amount by way of VAT that was not VAT due to the Commissioners for Her Majesty's Revenue and Customs, any amount received by the person by way of a repayment of that amount.

(2) In this section "VAT" means value added tax."

28 After section 106A (inserted by paragraph 27) insert—

"Cash basis: repayments of rent etc

106B Cash basis: repayments of rent etc

(1) This section applies for the purpose of calculating the profits of a trade of a person on the cash basis.

(2) Subsection (3) applies if any expenses paid in renting, leasing or hiring an asset have been brought into account in calculating the profits of the trade on the cash basis (or would have been so brought into account if an election under section 25A had had effect in relation to the trade at the time the expenses were paid).

(3) Any amounts received by the person in connection with the rental, lease or hire of the asset are to be brought into account as receipts of the trade."

Amounts not reflecting commercial transactions

29 After Chapter 6 insert—

"CHAPTER 6A

TRADE PROFITS: AMOUNTS NOT REFLECTING COMMERCIAL TRANSACTIONS

106C Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

106D Application of Chapter

This Chapter applies in calculating the profits of a person's trade for a period on the cash basis.

106E Amounts not reflecting commercial transactions

(1) This section applies if—
  (a) the person does anything in relation to the trade ("the relevant act"),
  (b) there is a difference between—
    (i) the amount (if any) that, as a result of the relevant act, would (apart from this section) be brought into account in calculating the profits of the trade for the period, and
    (ii) the amount (if any) that would have been so brought into account had the relevant act occurred between the person and another person dealing with each

other at arm's length in the open market ("the arm's length amount"), and

(c) the profits for the period are less than they would have been if the arm's length amount had been so brought into account.

(2) The amount to be brought into account in calculating the profits of the trade for the period is an amount that is just and reasonable in all the circumstances.

106F Capital receipts

Section 106E does not apply in relation to the relevant act if any of subsections (3) to (5) of section 96A (cash basis: capital receipts) applies in relation to that act.

106G Gifts to charities etc

Section 106E does not apply in relation to the relevant act if any of the provisions of Chapter 7 (trade profits: gifts to charities etc) applies in relation to that act.

106H Changes in trading stock

Section 106E does not apply in relation to the relevant act if any of the provisions of Chapter 11A (trade profits: changes in trading stock) applies in relation to that act."

Herd basis rules

30 In Chapter 8 (trade profits: herd basis rules), after section 111 insert—

"111A Herd basis rules not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Sound recordings

31 In Chapter 9 (trade profits: sound recordings), after section 130 insert—

"130A Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Telecommunication rights

32 In Chapter 10 (trade profits: certain telecommunication rights), before section 145 insert—

"144A Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Long funding leases

33 In Chapter 10A (leases of plant and machinery: special rules for long funding leases), before section 148A (and the italic heading preceding it) insert—

"Application of Chapter

148ZA Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Specific trades

34 In Chapter 11 (trade profits: other specific trades), before section 149 (and the italic heading preceding that section) insert—

"Cash basis accounting

148K Overview of rules for calculating profits on cash basis

The following sections do not apply in calculating the profits of a trade, profession or vocation on the cash basis—
sections 149 to 154A (dealers in securities etc),
section 157 (relief in respect of mineral royalties),
section 158 (lease premiums etc: reduction of receipts),
section 159 (ministers of religion),
section 162 (payments by persons liable to pool betting duty),
sections 163 and 164 (intermediaries treated as making employment payments),
section 164A (managed service companies),
sections 165 to 168 (waste disposal),
sections 169 to 172ZE (cemeteries and crematoria)."

Unremittable amounts

35 In Chapter 13 (deductions from profits: unremittable amounts), after section 188 insert—

"188A Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Disposal and acquisition of know-how

36 In Chapter 14 (disposal and acquisition of know-how), before section 192 insert—

"191A Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Basis periods

37 Chapter 15 (basis periods) is amended as follows.

38 (1) Section 198 (general rule) is amended as follows.

(2) In subsection (2), omit the "and" before "section 216" and at the end insert—

"section 220E (first tax year after using cash basis),
section 220F (second tax year after using cash basis)."

(3) After that subsection insert—

"(3) Where an election under section 25A (cash basis for small businesses) has effect for a tax year, the basis period for the tax year is given by section 220A (and not by subsection (1) or any of the sections mentioned in subsection (2))."

39 In section 203 (apportionment etc of profits to basis periods), after subsection (1) insert—

"(1A) But nothing in this section applies in calculating the profits of a trade on the cash basis."

40 (1) Section 205 (deduction for overlap profit in final tax year) is amended as follows.

(2) Before subsection (1) insert—

"(A1) This section applies if—

(a) a person permanently ceases to carry on a trade in a tax year, or

(b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade for the tax year."

(3) In subsection (1), for the words from "If" to "a deduction" substitute "A deduction".

(4) The heading of the section becomes "**Deduction for overlap profit**".

41 In section 206 (restriction on bringing losses into account twice)—

(a) the existing provision becomes subsection (1), and

(b) after that subsection insert—

"(2) This section does not apply in calculating the profits of a trade on the cash basis."

42 In section 207 (treatment of business start-up payments received in an overlap period), after subsection (1) insert—

"(1A) But nothing in this section applies in calculating the profits of a trade on the cash basis."

43 In section 208 (when the late accounting date rules apply), after subsection (2) insert—

"(2A) But nothing in section 209 or 210 applies in calculating the profits of a trade on the cash basis."

44 In section 220 (deduction for overlap profit on change of accounting date), after subsection (1) insert—

"(1A) But nothing in this section applies in calculating the profits of a trade on the cash basis."

45 After section 220 insert—

"Special rules if cash basis used

220A Rule if cash basis is used for a tax year

(1) This section applies in relation to a trade if an election under section 25A (cash basis for small businesses) has effect in relation to the trade for a tax year.

(2) The basis period for the tax year is the period—

(a) beginning immediately after the end of the basis period for the previous tax year, and

(b) ending with the chosen date for that tax year.

(3) This applies unless a different basis period is given by one of the following sections—

section 220B (no chosen date),

section 220C (first tax year in which trade carried on),

section 220D (final tax year in which trade carried on).

(4) The "chosen date", in relation to a tax year, is a date chosen by the person carrying on the trade which falls within the period—

(a) beginning with the 31st March in that tax year, and

(b) ending with the 30th April immediately following the end of that tax year.

220B No chosen date

(1) This section applies if a person carries on a trade in a tax year and—

(a) an election under section 25A has effect in relation to the trade for the tax year,

(b) the person does not start or permanently cease to carry on the trade in the tax year, and

(c) there is no chosen date for the tax year for the purposes of section 220A(4).

(2) The basis period for the tax year is the period—

(a) beginning immediately after the end of the basis period for the previous tax year, and

(b) ending with the 5th April in the tax year.

220C First tax year in which trade carried on

(1) This section applies if—

(a) a person starts to carry on a trade in a tax year, and

(b) an election under section 25A has effect in relation to the trade for the tax year.

(2) The basis period for the tax year—

(a) begins with the date on which the person starts to carry on the trade, and

(b) ends with the chosen date for that tax year.

(3) But if a person starts and permanently ceases to carry on a trade in the same tax year, the basis period for the tax year is that given by section 220D(3).

(4) If there is no chosen date for the tax year, the basis period for the tax year—
  (a) begins with the date on which the person starts to carry on the trade, and
  (b) ends with the 5th April in that tax year.

(5) If the person starts to carry on the trade after 31st March—
  (a) the profits or losses of the trade of the tax year are treated as nil, and
  (b) the actual profits and losses of the trade of the tax year are treated as arising in the basis period for the following tax year.

220D Final tax year in which trade carried on

(1) This section applies if—
  (a) a person permanently ceases to carry on a trade in a tax year, and
  (b) an election under section 25A has effect in relation to the trade for the tax year.

(2) The basis period for the tax year—
  (a) begins immediately after the end of the basis period for the previous tax year, and
  (b) ends with the date on which the person permanently ceases to carry on the trade.

(3) But if a person starts and permanently ceases to carry on a trade in the same tax year, the basis period—
  (a) begins with the date on which the person starts to carry on the trade, and
  (b) ends with the date on which the person permanently ceases to carry on the trade.

220E First tax year after using cash basis

(1) This section applies if—
  (a) a person carries on a trade in a tax year (“the current tax year”),
  (b) the person does not permanently cease to carry on the trade in the current tax year,
  (c) an election under section 25A had effect in relation to the trade for the previous tax year, and
  (d) no such election has effect in relation to the trade for the current tax year.

(2) The basis period for the current tax year—
  (a) begins immediately after the end of the basis period for the previous tax year, and
  (b) ends with the relevant date in the current tax year.

(3) If there is an accounting date in the current tax year and that date is 31st March or 1st, 2nd, 3rd or 4th April, the relevant date is the accounting date.

(4) In any other case, the relevant date is the 5th April in the current tax year.

220F Second tax year after using cash basis

(1) This section applies if—

(a) a person carries on a trade in a tax year ("the current tax year"),

(b) the person does not permanently cease to carry on the trade in the current tax year, and

(c) section 220E (first tax year after using cash basis) had effect for the previous tax year.

(2) The basis period for the current tax year is the period of 12 months beginning immediately after the end of the basis period for the previous tax year."

Averaging profits of farmers and creative artists

46 In Chapter 16 (averaging profits of farmers and creative artists), after section 221 insert—

"221A Claim not available where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Compensation for compulsory slaughter of animal

47 In Chapter 16ZA (compensation for compulsory slaughter of animal), after section 225ZA insert—

"225ZAA Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Oil activities

48 In Chapter 16A (oil activities), before section 225A (and the italic heading preceding it) insert—

"Application of Chapter

225ZH Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis."

Adjustment income

49 In Chapter 17 (adjustment income), after section 227 insert—

"227A Application of Chapter where cash basis used

(1) This Chapter applies if—

(a) an election under section 25A (cash basis for small businesses) has effect in relation to a trade for a tax year but no such election has effect in relation to the trade for the following tax year, or

(b) no such election has effect in relation to a trade for a tax year but such an election has effect in relation to the trade for the following tax year.

(2) But this Chapter does not apply to income which is charged in accordance with section 832.

(3) In calculating the profits of a trade on the cash basis, any reference in any subsequent provision of this Chapter to a period of account is, in relation to a time when an election under section 25A has effect in relation to the trade, to be read as a reference to a basis period."

Post-cessation receipts

50 (1) Chapter 18 (post-cessation receipts) is amended as follows.

(2) In section 246 (basic meaning of "post-cessation receipt"), after subsection (2) insert—

"(2A) If, immediately before a person permanently ceases to carry on a trade, an election under section 25A (cash basis for small businesses) has effect in relation to the trade, a sum is to be treated as a post-cessation receipt only if it would have been brought into account in calculating the profits of the trade on the cash basis had it been received at that time."

(3) In section 254 (allowable deductions), after subsection (2) insert—

"(2A) If, immediately before a person permanently ceases to carry on a trade, an election under section 25A (cash basis for small businesses) has effect in relation to the trade, assume for the purposes of subsection (2) that such an election has effect in relation to the trade."

Rent-a-room relief

51 In Chapter 1 of Part 7 of ITTOIA 2005 (rent-a-room relief), in section 786 (meaning of "rent-a-room receipts"), after subsection (4) insert—

"(5) Subsections (6) and (7) apply if—

(a) the receipts would otherwise be brought into account in calculating the profits of a trade, and

(b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade.

(6) Any amounts brought into account under section 96A (capital receipts) as a receipt in calculating the profits of the trade are to be treated as receipts within paragraph (a) of subsection (1) above.

(7) The reference in subsection (1)(b) to receipts that accrue to an individual during the income period for those receipts is to be read

as a reference to receipts that are received by the individual during that period.”

Qualifying care relief

52 Chapter 2 of Part 7 of ITTOIA 2005 (qualifying care relief) is amended as follows.

53 In section 805 (meaning of “qualifying care receipts”), after subsection (3) insert—

“(4) Subsections (5) and (6) apply if—

(a) the receipts would otherwise be brought into account in calculating the profits of a trade, and

(b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade.

(5) Any amounts brought into account under section 96A (capital receipts) as a receipt in calculating the profits of the trade are to be treated as receipts within paragraph (a) of subsection (1) above.

(6) The reference in subsection (1)(b) to receipts that accrue to an individual during the income period for those receipts is to be read as a reference to receipts that are received by the individual during that period.”

54 In section 820 (periods of account not ending on 5th April)—

(a) the existing provision becomes subsection (1), and

(b) after that subsection insert—

“(2) Where an election under section 25A (cash basis for small businesses) has effect in relation to the trade, any reference in this section or sections 821 to 823 to the period of account in which receipts accrue is to be read as a reference to the basis period in which receipts are received.”

PART 2

CONSEQUENTIAL AMENDMENTS

TMA 1970

55 In section 42 of TMA 1970 (procedure for making claims etc), in subsection (7)(e), after “sections” insert “25A,”.

CAA 2001

56 In section 1 of CAA 2001 (capital allowances), after subsection (3) insert—

“(4) But a person is not entitled to any allowance or liable to any charge under this Act in calculating the profits of a trade, profession or vocation of the person in relation to which an election under section 25A of ITTOIA 2005 (cash basis for small businesses) has effect.”

ITTOIA 2005

57 Omit section 160 of ITTOIA 2005 (cash basis of calculation for barristers and advocates in early years of practice).

ITA 2007

58 In Part 4 of ITA 2007 (loss relief), in Chapter 2 (trade losses), after section 74D insert—

"Restriction on sideways relief and capital gains relief where cash basis applies

74E No relief where cash basis used to calculate losses

(1) This section applies if—
(a) a person makes a loss in any trade in a tax year, and
(b) an election under section 25A of ITTOIA 2005 (cash basis for small businesses) has effect in relation to the trade for that tax year.

(2) No sideways relief or capital gains relief may be given to the person for the loss.

(3) For the purposes of this section—
(a) capital gains relief is, in relation to a loss, the treatment of a loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and
(b) capital gains relief is given for a loss when it is so treated."

59 (1) Chapter 1 of Part 8 of ITA 2007 (relief for interest payments) is amended as follows.

(2) In section 383(5), after paragraph (a) insert—
"(aa) section 384B (restriction on relief where cash basis applies),".

(3) After section 384A insert—

"384B Restriction on relief where cash basis applies

(1) Relief is not to be given under this Chapter for a tax year for interest paid by a person on a relevant loan if the partnership to which the loan relates has made an election under section 25A of ITTOIA 2005 (cash basis for small businesses) for the tax year.

(2) A loan is a "relevant loan" if—
(a) it is a loan to which section 388 applies (loan to buy plant or machinery for partnership use), or
(b) it is a loan to which section 398 applies (loan to invest in partnership) and which is not used for purchasing a share in a partnership."

PART 3

COMMENCEMENT

60 The amendments made by this Schedule have effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

CASH BASIS FOR SMALL BUSINESSES

SUMMARY

1. This schedule provides that eligible individuals carrying on a trade or profession as self employed sole traders or in partnership with other individuals can choose to use a cash basis to calculate taxable income.

DETAILS OF THE SCHEDULE

2. Paragraph 3 amends section 25(3) Income Tax (Trading and other Income) Act 2005 (ITTOIA). Section 25(1) provides that profits of a trade are calculated in accordance with Generally Accepted Accounting Practice. Section 25(3) is amended so that section 25 is subject to new section 25A which provides for calculation of profits on a cash basis for small businesses. The new cash basis legislation replaces the alternative basis for barristers in the early years of practice allowed by section 160.

3. Paragraph 4 inserts a new section 25A of ITTOIA.

4. New subsection 25A(1) provides that a person carrying on a trade profession or vocation can elect to use the cash basis.

5. New subsection 25A(4) provides that sections 27, 28 and 30 of ITTOIA do not apply to those using the cash basis. These sections deal with receipts and expenses under Generally Accepted Accounting Practice and animals kept for trade purposes.

6. Paragraph 5 introduces a new Chapter 3A to Part 2 of ITTOIA dealing with when a person is eligible to make an election to use the cash basis under section 25A and the effect of an election.

7. New Section 31A details conditions A to C which a person must meet to be eligible to elect to use the cash basis.

   - Condition A is that the aggregate of cash basis receipts of each business carried on by the person in the tax year does not exceed any applicable relevant maximum. (New section 31B deals with when a relevant maximum applies and what that amount is).

   - Condition B sets out how the aggregate receipts condition applies in the case of a partnership controlled by an individual and of an individual who controls a partnership. It also requires that where a person is a partnership controlled by an individual, the

individual must have elected to use the cash basis for calculating his trading income, and where a person is an individual who controls a firm, the partnership must also have made a cash basis election for the tax year.

- Condition C is that the person does not fall within any of the "excluded persons" categories set out in new section 31C.

8. New subsection 31A(5) provides that cash receipts in a tax year means any receipts that are received in a tax year or would be included in calculating the profit s of the trade for that tax year.

9. New section 31B details the conditions regarding the 'relevant maximum'. There is a relevant maximum if any of three conditions is met.

10. New subsection 31B(2) provides Condition A which is that the business was not in the cash basis in the previous tax year.

11. New subsection 31B(3) provides Condition B which is that the aggregate of cash basis receipts for each business carried on is greater than twice the VAT threshold in the previous tax year.

12. New subsection 31B(4) provides Condition C which is that the person is an individual who controls a partnership or a partnership controlled by an individual, and the aggregate of cash basis receipts in the previous tax year exceeded double the VAT threshold.

13. New subsection 31B(5) provides that the 'relevant maximum' that applies if any of conditions A-C is met is the VAT threshold and double the VAT threshold where the person is a Universal Credit claimant.

14. New Section 31C sets out the categories of person that are excluded from electing to use the cash basis, for example, a partnership where any of the partners is a company.

15. New section 31D provides that an election under section 25A has effect for the tax year in which it is made and for all the trades professions or vocations carried on by the person in the tax year. New section 31D also signposts the amendment to the Capital Allowances Act 2001 which precludes a person using the cash basis from claiming capital allowances.

16. New section 31E provides for how profits are determined on the cash basis. There are two steps, firstly calculate the total trade receipts received in the basis period for the tax year and secondly, from that figure deduct the total amount of expenses of the trade paid during the basis period of the tax year (subject to any adjustments required or authorised by law).

17. Paragraphs 6 to 12 amend Chapter 4 Part 2 ITTOIA, dealing with trade profits: rules restricting deductions.

18. New section 32A gives an overview of how this Chapter applies when calculating profits on a cash basis.

19. New section 33A details the types of capital expenditure not allowed as a deduction for those using the cash basis to calculate the profits of a trade. Capital expenditure not allowed includes expenditure on land, cars and motorcycles. Capital expenditure not within new section 33A is allowable as an expense in computing taxable income under the cash basis. Under the normal rules, section 33 ITTOIA disallows any capital expenditure as a deduction in calculating the profits of a trade.

20. Paragraph 9 amends section 38 which provides that where an employee benefit contribution is made, a deduction is available to the trader only if certain qualifications are met. This section is amended with the effect that for calculating taxable income on the cash basis the employee benefit contributions have to be made in the taxable period.

21. Paragraph 10 inserts new section 51A which provides that in calculating profits of a trade on a cash basis no deduction is allowed for interest paid. This section is subject to new section 57B.

22. Paragraph 11 amends section 55A. Section 55A provides that no deduction is available for integral features of a building or structure as detailed in section 33A(3) Capital Allowances Act 2001. As amended, section 55A signposts that s.33A(3) does not apply in the cash basis.

23. Paragraph 12 inserts new section 55C into ITTOIA. This section provides that where an asset is rented leased or hired then the expense of renting leasing or hiring is not an allowable expense in calculating the profits of a business on the cash basis unless the acquisition costs of the asset would have been an allowable expense for cash basis purposes and that the expenses relate to the use of the asset in the current or following basis periods.

24. Paragraphs 13 to 19 amend Chapter 5 Part 2 ITTOIA dealing with ‘trade profits: rules allowing deductions’.

25. New section 56A provides an overview of the rules in Chapter 5 for calculating profits on the cash basis.

26. Paragraph 15 inserts a new section 57B. This allows that, in calculating profits of a trade under the cash basis, where a deduction would otherwise be disallowed under new section 51A, or where in the absence of section 51A a deduction would not be allowable only

because it was not an expense wholly and exclusively for the trade, a deduction is allowed for interest paid of up to £500.

27. Paragraph 16 amends section 58 which allows incidental costs of finance so that on the cash basis, the maximum deduction which may be made for those costs when taken together with interest allowable under new section 57B is £500.

28. Paragraph 17 amends section 72 which deals with payroll expenses so that contributions to agents expenses are only allowed as a deduction when the expenses have been incurred.

29. Paragraph 18 amends section 94A which allows expenses of setting up a SAYE or CSOP option scheme. The amendment ensures that only expenses paid in respect of such schemes are allowable deductions for computing income under the cash basis.

30. Paragraph 19 inserts new section 94B. New section 94B provides that where a person using the cash basis is a taxable person under the Value Added Tax Act 1994 then the value added tax paid is allowed as a deduction in calculating profits for the period on the cash basis.

31. New section 94B(3) restricts the deduction of VAT to expenses that are incurred wholly and exclusively for the purposes of a business and is subject to section 34.

32. Paragraph 21 inserts new section 95A. This provides that rules about receipts which apply only for the purposes of calculating profits under the cash basis can be found at new sections 96A, 97A, 106A and 106B.

33. Paragraph 22 inserts new section 96A which provides how capital receipts are to be treated under the cash basis.

34. New section 96A(1) provides that section 96A applies where an asset has been brought into account in calculating profits under the cash basis, or would have done if the cash basis had been elected for when the asset was acquired.

35. New subsection (2) provides that the amounts to be brought into account as a receipt of the cash basis are any proceeds arising from disposing of the asset or part of the asset, any proceeds arising from the grant of any right or interest in the asset or any damages, insurance or compensation received in respect of the asset.

36. New subsection (3) provides that where the proceeds from disposal are less than market value then market value is the amount to be brought to account for the cash basis.

37. New subsection (4) provides that where a person ceases to use an asset but does not dispose of it an amount equal to market value is

brought into account for the cash basis at the time that use of the asset ceases.

38. New subsection (5) provides that where there is an increase in the proportion of non business use of an asset then an amount is brought into account by treating the asset as disposed of and for the relevant proportion of the market value amount relating to the increase.

39. New subsection (6) provides the mechanism by which changes in the proportion of non business use before disposal are dealt with.

40. New subsection (7) defines market value for the purpose of section 96A. That is an amount that would be regarded as normal and reasonable in the prevailing market conditions at arm's length in the open market.

41. New subsection (8) provides that where only part of the cost of the asset has been brought into account under subsection (1) the amount brought into account under subsection (2) is reduced accordingly.

42. Paragraph 23 introduces new section 97A provides that where a cash basis business ceases the value of stock on hand at cessation is brought into accounts as a receipt of the business.

43. Paragraph 26 amends section 105 ITTOIA which deals with particular grants received and treats them as trading income. One of the exceptions to this is where the grant is towards the cost of capital expenditure. The new subsection (2A) disapplies this exception when calculating profits under the cash basis.

44. Paragraph 27 inserts new section 106A into ITTOIA. This new section provides that where a person using the cash basis is a taxable person under the Value Added Tax Act 1994 then the value added tax paid to the person including repayments of VAT are receipts to be brought into account in calculating profits for the period on the cash basis.

45. Paragraph 28 inserts new section 106B into ITTOIA. This section provides that where an asset is rented leased or hired and the expense of renting leasing or hiring has been brought into account in calculating the profits of a business on the cash basis then any income received in connection with the rental lease or hire of the asset are to be brought into account as receipts of the trade.

46. Paragraph 29 inserts new chapter 6A which applies only in relation to the cash basis and which deals with bringing into account amounts which do not reflect commercial transactions.

47. New section 106E of chapter 6A provides that where there is a difference between the amount brought into account in respect of a transaction and the amount that would be brought into account if the

transaction was at arm's length then the amount which must be brought into account is a just and reasonable amount.

48. New section 106F disapplies new 106E where the transaction involves a capital receipt (new section 96A covers this situation).

49. New section 106G disapplies new 106E where the transaction involves a gift to charity.

50. New section 106H disapplies new 106E where Chapter 11A applies to the transaction. Chapter 11A concerns changes in trading stock.

51. Paragraph 30 inserts new section 111A into ITTOIA which disapplies the 'herd basis rules' (a tax treatment where a person has a production herd) for those using the cash basis.

52. Paragraph 31 inserts new section 130A which disapplies chapter 9 Part 2 ITTOIA (sound recordings), for the purposes of calculating profits under the cash basis.

53. Paragraph 32 inserts new section 144A which disapplies chapter 10 Part 2 ITTOIA (telecommunication rights), for the purposes of calculating profits under the cash basis.

54. Paragraph 33 inserts new section 148ZA into ITTOIA which disapplies Chapter 10A (regarding long funding leases) for those using the cash basis.

55. Paragraph 34 inserts new section 148K into ITTOIA which disapplies legislation relating to specific trades for those using the cash basis.

56. Paragraph 35 inserts new section 188A into ITTOIA which disapplies Chapter 13 Part 2 ITTOIA (deductions from profits: unremittable amounts) for those using the cash basis.

57. Paragraph 36 inserts new section 191A into ITTOIA which disapplies Chapter 14 Part 2 ITTOIA (Disposal and Acquisition of know-how) for those using the cash basis.

58. Paragraph 37 introduces amendments to Chapter 15 Part 2 ITTOIA which concerns basis periods.

59. Paragraph 45 inserts new sections 220A-E which provide for special rules on basis periods where the cash basis is used or has been used.

60. New section 220A introduces special rules where the cash basis is used for a tax year.

61. New section 220A(2) provides that the basis period for a tax year is the period beginning immediately after the end of the previous basis period and ends on the chosen date for that tax year.

62. New section 220A(3) provides that subsection (2) applies except for where there is no chosen date (in which case new section 220B applies), in the first tax year in which the trade is carried on (in which case new section 220C will apply), or in the final tax year in which trade is carried on (in which case new section 220D will apply).

63. New section 220A(4) provides for the ‘chosen date’. This is a date chosen by the trader that falls in the period beginning with the 31 March in the tax year and ending with the 30 April following the end of that tax year.

64. New section 220B provides that for a person who has elected to use the cash basis but not chosen an end date then the basis period ends with 5 April of the tax year.

65. New section 220C provides the basis period for a person electing to use the cash basis for a trade that starts in the tax year. The basis period will be from the date the trade started to the chosen date unless the trade also ceases in the tax year in which case the basis period is provided for in new section 220D. If there is no chosen date the basis period ends on 5 April in that tax year.

66. New section 220D provides for the basis period when a business using the cash basis ceases. The basis period will begin immediately after the end of the previous basis period and end on the date the business is permanently ceased. If a person using the cash basis starts and ceases his business in a year then the basis period runs from the date the person starts the business to the date the person ceases the business.

67. New section 220E provides for what happens when a continuing business stops electing to use the cash basis. The basis period will begin immediately after the end of the basis period of the previous tax year and end on the relevant date in the current year. The relevant date is the accounting date in that tax year, and in the absence of an accounting date the relevant date will be 31 March.

68. Paragraph 46 inserts new section 221A into ITTOIA to disapply chapter 16 which allows for averaging of profits of farmers and creative artists. New section 221A disapplies the averaging provisions for those using the cash basis.

69. Paragraph 47 inserts new section 225ZAA into ITTOIA to disapply chapter 16ZA which provides for the treatment of compensation when animals treated as trading stock are compulsorily slaughtered. New section 225ZAA disapplies this treatment for those using the cash basis.

70. Paragraph 48 inserts new section 225ZH into ITTOIA to disapply chapter 16A which applies to oil activities. New section 225ZH disapplies the chapter for those using the cash basis.

71. Paragraph 49 Paragraph 49 amends Chapter 17 which deals with adjustment income where a person changes the basis on which he calculates the profits of the trade. The insertion of new section 227A provides that Chapter 17 applies to businesses moving to and from the cash basis.

72. Paragraph 51 to 54 make changes to allow the cash basis to work with rent a room relief (amending section 786 ITTOIA) and qualifying care relief (amending sections 805 and 820 ITTOIA).

73. Part 2 of the Schedule deals with consequential amendments.

74. Paragraph 55 amends section 42 of the Taxes Management Act 1970 so that in the case of a business carried on by a partnership, the general rule is that an election to use the cash basis must be made on the partnership return by the person required to make that return.

75. Paragraph 56 makes an amendment to the Capital Allowances Act 2001 inserting a new subsection (4) to section (1) CAA2001. The new subsection provides that persons using the cash basis are not entitled to any allowance or liable to any charge under the capital Allowances Act.

76. Paragraph 57 omits section 160 of ITTOIA which provides that barristers in the early years of business can use a cash basis of calculating profits.

77. Paragraph 58 amends the Income Tax Act 2007 (ITA 2007) by inserting a new section 74E which prevents a person using the cash basis from using a loss arising from the business either as sideways relief or capital gains relief.

78. Paragraph 59 amends the provisions of ITA 2007 dealing with relief for interest payments. New section 384B inserted in ITA 2007 restricts relief for interest on loans where the cash basis is used for loans to buy plant and machinery for partnership use or to buy an interest in a partnership.

79. Paragraph 60 provides that the amendments made by the schedule have effect for the tax year 2013-14 onwards.

BACKGROUND

80. Existing income tax legislation requires the taxable profits of a business to be calculated in accordance with Generally Accepted Accounting Practice.

81. This means that profits are computed on the accruals basis so that income is the income earned in a tax year and not the amounts received in a year; expenses are those incurred in a tax year not the expenses paid out in a tax year.

82. The cash basis introduced by this schedule allows eligible small businesses to choose to use a simpler cash basis to work out their taxable income with effect from the tax year 2013-14.

83. If you have any questions about this change, or comments on the legislation, please contact Tony Linehan 020 7147 0527 (email: tony.linehan@hmrc.gsi.gov.uk) or Alison Bull on 020 7147 2595 (email: alison.bull@hmrc.gsi.gov.uk).

1 Trade profits: deductions allowable at a fixed rate

Schedule 1 contains provision enabling persons carrying on a trade, profession or vocation to claim deductions for certain expenses at a fixed rate.

SCHEDULE 1 Section 1

TRADE PROFITS: DEDUCTIONS ALLOWABLE AT A FIXED RATE

1 In Part 2 of ITTOIA 2005 (trading income), after Chapter 5 insert—

"CHAPTER 5A

TRADE PROFITS: DEDUCTIONS ALLOWABLE AT A FIXED RATE

Introduction

94C Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

94D Provisions not applicable to certain firms

The provisions of this Chapter do not apply in calculating the profits of a trade carried on by a firm for a period if one or more of the persons who have been partners in the firm at any time during the period was not an individual at that time.

Expenditure on vehicles

94E Expenditure on vehicles

(1) This section applies if, in calculating the profits of a trade for a period—
  (a) a deduction would otherwise be allowable for the period in respect of qualifying expenditure incurred in relation to a relevant vehicle (see subsection (2)), or
  (b) a deduction would be so allowable in respect of such expenditure but for the fact it is capital expenditure.

(2) In this section "relevant vehicle" means a car, motor cycle or goods vehicle that—
  (a) is used for the purposes of the trade, and
  (b) is not an excluded vehicle (see section 94F).

(3) A deduction is allowed for the period in respect of the qualifying expenditure.

(4) If any of the mandatory deduction conditions in section 94G is met in relation to the relevant vehicle, the only deduction that is allowed for the period in respect of the qualifying expenditure is a deduction under this section.

(5) If a deduction for a period is made under this section—

(a) no other deduction is allowed (for that or any other period) in respect of the qualifying expenditure, and

(b) this section applies in relation to the relevant vehicle for every subsequent period for which the vehicle is used for the purposes of the trade.

(6) The amount of the deduction is the appropriate mileage amount in relation to the relevant vehicle for the period (see section 94H).

(7) In this section "qualifying expenditure", in relation to a vehicle, means any expenditure incurred in respect of the acquisition, ownership, hire, leasing or use of the vehicle, other than incidental expenses incurred in connection with a particular journey.

(8) For provision preventing capital allowances from being claimed in respect of qualifying expenditure incurred in relation to a relevant vehicle, see section 38ZA of CAA 2001.

94F Excluded vehicles

(1) A car, motor cycle or goods vehicle that is used for the purposes of a trade is an "excluded vehicle" for the purposes of section 94E if condition A or B is met in relation to the vehicle.

(2) Condition A is that—

(a) the person who is or has been carrying on the trade has at any time—

(i) claimed an annual investment allowance under section 51A of CAA 2001 in respect of any expenditure incurred in relation to the vehicle, or

(ii) claimed a first-year allowance under section 52 of that Act in respect of any such expenditure, and

(b) the vehicle is not—

(i) a car that has low CO_2 emissions (within the meaning of section 45D of CAA 2001), or

(ii) a car that is electrically-propelled (within the meaning of section 268B of that Act).

(3) Condition B is that—

(a) the vehicle is a goods vehicle, and

(b) any of the expenditure incurred on acquiring the vehicle has been deducted in calculating the profits of the trade for a period on the cash basis (see section 25A).

94G The mandatory deduction conditions

(1) This section applies for the purposes of determining for the purposes of section 94E whether any of the mandatory deduction conditions is met in relation to a relevant vehicle (within the meaning of that section).

(2) Mandatory deduction condition A is met in relation to a relevant vehicle if—

(a) it is a car or a motor cycle, and

(b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade.

(3) Mandatory deduction condition B is met in relation to a relevant vehicle if—
  (a) an election under section 25A has at any time had effect in relation to the trade, and
  (b) at that time mandatory deduction condition A was met in relation to the vehicle.

94H The appropriate mileage amount

(1) In calculating the profits of a trade for a period, the appropriate mileage amount in relation to a relevant vehicle for the period is—

$$M \times R$$

where—

M is the number of miles of business journeys made by a person (other than as a passenger) using that vehicle in the period, and

R is the rate applicable to that kind of vehicle.

(2) The rates applicable are as follows—

Table

Kind of vehicle	*Rate per mile*
Car or goods vehicle	45p for the first 10,000 miles
	25p after that
Motor cycle	24p

(3) In a case where the total number of miles of relevant business journeys made in the period is greater than 10,000, the rate of 45p per mile is available only in relation to 10,000 of those miles.

(4) "Relevant business journey" means any business journey made in the period by a car or goods vehicle—
  (a) that is used for the purposes of the trade, and
  (b) in relation to which section 94E applies for the period.

(5) In this section—

"business journey", in relation to a vehicle used for the purposes of a trade, means any journey, or any identifiable part or proportion of a journey, that is made wholly and exclusively for the purposes of the trade, and

"relevant vehicle" has the same meaning as in section 94E.

(6) The Treasury may by regulations amend subsection (2) so as to alter the rates or rate bands.

Regulations under this subsection may also make consequential amendments to subsection (3).

94I Definitions of types of vehicle

(1) This section applies for the purposes of sections 94E to 94H (and this section).

(2) "Car" means a mechanically propelled road vehicle which is not—
(a) a goods vehicle,
(b) a motor cycle,
(c) an invalid carriage, or
(d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.

(3) "Goods vehicle" means a mechanically propelled road vehicle which—
(a) is of a construction primarily suited for the conveyance of goods or burden of any description, and
(b) is not a motor cycle.

(4) "Motor cycle" has the meaning given by section 185(1) of the Road Traffic Act 1988.

(5) For the purposes of this section "invalid carriage" has the meaning given by section 185(1) of the Road Traffic Act 1988.

Use of home for business purposes

94J Use of home for business purposes

(1) This section applies if, in calculating the profits of a trade of a person for a period, a deduction ("the standard deduction") would otherwise be allowable for the period in respect of the use of the person's home for the purposes of the trade.

(2) The person may, instead of making the standard deduction, make a deduction for the period under this section.

(3) The amount of the deduction allowable for the period is the sum of the applicable amounts for each month, or part of a month, falling within the period.

(4) The applicable amount for a month, or part of a month, is given by the following Table—

Table

Number of hours worked	*Applicable amount*
25 or more	£10.00
51 or more	£18.00
101 or more	£26.00

where the "number of hours worked" in a month (or part of a month) is the number of hours spent wholly and exclusively on 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.

(5) If the person has more than one home, this section has effect as if those homes were a single home.

(6) The Treasury may by regulations amend subsection (4) so as to alter the rates or rate bands.

Premises used both as home and business premises

94K Premises used both as a home and as business premises

(1) This section applies if—
 (a) a person carries on a trade at any premises,
 (b) the premises are used mainly for the purposes of carrying on the trade, but are also used by the person as a home,
 (c) the person incurs expenses in relation to the premises,
 (d) the expenses are incurred mainly (but not wholly and exclusively) for the purposes of the trade, and
 (e) in calculating the profits of the trade for a period, a deduction ("the standard deduction") would otherwise be allowable for the period in respect of a part or proportion of the expenses in accordance with section 34(2).

(2) The person may, instead of making the standard deduction, make a deduction for the period under this section.

(3) The amount of the deduction allowable for the period is the amount of the expenses less the non-business use amount.

(4) The non-business amount is the sum of the applicable amounts for each month, or part of a month, falling within the period.

(5) The applicable amount for a month, or part of a month, is given by the following Table—

Table

Number of relevant occupants	*Applicable amount*
1	£350
2	£500
3 or more	£650

(6) For the purposes of subsection (5), "relevant occupant", in relation to a month (or part of a month), means an individual who, at any time during that month (or that part of a month)—
 (a) occupies the premises as a home, or
 (b) stays at the premises otherwise than in the course of the trade.

(7) The Treasury may by regulations amend subsection (5) so as to alter the rates or rate bands."

2 In Part 2 of CAA 2001 (plant and machinery allowances), in Chapter 3 (qualifying expenditure), after section 38 insert—

“38ZA Vehicles for which deductions allowed at fixed rate under Part 2 of ITTOIA 2005

Expenditure is not qualifying expenditure if—

(a) it is incurred in respect of a vehicle, and

(b) a deduction is allowed in respect of the expenditure under section 94E of ITTOIA 2005 (trade profits: deduction for expenditure on vehicles).”

3 The amendments made by this Schedule have effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

TRADE PROFITS: DEDUCTIONS ALLOWABLE AT A FIXED RATE

SUMMARY

1. This clause introduces the schedule which provides that individuals carrying on a trade or profession as self employed sole traders or in partnership with other individuals can choose to use certain simplified expenses when calculating their profits for income tax purposes.

DETAILS OF THE SCHEDULE.

2. Paragraph 1 inserts new Chapter 5A 'Trade Profits: Flat Rate Expenses' into the Income Tax (Trading and other Income) Act 2005 (ITTOIA). The new chapter comprises new sections 94C-K.

3. New section 94D excludes a partnership where one of the partners is not an individual (for example a company) from using the fixed rates provided for in new chapter 5A.

4. New section 94E sets out the circumstances in which a fixed rate deduction is allowable for expenditure on vehicles.

5. New section 94E(1) provides that new section 94D applies where a deduction would be allowed under the normal trading income rules for expenditure on a relevant vehicle. In some cases the only deduction allowed for vehicle expenditure is that provided under new section 94E. These are cases where any of the mandatory conditions (as set out in new section 94G).

6. New section 94E(5) provides that where a deduction is made under new section 94E then no other deduction can be made and that only a deduction under new section 94E is allowed in respect of the relevant vehicle in any later period.

7. New section 94E(7) provides a definition of qualifying expenditure as being amounts incurred on acquisition and ownership of a vehicle.

8. New section 94F(1) provides that a vehicle is an excluded vehicle if either of two conditions are met.

9. New section 94F(2) provides the first condition which is that if the car is not a low emission car and the person carrying on the trade has claimed an annual investment allowance in respect of expenditure on

the vehicle or a first year allowance, then the vehicle is an excluded vehicle.

10. New section 94F(3) provides the second condition which is that if the vehicle is a van and expenditure incurred on acquiring the van has been deducted in calculating profits of the trade on a cash basis the vehicle is an excluded vehicle.

11. New section 94G provides the mandatory conditions referred to in new section 94D with the effect that if either of the conditions is met the fixed rate deduction is to be used.

    Condition A (new section 94G(2)) is that the vehicle is a car or motorcycle and the business is using the cash basis.

    Condition B (new section 94G(3)) is that at any time there has been an election to use the cash basis and at that time condition A was met in respect of the vehicle.

12. New section 94H provides the means of calculating the 'appropriate mileage amount', the amount allowable as an expense of the business.

13. New section 94H(1) provides that the rate for a vehicle is computed by multiplying the number of miles of business journeys made by a person (other than as a passenger) by the rate appropriate to that vehicle.

14. New section 94H(2) provides the rates for vehicles. For cars or vans the rate for the first 10,000 miles is 45p, after which the rate is 25p. For motorcycles the rate is 24p.

15. New section 94H(4) provides that in calculating the rate of the fixed rate deduction where a business has more than one car or van, the number of miles of business journeys of each of the cars and vans must be taken together in calculating the first 10, 000 miles.

16. New section 94H(5) provides that in new section 94H that a business journey is a journey or an identifiable part of that journey that is wholly and exclusively for the purposes if the trade.

17. New section 94J deals with a fixed rate deduction for the business use of a home. Where the section applies (as set out in subsection (1), a person may make a fixed deduction instead of making a deduction under the normal trading income rules.

18. New section 94J(3) provides that the deduction allowable is the sum of the applicable amounts for each month or part of a month falling within a period.

19. New section 94J(4) provides the monthly rates at which a deduction will be allowed being £10.00 per month where business use is 25 hours or more, £18.00 where business use is 51 hours or more and £26.00 where business use is 101 hours or more. The hours worked have to be wholly and exclusively for the purposes of the business.

20. New section 94K provides for a fixed rate deduction where premises are used both as a home and for business purposes. Where the section applies (as set out in subsection (1), a person may make a fixed deduction instead of making a deduction under the normal trading income rules.

21. New section 94K(3) provides that the amount of the deduction allowed is the amount of the expenses reduced by the non-business use amount.

22. New section 94K(4) provides that the non-business amount is the sum of the monthly "applicable amounts" computed in accordance with the table in new subsection 94K(5). The level of the applicable amount depends on the number of people occupying the premises in a month. Where one person occupies the premises the rate is £350 per month, where two people occupy the premises the amount is £500 per month and where more than two people occupy the premises the amount is £650 per month.

23. New section 94K(6) provides that for the purposes of the fixed rate deduction, the relevant persons occupying the premises are those who occupy the premises as a home or who stay at the premises otherwise than as part of the trade.

BACKGROUND

24. Existing tax legislation requires that where expenses are incurred that are partly for business purposes and partly for private purposes that an apportionment of these expenses is made.

25. New Chapter 5A inserted by this schedule provides that for certain expenses an apportionment will not be required. A business can choose to make fixed rate deductions for vehicle expenditure, expenses arising from business use of home and in relation to premises used both as a home and as business premises.

26. If you have any questions about this change, or comments on the legislation, please contact Tony Linehan 020 7147 0527 (email: tony.linehan@hmrc.gsi.gov.uk) or Alison Bull on 020 7147 2595 (email: alison.bull@hmrc.gsi.gov.uk).

1 Disincorporation relief

(1) A claim for relief under this section ("disincorporation relief") may be made where—
  (a) a company transfers its business to some or all of the shareholders of the company,
  (b) the transfer of the business is a qualifying business transfer (see section 2), and
  (c) the business transfer date falls within the period of 5 years beginning with 1 April 2013.

(2) As to the consequences of a claim for disincorporation relief being made, see—
  sections 162B and 162C of TCGA 1992;
  section 849A of CTA 2009.

(3) In this section and sections 2 to 4 "the business transfer date", in relation to the transfer of a business, is the date on which the business is transferred.

For this purpose, where the business is transferred under a contract—
  (a) the date on which the business is transferred is to be determined in accordance with section 28 of TCGA 1992, and
  (b) if the business in question is transferred by more than one contract, then for the purposes of that section the contract under which the business is transferred is to be taken to be the contract under which the goodwill of the business is transferred.

(4) This section and sections 2 and 3 apply to a transfer of a business with a business transfer date on or after 1 April 2013.

2 Qualifying business transfer

(1) The transfer of a business from a company to some or all of the shareholders of the company is a qualifying business transfer for the purposes of section 1 if conditions A to E are met.

(2) Condition A is that the business is transferred as a going concern.

(3) Condition B is that the business is transferred together with all of the assets of the business, or together with all of those assets other than cash.

(4) Condition C is that the total market value of the qualifying assets of the business included in the transfer does not exceed £100,000.

(5) Condition D is that all of the shareholders to whom the business is transferred are individuals.

(6) Condition E is that each of those shareholders held shares in the company throughout the period of 12 months ending on the business transfer date.

(7) For the purposes of condition D, the reference to individuals includes an individual acting as a member of a partnership, but does not include an individual acting as a member of a limited liability partnership.

(8) Section 60 of TCGA 1992 (nominees and bare trustees) applies for the purposes of this section as it applies for the purposes of that Act.

(9) In this section "market value", in relation to an asset, means the price which the asset might reasonably be expected to fetch on a sale in the open market.

(10) In this section a "qualifying asset" means—
  (a) goodwill, or
  (b) an interest in land which is not held as trading stock.

3 Making a claim

(1) A claim for disincorporation relief under section 1—
  (a) is to be made jointly by the company and all of the shareholders to whom the business is transferred, and
  (b) is irrevocable.

(2) Any claim for disincorporation relief must be made within the period of 2 years beginning with the business transfer date.

4 Effect of disincorporation relief

(1) In Part 5 of TCGA 1992 (transfer of business assets), in Chapter 1 (general provisions), after section 162A insert—

"Transfer of business from company to shareholders

162B Disincorporation relief: assets (including pre-FA 2002 goodwill)

(1) This section applies where—
  (a) a company transfers its business to some or all of the shareholders of the company, and
  (b) a claim for disincorporation relief in respect of the transfer has been made under section 1 of the Finance Act 2013.

(2) The disposal and acquisition of any qualifying asset of the business included in the transfer is to be deemed to be for a consideration equal to the lower of—
  (a) the sums allowable under section 38 as a deduction in the computation of the gain accruing to the company on the disposal of the asset in question, and
  (b) the market value of the asset.

(3) Subsection (2) does not apply to the goodwill of the business if section 162C applies to it.

(4) In subsection (2) a "qualifying asset" means—
  (a) goodwill, or
  (b) an interest in land which is not held as trading stock.

162C Disincorporation relief: post-FA 2002 goodwill

(1) This section applies where—

(a) a company transfers its business to some or all of the shareholders of the company,

(b) a claim for disincorporation relief in respect of the transfer has been made under section 1 of the Finance Act 2013, and

(c) section 849A of the Corporation Tax Act 2009 (disincorporation relief) applies to the transfer of the goodwill of the business.

(2) The acquisition of the goodwill of the business is deemed to be for a consideration equal to the value at which the goodwill is treated as transferred by virtue of that section."

(2) In Part 8 of CTA 2009 (intangible fixed assets), Chapter 13 (transactions between related parties) is amended as follows.

(3) In section 845 (transfer between company and related party treated as at market value), in subsection (4) (exceptions to basic rule)—

(a) omit the "and" immediately following paragraph (ca),

(b) after paragraph (d) insert ", and

(e) section 849A (disincorporation relief)."

(4) After section 849 insert—

"Transfers treated as being at tax written down value or market value etc

849A Disincorporation relief

(1) This section applies where—

(a) a company transfers its business to some or all of the shareholders of the company, and

(b) a claim for disincorporation relief in respect of the transfer has been made under section 1 of the Finance Act 2013.

(2) If section 735 applies to the transfer of the goodwill of the business, the transfer is treated for the purposes of this Part as being at the lower of—

(a) the tax written-down value of the goodwill, and

(b) its market value.

(3) If section 736 applies to the transfer of the goodwill of the business, the transfer is treated for the purposes of this Part as being at the lower of—

(a) the cost of the goodwill, and

(b) its market value.

(4) If section 738 applies to the transfer of the goodwill of the business, the proceeds of realisation of the goodwill are treated for the purposes of this Part as being nil.

(5) In subsection (2)(a) the reference to the tax written-down value of the goodwill is to its tax written-down value immediately before the transfer.

(6) In subsection (3)(a) "the cost of the goodwill" means the cost recognised for tax purposes (determined in accordance with section 736(6) and (7)).

(7) In this section market value has the meaning given in section 845(5)."

(5) The amendments made by this section have effect in relation to a transfer of a business with a business transfer date on or after 1 April 2013.

EXPLANATORY NOTE

DISINCORPORATION RELIEF

SUMMARY

1. These clauses introduce legislation to allow a company to transfer goodwill and interests in land to its shareholders so that no corporation tax charge arises to the company on the transfer.

DETAILS OF THE CLAUSES

Clause 1

2. Clause 1 introduces disincorporation relief.

3. Subsection (1) limits the circumstances when a claim for disincorporation relief may be made. It limits claims to transfers of a business from a company to some or all of its shareholders provided that the transfer is a qualifying business transfer (as defined in section 2) and it takes place within the 5 year period starting on 1 April 2013.

4. Subsection (2) explains that the consequences of a claim are set out in new sections 162B and 162C of the Taxation of Chargeable Gains Act (TCGA 1992) and new section 849A of the Corporation Tax Act (CTA 2009).

5. Subsection (3) defines the term "the business transfer date" as the date on which the business was actually transferred unless transferred under a contract.

6. Where the business is transferred under a contract subsection (3)(a) uses the same rule as in section 28 of TCGA 1992 to determine the time of the transfer i.e. if the contract is unconditional the time of the transfer is the date the contract was agreed and if it is conditional the time of the transfer is the date on which the contract became unconditional.

7. Subsection (3)(b) provides for situations where a business is transferred under more than one contract and provides that the contract that transfers the goodwill of the business is the relevant contract to determine the business transfer date.

8. Subsection (4) provides that disincorporation relief will apply to business transfers occurring on or after 1 April 2013.

Clause 2

9. Clause 2 defines a qualifying business transfer.

10. Subsection (1) provides that a qualifying business transfer is one where conditions A to E are met.

11. Subsection (2) provides that condition A is that the business must be transferred as a going concern.

12. Subsection (3) provides that condition B is that the business must be transferred with all of the assets of the business, or all assets apart from cash.

13. Subsection (4) provides that condition C is that the total market value of the assets that qualify for disincorporation relief must not exceed £100,000.

14. Subsection (5) provides that condition D is that all the shareholders to whom the business is transferred must be individuals.

15. Subsection (6) provides that condition E is that the shareholders must have held shares in the company throughout the 12 months prior to the business transfer date.

16. Subsection (7) confirms that the reference to individuals in condition D includes individuals acting as members of a partnership but excludes individuals acting as members of a limited liability partnership.

17. Subsection (8) provides that section 60 of TCGA 1992 applies for the purpose of disincorporation relief, so that the qualifying assets could be transferred to a nominee or bare trustee for individuals who are shareholders or the shares could be held by a nominee or bare trustee for an individual.

18. Subsection (9) defines the market value of an asset as its price if sold on the open market.

19. Subsection (10) defines qualifying asset as goodwill or an interest in land other than land held as trading stock.

Clause 3

20. Clause 3 provides that a claim to disincorporation relief must be made jointly by the company and the shareholders to whom the business is transferred (subsection (1)) within 2 years from the business transfer date (subsection (2)).

Clause 4

21. Clause 4 inserts new provisions into existing legislation within Part 5 of TCGA 1992 and Part 8 CTA 2009.

22. Subsection (1) inserts new section 162B and new section 162C into TCGA 1992.

New section 162B TCGA 1992

23. Subsection (1) of new section 162B provides that the section applies where a company transfers its business to its shareholders and a claim to disincorporation relief is made.

24. Subsection (2) provides that the transfer of any qualifying asset by the company is deemed to be for a consideration which is equal to the lower of the cost of the asset to the company, as determined by section 38 of TCGA 1992, and the market value of the asset.

25. Subsection (3) provides that goodwill falling within new section 162C TCGA 1992 (post-Finance Act 2002 goodwill) is excluded from subsection (2).

26. Subsection (4) defines a qualifying asset as goodwill or an interest in land, other than land held as trading stock.

New section 162C TCGA 1992

27. Subsection (1) of new section 162C TCGA 1992 provides that this section applies where a company transfers its business to its shareholders, a claim to disincorporation relief is made and any goodwill is post-FA 2002 (i.e. new section 849A CTA 2009 applies to the transfer of goodwill).

28. Subsection (2) provides that goodwill to which the section applies acquired by the shareholders from the company is acquired for a consideration equal to the transfer value determined by new section 849A CTA 2009.

Amendment to section 845 CTA 2009

29. Subsections 4(2) and 4(3) amend Chapter 13 of Part 8 CTA 2009, adding a new subsection 845(4)(e) (disincorporation relief) to the list of exceptions to the basic rule.

New section 849A CTA 2009

30. Subsection 4(4) inserts new section 849A CTA 2009 immediately after section 849 CTA 2009.

31. Subsection (1) of new section 849A provides that new section 849A CTA 2009 applies where a company transfers its business to some or all of its shareholders and a claim to disincorporation relief is made.

32. Subsection (2) provides that the transfer value of goodwill within Part 8 CTA 2009 is the lower of the tax written-down value of the goodwill or market value where the realisation of goodwill is dealt with under section 735 CTA 2009 (asset written down for tax purposes).

33. Subsection (3) provides that the transfer value of goodwill within Part 8 CTA 2009 is the lower of cost or market value where section 736 applies (asset shown in balance sheet and not written down for tax purposes).

34. Subsection (4) provides that the transfer value is nil where section 738 applies (asset not shown in balance sheet).

35. Subsection (5) provides that the tax written-down value is a reference to the tax written-down value immediately before the transfer.

36. Subsection (6) defines “the cost of the goodwill” as the cost recognised for tax purposes (sections 736(6) and (7) of CTA 2009).

37. Subsection (7) provides that the same definition of market value is to be used as that in section 845(5) of CTA 2009.

38. Subsection 4(5) of the clause provides that the amendments made by this section have effect to business transfers occurring on or after 1 April 2013.

BACKGROUND

39. In February 2012 the independent Office of Tax Simplification (OTS) published its final reports into small business tax. One of these reports identified a population of businesses operating as limited companies which would prefer to operate in unincorporated form and

highlighted a number of tax charges and administrative issues that might currently discourage this.

40. At Budget 2012 the Government announced a consultation on the OTS proposals for a disincorporation relief. That consultation closed on 30 August 2012. The Government has considered all the responses to the consultation and will publish a summary of the responses on 11 December 2012.

41. Disincorporation relief responds to proposals made by the OTS, which recommended that a relief be introduced to remove the tax barriers that currently exist when business assets are transferred by a company to its shareholders who wish to continue the business as a going concern in an unincorporated form.

42. The current legislation requires a company to pay corporation tax under the Taxation of Chargeable Gains Act 1992 when chargeable gains arise on disposals of assets, and corporation tax under the intangible fixed assets rules at Part 8 of the Corporation Tax Act 2009 when credits arise from a realisation of goodwill, based on the market value of the asset at the time of the transfer.

43. Legislation will be introduced in the Finance Bill with effect from 1 April 2013, to allow a company to transfer qualifying assets (land and goodwill used in the business) to shareholders as individuals who wish to continue the businesses in an unincorporated form. The relief will allow qualifying business assets to transfer at a reduced value for corporation tax.

44. Claims will be restricted to those businesses where the market value of the classes of qualifying assets does not exceed £100,000 and the relief will be available for a period of 5 years commencing from 1 April 2013 (subject to Royal Assent).

45. Joint claims must be made in writing to HMRC by the company and the shareholders who wish to continue the business within two years of the date of the transfer of qualifying assets. Other eligibility criteria will also apply. HMRC will publish guidance on what information will need to be included in the claim.

46. Disincorporation relief does not cover the tax charges that might arise to the shareholders when assets are distributed below market value in the course of a disincorporation.

47. If you have any questions about this change, or comments on the legislation, please contact John Williams on 020 7147 3117 (email: john.r.williams@hmrc.gsi.gov.uk).

1 Currency used in tax calculations: chargeable gains and losses

(1) Chapter 4 of Part 2 of CTA 2010 (currency) is amended as follows.

(2) In section 5 (basic rule: sterling to be used), after subsection (2) insert—

"(3) See section 9C for provision about the application of subsection (1) so far as it relates to calculating chargeable gains."

(3) After section 9B insert—

"9C Chargeable gains and losses of companies

(1) This section applies if—
(a) a company disposes of shares, and
(b) at any time beginning with the company's acquisition of the shares (or, if earlier, the time allowable expenditure was first incurred in respect of the shares) and ending with the disposal, the company's relevant currency is not sterling.

(2) A company's relevant currency at any time is its functional currency at that time, subject to subsection (3).

(3) If, at any time—
(a) a company is a UK resident investment company,
(b) the company has a designated currency (see sections 9A and 9B) which is different from its functional currency, and
(c) the company's designated currency and functional currency would be the same if the company were not a member of any group (or, if the company is not a member of any group, its designated currency and functional currency are the same),

the company's relevant currency at that time is that designated currency.

(4) If the relevant currency of the company at the time of the disposal is not sterling, the chargeable gain or loss accruing to the company on the disposal must be calculated as follows—

Step 1

Calculate the chargeable gain or loss in the relevant currency of the company at the time of the disposal.

Step 2

Take the sterling equivalent of the chargeable gain or loss at that time.

(5) In any case, subsections (6) to (9) apply for the purposes of calculating the chargeable gain or loss.

(6) Where any allowable expenditure is incurred in a currency which is not the company's relevant currency at the time it is incurred, that expenditure is to be translated into that relevant currency by reference to the spot rate of exchange for the day on which it is incurred.

(7) Where, at any time after any allowable expenditure is incurred but before the shares are disposed of, there is a change in the company's relevant currency, that expenditure is to be translated (or, if it has previously been translated under this section, further translated) into the relevant currency of the company immediately following the

change, by reference to the spot rate of exchange for the day of the change.

(8) Any amount of consideration for the disposal which is given in a currency other than the company's relevant currency is to be translated into that relevant currency by reference to the spot rate of exchange on the day of disposal.

(9) For the purposes of subsections (6) and (7)—

(a) any translation of expenditure under subsection (6) is to be done before any translation of the expenditure under subsection (7), and

(b) if subsection (7) applies as a result of more than one change in the company's relevant currency, it is to be applied in relation to each change in the order the changes were made (with the earliest first).

(10) Where, by virtue of any enactment, the company was at any time treated for the purposes of corporation tax on chargeable gains as acquiring the shares—

(a) for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the person disposing of the shares, or

(b) for a consideration equal to the market value of the asset,

for the purposes of this section that allowable expenditure is treated as incurred by the company at that time.

(11) In this section—

"allowable expenditure" means expenditure which, immediately before the disposal, was attributable to the shares under section 38(1)(a) to (c) of TCGA 1992;

"group" has the same meaning as it has for the purposes of Part 7 of TIOPA 2010 (see section 338);

"interest in shares" has the same meaning as in Schedule 7AC to TCGA 1992 (see paragraph 29 of that Schedule);

"shares" includes stock."

(4) The amendments made by this section have effect in relation to disposals on or after the day on which this Act is passed.

EXPLANATORY NOTE

CURRENCY USED IN TAX CALCULATIONS: CHARGEABLE GAINS AND LOSSES

SUMMARY

1. This clause provides that companies must compute their chargeable gains and losses on share disposals in the currency which is their functional currency (or if certain conditions are met, their designated currency) at the time of the disposal.

DETAILS OF THE CLAUSE

2. Section (1) amends Chapter 4 of Part 2 of the Corporation Tax Act 2010 (CTA10), which determines the currency to be used in tax calculations

3. Section (2) inserts new subsection (3) after section 5(2) of CTA10 stating that new section 9C will apply to the application of subsection (1) so far as it relates to calculating chargeable gains.

4. Section (3) inserts a new section 9C after section 9B of CTA10.

5. New section 9C(1) sets out when the section will apply:

   - a company must dispose of shares, and,

   - at some point during the ownership of the shares, the company must have had a functional currency which was not sterling, or have made a designated currency election for tax purposes.

6. New section 9C(2) defines the term "relevant currency" to include functional currency or designated currency where the conditions in subsection 9C(3) are satisfied.

7. New section 9C(3) sets out the conditions for when the relevant currency is the designated currency rather than the company's functional currency:

   - the company must be a UK resident investment company which has made a designated currency election under section 9A Corporation Tax Act 2010;

   - the designated currency must differ from the company's functional currency; and

- the designated currency must be the same as the functional currency the company would have had if it was not in a group.

8. New section 9C(4) provides the methodology for calculating a chargeable gain or allowable loss when the company has a relevant currency which is not sterling.

9. New section 9C(5) determines that subsections (6) to (9) apply to all computations of chargeable gains and losses on disposals of shares, regardless of whether or not the relevant currency is sterling at the time of disposal.

10. New section 9C(6) requires allowable expenditure incurred in a currency other than the relevant currency at the time of the expenditure to be translated into the relevant currency using the spot rate of exchange rate at the date of the expenditure.

11. New section 9C(7) provides for a recalculation of the base cost of the shares on each occasion when there is a change in relevant currency during the ownership of the shares.

12. New section 9C(8) provides that on disposal of shares, amounts received as consideration in a currency other than the relevant currency at that time must be translated into the relevant currency using the spot exchange rate at the date of disposal.

13. New section 9C(9) ensures any translations under new subsection 9C(6) occur before any translations under new subsection 9C(7), and that any translations under new subsection 9C(7) are made in chronological order of the changes of relevant currency.

14. New section 9C(10) provides that where statute requires that the shares are treated for tax purposes as acquired for a deemed amount, then that amount is treated as being incurred on the date the shares are so acquired.

15. New section 9C(11) defines the terms: “allowable expenditure”; “group”; “interest in shares” and “shares” for the purposes of the clause.

16. Subsection (4) provides that the amendments apply to disposals on or after the day on which the Finance Bill receives Royal Assent.

BACKGROUND

17. All companies must currently compute all of their chargeable gains and losses in sterling. This clause provides a limited exception to this rule which will ensure closer alignment between the tax and economic outcomes for companies that do not have a sterling

functional currency. This should reduce barriers to commercial decision making by businesses faced with tax gains not matched by a gain of economic substance and reduce administrative burdens for businesses attempting to manage the effects of such gains.

18. If you have any questions about this change, or comments on the legislation, please contact Ellen Milner on 020 7147 3961 (email: ellen.milner@hmrc.gsi.gov.uk).

1 Health service bodies: exemption from corporation tax

In section 986 of CTA 2010 (exemption from corporation tax: meaning of "health service body"), insert the following entries at the appropriate places in the table—

"a clinical commissioning group	section 1I of the National Health Service Act 2006"
"Health and Social Care Information Centre	section 252 of the Health and Social Care Act 2012"
"National Health Service Commissioning Board	section 1H of the National Health Service Act 2006"
"National Institute for Health and Care Excellence	section 232 of the Health and Social Care Act 2012"

EXPLANATORY NOTE

HEALTH SERVICE BODIES: EXEMPTION FROM CORPORATION TAX

SUMMARY

1. This clause amends section 986 of the Corporation Tax Act 2010 (CTA 2010). The amendment ensures that certain health service bodies created (the new bodies) by the Health and Social Care Act 2012 (the Act) will be exempt from Corporation Tax (CT).

DETAILS OF THE CLAUSE

2. Subsection 1 adds the new bodies at the appropriate place in section 986 CTA 2010. Section 986 provides the meaning of “health service body” for the purposes of the exemption from CT contained in section 985 of that Act.

BACKGROUND

3. The Act is making significant changes to the structure of the National Health Service (NHS) in England. Some existing bodies, such as Primary Care Trusts, are to be abolished and new bodies established; other bodies will change their status (from special health authority to Non-Departmental Public Bodies). Subject to specific legislation these new bodies would be liable to CT.

4. The predecessor bodies were generally exempt from CT, as they were either part of the Department of Health or had specific exemption by virtue of sections 985 and 986 CTA 2010.

5. This measure introduces legislation to similarly exempt the new bodies from CT.

6. If you have any questions about this change, or comments on the legislation, please contact Lorraine Coster on 020 7147 2542 (email: lorraine.coster@hmrc.gsi.gov.uk).

1 Repayments of value added tax to health service bodies

(1) In section 41 of VATA 1994 (application to the Crown), in subsection (7), after "Board" insert "and a clinical commissioning group, the Health and Social Care Information Centre, the National Health Service Commissioning Board and the National Institute for Health and Care Excellence".

(2) The amendment made by this section is treated as having come into force on 1 April 2013.

EXPLANATORY NOTE

APPLICATION OF VAT TO HEALTH SERVICE BODIES

SUMMARY

1. This clause adds, from 1 April 2013, four new categories of National Health Service (NHS) body to the list of bodies within the definition of Government departments which may claim refunds of the VAT they pay on certain goods and services.

DETAILS OF THE CLAUSE

2. The clause amends section 41(7) of the Value Added Tax Act 1994 to add the National Health Service Commissioning Board, clinical commissioning groups, the Health and Social Care Information Centre and the National Institute for Health and Care Excellence to the list of bodies to be regarded as persons exercising functions on behalf of a Minister of the Crown.

BACKGROUND

3. Section 41(3) provides that a Government department may claim a refund of the VAT it pays on certain goods and services, if and to the extent that the Treasury so directs. This is to ensure that VAT is not an obstacle to the contracting out of activities to the public and voluntary sectors.

4. Section 41(6) provides that "Government department" includes "any body of persons exercising functions on behalf of a Minister of the Crown". For the purposes of subsection (6) bodies listed in subsection (7) are to be regarded as a body of persons exercising functions on behalf of a Minister of the Crown".

5. The bodies named in section 41(7) are NHS bodies.

6. The Health and Social Care Act 2012 establishes the four new categories of NHS body referred to in the clause.

7. This measure ensures that the bodies referred to in the clause may reclaim the VAT they pay on certain goods and services as provided for in section 41(3).

8. If you have any questions about this change, or comments on the legislation, please contact David Ogilvie on 020 7147 0473 (email:david.ogilvie@hmrc.gsi.gov.uk).

1 Decommissioning relief agreements

(1) There are to be paid out of money provided by Parliament any sums which a Minister of the Crown is liable to pay under a decommissioning relief agreement.

(2) A "decommissioning relief agreement" is an agreement which—
 (a) is made between a Minister of the Crown and a qualifying company, and
 (b) provides that, in such circumstances as are specified in the agreement, if the amount of tax relief in respect of any decommissioning expenditure incurred by the qualifying company is less than an amount determined in accordance with the agreement ("the reference amount"), the difference is payable to the company.

(3) "Qualifying company" means—
 (a) any company that has at any time carried on a ring fence trade,
 (b) any company that is associated with a company carrying on a ring fence trade, and
 (c) any company that has at any time been associated with a company that was carrying on a ring fence trade at that time.

(4) For the purposes of subsection (2)(b) the amount of tax relief in respect of any decommissioning expenditure is to be determined in accordance with the agreement; and in making such a determination tax relief in respect of expenditure incurred by the qualifying company that is not decommissioning expenditure may, in such circumstances as are specified in the agreement, be treated as if it were tax relief in respect of decommissioning expenditure.

(5) A payment made to a company under a decommissioning relief agreement is not to be regarded as income or a gain of the company for any purpose of the Tax Acts.

(6) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to a party to a decommissioning relief agreement for the purpose of enabling the party to determine the reference amount.

(7) In this section—
 "decommissioning expenditure" has the meaning given by section 2,
 "Minister of the Crown" includes the Treasury, and
 "ring fence trade" has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act).

(8) Subsections (8) to (9) of section 30 of the Petroleum Act 1998 (which specifies when one body corporate is associated with another) apply for the purposes of this section as they apply for the purposes of that section.

2 Meaning of "decommissioning expenditure"

(1) In section 1 "decommissioning expenditure" means expenditure incurred in connection with—
  (a) demolishing any plant or machinery,
  (b) preserving any plant or machinery pending its reuse or demolition,
  (c) preparing any plant or machinery for reuse,
  (d) arranging for the reuse of any plant or machinery, or
  (e) the restoration of any land.

(2) It is immaterial for the purposes of subsection (1)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(3) It is immaterial for the purposes of subsection (1)(c) and (d) whether the plant or machinery is in fact reused.

(4) In subsection (1)(e) "restoration" includes landscaping.

(5) The Treasury may by order amend this section.

(6) An order under subsection (5) may include transitional provision and savings.

(7) The power to make an order under subsection (5) is exercisable by statutory instrument.

(8) A statutory instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of the House of Commons.

3 Annual report

(1) For each financial year the Treasury must prepare a report containing the information in subsection (2).

(2) The information is—
  (a) the number of decommissioning relief agreements entered into in that year,
  (b) the total number of decommissioning relief agreements in force at the end of that year,
  (c) the number of payments made under any decommissioning relief agreements during that year, and the amount of each such payment,
  (d) the total number of payments that have been made under any decommissioning relief agreements as at the end of that year, and the total amount of those payments, and
  (e) an estimate of the maximum amount liable to be paid under any decommissioning relief agreements.

(3) The report for a financial year must be laid before the House of Commons as soon as is reasonably practicable after the end of that year.

(4) In this section "decommissioning relief agreement" has the same meaning as in section 1.

(5) This section has effect in relation to financial years ending on or after 31 March 2014.

4 Decommissioning relief agreements: effect of claim on PRT

(1) This section applies where a sum is payable to a company ("the claimant") under a decommissioning relief agreement.

(2) Subsection (3) applies where the reference amount is calculated by reference to what the claimant's assessable profit in any chargeable period would be if any expenditure incurred by it were used to reduce its profit in a particular way (rather than in any way that it has in fact been used).

(3) For the purposes of petroleum revenue tax—

(a) the expenditure is treated as having been used to reduce the claimant's profit in that way (rather than in any way that it has in fact been used), and

(b) the claimant is treated as if it had received the tax relief it would receive if its profit were reduced in that way (so no repayment of tax is to be made by virtue of this subsection).

(4) Subsection (5) applies where the reference amount is calculated by reference to what any other company's assessable profit in any chargeable period would be if any expenditure incurred by the claimant—

(a) had been incurred by the other company, and

(b) were used to reduce the other company's profit in a particular way.

(5) For the purposes of petroleum revenue tax—

(a) the expenditure is treated as incurred by the other company (and not the claimant),

(b) the expenditure is treated as having been used by the other company to reduce its profit in that way, and

(c) the other company is treated as if it had received the tax relief it would receive if its profit were reduced in that way (so no repayment of tax is to be made by virtue of this subsection).

(6) "Decommissioning relief agreement" has the same meaning as in section 1.

(7) "The reference amount" means the reference amount (within the meaning of that section) that relates to the sum mentioned in subsection (1).

5 Decommissioning relief agreements: terminal losses accrued by virtue of another's default

(1) This section applies where—

(a) a company defaults on a liability under a relevant agreement or abandonment programme to incur decommissioning expenditure in respect of an oil field, and

(b) in consequence of the default, another company ("the other company") that is a party to a decommissioning relief agreement at the time of the default incurs decommissioning expenditure in respect of that oil field.

(2) Paragraph 15 of Schedule 17 to FA 1980 (terminal losses) does not apply in relation to allowable losses accrued by the other company in respect of that oil field.

(3) In this section—

"abandonment programme" means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including such a programme as revised);

"decommissioning expenditure" has the same meaning as in section 1;

"decommissioning relief agreement" has the same meaning as in that section;

"oil field" has the same meaning as in OTA 1975;

"relevant agreement" has the meaning given by section 104(5)(a) of FA 1991.

EXPLANATORY NOTE

DECOMMISSIONING RELIEF AGREEMENTS

SUMMARY

1. This clause provides that payments due under decommissioning relief agreements shall be made out of money provided by Parliament. It defines such agreements and the type of expenditure to which they apply, and introduces a requirement for the Treasury to lay before Parliament an annual report on the Government's liabilities under these agreements.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that sums due under a decommissioning relief agreement shall be paid out of money provided by Parliament.

3. Subsection (2) defines a "decommissioning relief agreement" as an agreement between a Minister of the Crown and a qualifying company.

4. Subsection (3) defines a "qualifying company" for the purposes of a decommissioning relief agreement.

5. Subsection (4) provides that for the purposes of subsection (2) the amount of tax relief in respect of decommissioning expenditure is to be determined in accordance with the decommissioning relief agreement, and may in some circumstances, which will be specified in the decommissioning relief agreement include tax relief in respect of expenditure that is not decommissioning expenditure.

6. Subsection (5) provides that a payment made under a decommissioning relief agreement is not to be regarded as income or a gain for the company for any purpose of the Tax Acts.

7. Subsection (6) provides that Section 18 (1) of the Commissioners for Revenue and Customs Act 2005, which restricts disclosure by Revenue and Customs officials, does not prevent disclosure of information to a party to a decommissioning relief agreement for the purposes of enabling that party to determine the reference amount.

8. Subsection (7) provides definitions for, "Minister of the Crown", which includes HM Treasury, and "ring fence trade".

9. Subsection (8) provides that subsections (8) to (9) of section 30 of the Petroleum Act 1998 apply for the purposes of Section 1 of this clause.

10. Subsections (1) to (4) of section 2 define the categories of expenditure which constitute "decommissioning expenditure" for the purpose of this clause.

11. Subsections (5) and (6) provide that HM Treasury may amend this section by order, and this order may include transitional provision and savings. Where such an order is made it shall be subject to the negative resolution procedure.

12. Subsection (1) of section 3 provides that in each financial year HM Treasury must prepare a report.

13. Subsection (2) defines the information which must be contained in the report.

14. Subsection (3) provides that the report for a financial year must be laid before the House of Commons as soon as is reasonably practicable after the end of that year.

15. Subsection (5) provides that this clause has effect in relation to financial years ending on or after 31 March 2014.

BACKGROUND

16. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

17. If you have any questions about these changes, or comments on the legislation, please contact Adrian Yeo on 020 7270 5774 (email: adrian.yeo@hmtreasury.gsi.gov.uk).

EXPLANATORY NOTE

DECOMMISSIONING RELIEF AGREEMENTS: EFFECT OF CLAIMS ON PRT

SUMMARY

1. This clause makes a number of amendments to existing legislation which have the effect of ensuring that no tax relief can be obtained by a company in respect of expenditure, relief for which has already been obtained under a decommissioning relief agreement. These amendments also ensure that where a company's tax history is used to calculate a payment under a decommissioning relief agreement in respect of any expenditure incurred by a claimant then that tax history will reflect that expenditure so incurred. The amendments come into force in relation to any sum payable to a company under a decommissioning relief agreement on or after the date of Royal Assent to Finance Bill 2013.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that this section applies where a sum is payable to a claimant under a decommissioning relief agreement.

3. Subsections (2) and (3) provide that where expenditure incurred by the claimant, and taking into account its assessable profits, is used to calculate the payment under the decommissioning relief agreement then, for the purposes of petroleum revenue tax, the claimant's profits are treated as reduced by that expenditure as if the payment had been made by way of relief through a repayment of tax.

4. Subsections (4) and (5) provide that where expenditure incurred by the claimant is used to calculate the payment under the decommissioning relief agreement with reference to another company's assessable profits, then, for the purposes of petroleum revenue tax, that other company's profits are treated as reduced by that expenditure as if that other company had incurred the expenditure and the payment had been made by way of relief through a repayment of tax.

5. Subsection (6) provides that "decommissioning relief agreement" has the same meaning as in clause the draft clause relating to Decommissioning relief agreements.

6. Subsection (7) provides that "the reference amount" has the same meaning as the reference amount relating to the sum mentioned in subsection (1).

BACKGROUND

7. Companies may obtain relief under a decommissioning relief agreement in respect of expenditure incurred for the purposes of tax. For petroleum revenue tax (PRT) this relief is calculated by reference to assessable profits arising in current and previous chargeable periods. Moreover in a situation where a claimant is incurring decommissioning expenditure as a result of another company defaulting on its decommissioning liability, the profits referred to may be in respect of companies other than the claimant.

8. This clause reduces, for the purposes of PRT, assessable profits of a company where those profits have been used to calculate the reference amount under a decommissioning agreement. This is achieved by deeming expenditure to have been incurred and applied in the same way as provided for under the decommissioning relief agreement.

9. The effect of this clause is to prevent a company obtaining tax relief in respect of profits that have already been used in order to provide relief through the decommissioning relief agreement.

10. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

11. If you have any questions about these changes, or comments on the legislation, please contact Tony Chanter on 020 7438 7918 (email: tony.chanter@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

DECOMMISSIONING RELIEF AGREEMENTS: TERMINAL LOSSES ACCRUED BY VIRTUE OF ANOTHER'S DEFAULT

SUMMARY

1. This clause makes amendments to existing petroleum revenue tax (PRT) legislation which have the effect of ensuring that, where a company that is a party to a decommissioning relief agreement has incurred decommissioning expenditure as a consequence of another company defaulting on its own decommissioning liability, the terminal loss provisions of paragraph 15 of Schedule 17 to FA 1980 will not apply. The amendments come into force in relation to a default occurring on or after the date of Royal Assent to Finance Bill 2013.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that this section applies where a company that is a party to a decommissioning relief agreement incurs decommissioning expenditure as a consequence of another company's default on a decommissioning liability.

3. Subsection (2) provides that Paragraph 15 of Schedule 17 to FA 1980 does not apply.

4. Subsection (3) provides definitions for "abandonment programme", "decommissioning expenditure", "decommissioning relief agreement", "oil field" and "relevant agreement".

BACKGROUND

5. For the purposes of PRT paragraph 15 of Schedule 17 to FA 1980 provides for terminal losses in respect of a current participator in an oil field to be carried back and relieved against profits of a former participator in that oil field. This will result in a participator obtaining tax relief in respect of expenditure incurred by another participator.

6. In many cases the effect of this provision is recognised and mitigated through commercial arrangements between the parties involved which often provide for the participator incurring the expenditure to receive the benefit of the relief paid to a former participator.

7. However, where a participator incurs decommissioning expenditure as a result of another participator defaulting on its decommissioning

liability then such commercial arrangements are unlikely to apply and the participator incurring the expenditure is denied the benefit of the relief paid to former predecessors in respect of that expenditure.

8. To address this issue clause this clause disapplies paragraph 15 of Schedule 17 to FA 1980 where a participator has incurred decommissioning expenditure as a consequence of a default and is party to a decommissioning relief agreement. In such cases, a participator will instead be able to achieve an equivalent amount of relief directly through a decommissioning relief agreement.

9. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

10. If you have any questions about these changes, or comments on the legislation, please contact Tony Chanter on 020 7438 7918 (email: tony.chanter@hmrc.gsi.gov.uk).

1 Restriction on allowances for certain decommissioning expenditure

(1) CAA 2001 is amended as follows.

(2) After section 165 insert—

"Restrictions on allowances: anti-avoidance

165A Decommissioning services supplied by connected person

(1) Allowances under this Part are restricted under subsection (9) if—

(a) a person ("R") carrying on a ring fence trade enters into an arrangement,

(b) under the arrangement, a person ("S") who is connected with R provides a service to R, and

(c) all or part of the consideration for the service is decommissioning expenditure.

(2) Subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly; and in particular it does not matter—

(a) whether R and S are parties to the same contract, or

(b) whether payments are made by R directly to S.

(3) Subsections (4) to (8) apply for the purposes of this section and sections 165B to 165D.

(4) "Decommissioning expenditure" means expenditure in connection with decommissioning.

(5) "Decommissioning" means—

(a) demolishing plant or machinery,

(b) preserving plant or machinery pending its reuse or demolition,

(c) preparing plant or machinery for reuse, or

(d) arranging for the reuse of plant or machinery.

(6) It is immaterial for the purposes of subsection (5)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(7) It is immaterial for the purposes of subsection (5)(c) and (d) whether the plant or machinery is in fact reused.

(8) References to R's expenditure under the arrangement are to so much of the consideration for the service as is decommissioning expenditure incurred by R.

(9) The amount, if any, by which R's expenditure under the arrangement exceeds D is to be left out of account in determining R's available qualifying expenditure.

(10) D is the cost to S of providing the service.

(11) But if, under any arrangement, a particular service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D in relation to that service), D is the lowest of those amounts.

(12) Subsections (10) and (11) are subject to sections 165B and 165C, which provide for D to be calculated differently in certain circumstances.

165B Allowance in respect of certain services related to decommissioning

(1) This section applies to so much of R's expenditure under the arrangement as relates to the supply by S of a service within subsection (2).

(2) A service is within this subsection if—
  (a) it is a planning or project management service,
  (b) the cost plus method is an appropriate method of applying the arm's length principle to the provision of the service, and
  (c) in the application of that method to the service, the appropriate mark up is no greater than [x]%.

(3) D is the amount determined as R's appropriate expenditure on the service by applying that method to the service.

(4) Any expression which is used in this section and in the transfer pricing guidelines has the meaning given in those guidelines.
"The transfer pricing guidelines" has the meaning given by section 164(4) of TIOPA 2010.

165C Allowance where decommissioning undertaken for other participants in oil field

(1) This section applies where—
  (a) S decommissions the plant or machinery,
  (b) there are, in addition to R, one or more other participators in the oil field in which the plant or machinery is being used or, when last in use for the purposes of a ring fence trade, was being used, and
  (c) the expenditure incurred in respect of the decommissioning of the plant or machinery is apportioned between the participators (including R) in accordance with their shares in the oil won from the field.

(2) D is the amount of expenditure incurred by R in respect of the decommissioning.

(3) But subsection (2) does not apply (and section 165A(10) and (11) apply instead) if—
  (a) the amount of consideration to be received by S under the arrangement or arrangements, or
  (b) the apportionment between the participators of the liability for paying that consideration,

has been agreed as, or as part of, an avoidance scheme.

(4) A scheme is an "avoidance scheme" if the main purpose, or one of the main purposes, of a party in entering into the scheme is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.

(5) The reference in subsection (4) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in

any way more favourable to a person than the one that would otherwise be obtained.

(6) In this section—

"licensee" and "oil field" have the same meaning as in Part 1 of OTA 1975, and

"other participator" means a person, not connected to R, who is a licensee in respect of any licensed area wholly or partly included in the oil field in question.

165D Transaction to obtain tax advantage

(1) Allowances under this Part are restricted under subsection (5) if—

(a) a person ("R") carrying on a ring fence trade enters into a transaction with another person ("S"),

(b) S receives from R consideration for services provided in pursuance of the transaction,

(c) all or part of that consideration is decommissioning expenditure, and

(d) the transaction either has an avoidance purpose, or is part of, or occurs as a result of, a scheme or arrangement that has an avoidance purpose.

(2) Subsection (1)(d) may be satisfied—

(a) whether the scheme or arrangement was made before or after the transaction was entered into, and

(b) whether or not the scheme or arrangement is legally enforceable.

(3) A transaction, scheme or arrangement has an "avoidance purpose" if the main purpose, or one of the main purposes, of a party in entering into the transaction, scheme or arrangement is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.

(4) The reference in subsection (3) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.

(5) All or part of R's expenditure under the transaction is to be left out of account in determining R's available qualifying expenditure.

(6) The amount of expenditure to be left out of account is—

(a) such amount as would or would in effect cancel out the tax advantage mentioned in subsection (3) (whether that advantage is obtained by R or another person and whether it relates to the transaction or something else), or

(b) if the amount found under paragraph (a) exceeds the whole of R's expenditure under the transaction, the whole of that expenditure."

(3) In section 26(5), at the end insert "and sections 165A to 165D (restrictions on allowances: anti-avoidance)."

(4) In section 57(3), after the reference to section 70DA insert—

"sections 165A to 165D (restrictions on allowances: anti-avoidance);".

(5) In section 161C(3), for "and 164(4)" substitute ", 164(4) and 165A to 165D".

(6) In section 164(5A), at the end insert "and sections 165A to 165D."

(7) After section 165(3) insert—

"(3A) Subsection (3) is subject to sections 165A to 165D."

(8) In section 213 of TIOPA 2010 (effect of Part 4 on capital allowances), after subsection (2) insert—

"(3) But a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165D of CAA 2001."

EXPLANATORY NOTE

RESTRICTION ON ALLOWANCES FOR CERTAIN COMMISSIONING EXPENDITURE

SUMMARY

1. This clause provides that where a connected person provides a decommissioning service to a ring fence company, the plant and machinery allowances in respect of decommissioning expenditure are restricted to the cost to the connected person of providing the service. The clause provides exceptions to this rule for certain expenditure to which the cost plus method is to be applied, and for expenditure where unconnected parties are co-licensees in the field. The clause also restricts allowances where a transaction, scheme or arrangement has an avoidance purpose.

DETAILS OF THE CLAUSE.

2. Subsection (1) provides that Capital Allowances Act 2001 (CAA 2001) is amended by the following subsections.

3. Subsection (2) inserts new sections 165A to 165D into CAA 2001.

4. Subsection (1) of new section 165A provides that plant and machinery allowances are restricted under subsection (9) if a connected person (S) provides a service to a person (R) carrying on a ring fence trade and all or part of the consideration for the service is decommissioning expenditure.

5. Subsection (2) of new section 165A provides that subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly, and it does not matter whether R and S are parties to the same contract or whether payments are made by R directly to S.

6. Subsection (3) of new section 165A applies subsections (4) to (8) for the purposes of sections 165A to 165D.

7. Subsection (4) of new section 165A defines ‘decommissioning expenditure’.

8. Subsection (5) of new section 165A defines ‘decommissioning’.

9. Subsections (6) and (7) of new section 165A provide further detail for the purposes of section (5).

10. Subsection (8) of new section 165A provides the meaning of 'R's expenditure under the arrangement'.

11. Subsection (9) of new section 165A provides that the amount if any by which R's expenditure under the arrangement exceeds D is to be left out of account in determining R's available qualifying expenditure.

12. Subsection (10) of new section 165A provides that D is the cost to S of providing the service.

13. Subsection (11) of new section 165A provides that if a particular service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D) then D is the lowest of those amounts.

14. Subsection (12) of new section 165A provides that sections 165B and 165C provide for D to be calculated differently in certain circumstances.

15. Subsection (1) of new section 165B provides that section 165B applies to so much of R's expenditure as relates to the supply by S of services within subsection (2).

16. Subsection (2) of new section 165B provides that services are within subsection (2) if:

    (a) they are planning or project management services;

    (b) the cost plus method is an appropriate method of applying the arm's length principle to the provision of those services; and,

    (c) in applying that method to the services, the appropriate mark-up is no greater than [X]%.

17. Subsection (3) of new section 165B provides that D is the amount determined by applying the cost plus method to the services.

18. Subsection (4) of new section 165B provides that any expression used in section 165B and in the transfer pricing guidelines (as defined by section 164(4) TIOPA 2010) takes its meaning from those guidelines.

19. Subsection (1) of new section 165C provides that section 165C applies where S decommissions the plant or machinery, there are one or more other participators in the oil field in which the plant or machinery is or was being used, and the decommissioning expenditure is apportioned between the participators in accordance with their shares in the oil won from the field.

20. Subsection (2) of new section 165C provides that D is the amount of expenditure incurred by R in respect of the decommissioning.

21. Subsection (3) of new section 165C provides that subsection (2) does not apply, and section 165A(10) applies instead, if the amount of consideration to be received by S, or the apportionment for paying that amount between the participators, is part of an avoidance scheme.

22. Subsection (4) of new section 165C provides that a scheme is an ‘avoidance scheme’ if a main purpose is to obtain a tax advantage under Part 2 CAA 2001 that would not otherwise be obtained.

23. Subsection (5) of new section 165C provides that obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable than the allowance that would otherwise be obtained.

24. Subsection (6) of new section 165C provides that ‘licensee’ and ‘oil field’ take their meaning from Part 1 of OTA 1975 and provides a definition of ‘other participator’.

25. Subsection (1) of new section 165D provides that allowances under Part 2 CAA 2001 are restricted under subsection (5) if

    (a) a person (R) carrying on a ring fence trade enters into a transaction with another person (S);

    (b) S receives from R consideration for services provided;

    (c) all or part of that consideration is decommissioning expenditure; and,

    (d) the transaction has, or is part of or occurs as a result of a scheme or arrangement that has, an avoidance purpose.

26. Subsection (2) of new section 165D provides further detail as to the circumstances in which subsection (1)(d) may be satisfied.

27. Subsection (3) of new section 165D provides that a transaction, scheme or arrangement has an ‘avoidance purpose’ if a main purpose of a party is to enable a person to obtain a tax advantage under Part 2 CAA 2001 that would not otherwise be obtained.

28. Subsection (4) of new section 165D provides that obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable than the allowance that would otherwise be obtained.

29. Subsection (5) of new section 165D provides that all or part of R's expenditure is to be left out of account in determining R's available qualifying expenditure.

30. Subsection (6) of new section 165D provides that the amount of expenditure to be left out of account is such amount as would or would in effect cancel out the tax advantage.

31. Subsections (3) to (7) provide consequential amendments.

32. Subsection (8) inserts new subsection (3) into section 213 TIOPA 2010.

33. New subsection (3) of section 213 TIOPA 2010 provides that a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165D CAA 2001.

BACKGROUND

34. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

35. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

1 Capital allowances: expenditure on decommissioning onshore installations

(1) Section 163 of CAA 2001 (meaning of "general decommissioning expenditure") is amended as follows.

(2) In subsection (1)—

(a) the words after "if" become paragraph (a) of that subsection,

(b) in that paragraph, for "subsections (3) to (4)" substitute "subsections (3), (3A) and (4)", and

(c) at the end of that paragraph insert ", or

(b) the conditions in subsections (3B) and (4) are met."

(3) After subsection (3A) insert—

"(3B) The expenditure must have been incurred on decommissioning plant or machinery—

(a) which has been brought into use wholly or partly for the purposes of a ring fence trade, and

(b) which—

(i) is, or forms part of, a relevant onshore installation, or

(ii) when last in use for the purposes of a ring fence trade, was, or formed part of, such an installation.

(3C) In subsection (3B) "relevant onshore installation" means any building or structure which—

(a) falls within any of sub-paragraphs (ii) to (iv) of section 3(4)(c) of OTA 1975,

(b) is not an offshore installation, and

(c) is or has been used for purposes connected with the extraction of mineral deposits in or under the bed of—

(i) the territorial sea of the United Kingdom, or

(ii) an area designated under section 1(7) of the Continental Shelf Act 1964."

(4) The amendments made by this section have effect in relation to expenditure incurred on decommissioning carried out on or after the day on which this Act comes into force.

EXPLANATORY NOTE

CAPITAL ALLOWANCES: EXPENDITURE ON DECOMMISSIONING ONSHORE INSTALLATIONS

SUMMARY

1. This clause extends the meaning of ‘general decommissioning expenditure’ for plant and machinery allowances to include onshore assets used for the purposes of offshore oil and gas production. This enables the special allowance which is currently available for decommissioning expenditure in respect of offshore assets to apply to such onshore assets.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that section 163 Capital Allowances Act (CAA) 2001 is amended by subsections (2) and (3).

3. Subsection (2) amends subsection (1) of section 163 to extend the qualifying conditions for expenditure to be ‘general decommissioning expenditure’.

4. Subsection (3) inserts new subsections (3B) and (3C) into section 163.

5. New subsection (3B) of section 163 requires that the expenditure must have been incurred on decommissioning plant or machinery:

   (a) which has been used for the purposes of a ring fence trade; and,

   (b) which is or forms part of a relevant onshore installation, or when last in use for the purposes or a ring fence trade was or formed part of such an installation.

6. New subsection (3C) of section 163 provides the definition of a ‘relevant onshore installation’.

7. Subsection (4) provides that the changes made by the clause have effect in relation to expenditure incurred on decommissioning carried out on or after Royal Assent to Finance Bill 2013.

BACKGROUND

8. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

9. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

1 Removal of IHT charges in respect of decommissioning security settlements

(1) In Chapter 3 of Part 3 of IHTA 1984 (settled property: settlements without interests in possession etc), section 58 (relevant property) is amended as follows.

(2) In subsection (1), omit the "and" at the end of paragraph (ea) and before paragraph (f) insert—

"(eb) property comprised in a decommissioning security settlement; and".

(3) At the end insert—

"(6) For the purposes of subsection (1)(eb) above a settlement is a "decommissioning security settlement" if the sole or main purpose of the settlement is to provide security for the performance of obligations under an approved abandonment programme.

(7) In subsection (6)—

"abandonment programme" has the meaning given by section 29 of the Petroleum Act 1998;

"approved" means approved by the Secretary of State in accordance with section 32 of that Act;

"security" has the same meaning as in section 38A of that Act."

(4) This section is treated as having come into force on [the first day of the period of 20 years ending immediately before the date of the 2013 Budget].

(5) For the purposes of section 58 of IHTA 1984—

(a) any reference in that section to section 29 or 32 of the Petroleum Act 1998 has effect, in relation to any period before the coming into force of the section, as a reference to the corresponding provision of the Petroleum Act 1987, and

(b) section 38A of the Petroleum Act 1998 is to be treated as having come into force at the same time as this section.

(6) There is to be no charge to tax under section 65 of IHTA 1984 if the only reason for such a charge would be that property ceases to be relevant property by virtue of the coming into force of this section.

EXPLANATORY NOTE

REMOVAL OF INHERITANCE TAX CHARGES IN RESPECT OF DECOMMISSIONING SECURITY SETTLEMENTS

SUMMARY

1. This clause removes the charge to inheritance tax (IHT) on property held in decommissioning security settlements. The clause achieves this by amending the definition of relevant property at section 58(1) Inheritance Act 1984 (IHTA) to exclude property held in decommissioning security settlements from that definition. The change is treated as having come into force on [the first day of the period of 20 years ending immediately before the date of the 2013 Budget].

DETAILS OF THE CLAUSE

2. Subsection 1 of the clause provides for amendments to section 58 of IHTA which deals with the interpretation of relevant property.

3. Subsection 2 inserts a new section 58(1)(eb) to add property in a decommissioning security settlement as one of the categories of settled property in section 58(1) that is not to be regarded as relevant property. This has the effect of excluding such settlements from the IHT charges which would otherwise apply to relevant property.

4. Subsection 3 inserts new sections 58(6) and 58(7) into IHTA, which define the meaning of "decommissioning security settlement" and explain the meaning of certain terms used in these provisions respectively.

5. Subsection 4 provides the commencement provisions. The new section is treated as coming into effect on [the first day of the period of 20 years ending immediately before the date of the 2013 Budget].

6. Subsection 5 provides necessary linkage to the Petroleum Act 1987 so that the new exclusion in section 58(1) also applies to the equivalent of an approved abandonment programme under that Act.

7. Subsection 6 provides that the charge which would normally arise under section 65 IHTA when property ceases to be relevant property will not apply if the only reason for that charge would be the application of these new provisions.

BACKGROUND

8. Property held in decommissioning security settlements, whether money or alternative provision such as standby letters of credit, is settled property for IHT purposes and as such is “relevant property” as defined in section 58(1) IHTA. Relevant property held in settlements is within the charge to IHT in accordance with the provisions contained in Part 3 of IHTA.

9. The change made by this clause forms part of the Government’s wider package of measures to provide greater certainty in respect of decommissioning tax relief, removing barriers to the transfer of licence interests and increasing capacity for additional investment in the UK Continental Shelf.

10. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 0207 438 6993 (email: paul.philip@hmrc.gsi.gov.uk) for general oil and gas decommissioning issues, or Danka Wigley on 0207 7147 3674 (email: danka.wigley@hmrc.gsi.gov.uk) for IHT issues.

1 Capital allowances: expenditure on site restoration

(1) Part 5 of CAA 2001 (mineral extraction allowances) is amended as follows.

(2) In section 395 (qualifying expenditure), in subsection (1)(d), omit "post-trading".

(3) In section 403 (qualifying expenditure on acquiring a mineral asset), after subsection (2) insert—

"(2A) For the purposes of this section the reference to expenditure on acquiring a mineral asset does not include expenditure incurred on the restoration of a relevant site (within the meaning of section 416 or 416ZA)."

(4) In section 416 (expenditure on restoration within 3 years of ceasing to trade)—

(a) in subsections (1)(a) and (6)(a), before "mineral extraction trade" insert "relevant";

(b) after subsection (7) insert—

"(7A) "Relevant mineral extraction trade" means a mineral extraction trade that is not a ring fence trade within the meaning of Part 8 of CTA 2010 (see section 277 of that Act).";

(c) the heading of section 416 becomes "**Non-ring fence trades: expenditure on restoration within 3 years of ceasing to trade**".

(5) After section 416 insert—

"416ZA Ring fence trades: expenditure on site restoration

(1) If—

(a) a person who is or has been carrying on a ring fence trade incurs expenditure on the restoration of a relevant site,

(b) that part of the restoration work to which the expenditure relates has been carried out, and

(c) the expenditure has not been deducted in calculating for tax purposes the profits of any trade carried on by the person,

the net cost of the restoration is qualifying expenditure.

(2) The qualifying expenditure is treated as incurred—

(a) in the case of a person carrying on a ring fence trade, in the chargeable period in which that part of the restoration work to which the expenditure relates is carried out, and

(b) in the case of a person who has ceased to carry on a ring fence trade, on the last day of trading.

(3) If the amount of expenditure incurred on any part of the restoration work carried out in a chargeable period is disproportionate to that part of the restoration work, only so much of the net cost of the restoration as is proportionate to that part of the restoration work (the "allowable expenditure for the period") is to be treated as qualifying expenditure incurred in that chargeable period.

(4) But subsection (3) does not prevent that part of the expenditure that is not allowable expenditure for the period from being treated as qualifying expenditure incurred in a subsequent chargeable period.

(5) If any expenditure incurred by a person is qualifying expenditure under this section—
(a) the whole of the expenditure on the restoration (not just the net cost) is not deductible in calculating the person's income for any tax purposes, and
(b) none of the amounts subtracted to produce the net cost is to be treated as the person's income for any tax purposes.

(6) "Restoration" is to be read in accordance with section 416(5).

(7) A "relevant site" means—
(a) the site of a source to the working of which the ring fence trade relates (or related), or
(b) land used in connection with working such a source.

(8) "The net cost of the restoration" means the expenditure incurred on the restoration less any amounts attributable to the restoration of the relevant site.

(9) "Ring fence trade" has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act).

(10) All such adjustments are to be made, by way of discharge or repayment of tax or otherwise, as are necessary to give effect to this section."

(6) Part 4 of CTA 2010 (loss relief) is amended as follows.

(7) In section 40 (ring fence trades: extension of periods for which relief may be given), in subsection (1)(b), for "403" substitute "by virtue of 416ZA".

(8) In section 43 (claim period in case of ring fence or mineral extraction trades), in subsection (1)(b)—
(a) after "416" insert "or 416ZA", and
(b) for the words from "restoration" to "trade" substitute "site restoration".

(9) The amendments made by this section have effect in relation to expenditure incurred on restoration carried out on or after the day on which this Act comes into force.

EXPLANATORY NOTE

CAPITAL ALLOWANCES: EXPENDITURE ON SITE RESTORATION

SUMMARY

1. This clause inserts a new section 416ZA into Capital Allowances Act (CAA) 2001. The section provides relief under the Mineral Extraction Allowances code for expenditure on site restoration incurred by a person who is or has been carrying on a ring fence trade. The clause also provides that any resulting loss can access the extended period for which loss relief may be given for ring fence trades.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that part 5 of CAA 2001 is amended by subsections (2) to (5).

3. Subsection (2) makes a consequential change to the definition of 'qualifying expenditure' in section 395 CAA 2001.

4. Subsection (3) inserts new subsection (2A) into section 403 CAA 2001. The new subsection provides that for the purposes of section 403 expenditure incurred on the restoration of a relevant site is not expenditure on acquiring a mineral asset.

5. Subsection (4) makes consequential changes to section 416 CAA 2001 (expenditure on restoration within 3 years of ceasing to trade).

6. Subsection (5) inserts new section 416ZA (ring fence trades: expenditure on site restoration) into CAA 2001.

7. New subsection (1) of section 416ZA provides that if certain conditions are met the net cost of the restoration is qualifying expenditure.

8. New subsection (2) of section 416ZA provides when the qualifying expenditure is treated as incurred.

9. New subsection (3) of section 416ZA provides that if the expenditure incurred is disproportionate to the work carried out in a chargeable period, only so much of the net cost of the restoration as is proportionate is to be treated as qualifying expenditure incurred in that chargeable period.

10. New subsection (4) of section 416ZA provides that subsection (3) does not prevent that part of the expenditure that is not allowable expenditure for the period from being treated as qualifying expenditure incurred in a subsequent chargeable period.

11. New subsection (5) of section 416ZA provides that if any expenditure is qualifying expenditure:

    (a) all the expenditure on the restoration is not deductible in calculating income for tax purposes; and,

    (b) none of the amounts subtracted to produce the net cost is to be treated as income for tax purposes.

12. New subsection (6) of section 416ZA provides that 'restoration' is to be read in accordance with section 416.

13. New subsection (7) of section 416ZA provides the definition of a 'relevant site'.

14. New subsection (8) of section 416ZA provides the definition of 'the net cost of the restoration'.

15. New subsection (9) of section 416ZA provides that the definition of 'ring fence trade' in section 277 CTA 2010 applies.

16. New subsection (10) of section 416ZA provides that all such adjustments are to be made as are necessary to give effect to this section.

17. Subsection (6) provides that part 4 of CTA 2010 (loss relief) is amended by subsections (7) to (9).

18. Subsection (7) replaces a reference to section 403 CAA 2001 in section 40 CTA 2010 with a reference to new section 416ZA.

19. Subsection (8) amends section 43 CTA 2010 (claim period) to include new section 416ZA and to make a consequential amendment.

20. Subsection (9) provides that the changes made by the clause have effect in relation to expenditure incurred on restoration carried out from Royal Assent to Finance Bill 2013.

BACKGROUND

21. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence

interests and increase capacity for additional investment in the UK Continental Shelf.

22. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

1 Decommissioning expenditure taken into account for PRT purposes

(1) Section 330B of CTA 2010 (decommissioning expenditure taken into account for PRT purposes) is amended as follows.

(2) In subsection (1), omit the "and" at the end of paragraph (a) and after paragraph (b) insert ", and

"(c) an amount equal to the appropriate fraction of the used-up amount of that expenditure is added under section 330A(2) in calculating the participator's adjusted ring fence profits for an accounting period."

(3) For subsection (2) substitute—

"(2) In calculating for the purposes of section 330(1) the amount of the participator's adjusted ring fence profits for the accounting period, there is to be deducted the amount given by—

$$RP \times AF \times D$$

where—

RP is the relevant percentage of the decommissioning expenditure,

AF is the appropriate fraction, and

D is the PRT difference."

(4) In subsection (3)—

(a) before the definition of "the appropriate fraction" insert—

""the relevant percentage of the decommissioning expenditure" is the percentage of that expenditure that is the used-up amount referred to in subsection (1)(c),";

(b) in the definition of "the appropriate fraction", omit "relevant";

(c) in the definition of "the PRT difference", for "subsection (1)" substitute "subsection (1)(a)".

(5) In subsection (4), for "subsection (1)" substitute "subsection (1)(a)".

(6) In subsection (7)—

(a) omit the definition of "the relevant accounting period", and

(b) at the end insert—

""the used-up amount", in relation to any expenditure, has the same meaning as in section 330A (see subsection (3))."

(7) The amendments made by this section have effect in relation to expenditure incurred in connection with decommissioning carried out on or after the day on which this Act comes into force.

EXPLANATORY NOTE

DECOMMISSIONING EXPENDITURE TAKEN INTO ACCOUNT FOR PRT PURPOSES

SUMMARY

1. This clause amends section 330B CTA 2010 to change the accounting period for which a deduction is given. The clause provides that the deduction from profits provided by section 330B is given for the accounting period for which an addition to profits is provided by section 330A in respect of decommissioning expenditure.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that section 330B CTA 2010 is amended by subsections (2) to (6).

3. Subsection (2) inserts new paragraph (c) into subsection (1) of section 330B.

4. New paragraph (c) of section 330B(1) CTA 2010 is an additional condition which governs whether section 330B applies. The condition is that an amount equal to the appropriate fraction of the used-up amount of decommissioning expenditure is added under section 330A(2) in calculating the participator's adjusted ring fence profits for an accounting period.

5. Subsection (3) substitutes subsection (2) in section 330B.

6. New subsection (2) of section 330B provides the deduction to be made in respect of the PRT difference in calculating the adjusted ring fence profits for the accounting period.

7. Subsection (4) inserts a definition of 'the relevant percentage of the decommissioning expenditure' in section 330B(3) and makes consequential changes to two other definitions.

8. Subsection (5) makes a consequential amendment to section 330B(4).

9. Subsection (6) amends section 330B(7) to remove one definition and to provide that 'the used-up amount' takes the same meaning as in section 330A.

10. Subsection (7) provides that the amendments have effect in relation to expenditure incurred in connection with decommissioning carried out on or after Royal Assent to Finance Bill 2013.

BACKGROUND

11. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

12. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

1 Oil taxation: abandonment guarantees and abandonment expenditure

Schedule 1 contains provision about expenditure on and under abandonment guarantees and abandonment expenditure.

SCHEDULE 1

Section 1

OIL TAXATION: ABANDONMENT GUARANTEES AND ABANDONMENT EXPENDITURE

Expenditure on abandonment guarantees

1 (1) In Part 2 of ITTOIA 2005 (trading income), Chapter 16A (oil activities) is amended as follows.

(2) In section 225N (expenditure on and under abandonment guarantees)—

(a) after subsection (1) insert—

"(1A) Subsection (2) also applies if expenditure incurred by a participator in an oil field would be so allowable as a result of section 3(1)(hh) of that Act but for the fact that the oil field is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(b) in subsection (2), for "that expenditure is so allowable" substitute "the expenditure mentioned in subsection (1) or (1A) is or would be so allowable".

(3) In section 225R (introduction to sections 225S and 225T)—

(a) in paragraph (a) of subsection (1), omit the words from ", or would apply" to "made";

(b) in paragraph (b) of that subsection, after "Schedule" insert ", or would fall to be so attributed if a claim under paragraph 2A(2) of that Schedule were made";

(c) after subsection (1) insert—

"(1A) The condition in subsection (1)(b) is to be treated as met for the purposes of this section if it would be met but for the fact that the contributing participator is (or was) a participator in an oil field that is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(d) in subsection (2), before "attributed" insert "or would be".

2 (1) In Part 8 of CTA 2010 (oil activities), Chapter 4 (calculation of profits) is amended as follows.

(2) In section 292 (expenditure on and under abandonment guarantees)—

(a) after subsection (1) insert—

"(1A) Subsection (2) also applies if expenditure incurred by a participator in an oil field would be so allowable as a result of section 3(1)(hh) of that Act but for the fact that the oil field is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(b) in subsection (2), for "that expenditure is so allowable" substitute "the expenditure mentioned in subsection (1) or (1A) is or would be so allowable".

(3) In section 296 (introduction to sections 297 and 298)—
(a) in paragraph (a) of subsection (1), omit the words from ", or would apply" to "made";
(b) in paragraph (b) of that subsection, after "Schedule" insert ", or would fall to be so attributed if a claim under paragraph 2A(2) of that Schedule were made";
(c) after subsection (1) insert—

"(1A) The condition in subsection (1)(b) is to be treated as met for the purposes of this section if it would be met but for the fact that the contributing participator is (or was) a participator in an oil field that is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(d) in subsection (2), before "attributed" insert "or would be".

Expenditure under abandonment guarantees

3 In Schedule 3 to OTA 1975 (petroleum revenue tax: miscellaneous provisions), in paragraph 8 (certain subsidised expenditure to be disregarded), after sub-paragraph (1) insert—

"(1A) But sub-paragraph (1) above does not apply to any expenditure for which the relevant participator is liable that has been or is to be met directly or indirectly out of a payment made by the guarantor under an abandonment guarantee.

(1B) In sub-paragraph (1A) above—
"abandonment guarantee" has the same meaning as it has for the purposes of section 3 of this Act (see section 104 of the Finance Act 1991), and
"the guarantor" and "the relevant participator" have the same meaning as in section 104 of that Act."

4 (1) Part 3 of FA 1991 (oil taxation) is amended as follows.

(2) Omit section 105 (restriction of expenditure relief by reference to payments under abandonment guarantees).

(3) Omit section 106 (relief for reimbursement expenditure under abandonment guarantees).

5 (1) In Part 2 of ITTOIA 2005 (trading income), Chapter 16A (oil activities) is amended as follows.

(2) In section 225N (expenditure on and under abandonment guarantees), omit subsections (3) and (4).

(3) Omit section 225O (relief for reimbursement expenditure under abandonment guarantees).

6 (1) In Part 8 of CTA 2010 (oil activities), Chapter 4 (calculation of profits) is amended as follows.

(2) In section 292 (expenditure on and under abandonment guarantees), omit subsections (3) and (4).

(3) Omit section 293 (relief for reimbursement expenditure under abandonment guarantees).

Reimbursement by defaulter in respect of abandonment expenditure

7 In Part 3 of FA 1991, omit section 108 (reimbursement by defaulter in respect of certain abandonment expenditure).

8 In Part 2 of ITTOIA 2005, omit section 225T (reimbursement by defaulter in respect of certain abandonment expenditure).

9 In Part 8 of CTA 2010, omit section 298 (reimbursement by defaulter in respect of certain abandonment expenditure).

Consequential amendments

10 (1) Section 104 of FA 1991 is amended as follows.

(2) In subsection (1), omit "and sections 105 and 106 below".

(3) In subsection (2), omit "and section 106 (but not section 105) below".

11 In FA 2008, omit section 105.

12 In Part 2 of ITTOIA 2005, Chapter 16A is amended as follows.

13 (1) Section 225N is amended as follows.

(2) Omit subsection (5).

(3) In subsection (6), in the definition of "abandonment guarantee"—
(a) for "section 105 of FA 1991" substitute "section 3 of OTA 1975", and
(b) for "that Act" substitute "FA 1991".

(4) The heading of that section becomes "**Expenditure on abandonment guarantees**".

14 Omit sections 225P and 225Q.

15 In section 225R (introduction to sections 225S and 225T)—
(a) in subsection (1), for "Sections 225S and 225T apply" substitute "Section 225S applies";
(b) the heading of section 225R becomes "**Introduction to section 225S**".

16 In Part 8 of CTA 2010, Chapter 4 is amended as follows.

17 (1) Section 292 is amended as follows.

(2) Omit subsection (5).

(3) In subsection (6), in the definition of "abandonment guarantee"—
(a) for "section 105 of FA 1991" substitute "section 3 of OTA 1975", and
(b) for "that Act" substitute "FA 1991".

(4) The heading of that section becomes "**Expenditure on abandonment guarantees**".

18 Omit sections 294 and 295.

19 In section 296 (introduction to sections 297 and 298)—
(a) in subsection (1), for "Sections 297 and 298 apply" substitute "Section 297 applies";
(b) the heading of section 296 becomes "**Introduction to section 297**".

Application

20 The amendments made by this Schedule have effect in relation to expenditure incurred on or after the day on which this Act comes into force.

EXPLANATORY NOTE

OIL TAXATION - ABANDONMENT GUARANTEES AND ABANDONMENT EXPENDITURE

SUMMARY

1. This clause and Schedule make a number of amendments to existing legislation. These taken collectively have the effect of ensuring, as originally intended, that relief for expenditure on obtaining an abandonment guarantee and expenditure incurred by a company as a result of another company's defaulting on its own abandonment commitments is also available in respect of oil fields that are not subject to petroleum revenue tax (PRT). These amendments also disapply, for the purposes of ring fence corporation tax (RFCT), PRT, and income tax (IT) in the context of oil activities, the general principle that a person is not entitled to relief in respect of expenditure to the extent that is has been met by another party's contribution (contribution and reimbursement rules).

DETAILS OF THE SCHEDULE

Expenditure on abandonment guarantees

2. Paragraphs 1 and 2 amend sections 225N and 225R of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) and sections 292 and 296 Corporation Tax Act 2010 (CTA) to ensure these sections also apply in respect of oil fields that are not subject to PRT.

Expenditure under abandonment guarantees

3. Paragraph 3 provides that paragraph 8 of Schedule 3 to the Oil Taxation Act 1975 (OTA) does not apply to expenditure which is met out of a payment under an abandonment guarantee.

4. Paragraphs 4 to 6 omit sections and sub-sections in the Finance Act 1991 (FA), ITTOIA and CTA.

Reimbursement by defaulter in respect of abandonment expenditure

5. Paragraphs 7 to 9 omit sections in FA, ITTOIA and CTA.

Consequential amendments

6. Paragraphs 10 to 19 make minor consequential changes resulting from the amendments made by this Schedule.

BACKGROUND

7. Section 292 (1) and (2) CTA and section 225N ITTOIA provide that where expenditure on an abandonment guarantee qualifies for relief for PRT purposes it also qualifies as a deduction in computing ring fence income.

8. Section 296 CTA and section 225R ITTOIA operate where the PRT provisions in paragraph 2A of Schedule 5 to OTA apply.

9. The changes made by the Schedule ensure sections 292 (1) and (2) and 296 CTA and sections 225N and 225R ITTOIA apply in respect of non-PRT fields as originally intended.

10. This Schedule also amends and repeals the RFCT, PRT and IT contribution and reimbursement rules. This is being done to ensure that companies which accept decommissioning security on a post-tax basis will receive full tax relief for any expenditure they incur in respect of a defaulting company's decommissioning obligations.

11. The amendments made by this Schedule form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

12. The amendments come into force in relation to expenditure incurred on or after the date of Royal Assent to Finance Bill 2013.

13. If you have any questions about these changes, or comments on the legislation, please contact Paul Philip on 020 7438 6993 (email: paul.philip@hmrc.gsi.gov.uk).

1 Receipts arising from decommissioning

Schedule 1 contains provision about calculating the profits of a ring fence trade carried on by a person who incurs expenditure on meeting another person's decommissioning liabilities.

SCHEDULE 1

Section 1

OIL TAXATION: RECEIPTS ARISING FROM DECOMMISSIONING

Calculation of profits chargeable to corporation tax and supplementary charge

1 In Chapter 4 of Part 8 of CTA 2010 (oil activities: calculation of profits), after section 298 insert—

"Receipts arising from decommissioning

298A Receipts arising from decommissioning

(1) This section applies if—

(a) a company that is or has been carrying on a ring fence trade ("the defaulter") has defaulted on a liability under—

(i) a relevant agreement, or

(ii) an abandonment programme,

to make a payment towards decommissioning expenditure,

(b) another company that is or has been carrying on a ring fence trade ("the contributing company") pays an amount ("the relevant contribution") in or towards meeting the whole or part of the default, and

(c) the amount of the relevant contribution is less than the sum of the amounts within subsection (2).

(2) The amounts within this subsection are—

(a) any payments made (directly or indirectly) to the contributing company by the guarantor under an abandonment guarantee as a result of the defaulter defaulting on the liability,

(b) any reimbursement payments (see subsection (3)), and

(c) any relief from tax which the contributing company obtains in respect of the relevant contribution.

(3) For the purposes of this section "reimbursement payment" means any payment made to the contributing company by the defaulter in reimbursing the contributing company in respect of, or otherwise making good to the contributing company, the whole or any part of the relevant contribution.

(4) The difference between—

(a) the sum of the amounts within subsection (2), and

(b) the relevant contribution,

is to be treated as a receipt (in the nature of income) of the contributing company's ring fence trade for the relevant accounting period.

(5) In subsection (4) "the relevant accounting period" means the latest of—

(a) the last accounting period in which any of the relevant contribution is paid,

(b) the last accounting period in which any amount within subsection (2)(a) or (b) is paid, and

(c) the last accounting period in which any relief within subsection (2)(c) is obtained.

This is subject to subsections (6) and (7).

(6) If the contributing company has ceased to carry on the ring fence trade before any of the relevant contribution is paid, "the relevant accounting period" is the last accounting period of the trade.

(7) If the contributing company has ceased to be within the charge to corporation tax in respect of the ring fence trade before any of the relevant contribution is paid, "the relevant accounting period" is the accounting period during or at the end of which the contributing company ceased to be within the charge to corporation tax in respect of the trade.

(8) In this section—

"abandonment programme" has the meaning given by section 29 of the Petroleum Act 1998,

"decommissioning expenditure" has the meaning given by section 330C, and

"relevant agreement" has the meaning given by section 104(5)(a) of FA 1991."

Calculation of profits chargeable to income tax

2 In Chapter 16A of Part 2 of ITTOIA 2005 (trading income: oil activities), after section 225U insert—

"Receipts arising from decommissioning

225V Receipts arising from decommissioning

(1) This section applies if—

(a) a person that is or has been carrying on a ring fence trade ("the defaulter") has defaulted on a liability under—

(i) a relevant agreement, or

(ii) an abandonment programme,

to make a payment towards decommissioning expenditure,

(b) another person that is or has been carrying on a ring fence trade ("the contributing person") pays an amount ("the relevant contribution") in or towards meeting the whole or part of the default, and

(c) the amount of the relevant contribution is less than the sum of the amounts within subsection (2).

(2) The amounts within this subsection are—

(a) any payments made (directly or indirectly) to the contributing person by the guarantor under an abandonment

guarantee as a result of the defaulter defaulting on the liability,

(b) any reimbursement payments (see subsection (3)), and

(c) any relief from tax which the contributing person obtains in respect of the relevant contribution.

(3) For the purposes of this section "reimbursement payment" means any payment made to the contributing person by the defaulter in reimbursing the contributing person in respect of, or otherwise making good to the contributing person, the whole or any part of the relevant contribution.

(4) The difference between—

(a) the sum of the amounts within subsection (2), and

(b) the relevant contribution,

is to be treated as a receipt (in the nature of income) of the contributing person's ring fence trade for the relevant tax year.

(5) In subsection (4) "the relevant tax year" means the latest of—

(a) the last tax year in which any of the relevant contribution is paid,

(b) the last tax year in which any amount within subsection (2)(a) or (b) is paid, and

(c) the last tax year in which any relief within subsection (2)(c) is obtained.

This is subject to subsection (6).

(6) If the contributing person's ring fence trade is permanently discontinued before any of the relevant contribution is paid, "the relevant tax year" is the last tax year in which that trade is carried on.

(7) In this section—

"abandonment programme" has the meaning given by section 29 of the Petroleum Act 1998,

"decommissioning expenditure" has the meaning given by section 330C of CTA 2010, and

"relevant agreement" has the meaning given by section 104(5)(a) of FA 1991."

Application

3 The amendments made by this Schedule have effect in relation to expenditure incurred on or after the day on which this Act comes into force.

EXPLANATORY NOTE

OIL TAXATION: RECEIPTS ARISING FROM DECOMMISSIONING

SUMMARY

1. This clause and Schedule provide for the taxation of any profit which arises to a person from the incurring of decommissioning expenditure as a consequence of the default of another person.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new section 298A into CTA 2010.

3. Subsection (1) of new section 298A provides that the section applies if:

   (a) a company carrying on a ring fence trade has defaulted on a liability to pay decommissioning expenditure;

   (b) another company carrying on a ring fence trade pays an amount (the relevant contribution) towards meeting that expenditure; and,

   (c) the relevant contribution is less than the sum of the amounts within subsection (2).

4. Subsection (2) of new section 298A provides that the amounts within this subsection are:

   (a) any payments made by the guarantor under an abandonment guarantee;

   (b) any reimbursement expenditure; and,

   (c) any tax relief given to the contributing company in respect of the relevant contribution.

5. Subsection (3) of new section 298A defines ‘reimbursement expenditure’.

6. Subsection (4) of new section 298A provides that the difference between the sum of the amounts within subsection (2) and the relevant contribution is to be treated as a receipt of the contributing company’s ring fence trade for the relevant accounting period.

7. Subsection (5) of new section 298A defines 'the relevant accounting period'.

8. Subsection (6) of new section 298A provides that in this section 'abandonment programme', 'decommissioning expenditure' and 'relevant agreement' are as defined by other legislation.

9. Paragraph (2) inserts new section 225W into ITTOIA 2005.

10. Subsection (1) of new section 225W provides that the section applies if:

    (a) a person carrying on a ring fence trade has defaulted on a liability to pay decommissioning expenditure,;

    (b) another person carrying on a ring fence trade pays an amount ('the relevant contribution') towards meeting that expenditure; and,

    (c) the relevant contribution is less than the sum of the amounts within subsection (2).

11. Subsection (2) of new section 225W provides that the amounts within this subsection are:

    (a) any payments made by the guarantor under an abandonment guarantee;

    (b) any reimbursement expenditure; and,

    (c) any tax relief given to the contributing person in respect of the relevant contribution.

12. Subsection (3) of new section 225W defines 'reimbursement expenditure'.

13. Subsection (4) of new section 225W provides that the difference between the sum of the amounts within subsection (2) and the relevant contribution is to be treated as a receipt of the contributing person's ring fence trade for the relevant tax year.

14. Subsection (5) of new section 225W defines 'the relevant tax year'.

15. Subsection (6) of new section 225W provides that in this section 'abandonment programme', 'decommissioning expenditure' and 'relevant agreement' are as defined by other legislation.

16. Paragraph 3 provides that the amendments made by the Schedule have effect in relation to expenditure incurred on or after Royal Assent.

BACKGROUND

17. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

18. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

1 Corporation tax: deferral of payment of exit charge

(1) Schedule 1 contains provision for, and in connection with, deferring the payment by a company of certain tax in circumstances where income, profits or gains arise by virtue of section 185 or 187(4) of TCGA 1992 or section 333, 609, 859 or 862 of CTA 2009.

(2) The amendments made by Schedule 1 are treated as having come into force on 11 December 2012 in relation to an accounting period if the relevant day, in relation to that period, falls on or after 11 December 2012.

(3) In subsection (2) "the relevant day", in relation to an accounting period, means the day following the expiry of the 9 month period beginning on the day after the end of the accounting period.

(4) But if the relevant day falls between 11 December 2012 and 31 March 2013 (including those dates), section 59FA(3) of TMA 1970 (inserted by Schedule 1) has effect as if for the words from "before the expiry of" to the end, there were substituted "on or before 31 March 2013".

SCHEDULE 1

Section 1

CORPORATION TAX: DEFERRAL OF PAYMENT OF EXIT CHARGE

1 TMA 1970 is amended as set out in paragraphs 1 to 5.

2 After section 59F insert—

"Exit charge payment plans

59FA Exit charge payment plans

(1) This section and sections 59FB to 59FM apply where an eligible company—
  (a) ceases to be resident in the United Kingdom,
  (b) on ceasing to be so resident, becomes resident in another EEA state, and
  (c) is liable to pay qualifying tax in respect of the migration accounting period.

(2) The company may defer payment of an amount of that tax if it enters into an exit charge payment plan in respect of that amount in accordance with section 59FD.

(3) The company may enter into an exit charge payment plan in respect of an amount of qualifying tax only if it does so before the expiry of the period of 9 months beginning on the day after the end of the migration accounting period.

(4) The company may enter into an exit charge payment plan only if conditions A and B are met.

(5) Condition A is that on ceasing to be resident in the United Kingdom, the company carries on a business in an EEA state.

(6) Condition B is that on becoming resident in the other EEA state, the company is not treated as resident in a territory outside the European Economic Area for the purposes of any double taxation arrangements.

(7) In this section—
  "double taxation arrangements" means arrangements which are made by two or more territories with a view to affording relief from double taxation and which have effect on the migration date;
  "eligible company" means a company that has a right to freedom of establishment protected by article 49 of the Treaty on the Functioning of the European Union.

(8) In this section and sections 59FB to 59FK—
  (a) references to the migration date are to the date on which the company ceases to be resident in the United Kingdom, and

(b) references to the migration accounting period are to the accounting period that includes the migration date.

59FB Qualifying tax

(1) The company is liable to pay qualifying tax in respect of the migration accounting period if CT1 is greater than CT2 where—

CT1 is the corporation tax which the company is liable to pay for the accounting period, and

CT2 is the corporation tax which the company would be liable to pay for the accounting period if any income, profits, gains, losses or debits arising only by virtue of the exit charge provisions were ignored (which will be zero if the company would not be liable to pay any corporation tax for the period).

(2) The amount of the qualifying tax which the company is liable to pay is the difference between CT1 and CT2.

(3) "Exit charge provisions" means—

(a) section 185 of the 1992 Act,

(b) section 187(4) of that Act, where that subsection applies by virtue of section 187(4)(c),

(c) section 333 of CTA 2009,

(d) section 609 of that Act,

(e) section 859 of that Act, where that section applies by virtue of section 859(2)(a), and

(f) section 862 of that Act, where that section applies by virtue of section 862(1)(c).

(4) References in section 59FA and sections 59FC to 59FF to qualifying tax or to an amount of qualifying tax are to be read in accordance with this section.

59FC Interpretation: exit charge assets and liabilities

(1) This section applies for the purposes of sections 59FG to 59FM.

(2) "Exit charge assets" and "exit charge liabilities" means assets or liabilities (as the case may be) in respect of which income, profits or gains arise in the migration accounting period by virtue of the exit charge provisions, and in particular—

(a) "TCGA exit charge assets" means those exit charge assets, other than pre-FA 2002 intangible fixed assets, in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(a) or (b),

(b) "loan relationship exit charge assets or liabilities" means those exit charge assets or liabilities in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(c),

(c) "derivative contract exit charge assets or liabilities" means those exit charge assets or liabilities in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(d), and

(d) "intangible exit charge assets" means—

(i) those exit charge assets in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(e) or (f), and

(ii) those exit charge assets which are pre-FA 2002 intangible fixed assets in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(a) or (b).

(3) In subsection (2)—

"exit charge provisions" has the meaning given in section 59FB(3);

"pre-FA 2002 intangible fixed asset" means an intangible fixed asset which is a pre-FA 2002 asset (as defined in section 881 of CTA 2009).

59FD Entering into an exit charge payment plan

(1) The company enters into an exit charge payment plan in respect of an amount of qualifying tax in accordance with this section if—

(a) the company agrees to pay, and an officer of Revenue and Customs agrees to accept payment of, the amount in accordance with the standard instalment method (see section 59FI) or the realisation method (see sections 59FJ to 59FM),

(b) the company agrees to pay interest on the amount in accordance with section 59FE(3), and

(c) the plan meets the requirements set out in sections 59FF to 59FH as to the matters that must be specified in it.

(2) The exit charge payment plan may contain appropriate provision regarding security for Her Majesty's Revenue and Customs in respect of the deferred payment of the tax in the circumstances mentioned in subsection (3).

(3) Those circumstances are where an officer of Her Majesty's Revenue and Customs considers that agreeing to accept payment of an amount of qualifying tax in accordance with the plan would present a serious risk as to collection of the tax in the absence of provision regarding security in respect of that tax.

(4) An exit charge payment plan is void if any information furnished by the company in connection with the plan does not fully and accurately disclose all facts and considerations material to the decision of the officer of Revenue and Customs to accept payment of qualifying tax in accordance with the plan.

59FE Effect of exit charge payment plan

(1) This section applies where an exit charge payment plan is entered into by a company in respect of an amount of qualifying tax in accordance with section 59FD.

(2) As regards when the amount is payable—

(a) the plan does not prevent the amount becoming due and payable under section 59D or 59E, but

(b) the Commissioners for Her Majesty's Revenue and Customs will not seek payment of the amount otherwise than in accordance with the plan.

(3) As regards interest—
  (a) the amount carries interest in accordance with Part 9 as if the plan had not been entered into, and
  (b) each time a payment is made under the plan, it is to be paid together with any interest payable on it.

(4) As regards penalties, the company will only be liable to penalties for late payment of the amount if it fails to make payments in accordance with the plan (see item 6ZA of the Table at the end of paragraph 1 of Schedule 56 to the Finance Act 2009).

(5) Qualifying tax payable in accordance with an exit charge payment plan which is for the time being unpaid may be paid at any time together with interest payable on it to the date of payment.

59FF Content of exit charge payment plan: general

(1) An exit charge payment plan entered into by a company must specify—
  (a) the date on which the company ceased to be resident in the United Kingdom,
  (b) the EEA state in which the company has become resident,
  (c) the amount of qualifying tax which, in the company's opinion, is payable by it in respect of the migration accounting period,
  (d) the amount of that qualifying tax which the company wishes to defer paying ("the deferred tax"), and
  (e) whether the deferred tax is to be paid in accordance with—
    (i) the standard instalment method (see section 59FI), or
    (ii) the realisation method (see sections 59FJ to 59FM).

(2) But an exit charge payment plan may specify that the deferred tax is to be paid in accordance with the standard instalment method only if the company ceasing to be resident in the United Kingdom is not part of arrangements the main purpose of which, or one of the main purposes of which, is to defer the payment of any qualifying tax payable by it.

(3) Sections 59FG and 59FH apply if the exit charge payment plan specifies that the deferred tax is to be paid in accordance with the realisation method.

59FG Content: realisation method

(1) If the exit charge payment plan specifies that the deferred tax is to be paid in accordance with the realisation method, the plan must also specify—
  (a) the company's exit charge assets or liabilities (see section 59FC(2)),
  (b) the amount of the deferred tax which is attributable to each exit charge asset or liability, calculated in accordance with subsection (2), and
  (c) any additional information required by section 59FH in relation to the exit charge assets or liabilities.

(2) The tax attributable to each exit charge asset or liability is—

$$\frac{A}{B} \times D$$

where—

(a) A is the income, profits or gains arising in respect of the asset or liability in the migration accounting period by virtue of the relevant exit charge provision,

(b) B is the total income, profits or gains arising in respect of all the exit charge assets and liabilities in the migration accounting period by virtue of the exit charge provisions, and

(c) D is the deferred tax.

(3) The plan is to include requirements as to the ongoing provision of information by the company to Her Majesty's Revenue and Customs in relation to each exit charge asset or liability.

59FH Content: additional information relating to assets and liabilities

(1) This section sets out the circumstances in which additional information (as referred to in section 59FG(1)(c)) must be specified in an exit charge payment plan in relation to exit charge assets and liabilities.

(2) Subsection (3) applies in the case of a loan relationship exit charge asset or liability if the remaining term of the loan relationship in question is less than 10 years at the time when the plan is entered into.

(3) The plan must specify, in relation to the asset or liability, how many years of the term of the loan relationship remain (rounded up to the nearest whole year).

(4) Subsection (5) applies in the case of a derivative contract exit charge asset or liability if the remaining term of the derivative contract in question is less than 10 years at the time when the plan is entered into.

(5) The plan must specify, in relation to the asset or liability, how many years of the term of the derivative contract remain (rounded up to the nearest whole year).

(6) Subsection (7) applies in the case of an intangible exit charge asset if the remaining useful life of the asset for accountancy purposes is less than 10 years at the time when the plan is entered into.

(7) The plan must specify, in relation to the asset, how many years of the useful life of the asset remain (rounded up to the nearest whole year).

59FI Standard instalment method

(1) This section applies if an exit charge payment plan provides for deferred tax to be paid in accordance with the standard instalment method.

(2) The deferred tax is payable in 6 instalments of equal amounts as follows—

(a) the first instalment is due on the day following the end of the period of 9 months beginning on the day after the end of the migration accounting period, and

(b) the other 5 instalments are due on the first 5 anniversaries of that day.

(3) But if a relevant event occurs, the balance outstanding of the deferred tax is payable on the date on which the next instalment would otherwise have been due under the plan.

(4) A "relevant event" means—

(a) the company becoming insolvent or entering into administration,

(b) the appointment of a liquidator,

(c) any event under the law of an EEA state outside the United Kingdom corresponding to an event specified in paragraph (a) or (b), or

(d) the company ceasing to be resident in an EEA state.

59FJ Realisation method: TCGA exit charge assets

(1) This section applies if—

(a) an exit charge payment plan provides for deferred tax to be paid in accordance with the realisation method, and

(b) some or all of the deferred tax is attributable to TCGA exit charge assets.

(2) The amount of deferred tax attributable to each such asset under section 59FG(2) is payable in relation to whichever is the first to occur of the following events—

(a) the disposal of that asset at any time after the company ceases to be resident in the United Kingdom,

(b) the tenth anniversary of the date on which the company ceased to be resident there, or

(c) a relevant event (as defined in section 59FI(4)).

(3) The date on which the amount is payable is—

(a) in a case falling within subsection (2)(a) or (b), the date of the event referred to, and

(b) in a case falling within subsection (2)(c), the relevant date or the next anniversary of that date.

(4) In subsection (3)(b), "relevant date" means the day following the expiry of the period of 9 months beginning on the day after the end of the migration accounting period.

(5) Section 21(2) of the 1992 Act (part disposals of assets) applies for the purposes of subsection (2)(a) as it applies for the purposes of that Act.

(6) Where part of an asset is disposed of at any time after the company ceases to be resident in the United Kingdom, the amount of deferred tax attributable to the asset under section 59FG(2) is to be apportioned on a just and reasonable basis for the purpose of

applying this section to the part of the asset disposed of and the part which remains undisposed of.

59FK Realisation method: other exit charge assets and liabilities: instalments

(1) This section applies if—
   (a) an exit charge payment plan provides for deferred tax to be paid in accordance with the realisation method, and
   (b) some or all of the deferred tax is attributable to—
      (i) loan relationship exit charge assets or liabilities,
      (ii) derivative contract exit charge assets or liabilities, or
      (iii) intangible exit charge assets.

(2) If a number of years ("U") is specified in the plan in relation to any such asset or liability by virtue of section 59FH(3), (5) or (7), the amount of deferred tax attributable to the asset or liability under section 59FG(2) is payable in U instalments of equal amounts.

(3) The instalments under subsection (2) are due as follows—
   (a) the first instalment is due on the day following the end of the period of 9 months beginning on the day after the end of the migration accounting period, and
   (b) the other V instalments are due on the first V anniversaries of that day.

(4) In subsection (3) "V" means U minus 1.

(5) If no number of years is specified in the plan in relation to any such asset or liability by virtue of section 59FH(3), (5) or (7), the amount of deferred tax attributable to the asset or liability under section 59FG(2) is payable in 10 instalments of equal amounts.

(6) The instalments under subsection (5) are due as follows—
   (a) the first instalment is due on the day following the end of the period of 9 months beginning on the day after the end of the migration accounting period, and
   (b) the other 9 instalments are due on the first 9 anniversaries of that day.

(7) But see sections 59FL and 59FM for circumstances in which all or part of the balance outstanding of the amount of deferred tax attributable to each asset or liability under section 59FG(2) ("the outstanding balance in respect of the asset or liability") becomes payable.

59FL Section 59FK: outstanding balance becoming payable in full

(1) This section applies where the amount of deferred tax attributable to an asset or liability under section 59FG(2) is payable in instalments in accordance with section 59FK(3) or (6).

(2) All of the outstanding balance in respect of the asset or liability (as defined in section 59FK(7)) is payable in accordance with subsection (3) if—
   (a) a trigger event occurs in relation to the asset or liability (see subsection (4)), or
   (b) a relevant event occurs (as defined in section 59FI(4)),

before the last instalment would be payable in accordance with section 59FK(3) or (6).

(3) The outstanding balance is payable—

(a) in a case falling within subsection (2)(a), on the date of the trigger event, and

(b) in a case falling within subsection (2)(b), on the date on which the next instalment would otherwise have been due under the plan.

(4) For the purposes of this section, a trigger event occurs in relation to an asset or liability if—

(a) in the case of a loan relationship exit charge asset or liability, the company ceases to be party to the loan relationship in question,

(b) in the case of a derivative contract exit charge asset or liability, the company ceases to be party to the derivative contract in question, and

(c) in the case of an intangible fixed asset, the asset is disposed of.

59FM Section 59FK: outstanding balance becoming payable in part

(1) This section applies where the amount of deferred tax attributable to an asset or liability under section 59FG(2) is payable in instalments in accordance with section 59FK(3) or (6).

(2) Part of the outstanding balance in respect of the asset or liability (as defined in section 59FK(7)) is payable on the occurrence of a partial trigger event in relation to the asset or liability (see subsection (4)) before the last instalment would be payable in accordance with section 59FK(3) or (6).

(3) The part of the balance payable under subsection (2) is so much of the outstanding balance in respect of the asset or liability as is attributable to the transaction mentioned in subsection (4)(a), (b) or (c) as the case may be.

(4) For the purposes of subsection (2), a partial trigger event occurs in relation to an asset or liability if—

(a) in the case of a loan relationship exit charge asset or liability—

(i) there is a disposal of rights or liabilities under the loan relationship in question which amounts to a related transaction (as defined in section 304 of CTA 2009), but

(ii) the transaction does not result in the company ceasing to be a party to the relationship,

(b) in the case of a derivative contract exit charge asset or liability—

(i) there is a disposal of rights or liabilities under the derivative contract in question which amounts to a related transaction (as defined in section 596 of CTA 2009), but

(ii) the transaction does not result in the company ceasing to be a party to the contract, and

(c) in the case of an intangible exit charge asset, there is a transaction which—

(i) results in a reduction in the accounting value of the asset, but

(ii) does not result in the asset ceasing to be recognised in the company's balance sheet.

(5) Where part of the outstanding balance in respect of an asset or liability is paid in accordance with subsections (2) and (3), so much of the remaining instalments due under section 59FK(3) or (6) in respect of the asset or liability as are attributable to the remaining asset or liability continue to be payable (subject to section 59FL and this section).

(6) In subsection (5), the "remaining asset or liability" means—

(a) in the case of a loan relationship exit charge asset or liability, the loan relationship as it exists following the related transaction,

(b) in the case of a derivative contract exit charge asset or liability, the derivative contract as it exists following the related transaction, and

(c) in the case of an intangible exit charge asset, the asset as it continues to be recognised on the balance sheet following the transaction mentioned in subsection (4)(c).

(7) For the purposes of subsections (3) and (5)—

(a) the outstanding balance in respect of the asset or liability, and

(b) the remaining instalments due under section 59FK(3) or (6) in respect of the asset or liability,

are to be apportioned on a just and reasonable basis between the transaction mentioned in subsection (4)(a), (b), or (c) (as the case may be) and the remaining asset or liability.

(8) In relation to an intangible exit charge asset that has no balance sheet value (or no longer has a balance sheet value), subsection (4)(c) applies as if, immediately before the transaction, it did have a balance sheet value."

3 Immediately before section 59G insert—

"Managed payment plans".

4 (1) Section 109B (provision for securing payment by company of outstanding tax) is amended as follows.

(2) In subsection (1), at the end insert ", subject to subsection (5A)."

(3) In subsection (4)(b), at the end insert "(which may include a proposal to enter into an exit charge payment plan in accordance with section 59FD)."

(4) After subsection (5) insert—

"(5A) Condition D does not apply to the extent that payment of the tax is to be secured by the company entering into an exit charge payment plan in accordance with section 59FD."

5 (1) Section 109E (liability of other persons for unpaid tax) is amended as follows.

(2) After subsection (1) insert—

"(1A) The reference in subsection (1)(b) to the time when tax becomes payable is a reference to—

(a) in a case where an exit charge payment plan has been entered into in accordance with section 59FD in respect of the tax, the time when the tax becomes payable under the plan, and

(b) in any other case, the time when the tax becomes payable in accordance with section 59D or 59E."

(3) In subsection (2), for "the time when the amount of the tax is finally determined" substitute "the relevant time".

(4) After subsection (2) insert—

"(2A) In subsection (2) the "relevant time" means—

(a) in a case where an exit charge payment plan has been entered into in accordance with section 59FD in respect of the tax, the later of—

(i) the day following the expiry of the 12 month period beginning on the day after the end of the migration accounting period (as defined in section 59FA(8)), and

(ii) the date on which the tax is payable under the plan, and

(b) in any other case, the time when the amount of the tax is finally determined."

6 In Schedule 56 to FA 2009 (penalty for failure to make payments on time), in the Table at the end of paragraph 1, after entry 6 insert—

"6ZA	Corporation tax	Amount payable under an exit charge payment plan entered into in accordance with section 59FD of TMA 1970	The later of— (a) the day following the expiry of the 12 month period beginning on the day after the end of the migration accounting period (as defined in section 59FA(8) of TMA 1970), and (b) the date on which the amount is payable under the plan."

EXPLANATORY NOTE

CORPORATION TAX: DEFERRAL OF PAYMENT OF EXIT CHARGE

SUMMARY

1. This clause and Schedule introduce two options for companies to defer payment for UK corporation tax where it arises under provisions taxing unrealised profits or gains when the company ceases to be resident in the United Kingdom. Exit charge payment plans will be available to companies incorporated in the EU or European Economic Area (EEA), including UK companies, which transfer their business and their place of residence for tax purposes to another Member State. Deferred tax payments will be subject to interest under the usual rules. The changes ensure that UK rules taxing such profits and gains are compatible with EU law.

DETAILS OF THE CLAUSE

2. This clause outlines the scope of the changes introduced by the Schedule, and the date from which applications for deferral of tax payments can be made.

3. A company may apply for deferred payment of that part of its corporation tax liability payable in respect of specified unrealised chargeable gains or income profits under an exit charge payment plan. An exit charge is the corporation tax on profits or gains which the company is deemed to have realised when it ceases to be UK resident. Subsection (1) of the clause specifies that the relevant tax provisions are:

- Sections 185 and 187(4) of the Taxation of Chargeable Gains Act 1992 (‘TCGA’), which deem a company to have disposed of all its assets at the time it ceases to be UK resident, and taxes any net chargeable gain.
- Sections 333 and 609 of the Corporation Tax Act 2009 (‘CTA 09’) which deem a company to have disposed of all of its loan relationships and derivative contracts at their fair value immediately before ceasing to be UK resident.
- Section 859 and 862 of CTA 09 which deem a company to have realised its intangible fixed assets for market value at the time that it ceases to be UK resident, and taxes any resulting profit.

4. Subsections (2) and (3) set out the commencement rule. Companies may apply to defer tax payments in respect of an amount of an exit charge arising for accounting periods ended on or after 10 March 2012. For a company that is not in the quarterly instalment payment scheme for large companies, its corporation tax bill for an accounting period ended on that date would be due and payable on or after 11 December 2012. Applications to enter into an exit charge payment plan must be made within nine months and one day of the end of an accounting period.

5. Subsection (4) provides a transitional rule for periods where the relevant day falls between 11 December 2012 and 31 March 2013, in which case an application may be made at any time until 31 March 2013.

DETAILS OF THE SCHEDULE

6. Paragraphs 1 to 3 of the Schedule provide for amendments to be made to Part VA of the Taxes Management Act 1970 (TMA), which sets out the rules for payment of tax.

7. Paragraph 2 inserts the new provisions for exit charge payment plans.

8. New section 59FA TMA specifies the conditions under which a company may apply for an exit charge payment plan. An exit charge payment plan is available for companies that are formed in accordance with the laws of an EU or EEA Member State and who transfer their tax residence from the UK to another EU or EEA State, exercising a right to Freedom of Establishment that is protected by Article 49 of the Treaty on the Functioning of the European Union, or equivalent rights in the EEA.

9. New section 59FB specifies the amount of tax on which the company may defer payment by entering into an exit charge payment plan. This is the difference between the amount of corporation tax that a company is liable to pay for the accounting period, and the amount to which it would be liable for the same period in the absence of the various exit charge provisions in the Taxation of Chargeable Gains Act 1992 (TCGA) and the Corporation Tax Act 2009 (CTA 2009). In respect of income arising on loan relationships and derivative products, this is limited to tax on the amount of profits which would not otherwise have been brought into account if the company had drawn up accounts to the date on which it migrates.

10. New section 59FC defines various terms used in new sections 59FG to 59FM.

11. New sections 59FD and 59FE explain that an exit charge payment plan is an agreement between a company and an officer of HM Revenue & Customs (HMRC) which will override the usual collection and penalty consequences where a company does not pay the full amount of its corporation tax liability at the normal time. Under the agreement, the company agrees to pay the deferred tax liabilities in accordance with the plan, along with interest from the normal due date for payment of the tax to the date it is actually paid. An exit charge payment plan may include provision for HMRC to take security for the deferred payments under the plan where an HMRC officer considers that there would otherwise be a serious risk to the collection of tax. This security would generally take the form of a bank guarantee.

12. New section 59FF sets out the details that the company will need to supply when making an application for an exit charge payment plan. In addition to giving details of when, and to where the company is migrating, it should quantify to the best of its ability, the amount of tax that qualifies for deferral, how much of that qualifying tax it wishes to include in the exit charge payment plan, and the method it will use to determine when the tax is to be paid under the plan. There are two alternative methods that the company may use to determine the period over which tax payments can be deferred. These are the standard instalment method and the realisation method. A company must choose which method to apply for, and apply the same method in respect of all assets and liabilities that give rise to exit charges. It may not adopt the instalment method for certain assets and the realisation method for others. In order to prevent abuse of the deferral arrangements, the company may not use the standard instalment method where the obtaining a deferral of tax payments is the main purpose, or one of the main purposes of the change of residence of the company.

13. New sections 59FG and 59FH set out additional details that the company needs to provide on entering into an exit charge payment plan where it intends to adopt the realisation method.

14. New section 57FG specifies that the company must identify the assets (and, where appropriate, the liabilities) in respect of which income, profits or gains arise under the exit charge provisions, the amount of each item of such income, profits or gains arising under the various exit charges, and the amount of deferred tax that is to be attributed to each of the exit charge assets and liabilities. The attribution of deferred tax is to be made in proportion to the income, profits or gains arising on each of the assets or liabilities. No amount is to be apportioned to an asset or liability that has given rise to a loss.

15. New section 59FH then specifies what further information is required to determine the period over which tax will be payable under the plan

in respect of intangible fixed assets, loan relationships or derivative contracts. Intangible fixed assets for these purposes are defined in new section 59FC(2)(d) and (3) to include assets that are pre-2002 assets for the purposes of Part 8 of CTA 2009. The company must include in the exit charge payment plan details of the remaining term of a financial instrument or the remaining useful life of intangible fixed assets as of the date of migration.

16. New section 59FI sets out how tax may be deferred under the standard instalment method. Any qualifying tax can be paid in six equal annual instalments which commence nine months and one day after the end of the last accounting period in which the company is UK resident for tax purposes. Where a company adopts this method, it is not required to provide HMRC with annual reports on the realisation of its exit charge assets and liabilities. The deferral will run for the full six years unless either the company decides to pay the balance of any unpaid tax and interest, or one of the events specified in new section 59FF(4) occurs. Under any of these circumstances the balance of any deferred tax is payable no later than the next instalment date.

17. New sections 59FJ to 59FM set out how tax may be deferred under the realisation method in respect of different classes of asset or liability. Where a company adopts the realisation method, it will be required to provide HMRC with annual reports detailing the realisation of its exit charge assets and liabilities. Deferral periods will vary depending upon the nature of the asset or liability, and its treatment for tax and accounting purposes. The general scheme is that tax will either be paid in instalments on the basis of how the value of the asset or liability is expected to be realised, either through use or through subsequent disposal. This is specified as being over the useful economic life of an intangible fixed asset, the term of a financial instrument or deferred until a disposal of the asset in any other case. For all assets and liabilities, the maximum period over which payments may be deferred is the shorter of ten years, or until the company ceases to hold the asset or liability.

18. New section 59FJ provides for the deferral of tax attributed to any asset other than an intangible fixed asset, a loan relationship or a derivative contract until disposal, subject to an upper limit of ten years. A disposal for these purposes includes all the matters that would fall to be treated as a disposal by the company for the purposes of chargeable gains, including any occasions when an asset is deemed to have been disposed of, in whole or in part. Where there is a part disposal of the asset, the tax attributable to the part disposed of is payable on the next anniversary of the first potential payment date under the exit charge payment plan. Attribution of the tax is to be made on a just and reasonable basis.

19. New section 59FK sets out the deferral periods applicable to loan relationships, derivative contracts and intangible fixed assets. The general scheme provides for the tax to be paid in equal annual instalments over the expected term or useful economic life of the asset or liability, up to a maximum period of ten annual instalments.

20. New sections 59FL and 59FM modify the general scheme and determine when the balance of tax outstanding in respect of an exit charge asset or liability is to be payable in full, or in part, on the next instalment date following the occurrence of particular events.

21. New section 59FL requires the outstanding balance to be paid in full where either the company no longer holds the exit charge asset or liability, or one of the events listed in new section 59FI(4) occurs.

22. New section 59FM provides equivalent rules to the part disposal rules for chargeable gains assets dealing with instances where an exit charge asset or liability is realised or disposed of in part. A just and reasonable proportion of the tax is attributed to the part realised, which is to be paid on the next instalment date, along with a proportionate part of the tax relating to the balance of the asset or liability. Tax that remains unpaid in respect of the asset continues to be treated in accordance with the exit charge payment plan.

23. Paragraph 4 of the Schedule adds references to exit charge payment plans into section 109B TMA, which is concerned with the obligations imposed on a company intending to cease to be resident in the UK, and which it must comply with prior to migration.

24. Paragraph 5 amends section 109E TMA, which is concerned with the powers to recover tax from an individual involved in the management of a company that has ceased to be resident in the UK and which has failed to pay tax that is owed. The amendments ensure that the provisions are adapted to take account of the revised payable dates for tax that is subject to an exit charge payment plan.

25. Paragraph 6 inserts a reference to corporation tax payable in accordance with an exit charge payment plan into Schedule 56 of Finance Act 2009, which sets out when a taxpayer may incur a penalty for late payment of tax. Although these rules are provided in the statute, they will only apply for corporation tax purposes after such time as an Order to that effect has been made.

BACKGROUND

26. The changes introduced in this clause and Schedule implement recent decisions of the Court of Justice of the European Union in cases where the compatibility of Member State exit charges with Article 49 of the Treaty on the Functioning of the European Union was considered. Article 49 is concerned with ensuring the Freedom of Establishment of EU nationals and is extended by Article 54 to companies or firms formed in accordance with the law of a Member State having their registered office, central administration or principal place of business within the EU or EEA. Consequently, these changes apply only to companies that are nationals of the EU or EEA and who are seeking to exercise their rights of establishment within the EU/EEA.

27. This clause and Schedule were published in draft on 11 December 2012, and its provisions apply to allow applications for exit charge payment plans from that date. A consultation document, including details of the legislation was published on the same date. Consultation on the draft legislation is limited to consideration of matters such as the administrative impacts of the reporting requirements imposed by certain options available under the legislation.

28. If you have any questions about this change, or comments on the legislation, please contact Philip Donlan on 020 7147 2633 (email: philip.donlan@hmrc.gsi.gov.uk).

1 Tier two capital of banks

(1) CTA 2010 is amended as follows.

(2) In section 162 (meaning of "normal commercial loan"), after subsection (1) insert—

"(1A) For those purposes, "normal commercial loan" also includes any loan which is not a normal commercial loan by virtue of subsection (1) but is such a loan by virtue of section 164A(1) (loan forming part of bank's tier two capital)."

(3) After section 164 insert—

"164A Loan forming part of bank's tier two capital

(1) A loan is a normal commercial loan by virtue of this subsection if it was issued by a bank or a parent undertaking of a bank and forms part of the bank's tier two capital resources.

(2) Subsection (1) does not apply in the case of any loan if there are arrangements the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person as a result of the application of that subsection in respect of that loan.

(3) For the purposes of this section—

(a) "bank" has the meaning given by section 1120,

(b) "tax advantage" has the meaning given by section 1139,

(c) "parent undertaking" is to be read in accordance with section 420 of FISMA 2000, and

(d) the reference to the bank's tier two capital resources is to be read in accordance with the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time)."

(4) In section 1029(1) (overview), after paragraph (c) insert—

"(ca) section 1032A (payment in respect of bank's tier two capital),".

(5) After section 1032 insert—

"Tier two capital

1032A Payment in respect of bank's tier two capital

(1) A payment made in respect of tier two securities is not a distribution for the purposes of the Corporation Tax Acts.

(2) Subsection (1) does not apply in the case of any tier two securities if there are arrangements the main purpose, or one of the main purposes,

of which is to obtain a tax advantage for any person as a result of the application of that subsection in respect of those securities.

(3) For the purposes of this section—

(a) "tier two securities" means securities issued by a bank or a parent undertaking of a bank that form part of the bank's tier two capital resources,

(b) "bank" has the meaning given by section 1120,

(c) "tax advantage" has the meaning given by section 1139,

(d) "parent undertaking" is to be read in accordance with section 420 of FISMA 2000, and

(e) the reference to the bank's tier two capital resources is to be read in accordance with the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time)."

(6) The amendments made by this section are treated as having come into force on 26 October 2012.

EXPLANATORY NOTE

TIER TWO CAPITAL OF BANKS

SUMMARY

1. This clause prevents the payments on banks' Tier Two regulatory capital instruments from being treated as distributions for tax purposes and ensures that the issue of Tier Two instruments do not break the banks corporate group for tax purposes. Both these changes are subject to an anti-avoidance rule to prevent abuse.

DETAILS OF THE CLAUSE

2. New subsections (1) and (2) insert new section 162(1A) into the Corporation Tax Act 2010 (CTA 2010). New section 162(1A) ensures that loans forming part of a banks' Tier Two capital are treated as 'normal commercial loans' for the purposes of the group relief rules. This change prevents a bank which issues Tier Two instruments from breaking its corporate group for tax purposes.

3. Subsection (3) inserts new section 164A into CTA 2010.

4. New section 164A(1) ensures that where a bank or a parent undertaking of a bank issues instruments which form part of the banks Tier Two capital resources those instruments are treated as though they are normal commercial loans.

5. New section 164A(2) prevents new section 164A(1) from applying where there is an arrangement with a main purpose (or one of the main purposes) of obtaining a tax advantage by ensuring that an instrument issued by a bank or parent undertaking of a bank falls within new section 164A(1).

6. New section 164A(3) defines 'bank', 'tax advantage', 'parent undertaking' and 'Tier Two capital' for the purposes of new section 164A.

7. Sections (4) inserts new subsection (ca) into section 1029(1) CTA 2010. New subsection 1029(1)(ca) ensures that a payment made in respect of Tier Two capital is added to the list of items which are not distributions.

8. New subsection (5) inserts new section 1032A into CTA 2010.

9. New subsection 1032A(1) ensures that a payment made in respect of Tier Two securities is a not a distribution for tax purposes.

10. New subsection 1032A(2) prevents new subsection 1032A(1) from applying where there is an arrangement with a main purpose (or one of the main purposes) of obtaining a tax advantage by ensuring that a Tier Two security instrument falls within new section 1032A(1).

11. New subsection 1032A9(3) defines 'Tier Two securities', 'bank', 'tax advantage', 'parent undertaking' and 'Tier Two' for the purposes of new subsection 1032A.

12. New subsection (6) provides that these changes come into force on 26 October 2012.

BACKGROUND NOTE

13. Once the Capital Requirements Directive IV (CRD IV) is in force, bank's Tier Two capital must have more loss absorbing features than previously. Tier two capital will also have to count as Tier Two throughout the life of the instrument (including after CRD IV is in force). Both these requirements have caused tax issues in relation to the distributions rules and the group relief rules.

14. If you have any questions about this change, or comments on the legislation, please contact Fiona Hay on 020 7147 2543 (email: Fiona.hay@hmrc.gsi.gov.uk).

1 Financing costs and income: group treasury companies

(1) In section 316 of TIOPA 2010 (group treasury companies) for subsections (2) to (8) substitute—

“(2) A company is a group treasury company in the relevant period if—

(a) it is a member of the worldwide group,

(b) it undertakes treasury activities for the worldwide group in the relevant period (whether or not it also undertakes other activities),

(c) at least 90% of the relevant income of the company for the relevant period is group treasury revenue, and

(d) it makes an election in respect of the relevant period for the purposes of this section.

(3) Subsection (4) applies if throughout the relevant period—

(a) all or substantially all of the activities undertaken by a group treasury company consist of treasury activities undertaken by it for the worldwide group, and

(b) all or substantially all of the assets and liabilities of the company relate to such activities.

(4) Where this subsection applies, the relevant amount, and all other amounts that are relevant amounts in respect of the group treasury company and the relevant period, are treated as not being a financing expense amount or a financing income amount of the group treasury company.

(5) If subsection (4) does not apply, those relevant amounts are treated as not being a financing expense amount or a financing income amount of the group treasury company only to the extent that they relate to treasury activities undertaken by the company for the worldwide group.

(6) For the purposes of subsection (5) the extent to which amounts relate to the matters mentioned is to be determined on a just and reasonable basis.

(7) An election under this section must be made within 3 years after the end of the relevant period.”

(2) The amendment made by this section has effect in relation to periods of account of the worldwide group beginning on or after 11 December 2012.

EXPLANATORY NOTE

FINANCING COSTS AND INCOME: GROUP TREASURY COMPANIES

SUMMARY

1. This clause amends the provisions in Part 7 of the Taxation (International and Other Provisions) Act 2010 (TIOPA) on the treatment of financing expenses and financing income (the debt cap). It makes changes to the conditions that companies have to satisfy in order to make an election under section 316 TIOPA 2010 and to how the election applies to financing expenses and financing income.

DETAILS OF THE CLAUSE

2. Subsection (1) substitutes new subsections (2) to (7) for subsections (2) to (8) of section 316 TIOPA 2010. New subsection (2) introduces a new criterion in addition to the three existing criteria for a company to be a group treasury company. The new criterion is that the company has made an election under section 316.

3. New subsection (3) provides that new subsection (4) applies to a company if all or substantially all of its activities are treasury activities and all or substantially all of its assets and liabilities relate to such treasury activities.

4. New subsection (4) provides that the relevant amount or relevant amounts of the company for the period of account of the worldwide group are not treated as financing expenses or financing income of the group treasury company. The effect of this is that the financing expenses and financing income of the group treasury company are not included in the group's debt cap computation.

5. If new subsection (4) does not apply, for example because the company cannot meet the provisions of new subsection (3) throughout the relevant period or the company's activities are not substantially all treasury activities then the election has effect as described in new subsection(5).

6. New subsection (5) provides that the relevant amounts are not treated as financing expenses or financing income only to the extent that the amounts relate to treasury activities undertaken by the company. Consequently if a relevant amount does not relate to the company's treasury activities then it cannot be included in the election.

7. New subsection (6) allows for the extent of the relevant amount included in the election under new subsection (5) to be determined on a just and reasonable basis. New subsection (7) continues the current provision that a group treasury company election must be made within three years of the end of the period of account of the worldwide group.

8. Subsection (2) provides that the amendments apply to periods of account of the worldwide group beginning on or after 11 December 2012.

BACKGROUND

9. Finance Act (FA) 2009 introduced a package of changes to the taxation of companies on their foreign profits. This package included a measure to restrict the interest and other finance expenses that can be deducted in computing the corporation tax payable by UK members of a worldwide group of companies. This is known as the debt cap.

10. The debt cap rules are now in Part 7 of TIOPA 2010. They broadly operate by requiring UK groups to compare their UK financing costs, as calculated under the rule, with the finance costs of their worldwide group. If the UK costs exceed the worldwide costs then the excess is disallowed and the UK companies do not get any relief for the excess.

11. Section 316 allows group treasury companies to make an election so that their financing expenses and financing income are excluded from the group's debt cap computation. This was originally intended to relieve the administrative burden on groups in complying with the debt cap by applying to treasury companies acting as a conduit for borrowing and lending by the group. Such companies would have a relatively large number of transactions on which a small amount would be made, sufficient to meet the treasury company's own finance costs.

12. It was possible for companies outside the original intention of the legislation to make a group treasury company election and so remove from the debt cap computation substantial amounts of financing expenses and financing income that would otherwise have been included. If the financing expenses and financing income were not included in the debt cap computation then they could not be subject to a debt cap disallowance or exemption. The changes made by this clause ensure that the original intention of the legislation is restored.

13. If you have any questions about this change, or comments on the legislation, please contact Fiona Hay on 020 7147 2543 (email: fiona.hay@hmrc.gsi.gov.uk).

1 Loss relief surrenderable by non-UK resident established in EEA state

(1) Section 107 of CTA 2010 (surrender of losses etc) is amended as follows.

(2) After subsection (1) insert—

"(1A) If the surrendering company is established in the EEA (within the meaning of section 134A), it may surrender a loss or other amount under this Chapter only so far as conditions A and B are met.

Subsection (6A) imposes restrictions on a surrender under this subsection."

(3) In subsection (2) for "The" substitute "In any other case, the".

(4) After subsection (6) insert—

"(6A) A loss or other amount may not be surrendered by virtue of subsection (1A) if and to the extent that it, or any amount brought into account in calculating it, corresponds to, or is represented in, amounts within subsection (6B).

(6B) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deducted from or otherwise allowed against non-UK profits of any person."

(5) In subsection (7), after "subsection (6)" insert "or (6B)".

(6) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2013.

(7) But for this purpose an accounting period beginning before, and ending on or after, 1 April 2013 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

(8) An apportionment for the purposes of subsection (7) must be made in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

EXPLANATORY NOTE

LOSS RELIEF SURRENDERABLE BY NON-UK RESIDENT ESTABLISHED IN EEA STATE

SUMMARY

1. This clause amends the restrictions on when companies resident in the European Economic Area (EEA) can surrender losses attributable to their UK permanent establishments as group relief from Corporation Tax in the UK. Currently, companies resident in the EEA are subject to the same rules as non-EEA resident companies. From 1 April 2013, a new restriction will apply for EEA resident companies based on whether their losses are relieved in another country in any period, rather than on whether they could potentially be relieved in another country.

DETAILS OF THE CLAUSE

2. Subsection (1) is introductory and confirms that section 107 Corporation Tax Act (CTA) 2010, which restricts the losses and other amounts that may be surrendered as group relief by a non-UK resident company, is amended as follows.

3. Subsection (2) provides that where the surrendering company is established in the European Economic Area (EEA) then (as before) it may surrender losses and other amounts that meet Conditions A and B, but they no longer need to meet Condition C. Instead these losses are subject to a new restriction, set out at subsection (4) of this clause.

4. The effect of subsection (3) is that for a non-UK resident company that is not established in the EEA, section 107 CTA remains unchanged.

5. Subsection (4) inserts a new restriction for a company established in the EEA. It may not surrender losses and other amounts that meet conditions A and B if and to the extent that they are deducted from or allowed against non-UK profits of any person.

6. Subsections (6) to (8) provide that this amendment applies to losses arising on or after 1 April 2013. Where an apportionment is needed to work out the losses that arise from this date, companies should use a time apportionment unless that produces an unjust or unreasonable result.

BACKGROUND

7. This clause derives from a recent decision of the Court of Justice of the European Union (CJEU) in the case of *Philips Electronics UK Ltd* (C-18/11).

8. If you have any questions about this change, or comments on the legislation, please contact Megan Shaw on 020 7147 0212 (email: megan.shaw@hmrc.gsi.gov.uk).

1 Arrangements for transfers of companies

(1) In section 156 of CTA 2010 (definition of "arrangements" for purposes of sections 154 to 155B, etc)—

(a) in subsection (2), in paragraph (b), after "include" insert "—

(i) ",

(b) at the end of that paragraph insert ", or

(ii) a condition or requirement imposed by, or agreed with, a Minister of the Crown, the Scottish Ministers, a Northern Ireland department or a statutory body.", and

(c) after that subsection insert—

"(2A) In subsection (2) "statutory body" means a body (other than a company) established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision, except that the Treasury may, by order, specify that a body is or is not to be a statutory body for this purpose."

(2) In sections 154(3) and 155(3) of that Act (arrangements for transfers), for "154A" substitute "155A".

(3) The amendments made by this section have effect in relation to accounting periods ending on or after 1 April 2013.

EXPLANATORY NOTE

ARRANGEMENT FOR TRANSFERS OF COMPANIES

SUMMARY

1. This clause makes a specific change to the types of arrangements that are exempt from the anti-avoidance rules affecting the group relief rules contained in Part 5 of the Corporation Tax Act 2010 (CTA 2010). The clause also corrects cross-reference errors in sections 154(3) and 155(3) of CTA 2010.

DETAILS OF THE CLAUSE

2. The clause amends section 156 of CTA 2010 which provides the definition of ‘arrangements’ for the purposes of the anti-avoidance rules in sections 154 and 155. These sections ensure, for example, that if there are arrangements providing a specific date on which a company can leave a group and come under the control of another that no group relief can flow.

3. Subsection (1)(b) inserts new sub-paragraph (ii) to section 156(2)(b). The paragraph extends the exclusion of what is not treated as arrangements to include conditions and requirements imposed by, or agreed with, Ministers or statutory bodies.

4. Subsection (1)(c) inserts new subsection (2A) which provides a definition of statutory body for the purposes of section 156(2).

5. Subsection (2) corrects the reference to section 154A in sections 154(3) and 155(3) to section 155A.

6. Subsection (3) provides that the changes made by the clause are for accounting periods ending on or after 1 April 2013.

BACKGROUND

7. Currently some statutory public bodies set down conditions or requirements for companies (who are members of wider groups) operating in specific sectors, which mean they are inadvertently caught by the anti-avoidance rules in sections 154 to 156 of CTA 2010 preventing the flow of group relief.

8. For accounting periods ending on or after 1 April 2013, any such conditions imposed by, or agreed with, a statutory public body will not be arrangements that prevent the flow of group relief.

9. If you have any questions about this change, or comments on the legislation, please contact Paula Jarnecki on 020 7147 2607 (email: paula.jarnecki@hmrc.gsi.gov.uk).

1 Controlled foreign companies etc

Schedule 1 makes provision in relation to CFCs etc.

SCHEDULES

SCHEDULE 1

Section 1

CONTROLLED FOREIGN COMPANIES

Relevant finance leases etc

1 Part 9A of TIOPA 2010 (controlled foreign companies) is amended as follows.

2 Chapter 5 (the CFC charge gateway: non-trading finance profits) is amended as follows.

3 In section 371ED (arrangements in lieu of dividends) in subsection (1) omit "(other than a relevant finance lease)".

4 (1) Section 371EE (leases to UK resident companies etc) is amended as follows.

(2) In subsection (2)(b)(i) for "which is the subject of the lease" substitute "("the relevant asset") which is the subject of the lease or making (directly or indirectly) an arrangement which would fall within subsection (3)".

(3) After subsection (2) insert—

"(3) An arrangement would fall within this subsection if—

(a) the arrangement would meet one or both of the following requirements—

(i) it would not be a relevant finance lease;

(ii) it would not involve the CFC, and

(b) under the arrangement the other company would (directly or indirectly) purchase rights to use the relevant asset."

5 Chapter 22 (supplementary provision) is amended as follows.

6 In section 371VA (definitions) for the definition of "relevant finance lease" substitute—

""relevant finance lease" is to be read in accordance with section 371VIA,".

7 (1) Section 371VG (finance profits) is amended as follows.

(2) In subsection (1) for paragraph (b) substitute—

"(b) which are included in the CFC's assumed total profits for the accounting period in question and which—

(i) arise from a relevant finance lease, but

(ii) are not trading profits."

(3) In subsection (4)(b) omit "an arrangement which would be".

8 (1) Section 371VH (interests in companies) is amended as follows.

(2) In subsection (9) omit the second paragraph.

(3) After subsection (10) insert—

"(10A) For the purposes of subsection (9), if for any relevant period accounts for a loan creditor are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined in relation to the loan creditor for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards."

9 After section 371VI insert—

"371VIA Relevant finance leases

(1) In this Part "relevant finance lease" means an arrangement falling within subsection (2) or (3).

(An arrangement which is a loan relationship of any company does not fall within either of those subsections.)

(2) An arrangement falls within this subsection if—

(a) it provides for an asset to be leased or otherwise made available by a person ("the lessor") to another person, and

(b) in accordance with generally accepted accounting practice, it falls (or would fall) to be treated in the accounts of the lessor, or of a person connected with the lessor, as a finance lease or a loan.

(3) A hire-purchase, conditional sale or other arrangement relating to an asset falls within this subsection if it does not fall within subsection (2) but is of a similar character to an arrangement which would fall within that subsection.

(4) If for any relevant period accounts for a person are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined for the purposes of this section in relation to that person for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.

(5) In this section "accounts", in relation to a company, includes accounts relating to two or more companies of which that company is one."

Limit on double taxation relief in cases involving qualifying loan relationships of CFCs

10 Part 2 of TIOPA 2010 (double taxation relief) is amended as follows.

11 Chapter 2 (double taxation relief by way of credit) is amended as follows.

12 In section 42 (limit on credit against corporation tax) after subsection (4) insert—

"(5) See also section 49A which contains an additional limit on credit allowed in certain cases involving CFCs."

13 After section 49 insert—

"49A Limit on credit in cases involving qualifying loan relationships of CFCs

(1) This section applies if—

(a) a claim is made under Chapter 9 of Part 9A (controlled foreign companies: exemptions for profits from qualifying loan relationships) in relation to an accounting period ("the relevant period") of a CFC ("the creditor CFC"),

(b) in the relevant period, the creditor CFC has a qualifying loan relationship in relation to which another CFC is the ultimate debtor by virtue of section 371IG(4) or (5), and

(c) a UK resident company ("the relevant UK company") has loan relationship credits which arise in the relevant period from—

(i) loan B (see section 371IG(3)(b)), or

(ii) loans out of which loan B is wholly or partly funded (directly or indirectly).

(2) So far as any credit allowed under section 18(2) to the relevant UK company is referable to loan relationship credits falling within subsection (1)(c) which arise in an accounting period of the relevant UK company, the credit must not exceed—

$$R \times S$$

where—

R has the same meaning as in section 42(2), and

S is—

(a) the relevant UK company's share of the relevant profit amount (see subsection (4)), or

(b) if only X% of the total amount of the loan relationship credits falling within subsection (1)(c) arises in the accounting period, X% of the relevant UK company's share of the relevant profit amount.

(If the amount given by the formula above is nil, no credit is allowed.)

(3) The limit on credit contained in subsection (2) is in addition to the limit given by section 42(2).

(4) Take the following steps to determine the relevant profit amount and the relevant UK company's share of that amount.

Step 1

Determine the total amount of the loan relationship credits which arise in the relevant period from loan B to the person who made loan B.

Step 2

Deduct from the amount determined at step 1 above the credits from the creditor CFC's qualifying loan relationship determined at step 1 in section 371IF for the relevant period.

The result is the relevant profit amount.

Step 3

On a just and reasonable basis, apportion the relevant profit amount amongst all the persons falling with subsection (5) (although the amount apportioned to a person may be nil).

The relevant UK company's share of the relevant profit amount is the amount apportioned to it (and is nil if no amount is apportioned to it).

(5) The following persons (apart from the creditor CFC) fall within this subsection—

(a) the person who made loan B, and

(b) any person who has made or received a loan out of which loan B is wholly or partly funded (directly or indirectly).

(6) In this section—

(a) references to loan B do not include any part of loan B—

(i) which loan A (see section 371IG(3)(a)) is not made and used to fund, or

(ii) in relation to which the requirement of section 371IG(3)(c) is not met,

(b) "loan relationship credit" means, in relation to a person, a credit which the person has under Part 5 of CTA 2009 or would have were the person a UK resident company within the charge to corporation tax, and

(c) "loan" has the same meaning as it has in Chapter 9 of Part 9A."

14 (1) In Chapter 3 (miscellaneous provisions) section 112 (deduction from income for foreign tax (instead of credit against UK tax)) is amended as follows.

(2) After subsection (3) insert—

"(3A) Subsection (3B) applies if—

(a) the requirements of section 49A(1)(a) to (c) are met,

(b) amounts have been paid in respect of non-UK tax on loan relationship credits falling within section 49A(1)(c) which arise in an accounting period of the relevant UK company, and

(c) apart from subsection (3B), Z would exceed $R \times S$, where—

Z is—

(i) the total amount of any reductions under subsection (1) for amounts paid in respect of that non-UK tax, less

(ii) the total amount of any increases under subsection (3) for payments made by reference to that non-UK tax, and

R and S have the same meaning as in section 49A(2).

(3B) The total amount of the reductions under subsection (1) is to be reduced so that Z equals $R \times S$."

(3) In subsection (6) for "subsection (1)" substitute "this section".

Tax arbitrage: consequential amendment

15 In Part 6 of TIOPA 2010 (tax arbitrage) in section 236 (deduction schemes involving hybrid entities) for subsection (4) substitute—

“(4) Condition B is not met just because the party’s profits or gains are subject to a charge under the law of a territory outside the United Kingdom (by whatever name known) which is similar to the CFC charge (see Part 9A).”

Commencement

16 The amendments made by this Schedule are treated as having come into force on 1 January 2013.

EXPLANATORY NOTE

CONTROLLED FOREIGN COMPANIES (CFC) REGIME MEASURE NUMBER 2024

SUMMARY

1. This Clause and Schedule ensures the Controlled Foreign Companies (CFC) regime at Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA) operates as intended. It makes amendments to Part 2 (double taxation relief), Part 6 (tax arbitrage) and Part 9A (controlled foreign companies) TIOPA.

2. The above amendments will come into force on 1 January 2013.

DETAILS OF THE SCHEDULE

Relevant finance leases

3. Paragraph 3 of the Schedule removes the limitation in section 371ED(1) TIOPA that excludes non-trading finance profits arising from a relevant finance lease from the scope of section 371ED TIOPA. This ensures that all non-trading finance profits that arise from either arrangements made as an alternative to paying dividends, or from relevant finance leases are within the scope of Chapter 5 of Part 9A TIOPA.

4. Paragraph 4 amends section 371EE(2)(b) TIOPA so that the alternative scenario considered is both the purchase (directly or indirectly) of an asset, and an arrangement falling within new section 371EE(3) TIOPA. That section deals with an arrangement whereby a UK company purchases rights to use an asset (such as a licence to use a patent). It provides for two counterfactuals:

   - An arrangement that involves purchasing the rights to use the relevant asset from a person other than the CFC (and so the arrangement could involve a relevant finance lease provided the CFC was not the lessor); or

   - An arrangement that involves purchasing the rights to use the asset, but not by way of a relevant finance lease (and so the counterfactual could be an arrangement such as a licence granted by the CFC).

5. Paragraph 5 and 6 refer to the new definition of "relevant finance lease" in new section 371VIA TIOPA.

6. Paragraph 7 amends the definition of finance profits in section 371VG TIOPA.

7. Paragraph 8 amends section 371VH(9) TIOPA and inserts new section 371IH(10A) TIOPA to make clear that in determining whether a person has an interest in a CFC by virtue of a loan relationship with embedded derivatives in a situation where accounts have not been prepared in accordance with generally accepted accounting standards then that issue will be determined on the assumption that accounts have been prepared in accordance with international accounting standards.

8. Paragraph 9 inserts new section 371VIA (relevant finance leases) TIOPA. The new section has the effect of including all finance leases over assets and arrangements that are of a similar character, within the definition of relevant finance lease.

9. New section 371VIA(1) provides that relevant finance leases are the arrangements that fall within new subsections (2) and (3) and specifies that loan relationships of any company are not included within the definition of relevant finance lease.

10. New section 371VIA(2) identifies arrangements where a lessor provides an asset to be leased, or otherwise made available, to another person. These arrangements are relevant finance leases for the purposes of Part 9A TIOPA where, in accordance with generally accepted accounting practice, they are treated in the accounts of the lessor, or a person connected with the lessor, as a finance lease or loan.

11. New section 371VIA(3) provides that the term relevant finance lease shall also include certain hire-purchase, conditional sale or other arrangements. These arrangements are included where they do not fall within new section 371VIA(2), but are of a similar character to the arrangements that would fall within new section 371VIA(2).

12. New section 371VIA(4) stipulates for the purposes of new section 371VIA, that where the accounts of a person are not drawn up in accordance with generally accepted accounting practice (which is specified as either UK GAAP or international accounting standards), any question that has to be considered by reference to generally accepted accounting practice is determined by assuming that the accounts of the person are prepared in accordance with international accounting standards.

13. New section 371VIA(5) makes clear that for the purposes of this section the "accounts" of a company include accounts that relate to two or more companies of which that company is one and so includes consolidated accounts.

Limit on double taxation relief in cases involving qualifying loan relationships of CFCs

14. Paragraphs 10 to 14 of the Schedule limit double taxation relief given by way of credit against corporation tax, or by deduction in calculating corporation tax profits in certain circumstances involving qualifying loan relationships of CFCs.

15. Paragraph 12 inserts new section 42(5) TIOPA that makes clear that the limitation provided by new section 49A TIOPA is an additional limitation to double taxation relief to that provided for by section 42 TIOPA.

16. Paragraph 13 inserts new section 49A after section 49 TIOPA. New sections 49A(1)(a)-(c) identify the circumstances under which this section will apply.

17. New section 49A(1)(a) provides that section 49A will take effect only if a claim has been made under Chapter 9 of Part 9A TIOPA in relation to an accounting period of the CFC. A Chapter 9 claim is for partial or full exemption from a CFC charge for certain non-trading finance income profits that arise on a loan relationship between two non-UK resident group companies.

18. New section 49A(1)(b) stipulates that in that period there needs to be a qualifying loan relationship between the two CFCs (the "Creditor CFC" in respect of which a Chapter 9 claim has been made and an "Ultimate Debtor" CFC).

19. New section 49A(1)(c) requires that the UK resident company ("the relevant UK company") has profits which include loan relationship credits in the period which originate directly or indirectly from "Loan B". "Loan B" is defined by the new CFC rules. Where "Loan B" is made by a person out of funds provided directly as a loan from the "Creditor CFC" or where for example another person is interposed between the "Creditor CFC" and the first person and provides the funds in such a way that the loan made by the "Creditor CFC" would be a qualifying loan relationship (as defined in Chapter 9 of Part 9A), then the condition in new section 49A(1)(c) is met.

20. New section 49A(2) limits entitlement to double taxation relief by way of credit under Part 2 TIOPA to a relevant UK company that has loan relationship credits that have been subject to foreign tax. This section further limits the credit entitlement by reference to the formula:

$$R \times S$$

Where:

R is the rate of Corporation Tax payable by the relevant UK company (before any credit relief); and

S is (a) the relevant UK company's share of the relevant profit amount; or

(b) the proportion of the relevant UK company's share of the relevant profit amount that arises in the relevant period.

21. New section 49A(3) states that the limit introduced by this new section applies in addition to the limits to credit against corporation tax specified in section 42(2).

22. New section 49A(4) provides the steps for the calculation of the relevant UK company's share of the relevant profit amount for the relevant period ("S" in the above example).

Step 1 - ascertains the loan relationship credits in the period from "Loan B"

Step 2 - establishes the loan relationship credits of the Creditor CFC's qualifying loan relationship and subtracts this sum from the amount established in Step 1 above. This is the relevant profit amount.

Step 3 - the relevant profit amount is allocated between all the persons in the lending chain in a way that seems the most reasonable.

Example

CFC A (Creditor CFC) lends (Loan A) to UK Company (Relevant UK Company) that in turn lends (Loan B) to CFC B (Ultimate Debtor CFC). In the relevant period:

- UK Company has interest receivable of 100 on Loan B from CFC B (Ultimate debtor CFC),

- CFC A (CFC Creditor) has interest receivable of 90.

The relevant profit amount is therefore 10 which would be apportioned to UK Company in the lending chain.

23. New section 49A(5) determines the persons amongst whom the relevant profit amount is apportioned. It includes the person who made "Loan B" and any other person in the lending chain between the Creditor CFC and the "Loan B" lender. It includes anyone who has made or received a loan in that lending chain, for example a person who has received a loan and then passes the funds on as an investment by way of preference shares in another company in the

lending chain. It also includes persons who only provide part of the funds for "Loan B".

24. New sections 49A(6)(a)(i) and (ii) provide a limitation to the amount of "Loan B" where that loan is not wholly funded by "Loan A" provided by the Creditor CFC, or where "Loan B" is used to make a further loan to another person.

25. New section 49A(6)(b) defines "loan relationship credit" in line with a loan relationship credit under Part 5 of CTA 2009. The definition is extended to persons in the lending chain who are not liable to corporation tax, by assuming they are a UK resident company within the charge to corporation tax.

26. New section 49A(6)(c) defines "loan" for the purposes of this section.

27. Paragraph 14 inserts new sections 112(3A) and (3B) TIOPA. These new sections modify the amount of foreign tax that is allowed as a deduction from the income subject to that foreign tax, where a claim for relief by way of credit is not made.

28. New sections 112 (3A)(a) and (b) set out the first two conditions for new section 112(3B) to apply. New subsection (a) mirrors the conditions which trigger S49A to act. New subsection (b) applies if the loan relationship credits received by the relevant UK company have had foreign tax paid in respect of those credits.

29. New section 112 (3A)(c) sets out the third condition for new section 112(3B) to apply. It modifies the amount of foreign tax that can be deducted in section 112(1) TIOPA to take account of any repayment of the foreign tax, reducing the amount to be considered for deduction to the net amount after any repayment. It does this by defining Z as that net amount and compares whether Z exceeds the amount RxS, where:

R is the rate of Corporation Tax payable by the Company (before any credit relief); and

S is (a) the UK resident company's share of the relevant profit amount or

(b) the proportion of the UK resident company's share of the relevant profit amount that arises in the relevant period,

as determined in accordance with new section 49A TIOPA.

If Z were for example nil (because all the foreign tax had been repaid), then Z would not exceed RxS and so the third condition would not be met. In that case the amount of foreign tax deducted in section 112(1) would be nil because of the application of section

112(3) TIOPA. Alternatively if Z equals the amount of the foreign tax deducted (because there is no repayment of foreign tax) then the third condition is met and the limitation in new section 112(3B) applies.

30. New section 112(3B) limits the deduction from income for foreign tax by reference to the formula RxS.

31. In section 112(6) "this section" is inserted in place of "subsection 1".

Tax arbitrage: consequential amendment

32. Paragraph 15 substitutes new subsection 236(4) in TIOPA. It ensures condition B is brought into line with the introduction of Part 9A TIOPA. Condition B, which assists in determining whether the scheme is a deduction scheme for the purposes of the arbitrage rules, shall not be failed solely because the profits of the company in question are treated as taxable on another person by a rule in a territory outside the UK, which is similar to Part 9A TIOPA.

Commencement

33. Paragraph 16 states that the amendments made by this Schedule come into force on 1 January 2013.

BACKGROUND

34. The new CFC rules at Part 9A TIOPA (introduced in Finance Act 2012) better reflect the way that businesses operate in a global economy whilst maintaining adequate protection against artificial diversion of UK profits. This Schedule amends Part 9A in order to ensure the CFC rules operate as intended and continue to protect the UK's corporation tax base. It also amends Part 2 of TIOPA to limit the amount of double tax relief available to UK companies where they are involved in certain financing arrangements involving CFCs.

35. The Schedule addresses two tax planning opportunities, and in addition makes minor consequential amendments to provide consistency of interpretation of accounting practice in the new CFC rules and to make sure a limitation in the arbitrage rules continues to apply. The amendments:

- expand the definition of 'relevant finance lease' within Part 9A, to ensure certain hire purchase business is within scope of the new CFC rules and so that the definition applies to any asset (other than an asset which would be a loan relationship);

- limit the amount of double taxation relief that can be claimed by UK companies that form part of certain arrangements involving

the routeing of a loan from one CFC to another CFC through one or more UK companies;

- ensure that references to the interpretation of certain accounting practices in Part 9A are consistent; and
- introduce a minor consequential amendment to the arbitrage anti-avoidance rules in Part 6 of TIOPA.

36. If you have any questions about this change, or comments on the legislation, please contact Nick Shepherd on 020 7147 2689 (email: Nick.Shepherd@hmrc.gsi.gov.uk).

Consultation draft

CONTENTS

PART 1

ANNUAL RESIDENTIAL PROPERTY TAX

The charge to tax

1 Charge to tax
2 Person liable
3 Liability of persons jointly entitled
4 Amount of tax chargeable
5 Indexation of annual chargeable amounts
6 Taxable value
7 No double charge

Adjustment of amount charged

8 Adjustment of amount chargeable

Chargeable interests and "single-dwelling interest"

9 Chargeable interests
10 Meaning of "single-dwelling interest"
11 Different interests held in the same dwelling
12 Interests held by connected persons

Meaning of "dwelling"

13 Meaning of "dwelling"
14 Substantial performance of "off plan" purchase
15 Power to widen references to "use as a dwelling"
16 Parts of a greater whole
17 Dwelling in grounds of another dwelling
18 Amalgamation of dwellings in the same building
19 Section 18: supplementary
20 Terraces etc

Acquisitions and disposals

21 Acquisitions and disposals of chargeable interests
22 Date of acquisition
23 Date of disposal
24 Contract and conveyance: the purchaser
25 Contract and conveyance: the vendor

New dwellings, conversions, demolition etc

26 New dwellings
27 Dwellings produced from other dwellings
28 Demolition of a dwelling
29 Demolition without replacement
30 Demolition and replacement: new dwellings
31 Demolition and replacement: other cases
32 Conversion of dwelling for non-residential use
33 Damage to a dwelling

Reliefs

34 Property rental businesses
35 Meaning of "property rental business" and related expressions
36 Trades involving the exploitation of an interest in a dwelling
37 Provisional relief under section 36
38 Property developers
39 Property developers: occupation of dwelling by non-qualifying individual
40 Property developers: exchange of dwellings
41 Definitions for sections 38 to 40
42 Property traders
43 Property traders: supplementary
44 Occupation by certain employees or partners
45 Meaning of "qualifying individual" in section 44
46 Meaning of "5% or greater share in a company"
47 Farmhouses

Administration and payment of tax

48 Responsibility for collection and management
49 Duty to make an annual residential property tax return
50 Amendment of return where conditions for relief cease to be met
51 Annual residential property tax return to include self-assessment
52 Returns, enquiries, assessments and other administrative matters
53 Payment of tax
54 Interest on repayment of tax overpaid etc

Application of provisions

55 Companies
56 Partnerships

Supplementary provisions

57 Orders and regulations

Interpretation

58 Meaning of “chargeable day” and “within the charge”
59 Connected persons
60 General interpretation

Schedule 1 — Annual residential property charge: returns, enquiries, assessments and appeals
Part 1 — returns
Part 2 — Enquiry into return
Part 3 — HMRC determination where no return delivered
Part 4 — HMRC assessments
Part 5 — Supplementary
Schedule 2 — Annual residential property charge: special provision for 2013-14

PART 1

ANNUAL RESIDENTIAL PROPERTY TAX

The charge to tax

1 Charge to tax

(1) A tax (called "annual residential property tax") is to be charged in accordance with this Part.

(2) Tax is charged in respect of a chargeable interest if on one or more days in a chargeable period—

(a) the interest is a single-dwelling interest and has a taxable value of more than £2 million, and

(b) a company, partnership or collective investment scheme meets the ownership condition with respect to the interest.

(3) The tax is charged for the chargeable period concerned.

(4) A company meets the ownership condition with respect to a single-dwelling interest on a day if on that day the company is beneficially entitled to the interest (otherwise than as a member of a partnership).

(5) A partnership meets the ownership condition with respect to a single-dwelling interest on a day if on that day a member of the partnership that is a company is beneficially entitled to the interest (as a member of the partnership).

(6) A collective investment scheme meets the ownership condition with respect to a single-dwelling interest on a day if the interest is held for the purposes of the scheme on that day.

(7) References in this section to being beneficially entitled to an interest are to being beneficially entitled to it either solely or jointly with another person.

(8) If a company is jointly beneficially entitled to a chargeable interest (as a member of a partnership or otherwise), then regardless of whether the company is entitled as a joint tenant or tenant in common (or, in Scotland, as a joint owner or owner in common) the ownership condition is regarded as met in relation to the whole chargeable interest.

(9) The chargeable periods are—

(a) the period beginning with 1 April 2013 and ending with 31 March 2014, and

(b) each subsequent period of 12 months beginning with 1 April.

2 Person liable

(1) The chargeable person is liable to pay tax charged under this Part.

(2) "The chargeable person" means—
(a) in the case of tax charged for a chargeable period by virtue of section 1(4), the company;
(b) in the case of tax charged for a chargeable period by virtue of section 1(5), the responsible partners.

(3) In the case of tax charged for a chargeable period by virtue of section 1(6) "the chargeable person" means—
(a) if the collective investment scheme is a unit trust scheme, the trustee of the scheme;
(b) if the collective investment scheme is an open-ended investment company, the body corporate referred to in section 236(2) of the Financial Services and Markets Act 2000;
(c) in relation to an EEA UCITS which is not an open-ended investment company or unit trust scheme, the management company for that UCITS;
(d) in any other case, means the person who has day-to-day control of the management of the property to which the scheme relates.

(4) The liability of the responsible partners to pay tax charged on them under this Part is joint and several.

(5) The reference in subsection (2)(b) to "the responsible partners" is to all the persons who are members of the partnership concerned on the first day in the chargeable period on which the partnership meets the ownership condition with respect to the single-dwelling interest.

(6) Tax charged under this Part is said to be "charged on" the chargeable person (and that person is said to be "chargeable to" the tax).

3 Liability of persons jointly entitled

(1) Subsection (2) applies if on the first day in a chargeable period on which a person ("P") is within the charge with respect to a single-dwelling interest, P and another person or persons are jointly entitled to the interest.

(2) P and the other person or persons are jointly and severally liable for the tax charged for that period with respect to the single-dwelling interest (whether or not those other persons are also within the charge with respect to the interest on the day in question).

4 Amount of tax chargeable

(1) The amount of tax charged for a chargeable period with respect to a single-dwelling interest is stated in subsection (2) or (3).

(2) If the chargeable person is within the charge with respect to the single-dwelling interest on the first day of the chargeable period, the amount of tax charged is equal to the annual chargeable amount, as determined by reference to the taxable value of the interest on the relevant day.

(3) Otherwise, the amount of tax charged is equal to the relevant fraction of the annual chargeable amount, as determined by reference to the taxable value of the interest on the relevant day.

(4) The "relevant day" is—
  (a) for the purposes of subsection (2), the first day of the chargeable period;
  (b) for the purposes of subsection (3), the first day in the chargeable period on which the chargeable person is within the charge with respect to the interest.

(5) The following table gives the annual chargeable amount for a single-dwelling interest (based on the taxable value the interest has on the day mentioned in subsection (2) or (3)).

Annual chargeable amount	*Taxable value of the interest on the relevant day*
£15,000	Greater than £2 million but not greater than £5 million.
£35,000	Greater than £5 million but not greater than £10 million.
£70,000	Greater than £10 million but not greater than £20 million.
£140,000	Greater than £20 million.

(6) The relevant fraction is—

$$\frac{N}{Y}$$

where—
"N" is the number of days from (and including) the relevant day to the end of the chargeable period;
"Y" is the number of days in the chargeable period.

5 Indexation of annual chargeable amounts

(1) If the consumer prices index for September in 2013 or any later year ("the later year") is higher than it was for the previous September, section 4(5) applies in relation to chargeable periods beginning on or after the 1 April in the year after the later year with the following amendments.

(2) For each of the annual chargeable amounts stated in the table in section 4(5) (as it applies in relation to chargeable periods beginning in the previous 12 months) there is substituted the indexed amount.

(3) "The indexed amount" is found by—
  (a) increasing the previous amount by the same percentage increase as the percentage increase in the consumer prices index, and

(b) rounding down the result to the nearest multiple of £50.

(4) In this section "consumer prices index" means the all items consumer prices index published by the Statistics Board.

(5) The Treasury must, before 1 April 2014 and before each subsequent 1 April, make an order stating the amounts that by virtue of this section are to be the annual chargeable amounts for chargeable periods beginning on or after that date.

6 Taxable value

(1) The taxable value of a single-dwelling interest on any day ("the relevant day") is equal to its market value at the end of the latest day that—
(a) falls on or before that day, and
(b) is a valuation date in the case of that interest.

(2) Each of the following is a valuation date in the case of any single-dwelling interest—
(a) 1 April 2012;
(b) each 1 April falling 5 years, or a multiple of 5 years, after 1 April 2012.

(3) The following are also valuation dates in the case of any single-dwelling interest to which a company is beneficially entitled on the relevant day (otherwise than as a member of a partnership)—
(a) the effective date of any acquisition by the company of a chargeable interest in or over the dwelling concerned;
(b) the effective date of any disposal of part (but not the whole) of the single-dwelling interest.

(4) The following are also valuation dates in the case of any single-dwelling interest to which a company is beneficially entitled on the relevant day as a member of a partnership—
(a) the effective date of any acquisition as a result of which a chargeable interest in or over the dwelling concerned became partnership property of the partnership,
(b) the effective date of any disposal of part (but not the whole) of the single-dwelling interest.

(5) The following are also valuation dates in the case of any single-dwelling interest that is on the relevant day held for the purposes of a collective investment scheme—
(a) the effective date of any acquisition, made for the purposes of the scheme, of a chargeable interest in or over the dwelling concerned;
(b) the effective date of any disposal of part (but not the whole) of the single-dwelling interest.

(6) In this section references to a disposal of part of a single-dwelling interest include the grant of a chargeable interest out of the single-dwelling interest.

(7) The grant of an option does not count as the grant of a chargeable interest for the purposes of subsection (6).

(8) For the purposes of this Part "market value" is to be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (see sections 272 to 274 of that Act).

7 No double charge

Tax in respect of a given single-dwelling interest is charged only once for any chargeable day even if more than one person is "the chargeable person" with respect to the tax charged.

Adjustment of amount charged

8 Adjustment of amount chargeable

(1) Relief may be claimed if the amount of tax charged on a person for a chargeable period with respect to a single-dwelling interest is greater than the adjusted chargeable amount for that interest and that period.

(2) On the making of a claim under this section, the amount of tax charged for the period with respect to the interest is reduced to the adjusted chargeable amount.

(3) The adjusted chargeable amount is the total of the daily amounts for all the days in the period on which the chargeable person is within the charge with respect to the interest.

(4) The daily amount for any such day ("the included day") is—

$$\frac{1}{Y} \times A$$

where—

"Y" is the number of days in the chargeable period;

"A" is the annual chargeable amount, determined by reference to the taxable value of the interest on the included day.

(5) Relief under this section is to be claimed—

(a) in an annual residential property tax return, or

(b) by amending an annual residential property tax return.

(6) A claim for relief must be delivered by the end of the chargeable period following the one to which the claim relates.

(7) Relief under this section may be given by repayment of tax or otherwise.

Chargeable interests and "single-dwelling interest"

9 Chargeable interests

(1) In this Part "chargeable interest" 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.

(2) Where two or more persons are jointly entitled to a chargeable interest the chargeable interest is not regarded, for the purposes of this Part, as consisting

of separate interests corresponding to the shares (if any) that those persons have by virtue of their joint entitlement.

(3) An exempt interest is not a chargeable interest for the purposes of this Part.

(4) The following are exempt interests—
   (a) any security interest;
   (b) a licence to use or occupy land;
   (c) in England and Wales or Northern Ireland, a tenancy at will.

(5) In subsection (4) "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.

(6) In the application of this Part in Scotland the reference in subsection (5) 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).

(7) The Treasury may by regulations provide that any other description of interest or right in or over a dwelling is an exempt interest.

10 Meaning of "single-dwelling interest"

(1) References in this Part to a "single-dwelling interest" are to be read in accordance with this section.

(2) A chargeable interest that is exclusively in or over land consisting (on any day) of a single dwelling is a single-dwelling interest (on that day).

(3) Where a person is entitled to a chargeable interest that is exclusively in or over land consisting (on any day) of two or more single dwellings—
   (a) provisions referring to a "single-dwelling interest" operate as if the person had (on that day) a separate chargeable interest in or over each dwelling, and
   (b) the chargeable interest in or over each dwelling is therefore a single-dwelling interest.

(4) Where a person is entitled to a chargeable interest in or over land that on any day consists of one or more single dwellings and non-residential land—
   (a) provisions referring to a "single-dwelling interest" operate as if the person had (on that day) a separate chargeable interest in or over each dwelling and a further separate chargeable interest in or over the non-residential land, and
   (b) the chargeable interest in or over each dwelling is therefore a single-dwelling interest.

(5) A single dwelling interest is referred to as a single-dwelling interest "in" the dwelling concerned.

(6) A single-dwelling interest in one dwelling is distinct from any single-dwelling interest in another dwelling, even if the dwellings stand successively on the same land.

(7) In this section—
   (a) "non-residential land" means land that is not a dwelling or part of a dwelling;
   (b) references to a dwelling include a part of a dwelling.

11 Different interests held in the same dwelling

(1) Subsection (2) applies if on one or more days in a chargeable period—
  (a) a company is beneficially entitled to two or more single-dwelling interests in the same dwelling, or
  (b) two or more single-dwelling interests in the same dwelling are held for the purposes of the same collective investment scheme.

(2) This Part has effect with respect to that chargeable period as if those separate interests constituted just one single-dwelling interest, the taxable value of which on any day is the sum of the taxable values of the separate interests.

(3) For the purposes of subsection (1)(a) it does not matter whether a company beneficially entitled to a single-dwelling interest is beneficially entitled to it—
  (a) solely or jointly with another person, or
  (b) as a member of a partnership or otherwise.

12 Interests held by connected persons

(1) If on any day a company ("A") is beneficially entitled to a single-dwelling interest in a dwelling and another person ("B") who is connected with A is beneficially entitled to a different single-dwelling interest in the same dwelling, this Part has effect—
  (a) in relation to A as if A were on that day beneficially entitled to B's single-dwelling interest as well as A's single dwelling interest, and
  (b) (if B is a company) in relation to B as if B were on that day beneficially entitled to A's single-dwelling interest as well as B's single-dwelling interest.

(2) If on any day a single-dwelling interest ("the scheme interest") is held for the purposes of a unit trust scheme and a person ("B") who is connected with the unit trust scheme is beneficially entitled to a different single-dwelling interest in the same dwelling, this Part has effect—
  (a) in relation to the unit trust scheme, as if those separate interests constituted (on that day) just one single-dwelling interest held for the purposes of the scheme, the taxable value of which is the sum of the taxable values of the separate interests, and
  (b) (if B is a company) in relation to B as if B were (on that day) beneficially entitled to the scheme interest as well as B's single-dwelling interest.

(3) If on any day a single-dwelling interest in a dwelling ("the first scheme interest") is held for the purposes of a unit trust scheme and another interest in the same dwelling ("the second scheme interest") is held for the purposes of another unit trust scheme that is connected with the first-mentioned unit trust scheme, this Part has effect in relation to each scheme as if those separate interests constituted (on that day) just one single-dwelling interest held for the purposes of that scheme, the taxable value of which is the sum of the taxable values of the separate interests.

(4) For the purposes of subsections (1) and (2) it does not matter whether a person is beneficially entitled to an interest—
  (a) solely or jointly with another person, or
  (b) as a member of a partnership or otherwise.

(5) In accordance with section 7, tax is not charged more than once for any day with respect to the interest treated under this section (read with section 11(2)) as just one single-dwelling interest.

(6) Where tax is charged for a day in a chargeable period with respect to an interest that on that day is treated as mentioned in subsection (5), each of the persons who is, by virtue of this section, the chargeable person in relation to that tax is jointly and severally liable with the other chargeable persons to pay the tax referable to that day.

Meaning of "dwelling"

13 Meaning of "dwelling"

(1) A building or part of a building counts as a dwelling at any time when—
  (a) it is used or suitable for use as a single dwelling, or
  (b) it is in the process of being constructed or adapted for such use.

(2) Land that is, or is at any time 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) Land that subsists, or is at any time intended to subsist, for the benefit of a dwelling is taken to be part of the dwelling at that time.

(4) A building, or part of a building, used for a purpose specified in section 116(2) or (3) of FA 2003 is not used as a dwelling for the purposes of subsection (1).

(5) Where a building, or part of a building, is used for a purpose mentioned in subsection (4), no account is to be taken for the purposes of subsection (1) of its suitability for any other use.

(6) If a building or part of a building becomes temporarily unsuitable for use as a dwelling for any reason (including accidental damage, repairs or any other physical change to the building or its environment), that temporary unsuitability is ignored in determining whether or not the building or part of a building is, during the period in question, a dwelling for the purposes of this Part.
This subsection does not affect any of the provisions in sections 28 to 33.

14 Substantial performance of "off plan" purchase

(1) Subsection (2) applies where—
  (a) a contract is entered into for the acquisition of a chargeable interest in or over land that consists of or includes a building, or part of a building, that is to be constructed or adapted for use as a single dwelling,
  (b) substantial performance is treated as constituting the acquisition of the chargeable interest (under section 24), and
  (c) construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed.

(2) The chargeable interest deemed to be acquired as mentioned in subsection (1)(b) is taken to be in or over land that consists of or (as appropriate) includes a dwelling.

(3) If at any time after the substantial performance of the contract the obligation under the contract to carry out the construction or adaptation ceases to have effect without the construction or adaptation having been begun, subsection (2) ceases to apply at that time.

(4) A building or part of a building used for a purpose specified in section 116(2) or (3) of FA 2003 is not used as a dwelling for the purposes of subsection (1).

(5) In this section—

"contract" includes any agreement (including, in the case of Scotland, missives of let not constituting a lease);

"substantially performed" has the same meaning as in section 44 of FA 2003.

15 Power to widen references to "use as a dwelling"

(1) The Treasury may by order amend this Part so as to specify cases where use of a building is to be use of a building as a dwelling for the purposes of section 14(2) or 13(1).

(2) The reference in section 116(8)(a) of FA 2003 (power to amend section 116(2) and (3)) to "the purposes of subsection (1)" includes a reference to the purposes of sections 13(1) and 14(2).

16 Parts of a greater whole

(1) The fact that a part of a building is suitable for use as a dwelling does not prevent that part from forming part of a larger single dwelling.

(2) The fact that a building or structure that is—

(a) in the garden or grounds of a dwelling, and

(b) occupied or enjoyed with the dwelling,

is itself suitable for use as a single dwelling does not prevent it from being treated (in accordance with section 13(3)) as part of the dwelling.

17 Dwelling in grounds of another dwelling

(1) Subsection (4) applies where the conditions in subsection (2) are met in relation to two dwellings (the "main dwelling" and the "associated dwelling") at the end of a day ("the day in question") in a chargeable period.

(2) The conditions are that—

(a) the main dwelling has a garden or grounds,

(b) the associated dwelling stands within the garden or grounds of the main dwelling, but is not occupied or enjoyed with that dwelling,

(c) the associated dwelling does not have separate access, and is not part of the same building as the main building, and

(d) the common ownership condition is met.

(3) The common ownership condition is that—

(a) a company is beneficially entitled to a chargeable interest in the main dwelling, and the company or a person connected with the company is beneficially entitled to a chargeable interest in the associated dwelling, or

(b) a chargeable interest in the main dwelling is held for the purposes of a collective investment scheme, and a chargeable interest in the associated dwelling is held for the purposes of the same collective investment scheme.

(It does not matter whether or not the interest in the main dwelling and the interest in the associated dwelling are held for the same title.)

(4) This Part has effect in relation to the interests mentioned in paragraph (a) or (as the case may be) (b) of subsection (3) as if the main dwelling and the associated dwelling were, on the day in question, suitable for use as a single dwelling.

(5) Subsection (4) does not apply if the day in question is, in relation to the interest in the main dwelling or the interest in the associated dwelling, a relievable day by virtue of a provision mentioned in subsection (6).

(6) Those provisions are—

(a) section 34 (property rental businesses);

(b) section 41 (property developers);

(c) section 40 (property developers: exchange of dwellings);

(d) section 42 (property traders);

(e) section 44 (occupation by certain employees or partners);

(f) section 47 (farmhouses).

(7) If the collective investment scheme first mentioned in paragraph (b) of subsection (3) is a unit trust scheme, the reference in that paragraph to a chargeable interest being held for the purposes of the same collective investment scheme includes a reference to a person connected with the scheme being beneficially entitled to the interest.

(8) The associated dwelling has "separate access" only if—

(a) there is access to the associated dwelling directly from a highway (in Scotland, a road) that the dwelling adjoins, or

(b) the person entitled to possession of the associated dwelling has access to that dwelling from a highway (in Scotland, a road), exclusively by passing over land that the person is entitled to pass over by reason of one or more rights of way or other interests in land to which the person is separately entitled.

(9) In this section—

references to beneficial entitlement are to beneficial entitlement, whether solely or jointly with another person, and whether as a member of a partnership or otherwise;

in relation to a dwelling or dwellings, references to the "garden or grounds" are to land occupied or enjoyed with the dwelling or dwellings as a garden or grounds;

references to the person entitled to possession of a dwelling are to the person entitled to possession of the dwelling by reason of an estate or interest held by that person;

"separately entitled" means entitled otherwise than by reason of a chargeable interest in or over the main dwelling.

18 Amalgamation of dwellings in the same building

(1) Two parts of a building are "linked dwellings" if—

(a) each of them counts as a dwelling,

(b) there is private access between the two dwellings,

(c) the two parts of the building are not (together) used or suitable for use as a single dwelling, and

(d) the common ownership condition and the use condition are met.

(2) The common ownership condition is that—

(a) a company is beneficially entitled to a chargeable interest in one of the dwellings, and the company or a person connected with the company is beneficially entitled to a chargeable interest in the other dwelling, or

(b) a chargeable interest in one of the dwellings is held for the purposes of a collective investment scheme, and a chargeable interest in the other dwelling is held for the purposes of the same collective investment scheme.

(It does not matter whether or not the interests are held for the same title.)

(3) If at the end of a day in a chargeable period ("the day in question") two parts of a building constitute linked dwellings, this Part has effect in relation to the interests mentioned in paragraph (a) or (as the case may be) (b) of subsection (2) as if the two parts were, on the day in question, suitable for use as a single dwelling.

(4) Subsection (3) does not apply if the day in question is, in relation to a chargeable interest mentioned in subsection (2)(a) or (as the case may be) (2)(b), a relievable day by virtue of a provision mentioned in subsection (5).

(5) Those provisions are—

(a) section 34 (property rental businesses);

(b) section 36 (trades involving the exploitation of an interest in a dwelling);

(c) section 38 (property developers);

(d) section 40 (property developers: exchange of dwellings);

(e) section 42 (property traders);

(f) section 44 (occupation by certain employees or partners);

(g) section 47 (farmhouses).

(6) If two dwellings in a building (dwelling A and dwelling B) are treated under this section as suitable for use as a single dwelling, and dwelling B and a third dwelling in the building ("dwelling C") are treated under this section as suitable for use as a single dwelling, all three are treated as suitable for use as a single dwelling (and so on).

19 Section 18: supplementary

(1) If the collective investment scheme first mentioned in paragraph (b) of section 18(2) is a unit trust scheme, the reference in that paragraph to a chargeable interest being held for the purposes of the same collective investment scheme includes a reference to a person connected with the scheme being beneficially entitled to the interest.

(2) For the purposes of section 18, there is private access between two dwellings if the person entitled to possession of each dwelling is entitled, by reason of a right of way or other interest in land, to have access to that person's dwelling from the other dwelling, without passing over any part of the building (or any other land) in which a third party has an interest entitling that third party to enter it.

(3) In subsection (2) "third party" means a person other than—
   (a) the persons entitled to possession of the dwellings mentioned in subsection (1), and
   (b) persons connected with any of them.

(4) The use condition mentioned in section 18(1)(d) is that each of the two dwellings—
   (a) is occupied (or usually occupied) by a relevant person,
   (b) is intended to be so occupied (or usually so occupied), or
   (c) is not occupied.

(5) In subsection (4) "relevant person" means—
   (a) an individual connected with the company mentioned in section 18(2)(a),
   (b) if the collective investment scheme mentioned in section 18(2)(b) is a unit trust scheme, an individual connected with that scheme,
   (c) an individual who occupies (or is to occupy) the dwelling concerned otherwise than on commercial terms, or
   (d) an individual employed wholly or partly in connection with the occupation, by a person falling within any of paragraphs (a) to (c), of a dwelling in the building, or providing services in connection with such a person's occupation of a dwelling in the building.

(6) In this section and section 18—
   (a) references to beneficial entitlement are to beneficial entitlement, whether solely or jointly with another person, and whether as a member of a partnership or otherwise;
   (b) references to the person entitled to possession of a dwelling are to the person entitled to possession of the dwelling by reason of an estate or interest held by that person.

20 Terraces etc

Any structure (such as a terrace of houses or a pair of semi-detached houses) that is composed of or includes dwellings is regarded as a building for the purposes of sections 18 and 19.

Acquisitions and disposals

21 Acquisitions and disposals of chargeable interests

(1) References in this Part to the acquisition of a chargeable interest include any acquisition however effected (including an acquisition effected by the act of parties to a transaction, by order of a court or other authority, by or under any statutory provision or by operation of law).

(2) The surrender or release of a chargeable interest is—
   (a) an acquisition of that interest by any person whose interest or right is benefited or enlarged by the transaction, and
   (b) a disposal by the person ceasing to be entitled to that interest.

(3) The variation of a chargeable interest is—
   (a) an acquisition of a chargeable interest by the person benefiting from the variation, and

(b) a disposal of a chargeable interest by the person whose interest is subject to or limited by the variation.

22 Date of acquisition

(1) A person who acquires a chargeable interest in or over land that consists of or includes a dwelling is treated for the purposes of this Part as acquiring the interest at the beginning of the effective date of the acquisition.

(2) The effective date of an acquisition is—

(a) the date on which the acquisition is completed, or

(b) any alternative date the Commissioners for Her Majesty's Revenue and Customs may specify by regulations.

23 Date of disposal

(1) A person who disposes of a chargeable interest in or over land that consists of or includes a dwelling is treated for the purposes of this Part as ceasing to be entitled to the interest at the end of the day preceding the effective date of the disposal.

(2) The effective date of a disposal is—

(a) the date on which the disposal is completed, or

(b) any alternative date the Commissioners for Her Majesty's Revenue and Customs may prescribe by regulations.

24 Contract and conveyance: the purchaser

(1) This section applies where a person ("P") enters into a contract under which—

(a) P is to acquire a relevant chargeable interest, and

(b) the acquisition is to be completed by a conveyance.

(2) P is not regarded as acquiring any chargeable interest by reason of entering into the contract.

(3) If the contract is substantially performed without having been completed, this Part has effect as if the substantial performance of the contract were the completion of the acquisition provided for by the contract.

(4) Accordingly, where subsection (3) applies and the contract is subsequently completed by a conveyance, that completion is not treated for the purposes of section 6 as effecting the acquisition of a chargeable interest.

(5) Where subsection (3) applies and—

(a) the contract is afterwards rescinded or annulled, or

(b) performance of the contract is for any other reason terminated before the contract has been carried fully into effect,

this Part has effect as if P had at the relevant time disposed of the chargeable interest referred to in subsection (1)(a).

(6) In subsection (5) "the relevant time" means—

(a) the time when the rescission or annulment takes effect, or

(b) (as the case requires) the time when performance of the contract ceases.

(7) Where subsection (3) applies and the contract is afterwards varied (or partially rescinded) so that the chargeable interest to be acquired under the contract is not the same as the chargeable interest to which the contract originally related, this Part (including subsection (3)) has effect as if the variation of the contract effected—
  (a) the disposal by P of the chargeable interest referred to in subsection (1)(a), and
  (b) the substantial performance of the contract, as varied.

(8) If the parties to the contract proceed as if they had varied the contract in the way mentioned in subsection (7) (without actually doing so), subsection (7) applies as if they had actually made the corresponding variation in the terms of the contract.

(9) In this section—
  (a) references to completion are to the completion of the acquisition proposed, whether or not between the original parties;
  (b) "contract" includes any agreement;
  (c) "conveyance" includes any instrument;
  (d) "relevant chargeable interest" means a chargeable interest in or over land that consists of or includes a dwelling;
  (e) "substantially performed" has the same meaning as in section 44 of FA 2003.

25 Contract and conveyance: the vendor

(1) Subsections (3) and (4) apply where a person ("V") enters into a contract under which—
  (a) V is to dispose of a relevant chargeable interest, and
  (b) the disposal is to be completed by a conveyance.

(2) V is not regarded as disposing of a chargeable interest by reason of entering into the contract.

(3) If the contract is substantially performed without having been completed, this Part has effect as if the substantial performance of the contract were the completion of the disposal provided for by the contract.

(4) Accordingly, where subsection (3) applies and the contract is subsequently completed by a conveyance, that completion is not treated for the purposes of section 6 as effecting the disposal of a chargeable interest.

(5) Where subsection (3) applies and—
  (a) the contract is afterwards rescinded or annulled, or
  (b) performance of the contract is for any other reason terminated before the contract has been carried fully into effect,

this Part has effect as if V had at the relevant time re-acquired the chargeable interest referred to in subsection (1)(a).

(6) In subsection (5) "the relevant time" means—
  (a) the time when the rescission or annulment takes effect, or
  (b) (as the case requires) the time when performance of the contract ceases.

(7) Where subsection (3) applies and the contract is afterwards varied (or partially rescinded) so that the chargeable interest to be disposed of under the contract

is not the same as the chargeable interest to which the contract originally related, this Part (including subsection (3)) has effect as if the variation of the contract effected—

(a) the re-acquisition by V of the chargeable interest referred to in subsection (1)(a), and

(b) the substantial performance of the contract, as varied.

(8) If the parties to the contract proceed as if they had varied the contract in the way mentioned in subsection (7) (without actually doing so), subsection (7) applies as if they had actually made the corresponding variation in the terms of the contract.

(9) In this section—

(a) references to completion are to the completion of the disposal proposed, between the same parties, in substantial conformity with the contract;

(b) "contract" includes any agreement;

(c) "conveyance" includes any instrument;

(d) "relevant chargeable interest" means a chargeable interest in or over land that consists of or includes a dwelling;

(e) "substantially performed" has the same meaning as in section 44 of FA 2003.

New dwellings, conversions, demolition etc

26 New dwellings

(1) Where a new dwelling is being or has been constructed (whether or not as part of a larger building) the earlier of the following days is a valuation date in the case of a single-dwelling interest in that dwelling—

(a) the completion day;

(b) the day on which the dwelling is first occupied.

(2) The reference in subsection (1) to the construction of a new dwelling—

(a) includes the production of a new dwelling by the alteration (whether structural or otherwise) of an existing building, but

(b) does not include a case to which section 27 (dwellings produced from other dwellings) or section 30 (demolition and replacement: new dwellings) applies.

(3) The reference in subsection (1) to the "completion day" is to the day on which the new dwelling is treated as having come into existence for the purposes of—

(a) Part 1 of the Local Government Finance Act 1992 (council tax: England and Wales) (see section 17 of that Act), or

(b) Part 2 of that Act (council tax: Scotland) (see section 83 of that Act), or

(c) the Rates (Northern Ireland) Order 1977 (N.I. 28) (see Article 25B of that Order).

(4) In this section "building" includes a part of a building.

27 Dwellings produced from other dwellings

(1) This section applies where an existing building that is a dwelling or dwellings ("the old dwelling" or "the old dwellings") becomes a different dwelling or dwellings ("new" dwellings) as a result of structural alteration.

(2) Any question as to whether or not a person has a single-dwelling interest at any time either in the old dwelling (or dwellings) or in a new dwelling is determined on the assumption that the old dwelling (or dwellings) cease to exist, and any new dwelling come into existence, only when the conversion is completed.

(3) The day after the conversion is completed is a valuation date in the case of any single-dwelling interest in a new dwelling.

(4) References to when the conversion is completed are to the end of the day on which the new dwelling is treated as having come into existence (or the first day on which all the new dwellings are treated as having come into existence) for the purposes of—

- (a) Part 1 of the Local Government Finance Act 1992 (council tax: England and Wales) (see section 17 of that Act), or
- (b) Part 2 of that Act (council tax: Scotland) (see section 83 of that Act), or
- (c) the Rates (Northern Ireland) Order 1977 (N.I. 28) (see Article 25B of that Order).

(5) In this section "building" includes a part of a building.

28 Demolition of a dwelling

(1) This section and sections 29 to 31 apply where a building that is a dwelling ("the old dwelling") is demolished after 1 April 2013.

(2) Except so far as express provision to the contrary is made in sections 29 to 31, any question as to whether a person has a single-dwelling interest in the dwelling, and any question as to the taxable value of such an interest, is determined as if the dwelling had not been demolished.

(3) For the purposes of subsection (1) the demolition of a building is treated as having occurred after 1 April 2013 if a day after 1 April 2013 is the first day on which—

- (a) the demolition has begun, and
- (b) as a result, the building is no longer suitable for use as a dwelling.

(4) In this section "building" includes a part of a building.

29 Demolition without replacement

(1) Subsection (2) applies if a person entitled to a single-dwelling interest in the old dwelling notifies an officer of Revenue and Customs that to the best of the person's knowledge there is no proposal to construct any dwelling or dwellings on the site of the old dwelling.

(2) Any question as to whether a person has a single-dwelling interest in the old dwelling is determined on the assumption that the old dwelling ceases (or ceased) to exist with effect from the end of the day mentioned in subsection (3).

(3) That day is the first day on which—

(a) the demolition has begun, and
(b) as a result, the building in question is no longer suitable for use as a dwelling.

(4) A notification under subsection (1) must be in writing.

(5) In this section—
(a) "building" includes part of a building;
(b) "the site of the old dwelling" means the land on which the dwelling stood and that counted as part of the dwelling;
(c) the reference to the construction of a dwelling or dwellings on that site is to the construction of a dwelling or dwellings wholly or partly on the site.

30 Demolition and replacement: new dwellings

(1) Subsection (2) applies if one or more dwellings (referred to below as "new dwellings") are constructed on the site of the old dwelling after the demolition.

(2) Any question as to whether or not a person has a single-dwelling interest at any time either in the old dwelling or in a new dwelling is determined on the assumption that the old dwelling ceases to exist, and the new dwellings come into existence, only when the rebuilding is completed.

(3) The day after the rebuilding is completed is a valuation date in the case of any single-dwelling interest in a new dwelling.

(4) In subsection (1)—
(a) "the site of the old dwelling" means the land on which the dwelling stood and that counted as part of the dwelling;
(b) the reference to the construction of a dwelling on that site is to the construction of a dwelling wholly or partly on the site.

(5) References to when the rebuilding is completed are to the end of whichever of the following days is earlier—
(a) the completion day;
(b) the day on which the last of the new dwellings to be occupied is first occupied.

(6) The reference in subsection (5) to the "completion day" is to the day on which the new dwelling is treated as having come into existence (or the first day on which all the new dwellings are treated as having come into existence) for the purposes of—
(a) Part 1 of the Local Government Finance Act 1992 (council tax: England and Wales) (see section 17 of that Act), or
(b) Part 2 of that Act (council tax: Scotland) (see section 83 of that Act), or
(c) the Rates (Northern Ireland) Order 1977 (N.I. 28) (see Article 25B of that Order).

(7) In this section "building" includes part of a building.

31 Demolition and replacement: other cases

(1) This section applies if—

(a) a building is constructed on the site of the old dwelling after the demolition, and
(b) section 30 does not apply.

(2) Any question as to whether a person has a single-dwelling interest in the old dwelling is determined on the assumption that the old dwelling ceases to exist at the end of—
(a) the day on which the change of use is approved, or
(b) if later, the day on which the old dwelling ceased to be occupied.

(3) In subsection (1)—
(a) "the site of the old dwelling" means the land on which the dwelling stood and that counted as part of the dwelling;
(b) the reference to the construction of a dwelling on that site is to the construction of a dwelling wholly or partly on the site.

32 Conversion of dwelling for non-residential use

(1) This section applies where a building or part of a building—
(a) has been suitable for use as a dwelling, and
(b) is altered for the purpose of making it suitable for use otherwise than as a dwelling.

(2) The question whether or not the alterations make the building or part unsuitable for use as a dwelling is one of fact (but see subsection (3)).

(3) The building or part will not be regarded as having become unsuitable for use as a dwelling as a result of the alterations at any time unless by that time any planning permission or development consent required for the alterations has been granted (and the alterations have been made in accordance with any such permission or consent).

(4) In this section "planning permission" has the meaning given by the relevant planning enactment.

(5) "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 277(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.

(6) In this section "development consent" means development consent under the Planning Act 2008.

33 Damage to a dwelling

(1) Subsections (2) and (3) apply if on a day on which a person is within the charge with respect to a single-dwelling interest ("the relevant day")—
(a) the dwelling in question suffers substantial damage that is accidental, or otherwise caused by events outside the control of the relevant person, and
(b) as a result of the damage the dwelling becomes temporarily unsuitable for occupation for a period of at least 90 days.

(2) The day on which the period mentioned in subsection (1)(b) begins is a valuation date in the case of the single-dwelling interest.

(3) Subsection (2) does not apply if the damage destroys the dwelling (so that it ceases to be a dwelling).

(4) Damage done to a dwelling is disregarded for the purposes of subsection (1) if it occurs in the course of work done on the relevant person's behalf for the purpose of demolishing part of the dwelling, or part of a building that contains the dwelling.

(5) "The relevant person" means a person who is beneficially entitled to the single dwelling interest (whether solely or jointly, and whether or not as a member of a partnership).

Reliefs

34 Property rental businesses

(1) A day in a chargeable period is "relievable" in relation to a single-dwelling interest if at the end of that day the interest—

(a) is being exploited as a source of rents or other receipts (other than excluded rents) in the course of a qualifying property rental business carried on by a person beneficially entitled to the interest, or

(b) is held with the intention that it will be so exploited in the course of a qualifying property rental business that is being carried on, or is to be carried on, by a person beneficially entitled to the interest.

(2) Subsection (3) applies where tax is charged, in respect of a single-dwelling interest, for a chargeable period that includes one or more days that are relievable as a result of subsection (1) (or for more than one such period).

(3) For any such period, the adjusted chargeable amount is to be calculated on the basis that the chargeable person is not within the charge with respect to the interest on any relievable day.

(4) A single-dwelling interest is not regarded as being "exploited in the course of a qualifying property rental business" at any time when—

(a) a non-qualifying individual is permitted to occupy the dwelling, or

(b) it is intended that the dwelling will (or will if certain circumstances arise) be made available for occupation by a non-qualifying individual.

(5) "Non-qualifying individual" means any of the following—

(a) an individual who is beneficially entitled to the interest,

(b) an individual who is connected with a person beneficially entitled to the interest ("a connected person"),

(c) a relevant settlor,

(d) the spouse or civil partner of a connected person or of a relevant settlor,

(e) a relative of a connected person or of a relevant settlor, or the spouse or civil partner of a relative of a connected person or of a relevant settlor,

(f) a relative of the spouse or civil partner of a connected person or of a relevant settlor, or

(g) the spouse or civil partner of a person falling within paragraph (f).

(6) If a non-qualifying individual has occupied, or had permission to occupy, a dwelling or part of a dwelling, no subsequent day is a relievable day in relation to a single-dwelling interest in the dwelling unless that day is, or is preceded by, a day at the end of which the interest is being exploited as mentioned in subsection (1)(a).

(7) If at any time in a chargeable period a person ("the firm") who is beneficially entitled to a single-dwelling interest and carries on a property rental business permits a non-qualifying individual to occupy the dwelling (or part of it), this section has effect as if there had been an intention such as is mentioned in subsection (4)(b) throughout the period ending with the giving of that permission to occupy and beginning—

  (a) with the first day of the chargeable period preceding the one mentioned above, or

  (b) (if later) with the first day on which the firm was beneficially entitled to the single-dwelling interest (and carried on the business).

(8) But subsection (7) does not treat a person as having had the intention in question during any period in which a qualifying individual was permitted, in the course of the business, to occupy the dwelling (provided that no non-qualifying individual occupies the dwelling at any time during the period of the qualifying individual's occupation).

(9) A single-dwelling interest is not regarded as being "held with the intention that" it will be exploited as mentioned in subsection (1)(b) unless steps are being taken to secure that the interest will be so exploited as soon as is reasonably practicable.

(10) In this section—

"relative" means brother, sister, ancestor or lineal descendant;

"relevant settlor", in a case where a person, in the capacity of trustee of a settlement, is connected with the person mentioned in subsection (1)(a), means any individual who is a settlor in relation to the settlement;

"qualifying individual" means an individual other than a non-qualifying individual;

"settlement" has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act);

"trustee" is to be read in accordance with section 1123(3) of CTA 2010 ("connected persons": supplementary).

35 Meaning of "property rental business" and related expressions

(1) The following definitions are for section 34.

(2) "Property rental business" means a business that is a property business for the purposes of the CTA 2009 (but see subsection (3)).

(3) For that purpose, the "rents or other receipts" referred to in section 207(1) of CTA 2009 (generating income from land) are taken not to include excluded rents.

(4) "Excluded rents" means rents within any of classes 2 to 6 in the table in section 605(2) of CTA 2010.

(5) "Qualifying property rental business" means a property rental business that is carried on—

(a) on a commercial basis, and
(b) with a view to the realisation of profits.

36 Trades involving the exploitation of an interest in a dwelling

(1) A day in a chargeable period is "relievable" in relation to a single-dwelling interest if at the end of that day the interest—
(a) is being exploited as a source of income in the course of a qualifying trade, or
(b) is held with intention that it will be exploited as a source of income in the course of a qualifying trade that is being, or is to be, carried on.

(2) Subsection (3) applies where tax is charged, in respect of a single-dwelling interest, for a chargeable period that includes one or more days that are relievable as a result of subsection (1).

(3) The adjusted chargeable amount for the chargeable period is to be calculated on the basis that the chargeable person is not within the charge with respect to the interest on any relievable day.

(4) "Qualifying trade", in relation to a single-dwelling interest, means a trade that—
(a) involves permitting persons to make use of, stay in or otherwise enjoy the dwelling, and
(b) meets the conditions in subsection (5).

(5) The conditions are that—
(a) the trade is carried on on a commercial basis and with a view to the realisation of profits;
(b) the opportunity to make use of, stay in or otherwise enjoy the dwelling as customers of the trade is available to the public for at least 28 days in the chargeable period.

(6) For the purposes of subsections (4)(a) and (5)(b) persons are not considered to be permitted to make use of, stay in or otherwise enjoy a dwelling unless the areas that they are permitted to make use of, stay in or otherwise enjoy include a significant part of the interior of the dwelling.

(7) The size (relative to the size of the whole dwelling), nature, and function of the area or areas concerned are taken into account in determining whether they form a significant part of the interior of the dwelling.

(8) A single-dwelling interest is not regarded as being "held with the intention that" it will be exploited as a source of income in the course of a qualifying trade unless steps are being taken to secure that the interest will be so exploited as soon as is reasonably practicable.

37 Provisional relief under section 36

(1) Subsection (2) applies if—
(a) a person is required to deliver an annual residential property tax return for a chargeable period with respect to a single-dwelling interest,
(b) on the first day in the period on which the person is within the charge to tax ("the initial day") the condition in section 36(5)(b) has not yet been met with respect to the dwelling concerned,

(c) if that condition is met, the initial day will count as a relievable day by virtue of section 36 (trades involving the exploitation of an interest in a dwelling), and

(d) the person states in the return that it is intended that the opportunity to make use of, stay in or otherwise enjoy the dwelling as customers of the trade will be available to the public for at least 28 days in the chargeable period.

(2) Her Majesty's Revenue and Customs may give under section 8 the relief that would be due if the initial day were a relievable day by virtue of section 36.

(3) Any relief given under subsection (2) is to be withdrawn if the condition in section 36(5)(b) is not in fact met in the case of the dwelling in the chargeable period.

38 Property developers

(1) A day in a chargeable period is a "relievable day" in relation to a single-dwelling interest if the interest has been acquired in the course of a property development trade, and at the end of that day—

(a) a person carrying on the trade ("the property developer") is beneficially entitled to the interest, and

(b) the interest is held exclusively for a qualifying purpose.

(2) Subsection (3) applies where tax is charged, in respect of a single-dwelling interest, for a chargeable period that includes one or more days that are relievable as a result of subsection (1).

(3) For any such chargeable period, the adjusted chargeable amount for the single-dwelling interest is to be calculated on the basis that the chargeable person is not within the charge with respect to the interest on any relievable day.

(4) For the purposes of subsection (1), a single-dwelling interest is held for a qualifying purpose if it is held—

(a) for the purpose of redeveloping and reselling the land in the course of the property development trade,

(b) for the purpose of redeveloping the land with a view to exploiting it as a source of rents and other receipts in the course of a qualifying property rental business carried on by the property developer, or

(c) for a combination of the purposes in paragraphs (a) and (b).

But see subsection (5).

(5) The fact that a single-dwelling interest is held as mentioned in subsection (4)(b) does not preclude the availability of relief under section 34 (property rental businesses).

(6) A single-dwelling interest is not regarded as being held for any purpose mentioned in subsection (4)(b) unless steps are being taken to secure that the redevelopment will commence without delay (except so far as delay is justified by commercial considerations).

39 Property developers: occupation of dwelling by non-qualifying individual

(1) A single-dwelling interest is not regarded as being held for a qualifying purpose at any time when—

(a) a non-qualifying individual is permitted to occupy the dwelling, or any part of it, or

(b) it is intended that the dwelling, or any part of it, will (or will if certain circumstances arise) be made available for occupation by a non-qualifying individual.

(2) If at any time in a chargeable period a person ("the property developer") that is beneficially entitled to a single-dwelling interest and carries on a property development trade permits a non-qualifying individual to occupy the dwelling, this section has effect as if the interest had been held otherwise than as mentioned in subsection 38(1)(b) throughout the period ending with the giving of that permission to occupy and beginning—

(a) with the first day of the chargeable period preceding the one mentioned above, or

(b) (if later) with the first day on which the property developer was beneficially entitled to the single-dwelling interest (and carried on the trade).

(3) If any period during which a person carrying on a property development trade ("the property developer") is beneficially entitled to a single-dwelling interest includes an interval between periods of non-qualifying occupation, section 38 has effect as if a non-qualifying individual were permitted to occupy the dwelling—

(a) throughout that interval, and

(b) from the end of the interval until the property developer disposes of the interest.

(4) In subsection (3) "interval between periods of non-qualifying occupation" means an interval that is preceded and followed by periods during which a non-qualifying individual (whether or not the same individual) is permitted to occupy the dwelling.

40 Property developers: exchange of dwellings

(1) A day in a chargeable period is a "relievable day" in relation to a single-dwelling interest if—

(a) a person ("the property developer") is, at the end of that day, beneficially entitled to a single-dwelling interest ("the returned interest") that was acquired (by the relevant person) in the course of a property development trade, and

(b) that acquisition ("the reverse acquisition") was part of a qualifying exchange.

(2) Subsection (3) applies where tax is charged, in respect of a single-dwelling interest, for a chargeable period that includes one or more days that are relievable as a result of subsection (1).

(3) For any such chargeable period, the adjusted chargeable amount for the single-dwelling interest is to be calculated on the basis that the chargeable person is not within the charge with respect to the interest on any relievable day.

(4) A day is not a relievable day by virtue of this section if at the end of the day a non-qualifying individual occupies or has permission to occupy the dwelling (or any part of it).

(5) If the conditions in subsection (1)(a) and (b) are met at the end of a day, and at any time between the reverse acquisition and that time a non-qualifying person has occupied, or had permission to occupy, the dwelling (or part of the dwelling), that day is not a relievable day in relation to the single-dwelling interest.

(6) In this section "the relevant person" means—

(a) if the property developer is beneficially entitled to the returned interest as a member of a partnership, the persons who acquired the interest as members of the partnership, or

(b) otherwise, the property developer (and any person who acquired the returned interest jointly with the property developer).

(7) The reverse acquisition is part of a qualifying exchange only if—

(a) it was made by way of transfer,

(b) the person from whom the reverse acquisition was made itself acquired (by way of grant or transfer) a chargeable interest in or over a new dwelling from the relevant person, and

(c) each of those acquisitions was entered into in consideration of the other.

(8) A building or part of a building is a "new dwelling" if—

(a) it has been constructed for use as a single dwelling and has not previously been occupied, or

(b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.

41 Definitions for sections 38 to 40

(1) "Property development trade" means a trade that—

(a) consists of or includes buying and redeveloping for resale residential or non-residential property, and

(b) is run on a commercial basis and with a view to the realisation of profits.

(2) In sections 38 to 40 "non-qualifying individual" means any of the following—

(a) an individual who is beneficially entitled to the interest,

(b) an individual who is connected with a person beneficially entitled to the interest ("a connected person"),

(c) if the company is beneficially entitled to the chargeable interest as a member of a partnership, any person who is connected with a person who is a partner in the partnership,

(d) a relevant settlor,

(e) the spouse or civil partner of a connected person or of a relevant settlor,

(f) a relative of a connected person or of a relevant settlor, or the spouse or civil partner of a relative of a connected person or of a relevant settlor,

(g) a relative of the spouse or civil partner of a connected person or of a relevant settlor, or

(h) the spouse or civil partner of a person falling within paragraph (g).

(3) In sections 38 to 40—

"relative" means brother, sister, ancestor or lineal descendant;

"relevant settlor", in a case where a person, in the capacity of trustee of a settlement, is connected with the company mentioned in section 38(1)(a), means any individual who is a settlor in relation to the settlement;

"qualifying individual" means an individual other than a non-qualifying individual;

"settlement" has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act);

"trustee" is to be read in accordance with section 1123(3) of CTA 2010 ("connected persons": supplementary).

(4) In this section and sections 38 to 40 "beneficially entitled" means beneficially entitled—
  (a) whether solely or jointly with another person, and
  (b) whether as a member of a partnership or otherwise.

(5) Section 35 applies for the purposes of section 38 as for the purposes of section 34.

42 Property traders

(1) A day in a chargeable period is "relievable" in relation to a single-dwelling interest if at the end of that day—
  (a) a person carrying on property trading business (a "property trader") is beneficially entitled to the interest, and
  (b) the interest is held as stock of the business and for the sole purpose of resale in the course of the business.

(2) Subsection (3) applies where tax is charged, in respect of a single-dwelling interest, for a chargeable period that includes one or more days that are relievable as a result of subsection (1) (or for more than one such period).

(3) For any such chargeable period, the adjusted chargeable amount for the single-dwelling interest is to be calculated on the basis that the chargeable person is not within the charge with respect to the interest on any relievable day.

(4) A single-dwelling interest in a dwelling is taken not to be held for the sole purpose of resale in the course of a property trading business at any time when—
  (a) a non-qualifying individual is permitted to occupy the dwelling, or
  (b) it is intended that the dwelling will (or will if certain circumstances arise) be made available for occupation by a non-qualifying individual.

(5) "Property trading business" means a business that consists of or includes activities in the nature of a trade of buying and selling dwellings.

43 Property traders: supplementary

(1) If at any time in a chargeable period a property trader who is beneficially entitled to a single-dwelling interest permits a non-qualifying individual to occupy the dwelling, section 42 has effect as if there had been an intention such as is mentioned in section 42(4)(b) throughout the period ending with the giving of that permission to occupy and beginning—
  (a) with the first day of the chargeable period preceding the one mentioned above, or

(b) (if later) with the first day on which the property trader was beneficially entitled to the single-dwelling interest (and carried on the business).

(2) If any period during which a property trader is beneficially entitled to a single-dwelling interest includes an interval between periods of non-qualifying occupation, section 42 has effect as if a non-qualifying individual were permitted to occupy the dwelling—

(a) throughout that interval, and

(b) from the end of the interval until the property trader disposes of the interest.

(3) In subsection (2) "interval between periods of non-qualifying occupation" means an interval that is preceded and followed by periods during which a non-qualifying individual (whether or not the same individual) is permitted to occupy the dwelling.

(4) In this section and section 42, "non-qualifying individual", in relation to a property trader, means any of the following—

(a) an individual who is beneficially entitled to the interest,

(b) an individual who is connected with a person beneficially entitled to the interest ("a connected person"),

(c) a relevant settlor,

(d) the spouse or civil partner of a connected person or of a relevant settlor,

(e) a relative of a connected person or of a relevant settlor, or the spouse or civil partner of a relative of a connected person or of a relevant settlor,

(f) a relative of the spouse or civil partner of a connected person or of a relevant settlor, or

(g) the spouse or civil partner of a person falling within paragraph (f).

(5) In subsection (4)—

"relative" means brother, sister, ancestor or lineal descendant;

"relevant settlor", in a case where a person, in the capacity of trustee of a settlement, is connected with the property trader, means any individual who is a settlor in relation to the settlement;

"settlement" has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act);

"trustee" is to be read in accordance with section 1123(3) of CTA 2010 ("connected persons": supplementary).

(6) For the purposes of this section and section 42, occupation of any part of a dwelling is regarded as occupation of the dwelling.

(7) In this section and section 42 "beneficially entitled" means beneficially entitled—

(a) whether solely or jointly with another person, and

(b) whether as a member of a partnership or otherwise.

44 Occupation by certain employees or partners

(1) A day in a chargeable period is a "relievable day" if at the end of that day—

(a) a person ("P") is beneficially entitled to a single-dwelling interest,

(b) P, or a relevant group member, carries on a qualifying trade,

(c) the interest is held for the purpose of making the dwelling available to a qualifying individual or qualifying individuals for use as living accommodation, and

(d) the dwelling is, or is to be, made available as mentioned in paragraph (c) for purposes that are solely or mainly purposes of the trade.

(2) Subsection (3) applies where tax is charged, in respect of a single-dwelling interest, for a chargeable period in which one or more days are relievable as a result of subsection (1).

(3) The adjusted chargeable amount is to be calculated on the basis that the chargeable person is not within the charge with respect to the interest on any relievable day.

(4) "Qualifying trade" means a trade that—

(a) is not a property rental business, a property development trade or a property trading business, and

(b) is carried on on a commercial basis and with a view to profit.

(5) In this section references to making a dwelling available to a qualifying individual include making it available to persons who are to share the accommodation with a qualifying individual as that person's family.

(6) Where P is a company, "a relevant group member" means a company which is a member of the same group as P for the purposes mentioned in paragraph 1(2) of Schedule 7 to FA 2003 (stamp duty land tax: group relief).

45 Meaning of "qualifying individual" in section 44

(1) In a case where the person carrying on the trade mentioned in section 44(1)(b) carries it on in partnership with one or more other persons, the following are "qualifying individuals"—

(a) any qualifying member of the partnership;

(b) any qualifying employee.

(2) In any other case, "qualifying individual" means a qualifying employee.

(3) In the case mentioned in subsection (1), any individual who is a member of the partnership is a "qualifying member of the partnership", unless that individual is entitled to a 5% or greater share—

(a) in the income profits of the partnership, or

(b) in any company that is beneficially entitled to the single-dwelling interest mentioned in section 44(1)(a), or

(c) in that single-dwelling interest.

(4) In subsections (1) and (2), "qualifying employee" means any individual employed for the purposes of the qualifying trade, except one who—

(a) is entitled to a 5% or greater share—

(i) in the income profits of the trade, or

(ii) in any company that is beneficially entitled to the single-dwelling interest mentioned in section 44(1)(a), or

(iii) in that single-dwelling interest, or

(b) provides excluded domestic services.

(5) The reference in subsection (4)(b) to an individual who provides excluded domestic services is to an individual the duties of whose employment include

the provision of services in connection with the (actual or intended) occupation, by a non-qualifying individual, of the dwelling mentioned in section 44(1)(b) ("the relevant dwelling"), or a linked dwelling.

(6) In subsection (5) "non-qualifying individual" means an individual connected with a person who is beneficially entitled to the single-dwelling interest.

(7) The following are "linked" dwellings for the purposes of subsection (5)—
  (a) if the conditions in section 17(2) are met in relation to the relevant dwelling and another dwelling, that other dwelling;
  (b) a dwelling that is linked to the relevant dwelling, as described in section 18(1).

(8) In this section references to employment include the holding of an office.

(9) For the purposes of subsection (3)(c) persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) are taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

46 Meaning of "5% or greater share in a company"

(1) This section applies for the purposes of section 45.

(2) An individual ("P") is taken to be entitled to a 5% or greater share in a company ("C") if P possesses (directly or indirectly) or is entitled to acquire—
  (a) 5% or more of the share capital of C,
  (b) 5% or more of the issued share capital of C,
  (c) 5% or more of the voting power in C,
  (d) 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 5% or more of the amount so distributed, or
  (e) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive 5% or more 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 subsection (2)(d).

(4) For the purposes of subsection (2) a person is treated as entitled to acquire anything which the person—
  (a) is entitled to acquire at a later date, or
  (b) will at a future date be entitled to acquire.

(5) 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 behalf,

those rights or powers are to be attributed to A.

(6) The following are also be attributed to a person—
  (a) the rights and powers of any two or more companies of which the person has, or the person and associates of the person have, control (or of any two or more companies within this paragraph);

(b) the rights and powers of any associate of the person (or of any two or more associates of the person).

(7) The rights and powers which are to be attributed under subsection (6)—

(a) include those attributed to a company or associate under subsection (5), but

(b) do not include those attributed to an associate under subsection (6).

(8) A person who does not meet the conditions in subsection (2) is nevertheless treated as having a 5% or greater share in a company if the person exercises, is able to exercise or is entitled to acquire, direct or indirect control over the company's affairs.

(9) In this section—

"associate" has the same meaning as in Part 10 of CTA 2010 (see section 448 of that Act); but for this purpose section 448 is to be read as if the words "or partner" were omitted in subsection (1)(a);

"control" has the same meaning as in that Part (see section 450 of that Act);

"loan creditor" has the same meaning as in that Part (see section 453 of that Act);

"participator" has the same meaning as in that Part (see section 454 of that Act).

47 Farmhouses

(1) A day in a chargeable period is a "relievable day" in relation to a single-dwelling interest in a farmhouse if at the end of the day—

(a) a person carrying on a qualifying trade of farming is beneficially entitled to the interest, and

(b) the farmhouse is occupied by a qualifying farm worker.

(2) Subsection (3) applies where tax is charged for a chargeable period in respect of a single-dwelling interest in a farmhouse.

(3) The adjusted chargeable amount is to be calculated on the basis that the chargeable person is not within the charge with respect to the interest on any relievable day in the period.

(4) In subsection (1) "farmhouse" means a dwelling that—

(a) forms part of land occupied for the purposes of the trade mentioned in that subsection, and

(b) is of a character appropriate to a dwelling occupied in connection with the farming of the land concerned, having regard to the size of the farm and to the nature and scale of the trade carried on.

(5) In subsection (1) "qualifying farm worker" means an individual who—

(a) occupies the farmhouse for the purposes of the trade mentioned in that subsection, and

(b) has a substantial involvement (as a manager or otherwise) in the day-to-day work of the trade.

(6) A trade of farming is a "qualifying trade" only if it is carried on—

(a) on a commercial basis, and

(b) with a view to the realisation of profits.

(7) A person occupying part of a dwelling is regarded as occupying the dwelling for the purposes of this section.

(8) In this section "beneficially entitled" means beneficially entitled—
(a) whether solely or jointly with another person, and
(b) whether as a member of a partnership or otherwise.

(9) In this section—
(a) "farming" has the same meaning as in the Corporation Tax Acts (see section 1125 of CTA 2010), except that in this section "farming" includes market gardening;
(b) "market gardening" has the same meaning as in the Corporation Tax Acts (see section 1125(5) of CTA 2010).

Administration and payment of tax

48 Responsibility for collection and management

The Commissioners for Her Majesty's Revenue and Customs are responsible for the collection and management of annual residential property tax.

49 Duty to make an annual residential property tax return

(1) Where tax is charged on a person for a chargeable period with respect to a single-dwelling interest the person must deliver a return for the period with respect to the interest.

(2) A return under subsection (1) must be delivered by the end of the period of 30 days beginning with first day in the period on which the person is within the charge with respect to the interest.

(3) If the first day in the chargeable period on which the person is within the charge with respect to the interest ("day 1") is a valuation date only because of section 26 or 27—
(a) subsection (2) does not apply, and
(b) the return must be delivered by the end of the period of 90 days beginning with day 1.

(4) Subsections (5) and (6) apply if—
(a) as a result of the acquisition of a chargeable interest in or over a dwelling ("the new interest"), a person is within the charge with respect to a a single-dwelling interest on one or more days in a chargeable period, and
(b) that person was within the charge with respect to a single-dwelling interest in the same dwelling ("the previously-held interest") on one or more days in the chargeable period that precede the effective date of the acquisition of the new interest.

(5) If the person was not within the charge with respect to the previously-held interest on the day before the effective date of the acquisition mentioned in subsection (4)(a), the new interest is, for the purposes of this Part, a different single-dwelling interest from the previously-held interest (and subsection (2) applies accordingly).

(6) In any other case, the person mentioned in subsection (4) must deliver (in addition to the return required under subsection (2) for the period) a further return with respect to the interests mentioned in subsection (4) (whether or not those interests are, or are treated under section 11 or 12 as being, one single-dwelling interest as a result of the acquisition).

(7) A return under subsection (6) must be delivered by the end of the period of 30 days beginning with the effective date of the acquisition referred to in subsection (4)(a).

(8) A return under this section must be delivered to an officer of Revenue and Customs, and is called an "annual residential property tax return".

50 Amendment of return where conditions for relief cease to be met

(1) If a person is entitled to, and claims relief for a chargeable period by virtue of any of sections 34 to 47, and circumstances change during the chargeable period, so that one or more subsequent days in the chargeable period are not relievable days by virtue of the relief in question, the person must amend the annual residential property tax return (in which the relief was claimed).

(2) The return must be amended by the end of the period of 90 days beginning with the first day in the chargeable period that is not a relievable day by virtue of the relief in question.

51 Annual residential property tax return to include self-assessment

(1) An annual residential property tax return must include a self-assessment.

(2) A "self-assessment" is—
 (a) an assessment of the amount of tax to which the person is chargeable for the period in respect of the interest, or
 (b) in the case of a return under section 49(6), a re-assessment of that amount.

(3) A self-assessment must include a statement of the amount taken to be the market value of the interest on each valuation date that is relevant for the purposes of the assessment.

52 Returns, enquiries, assessments and other administrative matters

(1) Schedule 1 contains provision about returns, enquiries and related matters.

(2) The Treasury may by regulations make any amendments of Schedule 1, and any consequential amendments of any other provisions of this Part, they may at any time think appropriate.

53 Payment of tax

(1) Tax charged on a person for a chargeable period with respect to a single-dwelling interest must be paid not later than the filing date for the return required to be made with respect to the interest for the period.

(2) Tax payable as a result of the amendment of an annual residential property tax return must be paid—
 (a) immediately, or

(b) if the amendment is made on or before the filing date for the return, not later than that date.

But see subsection (3).

(3) Where a person is required by section 50(1) (loss of eligibility for relief) to amend a return and complies with subsection (2) of that section (90 day time limit for amendment), tax payable as a result of the amendment must be paid not later than the last day of the period mentioned in that subsection.

(4) Tax payable in accordance with a determination or assessment by an officer of Revenue and Customs must be paid within the period of 30 days beginning with the day on which the determination or assessment is issued.

54 Interest on repayment of tax overpaid etc

(1) A repayment by an officer of Revenue and Customs to which this section applies must be made with interest at the rate applicable under section 178 of FA 1989 for the period beginning with the relevant day and ending with the day (if later than the relevant day) on which the order for repayment is issued.

(2) This section applies to a repayment of tax under section 8 (adjustment of amount chargeable).

(3) The relevant day is the day after the last day of the chargeable period for which the tax was paid.

(4) Interest paid to any person under this section is not income of that person for any tax purposes.

Application of provisions

55 Companies

(1) Everything to be done by a company under this Part must be done by the company acting through—

(a) the proper officer of the company, or

(b) another person who has the express, implied or apparent authority to act on its behalf for the purpose.

(2) For the purposes of subsection (1) the proper officer of a company is—

(a) the secretary, or a person acting as secretary, of the company, or

(b) if the company does not have a proper officer within paragraph (a), the treasurer, or a person acting as treasurer, of the company.

(3) Service of a document on a company under this Part may be effected by serving the document on the proper officer.

(4) Tax due from any company that is incorporated under the law of a country or territory outside the United Kingdom may be recovered from the proper officer of the company (as well as by any means available in the absence of this subsection).

(5) The proper officer—

(a) may retain out of any money that may come into the hands of that officer on the company's behalf enough money to pay that tax, and

(b) is entitled to be fully reimbursed by the company (by that method or another) for amounts recovered from the officer under subsection (4).

(6) If a liquidator or administrator has been appointed for the company, the following rules apply instead of subsections (1) and (2).

Rule 1
Everything to be done by the company under this Part must be done by the company acting through the proper officer.

Rule 2
The liquidator or administrator is the proper officer.

Rule 3
If two or more persons are appointed to act jointly or concurrently as the administrator of the company, the reference in rule 1 to the administrator is to—

(a) whichever of them is specified in a notice given by the administrators to an officer of Revenue and Customs, or

(b) if a notice is not given under sub-paragraph (a), whichever of them is designated by an officer of Revenue and Customs as the administrator for the purposes of rule 1.

56 Partnerships

(1) In this Part "partnership" means—

(a) a partnership within the Partnerships Act 1890,

(b) a limited partnership registered under the Limited Partnerships Act 1907,

(c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships Act (Northern Ireland) 2002, or

(d) a firm or entity of a similar character to any of those mentioned in paragraphs (a) to (c) formed under the law of a country or territory outside the United Kingdom.

(2) This Part has effect as follows in relation to a partnership (for instance, a limited liability partnership formed as mentioned in subsection (1)(c)) that is itself capable of being beneficially entitled to, or of acquiring or disposing of, a chargeable interest—

(a) transactions entered into on behalf of the partnership are treated as entered into by or on behalf of the partners;

(b) where the partnership is beneficially entitled to a single-dwelling interest, this Part has effect as if the partners were jointly beneficially entitled to the interest (and the partnership had no entitlement to it).

(3) For the purposes of this Part a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

(4) A partnership is not regarded for the purposes of this Part as a collective investment scheme (and more particularly, is not regarded as a unit trust scheme).

(5) Anything required or authorised by this Part to be done by or in relation to the responsible partners for a partnership may instead be done by or in relation to any representative partner or partners.

(6) A representative partner means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Part of this Act.

(7) Any such nomination, or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to an officer of Revenue and Customs.

Supplementary provisions

57 Orders and regulations

(1) An order or regulations under this Part are to be made by statutory instrument.

(2) A statutory instrument containing regulations or an order made under this Part, other than an order under section 5(5), is subject to annulment in pursuance of a resolution of the House of Commons.

(3) An order or regulations under this Part—
(a) may make different provision for different cases,
(b) may include consequential or transitional provisions or savings.

Interpretation

58 Meaning of "chargeable day" and "within the charge"

Where tax is charged for a chargeable period with respect to a single-dwelling interest—
(a) any day in the chargeable period on which the conditions in section 1(2) are met with respect to the interest is a "chargeable day" for that interest;
(b) the chargeable person is "within the charge" with respect to the interest on any day on which that person meets the ownership condition with respect to the interest.

59 Connected persons

Section 1122 of the Corporation Tax Act 2010 (connected persons) has effect for the purposes of this Part.

60 General interpretation

(1) In this Part—
"chargeable day" (in relation to a single-dwelling interest) is to be read in accordance with section 58;
"the chargeable person" has the meaning given by section 2(2) or (3);
"collective investment scheme" has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act);

"company" has the same meaning as in Schedule 4A to FA 2003 (see paragraph 9 of that Schedule and paragraph 1 of Schedule 15 to that Act);

"completion", in Scotland, means—

(a) in relation to a lease, when it is executed by the parties (that is to say, by signing) or constituted by any means,

(b) in relation to any other transaction, the settlement of the transaction;

"EEA UCITS" has the same meaning as in Part 17 of the Financial Services and Markets Act 2000;

"filing date", in relation to an annual residential property tax return or a nil charge return, has the meaning given by paragraph 26 of Schedule 1;

"jointly entitled" means—

(a) in England and Wales, beneficially entitled as joint tenants or tenants in common,

(b) in Scotland, entitled as joint owners or owners in common,

(c) in Northern Ireland, beneficially entitled as joint tenants, tenants in common or coparceners;

"property rental business" has the meaning given by section 35(2);

"market value" has the meaning given by section 6(8);

"open-ended investment company" has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236(1) of that Act);

"settlement" has the meaning given by paragraph 1 of Schedule 16 to FA 2003;

"property trading business" has the meaning given by section 42(5);

"qualifying property rental business" has the meaning given by section 35;

"tax" means tax under this Part;

"trade" has the same meaning as in section 35 of CTA 2009 (and cognate expressions are to be read accordingly);

"unit trust scheme" has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 237(1) of that Act).

(2) In this Part—

references to an "annual residential property tax return" are to be read in accordance with section 49(8);

references to the "effective date" of an acquisition are to be read in accordance with section 22(2);

references to the "effective date" of a disposal are to be read in accordance with section 23(2);

references to a "major interest" in land are to be read in accordance with section 117 of FA 2003;

references to meeting the "ownership condition" are to be read in accordance with section 1(4) to (6);

references to being "within the charge" with respect to a single-dwelling interest are to be read in accordance with section 58.

SCHEDULES

SCHEDULE 1

Section 52

ANNUAL RESIDENTIAL PROPERTY CHARGE: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

PART 1

RETURNS

Contents of return

1 (1) The Commissioners for Her Majesty's Revenue of Customs may by regulations make provision about—
   (a) the content of an annual residential property tax return;
   (b) the form of such a return;
   (c) the method of delivering such a return.

(2) Regulations under sub-paragraph (1) may make different provision for different purposes.

(3) Every return must include a declaration by the person making it to the effect that the return is correct and complete to the best of the person's knowledge.

(4) An annual residential property tax return is treated as containing any information provided by the person making the return for the purpose of completing the return.

2 References in this Part of this Act to the delivery of an annual residential property tax return are to the delivery of a return that complies with all requirements imposed by or under section 49 or 51 or paragraph 1.

Amendment of return by taxpayer

3 (1) A person who has delivered an annual residential property tax return or a nil charge return may amend the return by notice to an officer of Revenue and Customs.

(2) An officer of Revenue and Customs may specify—
   (a) the form in which the return must be made;
   (b) information that it must contain.

(3) An amendment under this paragraph must be made by the end of the next chargeable period after the chargeable period to which the return relates (but see the exception that follows).

(4) If a return is delivered on or after 1 January in the chargeable period next after that to which it relates, the latest time for amending the return under

this paragraph is the end of the period of 3 months after the day on which the return is delivered.

PART 2

ENQUIRY INTO RETURN

Notice of enquiry

4 (1) An officer of Revenue and Customs may enquire into an annual residential property tax return or a nil charge return if sub-paragraph (2) has been complied with.

(2) Notice of the intention to make an enquiry must be given—

(a) to the person by whom or on whose behalf the return was delivered ("the relevant person");

(b) before the end of the period of 12 months after the relevant date.

(3) The relevant date is—

(a) the filing date, if the return was delivered on or before that date;

(b) the date on which the return was delivered, if the return was delivered after the filing date;

(c) the date on which the amendment was made, if the return is amended under paragraph 3 (amendment by person making the return).

(4) A return that has been the subject of one notice of enquiry may not be the subject of another, except a notice given in consequence of an amendment (or another amendment) of the return under paragraph 3.

Scope of enquiry

5 (1) An enquiry extends to anything contained in the return, or required to be contained in the return, that relates—

(a) to the question whether the relevant person is chargeable to tax with respect to the interest to which the return relates for the chargeable period concerned, or

(b) to the amount of tax chargeable on the relevant person with respect to that interest for that period.

(2) Sub-paragraph (3) applies if notice of an enquiry is given as a result of the amendment of a return under paragraph 3 (amendment by person making the return)—

(a) at a time when it is no longer possible to give notice of enquiry under paragraph 4(3)(a) or (b), or

(b) after an enquiry into the return has been completed.

(3) The enquiry is limited to—

(a) matters to which the amendment relates, and

(b) matters affected by the amendment.

Amendment of self-assessment during enquiry to prevent loss of tax

6 (1) If at a time when an enquiry is in progress into an annual residential property tax return an officer of Revenue and Customs forms the opinion—

(a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and

(b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,

the officer may by notice in writing to the relevant person amend the assessment to make good the deficiency.

(2) If the enquiry is one that is limited by paragraph 5(2) and (3) to matters arising from an amendment of the return, sub-paragraph (1) above applies only so far as the deficiency is attributable to the amendment.

(3) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—

(a) beginning with the day on which the notice of enquiry is given, and

(b) ending with the day on which the enquiry is completed.

Referral of questions to tribunal during enquiry

7 (1) At any time when an enquiry is in progress into an annual residential property tax return or a nil charge return any question arising in connection with the subject-matter of the return may be referred to the tribunal for determination.

(2) Notice of the referral must be given to the tribunal jointly by the relevant person and an officer of Revenue and Customs.

(3) More than one notice of referral may be given under this paragraph in relation to an enquiry.

(4) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—

(a) beginning with the day on which the notice of enquiry is given, and

(b) ending with the day on which the enquiry is completed.

(5) References in this paragraph to "the tribunal" are to be read as follows.

(6) Where the question to be referred is of the market value of any single-dwelling interest "the tribunal" means—

(a) the Upper Tribunal, if the land is in England and Wales;

(b) the Lands Tribunal for Scotland, if the land is in Scotland;

(c) the Lands Tribunal for Northern Ireland, if the land is in Northern Ireland.

(7) In any other case "the tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

Withdrawal of notice of enquiry

8 An officer of Revenue and Customs or the relevant person may withdraw a notice of referral under paragraph 7.

Effect of referral on enquiry

9 (1) While proceedings on a referral under paragraph 7 are in progress in relation to an enquiry—

(a) no closure notice may be given in relation to the enquiry, and

(b) no application may be made for a direction to give a closure notice.

(2) Proceedings on a referral are "in progress" where—
(a) notice of referral has been given and has not been withdrawn, and
(b) the questions referred have not been finally determined.

(3) A question referred has been "finally determined" when—
(a) it has been determined by the tribunal, and
(b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

Effect of referral on enquiry

10 (1) A determination under paragraph 7 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.

(2) The officer of Revenue and Customs conducting the enquiry must take the determination into account—
(a) in reaching conclusions on the enquiry, and
(b) in the formulation of any amendments of the return that may be required to give effect to those conclusions.

(3) The question determined may not be reopened on an appeal, except to the extent that it could be reopened if it had been determined as a preliminary issue in that appeal.

Completion of enquiry

11 (1) An enquiry under paragraph 4 is completed when an officer of Revenue and Customs informs the relevant person by a notice (a "closure notice") that the enquiry is complete and states the conclusions reached in the enquiry.

(2) A closure notice must either—
(a) state that in the officer's opinion no amendment of the return is required, or
(b) make the amendments of the return required to give effect to the officer's conclusions.

(3) A closure notice takes effect when it is issued.

Direction to complete enquiry

12 (1) The relevant person may apply to the tribunal for a direction that a closure notice is to be given within a specified period.

(2) The tribunal hearing the application must give a direction unless satisfied that Her Majesty's Revenue and Customs have reasonable grounds for not giving a closure notice within that period.

(3) In this paragraph "the tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

PART 3

HMRC DETERMINATION WHERE NO RETURN DELIVERED

Determination of tax chargeable if return not delivered

13 (1) This paragraph applies where—
(a) an officer of Revenue and Customs has reason to believe that a person ("P") is chargeable to tax for a chargeable period in respect of a single-dwelling interest,
(b) no return has been made for that period on the basis that P is so chargeable, and
(c) the relevant filing date has passed.

(2) "The relevant filing date" means the date by which the officer believes a return was required to be delivered on that basis.

(3) The officer may make a determination (an "HMRC determination") to the best of the officer's information and belief of the amount of tax to which P is chargeable for that period with respect to the interest.

(4) Notice of the determination must be given to P, stating the date on which it is issued.

(5) No HMRC determination may be made more than 4 years after the end of the chargeable period to which it relates.

Determination to have effect as a self-assessment

14 (1) A determination under paragraph 13 has effect for enforcement purposes as if it were a self-assessment made by P.

(2) In sub-paragraph (1) "for enforcement purposes" means for the purposes of the provisions of Schedule 55 to FA 2009 providing for tax-related penalties.

(3) Nothing in this paragraph affects any liability of a person to a penalty for failure to deliver a return.

Determination superseded by actual self-assessment

15 (1) If after an HMRC determination has been made P delivers an annual residential property tax return for the chargeable period with respect to the interest in question, the self-assessment included in that return supersedes the determination.

(2) Sub-paragraph (1) does not apply to a return delivered—
(a) more than 4 years after the power to make the determination first became exercisable, or
(b) more than 12 months after the date of the determination,

whichever is the later.

(3) Where—
(a) proceedings have been begun for the recovery of any tax charged by an HMRC determination, and
(b) before the proceedings are concluded the determination is superseded by a self-assessment,

the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not yet been paid.

Nil charge return following determination

16 (1) If after an HMRC determination has been made P makes a nil charge return for the chargeable period with respect to the interest in question, that return supersedes the determination.

(2) Sub-paragraph (1) does not apply to a return delivered—

(a) more than 4 years after the power to make the determination first became exercisable, or

(b) more than 12 months after the date of the determination,

whichever is the later.

(3) A nil charge return is a return that—

(a) refers to the determination, and

(b) states that the person making the return is not liable to tax for the chargeable period with respect to any chargeable interest in or over the dwelling concerned.

(4) The Commissioners for Her Majesty's Revenue of Customs may by regulations make provision (or further provision) about—

(a) the content of a nil charge return;

(b) the form of such a return;

(c) the method of delivering such a return.

(5) Regulations under sub-paragraph (4) may make different provision for different purposes.

(6) Every nil charge return must include a declaration by the person making it to the effect that the return is correct and complete to the best of the person's knowledge.

PART 4

HMRC ASSESSMENTS

Assessment where loss of tax discovered

17 (1) Sub-paragraph (2) applies if an officer of Revenue and Customs discovers, that—

(a) an amount of tax that ought to have been assessed under this Part as tax chargeable on a person for a chargeable period with respect to a single-dwelling interest has not been assessed,

(b) an assessment of the tax chargeable on a person for a chargeable period in respect of a single-dwelling interest is or has become insufficient, or

(c) relief has been given that is or has become excessive.

(2) An officer of Revenue and Customs may make an assessment (a "discovery assessment") in the amount or further amount that ought in the officer's opinion to be charged in order to make good to the Crown the loss of tax.

Assessment to recover excessive repayment of tax

18 (1) If an amount of tax has been, but ought not to have been, repaid to a person that amount may be assessed and recovered as if it were unpaid tax.

(2) If the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.

References to "the taxpayer"

19 In paragraphs 20 to 23 references to "the taxpayer" are to the person mentioned in paragraph 17(1)(a) or (b) or 18(1).

Conditions for making assessment where return has been delivered

20 (1) If the taxpayer has delivered an annual residential property tax return or a nil charge return in respect of the interest in question for the chargeable period in question, an assessment under paragraph 17 or 18 may only be made in the two cases specified in sub-paragraphs (2) and (3).

See also the further restriction in sub-paragraph (7).

(2) The first case is where the situation mentioned in paragraph 17(1) or 18(1) is attributable to fraudulent or negligent conduct on the part of—

(a) the taxpayer,
(b) a person acting on behalf of the taxpayer, or
(c) a person who was a partner of the taxpayer at the relevant time.

(3) The second case is where it could not reasonably have been expected, on the basis the information made available to Her Majesty's Revenue and Customs before the relevant time, that any officer of Revenue and Customs would be aware at the relevant time of the situation mentioned in paragraph 17(1) or 18(1).

(4) In sub-paragraph (3) "the relevant time" means the time Her Majesty's Revenue and Customs—

(a) ceased to be entitled to give a notice of enquiry into the return, or
(b) completed their enquiries into the return.

(5) For this purpose information is regarded as made available to Her Majesty's Revenue and Customs if—

(a) it is contained in an annual residential property tax return or nil charge return delivered by the taxpayer,
(b) it is contained in any documents produced or information provided to an officer of Revenue and Customs for the purposes of an enquiry into any such return,
(c) it is information the existence and relevance of which officers of Revenue and Customs could reasonably have been expected to infer from information made available as mentioned in paragraph (a) or (b), or
(d) it is information the existence and relevance of which was notified to an officer of Revenue and Customs by the taxpayer or a person acting on the taxpayer's behalf.

(6) In sub-paragraphs (5)(c) and (d) "relevance" means relevance as regards the situation mentioned in paragraph 17(1) or 18(1).

(7) No assessment may be made under paragraph 17 or 18 if—
(a) the situation mentioned in paragraph 17(1) or 18(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and
(b) the return was in fact made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

Time limit for assessments

21 (1) The general rule is that no assessment may be made more than 4 years after the end of the period of charge to which the assessment relates.

(2) An assessment of a person to tax in a case involving a loss of tax brought about carelessly by the taxpayer or a related person may be made up to 6 years after the end of the chargeable period to which the assessment relates.

(3) An assessment to which this sub-paragraph applies may be made up to 20 years after the end of the chargeable period to which the assessment relates.

(4) Sub-paragraph (3) applies to an assessment of a person in any case involving a loss of tax—
(a) brought about deliberately by the taxpayer or a related person,
(b) attributable to a failure by the taxpayer to comply with obligations under section 49(1) (duty to make return), or
(c) attributable to arrangements in respect of which the person has failed to comply with an obligation under section 309, 310 or 313 of FA 2004 (obligation of parties to tax avoidance schemes to provide information to Her Majesty's Revenue and Customs).

(5) An assessment under paragraph 18 (assessment to recover excessive repayment of tax) is not out of time if it is made—
(a) while an enquiry is in progress into a relevant return, or
(b) within the period of one year beginning with the date on which the repayment in question was made.

(6) In sub-paragraph (5)—
"in progress" is to be read in accordance with paragraph 7(4);
"relevant return" means an annual residential property tax return or nil charge return delivered by the taxpayer and relating to the chargeable period and the interest in question.

(7) If the taxpayer has died—
(a) any assessment on the personal representatives must be made within 4 years after the death, and
(b) an assessment is not to be made by virtue of sub-paragraph (2) in respect of a chargeable period that ended more than six years before the death.

(8) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on an appeal against the assessment.

(9) In this paragraph "related person", in relation to the taxpayer, means—

(a) a person acting on the taxpayer's behalf, or
(b) a person who was the partner of the taxpayer at the relevant time.

Losses brought about carelessly or deliberately

22 (1) This paragraph applies for the purposes of paragraph 21.

(2) A loss of tax is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss.

(3) Sub-paragraph (4) applies where—
(a) information is provided to Her Majesty's Revenue and Customs,
(b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and
(c) that person fails to take reasonable steps to inform Her Majesty's Revenue and Customs.

(4) Any loss of tax brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(5) References to a loss of tax brought about deliberately by a person include a loss of tax brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.

Assessment procedure

23 (1) Notice of an assessment must be served on the taxpayer.

(2) The notice must state—
(a) the tax due,
(b) the date on which the notice is issued, and
(c) the time within which any appeal against the assessment must be made.

(3) After notice of the assessment has been served on the taxpayer, the assessment may not be altered except in accordance with the express provisions of this Part of this Act.

(4) Where an officer of Revenue and Customs has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, the officer may entrust to some other officer of Revenue and Customs the responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

PART 5

SUPPLEMENTARY

Application of Schedule in cases involving joint ownership

24 (1) This paragraph applies where—
(a) tax is charged for a chargeable period with respect to a single-dwelling interest, and

(b) on one or more chargeable days in that period two or more persons (referred to below as "the owners") are jointly entitled to the interest.

(2) If two or more persons are jointly entitled to the interest on the first chargeable day in the period concerned—

(a) the obligation to deliver the return is a joint obligation of those persons;

(b) the declaration required by paragraph 1(3) must be made by all those persons;

(c) a single return is required, even if more than one of those persons is chargeable to the tax to which the return relates.

Partnerships

25 In relation to an annual residential property tax return or a nil charge return delivered by the responsible partners for a partnership, anything required or authorised under section 49 or this Schedule to be done by the responsible partners is required or authorised to be done by all the responsible partners.

Meaning of "filing date"

26 "Filing date", in relation to an annual residential property tax return or a nil charge return, means the day by the end of which the return is required to be delivered.

SCHEDULE 2

Section {jref}

ANNUAL RESIDENTIAL PROPERTY CHARGE: SPECIAL PROVISION FOR 2013-14

Duty to make returns

1 In relation to the chargeable period beginning on 1 April 2013, section 49 has effect as if subsections (2) and (3) of that section provided as follows—

"(2) A return under subsection (1) must be delivered by the end of 1 October 2013 if the days on which the person is within the charge with respect to the interest include 1 April 2013.

(3) If the days on which the person is within the charge with respect to the interest do not include 1 April 2013, the return must be delivered—

(a) by the end of 1 October 2013, or

(b) by the end of the period of 30 days beginning with the first day in the chargeable period on which the person is within the charge with respect to the interest,

whichever is the later."

EXPLANATORY NOTE

ANNUAL RESIDENTIAL PROPERTY TAX

SUMMARY

1. Clauses 1 to 63 introduce a new tax called the annual residential property tax (ARPT). This is chargeable on companies, collective investment schemes and partnerships with company members who hold UK residential dwellings valued at greater than £2 million on specified valuation dates. The measure takes effect from 1 April 2013. The annual tax is in most cases payable on or before 31 October 2013 for 2013-14, and on or before 30 April each year subsequently. If the payer is not chargeable for the full year, a later repayment claim can be made. The clause provides reliefs against the tax for residential dwellings that are leased out in a property rental business; held for sale in a property development or trading business; exploited in a trade of permitting the public to visit, stay in or otherwise enjoy the property; or provided for employees to use in the owner's trade.

DETAILS OF THE CLAUSE

Clause 1 – Charge to Tax

2. Subsection (1) provides for the new ARPT to be charged.

3. Subsection (2) sets out the two conditions that must apply on any day for the tax to be charged: an interest (a single-dwelling interest) in a UK dwelling exists of taxable value greater than £2 million, and a company, partnership or collective investment scheme meets the ownership condition in relation to that interest.

4. Subsection (3) provides for the tax to be charged for the chargeable period

5. Subsection (4) defines the ownership condition for a company (except where it is a member of a partnership) as beneficial entitlement to the single-dwelling interest.

6. Subsection (5) defines the ownership condition for a single-dwelling interest for a member of a partnership that is a company as beneficial entitlement as a member of the partnership.

7. Subsection (6) defines the ownership condition for a collective investment scheme as holding for the purposes of the scheme.

8. Subsection (7) defines references in this section to beneficial entitlement to an interest as being beneficially entitled to it either solely or jointly with another person.

9. Subsection (8) provides for the ownership condition to be regarded as met in relation to the whole chargeable interest where a company is jointly beneficially entitled to a chargeable interest (as a member of a partnership or otherwise).

10. Subsection (9) defines the chargeable periods.

Clause 2 – Person Liable

11. Subsection (2) defines the chargeable person for section 1(4) as the company and for section 1(5) as the responsible partners.

12. Subsection (3) defines the chargeable person for section 1(6) for the different types of collective investment schemes set out in this subsection.

13. Subsection (4) specifies the liability of the responsible partners to pay tax is joint and several.

14. Subsection (5) defines the responsible partners for subsection 2(b) as all the members of the partnership from the first day of the chargeable period when the partnership meets the ownership condition with respect to the single dwelling interest.

Clause 3 – Liability of persons jointly entitled

15. Subsection (1) sets out the application of subsection 2.

16. Subsection (2) states that a person (P) and other person/persons are jointly and severally liable for the tax charged if they are jointly entitled to the single-dwelling interest..

Clause 4 – Amount of tax chargeable

17. Subsection (1) provides for the amount of tax to be charged as specified under subsections (2) or (3).

18. Subsection (2) defines the amount of tax to be charged to be the annual chargeable amount if the chargeable person is within the charge on the first day of the chargeable period. The annual chargeable amount is determined by reference to the taxable value of the interest on the relevant day.

19. Subsection (3) provides for the amount of tax to be charged as a fraction of the annual chargeable amount if the chargeable person is not within the charge on the first day of the chargeable period.

20. Subsection (4) defines the relevant day for subsections (2) and (3).

21. Subsection (5) provides the annual chargeable amount for a single-dwelling interest, based on band into which the taxable value of the single-dwelling interest falls on the relevant day.

22. Subsection (6) defines the relevant fraction for calculating the annual chargeable amount with the number of days that it is owned in a chargeable period as a fraction of the chargeable period.

Clause 5 – Indexation of annual chargeable amounts

23. Subsection (1) sets out that section 4(5) is to be amended for chargeable periods beginning on or after 1 April 2014, if the consumer price index (CPI) is higher for September in 2013, or any later year than it was for the previous September.

24. Subsection (2) provides for the annual chargeable amounts in section 4(3) that apply for the chargeable periods beginning in the previous 12 months to be substituted with the indexed amount.

25. Subsection (3) specifies the method of calculating the indexed amount.

26. Subsection (4) defines "consumer prices index" for the purposes of this section.

27. Subsection (5) requires HM Treasury to make an order before 1 April 2014 and before 1 April annually thereafter, stating the annual chargeable amounts for chargeable periods beginning on or after that date.

Clause 6 – Taxable value

28. Subsection (1) defines the taxable value as equal to the market value on the last previous valuation date.

29. Subsection (2) sets out that the first valuation date for single-dwelling interests is 1 April 2012 and then there is a valuation date of 1 April every five years subsequently.

30. Subsection (3) defines valuation dates in respect of a single-dwelling interest to which a company (other than as a member of a partnership) is beneficially entitled to be also when interests are acquired or in part disposed of.

31. Subsection (4) defines valuation dates in respect of a single-dwelling interest to which a company is beneficially entitled as a member of a

partnership to be also when the partnership acquires or part disposes of an interest.

32. Subsection (5) defines the valuation dates in the case of a single-dwelling interest held by a collective investments scheme to be also when an interest is acquired or part disposed of for the scheme.

33. Subsection (6) confirms that references to disposal of part of a single-dwelling interest to include the grant of a chargeable interest.

34. Subsection (7) excludes the grant of an option from being a chargeable interest for the purposes of subsection (6).

35. Subsection (8) defines "market value" as the same as for the Taxation of Chargeable Gains Act 1992; see in particular sections 272 to 274 of that Act.

Clause 7 – No double charge

36. Clause 7 provides for tax in respect of a single-dwelling interest will be charged only once for any chargeable day even if more than one person is the "chargeable person".

Clause 8 – Adjustment of amount chargeable

37. Subsection (1) allows relief to be claimed if the tax charged is greater than the adjusted chargeable amount for that single-dwelling interest in that period.

38. Subsection (2) provides for the tax charge to be reduced to the adjusted chargeable amount upon a claim being made under this section.

39. Subsection (3) defines the adjustable chargeable amount.

40. Subsection (4) sets out the method for calculating the daily amount for "the relevant day".

41. Subsection (5) provides for relief under this section to be claimed either in an ARPT return or by amending an annual residential property return.

42. Subsection (6) specifies the deadline by which a claim for relief must be delivered.

Clause 9 – Chargeable interests

43. Subsection (1) defines what a chargeable interest is for this Part.

44. Subsection (2) provides that for this Part, when two or more people are jointly entitled to a chargeable interest, it will not be regarded as consisting of separate interests corresponding to their shares (if any) arising from joint entitlement, but will be viewed as a whole.

45. Subsection (3) excludes exempt interests from being chargeable interests.

46. Subsection (4) lists the exempt interests for the purposes of this Part.

47. Subsection (5) defines a security interest for the purposes of subsection (4) (exempt interests for this Part).

48. Subsection (6) states that in respect of the application of this Part in Scotland, the reference to "rentcharge" in subsection 9(5) means, in Scotand, "feu duty" or a payment in section 56(1) of the Abolition of the Feudal Tenure etc Scotland Act.

49. Subsection (7) provides for HM Treasury by regulations to provide that any other descriptions of interest in or right over a dwelling may become an exempt interest.

Clause 10 – Meaning of 'single-dwelling interest'

50. Subsection (1) introduces the clause as defining "single dwelling interest".

51. Subsection (2) defines a single-dwelling interest as a chargeable interest that is exclusively in or over land which (on any day) consists of a single dwelling.

52. Subsection (3) provides that where a person is entitled to a chargeable interest in or over land that consists of two or more single dwellings, provisions referring to a "single-dwelling interest" operate as if the person had a separate chargeable interest over each dwelling and that the chargeable interest for each dwelling is thus a single-dwelling interest.

53. Subsection (4) provides that where a person is entitled to a chargeable interest in or over land that consists of non-residential land in addition to one or more single dwellings, provisions referring to a "single-dwelling interest" operate as if the person had a separate chargeable interest over each dwelling, with a further separate chargeable interest over the non-residential land, and the chargeable interest for each dwelling thus a single-dwelling interest.

54. Subsection (5) reference to a single-dwelling interest should be made to a single-dwelling interest "in" the dwelling concerned.

55. Subsection (6) defines each single-dwelling interest as distinct, even where dwellings stand successively on the same land.

56. Subsection (7) defines for the purposes of this Part "non-residential land" and also states that references to a dwelling include part of a dwelling.

Clause 11 – Different interests held in the same dwelling

57. Subsection (1) applies subsection (2) where a company or a collective investment scheme holds two or more single-dwelling interests in the same dwelling for one or more days in a chargeable period.

58. Subsection (2) provides for this Part to have effect in respect of the chargeable period such that the taxable value of different interests held in the same dwelling is the sum of the taxable values of the separate interests, and the separate interests constituted one single-dwelling interest.

59. Subsection (3) provides that for the purposes of section 11(1)(a), it does not matter whether a company is beneficially entitled to the interest solely or jointly with another person, or as a member of a partnership or otherwise.

Clause 12 – Interests held by connected persons

60. Subsection (1) provides that where on any day separate beneficial entitlements to separate single-dwelling interests in the same dwelling are held by connected persons (e.g. company A and company or person B), this Part has effect as if they are beneficially entitled to the other's single-dwelling interest as well as their own.

61. Subsection (2) provides that where on any day, a single-dwelling interest is held for the purposes of a unit trust scheme and where a connected person is beneficially entitled to a different single-dwelling interest in the same dwelling, this Part has effect:

(i) in relation to the unit trust scheme: as if those separate interests constituted one single-dwelling interest held for the purposes of the unit trust scheme with a taxable value of the sum of the taxable values of the separate interests; or,

(ii) in relation to the connected person or connected company: as if it was beneficially entitled to the scheme's interest as well as to its own single-dwelling interest.

62. Subsection (3) provides for the treatment of two different interests in the same dwelling, each held by a unit trust scheme that is connected

to the other, to be treated in relation to each scheme as if those separate interests constituted just one single dwelling interest held for the purpose of that scheme, the taxable value of which is the sum of the taxable values of the separate interests.

63. Subsection (4) states that it does not matter whether a person is beneficially entitled to an interest jointly or as a member of a partnership, for subsections (1) and (2).

64. Subsection (5) ensures that in accordance with section 7 tax is not charged more than once for any day on an interest treated under this section when read with section 11(2) as one single dwelling interest. This will avoid a double charge,

65. Subsection (6) provides for chargeable persons to be jointly and severally liable with other chargeable persons.

Clause 13 – Meaning of "dwelling"

66. Subsection (1) states when a building or part of a building counts as a dwelling.

67. Subsection (2) provides for land such as a garden or grounds (including any buildings or structures on the land) that is or is intended to be occupied or enjoyed with the dwelling to be part of the dwelling.

68. Subsection (3) provides for land to be considered to be part of the dwelling where it subsists or is intended to subsist for the benefit of the dwelling.

69. Subsection (4) excludes a building or part of a building used for a purpose specified in section 116(2) or (3) of FA 2003 from being considered a dwelling under subsection (1).

70. Subsection (5) makes clear that this use disqualifies the building, or part of the building from being regarded as suitable for any other use.

71. Subsection (6) provides for the temporary unsuitability of a building for use as a dwelling, to be disregarded when considering whether it is a dwelling for this Part. This subsection does not affect any of the provisions in sections 28 to 33.

Clause 14 – Substantial performance of "off-plan" purchase

72. Subsection (1) applies subsection (2) to substantial performance of a contract to acquire a chargeable interest in land or a building to be constructed or adapted, beginning after substantial performance of that contract.

73. Subsection (2) defines the chargeable interest for the purposes of subsection (1)(b).

74. Subsection (3) disapplies subsection (2) if the construction or adaptation contractual obligations cease to have effect before constructions/adaptation work is started.

75. Subsection (4) excludes a building that is used for a purpose specified in sections 116(2) or (3) of FA 2003 from being considered a dwelling under subsection (1).

76. Subsection (5) defines "contract" and the meaning of "substantially performed" for this section.

Clause 15 – Power to widen references to "use as a dwelling"

77. Subsection (1) provides for HM Treasury to amend this Part by order in order to specify cases where use of a building is to be use as a dwelling for sections 14(2) or 13(1).

78. Subsection (2) notes that the reference in section 116(8)(a) of FA 2003 to "the purposes of subsection (1)" includes a reference for the purposes of sections 14(2) and 13(1).

Clause 16 – Parts of a greater whole

79. Subsection (1) provides that where a part of building that can be used a dwelling does not exclude it from being part of a larger single dwelling.

80. Subsection (2) provides that where a building or structure is in the garden or grounds of a dwelling and is enjoyed or occupied with the dwelling, where suitable for use as a single dwelling it is still considered (in accordance with s13(3)) as part of the dwelling.

Clause 17 – Dwelling in grounds of another dwelling

81. Subsection (1) applies subsection (4) if the conditions in subsection (2) are met for a "main dwelling" and an "associated dwelling" at the end of "the day in question" in a chargeable period.

82. Subsection (2) sets the conditions that need to be met for subsection (1) to apply subsection (4), including a common ownership condition.

83. Subsection (3) defines the common ownership condition for a companies (subsection (3)(a)) and collective investment schemes (subsection (3)(b)) entitled to interests in the main dwelling.

84. Subsection (4) applies this Part in relation to the interests as defined in subsections (3)(a) and (3)(b) as if the main dwelling and the associated dwelling were suitable to be used as a single dwelling.

85. Subsection (5) disapplies subsection (4) if on the day in question either the main dwelling or the associated dwelling is relieved from the ARPT by any of the provisions listed in subsection (6).

86. Subsection (6) lists the various relieving provisions referred to in subsection (5).

87. Subsection (7) states that, for a unit trust scheme, an interest held by a person connected with the scheme is treated as being held for the purpose of that scheme.

88. Subsection (8) defines “separate access” for an associated dwelling.

89. Subsection (9) outlines the meaning of references within this section to terms such as “beneficial entitlement”; “garden or grounds” in relation to dwelling or dwellings; the person entitled to possession of a dwelling; and the meaning of “separately entitled”.

Clause 18 – Amalgamation of dwellings in the same building

90. Subsection (1) provides the conditions which need to be met for two parts of a building to be “linked dwellings”.

91. Subsection (2) defines the common ownership condition for a company and for a collective investment scheme as applied to in subsection 18(1)(d).

92. Subsection (3) covers circumstances where at the end of a day in a chargeable period, two parts of a building constitute linked dwellings. This Part has effect in relation to interests cited at subsections 2(a) or (b) to treat them on the day in question, as suitable for use as a single dwelling.

93. Subsection (4) disapplies subsection (3) if in relation to a freehold or leasehold interest, the day in question is a relievable day as listed in subsection (5).

94. Subsection (5) lists the provisions where subsection (3) will not apply to treat the two parts of a building for use as a single dwelling, if the day in question is a relievable day.

95. Subsection (6) provides that a further dwelling in the same building are to be amalgamated with other linked dwellings amalgamated under this clause, so that all of the dwellings are considered suitable for use as a single dwelling, if the additional dwelling is linked with any one of them.

Clause 19 – Section 18: supplementary

96. Subsection (1) specifies that for section 18 purposes, an interest to which an individual connected with a unit trust is beneficially entitled is regarded as held for the purpose of the unit trust scheme.

97. Subsection (2) says that for the purposes of section 18 private access between two dwellings is a route between them to which no third party has a right to access

98. Subsection (3) provides the definition of "third party" for subsection (2) as someone who is neither a person entitled to possession of the dwellings mentioned in subsection (1) nor is connected with them.

99. Subsection (4) defines the "use" condition for section 18(1)(d) as that each of the two dwellings is either (a) occupied or (b) intended to be or usually so occupied or (c) not occupied by a relevant person.

100. Subsection (5) provides the definitions of "relevant person" for subsection (4), including an individual who is a connected person; occupies the property on non-commercial terms; or who is employed by a relevant person in connection with that person's occupation.

101. Subsection (6) defines references to "beneficial entitlement" to include joint entitlement and restricts a person entitled to the possession of a dwelling to on so entitled by an estate or interest in land the person holds.

Clause 20 – Terraces etc.

102. Subsection (1) provides for a terrace of houses or semi-detached houses that are (or include) dwellings to be considered buildings for the purposes of sections 18 and 19.

Clause 21 – Acquisitions and disposals of chargeable interests

103. Subsection (1) ensures that acqusitions however effected are treated as such.

104. Subsection (2) treats the surrender or release of an interest as an acquisition and disposal.

105. Subsection (3) treats the variation of an interest as an acquisition or disposal for the purpose of this legislation..

Clause 22 – Date of acquisition

106. Subsection (1) states that the acquisition date of a chargeable interest in a land with a dwelling is treated as the beginning of the effective date of acquisition.

107. Subsection (2) defines the effective date of an acquisition, with provision for an alternative date to be specified by regulations.

Clause 23 – Date of disposal

108. Subsection (1) provides for the date of disposal of a chargeable interest in a land consisting of or including a dwelling to be the day preceding the effective date of disposal.

109. Subsection (2) defines the effective date of a disposal, with provision for an alternative date to be specified by regulations.

Clause 24 – Contract and conveyance: the purchaser

110. Subsection (1) applies this section where a person enters a contract to acquire a relevant chargeable interest and the acquisition is completed by a conveyance.

111. Subsection (2) provides that a person is not seen as having acquired a chargeable interest by reason of entering into the contract.

112. Subsection (3) where a contract is not completed but is substantially performed, this Part has effect as if the substantial performance was completion of the acquisition which the contract intended to achieve.

113. Subsection (4) provides that where subsection (3) applies and the contract is then completed through a conveyance, completion (for the purposes of section 6) it is not deemed to have given effect to acquiring the chargeable interest.

114. Subsection (5) sets out the position where subsection (3) applies and the contract is subsequently rescinded or annulled before the contract is fully carried out, then this Part is effective as if P had disposed of the chargeable interest as per subsection (1)(a).

115. Subsection (6) defines "the relevant time" for the purposes of subsection (5).

116. Subsection (7) in a situation where subsection (3) applies and the contract is then varied or partially rescinded, resulting in a chargeable interest acquired under contract which differs from that to which the contract originally related, this Part operates as if the contract variation had resulted in purchaser P's disposal of the interest referred to in subsection (1)(a) and the substantial performance of the varied contract.

117. Subsection (8) applies subsection (7) if the parties proceed as if they had varied the contract without actually doing so.

118. Subsection (9) provides further definitions for this section.

Clause 25 – Contract and conveyance: the vendor

119. Subsection (1) applies subsections (3) and (4) where a person enters a contract to dispose of a chargeable interest and the disposal is completed by a conveyance.

120. Subsection (2) provides that a person is not seen as disposing of a chargeable interest just because it has entered into the contract to dispose of a chargeable interest where the contract provides for disposal to be completed by conveyance.

121. Subsection (3) provides that a contract substantially performed but not completed will, for this Part, be considered as though the substantial performance of the contract was completion of the disposal which the contract had intended.

122. Subsection (4) provides that where subsection (3) applies and the contract is later completed through a conveyance, for the purposes of section 6, it is not deemed that completion effected disposal of a chargeable interest.

123. Subsection (5) sets out the effect of this Part where subsection (3) applies along with other conditions that deem the vendor to have re-acquired the interest referred to in subsection (1)(a).

124. Subsection (6) defines "the relevant time" for the purposes of subsection (5).

125. Subsection (7) provides that where subsection (3) applies and the contract is subsequently varied or partially rescinded altering the result of the chargeable interest to be disposed of so that it is not the same chargeable interest provided for in the original contract, the result is as if variation of the contract achieved the vendor V now treated as if they had reacquired the interest referred to in subsection (1)(a) and substantial performance of the varied contract.

126. Subsection (8) applies subsection (7) if the parties proceed as if they had varied the contract in the way subsection (7) sets out, without actually having varied the contract, as if they had.

127. Subsection (9) provides further definitions for this section.

Clause 26 – New dwellings

128. Subsection (1) defines the valuation date for a new dwelling that is or has been constructed. It is the earlier of the completion day (the date construction is proposed to finish) or the date that the dwelling is first occupied.

129. Subsection(2) defines for the purposes of subsection (1) what constitutes the construction of a new dwelling. It includes any alterations to an existing building but does not include a dwelling where sections 27 or 30 apply.

130. Subsection (3) defines for the purposes of subsection (1) completion day as the day on which the new dwelling is treated as having come into existence under the relevant legislation listed in this subsection.

Clause 27 – Dwellings produced from other dwellings

131. Subsection (1) applies this section where as a result of some structural alterations, an existing building that is a dwelling or dwellings, becomes a different dwelling or dwellings.

132. Subsection (2) defines the point when it is determined that a person has a single-dwelling interest in the old or new dwelling. This is when the conversion is completed, the old dwelling ceases to exist and the new dwelling has come into existence.

133. Subsection (3) defines the valuation date for the new dwelling as the day after the conversion is completed.

134. Subsection (4) defines when the conversion is completed as being the end of the day on which the new dwelling is, or all new dwellings are treated as having come into existence for the purposes of the legislation listed in this subsection.

Clause 28 – Demolition of a dwelling

135. Subsection (1) applies sections 29 to 31 where a dwelling is demolished on or after 1 April 2013.

136. Subsection (2) treats the building as not demolished for the purposes of determining whether a person has a single-dwelling interest interesting the property and its taxable value except where express provision to the contrary is made in sections 29 to 31.

137. Subsection (3) defines the date of the demolition for the purposes of subsection (1) as being after 1 April 2013 if a day after 1 April 2013 is the day demolition has begun and as a result the building is no longer suitable for use as a dwelling.

Clause 29 – Demolition without replacement

138. Subsection (1) applies subsection (2) if a person owning the old dwelling notifies an officer of Revenue and Customs that there is no intention to build any new dwelling on the site of the old dwelling.

139. Subsection (2) defines when the person is said to have a single-dwelling interest in the old dwelling from the day as defined by subsection (3).

140. Subsection (3) defines the date for subsection (2) when both the criteria are met of the demolition having begun and thereby rendering the building unsuitable to be used as a dwelling.

141. Subsection (4) requires a notification to be made in writing to HM Revenue & Customs under subsection (1).

142. Subsection (6) provides some further definitions for this section.

Clause 30 – Demolition and replacement: new dwellings

143. Subsection (1) applies subsection (2) if new dwellings are built on the site of the old dwelling after its demolition.

144. Subsection (2) states that a person's single-dwelling interest in new dwelling comes into existence at the point when the rebuilding is completed on the assumption that the old dwelling has ceased to exist.

145. Subsection (3) defines the valuation date of a single-dwelling interest in a new dwelling as the day after the rebuilding is completed.

146. Subsection (4) provides further definitions for the terms in subsection (1).

147. Subsection (5) confirms that reference to when rebuilding is complete is the earlier of completion day or the day the last of the new dwellings is first occupied.

148. Subsection (6) defines the reference to completion day in subsection (5) as the day on which the new dwelling or all new dwellings are treated as having come into existence for the purposes of the legislation listed in this subsection.

Clause 31 – Demolition and replacement: other cases

149. Subsection (1) applies section 31 where section 30 does not apply and where a building is constructed on the site of an old dwelling, post-demolition.

150. Subsection (2) states that where a person's single-dwelling interest in the old dwelling is queried, this will be determined by assuming the old dwelling no longer existed at the end of the final day of the old dwelling's existence (i.e. before any demolition or replacement) or, at the end of the last day the dwelling was occupied, whichever is later.

151. Subsection (3) provides further definitions for the terms in subsection (1).

Clause 32 – Conversion of dwelling for non-residential use

152. Subsection (1) applies this section where a building, or any part of it previously been suitable as a dwelling is then altered so as to make is unsuitable to use as a dwelling.

153. Subsection (2) states that it is a question of fact whether the alterations at subsection (1)(b) above render the building or part unsuitable for use as a dwelling .

154. Subsection (3) provides that once planning permission or development consent has been granted for the alterations, the building or the part of it is unsuitable for use as a dwelling.

155. Subsection (4) applies the planning enactments as listed in subsection (5) to definitions of "planning permission" used throughout this section.

Clause 33 – Damage to a dwelling

156. Subsection (1) applies subsections (2) and (3) if accidental damage occurs to a dwelling, resulting in the dwelling becoming temporarily unsuitable for occupation for a period of at least 90 days. The damage has to be caused by events that the relevant person had no control over.

157. Subsection (2) states that the day the damage occurs is a valuation date for purposes of the single-dwelling interest.

158. Subsection (3) disapplies subsection (2) if the dwelling is destroyed.

159. Subsection (4) provides for the damage to be disregarded when applying subsection (1) if it occurs as part of the demolition work that the person is having done.

160. Subsection (5) defines "the relevant person" for the purposes of this section.

Clause 34 – Property rental businesses

161. Subsection (1) defines a relievable day for a single-dwelling interest if a person entitled to that interest intends to or is renting out or receiving some sort of receipt in carrying on a qualifying property rental business.

162. Subsection (2) applies subsection (3) where tax is charged and there are one or more relievable days in that chargeable period as a result of subsection (1) in respect of the single-dwelling interest.

163. Subsection (3) provides for the calculation of the adjusted chargeable amount such that the chargeable person is not within the charge in respect of the interest for relievable days.

164. Subsection (4) provides that if the dwelling is made available for occupation by a non-qualifying person or if they are permitted to occupy, the dwelling will not be considered as being exploited in the course of a qualifying property rental business.

165. Subsection (5) defines a "non-qualifying person" for the purposes of subsection (4).

166. Subsection (6) states that if a non-qualifying individual has had permission to occupy (or has occupied) the dwelling or part of it, no subsequent day is relievable unless on the day is itself or the previous day is a relievable day covered by the provision at section 1(a).

167. Subsection (7) provides for this section to apply if a non-qualifying individual is permitted to occupy any part or all of a dwelling where the beneficial entitlement to the single-dwelling interest is held by a property rental business. It is treated as if there had been an intention for the dwelling to be made available for occupation by a non-qualifying individual as per subsection (4)(b).

168. Subsection (8) states that subsection (7) does not treat a person as having had the intention in question to occupy the dwelling as long as a non-qualifying person does not occupy the dwelling at the same time.

169. Subsection (9) defines when a single-dwelling interest is considered as "held in preparation" for the purposes of subsection (1)(a).

170. Subsection (10) provides definitions for "relative", "relevant settlor", "settlement" and "trustee" for this section.

Clause 35 – Meaning of "property rental business" and related expressions

171. This section provides definitions for Section 35.

Clause 36 – Trade involving the exploitation of an interest in a dwelling

172. Subsection (1) defines a relievable day for a single-dwelling interest if that interest is being exploited or held with the intention of being exploited as a source of income in the course of carrying on a qualifying trade.

173. Subsection (2) applies subsection (3) where tax is charged and there are one or more relievable days in that chargeable period as a result of subsection (1) in respect of the single-dwelling interest.

174. Subsection (3) provides for the calculation of the adjusted chargeable amount after taking account of the person not being chargeable to tax for the relievable days.

175. Subsection (4) defines a “qualifying trade” for the purposes of this section as one which makes the dwelling available for use and enjoyment and meets the conditions set out in subsection (5).

176. Subsection (5) lists the conditions for a “qualifying trade”. The conditions to be met by the trade are that the trade is carried on commercially with a view to making a profit and that for at least 28 days in a chargeable period, the dwelling is made available to the public to use, stay in or enjoy.

177. Subsection (6) provides that for the purposes of subsections (4)(a) and (5)(b), a significant part of the interior of the dwelling has to be made available for persons permitted to use, stay in or enjoy the dwelling.

178. Subsection (7) sets out that size, nature and function of areas concerned are taken into account when determining whether they form a significant part of the interior of the dwelling.

179. Subsection (8) provides that a single-dwelling interest will only be seen as held with an intention to exploit it as a source of income in the course of a qualifying trade if steps are taken to secure the exploitation of the interest as soon as reasonably practical.

Clause 37 – Provisional relief under section 36

180. Subsection (1) states that subsection (2) is applicable if conditions listed are met. The conditions include the person being within the charge to tax and being required to deliver an ARPT return for a single-dwelling interest; subsection 36(5) not being met on the first day in the chargeable period. If the dwelling is available to the public to stay in, use or enjoy for at least 28 days in the chargeable period, the first day chargeable period will count as a relievable day and this has to be stated in the return.

181. Subsection (2) provides for HMRC under section 8 to give the relief due if the initial day was relievable under s36.

182. Subsection (3) provides for withdrawal of relief granted under subsection (2) if the condition of subsection 36(5)(b) are not met within the chargeable period.

Clause 38 –Property developers

183. Subsection (1) defines a relievable day for a single-dwelling interest if that interest has been acquired in the course of a property development trade, the company is beneficially entitled to the interest or the interest is held exclusively for a qualifying purpose.

184. Subsection (2) applies subsection (3) where tax is charged and there are one or more relievable days in that chargeable period as a result of subsection (1).

185. Subsection (3) states that the calculation of the adjusted chargeable amount excluding from the charge any relievable days.

186. Subsection (4) defines an interest being held for a qualifying purpose where it is held for the purpose or intention of redeveloping and reselling the land in the course of the property development trade or for rent or receipts in the course of a qualifying rental business, subject to subsection (5).

187. Subsection (5) states that where a single-dwelling interest is held within the terms of section 4(b) that does not preclude section 36 relief.

188. Subsection (6) provides that the interest is not held for a qualifying purpose within subsection 4(b) unless redevelopment will commence without delay (subject to delays justified by commercial considerations).

Clause 39 – Property developers: occupation of dwelling by non-qualifying individual

189. Subsection (1) covers a single-dwelling interest not held for a qualifying purpose if a non-qualifying individual occupies the building or any part of it; or where it is intended that a non-qualifying individual may occupy the building or part of it.

190. Subsection (2) has effect where a company in a property development trade and beneficially entitled to a single-dwelling interest, at any time during the chargeable period allows a non-qualifying individual to occupy the dwelling. This section has effect as if the interest was held other than for the purpose of s38(1)(b). It takes effect from either (2)(a) or (b) which define the first day of the chargeable period.

191. Subsection (3) for intervals between periods of non-qualifying occupation, for a company carrying on a property development trade, s41 has effect as if a non qualifying individual was permitted to occupy the dwelling during that interval and from the end of the interval until disposal of the investment.

192. Subsection (4) defines "interval between periods of non-qualifying occupation" for the purposes of subsection (3).

Clause 40 – Property developers: exchange of dwellings

193. Subsection (1) defines a relievable day for a single-dwelling interest if that interest has been acquired in the course of a property development business, the business is entitled to the interest and the acquisition (the reverse acquisition) was part of a qualifying exchange.

194. Subsection (2) applies subsection (3) where tax is charged and there are one or more relievable days in that chargeable period as a result of subsection (1) in respect of the single-dwelling interest.

195. Subsection (3) provides for the calculation of the adjusted chargeable amount after taking account of the person not being chargeable to tax for the relievable days.

196. Subsection (4) provides a day not be considered as relievable by this section if a non-qualifying person occupies or is intended to occupy the dwelling or any part of it.

197. Subsection (5) provides that if a non-qualifying person occupies or is intended to occupy the dwelling after the conditions in subsection (1)(a) and (b) are met at the end of a day, and between the reverse acquisition and time a non-qualifying person has occupied, that day or days are not relievable for the single-dwelling interest.

198. Subsection (6) provides the meaning of "the relevant person" for this section. These are the members of a partnership in the case where a company entitled to the interest is a member of a partnership, or the company itself and any person who acquired the interest jointly with the company.

199. Subsection (7) provides the conditions for a reverse acquisition to be part of a qualifying exchange.

200. Subsection (8) provides the conditions that need to be met for a building or part of it to be considered a "new dwelling".

Clause 41 – Definitions for sections 38 to 40

201. Subsection (1) provides for the meaning of property development trade.

202. Subsection (2) provides the meaning for non-qualifying individual as used in sections 38 to 40.

203. Subsection (3) provides further definitions for sections 38 to 40 for "relative", "relevant settlor", "qualifying individual", "settlement" and "trustee".

204. Subsection (4) further defines "beneficially entitled" in sections 38 to 40 and in this section.

205. Subsection (5) provides for the application of section 35 for the purposes of section 38 equally as for the purposes of section 34.

Clause 42 – Property traders

206. Subsection (1) defines a "relievable" day for a single-dwelling interest if at the end of that day a person beneficially entitled to that interest is carrying on a property trading business. The person is also required to hold the property as stock and solely for resale in the course of the business.

207. Subsection (2) applies subsection (3) where tax is charged and there are one or more relievable days in that chargeable period as a result of subsection (1).

208. Subsection (3) provides for the calculation of the adjusted chargeable amount having taking account of the person not being chargeable to tax for any "relievable" days.

209. Subsection (4) defines when a single-dwelling interest is not considered to be held for the sole purpose of resale by a person carrying on a property trading business.

210. Subsection (5) provides the definition for a "property trading business".

Clause 43 – Property traders: supplementary

211. Subsection (1) provides that during a chargeable period, where a property trader with beneficial entitlement to the property allows a non-qualifying person to occupy it, section 43 has effect as if there had been an intention (such as in section 42(4)(b) for occupation by a non-qualified individual).

212. Subsection (2) applies section 42 throughout any interval between periods of non-qualifying occupation. It applies from the end of the

interval until the interest is disposed of by the property trader, rendering the entire period unrelievable.

213. Subsection (3) provides for the meaning of "interval between periods of non-qualifying occupation" in subsection (2).

214. Subsection (4) provides the meaning of "non-qualifying individual" for section 44.

215. Subsection (5) provides further definitions for this section for "relative", "relevant settlor", "settlement" and "trustee".

216. Subsection (6) defines occupation of any part of a dwelling as occupation of the dwelling, for sections 42 and 43.

217. Subsection (7) defines "beneficially entitled".

Clause 44 – Occupation by certain employees or partners

218. Subsection (1) sets out the conditions for a relievable day where a dwelling is made available for use as a living accommodation for qualifying individual/individuals.

219. Subsection (2) applies subsection (3) where tax is charged and there are one or more relievable days in that chargeable period as a result of subsection (1) in respect of the single-dwelling interest.

220. Subsection (3) provides for the calculation of the adjusted chargeable amount after taking account of the person not being chargeable to tax for the relievable days.

221. Subsection (4) sets out the requirements for what makes a trade a "qualifying trade".

222. Subsection (6) provides the reference for "a relevant group member" in subsection (1)(a) as mentioned in paragraph 1(2) of Schedule 7 FA 2003.

Clause 45 – Meaning of "qualifying individual" in section 44

223. Subsection (1) sets out "qualifying individuals" where the trade as per section 44(1)(b) is carried out in partnership with one or more persons. It includes any qualifying member of the partnership and any qualifying employee.

224. Subsection (2) provides that for any other case than as defined in subsection (1), "qualifying individual" means a qualifying employee.

225. Subsection (3) provides that a "qualifying member of the partnership is any member of the partnership unless the partner is entitled to a 5%

or greater share in the income profits of the partnership or in any company beneficially entitled to the single-dwelling interest or in the single-dwelling interest in section 44(1)(a).

226. Subsection (4) sets out who is a "qualifying employee" for the purposes of subsections (1) and (2).

227. Subsection (5) provides for who is considered an individual providing excluded domestic services as per subsection (4)(b). The individual is one whose employment includes the provision of services with the occupation of the relevant dwelling in section 44(1)(b) or a linked dwelling by a non-qualifying individual.

228. Subsection (7) sets out "linked" dwellings for the purposes of subsection (5). The first is one which meets the conditions as set out in section 17(2) regarding a relevant dwelling and another dwelling. The second is one where a dwelling is linked to the relevant dwelling as per section 18(1).

229. Subsection (9) provides for the purposes of subsection (3)(c) that beneficial joint tenants (or, in Scotland, joint owners) entitled to a chargeable interest are treated as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

Clause 46 – Meaning of "5% or greater share in a company"

230. Subsection (2) sets out an individual P as entitled to a 5% or greater share in a company if it is entitled to acquire any of the shares or rights as set out in this subsection.

231. Subsection (3) requires any rights P or any other person has as a loan creditor to be disregarded for the assumption in subsection (2)(d).

232. Subsection (4) sets out that for subsection (2), a person is treated as entitled to acquire if it is at a later date or a future date.

233. Subsection (5) provides for the rights to be attributed to A if a person possesses any rights or powers on behalf of A or a person maybe required to exercise any rights or powers for A.

234. Subsection (6) provides for further attributions to a person in the case of rights and powers of any two or more companies or of any associate of the person.

235. Subsection (7) sets out the rights and powers to be attributed under subsection (6).

236. Subsection (8) provides for a person nevertheless to be treated as having 5% or greater share in a company if they are able to exercise

or acquire direct or indirect control over the company's affairs even if the conditions in subsection (2) are not met.

237. Subsection (9) provides definitions for "associate", "control", "loan creditor" and "participator" as per CTA 2010 for the purposes of this section.

Clause 47 – Farmhouses

238. Subsection (1) defines a relievable day for a farmhouse if a person entitled to it (the owner) is carrying on qualifying trade of farming and the farmhouse is occupied by a qualifying farm worker. The person (owner) is also required to have held the farmhouse and occupied it for the purposes of farming for the two years prior to the day.

239. Subsection (2) applies subsection (3) where tax is charged and there are one or more relievable days in that chargeable period as a result of subsection (1) in respect of the farmhouse.

240. Subsection (3) provides for the calculation of the adjusted chargeable amount after taking account of the person not within the charge to tax on relievable days.

241. Subsection (4) provides for the meaning of "farmhouse" as used in subsection (1).

242. Subsection 5 provides for the meaning of "qualifying farm worker" for the purposes of subsection (1).

243. Subsection (6) provides that farming is a qualifying trade only if the two conditions set out in subsection (6) are met.

244. Subsection (8) defines "beneficially entitled" for the purposes of this section

245. Subsection (9) defines "farming" and "market gardening" for the purposes of this section.

Clause 48 – Responsibility for collection and management

246. Section 48 provides for the HMRC Commissioners to be responsible for the administration and collection of the ARPT.

Clause 49 – Duty to make an ARPT return

247. Subsection (1) requires a person to make a return with respect to an interest they hold in a dwelling for a chargeable period.

248. Subsection (2) requires the person to make a return within 30 days of coming into charge with respect to their interest in the single-dwelling.

249. Subsection (3) disapplies subsection (2) if that first day that the person becomes chargeable is a valuation date under section 26 or 27. In this case, the return is required by the end of the 90 day period.

250. Subsection (4) applies subsection (5) and (6) if the person already held an interest in the dwelling and acquires a new interest in the same dwelling in the same chargeable period.

251. Subsection (5) if not within the charge on the day prior to the effective date of acquisition in subsection 4(a), the new interest is in a different single-dwelling and subsection 2 applies.

252. Subsection (6) requires the person to make a further return for all the interests that are mentioned in subsection (4) in addition to the one that is required under subsection (2).

253. Subsection (7) requires the further return under subsection (6) to be made within 30 days of the effective date of acquisition in subsection (4)(a).

254. Subsection (8) requires the return (ARPT return) to be made to an officer of HM Revenue and Customs.

Clause 50 – Amendment of return where conditions for relief cease to be met

255. Subsection (1) requires a person to amend their a return if that person claims relief through sections 34 to 47 and through a change of circumstances, one or more of the days that relief is claimed for is no longer relievable.

256. Subsection (2) requires the person to amend the ARPT return within 90 days of the first day in the chargeable period not being a relievable day. .

Clause 51 – ARPT return to include self-assessment

257. Subsection (1) requires the annual charge return to include a person's self assessment as per subsection (2).

258. Subsection (2) defines self-assessment and states that under s49(6) it is a re-assessment.

259. Subsection (3) requires the self-assessment to include a statement of the market value of the single-dwelling interest for each valuation date relevant for the purposes of the assessment.

Clause 52 – Returns, enquiries, assessments and other administrative matters

260. Subsections (1) and (2) refer to Schedule 1 which contains provisions for making returns, enquiries and related matters and provides for any further amendments to be made to this Part by regulations.

Clause 53 – Payment of tax

261. Subsection (1) provides for the tax to be paid with respect to the single-dwelling interest at the same time as the ARPT return and by the required filing date for the respective period.

262. Subsection (2) requires any tax payable due to an amendment to the return to be made by the filing date or immediately if it is after the filing date subject to subsection (3).

263. Subsection (3) requires the tax as a result of an amendment under section 50(1) to be made within the 90 day limit under section 50(2) for the amended return.

264. Subsection (4) provides for where a determination or assessment has been made by HMRC. This requires the tax to be paid within 30 days of the determination or assessment being issued.

Clause 54 – Interest on repayment of tax overpaid, etc

265. Subsection (1) requires the repayment of tax under this section to be made with interest for the period starting with the relevant day as per subsection (3) to the day before the repayment order is issued. The interest rate applicable is as per section 178 of Finance Act (FA) 1989.

266. Subsection (2) details the repayments of tax this section applies to.

267. Subsection (3) provides for the relevant day that is to be taken into account when applying subsection (1).

268. Subsection (4) provides that the interest that is paid under this section will not be considered income for the person for tax purposes.

Clause 55 - Companies

269. Subsection (1) requires an appropriately authorised person, including a proper officer of the company, to act on behalf of the company in complying with the provisions under this Part.

270. Subsection (2) lists who would be considered "the proper officer" of a company for the purposes of subsection (1).

271. Subsection (3) covers how service of a document can be effected.

272. Subsection (4) provides for any tax due under this Part to be recovered from the proper officer of the company.

273. Subsection (5) provides for the proper officer to be reimbursed by the company for any amount that has been paid by the officer under subsection (4).

274. Subsection (6) applies the rules as listed in the subsection instead of subsection (1) and (2) if a liquidator or administrator has been appointed for the company. The rules provide for the liquidator or administrator to act as "the proper officer" of the company.

Clause 56 - Partnerships

275. Subsection (1) defines "partnerships" as applied to this Part.

276. Subsection (2) provides for the application of provisions under this Part to partnerships and treats the partners as jointly beneficially entitled to the single-dwelling interest instead of the partnership itself.

277. Subsection (3) defines the partnership to be the same as long as at least one member of the partnership is the same as before and after any changes in membership.

278. Subsection (4) provides for a Partnership not to be regarded as a collective investment scheme or as a unit trust scheme for the purposes of this Part.

279. Subsection (5) provides for a representative partner or partners to act on behalf of the partnership to comply with this Part.

280. Subsection (6) defines a representative partner for the purposes of subsection (5).

281. Subsection (7) requires a nomination or revocation of a representative partner for the purposes of this section to be made to an officer of HMRC.

Clause 57 – Orders and regulations

282. Section 57 provides for any further provisions under this Part to be made by statutory instrument containing regulations.

Clause 58 – Meaning of "chargeable day" and "within the charge"

283. Section 58 defines "chargeable day" and "within the charge" for the purposes of this Part for tax charged with respect to a single-dwelling interest.

Clause 59 – Connected persons

284. Section 59 provides for section 1122 of the Corporation Tax Act 2010 for the application of connected persons for this Part.

Clause 60 – General interpretation

285. Section 60 provides general interpretations for this Part as defined in various sections under this Part as well as defined elsewhere in previous Finance Acts.

BACKGROUND NOTE

286. At Budget 2012 it was announced that an 'annual charge' on residential property owned in structures where stamp duty land tax (SDLT) might not be paid on a future sale was to be introduced. The 'annual charge' was to be consulted on over the summer with a response to that consultation and draft legislation available in the Autumn.

287. That consultation has been completed and the response document and the draft legislation for the 'annual charge' drafted. The 'annual charge' is to be known as the ARPT.

288. The ARPT will be payable by certain non-natural persons that own interests in dwellings valued at more than £2 million. This tax will come into effect on 1 April 2013. It is an annual tax, and returns and payments will be required annually. Returns and payment will usually be due on 30 April, but for the first year returns will be due on 1 October 2013 and payment by 31 October 2013. The amount of tax payable will depend upon which of the fixed bands the dwelling is within.

289. The measure is part of a package of measures designed to ensure that individuals and companies pay a fair share of tax on residential property transactions and to reduce avoidance. Its aim was to disincentivise the ownership of high value residential property in structures that would permit the indirect ownership or enjoyment of the property to be transferred in a way that would not be chargeable to SDLT.

290. As part of the package, FA 2012 package, FA 2012 introduced a 15 per cent rate of stamp duty land tax on the acquisition by certain non-natural persons of properties costing more than £2 million. That Act provided only two exclusions from the higher rate charge; for companies acting solely in their capacity as trustees, and for property developers with a 2 year trading history.

291. The scope of the 15 per cent rate was included as part of the consultation on the ARPT. In response to the consultation a number of reliefs are to be introduced in ARPT and also further reliefs into the SDLT legislation. Where possible the two reliefs should operate in tandem; so if the 15% of SDLT is paid on an acquisition then the property will be within ARPT. In particular there are to be reliefs for; property rental businesses, property developers, property traders, trades that exploit a dwelling to generate income by providing access to a significant part of the interior, dwellings used to house employees or partners with a limited interest in the company or partnership, farmhouses, charities, social landlords, diplomatic property and sovereign and public bodies.

292. Relief will only apply if the property continues to satisfy the relevant qualifying conditions throughout the period of ownership. It is possible that a property could move into and out of the charge though out its ownership.

293. The intention of the measures is to stop or reduce the number of properties that will enter such complex ownership structures other than where the property is used in a genuine business (or owned by a specific category of person). For those who choose to continue to hold their property in such a manner, and are not relieved, there is to be a cost. Taken together with the introduction of the SDLT changes in FA 2012 (and the changes in Finance Bill 2013) the ARPT will result in a reduction in the number of high value properties owned in such structures.

294. If you have on questions about these changes, or comments on the legislation, please contact Andrew Hewitt on 03000 564964 (email: andrew.hewitt@hmrc.gsi.gov.uk)

EXPLANTORY NOTE

ANNUAL RESIDENTIAL PROPERTY CHARGE: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

SUMMARY

295. This Schedule deals with returns, enquiries, compliance powers and other matters. It also empowers HM Treasury to amend certain parts of the Schedule by regulation.

DETAILS OF THE SCHEDULE

<u>Part 1: Annual charge returns</u>

296. This Part of the Schedule deals with returns. It provides for the contents of the return, defines delivery and covers amendment of a return.

297. Paragraph 1 deals with the contents of the return and allows for the Commissioners of HMRC to make provisions by regulation for the contents, form and method of delivery of an annual charge return or for a different purpose. It provides the requirement of the return to include a declaration by the person that the return is complete and correct.

298. Paragraph 2 provides for the references in this Part to the delivery of the return to be according to the requirements in section 49 or 51 or paragraph 1

299. Paragraph 3 provides for the amendment of a return and what form it needs to take. It also specifies the deadline by which the amendment to the return needs to be made.

Part 2: Enquiry into return

300. This Part of the Schedule deals with enquiries into returns. It provides for the notice and scope of enquiry, the amendment of self-assessment during enquiry, referrals to tribunal during enquiry and completion of enquiry.

301. Paragraph 4 provides for an officer of HMRC to make enquiries into returns within 12 months of the relevant date as defined by sub-paragraph (3).

302. Paragraph 5 deals with the scope of enquiry. The enquiry can be into the amount of tax chargeable or the question of whether tax is chargeable on the relevant person with respect to an interest. Where an enquiry is made into an amended return after the enquiry period is closed, the enquiries are limited to matters which are amended or affected by the amendment.

303. Paragraph 6 provides for the amendment of the return by an officer of HMRC during course of enquiry to prevent loss of tax. Where an enquiry is made into an amended return, it limits this to matters which are amended or affected by the amended return.

304. Paragraph 7 deals with the referral of questions to the tribunal during enquiry. It requires the referral to be made jointly by the relevant person and HMRC by notice.

305. Paragraph 8 provides for the withdrawal of notice of referral made under paragraph (7) by HMRC or the person who made the return.

306. Paragraph 9 deals with the effect of referral under paragraph (7) on an enquiry. It provides that a closure notice or an application for a closure notice cannot be made while proceedings under paragraph (7) are in progress.

307. Paragraph 10 provides that the determination of any question by the Tribunals under paragraph (7) is binding on the parties. It requires the officer of HMRC to take the determination into account when making any amendments to the return and limits the question from being reopened.

308. Paragraph 11 deals with the completion of enquiry and requires HMRC to issue a closure notice stating whether an amendment is required or not and making the amendment if necessary.

309. Paragraph 12 provides for the person who made the return to seek from a tribunal a direction that HMRC should issue a closure notice.

Part 3: HMRC determination where no return delivered

310. This Part of the Schedule deals with determinations by HMRC where no return is delivered.

311. Paragraph 13 allows HMRC to make a determination of tax chargeable if no return is delivered by the relevant filing date. It limits the time period in which the determination has to be made to 4 years after the end of the chargeable period when the return should have been made.

312. Paragraph 14 provides that the determination has the same effect as self-assessment by the person for enforcement purposes as defined in sub-paragraph (14)(2).

313. Paragraph 15 provides that if, after a determination under paragraph 14, the person make a self-assessment, that supersedes the determination unless the self-assessment is delivered as defined in sub-paragraph (15)(2). It also provides that where proceedings have begun for the tax due, these may continue regardless of the self-assessment.

314. Paragraph 16 provides for a nil charge return following a determination to supersede the determination.

Part 4: HMRC Assessments

315. This Part of the Schedule provides for HMRC assessments in certain defined cases.

316. Paragraph 17 deals with discovery assessments where an amount that should have been assessed under this Part has not been assessed, is less than it should be or excessive relief has been claimed.

317. Paragraph 18 provides for an assessment to recover an excessive repayment of tax including any interest that may have been paid.

318. Paragraph 19 provides for the references to the taxpayer in paragraphs 20 to 23.

319. Paragraph 20 sets out the circumstances where a discovery assessment can be made if the taxpayer has made a return. There has to be fraudulent or negligent conduct on the part of the taxpayer or a person acting on their behalf (or a partner) and the information on which HMRC base the return has to be information that they could not reasonably be expected to be aware of when the return was delivered. Furthermore no assessment can be made if the return was made in accordance with generally prevailing practice at the time it was delivered.

320. Paragraph 21 provides the time limit for assessments. The general time limit is 4 years after the end of the relevant chargeable period, but in cases as provided in sub-paragraph (4), this is extended to 20 years. Where the taxpayer or a related person has been careless in their assessment, the time limit is 6 years. If the taxpayer has died, assessments must be made on personal representatives within 4 years of the date of death and can only cover chargeable periods within the 6 years prior to death.

321. Paragraph 22 provides the definition of losses brought about carelessly or deliberately for the purposes of paragraph 21.

322. Paragraph 23 provides procedure for making an assessment on a taxpayer and the contents of the notice of assessment.

Part 5: Supplementary

323. Paragraph 24 provides for persons who are jointly entitled to a single-dwelling interest to be jointly obliged to deliver a return

324. Paragraph 25 provides the requirement for all the responsible partners of a partnership to be responsible for anything required section (40) or this Schedule.

325. Paragraph 26 provides for meaning of “filing date” for an annual charge return.

BACKGROUND

326. ARPT is a new tax and therefore it requires a set of rules regarding returns, enquiries, compliance powers in much the same way as other regimes administered by HMRC. The scheme adopted is based on the stamp duty land tax self-assessment regime, and that legislation is found in Schedule 10 FA 2003. This allows ARPT to use established procedures which will be familiar to many tax and legal practitioners and HMRC. The legislation will be fully balanced by rights of appeal to the independent tax tribunals and when appropriate to the relevant lands tribunal.

327. If you have on questions about these changes, or comments on the legislation, please contact Andrew Hewitt on 03000 564964 (email: andrew.hewitt@hmrc.gsi.gov.uk)

EXPLANATORY NOTE

ANNUAL RESIDENTIAL PROPERTY CHARGE: SPECIAL PROVISIONS FOR 2013-14

SUMMARY

328. This schedule provides special rules regarding the filing if returns for the first year of the ARPT.

DETAILS OF THE SCHEDULE

329. The schedule deals with the duty to make returns for 2013-14. It makes provision for subsections (2) and (3) of section 49 for making returns for periods beginning 1 April 2013.

BACKGROUND NOTE

330. Special rules regarding the filing of returns for the ARPT are necessary in the first year as the legislation regarding the tax will only become law on Royal Assent being given to the Finance Bill 2013. Obligations under that law can only be enforced at that point. So whilst the tax will be due for the chargeable period 1 April 2013 to 31 March 2014 the filing obligation for this year will be 1 October 2013.

331. If you have on questions about these changes, or comments on the legislation, please contact Andrew Hewitt on 03000 564964 (email: andrew.hewitt@hmrc.gsi.gov.uk)

1 Relief from higher rate

Schedule 1 contains provisions about relief from the higher rate of stamp duty land tax.

SCHEDULE 1

Section 1

STAMP DUTY LAND TAX: RELIEF FROM 15% RATE

1 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.

2 (1) Schedule 4A (higher rate for certain transactions) is amended as follows.

(2) For paragraph 5 (property developers) and the cross-heading preceding it substitute—

"*Businesses of letting, trading in or redeveloping properties*

5 (1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest that is acquired exclusively for one or more of the following purposes—

(a) exploitation as a source of rents or other receipts (other than excluded rents) in the course of a qualifying property rental business;

(b) redevelopment and resale in the course of a property development trade;

(c) resale in the course of a property development trade (in a case where the chargeable transaction mentioned above is part of a qualifying exchange);

(d) resale (as stock of the business) in the course of a property trading business.

(2) A chargeable interest does not count as being acquired exclusively for one or more of those purposes if—

(a) it is intended that a non-qualifying individual will be permitted to occupy the dwelling, or

(b) it is intended that the dwelling will (or will if certain circumstances arise) be made available for occupation by a non-qualifying person.

(3) In this paragraph—

"excluded rents" has the same meaning as in section 34 of FA 2013;

"non-qualifying individual" has the same meaning as in section 34 of FA 2013;

"property development trade" means a trade that—

(a) consists of or includes buying and redeveloping for resale residential or non-residential property, and

(b) is run on a commercial basis and with a view to profit;

"property trading business" means a business that consists of or includes activities in the nature of a trade of buying and selling dwellings;

"qualifying exchange" is to be construed in accordance with section 40 of FA 2013;

"qualifying property rental business" has the same meaning as in section 34 of FA 2013.

(3) After paragraph 5 insert—

"Trades involving making a dwelling available to the public

5A (1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest in relation to which the conditions in sub-paragraph (2) are met.

(2) The conditions are that—

(a) the higher threshold interest is acquired with the intention of exploiting that interest as a source of income in the course of a qualifying trade, and

(b) reasonable commercial plans have been formulated to carry out those plans as soon as is reasonably practicable having regard to all the circumstances.

(3) "Qualifying trade", in relation to a higher threshold interest means a trade that—

(a) involves permitting persons to make use of, stay in or otherwise enjoy the dwelling,

(b) is carried on a commercial basis and with a view to profit, and

(c) involves making available to the public for at least 28 days in each calendar year the opportunity to make use of, stay in or otherwise enjoy the dwelling as customers of the trade.

(4) For the purposes of sub-paragraph (3), persons are not considered to have the opportunity to make use of, stay in or otherwise enjoy a dwelling unless the areas that they have the opportunity to make use of, stay in or otherwise enjoy include a significant part of the interior of the dwelling.

(5) The size (relative to the size of the whole dwelling), nature and function of any relevant area or areas in a dwelling are taken into account in determining whether they form a significant part of the interior of the dwelling.

Dwellings for occupation by certain employees etc

5B (1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest in relation to which the conditions for relief under this paragraph are met.

(2) The conditions are that—

(a) the purchaser, or a relevant group member, carries on a qualifying trade,

(b) the interest is acquired for the purpose of making the dwelling available to one or more qualifying individuals for use as living accommodation, and

(c) the dwelling is to be made available as mentioned in paragraph (b) for purposes that are solely or mainly purposes of the trade.

(3) For the purposes of the relief under this paragraph it does not matter whether or not the individuals mentioned in sub-paragraph (2)(b) are identified at the time of the chargeable transaction.

(4) "Qualifying trade" means a trade that—
  (a) is not a property rental business, a property development trade or a property trading business, and
  (b) is carried on on a commercial basis and with a view to profit.

(5) In this paragraph references to making a dwelling available to a qualifying individual include making it available to persons who are to share the accommodation with a qualifying individual as that person's family.

(6) Where the purchaser is a company, "relevant group member" means a company which is a member of the same group of companies as the purchaser for the purposes mentioned in paragraph 1(2) of Schedule 7 (group relief).

More about the condition in paragraph 5B(2)(b)

5C (1) In a case where the person carrying on the trade mentioned paragraph 5B(2)(a) carries it on in partnership with one or more other persons, "qualifying individual" means any individual who is—
  (a) a member of the partnership, or
  (b) employed for the purposes of the qualifying trade.

(2) In any other case, "qualifying individual" means an individual employed for the purposes of the qualifying trade.

(3) In a case falling within sub-paragraph (1), the condition in paragraph 5B(2)(b) is not taken to be met if the persons, or a class of persons, to whom it is proposed to make the dwelling available as living accommodation include, or are likely to include, a member of the partnership who is (or will at the relevant time be) entitled to a 5% or greater share—
  (a) in the income profits of the partnership, or
  (b) in any company beneficially entitled to the higher threshold interest mentioned in paragraph 5B(1), or
  (c) in that higher threshold interest.

(4) In addition, the condition in paragraph 5B(2)(b) is not taken to be met if the persons, or a class of persons, to whom it is proposed to make the dwelling available for use as living accommodation include, or are likely to include, an individual employed for the purposes of the trade in question who is (or will at the relevant time be)—
  (a) entitled to a 5% or greater share—
    (i) in the income profits of the trade, or
    (ii) in any company that is beneficially entitled to the higher threshold interest, or
    (iii) in that higher threshold interest, or

(b) employed to provide excluded domestic services.

(5) The reference in sub-paragraph (4)(b) to an individual employed to provide excluded domestic services is to an individual the duties of whose employment include the provision of services in connection with the (actual or intended) occupation, by a non-qualifying individual, of the dwelling mentioned in paragraph 5B(2)(b) ("the relevant dwelling"), or a linked dwelling.

(6) In sub-paragraph (5) "non-qualifying individual" means an individual connected with a person who is or is to be beneficially entitled to the higher threshold interest.

(7) The following are "linked" dwellings for the purposes of sub-paragraph (5)—

(a) if the conditions in section 17(2) of FA 2013 are met in relation to the relevant dwelling and another dwelling, that other dwelling;

(b) a dwelling that is linked to the relevant dwelling, as described in section 18(1) of FA 2013.

(8) In this paragraph references to employment include the holding of an office.

(9) For the purposes of sub-paragraphs (3)(c) and (4)(a) persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) are taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

(10) Section 46 of FA 2003 (meaning of "5% or greater share in a company") applies for the purposes of this paragraph as for the purposes of section 45 of that Act.

Farmhouses

5D (1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest in or over a dwelling—

(a) that is, or is to be, a farmhouse, and

(b) in relation to which the conditions in sub-paragraph (3) are met.

(2) The reference in sub-paragraph (1) to a dwelling that "is or is to be a farmhouse" is to a dwelling that—

(a) forms part of land that is to be occupied, or to continue to be occupied, for the purposes of a qualifying trade of farming, and

(b) is of a character appropriate to a dwelling occupied in connection with the farming of the land concerned, having regard to the size of the (proposed or actual) farm and to the nature and scale of the trade mentioned in paragraph (a).

(3) The conditions are that—

(a) the dwelling is to be occupied for the purposes of that trade by a qualifying farm worker,

(b) reasonable commercial plans have been formulated under which such occupation is either to continue from the effective date of the chargeable transaction or to begin as soon as is reasonably practicable having regard to all the circumstances, and

(c) occupation of the farmhouse by a qualifying farm worker is then expected to continue as part of the normal way in which the trade is, or is to be, carried on.

(4) In sub-paragraph (3) "qualifying farm worker" means an individual who—

(a) occupies the dwelling for the purposes of the trade mentioned in that sub-paragraph, and

(b) has a substantial involvement (as a manager or otherwise) in the day-to-day work of the trade.

(5) "Qualifying trade of farming" means a trade of farming that is carried on—

(a) on a commercial basis, and

(b) with a view to the realisation of profits.

(6) A person occupying part of a dwelling is regarded as occupying the dwelling for the purposes of this paragraph.

(7) In this paragraph—

(a) "farming" has the same meaning as in the Corporation Tax Acts (see section 1125 of CTA 2010), except that in this paragraph "farming" includes market gardening;

(b) "market gardening" has the same meaning as in the Corporation Tax Acts (see section 1125(5) of CTA 2010).

Withdrawal of relief

5E (1) Sub-paragraph (2) applies where relief under paragraph 5 has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.

(2) The relief is withdrawn if either of the requirements in sub-paragraph (3) is not met at any time in the period of three years beginning with the effective date of the chargeable transaction ("the control period") (but see sub-paragraph (4)).

(3) The requirements are that—

(a) the higher threshold interest is held exclusively for one or more of the purposes mentioned in paragraph 5(1), and

(b) no non-qualifying person is permitted to occupy the dwelling.

(4) The requirements in sub-paragraph (3) apply only to times in the control period when the purchaser holds—

(a) the higher threshold interest, or

(b) a chargeable interest that is derived from the higher threshold interest.

(5) The requirement in sub-paragraph (3)(a) does not apply in relation to times when, because of a change of circumstances that is

unforeseen and beyond the purchaser's control, it is not reasonable to expect the purposes for which the higher threshold interest was acquired to be carried out.

(6) Sub-paragraph (7) applies if a higher threshold interest was acquired for a purpose mentioned in paragraph 5(1) but at some time in the control period the activity in question (for instance, exploitation of the interest as mentioned in paragraph 5(1)(a))—

(a) has not yet begun, in the case of that interest, or

(b) has ceased in the case of that interest.

(7) For the purposes of sub-paragraph (3), the interest is taken to be held for the purpose in question only if reasonable steps are being taken to ensure that the purpose in question is carried out.

(8) In this paragraph "non-qualifying individual" has the same meaning as in section 34 of FA 2013.

5F (1) This paragraph applies where relief under paragraph 5A (trades involving making a dwelling open to the public) has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.

(2) The relief is withdrawn if the requirement in sub-paragraph (3) is not met at any time in the period of three years beginning with the effective date of the chargeable transaction ("the control period") (but see sub-paragraph (4)).

(3) The requirement is that the interest is being exploited as a source of income in the course of a qualifying trade (as defined in paragraph 5A(3)).

(4) The requirement in sub-paragraph (3) applies only to times in the control period when the purchaser holds—

(a) the higher threshold interest, or

(b) a chargeable interest that is derived from the higher threshold interest.

(5) The requirement in sub-paragraph (3) does not apply in relation to times when, because of a change of circumstances that is unforeseen and beyond the purchaser's control, it is not reasonable to expect the higher threshold interest to be exploited as mentioned in that sub-paragraph.

(6) Sub-paragraph (7) applies if at some time in the control period the higher threshold interest—

(a) has not begun to be made available as mentioned in paragraph 5B(2)(b) and (c), or

(b) has ceased to be so made available.

(7) The requirement in sub-paragraph (3) is treated as being met if reasonable steps are being taken to ensure that the higher threshold interest begins to be exploited as mentioned in that sub-paragraph, or that such exploitation of the interest is resumed.

5G (1) This paragraph applies where relief under paragraph 5B (dwellings for occupation by certain employees etc) has been

allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.

(2) The relief is withdrawn if any requirement in sub-paragraph (3) is not met at any time in the period of three years beginning with the effective date of the chargeable transaction ("the control period") (but see sub-paragraph (4)).

(3) The requirements are that—

(a) the condition in paragraph 5B(2)(a) is met,

(b) the dwelling is made available as mentioned in paragraph 5B(2)(b), and

(c) the dwelling is made so available for purposes that are solely or mainly purposes of the trade mentioned in paragraph 5B(2)(a).

(4) The requirements in sub-paragraph (3) apply only to times in the control period when the purchaser holds—

(a) the higher threshold interest, or

(b) a chargeable interest that is derived from the higher threshold interest.

(5) The requirements in sub-paragraph (3) do not apply in relation to times when, because of a change of circumstances that is unforeseen and beyond the purchaser's control, it is not reasonable to expect those requirements to be met.

(6) Sub-paragraph (7) applies if at some time in the control period the higher threshold interest—

(a) has not begun to be exploited as mentioned in sub-paragraph (3), or

(b) has ceased to be so exploited.

(7) The requirement in paragraph (b) of sub-paragraph (3) is treated as being met if reasonable steps are being taken to ensure that the dwelling will begin to be, or will return to being, available as mentioned in that paragraph.

5H (1) This paragraph applies where relief under paragraph 5D (farmhouses) has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.

(2) The relief is withdrawn if at any time in the period of three years beginning with the effective date of the chargeable transaction ("the control period") the requirements in sub-paragraph (3) are not met (but see sub-paragraph (4)).

(3) The requirements are that—

(a) the land mentioned in paragraph 5D(2)(a) is occupied for the purposes of a qualifying trade of farming, and

(b) the dwelling is occupied for the purposes of that trade by a qualifying farm worker.

(4) The requirement in sub-paragraph (3) applies only to times in the control period when the purchaser holds—

(a) the higher threshold interest, or

(b) a chargeable interest that is derived from the higher threshold interest.

(5) The requirements in sub-paragraph (3) do not apply in relation to times when, because of a change of circumstances that is unforeseen and beyond the purchaser's control, it is not reasonable to expect those requirements to be met.

(6) Sub-paragraph (7) applies if at some time in the control period a requirement in sub-paragraph (3)—

(a) has not begun to be met in the case of the higher threshold interest, or

(b) has ceased to be met in the case of the higher threshold interest.

(7) The requirement is treated as being met if reasonable steps are being taken to ensure that the requirement begins to be met, or is again met."

(4) In paragraph 9 (interpretation), at the appropriate places insert—

""qualifying farm worker" has the meaning given by section 5D(4);"

""qualifying trade of farming" has the meaning given by paragraph 5D(5);".

3 (1) Section 81 (further return where relief withdrawn), is amended as follows.

(2) After subsection (1) insert—

"(1A) Where relief is withdrawn to any extent under any of paragraphs 5E to 5H of Schedule 4A (relief from higher rate), the purchaser must deliver a further return before the end of the period of 30 days after the relevant date.

(1B) In subsection (1A) "the relevant date" means—

(a) in the case of relief under paragraph 5E, the first day in the period mentioned in paragraph 5E(2) on which a requirement under paragraph 5E(3) was not met in the case of the chargeable interest in question;

(b) in the case of relief under paragraph 5F, the first day in the period mentioned in paragraph 5F(2) on which the higher threshold interest in question was not being exploited as mentioned in paragraph 5F(3);

(c) in the case of relief under paragraph 5G, the first day in the period mentioned in paragraph 5G(2) on which a requirement under paragraph 5G(3) was not met in the case of the chargeable interest in question;

(d) in the case of relief under paragraph 5H, the first day in the period mentioned in paragraph 5H(2) on which a requirement under paragraph 5H(3) was not met in the case of the chargeable interest in question."

(3) In subsection (2A), at the beginning insert "Where subsection (1) applies any".

EXPLANATORY NOTE

STAMP DUTY LAND TAX RELIEF FROM 15 PER CENT RATE

SUMMARY

1. This clause and Schedule provide for a number of reliefs from the higher rate of Stamp Duty Land Tax charged by Schedule 4A Finance Act 2003. This rate is charged on acquisitions of interests in dwellings of value greater than £2 million by certain companies, partnerships with company members and collective investment schemes. The reliefs reduce the rate of tax chargeable to that applying to acquisitions of high value residential properties by others. They exclude from the higher rate dwellings held for a number of commercial purposes.

DETAILS OF THE SCHEDULE

2. Paragraph 1 is introductory.

3. Sub-paragraph 2(1) states that Schedule 4A FA 2003 is to be amended. Five new paragraphs replace the existing relief for property development trades with relief for a wider range of commercial uses of the dwelling.

4. Sub-paragraph 2(2) inserts a new paragraph 5 to replace the existing paragraph 5 in Schedule 4A FA 2003 which provides relief only for certain property developers.

5. New Paragraph 5 deals with relief for property rental businesses, property development trades and property trading businesses.

6. New sub-paragraph 5 (1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15 per cent rate on certain transactions, if the interest in land is acquired exclusively for one of four purposes:

   (a) exploitation as a source of rents or other receipts in a property rental business;

   (b) redevelopment and resale in a property development trade;

   (c) as an exchange property in a property development trade; and

   (d) resale in a property trading business.

7. New sub-paragraph 5(2) states that the interest is not to be regarded as exclusively acquired for one of these purposes if it is intended that

certain types of individual (non-qualifying individuals) will occupy the dwelling, or if it is intended that the dwelling may be made available for them to do so in the future.

8. New sub-paragraph 5(3) defines terms used in paragraphs 5(1) and 5(2).

9. Paragraph (3) inserts new paragraphs 5A to 5H into Schedule 4A to provide other reliefs for properties as follows:

10. New sub-paragraph 5A(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15 per cent rate on certain transactions, if certain conditions are met, that are set out in new paragraph 5A(2).

11. New sub-paragraph 5A(2) states one set of conditions to be that the interest in the property is acquired with the intention that it is to be used in a qualifying trade, and that reasonable commercial plans have been made to exploit the property as soon as is reasonably practicable.

12. New sub-paragraph 5A(3) defines a qualifying trade as one involving permitting persons to stay in, make use of, or otherwise enjoy the dwelling, provided it is carried on on a commercial basis and is made available to the public for at least 28 days in a year.

13. New sub-paragraph 5A(4) and (5) require that the public must be permitted to use a significant proportion of the interior of the building for the trade to qualify, taking into account the size, nature and function of the part which they are permitted to use.

14. New sub-paragraph 5B(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15 per cent rate on certain transactions, if conditions set out in new Paragraph 5B(2) are met.

15. New sub-paragraph 5B(2) sets out that the conditions are that the purchaser, or a member of the same group carries on a qualifying trade, the dwelling is acquired for the purpose of making it available as living accommodation for "qualifying individuals" for trade purposes.

16. New sub-paragraph 5B(3) clarifies that the accommodation can be for individuals generally or for specifically identified individuals.

17. New sub-paragraph 5B(4) defines a qualifying trade as one carried on on a commercial basis with a view to profit, with certain exclusions

18. New sub-paragraph 5B(5) specifies that provision for an individual includes provision for the individual's family living with the employee.

19. New sub-paragraph 5B(6) defines a group of companies as the same as a group for Stamp Duty Land Tax group relief purposes.

20. New sub-paragraph 5C(1) defines, for a trade carried on in partnership, qualifying individuals are individuals employed for the purposes of the trade and members of the partnership.

21. New sub-paragraph 5C(2) defines qualifying individuals as individuals employed for the purposes of the trade, in any other case.

22. New sub-paragraph 5C(3) prevents relief being given if the individuals to whom the dwelling is likely to be made available includes members of a partnership who have a 5 per cent or greater share in the income profits of the partnership, in a company holding the interest in the dwelling or in the interest itself.

23. New sub-paragraph 5C(4) similarly prevents relief if individuals to whom the dwelling is likely to be made available include employees of the relevant trade who have a 5 per cent or greater share of the income profits of the trade, in any company holding the interest in the dwelling or in the interest itself. Additionally relief is prevented if the individuals include those employed to provide excluded domestic services.

24. New sub-paragraph 5C(5) defines excluded domestic services as services in connection with actual or intended occupation of the dwelling or a linked dwelling by a non-qualifying individual.

25. New sub-paragraph 5C(6) defines a non-qualifying individual as one who is connected with a person beneficially entitled to the interest in the dwelling.

26. New sub-paragraph 5C(7) defines linked dwellings according to the definitions in the Annual Residential Property Tax legislation.

27. New sub-paragraph 5C(8) includes an office holder as an employee.

28. New sub-paragraph 5C(9) treats beneficial joint tenants as having equal shares in the dwelling.

29. New Paragraph 5C(10) applies the Annual Residential Property Tax definition of a 5 per cent or more share in a company.

30. New sub-paragraph 5D(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15 per cent rate on certain transactions, if the higher threshold interest is in or over a dwelling used as a farmhouse and the conditions set out in new paragraph 5D(3) are met.

31. New sub-paragraph 5D(2) defines a farmhouse for these purposes as a dwelling that forms part of land that is occupied (or to be occupied)

for the purposes of a farming trade and which is appropriate in character to the size of the farm and the nature and scale of the farming trade to be carried on there.

32. New sub-paragraph 5D(3) states that the conditions are (i) for the dwelling to be occupied for the purposes of the farming trade by a qualifying farm worker, (ii) that reasonable commercial plans have been made for such occupation to start as soon as is reasonably practicable, and (iii) that occupation by a qualifying farm worker is expected to continue as part of the normal way that farming trade is carried on.

33. New sub-paragraph 5D(4) defines a qualifying farm worker as an individual who occupies the farmhouse for the purposes of a farming trade in which he or she has substantial day to day involvement.

34. New sub-paragraph 5D(5) defines a qualifying trade of farming as one carried on on a commercial basis and with a view to profit.

35. New sub-paragraph 5D(6) states that a person who occupies part of a dwelling is treated as occupying the dwelling.

36. New sub-paragraph 5D(7) applies the definition of "farming" from Corporation Tax Act 2010 but with the inclusion of market gardening.

37. New paragraphs 5E – 5H provide that the reliefs from the higher rate of Stamp Duty Land Tax may, in certain circumstances, be withdrawn if the relevant conditions cease to be met within the three years following the acquisition of the interest.

38. New sub-paragraph 5E(1) provides that reliefs within paragraph 5 (property rental businesses, property development trades and property trading businesses) may be withdrawn under sub-paragraph 5E(2).

39. New sub-paragraph 5E(2) withdraws relief under paragraph 5 if, at any time in the three years following the acquisition, the requirements in paragraph 5E(3) are not met.

40. New sub-paragraph 5E(3) sets out the requirements that (i) the dwelling is held for the purposes of one or more of a property rental business, property development trade or property trading business and (ii) no non-qualifying individual is permitted to occupy the dwelling.

41. New sub-paragraph 5E(4) provides that these requirements only apply while the purchaser still holds the interest acquired (or an interest derived from that interest).

42. New sub-paragraph 5E(5) provides that, if it is not reasonable to expect the dwelling to be used for the intended purpose because of circumstances beyond the purchaser's control, the requirement that the interest is held for the purposes of one or more of a property rental business, property development trade or property trading business does not apply.

43. New sub-paragraph 5E(6) provides that sub-paragraph 5E(7) will apply if, within the three years following the acquisition, the activity which gave rise to the relief under paragraph 5 either has not begun or has ceased.

44. New sub-paragraph 5E(7) provides that an interest will only be treated as being held for a purpose eligible for relief if reasonable steps are being taken to ensure that that purpose is carried out.

45. New sub-paragraph 5E(8) applies the definition of non-qualifying individual from the property rental business relief from the Annual Residential Property Tax.

46. New sub-paragraph 5F(1) provides that relief from the 15 per cent rate for trades which involve opening a dwelling to the public may be withdrawn under sub-paragraph 5F(2).

47. New sub-paragraph 5F(2) withdraws relief if, at any time in the three years following the acquisition, the requirement in paragraph 5F(3) is not met.

48. New sub-paragraph 5F(3) sets out the requirement that the interest is being exploited as a source of income in the course of a qualifying trade.

49. New sub-paragraph 5F(4) provides that the requirement that the interest is being so exploited only applies while the purchaser still holds the interest acquired (or an interest derived from that interest).

50. New sub-paragraph 5F(5) provides that relief will not be withdrawn if, due to circumstances beyond the purchaser's control, it is not reasonable to expect the dwelling to be exploited as a source of income in the course of a qualifying trade.

51. New sub-paragraph 5F(6) provides that sub-paragraph 5F(7) will apply if, within the three years following the acquisition, the exploitation of the interest as a source of income either has not begun or has ceased.

52. New sub-paragraph 5F(7) provides that an interest will only be treated as being exploited as a source of income in a qualifying trade

if reasonable steps are being taken to ensure that the interest begins to be so exploited or that such exploitation resumes.

53. New sub-paragraph 5G(1) provides that relief from the 15 per cent rate for dwellings for occupation by certain employees and partners may be withdrawn under sub-paragraph 5G(2).

54. New sub-paragraph 5G(2) withdraws relief if, at any time in the three years following the acquisition, any requirement in paragraph 5G(3) is not met.

55. New sub-paragraph 5G(3) sets out the requirements that:

    a. the purchaser (or a group member) carries on a qualifying trade;

    b. the dwelling is made available to one or more qualifying individuals for use as living accommodation; and

    c. the dwelling is made available for trade purposes.

56. New sub-paragraph 5G(4) provides that these requirements only apply while the purchaser still holds the interest acquired (or an interest derived from that interest).

57. New sub-paragraph 5G(5) provides that relief will not be withdrawn if, due to circumstances beyond the purchaser's control, it is not reasonable to expect these requirements to be met.

58. New sub-paragraph 5G(6) provides that sub-paragraph 5G(7) will apply if, within the three years following the acquisition, the dwelling has not begun to or has ceased to be made available as accommodation within the conditions for the relief.

59. New sub-paragraph 5G(7) provides that a dwelling will only be treated as being made available to one or more qualifying individuals for use as living accommodation if reasonable steps are being taken to ensure that the dwelling will begin to be, or will return to being, so available.

60. New sub-paragraph 5H(1) provides that relief from the 15 per cent rate for farmhouses may be withdrawn under sub-paragraph 5H(2).

61. New sub-paragraph 5H(2) withdraws relief if, at any time in the three years following the acquisition, the requirements in paragraph 5H(3) are not met.

62. New sub-paragraph 5H(3) sets out the requirements that:

a. the land, of which the farmhouse forms part, is occupied for a qualifying farming trade; and

b. the dwelling is occupied for the purposes of that trade by a qualifying farm worker.

63. New sub-paragraph 5H(4) provides that these requirements only apply while the purchaser still holds the interest acquired (or an interest derived from that interest).

64. New sub-paragraph 5H(5) provides that relief will not be withdrawn if, due to circumstances beyond the purchaser's control, it is not reasonable to expect one of these requirements to be met.

65. New sub-paragraph 5H(6) provides that sub-paragraph 5H(7) will apply if, within the three years following the acquisition, a requirement in paragraph 5H(3) has not begun to be met or has ceased to be met.

66. New sub-paragraph 5H(7) provides that the requirement in question will be treated as met if reasonable steps are being taken to ensure that the requirement is met.

67. Paragraph 3 amends section 81 FA 2003 which provides that, where relief is withdrawn in certain circumstances, a purchaser is obliged to file a further land transaction return.

68. Sub-paragraph 3(2) inserts two new sub-sections in section 81 FA 2003 to provide for further returns to be filed where the relief from the 15 per cent rate is withdrawn.

69. New sub-section 81(1A) provides that where relief from the 15 per cent rate is withdrawn under new paragraphs 5E-5H (summarised above), the purchaser must deliver a further return within 30 days after the relevant date provided for in new sub-section 81(1B).

70. New sub-section 81(1B) specifies, for each relief, the relevant date from which the 30 day period, in which the further return must be delivered, is calculated.

71. Sub-paragraph 3(3) amends sub-section 81(2A) FA 2003 so that it does not apply to new-subsection 81(1A).

BACKGROUND

72. Finance Act 2012 introduced a 15 per cent rate of stamp duty land tax on the acquisition by certain non-natural persons of properties costing more than £2 million. The measure formed part of a package designed to ensure that individuals and companies pay a fair share of

tax on residential property transactions and to reduce avoidance. Its aim was to dis-incentivise the ownership of high value residential property in structures that would permit the indirect ownership or enjoyment of the property to be transferred in a way that would not be chargeable to SDLT.

73. The measure is to have effect for land transactions where the effective date is on or after the date Royal Assent is given to Finance Bill 2013. The effective date is normally the date on which a contract is completed, but may be earlier if the land is occupied or the consideration for the transaction is given before that date.

74. Finance Act 2012 provided only two exclusions from the higher rate charge; for companies acting solely in their capacity as trustees, and for property developers with a 2 year trading history.

75. The scope of the 15 per cent rate was included as part of the consultation on the annual residential property tax that was held over summer 2012.

76. In response to the consultation a number of reliefs will be introduced to reduce the SDLT rate to that applicable to purchases not within the higher rate of SDLT (currently 7 per cent). The new property developer relief no longer has the 2 year trading history condition. Further reliefs are also to be introduced for property rental businesses, property traders, trades that exploit a dwelling to generate income by providing access to a significant part of the interior, dwellings used to house employees or partners with a limited interest in the company or partnership, and farmhouses.

77. Relief will only apply if the property continues to satisfy the relevant qualifying conditions throughout the three years following purchase. If it does not, additional SDLT will become payable.

78. The intention is to stop or reduce the number of properties that will enter such complex ownership structures other than where the property is used in a genuine business. Taken together with the introduction of the annual residential property tax (ARPT) from 1 April 2013 on such property owned by non-natural persons, this will result in a reduction in the number of high value properties owned in such structures.

79. If you have any questions about this change, or comments on the legislation, please contact the Stamp Taxes team 03000 564964 (email: budget12.Stamptaxes@hmrc.gsi.gov.uk).

1 Contract and conveyance: transfers of rights

Schedule 1 contains provisions about the taxation of certain assignments, subsales and other transactions relating to a contract that is to be completed by a conveyance.

SCHEDULE 1

Section 1

STAMP DUTY LAND TAX: TRANSFERS OF RIGHTS

1 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.

2 (1) Section 45 (contract and conveyance: effect of transfer of rights) is amended as follows.

(2) For subsection (1) substitute—

"(1) Subsections (1ZA) to (1ZF) give the meaning of "transfer of rights" and some related expressions in sections 45ZA to 45ZK (and in this section).

(1ZA) There can be a "transfer of rights" only where a contract for the acquisition by a person of a chargeable interest is entered into under which the acquisition is to be completed by a conveyance (that is, where section 44 applies).

(1ZB) "Transfer of rights" means an assignment, subsale or other transaction that meets these conditions—

(a) the transaction is entered into when the original contract has yet to be completed by a conveyance;

(b) as a result of the transaction, a person other than the original purchaser becomes entitled to call for the whole or part of the subject-matter of the original contract to be conveyed to that person.

(Accordingly, a transaction that itself effects the acquisition of the whole or a part of the subject-matter of the original contract is not a "transfer of rights".)

(1ZC) If the entitlement mentioned in subsection (1ZB) is an entitlement to exercise rights under the original contract that have been assigned by the transfer of rights, that transfer of rights is an "assignment of contractual rights".

(1ZD) In subsection (1ZB) the reference to an assignment, subsale or other transaction does not include the grant or assignment of an option.

(1ZE) Where there is a transfer of rights—

(a) "the original contract" means the contract referred to in subsection (1ZA);

(b) "the original purchaser" means the person referred to in subsection (1ZA);

(c) "the subject-matter of the original contract" means the chargeable interest referred to in subsection (1ZA) (together with any interest or right appurtenant or pertaining to it that is to be acquired under the contract);

(d) "the subject-matter of the transfer of rights" means the chargeable interest the conveyance of which a person is

entitled to call for as a result of the transfer of rights (together with any interest or right appurtenant or pertaining to it that it is appropriate to treat as included in that subject-matter);

(e) "transferee" means the person entitled to call for a conveyance (to that person) as a result of the transfer of rights;

(f) "transferor" means the person who disposes of, or agrees to dispose of, the interest or rights as a result of which the transferee is so entitled.

(1ZF) References to "part of the subject-matter of the original contract"—

(a) are to a chargeable interest (an "interest in part of the land") that is the same as the chargeable interest referred to in subsection (1ZA) except that it relates to part only of the land concerned, and

(b) include, so far as appropriate, interests or rights appurtenant or pertaining to the interest in part of the land."

(3) Omit subsections (1A) to (5A).

(4) In subsection (6), for "subsection (3)(b)(i)" substitute "sections 45ZA to 45ZK".

(5) In subsection (7), after "this section" insert "and sections 45ZA to 45ZK".

(6) After subsection (7) insert—

"(8) Sections 45ZA to 45ZK do not apply where paragraph 12B of Schedule 17A (assignment of agreement for lease) applies."

(7) For the heading of that section substitute "**Transfers of rights: introduction**".

3 After section 45 insert—

"45ZA Transfer of rights not a land transaction

A person is not regarded as entering into a land transaction by reason of a transfer of rights.

45ZB Assignments of contractual rights: treatment of the transferee

(1) Where there has been an assignment of contractual rights, the original contract is taken for the purposes of section 44 to be substantially performed if—

(a) the transferee, or a person connected with the transferee, takes possession of the whole, or substantially the whole, of the subject-matter of the original contract, or

(b) a substantial amount of the consideration is provided by the transferee or a person connected with the transferee, or

(c) consideration provided by a person within paragraph (b) amounts, when taken together with consideration provided by another person, to a substantial amount of the consideration.

Substantial performance of a contract for a land transaction by the means described in this subsection is referred to as substantial performance of the contract "by the transferee".

(2) Where there has been an assignment of contractual rights and the original contract is substantially performed by the transferee, the transferee is taken to be the purchaser under the transaction treated (under section 44(4)) as being effected by that substantial performance.

(3) Where there has been an assignment of contractual rights and the subject-matter of the original contract is conveyed to the transferee, the conveyance is taken to effect the completion of the original contract (despite section 44(10)).

(4) Where subsection (2) or (3) applies, the chargeable consideration for the land transaction concerned is determined in accordance with subsection (5).

(5) Schedule 4 is to be read as if paragraph 1(1) of that Schedule provided that the chargeable consideration is the total of—

(a) any consideration in money or money's worth given (directly or indirectly) by the transferee or a person connected with the transferee in respect of the subject-matter of that contract, and

(b) any consideration given by the transferee or a person connected with the transferee for the assignment of contractual rights.

(6) Subsection (6) of section 44 applies in relation to subsection (1)(a) as it applies for the purposes of subsection (5)(a) of that section and subsection (7) of section 44 applies in relation to subsection (1)(b) and (c) as it applies in relation to subsection (5)(b) of that section.

(7) Subsection (1) should not be read as implying that the original contract may not be substantially performed otherwise than by the transferee.

45ZC Assignments of contractual rights: transferor treated as making separate acquisition

(1) Where section 45ZB(2) applies, this Part has effect as if—

(a) the effective date of the land transaction mentioned in that subsection were also the effective date of a land transaction (a "notional land transaction"), and

(b) the original purchaser were the purchaser under that transaction.

(2) Where section 45ZB(3) applies, this Part has effect as if—

(a) the effective date of the land transaction concerned were also the effective date of a land transaction (a "notional land transaction"), and

(b) the original purchaser were the purchaser under that transaction.

(3) For the purpose of determining the chargeable consideration for the notional land transaction mentioned in subsection (1) or (2), Schedule 4 has effect as if paragraph 1(1) of that Schedule provided that the chargeable consideration is any consideration in money or money's worth given (directly or indirectly) by any person in respect of the subject-matter of the original contract.

(4) If the transferee was entitled to call for the conveyance as a result of successive assignments of rights under the original contract, subsections (1) and (2) apply to each intermediate transferor as they apply to the original purchaser.

(5) A person (other than the original purchaser) is an "intermediate transferor" for the purposes of subsection (4) if the transferee's entitlement to call for a conveyance of the subject-matter of the original contract (see section 45(1ZB)(b)) is an entitlement to exercise rights that have been transferred to the transferee (directly or indirectly) by that person.

(6) In relation to a land transaction treated as taking place under this section—
   (a) references in Schedule 7 (group relief) to the vendor are to be read as references to the vendor under the original contract, and
   (b) other references in this Part to the vendor are to be read, where the context permits, as referring to either the vendor under the original contract or the transferor.

45ZD Notional land transactions: subsequent events

(1) Where section 45ZC(1) applies and the original contract (see section 45ZB(2)) is subsequently completed by a conveyance, tax is charged on the land transaction effected by the conveyance to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the notional land transaction.

(2) Where section 45ZC(1) applies and the original contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue section 45ZC(1) must (to that extent) be repaid by HMRC.

45ZE Transferee's acquisition: other cases

(1) "Free-standing transfer of rights" means a transfer of rights other than an assignment of contractual rights.

(2) Subsection (3) applies if a person entitled, as a result of a free-standing transfer of rights, to acquire the subject-matter of the transfer of rights acquires (or is treated under section 44(4) as acquiring) that subject-matter.

(3) The consideration for the transaction effecting that acquisition (or deemed acquisition) is taken to include the consideration given for the transfer of rights (if that would not otherwise be the case).

(4) If a person entitled, as a result of a free-standing transfer of rights, to acquire the subject-matter of the transfer of rights (or a person connected with such a person) takes action that would, if taken by the original purchaser, constitute the taking of possession of the whole or substantially the whole of the subject-matter of the original contract for the purposes of section 44(5), the transferee's action is treated as effecting the substantial performance of the original contract.

(5) If the transfer of rights mentioned in subsection (4) is a transfer of rights in relation to more than one contract such as is mentioned in section 45(1ZA), subsection (4) is to be applied in relation to each such contract.

(6) The reference in subsection (4) to a person entitled as a result of a free-standing transfer of rights to acquire the subject-matter of the transfer of rights includes a person who has acquired the entitlement to exercise that entitlement (under the free-standing transfer of rights) as a result of one or more assignments of contractual rights.

45ZF Minimum consideration rule

(1) This section applies if—
- (a) there is a transfer of rights ("the beneficial transfer of rights"),
- (b) the subject-matter of the transfer of rights is conveyed to the transferee, or the transfer of rights is substantially performed by the transferee, and
- (c) the connection condition is met.

(2) The connection condition is that—
- (a) the transferor and transferee are connected with each other or are not acting at arm's length, or
- (b) (if the beneficial transfer of rights is one in a series of transfers of rights) any person who is the transferor in relation to a transfer of rights that precedes the beneficial transfer of rights in the series is connected with, or not acting at arm's length in relation to, the transferee under the beneficial transfer of rights.

(3) The amount of the consideration for the relevant land transaction is taken to be the greatest amount that is equal to one (or more) of the following—
- (a) the amount that would be the amount of that consideration apart from this subsection;
- (b) the first minimum amount;
- (c) the second minimum amount.

(4) In subsection (3) "the relevant land transaction" means—
- (a) if the beneficial transfer of rights is an assignment of contractual rights, the land transaction referred to in section 45ZB(2) or, as the case requires, the land transaction effected by the conveyance referred to in section 45ZB(3);
- (b) otherwise, the land transaction effected by the conveyance mentioned in subsection (1)(b), or treated as effected by the substantial performance mentioned in subsection (1)(b).

(5) A transfer of rights is taken to be substantially performed by a transferee if—
- (a) the transferee, or a person connected with the transferee, takes possession of the whole, or substantially the whole, of the subject-matter of the original contract, or
- (b) a substantial amount of the consideration is provided by the transferee or a person connected with the transferee, or

(c) consideration provided by a person within paragraph (b) amounts, when taken together with consideration provided by another person, to a substantial amount of the consideration.

(6) Subsection (6) of section 44 applies in relation to subsection (5)(a) as it applies for the purposes of subsection (5)(a) of that section and subsection (7) of section 44 applies in relation to subsection (5)(b) and (c) as it applies in relation to subsection (5)(b) of that section.

45ZG Section 45ZF: calculation of minimum amounts

(1) "The first minimum amount" means—

(a) if the chargeable interest acquired (or treated as acquired) is the whole subject-matter of the original contract, the amount that under the terms of the original contract is the consideration payable for the acquisition of that subject-matter; or

(b) otherwise, so much of the amount mentioned in paragraph (a) as is referable, on a just and reasonable apportionment, to the chargeable interest mentioned in paragraph (a).

(2) "The second minimum amount" means the total of the net amounts of consideration given by the relevant parties.

(3) The net amount of consideration given by any relevant party is—

$$CP - CR$$

where—

CP is the total amount of consideration given by the party for the acquisition of the chargeable interest or as consideration for a transfer of rights;

CR is the total of any amounts of consideration given to the party by another relevant party (or other relevant parties) as consideration for the acquisition of the chargeable interest or as consideration for a transfer of rights.

If CR is greater than CP, the net amount of consideration given by the relevant party is taken to be zero.

(4) The following are relevant parties for the purposes of this section—

(a) the original purchaser,

(b) the transferee (or, if the beneficial transfer of rights is one in a series of transfers of rights, the transferee under the beneficial transfer of rights and each preceding transferee).

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

(a) amounts paid by a person connected with a relevant party are treated as paid by the relevant party;

(b) amounts paid to a person connected with a relevant party are treated as paid to the relevant party.

(6) If the subject-matter of the beneficial transfer of rights is not the whole subject-matter of the original contract, or is not the whole subject-matter of a transfer of rights that precedes the beneficial transfer of rights in a series of such transfers, then—
   (a) the amounts that are taken for the purposes of subsection (3) to be given "for the acquisition of the chargeable interest" are to be determined on a just and reasonable basis, and
   (b) only so much of the consideration for a preceding transfer of rights as is referable, on a just and reasonable apportionment, to the subject-matter of the beneficial transfer of rights is taken into account under subsection (3).

45ZH Relief for original purchaser: assignment of contractual rights

(1) This section applies where—
   (a) there has been an assignment of contractual rights,
   (b) the original contract had not been substantially performed when that assignment was entered into,
   (c) as a result of the completion or substantial performance of the original contract, the original purchaser is treated under section 45ZC as the purchaser under a notional land transaction, and
   (d) the land transaction effected by the completion or substantial performance of the original contract is not exempt from charge by virtue of any of sections 71A to 73 (which relate to alternative property finance).

(2) The notional land transaction is exempt from charge.

(3) Any relief under subsection (2) must be claimed in a land transaction return or an amendment of such a return.

(4) In this section "substantially performed" has the same meaning as in section 44 (read with section 45ZB(1)).

45ZI Relief for original purchaser: other cases

(1) This section applies where—
   (a) there has been a transfer of rights that is a qualifying subsale,
   (b) the original contract had not been substantially performed when the transfer of rights was entered into,
   (c) the original purchaser would, in the absence of this section, be liable to pay tax in respect of the completion or substantial performance of the original contract,
   (d) the performance of the qualifying subsale takes place at the same time as, and in connection with, the performance of the original contract, and
   (e) the transaction effected, or deemed to be effected, by the performance of the transfer of rights is not exempt from charge by virtue of any of sections 71A to 73.

(2) If the subject-matter of the qualifying subsale is the whole of the subject-matter of the original contract, the land transaction is exempt from charge.

(3) If the subject-matter of the qualifying subsale is part (but not the whole) of the subject-matter of the original contract, the amount of the consideration for the land transaction is taken to be—

(a) the amount that it would be apart from this subsection, less

(b) so much of that amount as is referable to the subject-matter of the qualifying subsale.

(4) The amount mentioned in subsection (3)(a) may be reduced more than once under subsection (3) if there is more than one qualifying subsale.

(5) Any relief under subsection (2) or (3) must be claimed in a land transaction return or an amendment of such a return.

(6) For the purposes of this section—

(a) the original contract is taken to be "performed" when it is substantially performed or completed (whichever is earlier), and

(b) the transfer of rights is taken to be "performed" when the transferee acquires, or is treated under section 44(4) as acquiring, the subject-matter of the transfer of rights.

(7) A transfer of rights is a "qualifying subsale" if it is a contract under which the original purchaser contracts to sell the whole or part of the subject-matter of the original contract to the transferee.

(8) In this section—

"the land transaction" means the transaction effected by the completion of the original contract or deemed to be effected by the substantial performance of the original contract;

"substantially performed" has the same meaning as in section 44.

45ZJ Relief for second or subsequent transferors

(1) The reference in section 45ZH(1)(c) to "the original purchaser" includes a person who is an intermediate transferor for the purposes of section 45ZC(4).

(2) For the purposes of sections 45ZH and 45ZI it does not matter whether or not the original contract entered into by the original purchaser mentioned in subsection (1)(c) of the section concerned is itself a transfer of rights in relation to another original contract.

45ZK Tax avoidance arrangements

(1) Relief is not given under section 45ZH or 45ZI if the transfer of rights referred to in subsection (1)(a) of the section concerned forms part of any tax avoidance arrangements.

(2) Arrangements are "tax avoidance arrangements" if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage for the original purchaser or any other person was the main purpose, or one of the main purposes, of the original purchaser in entering into the arrangements.

(3) In this section "tax advantage" means—

(a) a relief from tax or increased relief from tax,

(b) a repayment of tax or increased repayment of tax,
(c) the avoidance or reduction of a charge to tax, or
(d) the avoidance of a possible assessment to tax.

(4) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(5) Nothing in sections 45ZF and 45ZG (minimum consideration rule) or this section affects the breadth of the application of sections 75A to 75C (anti-avoidance).”

4 In section 119 (meaning of “effective date” of a transaction), in subsection (2), at the appropriate place insert—

“section 45ZC(1) and (2),”.

EXPLANATORY NOTE

STAMP DUTY LAND TAX: TRANSFERS OF RIGHTS

SUMMARY

1. This Schedule retains relief for intermediate purchasers where rights under a land transaction are transferred by way of an assignment of contractual rights and/or qualifying subsale and charges the end purchaser with stamp duty land tax (SDLT). It specifies the types of transfers of rights which qualify for relief and clarifies the legislation to protect against avoidance schemes which seek to circumvent the charge to SDLT.

DETAILS OF THE SCHEDULE

2. Paragraph 1 amends Part 4 of Finance Act 2003 (FA 2003) which applies to transfers of rights.

3. Paragraph 2 amends the transfers of rights rules applying to section 45 FA 2003.

4. Sub-Paragraphs (1) to (7) amend section 45(1) FA 2003 by substituting new subsections (1ZA) to (1ZF) which: (i) give the meaning of the term 'transfers of rights' and related terms; (ii) insert new sections 45ZA to 45ZK; and (iii) make other consequential amendments to section 45 FA 2003.

5. Paragraph 3 inserts new sections 45ZA to 45ZK. These sections set out how transfers of rights will be treated in future.

6. New Section 45ZA provides that entering into a contract for a transfer of rights does not in itself incur a charge to SDLT as a transfer of rights is not a land transaction.

7. New Section 45ZB deals with the treatment of the transferee in assignments of contractual rights and sets out what is meant by substantial performance by the transferee or a person connected with the transferee.

8. Subsection (1) sets out what is meant by substantial performance under section 44 FA 2003 by a transferee or a person connected with a transferee.

9. Subsection (2) provides that where there has been substantial performance by a transferee in an assignment of contractual rights the transferee will be treated as if it were the purchaser under section 44 FA 2003.

10. Subsection (3) provides that where the original contract is completed by a conveyance to the transferee the provisions of section 44 (10) are disregarded.

11. Subsections (4) and (5) provide that where there has been substantial performance by the transferee or the contract has been completed by a conveyance to the transferee the consideration will be: (i) any consideration given by the transferee or any person connected with them for the subject matter of that contract; and (ii) any consideration given for the transfer of rights.

12. Subsection (6) provides that section 44(6) and 44(7) FA 2003 concerning substantial performance applies to subsection (1) in relation to substantial performance by a transferee.

13. Subsection (7) provides that there should be no implication that the original contract may only be substantially performed by the transferee.

14. New Section 45ZC deems the transferor as making a separate acquisition ("the notional land transaction") in an assignment of contractual rights.

15. Subsection (1) provides that where there has been an assignment of contractual rights and the original contract is substantially performed by the transferee the effective date of that land transaction is deemed to be the effective date of a notional land transaction and the original purchaser is the deemed purchaser under the notional land transaction.

16. Subsection (2) provides that where there has been an assignment of contractual rights and the original contract is completed by a conveyance, the effective date of that land transaction is deemed to be the effective date of the notional land transaction and the original purchaser is the deemed purchaser under the notional land transaction.

17. Subsection (3) provides that the chargeable consideration for a notional land transaction is any consideration given in respect of the subject matter of the original contract.

18. Subsection (4) provides that where there are successive assignments of contractual rights the deeming provisions under subsections (1) and (2) apply to each intermediate transferor as they apply to the original purchaser so that there is a deemed notional land transaction for each with a deemed amount of chargeable consideration for each transaction.

19. Subsection (5) defines what is meant by an intermediate transferor. An intermediate transferor is any person (other than the original purchaser) who has transferred to a transferee the rights held by that person so that the transferee is entitled to call for the conveyance of the subject matter of the original contract.

20. Subsection (6) ensures that any references to the vendor will be read as the vendor under the original contract.

21. New Section 45ZD deals with events occurring subsequent to a notional land transaction.

22. Subsection (1) provides that where the original contract has been substantially performed and is subsequently completed by a conveyance, further tax will be chargeable will be chargeable if that amount is greater than the tax chargeable on the notional land transaction.

23. Subsection (2) provides that where there is a conveyance to the transferee and the original contract is rescinded or annulled any tax paid in respect of a notional land transaction will be repaid.

24. New Section 45ZE deals with all other transfers of rights that are not assignments of contractual rights.

25. Subsection (1) provides a definition of contracts for transfers of rights which are not assignments of contractual rights.

26. Subsection (2) deals with a person is who is entitled to acquire the subject matter of a transfer of rights which is not by way of an assignment of contractual rights.

27. Subsection (3) provides that where a person is entitled to acquire the subject matter of a transfer of rights which is not by an assignment of contractual rights, then the consideration will include the consideration given for the transfer of rights.

28. Subsection (4) provides that where action is taken which constitutes taking possession of the whole or substantially the whole of the subject-matter of the contract the rules for substantial performance under section 44(5) FA 2003 apply.

29. Subsection (5) provides that each successive transfer of rights in a series of transfers of rights under this subsection is a separate contract to which section 44 FA 2003 applies and in relation to each contract subsection (4) applies with regard to substantial performance for each such contract.

30. Subsection (6) provides that references in subsection (4) also apply to someone who becomes entitled as a result of an assignment to

exercise rights under a transfer of rights which is not an assignment of contractual rights, for example where there is a series of assignments of contractual rights and other transfers of rights.

31. New Section 45ZF provides for a minimum consideration rule when the parties are connected or not acting at arm's length.

32. Subsection (1) provides that the minimum consideration rule applies: (i) where there is a transfer of rights; (ii) where the subject matter of the transfer of rights is conveyed to the transferee or where the contract for the transfer of rights is substantially performed by the transferee; and (iii) where the parties are connected or not acting at arm's length.

33. Subsection (2) provides that the connectedness conditions apply to transfers in a series of transfers of rights preceding the beneficial transfer of rights.

34. Subsection (3) provides that where parties are connected or not acting at arm's length the amount of consideration is taken to be the greater of: (i) the amount paid by the acquirer (ii) the amount of consideration given by the original purchaser; (iii) the total of the net amounts given by the relevant parties. Where any of those amounts equally represent the greatest amount then any of those equal amounts can be taken as the greatest amount.

35. Subsection (4) defines what is meant by "the relevant transaction". "Relevant transaction" is defined as: (i) an assignment of contractual rights within section 45ZB (2) and (3) where substantial performance has occurred or has been completed by a conveyance; or (ii) a land transaction effected by substantial performance or completed by a conveyance.

36. Subsection (5) sets out what circumstances would amount to substantial performance.

37. Subsection (6) provides that section 44(6) and 44(7) FA 2003 regarding substantial performance, applies to subsection (5) in relation to substantial performance by a transferee or any person connected with them.

38. New section 45ZG provides for the calculation of minimum consideration amounts.

39. Subsection (1) provides that the first minimum amount means the amount of consideration under the original contract or for transfers of part as reasonably apportioned.

40. Subsection (2) provides that the second minimum amount is the total of the net amounts of consideration given by all the relevant parties under the formula in subsection (3).

41. Subsection (3) sets out the formula for ascertaining the minimum consideration. It deducts the amount of consideration given by a party for the acquisition of the chargeable interest (including where applicable the transfer of rights) from the amount of consideration given to that party for the chargeable interest (including the transfer of rights). The amount given to that party will not be allowed to reduce the final figure below nil. The subsection also requires that this calculation is carried out for each party.

42. Subsection (4) provides that the relevant parties for the purposes of the calculation are the original purchaser, the transferee and any successive transferees.

43. Subsection (5) provides that amounts given by connected parties and those not acting at arm's length are also included.

44. Subsection (6) provides that amounts of consideration given in respect of transfers of a part will be adjusted accordingly.

45. New Section 45ZH sets out the conditions for relief in the case of assignments of contractual rights.

46. Subsection (1) provides that relief is available where: (i) there is an assignment of contractual rights; (ii) the original contract is not substantially performed before the transfer of rights; (iii) the original purchaser is deemed a purchaser of a notional land transaction; and (iv) the land transaction is not exempt from charge by reason of the alternative property finance rules. .

47. Subsection (2) provides that if the conditions in subsection (1) are met then the notional land transaction is exempt from tax.

48. Subsection (3) provides that relief must be claimed by the submission of a land transaction return.

49. Subsection (4) provides that substantial performance has the same meaning as in section 44 FA 2003 and section 45ZB(1)

50. New Section 45ZI sets out the conditions for relief in the case of qualifying subsales.

51. Subsection (1) provides that relief is available where: (i) there is a qualifying subsale; (ii) the original contract was not substantially performed before the transfer of rights; (iii) the original purchaser would except for this section be liable for tax; (iv) the performance of the qualifying subsale takes place at the same time as the

performance of the original contract; and (v) the land transaction is not exempt from charge by reason of the alternative property finance rules.

52. Subsection (2) provides that where the qualifying subsale is the whole of the subject matter of the original contract the land transaction is exempt.

53. Subsection (3) provides that in qualifying subsales of part of the subject matter of the original contract the amount of consideration taken into account is reduced accordingly.

54. Subsection (4) provides that the reduction in tax for qualifying subsales of part of the subject matter of the original contract applies to qualifying subsales of each part of the subject matter of the original contract.

55. Subsection (5) provides that relief must be claimed by the submission of a land transaction return.

56. Subsection (6) provides that in subsection (1) the original contract is treated as "performed" at the earlier of: (i) substantial performance; or (ii) completion. The transfer of rights is "performed" when the transferee acquires or is treated as acquiring the subject matter.

57. Subsection (7) defines what is meant by a qualifying subsale.

58. Subsection (8) defines what is meant by a "land transaction" as being the completion or substantial performance of the original contract, and defines what is meant by "substantially performed" as having the same meaning as in section 44 FA 2003.

59. New Section 45ZJ deals with relief for second or subsequent transferors.

60. Subsection (1) provides that references to the original purchaser also include intermediate transferors.

61. Subsection (2) provides that the original contract can also be a transfer of rights of another original contract.

62. New Section 45ZK provides a test to ascertain whether the purpose of the transaction is for the avoidance of tax.

63. Subsection (1) provides that relief is not available under section 45ZH, 45ZI or 45ZJ (where there are a series of transfers of rights) if the transfer of rights is part of any tax avoidance arrangements.

64. Subsection (2) defines what is meant by tax avoidance arrangements as being where the main purpose or one of the main purposes is the obtaining of a tax advantage.

65. Subsection (3) defines what is meant by a tax advantage.

66. Subsection (4) defines what is meant by arrangements.

67. Subsection (5) provides that (for the avoidance of doubt) nothing in section 45ZF regarding the minimum consideration rule for connected parties, and the calculation of the minimum consideration amounts in section 45ZG affects the breadth of sections 75A-75C FA 2003 (anti-avoidance rules).

68. Paragraph 4 is a consequential amendment of section 119 FA 2003 dealing with the effective dates of certain land transactions

BACKGROUND

69. The Government announced in Budget 2012 that it would bring forward legislation in the Finance Bill 2013 to amend and supplement section 45 FA 2003. A consultation document was published on 17 July and closed on 9 October 2012. A consultation response document was published on 11 December alongside the draft legislation.

70. The current law achieves two broad outcomes where a transfer of rights takes place. The transferee is charged tax on a single land transaction which is an amalgam of the transfer of rights and the ultimate acquisition of the land. Any acquisition by the transferor is disregarded if it is completed at the same time and in connection with the acquisition by the transferee.

71. The draft clause broadly produces the same outcome as the current rules, but is more robust against attempted avoidance.

72. The amendments give relief to assignments of contractual rights and qualifying subsales. They set out what is meant by a transfer of rights and how assignments of contractual rights and subsales are to be treated. In assignments of contractual rights and subsales the transferor will be regarded as making an acquisition of chargeable interest for SDLT purposes and will need to make a land transaction return in order to be able to claim relief. The transferor will be able to make a claim for full relief in certain circumstances.

73. The position for the transferee will remain broadly the same with the exception of the introduction of anti-avoidance measures which include: (i) minimum consideration rules for connected parties or non-arm's length transactions; and (ii) an avoidance purpose test.

74. If you have any questions about this change, or comments on the legislation, please contact Jeremy Schryber on 020 7147 2788 (email: jeremy.schryber@hmrc.gsi.gov.uk)

1 Real estate investment trusts: UK REITs which invest in other UK REITs

Schedule 1 amends Part 12 of CTA 2010 (real estate investment trusts).

SCHEDULES

SCHEDULE 1

Section 1

REAL ESTATE INVESTMENT TRUSTS: UK REITS WHICH INVEST IN OTHER UK REITS

1 Part 12 of CTA 2010 (real estate investment trusts) is amended as follows.

2 (1) Section 530 (condition as to distribution of profits) is amended as follows.

(2) For subsection (1) substitute—

"(1) In the case of a group UK REIT, the condition in this section is met in relation to an accounting period if—

(a) so much of the group's UK profits arising in the period as are UK REIT investment profits (see section 549A), and

(b) at least 90% of the rest of the group's UK profits arising in the period,

are distributed by the principal company of the group on or before the filing date for the principal company's tax return for the period (see paragraph 14 of Schedule 18 to FA 1998)."

(3) For subsection (4) substitute—

"(4) In the case of a company UK REIT, the condition in this section is met in relation to an accounting period if—

(a) so much of the profits of the company's property rental business arising in the period as are UK REIT investment profits (see section 549A), and

(b) at least 90% of the rest of the profits of the company's property rental business arising in the period,

are distributed on or before the filing date for the company's tax return for the period (see paragraph 14 of Schedule 18 to FA 1998).

(4A) For the purposes of subsection (4) profits of the company's property rental business are to be calculated in accordance with section 599."

3 (1) Section 530A (condition as to distribution of profits: increase in profits after delivery of tax return) is amended as follows.

(2) In subsection (2) for "530(1)(c)" substitute "530(1)".

(3) In subsection (6) for "530(4)(b)" substitute "530(4)".

(4) After subsection (9) insert—

"(10) This section cannot be relied upon to satisfy the requirement of section 530(1)(a) or (4)(a)."

4 (1) Section 531 (conditions as to balance of business) is amended as follows.

(2) In subsection (5)(b) after “cash” insert “or relevant UK REIT shares”.

(3) In subsection (6)(b) after “cash” insert “and relevant UK REIT shares”.

(4) After subsection (8) insert—

“(9) In this section “relevant UK REIT shares” means—

(a) in the case of a group UK REIT, shares held by a member of the group in the principal company of another group UK REIT or in a company UK REIT, and

(b) in the case of a company UK REIT, shares held by the company in the principal company of a group UK REIT or in another company UK REIT.”

5 In section 548 (distributions: liability to tax) in subsections (1) and (3) after “distribution” insert “(other than one falling within section 549A(5) or (7))”.

6 In section 549 (distributions: supplementary) in subsection (3)(a) and (b) after “distribution” insert “(other than one falling within section 549A(5) or (7))”.

7 After section 549 insert—

“549A Distributions from one UK REIT to another UK REIT

(1) If a company receives a distribution falling within subsection (5) or (7), the distribution is to be treated as profits of a property rental business carried on by the company in the United Kingdom.

Such profits are referred to in this Part as “UK REIT investment profits”.

(2) The property rental business mentioned in subsection (1) is to be treated as separate from any other property rental business of the company.

(3) References to profits of property rental business or UK property rental business are to be read as including UK REIT investment profits accordingly, including where the profits referred to are otherwise profits calculated in accordance with international accounting standards or section 599.

(4) Section 549(2) and (2A) applies in relation to distributions falling within subsection (5) or (7) as it applies in relation to relevant distributions.

(5) A distribution falls within this subsection if—

(a) it is made by the principal company of a group UK REIT to a shareholder of the company which is—

(i) a member of another group UK REIT, or

(ii) a company UK REIT, and

(b) it is a distribution of amounts shown in the financial statements under section 532(2)(a) (statement of group’s property rental business) as—

(i) profits or gains (or both) of UK members of the group, or

(ii) profits or gains (or both) of UK property rental business of non-UK members of the group.

(6) In subsection (5) the reference to a distribution made by the principal company includes a reference to a distribution made by the principal company of the post-cessation group.

(7) A distribution falls within this subsection if—
  (a) it is made by a company UK REIT to a shareholder of the company which is—
    (i) a member of a group UK REIT, or
    (ii) another company UK REIT, and
  (b) it is a distribution in respect of profits or gains (or both) of property rental business of the company.

(8) In subsection (7) the reference to a distribution made by a company UK REIT includes a reference to a distribution made by the post-cessation company."

8 In section 550 (attribution of distributions) in subsection (2)—
  (a) for paragraph (a) substitute—
    "(a) first, to distributions in satisfaction of the requirement of section 530(1)(a) or 530(4)(a) (as the case may be),
    (aa) second, to distributions in satisfaction of the requirement of section 530(1)(b) or 530(4)(b) (as the case may be),",
  (b) in paragraph (b) for "second" substitute "third",
  (c) in paragraph (c) for "third" substitute "fourth",
  (d) in paragraph (d) for "fourth" substitute "fifth", and
  (e) in paragraph (e) for "fifth" substitute "sixth".

9 In section 588 (joint ventures: effect of notice under section 586) after subsection (6) insert—

"(7) Subsections (3) to (6) apply (in particular) for the purpose of interpreting section 549A(5)(a)(i) and (7)(a)(i)."

10 In section 589 (joint ventures: effect of notice under section 587) after subsection (6) insert—

"(7) Subsections (3) to (6) apply (in particular) for the purpose of interpreting section 549A(5)(a)(i) and (7)(a)(i)."

11 In section 605 (property rental business: exclusion of business producing listed income) after subsection (1) insert—

"(1A) But see section 549A which treats income falling within class 7 of the table as profits of property rental business."

12 In Chapter 18 of Part 15 of ITA 2007 (deduction of income tax at source) in sections 973 and 974 (which relate to distributions made by UK REITs) after subsection (6) insert—

"(7) In relation to references to profits of property rental business, see section 549A of CTA 2010."

13 The amendment made by paragraph 7 above has effect in relation to distributions as follows—
  (a) in the case of a distribution received by a member of a group UK REIT, the amendment has effect if the distribution is received in an

accounting period of the principal company of the group beginning on or after the day on which this Act is passed, and

(b) in the case of a distribution received by a company UK REIT, the amendment has effect if the distribution is received in an accounting period of the company beginning on or after the day on which this Act is passed,

and the other amendments made by this Schedule have effect accordingly.

EXPLANATORY NOTE

REAL ESTATE INVESTMENT TRUSTS: UK REITS WHICH INVEST IN OTHER UK REITS

SUMMARY

1. This clause and Schedule allows the income from UK real estate investment trusts (REITs) investing in other UK REITs to be treated as income of the investing REIT's tax exempt property rental business. The property income distribution (PID) that a UK REIT receives from another UK REIT in which it invests will be tax exempt. For the purpose of the balance of business test, the investment by a REIT in another REIT will be included as an asset of the investing REIT's property rental business. The investing REIT must distribute 100 per cent of the PID it receives from investing in another REIT to its investors.

DETAILS OF THE SCHEDULE

2. Paragraph 2 amends section 530 Corporation Tax Act 2010 (CTA 2010). This section sets out the percentage of UK profits from a property rental business that a group or company UK REIT must distribute in an accounting period in order to fulfil the distribution of profits condition.

3. Paragraph 2(2) introduces a new requirement (new section 530(1) CTA 2010) that all of a group UK REIT's profits that are UK REIT investment profits must be distributed. UK REIT investment profits are defined at paragraph 7. The existing requirement to distribute at least 90 per cent of the rest of the profits is at new section 530 (1) (b) CTA 2010.

4. Paragraph 2(3) introduces the same requirement for company UK REITs as for a group UK REIT in respect of UK REIT investment profits.

5. Paragraph 3 makes consequential amendments to section 530A CTA 2010. This section was introduced in Finance Act 2012 and sets out the distribution of profits condition where there has been an increase in profits after the delivery of a tax return.

6. Paragraph 4 amends the balance of business condition in section 531 CTA 2010 to include relevant UK REIT shares within the balance of

business assets condition for both group and company UK REITs. Relevant UK REIT shares are defined at subparagraph 4.

7. Paragraphs 5 and 6 make consequential amendments.

8. Paragraph 7 inserts new section 549A into CTA 2010. This section introduces the term "UK REIT investment profits" and defines it at for a group in new section 549A(5) and for a company is new section 549A (7). UK REIT investment profits are treated as profits of a UK property rental business and new section 549A(3) explains that references to property rental profits and similar terms within part 12 CTA 2010 include UK REIT investment profits. They are, however, treated as separate from other property rental business profits (new section 549A(2)).

9. Paragraph 8 makes consequential amendments to section 550 CTA 2010 required by the introduction of "UK REIT investment profits".

10. Paragraphs 9 (company) and 10 (group) apply Chapter 10 (joint ventures) to distributions that are UK REIT investment profits within new section 549A.

11. Paragraph 11 amends section 605 to ensure that UK REIT investment profits are not excluded from the definition of a property rental business.

12. Paragraph 12 is a consequential amendment required to ensure that UK REIT investment profits are included when considering deduction of tax at source.

13. Paragraph 13 sets out the operational date for the changes within the schedule.

BACKGROUND

14. UK REITs are tax advantaged vehicles introduced to encourage investment in the property sector.

15. A REIT is exempt from corporation tax on its profits from a property rental business. It is required to distribute 90 per cent of its profits by way of a property income distribution (PID). A PID is treated in the hands of investors as income from property and taxed accordingly.

16. If you have any questions about this change, or comments on the legislation, please contact Allana Sheil on 020 7147 2565 (email: allana.sheil@hmrc.gsi.gov.uk).

1 Lease premium relief

Schedule 1 makes provision in relation to relief for lease premiums.

SCHEDULES

SCHEDULE 1

Section 1

LEASE PREMIUM RELIEF

Income tax

1 ITTOIA 2005 is amended as follows.

2 In section 61 (tenants occupying land for purposes of trade treated as incurring expenses) after subsection (5) insert—

"(5A) No expense is to be determined under this section by reference to the taxed receipt if section 292(4B) or (4C) applies."

3 In section 292 (tenants under taxed leases treated as incurring expenses) after subsection (4) insert—

"(4A) No expense is to be determined under this section by reference to the taxed receipt if subsection (4B) or (4C) applies.

(4B) This subsection applies if there would have been no taxed receipt but for the application of Rule 1 in section 303 in determining the effective duration of the lease.

(4C) This subsection applies if there would have been no taxed receipt but for the application of Rule 1 in section 243 of CTA 2009 in determining the effective duration of the lease for the purposes of Chapter 4 of Part 4 of that Act."

4 The amendments made by paragraphs 2 and 3 above have effect in relation to leases granted on or after 6 April 2013.

Corporation tax

5 CTA 2009 is amended as follows.

6 In section 63 (tenants occupying land for purposes of trade treated as incurring expenses) after subsection (5) insert—

"(5A) No expense is to be determined under this section by reference to the taxed receipt if section 232(4B) or (4C) applies."

7 In section 232 (tenants under taxed leases treated as incurring expenses) after subsection (4) insert—

"(4A) No expense is to be determined under this section by reference to the taxed receipt if subsection (4B) or (4C) applies.

(4B) This subsection applies if there would have been no taxed receipt but for the application of Rule 1 in section 243 in determining the effective duration of the lease.

(4C) This subsection applies if there would have been no taxed receipt but for the application of Rule 1 in section 303 of ITTOIA 2005 in determining the effective duration of the lease for the purposes of Chapter 4 of Part 3 of that Act."

8 The amendments made by paragraphs 6 and 7 above have effect in relation to leases granted on or after 1 April 2013.

EXPLANATORY NOTE

LEASE PREMIUM RELIEF

SUMMARY

1. This clause and Schedule limits lease premium relief available to a trader or intermediate landlord where leases are of more than 50 years duration. The measure has effect for leases granted on or after 1 April 2013 in respect of companies and 6 April 2013 in respect of individuals or partnerships.

DETAILS OF THE SCHEDULE

2. Paragraph 2 adds new section 61(5A) to Income Tax (Trading and other Income) Act 2005 (ITTOIA). New section 61(5A) precludes the deduction of a trade expense where the charge on the landlord (the "taxed receipt") in respect of the lease premium is within new section 292(4B) or (4C)

3. New section 292(4A) precludes the deduction of a property business expense where the charge on the landlord (the "taxed receipt") in respect of the lease premium is within new section 292(4B) or (4C)

4. New section 292(4B) applies where the lease is only a long lease because of the operation of Rule 1 in section 303 ITTOIA 2005.

5. New section 292(4C) applies where the lease is only a long lease because of the operation of Rule 1 in section 243 Corporation Tax Act 2009 (CTA 2009).

6. Paragraph 6 adds new section 63(5A) to CTA 2009. New section 63(5A) precludes the deduction of a trade expense where the charge on the landlord (the "taxed receipt") in respect of the lease premium is within new section 232(4B) or (4C)

7. New subsection 232(4A) precludes the deduction of a property business expense where the charge on the landlord (the "taxed receipt") in respect of the lease premium is within new section 232(4B) or (4C)

8. New section 232(4B) applies where the lease is only a long lease because of the operation of Rule 1 in section 243 CTA 2009.

9. New section 232(4C) applies where the lease is only a long lease because of the operation of Rule 1 in section 303 ITTOIA 2005.

BACKGROUND NOTE

10. A lease premium payment, made on granting a lease of less than 50 years, is taxed on the recipient landlord and relieved on the tenant where that tenant is a trader or an intermediate landlord. The premium would otherwise be a capital payment for tax purposes. Where the payment relates to a lease of more than 50 years, a premium is also treated as being within the lease premium regime if it falls within Rule 1 of section 303 ITTOIA 2005 or section 243 CTA 2009.

11. If you have any questions about this change, or comments on the legislation, please contact Allana Sheil on 020 7147 2565 (email: allana.sheil@hmrc.gsi.gov.uk).

1 SDLT: leases

Schedule 1 contains provision about stamp duty land tax in relation to leases.

SCHEDULE 1

Section 1

STAMP DUTY LAND TAX ON LEASES

Introduction

1 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.

Leases that continue after a fixed term

2 (1) In Schedule 17A (further provisions about leases), paragraph 3 (leases that continue after a fixed term) is amended as follows.

(2) In sub-paragraph (3)—

(a) after "continuation of the lease" insert "for a period (or further period) of one year", and

(b) in paragraph (a), for "that term" substitute "that one year period".

(3) In sub-paragraph (4), for the words from "the day" to the end substitute "the last day of the one year period for which the lease is continued or (as the case may be) further continued."

(4) After sub-paragraph (5) insert—

"(6) Sub-paragraph (2) is subject to paragraph 3A."

3 After that paragraph insert—

"3A (1) This paragraph applies where—

(a) (ignoring this paragraph) paragraph 3 would apply to treat a lease ("the original lease") as if it were a lease for a fixed term one year longer than the original term,

(b) during that one year period the tenant under that lease is granted a new lease of the same or substantially the same premises, and

(c) the term of the new lease is expressed to begin during that one year period.

(2) Paragraph 3 does not apply to treat the lease as continuing after the original fixed term.

(3) The term of the new lease is treated for the purposes of this Part as beginning immediately after the original fixed term.

(4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that one year period is to be treated as payable under the new lease (and paragraph 1A of Schedule 5 does not apply to it).

(5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 3, this paragraph applies

as if references to the original term were references to the fixed term as previously so extended."

4 In section 87 (interest on unpaid tax), in subsection (3)—

(a) after paragraph (aa) insert—

"(aaa) in the case of an amount payable under paragraph 3(3) of Schedule 17A (leases that continue after a fixed term), the final day of the period (or further period) of one year mentioned in paragraph 3(3)(a) of that Schedule as a result of which the amount is payable;", and

(b) in paragraph (ab) omit "3(3) or" and "leases that continue after a fixed term and".

5 In section 119 (meaning of "effective date" of a transaction), in subsection (2), at the appropriate place in the list insert—

"paragraph 3(4) of Schedule 17A (leases that continue after a fixed term),".

Agreement for lease

6 (1) Schedule 17A is amended as follows.

(2) In paragraph 12A (agreement for lease), for sub-paragraph (3) substitute—

"(3) Where a lease ("the actual lease") is subsequently granted in pursuance of the agreement, this Part applies as if the notional lease and the actual lease were a single lease—

(a) granted on the date the agreement was substantially performed,

(b) for a term which begins with that date and ends at the end of the term of the actual lease, and

(c) in consideration of the total rent payable over the term of that single lease and any other consideration given for the notional lease or the actual lease.

(3A) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction)."

(3) In paragraph 19 (missives of let)—

(a) for sub-paragraph (2) substitute—

"(2) Where in Scotland there is a lease constituted by concluded missives of let ("the first lease") and at some later time a lease is executed ("the second lease"), this Part applies as if the first lease and the second lease were a single lease—

(a) granted on the date the missives of let were concluded,

(b) for a period which begins with that date and ends at the end of the period of the second lease, and

(c) in consideration of the total rent payable over the period of that single lease and any other

consideration given for the first lease or the second lease.

(2A) Where sub-paragraph (2) applies the grant of the second lease is disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).", and

(b) for sub-paragraph (4) substitute—

"(4) Where sub-paragraph (3) applies and at some later time a lease ("the actual lease") is executed, this Part applies as if the notional lease and the actual lease were a single lease—

(a) granted on the date the agreement was substantially performed,

(b) for a period which begins with that date and ends at the end of the period of the actual lease, and

(c) in consideration of the total rent payable over the period of that single lease and any other consideration given for the agreement or the actual lease.

(4A) Where sub-paragraph (4) applies the grant of the second lease is disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction)."

(4) Accordingly, in Schedule 25 to FA 2006, paragraphs 4 and 5 are omitted.

Abnormal rent increases

7 (1) In Schedule 17A, omit paragraphs 14 and 15 (abnormal increases in rent after fifth year).

(2) Accordingly, the following are also repealed—

(a) in Schedule 25 to FA 2006, paragraphs 7, 8 and 9(5), and

(b) in Schedule 3 to the Scotland Act 2012, paragraph 27(9).

Commencement

8 (1) The amendments made by paragraph 2(2) and (3) have effect in relation to any one year period for which a lease is continued, or further continued, which begins on or after the commencement day.

(2) The amendments made by paragraphs 2(4), 3 and 5 have effect if the one year period mentioned in paragraph 3A(1)(b) of Schedule 17A to FA 2003 begins on or after the commencement day.

(3) The amendments made by paragraph 4 have effect in relation to amounts payable in consequence of any one year period for which a lease is continued, or further continued, which begins on or after the commencement day.

(4) The amendments made by paragraph 6 have effect if the effective date of the actual lease or, as the case may be, second lease falls on or after the commencement day.

(5) The amendments made by paragraph 7 have effect in relation to any increase in rent that takes effect on or after the commencement day.

(6) "The commencement day" means the day on which this Act is passed.

EXPLANATORY NOTE

STAMP DUTY LAND TAX ON LEASES

SUMMARY

1. This clause and Schedule amend Schedule 17A of the Finance Act 2003 (FA 2003). Schedule 17A makes special provision for Stamp Duty Land Tax (SDLT) on certain types of lease transactions. The amendments will abolish the rules on abnormal rent increases. They will also simplify the reporting requirements where a lease continues after the expiry of its fixed term and where an agreement for a lease is substantially performed before the actual lease itself is granted.

DETAILS OF THE SCHEDULE

2. Paragraph 1 provides for amendments to be made to Part 4 of FA 2003 (in which Schedule 17A is contained).

Leases that continue after a fixed term

3. Paragraphs 2 and 3 amend paragraph 3 of Schedule 17A.

4. Paragraph 3 of Schedule 17A applies where a lease continues after the expiry of its fixed term. Currently, it provides that, where a lease continues after the end of its fixed term, it is treated as extended (in yearly increments). If any additional tax is due in respect of the extended lease, a return, together with the tax due, must be submitted to HM Revenue & Customs (HMRC) within 30 days after the expiry of the original (or previously extended) fixed term.

5. Paragraph 2 amends paragraph 3(3) of Schedule 17A to provide that, where a lease is treated as extended under that paragraph, notification of any additional tax due need not be given until 30 days after the end of the period of extension.

6. Paragraph 3 inserts a new paragraph 3A into Schedule 17A. Paragraph 3A provides, in essence, that paragraph 3 does not apply in cases where a new lease is granted within one year of the date of expiry of the original fixed term (or of any one-year extension). Instead, the new lease is treated as beginning immediately after that date. Any rent payable in relation to the extended lease is treated as payable under the new lease.

7. Paragraph 4 amends section 87 of FA 2003, by specifying "the relevant date" for the purpose of any interest payable on unpaid tax when paragraph 3(3) applies.

8. Paragraph 5 amends section 119(2) of FA 2003, by adding paragraph 3(4) of Schedule 17A to the list of provisions that provide for a different "effective date" from that set out in section 119(1).

Agreement for lease

9. Paragraph 6 changes the rules that apply when an agreement for lease is substantially performed before the lease itself ("the actual lease") is granted. The current rules are contained in paragraph 12A and 19 of Schedule 17A. Paragraph 19 makes provision for leases (or, where appropriate, missives of let) in Scotland. Paragraph 12A applies where, before a lease is granted, an agreement for lease is entered into and the agreement is substantially performed. The agreement is treated as the grant of a lease beginning on the date of substantial performance. If the transaction is notifiable, a return has to be submitted, and any tax chargeable paid, within 30 of the date of substantial performance. When the actual lease is granted, the notional lease is treated as surrendered and the actual lease is treated as if it were granted in consideration of the surrender of the notional lease. A second return is required for the actual lease. Relief is available for any period of overlap between the notional and actual leases.

10. Paragraph 6(2) replaces paragraph 12A(3) with a new paragraph 12A(3) and inserts paragraph 12A(3A).

11. The new paragraph 12A(3) provides that, where an agreement for lease has been substantially performed and a lease is subsequently granted, the notional lease and the actual lease are treated as a single lease, granted on the day of substantial performance, for a term beginning on that day and ending at the end of term of the actual lease. The consideration for the new single lease is the total rent (and any other consideration) payable over its term.

12. The new paragraph 12A(3A) provides that where paragraph 12A(3) applies, the actual lease is disregarded except for the purposes of section 81A of FA 2003. Section 81A requires a return, or further return, to be submitted when a transaction is linked with an earlier transaction and the effect of the later transaction is that the earlier transaction becomes notifiable or there is any additional tax to pay.

13. Paragraph 6(3) replaces paragraphs 19(2) and (4) of Schedule 17A with new paragraphs 19(2), 19(2A), 19(4) and 19(4A). These make similar provisions for Scotland.

Abnormal rent increases

14. Paragraph 7 repeals paragraphs 14 and 15 of Schedule 17A and makes consequential amendments to FA 2006 and the Scotland Act 2012. Paragraphs 14 and 15 impose an additional SDLT charge where there is a

rent increase after the first five years of the term of a lease and this increase is 'abnormal'. Broadly speaking, an increase is abnormal if the rent doubles, or more than doubles, after the fifth year. HMRC must be notified each time there is an abnormal increase.

Commencement

15. Paragraph 8 provides that the amendments made by paragraphs 1 to 7 will have effect from the date on which Finance Bill 2013 receives the Royal Assent:

    - The abolition of the rules on abnormal rent increases will apply to any increases on or after that date.

    - The changes to the rules on fixed term leases will apply where the period of continuation begins on or after that date.

    - The amendments concerning substantial performance will apply where the effective date of the actual lease is on or after that date.

BACKGROUND NOTE

16. Following representations from stakeholders, it was announced at Budget 2012 that the Government would explore ways of simplifying the complex rules that apply to certain lease arrangements. Informal consultation took place over the summer with industry representatives and other interested stakeholders.

17. Taking account of these discussions, the Government has decided to abolish the abnormal rent increases provisions and streamline the reporting requirements where a lease continues after the expiry of its fixed term and where an agreement for lease is substantially performed before the actual lease is granted.

18. If you have any questions about theses changes, or comments on the legislation, please contact Jane Ewart on 020 7147 3794 (email: jane.ewart1@hmrc.gsi.gov.uk).

1 Combined bingo

(1) Section 20A of BGDA 1981 (combined bingo) is amended as follows.

(2) In subsection (3) for the words from the beginning to "second promoter")—" substitute "Where money representing such payments (so far as they constituted stakes hazarded in the combined bingo) is paid in an accounting period by one promoter of the bingo ("the first promoter") to another ("the second promoter"), to the extent that the money is used (directly or indirectly) to provide bingo winnings for combined bingo promoted by the second promoter—".

(3) Omit subsection (4).

(4) The amendment made by this section has effect in relation to accounting periods beginning on or after the day on which this Act is passed.

EXPLANATORY NOTE

COMBINED BINGO

SUMMARY

1. This clause amends section 20A of the Betting and Gaming Duties Act 1981 (BGDA) which provides the accounting arrangements for games of combined bingo.

DETAILS OF THE CLAUSE

2. Subsection (2) amends section 20A(3) of BGDA 1981 to define the payments that may be taken into account for the purpose of calculating the duty liability from combined bingo.

3. Subsection (3) removes section 20A(4) of BGDA 1981. Section 20A(4) is the qualifying condition that the game is played entirely in the United Kingdom. Removal of subsection 20A(4) will enable bingo promoters in the United Kingdom to offer games in conjunction with promoters outside the United Kingdom without affecting their own bingo duty liability.

4. Subsection (4) provides that these new accounting arrangements will have effect for bingo duty accounting periods that begin on or after the date of Royal Assent to Finance Bill 2013.

BACKGROUND NOTE

5. Bingo duty is charged at 20 per cent of a person’s bingo profits, calculated by reference to receipts and expenditure on winnings. Bingo that is promoted by more than one person and played simultaneously at more than one place is known as combined bingo. To prevent double counting of payments that are transferred between promoters, as contributions to prize funds, special accounting provisions apply to combined bingo. These accounting provisions only apply where the bingo is played entirely in the United Kingdom.

6. This clause will modify the accounting arrangements and remove the qualifying condition that the game is played entirely in the United Kingdom. This will enable bingo promoters in the United Kingdom to offer games in conjunction with promoters elsewhere without affecting their own bingo duty liability.

7. If you have any questions about this change, or comments on the legislation, please contact Brian O’Kane on 0161 827 0325 (email: brian.okane@hmrc.gsi.gov.uk).

1 Meaning of "tobacco products"

(1) Section 1 of TPDA 1979 (tobacco products) is amended as follows.

(2) In subsection (1), omit ", but does not include herbal smoking products".

(3) After that subsection insert—

"(1A) But a product is not a tobacco product for the purposes of this Act if—
 (a) the product does not contain any tobacco, and
 (b) the Commissioners are satisfied that —
  (i) the product is of a description that is used for medical purposes, and
  (ii) the product is intended to be used exclusively for such purposes."

(4) In subsection (3), omit "but not including herbal smoking products".

(5) Omit subsection (6).

(6) The amendments made by this section come into force on 1 January 2014.

EXPLANATORY NOTE

MEANING OF "TOBACCO PRODUCTS"

SUMMARY

1. This clause amends section 1 of the Tobacco Products Duty Act 1979 (TPDA). It is designed to narrow the general exemption granted to herbal smoking products, so that exemption is only granted to products used exclusively for medical purposes. This change comes into force on 1 January 2014.

DETAILS OF THE CLAUSE

2. Subsections (2), (4) and (5) of the clause remove the existing references to herbal smoking products.

3. Subsection (3) invokes an exemption for non-tobacco smoking products which are used exclusively for medical purposes.

4. Subsection (6) makes the changes effective on and after 1 January 2014.

BACKGROUND NOTE

5. This clause amends section 1 of TPDA to correctly implement the following European legislation: Council Directive 2011/64/EC on the structure and rates of excise duty applied to manufactured tobacco (the Directive), specifically the second paragraph of Article 2.2.

6. Article 2.1 of the Directive sets out which tobacco products Member States should apply excise duty to.

7. Article 2.2 extends the definition to include products which may not contain tobacco but otherwise match the descriptions, for example, they are intended to be smoked.

8. Within Article 2.2 it is stated that products containing no tobacco and used exclusively for medical purposes are not to be treated as tobacco products.

9. The Directive is specific about which non-tobacco smoking products should be exempted from the application of excise duty - that is those products used exclusively for medical purposes. The current UK legislation does not specifically reflect this. In the TPDA (section 1, subsections 1.3 and 6) exemption was granted generally to herbal

smoking products, rather than to those herbal smoking products used exclusively for medical purposes.

10. This measure addresses that anomaly and aligns the UK legislation with the European Directive.

11. An additional advantage of this measure is that it will address the small but increasing risk of tax evasion. This stems from traders importing and dealing in products which claim to be herbal smoking products, but in fact contain tobacco and are therefore liable to duty. There will be no advantage to wrongly declaring goods as herbal smoking products when they are taxed at the same rate as their tobacco counterparts.

12. If you have any questions about this change, or comments on the legislation, please contact Paul McKee on 0161 827 0892 (email: paul.mckee@hmrc.gsi.gov.uk).

Order made by the Treasury, laid before the House of Commons under section 1(4) of the Tobacco Products Duty Act 1979, for approval by resolution of that House within twenty-eight days beginning with the date on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2013 No.

EXCISE

The Tobacco Products (Description of Products) (Amendment) Order 2013

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	*1st January 2014*

The Treasury, make the following Order in exercise of the powers conferred on them by section 1(3) of the Tobacco Products Duty Act 1979(**a**).

Citation and Commencement

1. This Order may be cited as the Tobacco Products (Description of Products) (Amendment) Order 2013 and comes into force on 1st January 2014.

Amendment to the Tobacco Products (Description of Products) Order 2003

2. The Tobacco Products (Description of Products) Order 2003(**b**) is amended as follows.

3.—(1) In article 4(2) (cigarettes) after "above" omit ", unless they are herbal smoking products".

(2) In article 7(2) (other smoking tobacco) after "above" omit ", unless they are herbal smoking products".

Name
Name

Date — Two of the Lords Commissioners for Her Majesty's Treasury

(**a**) 1979 c. 7; section 1(3) was amended by the Finance Act 1993 (c. 34), section 14.
(**b**) S.I. 2003/1471.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 1 January 2014 and amends the Tobacco Products (Description of Products) Order 2003, which describes products that fall within the description of tobacco for the purposes of the Tobacco Products Duty Act 1979.

Regulation 3 has the effect of including herbal smoking products (that consist in whole or in part of substances other than tobacco) in the definition of a cigarette for the purpose of the Tobacco Products Duty Act

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

DRAFT EXPLANATORY MEMORANDUM TO

The Tobacco Products (Description of Products) (Amendment) Order 2013

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Tobacco Products (Description of Products) (Amendment) Order 2013 removes references to herbal smoking products in the Tobacco Products Description of Products Order 2003.

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

3.1 None

4. Legislative Context

4.1 The Tobacco Products Duty Act 1979 (the Act) sets out which products excise duty applies to. The products are further defined by the Tobacco Products (Description of Products) Order (the Order). Previously the Act and the Order exempted herbal smoking products from duty. This exemption went further than the European Directive directed. This measure seeks to amend the Act and the Order to align them with the Directive.

4.2 The Act will be amended by means of the Finance Bill 2013 and this instrument makes the necessary consequential amendments to the Order by removing references to herbal smoking products.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Tobacco Products (Description of Products) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The policy aim of the herbal smoking products changes is to tighten the exemption on non-tobacco smoking products so that only those with an exclusive medical purpose are exempted from duty.

7.2 This will mean that all smoking products are taxed equally, regardless of tobacco content, unless there is a legitimate reason for exemption.

7.3 The instrument adheres to the changes made to primary law by removing remaining references to herbal smoking products.

8. Consultation outcome

8.1 HMRC has conducted a formal consultation which took place from 2 April 2012 to 29 June 2012. The consultation was about how the changes could be implemented rather than whether they should be. The UK legislation must comply with European Directives. The consultation had a direct effect on the implementation date of the changes, giving extra time to the trade to adjust.

9. Guidance

9.1 HMRC will publish guidance on this Order by making changes to the Public Notice on Tobacco Products Duty Number 476. The notice is available on the departmental website at www.hmrc.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide an additional three months to prepare for the change and amend the law so that fiscal marks are not required on the products affected.

11.3 The basis for the final decision on what action to take to assist small business was the responses received to our formal consultation, although few businesses provided the depth of information that we hoped for.

12. Monitoring & review

12.1 This policy may be kept under review through communication with taxpayer groups affected by the measures.

13. Contact

Mark Palmer at HM Revenue & Customs email:
mark.t.palmer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

STATUTORY INSTRUMENTS

2013 No.

EXCISE

The Tobacco Products (Amendment) Regulations 2013

Made - - - -	*****
Laid before Parliament	*****
Coming into force - -	*1st January 2014*

The Commissioners for Her Majesty's Revenue and Customs(**a**) make the following Regulations in exercise of the powers conferred by section 8B(2) of the Tobacco Products Duty Act 1979(**b**).

Citation and commencement

1. These Regulations may be cited as the Tobacco Products (Amendment) Regulations 2013 and come into force on 1st January 2014.

Amendment to the Tobacco Products Regulations 2001

2. The Tobacco Products Regulations 2001(**c**) are amended as follows.

3. In regulation 23 (exceptions to the requirement to carry a fiscal mark) after regulation 23(2A), insert—

> "(2B) specified tobacco products that do not contain any tobacco are not required to carry a fiscal mark."

Name
Name

Date Two of the Commissioners for Her Majesty's Revenue and Customs

---

(**a**) Section 10(3) of the Tobacco Products Duty Act 1979 (c. 7) provides that expressions used in that Act have the same meaning as provided 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)) define "the Commissioners" as "the Commissioners for Her Majesty's Revenue and Customs".
(**b**) 1979 c. 7; section 8B was inserted by the Finance Act 2000 (c. 17).
(**c**) S.I. 2001/1712.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations comes into force on 1st January 2014 and amend regulation 23 of the Tobacco Products Regulations 2001 which prescribe exceptions to the requirement to carry a fiscal mark for the purposes of the Tobacco Products Duty Act 1979.

Regulation 3 creates an exception to the need to carry a fiscal mark for specified tobacco products that do not contain any tobacco.

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

DRAFT EXPLANATORY MEMORANDUM TO

The Tobacco Products (Amendment) Regulations 2013

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Tobacco Products (Amendment) Regulations 2013 amends the Tobacco Products Regulations 2001 so that those products previously described as herbal smoking products, are not required to display fiscal marks on the packaging although they may be considered as cigarettes and hand-rolling tobacco in other respects.

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

3.1 None

4. Legislative Context

4.1 The liability of herbal smoking products to tobacco products duty has been changed, to bring UK legislation into line with European Directives. Changes to the Tobacco Products Duty Act 1979 have been included in the Finance Bill 2013 and consequential amendments made through the Tobacco Products (Description of Products (Amendment) Order SI [xxxx]. This change was accompanied by a consultation which focused on how the changes could be made rather than whether they should be made. This was to help smooth the transition for business and make the change less burdensome.

4.2 The amendments to the Regulations are as a result of discussions during the consultation process. Specifically, unless changes were made, herbal cigarettes and hand-rolling mixtures would have been subject to fiscal marks requirements, and in particular a requirement to carry the “UK DUTY PAID” mark. This was thought to be too burdensome for small business and disproportionate to the revenue risk.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Tobacco Products (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The policy aim of the herbal smoking products changes is to tighten the exemption on non-tobacco smoking products so that only those with an exclusive medical purpose are exempted from duty.

7.2 This will mean that all smoking products are taxed equally, regardless of tobacco content, unless there is a legitimate reason for exemption.

7.3 This instrument complements the changes made to primary law by amending the fiscal marks regulations so that the changes do not have a disproportionate impact on herbal smoking products.

8. Consultation outcome

8.1 HMRC has conducted a formal consultation which took place from 2 April 2012 to 29 June 2012. The consultation was about how the changes could be implemented rather than whether they should be. The UK legislation must comply with European Directives. The consultation had a direct effect on the implementation date of the changes, giving extra time to the trade to adjust. HMRC also recognised the difficulties that printing of fiscal marks would involve in terms of the cost to business. After considering less onerous fiscal marks, HMRC decided to exclude these products altogether from fiscal marks requirements.

9. Guidance

9.1 HMRC will publish guidance on this Order by making changes to the Public Notice on Tobacco Products Duty Number 476. The notice is available on the departmental website at www.hmrc.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide an additional three months to prepare

for the change and amend the law so that fiscal marks are not required on the products affected.

11.3 The basis for the final decision on what action to take to assist small business was the responses received to our formal consultation, although few businesses provided the depth of information that we hoped for.

12. Monitoring & review

12.1 This policy may be kept under review through communication with taxpayer groups affected by the measure.

13. Contact

Mark Palmer at HM Revenue & Customs email: mark.t.palmer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Air passenger duty: miscellaneous provision

(1) In section 38 of FA 1994 (accounting for and payment of duty) after subsection (2) insert—

"(2A) Regulations may require a prescribed person to make, at prescribed times during a prescribed period, payments based on an estimate of what the person's liability will be for duty charged in the period.

(2B) The estimate and the amounts of the payments are to be determined in accordance with provision made by the regulations.

(2C) The payments are to be treated as being payments on account of the person's liability for duty charged in the period.

(2D) The regulations must make provision for dealing with cases where this results in an overpayment of duty by providing for amounts—

(a) to be repaid by the Commissioners, or

(b) to be treated as having been paid on account of the person's liability for duty charged in other periods,

or both."

(2) In Part 2 of Schedule 5A to FA 1994 (territories etc) at the appropriate place insert "South Sudan".

(3) The amendment made by subsection (2) has effect in relation to the carriage of passengers beginning on or after 9 July 2011.

EXPLANATORY NOTE

AIR PASSENGER DUTY: MISCELLANEOUS PROVISIONS

SUMMARY

1. This clause introduces legislation to give HM Revenue & Customs (HMRC) the power to implement special accounting arrangements in relation to annual accounting and to specify the detail of these arrangements in regulations.

DETAILS OF THE CLAUSE

2. Subsection 1 inserts new subsections (2A) to (2D) into section 38 of Finance Act 1994 (FA 1994).

3. New subsection (2A) provides that payments based on an estimate of liability may be required at prescribed times during a prescribed period.

4. New subsection (2B) and (2C) provide that such payments are to be calculated in accordance with the regulations, and are to be treated as payments made on account of the person's duty liability for the period.

5. New subsection (2D) provides that where this results in an overpayment of duty, the regulations must make provision that this is to be repaid or treated as duty paid for other periods, or both.

6. Subsections 2 and 3 inserts 'South Sudan' into Part 2 of Schedule 5A to FA 1994, and applies this change from 9 July 2011.

BACKGROUND

7. To help minimise administrative burdens HMRC are introducing an accounting scheme which will allow operators to submit annual returns. This clause provides that payments on account may be required and that the calculation of these amounts and the time when they must be paid are prescribed in regulations.

8. The clause also updates the list of territories in Schedule 5A to include South Sudan, which was formally recognised on 9 July 2011.

9. If you have any questions about this change, or comments on the legislation, please contact Wing Edmundson on 020 7147 0410 (email: wing.edmundson@hmrc.gsi.gov.uk).

1 Not exhibiting licence: period of grace

(1) In section 33 of VERA 1994 (not exhibiting licence), omit subsections (1B) to (1D).

(2) After that section insert—

"33A Not exhibiting licence: period of grace

(1) A person is not guilty of an offence under subsection (1) or (1A) of section 33 by using or keeping a vehicle on a public road during any of the following periods.

First registration
The period of 14 days beginning with the day on which the vehicle is first registered under this Act.

Change of keeper
The period of 14 days beginning with the day on which a new licence or nil licence is issued for the vehicle because of a change in the person by whom the vehicle is being kept.

Renewal of licence etc.
The period of 14 days following the time when a licence or nil licence for or in respect of the vehicle, or a relevant declaration applying to the vehicle, ceases to be in force, but only if an application for a licence or nil licence for or in respect of the vehicle to run from that time has been received before that time.

(2) For the purposes of this section—

(a) there is a relevant declaration applying to a vehicle if the particulars and declaration required to be furnished and made by regulations under section 22(1D) have been furnished and made in relation to the vehicle in accordance with the regulations, and

(b) the relevant declaration ceases to be in force if, after the particulars and declaration have been furnished and made the vehicle is used or kept on a public road (otherwise than under a trade licence)."

(3) In consequence of the repeals made by subsection (1), omit section 147 of FA 2008.

EXPLANATORY NOTE

NOT EXHIBITING LICENCE: PERIOD OF GRACE

SUMMARY

1. This clause provides a 14 day waiver on vehicle owners displaying a newly issued tax disc within their vehicle.

DETAILS OF THE CLAUSE

2. Subsection (1) removes the existing Vehicle Excise and Registration Act 1994 (VERA) provision of a five working days display waiver, when a keeper of a vehicle has applied for a new tax disc ahead of their existing disc's expiry or ahead of the expiry of a period of statutory off-road notification.

3. Subsection (2) introduces new section 33A to VERA which defines the situations where a tax disc would otherwise have to be displayed, so as to include new vehicles and vehicles that have entered onto the UK register for the first time, vehicles that have changed keepership and vehicles that have been relicensed for continued use on the public road by an existing keeper.

4. These situations embrace the supply of new vehicles by motor dealers, the importation of vehicles by owners that are already or are intending to become permanently resident in the UK, used vehicle sales by and between private owners and by motor dealers where a tax disc is no longer present and a new disc has been applied for to enable a vehicle to be individually used on the public road, as well as the renewal of motor dealers' trade licences.

5. New section 33A to VERA replicates the existing provision on the expiry cessation of a period of statutory off-road notification declared under section 22(1D) of the Act, but by omission removes reference to an annual basis to the declarations.

BACKGROUND

6. The clause enables the Driver and Vehicle Licensing Agency to reduce tax disc postage costs by extending the display waiver period and broadening the range of applicable situations. The Agency is centralising its issuing of tax discs onto call centre and internet applications to save administration costs. Tax disc applicants will still have the choice to receive their disc immediately at the Post Office.

7. The Agency is also putting statutory off-road notification declarations onto a once only indefinite basis, to save the owners of laid-up stored vehicles from the burden of annual declaration.

8. If you have any questions about this change, or comments on the legislation, please contact Jason Donovan on 01792 786860 (email: Jason.Donovan@dvla.gsi.gov.uk).

1 Vehicles not kept or used on public road

(1) VERA 1994 is amended as follows.

(2) In section 7A (supplement payable on vehicle ceasing to be appropriately covered), in subsection (1A)(d) omit "within the immediately preceding period of 12 months".

(3) In Schedule 2A (immobilisation, removal and disposal of vehicles), in paragraph 1(10)(b) omit "within the immediately preceding period of 12 months".

EXPLANATORY NOTE

VEHICLES NOT KEPT OR USED ON PUBLIC ROAD

SUMMARY

1. This clause removes reference in the Vehicle Excise and Registration Act 1994 (VERA) to an annual requirement to renew statutory off-road notifications. This will enable regulations made under that Act to be modified to set notifications on a one-off indefinite basis.

DETAILS OF THE CLAUSE

2. Subsection (2) amends section 7A of VERA which provides for a supplement to be payable if a vehicle at any point ceases to be appropriately covered for vehicle excise duty purposes. Specifically, the amendment removes reference to a requirement to renew statutory off-road notification annually in order for the vehicle to remain "appropriately covered". With the removal of this reference, it will be possible to amend regulations made under VERA which set the requirements for statutory off-road notification. It is the intention to move from an annual notification requirement to a one-off indefinite notification.

3. Subsection (3) makes a similar amendment to Schedule 2A of VERA in relation to the provisions dealing with the release of vehicles immobilised for vehicle excise duty purposes. In certain circumstances, the Schedule provides for the release of vehicles which had a valid statutory off-road notification in place at the time the immobilisation device was fitted. This amendment specifically removes reference to the requirement to renew a statutory off-road notification annually. As above, this will permit the amendment of regulations made under the Act to provide for a one-off indefinite statutory off-road notification.

BACKGROUND

4. The Driver and Vehicle Licensing Agency is putting statutory off-road notification declarations onto a once only indefinite basis, to save the owners of laid-up stored vehicles from the burden of annual declaration.

5. If you have any questions about this change, or comments on the legislation, please contact Jason Donovan on 01792 786860 (email: Jason.Donovan@dvla.gsi.gov.uk).

1 Climate change levy: supplies subject to carbon price support rates etc

Schedule 1 amends Schedule 6 to FA 2000 (climate change levy).

SCHEDULES

SCHEDULE 1

Section 1

CLIMATE CHANGE LEVY: SUPPLIES SUBJECT TO CARBON PRICE SUPPORT RATES ETC

PART 1

EARLIER PROVISION NOT TO HAVE EFFECT

1 (1) Schedule 6 to FA 2000 (climate change levy) has effect as if neither—
(a) Schedule 20 to FA 2011, nor
(b) Parts 1 and 2 of Schedule 32 to FA 2012,
had ever been enacted.

(2) Accordingly—
(a) in FA 2011, section 78 and Schedule 20 are omitted, and
(b) in FA 2012, Parts 1 and 2 of Schedule 32 are omitted.

(3) This paragraph is treated as having come into force on [31] March 2013.

PART 2

NEW PROVISION HAVING EFFECT FROM 1 APRIL 2013

New provision

2 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

3 In paragraph 4 (definition of "taxable supply") in sub-paragraph (2)(b) after "24" insert ", 24A, 24B, 24C, 42D".

4 In paragraph 5 (supplies of electricity) after sub-paragraph (2) insert—

"(2A) Levy is chargeable on a supply of electricity if—
(a) the supply is made by an exempt unlicensed electricity supplier who is an auto-generator or who is of a description prescribed by regulations made by the Treasury,
(b) the electricity was produced in a generating station owned by the supplier from commodities which were the subject of a deemed supply under paragraph 24A,
(c) the supply is not a deemed supply under paragraph 23(3), and
(d) the person to whom the supply is made is not an electricity utility."

5 In paragraph 6 (supplies of gas) in sub-paragraph (2A) after "24" insert ", 24A, 24B, 24C, 42D".

6 (1) Paragraph 14 (exemption for supplies to electricity producers) is amended as follows.

(2) In sub-paragraphs (2)(b) and (3)(b) after "electricity" insert "in a small generating station".

(3) After sub-paragraph (3) insert—

"(3ZA) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—

(a) uses the commodity supplied in producing electricity in a stand-by generator, and

(b) uses the electricity produced otherwise than in exemption-retaining ways."

(4) After sub-paragraph (3A) insert—

"(3B) Paragraph 24A makes provision under which carbon price support rate commodities intended to be used in a generating station may be the subject of a deemed taxable supply (and, accordingly, this paragraph needs to be read subject to that paragraph)."

(5) Omit sub-paragraphs (4) and (5).

7 In paragraph 15 (exemption for supplies to combined heat and power stations) after sub-paragraph (4) insert—

"(4A) Paragraph 24B makes provision under which carbon price support rate commodities intended to be used in a combined heat and power station may be the subject of a deemed taxable supply (and, accordingly, this paragraph needs to be read subject to that paragraph)."

8 (1) Paragraph 17 (exemption: self-supplies by electricity producers) is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) The supply is exempt from levy if it is a supply of electricity produced in—

(a) a fully exempt combined heat and power station,

(b) a partly exempt combined heat and power station,

(c) a stand-by generator, or

(d) a small generating station.

(1B) Sub-paragraph (1A)(d) applies only if the producer is—

(a) an auto-generator, or

(b) an exempt unlicensed electricity supplier of a description prescribed by regulations made by the Treasury."

(3) In sub-paragraph (2) for the words from "If" to "unless—" substitute "This paragraph does not exempt the supply if—".

(4) Omit sub-paragraphs (3) and (4).

9 In paragraph 21 (regulations to avoid double charges to levy) after sub-paragraph (2) insert—

"(2A) In sub-paragraph (2)(b) "taxable supply" does not include a deemed supply under paragraph 24A, 24B, 24C or 42D."

10 In Part 2 after paragraph 24 insert—

"Deemed taxable supply: commodities to be used in producing electricity

24A (1) Sub-paragraph (2) applies if—

(a) a quantity of a carbon price support rate commodity is brought onto, or arrives at, a site in the United Kingdom at which a generating station is situated,

(b) that quantity of the commodity is intended to be used for producing electricity in the station,

(c) the station is neither a fully exempt combined heat and power station nor a partly exempt combined heat and power station, and

(d) the station is neither a small generating station nor a stand-by generator.

(2) For the purposes of this Schedule the owner of the station is deemed to make a taxable supply to himself of that quantity of the commodity.

(3) In sub-paragraph (1)(a) the reference to a commodity being brought onto, or arriving at, a site covers (in particular) gas in a gaseous state arriving at the site through a pipe.

(4) For the purposes of sub-paragraph (1) it does not matter—

(a) if the quantity of the commodity is not the subject of an actual supply made to the owner of the station, or

(b) if the commodity's availability for use in the station is subject to any condition.

Deemed supply: commodities to be used in combined heat and power station

24B (1) Sub-paragraph (2) applies if—

(a) a quantity of a carbon price support rate commodity is brought onto, or arrives at, the CHPQA site of a fully exempt combined heat and power station or a partly exempt combined heat and power station,

(b) that quantity of the commodity is intended to be used in the station for producing outputs of the station, and

(c) the station is not a small generating station.

(2) For the purposes of this Schedule the operator of the station is deemed to make a taxable supply to himself of that quantity of the commodity so far as that quantity is referable to the production of electricity.

(3) For the purposes of sub-paragraph (2) the extent to which a quantity of a commodity is referable to the production of electricity is to be determined in accordance with regulations made by the Commissioners.

(4) Regulations under sub-paragraph (3) may, in particular, include—
   (a) provision in respect of the calculations, measurements, data and procedures to be made or used;
   (b) provision that, so far as framed by reference to any document, is framed by reference to that document as from time to time in force.

(5) In sub-paragraph (1)(a) the reference to a commodity being brought onto, or arriving at, the CHPQA site of a station covers (in particular) gas in a gaseous state arriving at the CHPQA site through a pipe.

(6) In sub-paragraph (1)(b) "outputs" has the meaning given by paragraph 148(9).

(7) For the purposes of sub-paragraph (1) it does not matter—
   (a) if the quantity of the commodity is not the subject of an actual supply made to the operator of the station, or
   (b) if the commodity's availability for use in the station is subject to any condition.

(8) In this paragraph "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 scheme in relation to which the station's CHPQA certificate was issued.

(9) In sub-paragraph (8) "CHPQA certificate" has the same meaning as in the Climate Change Levy (Combined Heat and Power Stations) Exemption Certificate Regulations 2001 (S.I. 2001/486).

24C (1) This paragraph applies if—
   (a) a determination ("the initial determination") is made under regulations under paragraph 24B(3) that—
      (i) none of a quantity of a carbon price support rate commodity is, or
      (ii) a proportion of such a quantity is not,
   referable to the production of electricity,
   (b) as a result of the initial determination, the quantity or proportion of a quantity is determined not to be the subject of a deemed supply under paragraph 24B, and
   (c) it is later determined that the initial determination was wrong and that, accordingly, the quantity or proportion of a quantity should have been determined to be the subject of a deemed supply under paragraph 24B.

(2) For the purposes of this Schedule—
   (a) the operator of the station in question is deemed to make a taxable supply to himself of the quantity or proportion of a quantity, and
   (b) the amount payable by way of levy on the deemed supply is the amount which would have been payable on the deemed supply mentioned in sub-paragraph (1)(c)."

Power to make regulations giving effect to paragraphs 24A to 24C etc

24D (1) The Commissioners may by regulations make provision for giving effect to paragraphs 24A to 24C and 42A to 42D.

(2) Regulations under sub-paragraph (1) may, in particular, include provision for determining—

(a) whether a deemed supply under paragraph 24A or 24B is made;

(b) the quantity of any commodity which is the subject of such a deemed supply;

(c) whether paragraph 42C(2) applies in relation to a deemed supply under paragraph 24A or 24B and, if it does, the reduction in the relevant carbon price support rate.

11 After paragraph 38 insert—

"Deemed supplies under paragraph 24A, 24B, 24C or 42D

38A (1) A deemed supply under paragraph 24A or 24B is treated as taking place when the quantity of the commodity is brought onto, or arrives at, the site at which the station is situated or the CHPQA site of the station (as the case may be).

(2) A deemed supply under paragraph 24C or 42D is treated as taking place upon the later determination."

12 (1) Paragraph 39 (regulations as to time of supply) is amended as follows.

(2) In sub-paragraph (1)(c) after "24" insert ", 24A, 24B, 24C, 42D".

(3) In sub-paragraph (3) after "supply)" insert "and 38A".

13 In paragraph 42 (amount payable by way of levy) before sub-paragraph (2) insert—

"(1B) Sub-paragraph (1) does not apply to a deemed supply under paragraph 24A or 24B."

14 After paragraph 42 insert—

"42A(1) This paragraph applies to a deemed supply under paragraph 24A or 24B.

(2) The amount payable by way of levy on the deemed supply is the amount ascertained by applying the relevant carbon price support rate; and the levy payable on a fraction of a quantity of a commodity is that fraction of the levy payable on that quantity of the commodity.

(3) The carbon price support rates are as follows.

Carbon price support rate commodity	*Carbon price support rate*
Any gas in a gaseous state that is of a kind supplied by a gas utility	£0.00091 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, in a liquid state	£0.01460 per kilogram
Coal	£0.44264 per gigajoule

(4) Sub-paragraph (2) needs to be read with paragraphs 42B and 42C.

42B (1) This paragraph applies for the purposes of paragraph 42A(2) if the commodity deemed to be supplied is a quantity of coal.

(2) The number of gigajoules in the quantity supplied is to be determined by reference to the total gross calorific value of that quantity.

(3) The gross calorific value of any coal slurry included in that quantity is to be left out of account in determining the total gross calorific value of that quantity.

42C (1) Sub-paragraph (2) applies for the purposes of paragraph 42A(2) if, in the calendar year in which the deemed supply is treated as taking place, carbon capture and storage technology is operated in relation to carbon dioxide generated by the station in question in producing electricity.

(2) In relation to the deemed supply, only C% of the relevant carbon price support rate is to be applied (instead of the full rate).

(3) "C%" is 100% minus the station's carbon capture percentage for the calendar year.

(4) The station's "carbon capture percentage" for the calendar year is the percentage of the station's generated carbon dioxide for that year which, through the operation of the carbon capture and storage technology, is—

(a) captured, and

(b) then disposed of by way of permanent storage.

(5) The station's "generated carbon dioxide" for the calendar year is the amount of carbon dioxide generated in the year by the station in producing electricity from carbon price support rate commodities.

(6) In this paragraph "carbon capture and storage technology" and "carbon dioxide" have the meaning given by section 7(3) and (4) of the Energy Act 2010.

(7) Sub-paragraph (8) applies for the purposes of sub-paragraph (4) in relation to any carbon dioxide if—

(a) the carbon dioxide is captured but then leaks out and therefore is not disposed of by way of permanent storage, but

(b) the leak does not occur—

(i) on the land on which the station is situated,

(ii) on any other land under the control of the station's owner or a person connected with the station's owner, or

(iii) from any pipeline or other facility or installation which is operated by the station's owner or a person connected with the station's owner.

Section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies for the purposes of paragraph (b).

(8) The carbon dioxide is to be treated as if it had been disposed of by way of permanent storage.

(9) If the percentage mentioned in sub-paragraph (4) is not a whole number, it is to be rounded to the nearest whole number (taking 0.5% as nearest to the next whole number).

42D (1) This paragraph applies if—

(a) an amount is determined to be payable by way of levy on a deemed supply of a quantity of a commodity under paragraph 24A or 24B, but

(b) it is later determined that that amount is too low.

(2) For the purposes of this Schedule—

(a) the person who made the deemed supply is deemed to make a further taxable supply to himself of the quantity of the commodity, and

(b) the amount payable by way of levy on that further deemed supply is—

(i) the total amount payable on the first deemed supply on the basis of the later determination mentioned in sub-paragraph (1)(b), less

(ii) the amount previously determined to be payable on the first deemed supply."

15 In paragraph 62 (tax credits) in sub-paragraph (1) after paragraph (b) insert—

"(ba) after—

(i) a determination is made under regulations under paragraph 24B(3) that a quantity, or a proportion of a quantity, of a carbon price support rate commodity is referable to the production of electricity, and

(ii) it is accordingly determined that the quantity or proportion of a quantity is the subject of a deemed supply under paragraph 24B,

it is determined that the quantity or proportion of a quantity was not referable to the production of electricity;

(bb) after an amount is determined to be payable by way of levy on a deemed supply under paragraph 24A or 24B, it is determined that that amount is too high;".

16 In paragraph 146 (regulations) in sub-paragraph (3)—

(a) for "14(3)," substitute "5(2A), 14(2),", and

(b) after "16," insert "17(1B),".

17 In paragraph 147 (definitions)—

(a) at the appropriate places, insert—

""carbon price support rate commodity" means—

(a) any gas in a gaseous state that is of a kind supplied by a gas utility,

(b) any petroleum gas, or other gaseous hydrocarbon, in a liquid state, or

(c) coal;",

""exempt unlicensed electricity supplier" has the meaning given by paragraph 152A;",

""small generating station" has the meaning given by paragraph 152B;", and

""stand-by generator" means a generating station which is designed and used to provide an emergency electricity supply to a building in the event of a failure of the building's usual electricity supply;", and

(b) in the definition of "prescribed"—

(i) for "14(3)," substitute "5(2A), 14(2),", and

(ii) after "16(3)" insert ", 17(1B)".

18 After paragraph 152 insert—

"Meaning of "exempt unlicensed electricity supplier"

152A(1) In this Schedule "exempt unlicensed electricity supplier" means a person—

(a) to whom an exemption from section 4(1)(c) of the Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under section 5 of that Act, or

(b) to whom an exemption from Article 8(1)(c) of the Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order,

except where the person is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

(2) Sub-paragraph (1) applies subject to—

(a) any direction under paragraph 151(1), and

(b) any regulations under paragraph 151(2).

Meaning of "small generating station"

152B(1) In this Schedule "small generating station" means a generating station the capacity of which for producing electricity is no more than 2 megawatts.

(2) Sub-paragraph (3) applies if a relevant station ("station X") is one of a number of relevant stations which—

(a) are situated in the United Kingdom, and

(b) are owned by P or persons connected with P.

(3) In applying sub-paragraph (1) in relation to station X, the reference to the capacity of a generating station is to be read as a reference to the capacity of station X and all the other relevant stations mentioned in sub-paragraph (2) taken together.

(4) For the purposes of sub-paragraph (2)(b)—

(a) "P" is the person who owns station X, and

(b) section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies.

(5) In this paragraph "relevant station" means a generating station which is not—

(a) a fully exempt combined heat and power station,

(b) a partly exempt combined heat and power station, or

(c) a stand-by generator."

19 (1) Regulation 5 of the Climate Change Levy (Electricity and Gas) Regulations 2001 (S.I. 2001/1136) is amended as follows.

(2) In paragraph (1) for "paragraph 14(2) of the Act (exemption: certain supplies to electricity producers)" substitute "paragraphs 5(2A), 14(2) and 17(1B) of the Act (which contain references to exempt unlicensed electricity suppliers)".

(3) In paragraph (2)(a) for "14(4)" substitute "152A(1)".

(4) The amendments made by this paragraph are to be treated as having been made by the Treasury under the powers to make regulations conferred by paragraphs 5(2A), 14(2) and 17(1B) of Schedule 6 to FA 2000.

Commencement

20 This Part of this Schedule is treated as having come into force on [31] March 2013.

21 (1) The amendments made by paragraph 6(2) and (3) above have effect for the purpose of determining if a supply of gas or electricity is exempt from levy where the gas or electricity is actually supplied on or after 1 April 2013.

"Gas" means gas in a gaseous state that is of a kind supplied by a gas utility.

(2) Those amendments are to have effect for the purpose of determining if any other supply is exempt from levy where the supply is treated as taking place on or after 1 April 2013.

(3) The amendments made by paragraph 8 above have effect for the purpose of determining if a supply of electricity is exempt from levy where the electricity is caused to be consumed on or after 1 April 2013.

(4) The amendment made by paragraph 10 above has effect in relation to carbon price support rate commodities which are brought onto, or arrive at, sites on or after 1 April 2013.

PART 3

CARBON PRICE SUPPORT RATES FROM 1 APRIL 2014

22 (1) In paragraph 42A of Schedule 6 to FA 2000 (as inserted by paragraph 14 above) for sub-paragraph (3) substitute—

"(3) The carbon price support rates are as follows.

Carbon price support rate commodity	*Carbon price support rate*
Any gas in a gaseous state that is of a kind supplied by a gas utility	£0.00175 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, in a liquid state	£0.02822 per kilogram
Coal	£0.85489 per gigajoule"

(2) The amendment made by this paragraph has effect in relation to supplies treated as taking place on or after 1 April 2014 but before 1 April 2015.

PART 4

CARBON PRICE SUPPORT RATES FROM 1 APRIL 2015

23 (1) In paragraph 42A of Schedule 6 to FA 2000 (as inserted by paragraph 14 above) for sub-paragraph (3) substitute—

"(3) The carbon price support rates are as follows.

Carbon price support rate commodity	*Carbon price support rate*
Any gas in a gaseous state that is of a kind supplied by a gas utility	£[0.00221] per kilowatt hour

Carbon price support rate commodity	*Carbon price support rate*
Any petroleum gas, or other gaseous hydrocarbon, in a liquid state	£[0.03564] per kilogram
Coal	£[1.07962] per gigajoule”

(2) The amendment made by this paragraph has effect in relation to supplies treated as taking place on or after 1 April 2015.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: SUPPLIES SUBJECT TO CARBON PRICE SUPPORT RATES ETC.

SUMMARY

1. This Schedule amends Schedule 6 (Schedule 6) to the Finance Act 2000 to reflect the introduction of the carbon price floor, as it applies to coal, gas and liquefied petroleum gas (LPG) used in most forms of electricity generation, with effect from 1 April 2013. Part 1 of the Schedule repeals the carbon price floor provisions set out in Finance Acts 2011 and 2012, from [31] March 2013. Part 2 of the Schedule re-enacts the previous legislation in this Schedule in an amended and consolidated form, with effect from 1 April 2013. It also re-establishes the carbon price support (CPS) rates of climate change levy (CCL) (the CPS rates) and sets the rates for 2013-14. In addition, it sets out the scope of the tax and provides for the Commissioners for HM Revenue and Customs (HMRC) to make regulations to give effect to the CPS rates. Part 3 of the Schedule sets the CPS rates for 2014-15 and Part 4 sets them for 2015-16, with effect from 1 April 2014 and 1 April 2015 respectively.

DETAILS OF THE SCHEDULE

Part 1

Earlier provision not to have effect

2. Paragraph 1 repeals all previous carbon price floor primary legislation, which was set out in section 78 of, and Schedule 20, to the Finance Act 2011 and Parts 1 and 2 of Schedule 32 to the Finance Act 2012.

Part 2

New provisions having effect from 1 April 2013

3. Paragraph 2 provides for Schedule 6 to be amended.

4. Paragraph 3 inserts references to four new paragraphs of Schedule 6 into paragraph 4(2)(b) of Schedule 6 to provide that references to taxable supplies include deemed supplies subject to the CPS rates.

5. Paragraph 4 inserts a new sub-paragraph (2A) into paragraph 5 of Schedule 6 to make the electricity produced by auto-generators (persons who generate electricity for their own use) and other exempt

unlicensed generators liable to the CCL if their generating capacity is above 2 megawatts (MW) and they are producing electricity from commodities that are subject to the CPS rates.

6. Paragraph 5 inserts references to four new paragraphs of Schedule 6 into paragraph 6(2A) of Schedule 6 to provide that CCL is chargeable on deemed supplies of gas used in electricity generation.

7. Paragraph 6 amends paragraph 14 of Schedule 6 (exemption for supplies to electricity producers). It amends sub-paragraphs (2)(b) and (3)(b) to extend the exemption from the main rates of CCL to auto-generators and exempt unlicensed suppliers with a generating capacity above 2MW. It inserts new sub-paragraph (3ZA) to exclude stand-by generators from the scope of the exemption and inserts new sub-paragraph (3B) to clarify that the exemption from CCL for supplies for supplies of coal, gas and LPG to generating stations does not apply to deemed supplies of these commodities that are subject to the CPS rates. Finally, it removes unnecessary definitions which are now defined in amended paragraph 147 of Schedule 6.

8. Paragraph 7 inserts new sub-paragraph (4A) into paragraph 15 of Schedule 6 to clarify that the exemption from CCL for supplies of coal, gas and LPG made to CHP stations does not apply to deemed supplies of these commodities that are subject to the CPS rates.

9. Paragraph 8 amends paragraph 17 of Schedule 6 to remove the exemption from CCL on self-supplies of electricity when made by auto-generators and exempt unlicensed generators that are not CHP stations, stand-by generators or small generating stations. It provides that partly exempt CHP stations will continue to be liable to CCL on self-supplies that do not qualify for exemption under regulations made by the Treasury (the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005).

10. Paragraph 9 amends paragraph 21 of Schedule 6 (regulations to avoid double charges to levy) to exclude deemed supplies of coal, gas and LPG used to generate electricity from the scope of the power to make regulations to avoid double charging.

11. Paragraph 10 inserts four new paragraphs into Schedule 6.

12. New paragraph 24A provides that when commodities subject to the CPS rates are brought onto, or arrive at, an electricity generating station that is not a CHP station, a small generator or a stand-by generator, the owner of the station will be deemed to have made a supply of those commodities to himself.

13. New paragraph 24B provides that when commodities subject to the CPS rates are brought onto, or arrive at, a CHP station that is not a

small generating station, the operator of the station will be deemed to have made a supply to himself of the quantity of the commodities that are referable to production of electricity, and further provides for the Commissioners for HMRC to make regulations to determine the extent to which a quantity is so referable.

14. New paragraph 24C provides that if a quantity of a commodity is treated as not being referable to the production of electricity and it is later determined that it was so referable and should have been the subject of a deemed supply under new paragraph 24B, the operator of the station is deemed to make a deemed self-supply of that quantity.

15. New paragraph 24D authorises the Commissioners for HMRC to make regulations to give effect to new paragraphs 24A to 24C and 42A to 42D.

16. Paragraph 11 inserts new paragraph 38A into Schedule 6 to provide that deemed supplies of commodities subject to the CPS rates are to be treated as taking place when the fuel is brought onto, or arrives at, the generating station or CHP station. It also provides that where there is a deemed supply because it is later determined that a quantity of a commodity should have been the subject of a deemed supply or because the amount of CCL paid on the original deemed supply was too low, the time of supply is treated as taking place upon the later determination.

17. Paragraph 12 makes consequential amendments to paragraph 39 of Schedule 6 to provide that the Commissioners for HMRC may make regulations as to the time of supply under the new deemed supply provisions set out in this Schedule.

18. Paragraph 13 inserts new sub-paragraph (1B) into paragraph 42 of Schedule 6 to provide that the main, reduced and lower rates of CCL set out in sub-paragraph (1) do not apply to deemed supplies of commodities used to produce electricity.

19. Paragraph 14 inserts four new paragraphs into Schedule 6.

20. New paragraph 42A provides that, for deemed supplies of commodities used to generate electricity under new paragraphs 24A and 24B, the rates of CCL that apply are the CPS rates, subject to the provisions of new paragraphs 42B and 42C. It sets out the CPS rates, which are expressed in monetary amounts per unit of each fossil fuel.

21. New paragraph 42B provides that, in the case of the CPS rate on coal, the rate is to be calculated with reference to the gross calorific value. It also provides that the gross calorific value of any coal slurry content is to be left out of the calculation of the calorific value, in effect exempting coal slurry from the CPS rate for coal.

22. New paragraph 42C makes various provisions for reductions in the amount of CPS rates payable where carbon capture and storage technology is installed by electricity generators.

23. New paragraph 42D provides for a further deemed self-supply where it is later determined that the amount of levy paid on an initial deemed self-supply was too low. The amount payable on the further deemed self-supply is the difference between what was originally paid on the first deemed supply and what ought to have been paid.

24. Paragraph 15 inserts new sub-paragraphs (ba) and (bb) after paragraph 62(1)(b) of Schedule 6 to enable the Commissioners for HMRC to make regulations providing for a credit in cases where there has been an overpayment on deemed supplies of coal, gas or LPG subject to the CPS rates.

25. Paragraph 16 makes consequential amendments to paragraph 146 of Schedule 6 relating to when Treasury Regulations can be made under the draft affirmative procedure in respect of the description of an exempt unlicensed supplier.

26. Paragraph 17 inserts new definitions arising from this Schedule into paragraph 147 of Schedule 6 and makes consequential amendment arising from the amendments made by paragraph 16 of the Schedule.

27. Paragraph 18 inserts new paragraphs 152A and 152B into schedule 6.

28. New paragraph 152A defines an exempt unlicensed electricity supplier as a person who has an exemption under the Electricity Act 1989 or the Electricity Supply (Northern Ireland) Order 1992.

29. New paragraph 152B defines a small generating station as a generator of not more than 2MW generating capacity and provides that, in determining whether a generating station is a small generating station, the capacity is considered to be the combined generating capacity of all generating stations, other than CHP stations and stand-by generators, owned by a person or connected persons.

30. Paragraph 19 makes consequential amendments to Regulation 5 of the Climate Change Levy (Electricity and Gas) Regulations 2001 by correcting the references to paragraphs in Schedule 6 that relate to "exempt unlicensed electricity supplier" as a result of changes made to Schedule 6 by this Schedule.

31. Paragraph 20 provides for Part 2 of this Schedule (paragraphs 2 - 21) to come into force on [31] March 2013.

32. Paragraph 21 provides that amendments made by paragraphs 6(2) and (3) of this Schedule are to have effect for the purpose of determining

if a supply of gas or electricity is exempt from levy where it is actually supplied on or after 1 April 2013 and, in the case of any other supply, whether it is exempt from levy where the supply is treated as taking place on or after 1 April 2013. It also provides that amendments made by paragraph 8 of this Schedule are to have effect for the purpose of determining if a supply of electricity is exempt from levy where it is consumed on or after 1 April 2013 and that amendments made by paragraph 10 of this Schedule have effect in relation to supplies of CPS commodities (coal, gas and LPG) brought on to or arriving at a site on or after 1 April 2013.

Part 3

Carbon price support rates from 1 April 2014

33. Paragraph 22 amends paragraph 42A of Schedule 6 to set out the CPS rates for the year commencing 1 April 2014.

Part 4

Carbon price support rates from 1 April 2015

34. Paragraph 23 amends paragraph 42A of Schedule 6 to set out the CPS rates for the year commencing 1 April 2015.

BACKGROUND

35. The CCL came into force on 1 April 2001 with the purpose of encouraging energy efficiency. The main primary legislation is set out in Schedule 6 to the Finance Act 2000. Among the exemptions from the tax are those for taxable commodities used in generating electricity.

36. In order to encourage new and additional investment in low-carbon power generation, the Government announced at Budget 2011 that, following consultation, it would introduce a carbon price floor from 1 April 2013, which it would achieve by amending CCL legislation (and fuel duty legislation for oils used in electricity generation since oils are not subject to CCL). Supplies of coal, gas and LPG used in most forms of electricity generation would become liable to newly created CPS rates of CCL, which would be different from the main CCL rates levied on consumers' use of these commodities (and of other solid fuels and electricity). The amount of fuel duty reclaimable on oil used in electricity generation would be adjusted to establish new CPS rates of fuel duty. The changes needed to fuel duty are all set out in separate secondary legislation and are not covered in this Schedule.

37. The Government believes that a carbon price floor will build upon the EU Emissions Trading System, which to date has not delivered a sufficiently high and stable carbon price to encourage the investment in low-carbon technology the UK needs to meet its legal obligations.

38. Schedule 20 to the Finance Act 2011 and Schedule 32 to the Finance Act 2012 amended Schedule 6 to provide for the setting up of the CPS rates. Following further informal consultation since Budget 2012 the need for further changes to carbon price floor legislation has been identified to meet industry concerns. These changes are set out in the Tax Impact and Information Note published on 11 December 2011. Since the changes would have necessitated significant amendments to the earlier legislation set out in Finance Acts 2011 and 2012 that had not yet come into force, the earlier legislation is being repealed and replaced by this Schedule. This will consolidate all primary legislation for the carbon price floor into this one Schedule.

39. If you have any questions about this change, or comments on the legislation, please contact Tim Smith on 020 7147 0573 (email: timothy.smith@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No. 1234

CLIMATE CHANGE LEVY

The Climate Change Levy (General) (Amendment) Regulations 2013

Made - - - -	[*25th March 2013*]
Laid before the House of Commons	[*25th March 2013*]
Coming into force - -	*1st April 2013*

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) and (4), 24D, 44(3) and (4), 62(1)(ba) and (bb), and 146 of Schedule 6 to, the Finance Act 2000(**b**):

Citation and commencement

1. These Regulations may be cited as the Climate Change Levy (General) (Amendment) Regulations 2013 and come into force on 1st April 2013.

Amendments to the Climate Change Levy (General) Regulations 2001

2. Amend the Climate Change Levy (General) Regulations 2001(**c**) as follows.

3. In regulation 11 (other tax credits: entitlement)—

(a) in paragraph (1), after sub-paragraph (b), insert —

"(ba) after—

(i) a determination is made under Schedule 3 to these Regulations that a quantity, or a proportion of a quantity, of a carbon price support rate commodity is referable to the production of electricity, and

(ii) it is accordingly determined that the quantity or proportion of a quantity is a subject of a deemed supply under paragraph 24B of the Act,

---

(**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 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)(ba) and (bb) were added by a resolution passed by the House of Commons on [ ] March 2013 under section 1 of the Provisional Collection of Taxes Act 1968 (c.2). This resolution has statutory effect but will cease to have effect once provisions corresponding to those in the resolution are enacted in the Finance Act 2013. In any case it will cease to have effect at the end of seven months after the date on which it is expressed to take effect or, if no such date is expressed, after the date on which it is passed. Relevant amendments to section 1 were made by section 60 of the Finance Act 1968 (c.44), section 205(5) of the Finance Act 1993 (c. 34), paragraph 1 of Schedule 7 to the Finance Act 2000 (c. 17). Paragraph 146 has been amended by section 188(2)(c) of the Finance Act 2003 and S.I. 2009/571, Schedule 1, paragraph 20(1) and (7).

(**c**) S.I. 2001/838; relevant amending instruments are S.I. 2003/604, 2005/1716, 2007/2903, 2011/684.

it is determined that the quantity or proportion of a quantity was not referable to the production of electricity;

(bb) after an amount is determined to be payable by way of CCL on a deemed supply under paragraph 24A or 24B(**a**) of the Act, it is determined that that amount is too high;";

(b) in paragraph (2)—

(i) in sub-paragraph (a) after "(b)" insert "(bb)";

(ii) at the end of sub-paragraph (a) omit "and";

(iii) after sub-paragraph (a) insert—

"(aa) in relation to a case described by sub-paragraph (ba) of paragraph (1), the amount of CCL charged and paid on the quantity or proportion of a quantity of the commodity that has been determined as not referable to the production of electricity; and".

4. In paragraph (1) of regulation 51A (interpretation of part 4A)—

(a) for "Schedules 1 and 2" substitute "Schedules 1 to 3; and

(b) for the definition of "CHPQA" substitute—

"" CHPQA" refers to the Combined Heat and Power Quality Assurance Standard, Issue 3, January 2009 originally published by the Department for Environment, Food and Rural Affairs (the "CHPQA Standard") (including the later of version Final 1.0, 2.0 or 3.0 of CHPQA Guidance Notes 0 to 4 (including 2(S), 3(S), 4(S), 10 to 28 and 30);".

5. In regulation 51G (CCL treatment dependent on certification)—

(a) in sub-paragraph (1)(b) for ", 17(3) and 17(4)" substitute "and 17(1A)"(**b**);

(b) omit sub-paragraph (2)(c);

(c) in sub-paragraph 2(d) for "17(3) or 17(4)" substitute "17(1A)".

6. In regulation 51H (CCL treatment dependent on certification)—

(a) in sub-paragraph (1)(b) for ", 17(3) or 17(4)" substitute "or 17(1A)";

(b) omit sub-paragraph (1)(c).

7. In Part 4A (combined heat and power stations), after regulation 51M insert—

"Input fuels referable to the production of electricity in combined heat and power stations

51N. Schedule 3 has effect for the purpose of determining the extent to which a quantity of a carbon price support rate commodity is referable to the production of electricity in a combined heat and power station.".

8. In paragraph (1) of regulation 60 (penalties) after sub-paragraph "(hb)" insert—

"(hc) paragraph 3 of Schedule 3;".

9. In paragraph 2 of Schedule 1 (certification and payment of CCL in the case of excluded, exempt and other supplies)—

(a) in the formula, for "0.65R" substitute "(r x R)";

(b) after the definition of "M", insert—

"r = 0.90 in the case of electricity, and in any other case 0.65.";

(c) for "0.65R = 65% of", substitute "R =".

(**a**) Paragraphs 24A and 24B were inserted by the resolution referred to in footnote (b) above.
(**b**) Paragraph 17(1A) was inserted by the resolution referred to in footnote (b) on page 1.

10. In paragraph 2 of Schedule 2 (the CHP relief condition)—

(a) in sub-paragraph (b), for ", 17(3) or 17(4)" substitute "17(1A)";

(b) omit sub-paragraph (c).

11. After Schedule 2 insert—

"SCHEDULE 3

Regulation 51N

FUELS REFERABLE TO THE PRODUCTION OF ELECTRICITY IN A COMBINED HEAT AND POWER STATION

Interpretation

1. In this Schedule—

"Annual Operation" means a period commencing on 1st January and finishing on 31st December;

"CHPQA certificate" has the same meaning as in the Climate Change Levy (Combined Heat and Power Stations) Exemption Certificate Regulations 2001(**a**);

"CHP Qualifying Heat Output" "CHP scheme" and "CHP Total Fuel Input" have the meaning given in section 4 of the CHPQA;

Calculation of fuels referable to the production of electricity

2.—(1) The extent to which a quantity of a carbon price support rate commodity is referable to the production of electricity in a combined heat and power station is to be determined in accordance with sub-paragraphs (2) to (4).

(2) Calculate the total quantity of input fuels referable to the production of electricity in accordance with the following formula —

$$TFI - \frac{QHO}{\eta h, ref}$$

Where—

TFI is the CHP Total Fuel Input for the station specified on the current CHPQA certificate relating to the station at the time the quantity of the carbon price support rate commodity is brought onto, or arrives at, the CHPQA site.

QHO is the CHP Qualifying Heat Output for the station specified on the current CHPQA certificate relating to the station at the time the quantity of the carbon price support rate commodity is brought onto, or arrives at, the CHPQA site.

$\eta h, ref$ is the reference boiler heat efficiency, taken here to be 81%.

(3) Calculate the percentage of input fuels referable to the production of electricity in accordance with the following formula—

$$\frac{Q}{TFI} \text{ X } 100$$

Where—

Q is the quantity of input fuels referable to the production of electricity calculated in accordance with sub-paragraph (2).

(**a**) S.I. 2001/486.

TFI is the CHP Total Fuel Input for the station specified on the current CHPQA certificate relating to the station at the time the quantity of the carbon price support rate commodity is brought onto, or arrives at, the CHPQA site.

(4) Apply the percentage calculated in accordance with sub-paragraph (3) to the quantity of carbon price support rate commodities brought onto, or arriving at, the CHPQA site.

Compulsory review of calculation

3.—(1) This paragraph applies where a person ("P")—

(a) has accounted for CCL on a deemed supply under paragraph 24B of the Act; and

(b) the quantity of the carbon price support rate commodity that was the subject of the deemed supply has been calculated in accordance with paragraph 2 of this Schedule.

(2) Where this paragraph applies P must review the correctness of that quantity—

(a) in accordance with paragraphs 4 and 5; and

(b) no later than a reconciliation day.

4.—(1) That correctness must be reviewed in relation to the CHP Total Fuel Input and the CHP Qualifying Heat Output for the relevant reconciliation span.

(2) In the case of a reconciliation span for an incompleted calendar year, treat the actual CHP Total Fuel Input and the CHP Qualifying Heat Output as determined for the 12 month period preceding the relevant reconciliation day and as if that period was an Annual Operation.

(3) For the purposes of sub-paragraphs (1) and (2)—

(i) paragraph 9B of Schedule 1 to these Regulation has effect for the purposes of determining a reconciliation day and reconciliation span; and

(ii) "incompleted calendar year" has the meaning given in that paragraph.

5. The review must properly take into account—

(a) the quantities of carbon price support rate commodities that were the subject of deemed supplies; and

(b) the quantities that ought to have been the subject of deemed supplies having regard to the actual CHP Total Fuel Input and CHP Qualifying Heat Output for the station in question for the reconciliation span in which the commodities were supplied.

6. If the review determines that the quantities of carbon price support rate commodities that were the subject of deemed supplies was too little paragraphs 24C and 38A(2)(**a**) of the Act apply accordingly.

7. If the review determines that the quantities of carbon price support rate commodities that were the subject of deemed supplies was too much P is entitled to a tax credit under Part II of these Regulations.".

name
name

Date — Two of the Commissioners for Her Majesty's Revenue and Customs

(**a**) Paragraphs 24C and 38A were inserted by the resolution referred to in footnote (b) on page 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st April 2013, amend the Climate Change Levy (General) Regulations 2001 ("the General Regulations") (S.I. 2001/838) and are made following the introduction of carbon price support (CPS) rates of climate change levy (CCL) ("CPS rates").

Paragraphs 24A and 24B of schedule 6 to the Finance Act 2000 (c. 17) ("the Act") provide for deemed taxable self-supplies where fossil fuels (other than oil) are delivered to a generating station to be used in producing electricity in the station or are delivered to a combined heat and power (CHP) station and are referable to the production of electricity in the station. Paragraph 42A of the Act provides that these deemed supplies are subject to CPS rates.

Regulation 3 of this instrument amends regulation 11 of the General Regulations to entitle a registrable person who has overpaid the CPS rate of CCL on a deemed supply to reclaim the overpayment.

Regulation 4 amends regulation 51A of the General Regulations so that it applies to new Schedule 3 and updates the definition of "CHPQA" so that it refers to the latest version of the Standard.

Regulations 5, 6 and 10 make consequential amendments to regulations 51G and 51H of, and paragraph 2 of Schedule 2 to, the General Regulations following amendments made to paragraph 17 of the Act (exemption: self supplies by electricity producers).

Regulation 7 inserts new regulation 51N which introduces new Schedule 3 to the General Regulations.

Regulation 8 amends regulation 60 of the General Regulations to impose a civil penalty for failing to carry out a review required under new Schedule 3 of the correctness of the quantity of fossil fuels that is referable to the production of electricity in a CHP station.

Regulation 9 amends the CCL relief formula in paragraph 2 of Schedule 1 to the General Regulations as a consequence of the change to the rate of reduced–rates supplies of electricity (but not for reduced rate supplies of other taxable commodities).

Regulation 11 inserts new Schedule 3 which sets out the calculation for determining the extent to which a quantity of fossil fuels (other than oil) delivered to a CHP station is referable to the production of electricity in the station. It also sets out a compulsory review procedure and makes provision for tax credits and further deemed supplies in cases where the quantity determined in accordance with the calculation is subsequently found to be too much or too little.

A Tax Information and Impact Note covering this instrument was published on 11th December 2012 alongside draft clauses of the Finance Bill 2013 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 2013

2013 No. 1234

1. Introduction

This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the Statutory Instrument

This instrument amends the Climate Change Levy (General) Regulations 2001 (SI 2001/838) ("the principal Regulations") as a consequence of: the introduction of a carbon price floor, which involves the introduction of new carbon price support rates ("CPS rates") of climate change levy (CCL) on coal, gas and liquefied petroleum gas (LPG) used to generate electricity; and the change to the reduced rate of CCL to 10 per cent of the main CCL rate on electricity for supplies of electricity made to those businesses with climate change agreements. Both of these changes come into force on 1 April 2013.

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

[To be completed on final version.]

4. Legislative context

4.1 The European Council Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products (gas, LPG, oils and solid fuels, such as coal) and of electricity establishes the general arrangements for the taxation of these products and electricity, including setting minimum tax rates for these products. While the Directive requires Member States to exempt energy products used in the generation of electricity from general taxation, it does allow them to tax such products for reasons of environmental policy. In addition, in the interests of protecting the environment, it authorises EU countries to grant tax advantages to businesses that take specific measures to reduce their emissions.

4.2 In relation to energy products other than oil, the United Kingdom (UK) implements this Directive through CCL, the main primary legislation for which is contained in Schedule 6 to the Finance Act 2000 ("Schedule 6"), as amended. Currently CCL levies a charge on supplies of energy products (other than oil, which is taxed under the fuel duty regime) and electricity to businesses and the public sector, but exempts a range of supplies, including supplies to persons who will use them to generate electricity. Schedule 6 also contains provisions for a reduced rate of CCL for participants in the climate change agreement scheme, which energy intensive businesses become eligible to pay if they enter into, and

meet, emissions reductions or energy efficiency targets agreed with the Department of Energy and Climate Change.

4.3 Schedule 20 to the Finance Act 2011 ("FA 11") and Schedule 32 to the Finance Act 2012 ("FA 12") amended Schedule 6 to provide for CPS rates of CCL from 1 April 2013. Schedule [x] to the Finance Act 2013 ("FA 13") will make further amendments to Schedule 6 and consolidate all the primary legislation relating to the carbon price floor into this new Schedule.

4.4 For coal, gas and LPG, the carbon price floor will be achieved in part by the introduction in FA 13 of deemed taxable self-supplies where these fuels are delivered to a generating station to be used in producing electricity in the station or to a combined heat and power (CHP) station and are referable to the production of electricity in the station. Such deemed supplies are liable to the CPS rates of CCL.

4.5 Part 3 of Schedule 30 to FA 12 amended Schedule 6 to provide that the reduced rate of CCL for climate change agreement participants would be amended to 10 per cent from 1 April 2013 on participants' use of electricity.

4.6 These Regulations amend the principal Regulations as a result of the changes described in paragraphs 4.3 to 4.5.

4.7 The carbon price floor will also apply to oil used to generate electricity. However, oils are not subject to CCL and the price floor on oil-fired electricity will be achieved through separate secondary legislation covering changes to fuel duty (see the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendments from Carbon Price Support) Regulations 2013). That legislation also comes into effect on 1 April 2013.

5. Territorial extent and application

This instrument applies to all of the UK.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 In order to encourage new and additional investment in low-carbon power generation, the Government announced at Budget 2011, following consultation, that it would introduce a carbon price floor from 1 April 2013. Supplies of coal, gas and LPG used in most forms of electricity generation would become liable to newly created CPS rates of CCL, which would be different from the main CCL rates levied on consumers' use of these commodities (and of other solid fuels and electricity). The amount of fuel duty reclaimable on oil used in electricity

generation would be adjusted to establish new CPS rates of fuel duty. The Government believes that a carbon price floor will build upon the EU Emissions Trading System, which to date has not delivered a sufficiently high and stable carbon price to encourage the investment in low-carbon technology the UK needs to meet its legal obligations.

7.2 FA11 contained the initial primary legislation, including the CPS rates of CCL for 2013-14. Budget 2012 announced some changes, including that, to incentivise CHP, supplies of fossil fuels to CHP stations would only be liable to the CPS rates where they are referable to the production of electricity – fuels used to produce other outputs (mainly heat) would be exempt.

7.3 The changes made by this instrument will allow the Commissioners for HMRC to administer the CPS rates of CCL. It introduces a new Schedule which sets out: the calculation for determining the extent to which a quantity of coal, gas or LPG delivered to a CHP station is referable to the production of electricity in the station; a requirement to review that calculation based on the actual performance of the station; and provision for tax credits and further deemed supplies that may arise as a result of that review.

7.4 This instrument also amends the CCL relief formula in Schedule 1 of the principal Regulations to reflect the reduced rate of CCL in respect of a supply of electricity being set at 10 per cent of the main rates of CCL from 1 April 2013 for participants in the climate change agreement scheme. This change was announced at Budget 2012 as part of a package to help manufacturing and the most energy-intensive businesses to remain competitive during the shift to a low-carbon economy, by reducing the cost of electricity.

- ***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 A consultation on introducing a carbon price floor was released on 16 December 2010 and the Government's response to the consultation published on 30 March 2011. The key points of the response included:

- the floor would start at £16 per tonne of carbon dioxide and increase to £30 per tonne of carbon dioxide by 2020; and

- demonstration projects and commercial carbon capture and storage plants would receive relief from the carbon price floor equivalent to the proportion of carbon dioxide captured and stored rather than emitted.

8.2 As a result of continuing consultation throughout 2011 and 2012, a number of changes and clarifications were announced to the carbon price floor in December 2012 to meet industry concerns, in particular to incentivise CHP. These include:

- Supplies of coal, gas or LPG (excluding deemed supplies) to CHP stations registered under the CHP Quality Assurance (CHPQA) Programme that are used to generate outputs that are good quality, will continue to be exempt from the main rates of CCL.

- The operator of a CHP with a generating capacity above 2 megawatts will be liable to account for the CPS rates of CCL on the proportion of deemed supplies of coal, gas or LPG used to generate electricity.

- When calculating the generating capacity for a CHP no account will be taken of other stations operated by the same person or any connected person. The generating capacity will be specific to each individual CHP scheme.

- CHP stations registered under the CHPQA Programme which burn oils will continue to be able to claim relief on oils used to generate outputs that are good quality. This relief will be reduced by the amount of the CPS rate in relation to the quantity of oil used to generate electricity.

- The proportion of the fuel input that is used to generate electricity will be calculated using the established boiler displacement method and will be shown on the station's CHPQA certificate.

- Output electricity from a good quality CHP will remain outside the scope of CCL when subject to a self or direct supply. Such supplies will remain partially exempt if the CHP does not meet good quality standards. The position for indirect supplies of electricity (those made via the Grid) was announced at Budget 2012.

8.3 The draft primary and secondary legislation relating to the carbon price floor was published in draft on 11 December 2012.

9. Guidance

Six public notices covering CCL are available at www.hmrc.gov.uk. A new public notice which deals exclusively with the carbon price floor will be published in spring 2013.

10. Impact

10.1 Around 150 fossil fuel electricity generators embedded into the National Grid and a large number of small electricity generators will incur the CPS rates on the fuels that they burn. For CHP plants, the threshold below which they will not be liable for CPS rates of CCL will be based upon their generating capacity at the scheme level rather than at the person level. This threshold will remove around 450 CHPs, owned by around 20 businesses, from these rates. This will result in the businesses affected not having to register for the CPS rates of CCL or make returns for these CHPs.

10.2 The total one-off familiarisation and information technology costs and continuing administration burdens for the affected businesses are estimated to be negligible.

10.3 There is no impact on the public sector.

10.4 A Tax Information and Impact Note covering the carbon price floor was published on 11 December 2012 alongside draft Finance Bill 2013 legislation and draft secondary legislation, including this instrument. It is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is a general tax provision and the same for all firms.

11.3 The basis for the final decision on what action to take to assist small business is described in paragraphs 7.1 to 7.4 above, so no such action is taken for this general tax provision.

12. Monitoring and review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Customs, Stamps and Money Directorate of HMRC.

13. Contact

Tim Smith at HMRC Tel: 020 7147 0573 or e-mail: timothy.smith@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

STATUTORY INSTRUMENTS

2013 No. 0000

EXCISE

The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendments for Carbon Price Support) Regulations 2013

Made - - - -	*[25th March 2013]*
Laid before Parliament	*[25th March 2013]*
Coming into force - -	*1st April 2013*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 20AA(1)(a), (2)(a) to (g) and (h) of the Hydrocarbon Oil Duties Act 1979(**a**):

Citation, 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 2013 and come into force on 1st April 2013.

(2) They have effect in relation to qualifying oil or qualifying bioblend used in a generating station or combined heat and power station on or after that date.

Amendments to the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005

2. Amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005(**b**) as follows.

3. In regulation 2 (interpretation)—

(a) after the definition of "fully exempt combined heat and power station" insert—

(**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. Regulation 3(1), (2) and (4) of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065) (as amended by S.I. 2008/753) provides that references to hydrocarbon oil and to the duty on hydrocarbon oil in section 20AA(1)(a) are to be construed as including references to biodiesel and bioblend and to the duty on biodiesel and bioblend. The power to make regulations under section 20AA is conferred on "the Commissioners" and, by virtue of section 27(3), "the Commissioners" has the same meaning as given in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of that Act (as amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 22 (b)) defines "the Commissioners" as "the Commissioners for Her Majesty's Revenue and Customs".

(**b**) S.I. 2005/3320; relevant amending instruments are 2007/2191 and 2008/753.

““outputs” has the meaning given by paragraph 148(9) of Schedule 6 to the Finance Act 2000(**a**);”

(b) in the definition of “exempt unlicensed electricity supplier” for “14(4)” substitute “152A(1)”; and

(c) in the definitions of “qualifying oil” and “relevant duty” after “11(1)” insert “, 13ZA”.

4. For paragraph (1) of regulation 3 (relief) substitute—

“(1) Relief is allowed in accordance with these Regulations if a quantity of qualifying oil or qualifying bioblend has been used to produce—

(a) electricity in a generating station; or

(b) the outputs of—

(i) a fully exempt combined heat and power station; or

(ii) a partly exempt combined heat and power station.”.

5. At the end of regulation 6 (amount of relief on qualifying oil or bioblend used to produce electricity in a generating station) after “paid” insert “less the relevant amount specified in Schedule 2 (Carbon Price Support Rates)”.

6. In paragraph (2) of regulations 7 and 11 (application for relief) for “the Schedule” substitute “Schedule 1”.

7. For the heading to Part 4, and regulations 9 (application of Part 4) and 10 (amount of relief) substitute—

“OUTPUTS OF A COMBINED HEAT AND POWER STATION

Application and interpretation of Part 4

9.—(1) This Part applies to relief allowed by regulation 3(1)(b).

(2) For the purposes of this Part—

(a) a station’s threshold efficiency percentage shall be 20 per cent;

(b) a station’s efficiency percentage is its power efficiency, as stated in its CHPQA certificate;

(c) “CHPQA” has the meaning given in regulation 2 of the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005(**b**);

(d) “CHPQA certificate” means a certificate issued in respect of a combined heat and power station following assessment of the station against criteria set out in the CHPQA; and

(e) “relevant annual operation” means the annual operation to which the application for relief relates.

Amount of relief

10.—(1) Except where paragraph (2) applies, and subject to paragraph (4), the amount allowed is the amount of relevant duty that has been charged and paid on qualifying oil or qualifying bioblend used to produce outputs of the station in the relevant annual operation.

(2) Where the efficiency percentage of the station is less than the threshold efficiency percentage of that station, the amount allowed is the duty that has been charged and paid on the relevant fraction of the qualifying oil or qualifying bioblend.

(**a**) 2000 c.17.
(**b**) S.I. 2005/1714.

(3) For the purposes of paragraph (2), the relevant fraction is the fraction—

(i) whose numerator is the efficiency percentage for the station, and

(ii) whose denominator is the threshold efficiency percentage for the relevant annual operation.

(4) Where a quantity of the qualifying oil or qualifying bioblend used to produce outputs of the station is referable to the production of 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).

(5) For the purposes of paragraph (4), the quantity of qualifying oil or qualifying bioblend that is referable to the production of electricity is such quantity as is determined by applying the percentage of total fuels referable to the production of electricity stated in the station's CHPQA certificate to the quantity of qualifying oil or qualifying bioblend used to produce outputs of the station in the relevant annual operation.".

8. In paragraphs (2)(a) and (3) of regulation 13 (general conditions), and paragraph (c) of the Schedule (particulars to be contained in the application), after "electricity" insert "or outputs of a combined heat and power station".

9. Re-number the Schedule "Schedule 1" and, after that Schedule, insert—

"SCHEDULE 2

Regulations 6 and 10(4)

CARBON PRICE SUPPORT RATES

Fuel	1st April 2013 to 31st March 2014	1st April 2014 to 31st March 2015	On and after 1st April 2015
Qualifying oil on which a rebate has been allowed under section 11(1)(a), 13ZA(**a**) or 14(1) of the Hydrocarbon Oil Duties Act 1979 (HODA) (fuel oil, certain heavy oil used for heating etc. and light oil for us as furnace fuel)	£0.01568 per litre	£0.03011 per litre	£[0.03803] per litre
Qualifying oil on which a rebate has been allowed under section 11(1)(b) of HODA (gas oil) and qualifying bioblend	£0.01365 per litre	£0.02642 per litre	£[0.03336]per litre"

name
name

Date

Two of the Commissioners for Her Majesty's Revenue and Customs

(**a**) Section 13ZA was inserted by the Finance Act 2008 (c. 9), Schedule 6, paragraph 28.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320) ("the principal Regulations") which introduced a relief from excise duty for rebated oils used to produce electricity.

Regulation 3 inserts a definition of "outputs" in relation to a combined heat and power (CHP) station and amends the definition of "qualifying oil" to include heavy oil on which a rebate has been allowed under section 13ZA of the Hydrocarbon Oil Duties Act 1979. A consequential amendment is also made to the definition of "qualifying duty".

Regulation 4 amends regulation 3 of the principal Regulations so that it applies to qualifying oil or qualifying bioblend used to produce outputs of a CHP station.

Regulation 5 reduces the amount of relief that is allowed on qualifying oil or qualifying bioblend used to generate electricity in a generating station by the Carbon Price Support rates specified in Schedule 2.

Regulation 6 makes consequential amendments to regulations 7 and 11 of the principal Regulations as a result of the re-numbering of the Schedule.

Regulation 7 re-names the heading to Part 4 of the principal Regulations and substitutes regulations 9 and 10 with new regulations 9 and 10.

New regulation 9 specifies the relief to which Part 4 applies and contains interpretation provisions.

New regulation 10 provides for relief on qualifying oil or qualifying bioblend used to produce outputs of a CHP station. The relief is scaled back according to the efficiency percentage of the station and, where a quantity of the oil or bioblend is referable to the production of electricity in the station (as determined in accordance with new regulation 10(5)), the amount of relief allowed is reduced by the Carbon Price Support rates specified in Schedule 2.

Regulation 8 makes consequential amendments to regulation 13 of, and the Schedule to, the principal Regulations.

Regulation 9 re-numbers the Schedule to the principal Regulations and inserts new Schedule 2 which specifies the Carbon Price Support rates.

A Tax Information and Impact Note covering this instrument was published on 11th December 2012 alongside draft clauses of the Finance Bill 2013 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 2013

1. Introduction

This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Statutory Instrument

This Statutory Instrument, which comes into force on 1 April 2013, amends the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 ("the principal Regulations") which introduced a relief from excise duty for rebated oils used to produce electricity. The purpose of this instrument is to reduce the amount of relief that is currently allowed on oils used to generate electricity in a generating station or combined heat and power (CHP) station so that such oils are subject to newly created carbon price support rates ("CPS rates") of fuel duty from 1 April 2013.

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

[To be completed on final version.]

4. Legislative context

4.1 The European Council Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products (gas, liquefied petroleum gas (LPG) oils and solid fuels, such as coal) and of electricity establishes the general arrangements for the taxation of these products, including setting minimum tax rates for these products. While the Directive requires Member States to exempt energy products used in the generation of electricity from general taxation, it does allow them to tax such products in these circumstances for reasons of environmental policy. In addition, in the interests of protecting the environment, it authorises EU countries to grant tax advantages to businesses that take specific measures to reduce their emissions.

4.2 In introducing the carbon price floor from April 2013, the United Kingdom (UK) has decided to take up the option in the Directive to allow Member States to subject energy products used in electricity generation to tax for reasons of environmental policy. The price floor will be achieved by taxing fossil fuels used in electricity generation through new CPS rates of climate change levy (CCL) and fuel duty.

4.3 In relation to oil, the UK implements this Directive through excise duty on hydrocarbon oils, the primary legislation for which is contained in the Hydrocarbon Oil Duties Act 1979, as amended. The principal Regulations enable

generators that use rebated heavy and light oils to generate electricity to reclaim the fuel duty paid on the oil when it leaves the refinery. They also contain details of the relief from fuel duty for oils used in a CHP station to generate electricity.

4.4 This instrument will amend the principal Regulations as a result of the introduction of the carbon price floor, to reduce the amount of relief from excise duty currently available on heavy and light oils used to generate electricity so that the amount of duty payable reflects the CPS rates of fuel duty.

4.5 The carbon price floor will also apply to coal, gas and LPG used to generate electricity. However, these fuels are not subject to fuel duty and the price floor on these fuels when they are used to make electricity will be achieved through separate legislation covering changes to CCL (see the Climate Change Levy (General) (Amendment) Regulations 2013). That legislation also comes into effect on 1 April 2013.

5. Territorial extent and application

This instrument applies to all of the UK.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 In order to encourage new and additional investment in low-carbon power generation, the Government announced at Budget 2011 that, following consultation, it would introduce a carbon price floor from 1 April 2013. Supplies of fossil fuels used in electricity generation will become liable either to newly created CPS rates of CCL or fuel duty from that date. The Government believes a carbon price floor will build upon the EU Emissions Trading System which to date has not delivered a sufficiently high and stable carbon price to encourage the investment in low-carbon technology the UK needs to meet its legal obligations.

7.2 Budget 2012 announced some changes to the price floor, including that, to incentivise CHP, supplies of fossil fuels to CHP stations would only be liable to the CPS rates where they are referable to the production of electricity in the station – fuels used to produce other outputs (mainly heat) would be exempt.

7.3 This instrument will amend the existing excise relief for rebated oils used to generate electricity which was introduced from 1 January 2006. The relief was introduced to avoid double taxation and ensure consistency of treatment with other energy products used for the same purpose. In particular, the amount of relief allowed will be reduced, the effect of which will be that oils used to generate electricity in an electricity generating station or CHP station will become subject to CPS rates of fuel duty from 1 April 2013. In addition, oils

used in a CHP station that is registered under the CHP Quality Assurance (CHPQA) programme to generate non-electricity outputs that are good quality will be exempt from the CPS rates of fuel duty from the same date.

- ***Consolidation***

7.4 There is no intention to consolidate the amendments that have been made to the principal Regulations.

8. Consultation outcome

8.1 A consultation on the introduction of a carbon price floor was published on 16 December 2010 and the results of the consultation were published on 30 March 2011.

8.2 As a result of continuing consultation throughout 2011 and 2012, a number of changes and clarifications were announced to the carbon price floor in December 2012, in particular to incentivise CHP. CHP stations registered under the CHPQA Programme which burn oils will continue to be able to claim relief from fuel duty on oils used to generate outputs that are good quality. This relief will be reduced by the amount of the relevant CPS rate of fuel duty in relation to the quantity of oil used to generate electricity. In addition, the proportion of the fuel input that is used to generate electricity will be calculated using the established boiler displacement method and will be shown on the station's CHPQA certificate.

8.3 The draft primary and secondary legislation relating to the carbon price floor was published in draft on 11 December 2012.

9. Guidance

Public Notice 175, available at www.hmrc.gov.uk, will be updated in spring 2013 to take account of the changes being introduced by this instrument.

10. Impact

10.1 Around 40 electricity generators, including CHP stations, that use oil in electricity generation will incur CPS rates on their fuel input. The total one-off familiarisation and IT costs and continuing administration burdens for the affected businesses are negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 11 December 2012 alongside draft Finance Bill 2013 legislation and secondary legislation covering the carbon price floor, including this instrument. It is available on the HMRC website at www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

The legislation applies to small business.

12. Monitoring and review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Customs, Stamps and Money Directorate of HMRC.

13. Contact

Ann Little at HMRC, Tel: 020 7147 0655, e-mail: Ann.Little@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Reduced rate for energy-saving materials

(1) Group 2 (installation of energy-saving materials) of Part 2 of Schedule 7A to VATA 1994 (reduced rate supplies of goods and services) is amended as follows.

(2) For items 1 and 2 substitute—

"1. Supplies of services of installing energy-saving materials in residential accommodation.

2. Supplies of energy-saving materials by a person who installs those materials in residential accommodation."

(3) Omit Note 3 (meaning of "use for a relevant charitable purpose").

(4) The amendments made by this section have effect in relation to supplies made on or after 1 August 2013.

EXPLANATORY NOTE

VAT: REDUCED RATE FOR ENERGY-SAVING MATERIALS

SUMMARY

1. This clause amends the legislation relating to the reduced VAT rate for the installation of energy-saving materials (ESM). Its effect is to reduce the scope of this reduced rate. Previously, the reduced rate applied to installations of ESM in residential accommodation or buildings intended for use solely for a relevant charitable purpose. Following the change to the law, the reduced rate will cease to apply in the case of buildings intended for use solely for a relevant charitable purpose but will continue to apply in the case of residential accommodation.

DETAILS OF THE CLAUSE

2. This clause amends Items 1 and 2 of Group 2 of Schedule 7A to the Value Added Tax Act (VATA) 1994 by removing the references to buildings intended for use solely for a relevant charitable purpose so that the reduced rate is restricted to supplies of services of installing ESM in residential accommodation.

BACKGROUND NOTE

3. The UK applies a reduced rate of 5 per cent VAT to the supply and installation of certain ESM (listed in the attached Annex) in a building that consists of a dwelling or a number of dwellings, a building or part of a building used for a relevant residential purpose, a caravan used as a place of permanent habitation, a houseboat or a building intended for use solely for a relevant charitable purpose (i.e. by charities for non-business purposes or as village halls or similar buildings).

4. The relevant UK legislation for the reduced rate of VAT can be found at Section 29A of Schedule 7A VATA. The EU vires for this legislation is contained within European legislation, specifically article 98 of, and Category (10) of Annex III to, the Principal VAT Directive Category (10) (Category (10) refers to the '*provision, construction, renovation and alteration of housing, as part of a social policy*').

5. The European Commission (Commission) has taken the view that the UK's application of the reduced rate for the installation of ESM exceeds the possibilities offered to Member States by Category (10). In the Commission’s view, the UK is unlawfully applying the reduced rate since ESM are not listed in Category (10) and, even were they, the UK has applied a reduced rate to their installation as part of an environmental, not

a social, policy. In addition, buildings intended to be used solely for a relevant charitable purpose are not, in any case, housing as referred to in Category (10). The UK Government disagrees with the Commission's first two points but accepts its final point, namely that charitable non business buildings and village halls cannot properly be described as housing.

6. Although the Commission takes the view that the UK's entire application of the ESM reduced rate is ultra vires, the UK government takes the view that it is only its application to buildings intended for use solely for a relevant charitable purpose that is in breach of European law. As such, UK law needs to be amended to restrict this reduced rate to supplies of services of installing ESM in residential accommodation by removing the references to buildings intended for use solely for a relevant charitable purpose.

7. If you have any questions about this change, or comments on the legislation, please contact John Egerton on 020 7147 0238 (email: john.egerton@hmrc.gsi.gov.uk).

.

1 Valuation of certain supplies of fuel

Schedule 1 contains provision about the valuation of certain supplies of fuel for the purposes of value added tax.

SCHEDULE 1

Section 1

VALUATION OF CERTAIN SUPPLIES OF FUEL

Introductory

1 VATA 1994 is amended as follows.

Valuation of supplies for private use

2 In Schedule 6 (valuation: special cases), before paragraph 1 insert—

"PART 1

VALUATION OF SUPPLIES OF FUEL FOR PRIVATE USE

Option for valuation on flat-rate basis

A1 (1) This paragraph applies if, in a prescribed accounting period, supplies of goods by a taxable person ("P") arise by virtue of paragraph 5(1) of Schedule 4 (but otherwise than for a consideration) where road fuel which is or has previously been supplied to or imported or manufactured by P in the course of P's business is provided for, or appropriated to, private use.

(2) For this purpose "road fuel is provided for, or appropriated to, private use" if—

(a) it is provided or to be provided by P—

(i) to an individual for private use in the individual's own car or a car allocated to the individual, and

(ii) by reason of the individual's employment,

(b) where P is an individual, it is appropriated or to be appropriated by P for private use in P's own car, or

(c) where P is a partnership, it is provided or to be provided to any of the individual partners for private use in that partner's own car.

(3) P may opt for all supplies of goods within sub-paragraph (1) made by P in the prescribed accounting period to be valued on the flat-rate basis.

(4) On the flat-rate basis, the value of all supplies made to any one individual in respect of any one car is that determined in accordance with an order under paragraph B1.

B1 (1) The Treasury must, by order, make provision about the valuation of supplies on the flat-rate basis.

(2) In particular, an order under this paragraph must—

(a) set out a table ("the base valuation table") by reference to which the value of supplies is to be determined until such

time as the base valuation table is replaced under paragraph (b),

(b) provide that at regular intervals—

(i) the amounts specified in the base valuation table are to be revalorised by the Commissioners in accordance with the order, and

(ii) a table (an "updated valuation table") containing the revalorised amounts is to take effect (and replace any existing table) in accordance with the order, and

(c) require the Commissioners to publish any updated valuation table before it takes effect, together with a statement specifying the date from which it has effect.

(3) An order under this paragraph may provide for the base valuation table and any updated valuation table to be implemented or supplemented by either or both of the following—

(a) rules set out in the order which explain how the value is to be determined by reference to any table;

(b) notes set out in the order with respect to the interpretation or application of any table or any rules or notes.

(4) Rules or notes may make different provision for different circumstances or cases.

Interpretation

C1 (1) For the purposes of this Part of this Schedule—

(a) any reference to an individual's own car is to be construed as including any car of which for the time being the individual has the use, other than a car allocated to the individual,

(b) subject to sub-paragraph (2), a car is at any time to be taken to be allocated to an individual if at that time it is made available (without any transfer of the property in it) either to the individual or to any other person, and is so made available by reason of the individual's employment and for private use, and

(c) fuel provided by an employer to an employee and fuel provided to any person for private use in a car which, by virtue of paragraph (b), is for the time being taken to be allocated to the employee is to be taken to be provided to the employee by reason of the employee's employment.

(2) For the purposes of this Part of this Schedule, in any prescribed accounting period a car is not regarded as allocated to an individual by reason of the individual's employment if—

(a) in that period it was made available to, and actually used by, more than one of the employees of one or more employers and, in the case of each of them, it—

(i) was made available to that employee by reason of the employment, but

(ii) was not in that period ordinarily used by any one of them to the exclusion of the others,

(b) in the case of each of the employees, any private use of the car made by the employee in that period was merely incidental to the employee’s other use of it in that period, and

(c) in that period it was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.

(3) In this Part of this Schedule—

“employment” includes any office, and related expressions are to be construed accordingly;

“car” means a motor car as defined by paragraph 1A(4) and (5);

“road fuel” means hydrocarbon oil as defined by the Hydrocarbon Oil Duties Act 1979 (see section 1(2) of that Act) on which duty has been paid in accordance with that Act.

(4) The Treasury may, by order, amend the definition of “road fuel” in sub-paragraph (3).

PART 2

OTHER PROVISIONS”

3 In paragraph 6 of that Schedule (valuation of supplies of goods by virtue of paragraph 5(1) of Schedule 4 etc), in sub-paragraph (1), after “except where” insert “the person making the supply opts under paragraph A1(3) above for valuation on the flat-rate basis or”.

4 Omit sections 56 and 57 (fuel for private use).

5 In section 97(4) (orders subject to affirmative procedure), in paragraph (f), after “paragraph” insert “B1, C1(4),”.

Supplies to employees etc at less than open market value

6 After paragraph 2 of Schedule 6 insert—

“2A (1) This paragraph applies if—

(a) a taxable person (“P”) makes a supply of road fuel,

(b) the recipient of the supply is—

(i) connected with P, or

(ii) an employee or partner of P or a person who is connected with such an employee or partner,

(c) the value of the supply would (in the absence of this paragraph) be less than its open market value, and

(d) the recipient of the supply is not entitled to credit for the whole of the input tax arising on the supply.

(2) The value of the supply is to be taken to be an amount equal to its open market value.

(3) For the purposes of this paragraph—

(a) "road fuel" means hydrocarbon oil as defined by the Hydrocarbon Oil Duties Act 1979 (see section 1(2) of that Act) on which duty has been paid in accordance with that Act, and

(b) any question whether a person is connected with another is to be determined in accordance with section 1122 of the Corporation Tax Act 2010."

Commencement and transitional provision

7 (1) The amendments made by paragraphs 2 to 5 come into force in relation to prescribed accounting periods beginning on or after 1 February 2014.

(2) Subject to that, section 56 of VATA 1994 has effect on and after 11 December 2012 as if in subsection (2) of that section for the words after "it is supplied" there were substituted "for consideration."

8 (1) The amendment made by paragraph 6 is to be treated as coming into force on 11 December 2012 and has effect in relation to—

(a) supplies of goods on or after the commencement day, and

(b) supplies of goods in the period beginning with 11 December 2012 and ending immediately before the commencement day, if and to the extent that the goods are not made available before the end of that period to the person to whom they are supplied.

(2) "The commencement day" means the day on which this Act is passed.

EXPLANATORY NOTE

VAT: FVALUATION OF CERTAIN SUPPLIES OF FUEL

SUMMARY

1. This clause updates UK VAT law on how the use of business road fuel for private journeys should be taxed. It brings two concessions into law and brings UK law clearly within its European vires. It imposes no additional burdens on taxpayers in doing so and preserves all options previously available to taxpayers. The clause establishes an option for taxpayers to account for VAT on the private use of road fuel on a flat rate basis and provides for a table of charges for private use of road fuel, similar to the one that is currently set out in section 57 of the Value Added Tax Act 1994 (VATA), to be set out to this purpose. It takes the annual revalorisation of that table to take account of changes in pump prices of road fuel out of the Budget process. Instead HM Revenue & Customs (HMRC) will be required to update the table in the future, outside of the Budget process and to a formula set out in a Treasury Order approved by Parliament.

DETAILS OF THE CLAUSE

2. Paragraph 2 amends Schedule 6 VATA (valuation: special cases) by inserting a new Part 1 to that Schedule which provides an optional flat rate scheme for valuing deemed supplies which arise when a business's road fuel is used in private journeys for no consideration.

3. New paragraph A1 sets out the conditions to determine when a deemed supply (for no consideration) of road fuel, which arises by virtue of paragraph 5(1) of Schedule 4 VATA, may be valued on a flat-rate basis. The supply must have arisen in circumstances where an individual uses road fuel, which the taxable person has acquired as a business asset, for private journeys. The taxable person may opt for all such supplies made to be valued under the flat rate scheme. If the taxable person opts to use the flat rate scheme for such deemed supplies all such supplies to all individuals in the relevant prescribed accounting period are to be valued on the flat-rate basis.

4. New paragraph B1 requires HM Treasury to make provision for the valuation of supplies on a flat-rate basis and to set out in an order a base valuation table which determines how supplies are to be valued. It enables HM Treasury to set out detailed rules on how the table is to be interpreted. An order under this provision must also require the Commissioners of HMRC to regularly revalorise the amounts in the base table so as to reflect changes in road fuel prices and to set out

the revalorised figures in an updated valuation table which must be published by HMRC. The updated valuation table must be published before it takes effect together with a statement specifying the date from which the table has effect.

5. New paragraph C1 preserves a number of necessary rules and definitions that are currently in sections 56 and 57 VATA and brings them into Schedule 6. These stipulate which cars fall within the flat rate scheme, set out what happens if an employee drives more than one car or one car is driven by several employees and define "employment", "car" and "road fuel". This paragraph also provides a power for HM Treasury to amend the definition of road fuel.

6. Part 2 places all of the previously enacted paragraphs of Schedule 6 VATA under a new Part of that Schedule and a new heading. This does not change any of those paragraphs or how they should be construed.

7. Paragraph 3 provides for an exception to the standard rule for valuing deemed supplies so that, where a taxable person has opted to use the flat rate scheme for deemed supplies of road fuel, the standard valuation rule does not apply.

8. Paragraph 4 repeals sections 56 and 57 VATA.

9. Paragraph 5 amends section 97 VATA so that any order made under new Part 1 of Schedule 6 is subject to affirmative resolution procedures.

10. Paragraph 6 inserts a new paragraph 2A into Part 2 of Schedule 6. This is an anti-avoidance provision and replaces a previous anti-avoidance rule which appeared in section 56(2). It prevents under-taxation of private use of fuel by the charging of an artificially low consideration by a taxable person to his employee. It automatically values any supply for consideration made by a taxable person to an employee or partner, or another connected person, which is charged at less than an open market value (OMV), at the OMV.

11. Paragraph 7(1) sets out that the new flat-rate scheme will come into force on 1 February 2014. Paragraph 7(2) amends section 56(2) VATA with effect from 11 December 2013 to ensure that there is only one anti-avoidance rule in force.

12. Paragraph 8 provides for the new anti-avoidance rule in new paragraph 2A of Schedule 6 VATA to be treated as coming into force on 11th December 2012 and has effect for any supplies of road fuel made between 11th December 2012 and Royal Assent to the Finance Bill 2013, that were at made at less than the OMV, but only to the

extent that the fuel supplied has not been made available to the person receiving the supply before Royal Assent.

BACKGROUND NOTE

13. This measure achieves four objectives. These are (a) to bring two concessions into law, (b) to amend the current legislation so that it is compatible with EU law, (c) to streamline how the law is set out to aid small business's understanding; and, (d) to simplify how the valuation tables are updated over time.

14. The changes made preserve all of the options for dealing with private use of business road fuel that are currently available. These are: (a) to treat all road fuel purchased as a business asset and declare scale charges to account for private use under the optional flat rate scheme; (b) keep accurate records of mileage split between business and private journeys (such records can be used to either apportion fuel purchases so that only fuel for business journeys is counted as a business asset, or to accurately value deemed supplies of fuel); and, (c) not to treat road fuel as a business asset, in which case no deemed supplies can arise. HMRC will provide improved guidance for taxpayers so that they may choose the option that best suits them with the minimum of compliance cost in doing so.

15. If you have any questions about this change, or comments on the legislation, please contact Phil Mattacks on 020 7147 0538 (email: phil.mattacks@hmrc.gsi.gov.uk).

Order made by the Treasury, laid before the House of Commons under section 97(3) of the Value Added Tax Act 1994, for approval by resolution of that House within twenty-eight days beginning with the date on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2013 No.0000

VALUE ADDED TAX

The Value Added Tax (Flat-rate Valuation of Provision of Fuel for Private Use) Order 2013

Made - - - -	*2013*
Laid before the House of Commons	*2013*
Coming into force - -	*1st February 2014*

The Treasury make the following Order in exercise of the powers conferred by paragraph B1 of Schedule 6 to the Value Added Tax Act 1994(**a**).

Citation and commencement

1. This Order may be cited as the Value Added Tax (Flat-rate Valuation of Provision of Fuel for Private Use) Order 2013 and comes into force on 1st February 2014.

Flat-rate basis of valuation of provision of fuel for private use

2. Where a person opts for valuation on the flat-rate basis in accordance with paragraph A1 of Schedule 6 to the Value Added Tax Act 1994 (valuation of supplies of fuel for private use), the valuation of all supplies of road fuel made to any one individual in respect of any one car for a prescribed accounting period is to be determined in accordance with—

(a) the valuation table, and

(b) the notes to that table which are set out in Schedule 2 to this Order.

3. The "valuation table" is—

(a) the current updated valuation table published under article 6, or

(b) if no table has been published under article 6, the table set out in Schedule 1 to this Order ("the base valuation table").

Revalorisation of the flat-rate valuation of supplies

(**a**) 1994 c. 23; paragraphs A1 and B1 were inserted by section xcx of, and Schedule xcx to, the Finance Act 2013 (c.xx).

4. The Commissioners(**a**) must revalorise the amounts specified in the base valuation table in accordance with the method set out in Schedule 3 to this Order.

5. On each occasion that the Commissioners revalorise, a table (an "updated valuation table") containing the revalorised amounts is to take effect (and replace any existing valuation table) from the date the Commissioners specify ("the revalorisation start date").

6. The Commissioners must publish the updated valuation table before the revalorisation start date together with a statement specifying the revalorisation start date.

7. The Commissioners must revalorise in such time that each revalorisation start date is no more than twelve months after the previous revalorisation start date.

name
name

Date — Two of the Lords Commissioners of Her Majesty's Treasury

---

(**a**) Section 96(1) of the Value Added Tax Act 1994 (c. 23) defines "the Commissioners" as the Commissioners of Customs and Excise, however, section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides for the latter to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

SCHEDULE 1 Article 3

Base Valuation Table

Average retail price of diesel in the UK as at 1 March 2013…………. £xxx per litre **Average retail price of petrol in the UK as at 1 March 2013………….£xxx per litre**			
Description of vehicle: vehicle's CO_2 emissions figure	VAT inclusive consideration for a 12 month prescribed accounting period £	VAT inclusive consideration for a 3 month prescribed accounting period £	VAT inclusive consideration for a 1 month prescribed accounting period £

SCHEDULE 2

Article 2

Notes to the valuation table

1. For a car of a description in the first column of the valuation table, the value on the flat-rate basis of all supplies of road fuel made to any one individual in respect of that car for a prescribed accounting period is that specified under whichever of the second, third or fourth columns that corresponds with the length of the prescribed accounting period.

2. If a CO_2 emissions figure is specified in relation to a car in an EC certificate of conformity or a UK approval certificate, the car's CO_2 emissions for the purposes of the valuation table is determined as follows—

(a) if only one figure is specified in the certificate, that figure is the car's CO_2 emissions figure for those purposes.

(b) if more than one figure is specified in the certificate, the figure specified as the CO_2 (combined) emissions figure is the car's CO_2 emissions figure for those purposes.

(c) if separate CO_2 emissions figures are specified for different fuels, the lowest figure specified, or, in a case within (b), the lowest CO_2 emissions (combined) figure specified is the car's CO_2 emissions figure for those purposes.

(d) if the car's CO_2 emissions figure (determined in accordance with (a) to (c) is not a multiple of 5, it is rounded down to the nearest multiple of 5 for those purposes.

3. If no EC certificate of conformity or UK approval certificate is issued in relation to a car, or no emissions is specified in relation to it in any such certificate, the car's CO_2 emissions figure for those purposes is—

(a) 140 (if its cylinder capacity is 1,400 cubic centimetres or less),

(b) 175 (if its cylinder capacity exceeds 1,400 cubic centimetres but does not exceed 2,000 cubic centimetres), and

(c) 225 or more (if its cylinder capacity exceeds 2,000 cubic centimetres).

4. In the case of a car having an internal combustion engine with one or more reciprocating pistons, its cylinder capacity is the capacity of its engine as calculated for the purposes of the Vehicle Excise and Registration Act 1994(**a**).

5. In any case where—

(a) in a prescribed accounting period, there are supplies of fuel for private use to an individual in respect of one car for a part of the period and in respect of another car for another part of the period, and

(b) at the end of that period one of those cars neither belongs to, nor is allocated to, the individual,

the flat-rate value of the supplies is determined as if the supplies made to the individual during those parts of the period were in respect of only one car.

6.—(1) Where paragraph 4 applies, the value of the supplies is to be determined as follows—

(a) If each of the two or more cars falls within the same description of car specified in the valuation table, the value specified in that valuation table for that description of car applies as if only one of the cars were to be considered throughout the whole period, and

(b) if one of those cars falls within a description of car specified in that Table which is different from the others, the value of the supplies is the aggregate of the relevant fraction.

(**a**) 1994 c. 22; Schedule 1, Paragraph 1(2B) inserted by section 20(1) of the Finance Act 2002; Regulation 43 of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, to which there are amendments not relevant to this Order.

(2) “The relevant fraction” in relation to any car is that which the part of the prescribed accounting period in which fuel was supplied for private use in respect of the car bears to the whole of that period.

7. “CO_2 emissions figure” means a CO_2 emissions figure expressed in grams per kilometre driven.

8. “EC certificate of conformity” means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive 70/156/EEC(**a**).

9. ”UK approval certificate” means a certificate issued under—

(a) Section 58(1) or (4) of the Road Traffic Act 1988(**b**), or

(b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981(**c**).

(**a**) OJ No L 42, 23.2.1970, p1.
(**b**) 1988 c. 52.
(**c**) S.I. 1981/154 (NI 1); to which there are amendments not relevant to this Order.

SCHEDULE 3

Article 4

Method for revalorisation of amounts specified in the base valuation table

1. The amounts in the base valuation table are to be revalorised in accordance with the following steps—

2. Step 1 – establishing the current fuel price

In respect of each fuel (petrol and diesel) the current average retail price of a litre of fuel in the UK is to be ascertained from reliable data. The resulting figures ("the current fuel prices") are to be rounded down to the nearest whole penny.

3. Step 2 – calculating the prospective excise duty differences

If the Commissioners believe that, in the calendar year beginning on the date that they undertake the revalorisation, there is likely to be a change in the rate of excise duty liable to be charged on road fuel, the prospective increase or decrease in the amount of excise duty chargeable per litre of each of the fuels is to be calculated by—

(i) adding the amount of VAT that is applicable to the increased or decreased amount of excise duty chargeable. The resultant figures are to be rounded down to the nearest whole penny,

(ii) dividing the number of days of the calendar year immediately following the date of revalorisation that the increase or decrease in excise duty is likely to apply by 365 (or 366 in a leap year) and expressing the result of that calculation as a percentage rounded down to two decimal places, and

(iii) multiplying the increased or decreased amount calculated in accordance with (i) in respect of each of the fuels by the percentage calculated in accordance with (ii). Each figure is to be rounded down the nearest whole penny.

4. Step 3— calculating the excise duty inclusive fuel price

For each fuel, the prospective excise duty difference calculated in accordance with step 2 is to be added to, or deducted from, the current fuel price. The resultant figure is the "duty inclusive fuel price".

5. Step 4 – calculating the percentage price difference

The percentage price difference for each of the fuels is to be calculated using the following formula—

$$\frac{A}{B} x \frac{100}{1}$$

where (*A*) represents the duty inclusive fuel price for each fuel and *(B)* represents the price as at 1 March 2013 (as set out in the base valuation table) of that fuel. The resulting percentages are to be rounded down to two decimal places.

6. Step 5 – calculating the weighted percentage price difference

If the percentage price difference for each fuel is not the same, the average is to be calculated by weighting according to the relative number of petrol and diesel company cars in use in the UK (ascertained from reliable data) by using the following formula—

$$\left(Cx \frac{E}{E+F}) + (Dx \frac{F}{E+F} \right)$$

where (*C)* and *(D)* represent the percentage price differences for petrol and diesel respectively and (*E)* and *(F)* are the numbers of petrol and diesel cars in use respectively. The resulting percentage is to be rounded down to two decimal places.

7. Step 6 – calculating the increase or decrease in the amounts in the table

Each amount specified in the base valuation table is to be amended by multiplying that amount by the weighted percentage price difference rounded down to the nearest whole pound.

EXPLANATORY NOTE

(This note is not part of the Order)

Value Added Tax ("VAT") is payable if road fuel acquired by a business is used for private motoring. Council Decision 659/2006/EC of 25th September 2006 (O.J. No. L 272. 3.10.2006, p.15) authorises the United Kingdom to fix, on a flat-rate basis, the proportion of VAT that relates to expenditure on fuel incurred by a business which is used for private purposes. That proportion is required to be expressed in fixed amounts and is to be established on the basis of the CO_2 emissions level of the type of vehicle to reflect fuel consumption. The amounts must be adjusted annually to reflect changes in the average cost of fuel.

Paragraph A1 of Schedule 6 to the Value Added Tax Act 1994 provides that, where fuel is provided for (or appropriated to) private use, a taxpayer may opt to value all such supplies on a flat-rate basis. Paragraph B1 of that Schedule provides that the Treasury must by order make provision for the flat-rate valuation of those supplies.

Article 2 provides that the flat-rate basis for the valuation of supplies of road fuel for private use must be determined in accordance with the valuation table and the notes to that valuation table.

Article 3 defines what is meant by "valuation table" and introduces the base valuation table which is set out in Schedule 1.

Article 4 provides that the Commissioners are required to revalorise the amounts of the flat-rate charge and must do so in accordance with the method set out in Schedule 3.

Article 5 provides that each time the amounts of the flat-rate charge are revalorised an updated valuation table is to take effect from a date specified by the Commissioners.

Article 6 requires the Commissioners to publish the updated valuation table and to publish a statement specifying the date from which that table is to take effect.

Article 7 provides that the Commissioners must revalorise at least once in each twelve month period.

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

EXPLANATORY MEMORANDUM TO
The Value Added Tax (Flat-rate Valuation of Provision of Fuel for Private Use) Order 2013

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This instrument makes provision for the optional flat-rate basis of valuing supplies of a business's road fuel for private use where those supplies fall within paragraph A1 of Part 1 of Schedule 6 to the Value Added Tax Act 1994 ("VATA"). It also imposes a requirement on HMRC to regularly revalorise the flat-rate values in accordance with the method set out in the instrument and requires HMRC to publish updated valuation tables and the date from which they are to take effect.

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

None.

4. Legislative Context

4.1 VAT is payable if road fuel acquired by a business is used for private motoring. Council Decision 659/2006/EC of 25th September 2006 (O.J. No. L 272. 3.10.2006, p.15) authorises the United Kingdom to fix, on an optional flat-rate basis, the proportion of VAT that relates to expenditure on fuel incurred by a business which is used for private purposes. That proportion is required to be expressed in fixed amounts and is to be established on the basis of the CO_2 emissions level of the type of vehicle to reflect fuel consumption. The amounts must be adjusted annually to reflect changes in the average cost of fuel.

4.2 Paragraph B1 of Part 1 of Schedule 6 to VATA was inserted by the Finance Act 2013. It requires Her Majesty's Treasury ("HMT") to make provision for the valuation, on a flat-rate basis, of supplies of road fuel for private use, for the regular revalorisation by HMRC of those values and the publication of updated valuation tables. This instrument is the first to be made under that provision.

4.3. The effect of this instrument is to set out in secondary legislation a base valuation table, the method by which the values set out in that table will be re-valorised, that the values must be revalorised at least every twelve months and that HMRC must publish updated valuation tables and the date from which such tables take effect. The instrument also sets out notes to the valuation table which are to be used in conjunction with the table when

determining the flat-rate value of supplies of a business's road fuel for private use.

5. Territorial Extent and Application

This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights.

"In my view the provisions of the Value Added Tax (Flat-rate Valuation of Provision of Fuel for Private Use) Order 2013 are compatible with the Convention rights".

7. Policy background

7.1 VATA was amended by the Finance Act 2013, effective from 1 February 2014, to update and streamline how taxpayers account for VAT on supplies of road fuel that arise where a business's road fuel is used for private journeys for no consideration. The new flat-rate basis of valuing such supplies gives taxpayers clear and simple options which are all provided for in law rather than by concession.

7.2 This instrument is an integral and essential part of the new flat-rate basis. It sets out the base table of valuations, notes on its interpretation and the method by which HMRC is required to update it over time to reflect changes in fuel prices. The updated tables will appear in HMRC publications alongside clear and simple guidance on taxpayer options and their practical effect.

7.3 This achieves the policy objectives of having a properly set out flat-rate basis of valuation available to taxpayers, making it accessible to, and understandable by, small businesses and removing the routine updating of tables from the budget process without weakening Parliamentary control of taxation.

8. Consultation outcome

8.1 Consultation with business took place from 24 April 2012 to 20 July 2012. This set out how HMRC intended to update road fuel rules and invited comments.

8.2 Comments were supportive of the changes. A Summary of Responses was published on 11 December 2012.

9. Guidance

HMRC will publish the flat-rate updated valuation tables alongside guidance on the options available to business and how to operate the flat-rate basis of valuation.

10. Impact

10.1 No significant economic effects are expected from the changes.

10.2 The cost to HMRC and taxpayers of updating the flat rate basis provisions is estimated to be negligible.

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

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is to have clear and simple rules set out in clear guidance.

11.3 Although the consultation invited responses from small businesses none commented. The needs of small businesses were represented by accountancy bodies that advise small business.

12. Monitoring & review

12.1 HMRC will update the values in use at least annually as required by the instrument to reflect changes in fuel prices.

12.2 HMRC will monitor how the flat-rate basis of valuation is meeting taxpayer needs for simplification and amend the system if necessary through an Order made by HM Treasury.

12.3 If developments in technology overtake the flat-rate valuation so that it no longer meets business needs the flat-rate valuation scheme will be reviewed and amended as necessary.

13. Contact

Phil Mattacks at HMRC Tel: 0207 147 0538 or email: phil.mattacks@hmrc.gsi.gov.uk can answer any queries regarding this instrument.

PART 1

GENERAL ANTI-ABUSE RULE

1 General anti-abuse rule

(1) This Part has effect for the purpose of counteracting tax advantages arising from tax arrangements that are abusive.

(2) The rules of this Part are collectively to be known as "the general anti-abuse rule".

(3) The general anti-abuse rule applies to the following taxes—
 (a) income tax,
 (b) corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax,
 (c) capital gains tax,
 (d) petroleum revenue tax,
 (e) inheritance tax,
 (f) stamp duty land tax, and
 (g) annual residential property tax.

2 Meaning of "tax arrangements" and "abusive"

(1) Arrangements are "tax arrangements" if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.

(2) Tax arrangements are "abusive" if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances including—
 (a) whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions,
 (b) whether the means of achieving those results involves one or more contrived or abnormal steps, and
 (c) whether the arrangements are intended to exploit any shortcomings in those provisions.

(3) Where the tax arrangements form part of any other arrangements regard must also be had to those other arrangements.

(4) Each of the following is an example of something which might indicate that tax arrangements are abusive—

(a) the arrangements result in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes,

(b) the arrangements result in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes, and

(c) the arrangements result in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid,

but in each case only if it is reasonable to assume that such a result was not the intended result when the relevant tax provisions were enacted.

(5) The fact that tax arrangements accord with established practice, and HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice, is an example of something which might indicate that the arrangements are not abusive.

(6) The examples given in subsections (4) and (5) are not exhaustive.

3 Meaning of "tax advantage"

A "tax advantage" includes—

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) avoidance or reduction of a charge to tax or an assessment to tax,

(d) avoidance of a possible assessment to tax,

(e) deferral of a payment of tax or advancement of a repayment of tax, and

(f) avoidance of an obligation to deduct or account for tax.

4 Counteracting the tax advantages

(1) If there are tax arrangements that are abusive, the tax advantages that would (ignoring this section) arise from the arrangements are to be counteracted by the making of adjustments.

(2) The adjustments required to be made to counteract the tax advantages are such as are just and reasonable.

(3) The adjustments may be made in respect of the tax in question or any other tax to which the general anti-abuse rule applies.

(4) Any adjustments required to be made under this section (whether by an officer of Revenue and Customs or the person to whom the tax advantage would arise) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(5) But—

(a) no steps may be taken by an officer of Revenue and Customs by virtue of this section unless the procedural requirements of Schedule 1 have been complied with, and

(b) the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.

(6) Any adjustments made under this section have effect for all purposes.

5 Consequential relieving adjustments

(1) This section applies where—
  (a) an officer of Revenue and Customs gives a notice under paragraph 12 of Schedule 1 stating that any tax advantage arising from the arrangements is to be counteracted, and
  (b) the counteraction of the advantage is final.

(2) A person has 12 months, beginning with the day on which the counteraction becomes final, to make a claim for one or more consequential adjustments to be made in respect of any tax to which the general anti-abuse rule applies.

(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—
  (a) may be made in respect of any period, and
  (b) may affect any person (whether or not a party to the tax arrangements).

(5) But nothing in this section requires or permits an officer to make a consequential adjustment the effect of which is to increase a person's liability to any tax.

(6) For the purposes of this section—
  (a) if the claim relates to income tax or capital gains tax, Schedule 1A to TMA 1970 applies to it;
  (b) if the claim relates to corporation tax, that Schedule (and not Schedule 18 to FA 1998) applies to it;
  (c) if the claim relates to petroleum revenue tax, Schedule 1A to TMA 1970 applies to it, but as if the reference in paragraph 2A(4) of that Schedule to a year of assessment included a reference to a chargeable period within the meaning of OTA 1975 (see section 1(3) and (4) of that Act);
  (d) if the claim relates to inheritance tax it must be made in writing to HMRC and section 221 of IHTA 1984 applies as if the claim were a claim under that Act;
  (e) if the claim relates to stamp duty land tax, Schedule 11A to FA 2003 applies to it as if it were a claim to which paragraph 1 of that Schedule applies;
  (f) if the claim relates to annual residential property tax,[....].

(7) Where an officer of Revenue and Customs makes a consequential adjustment under this section, the officer must give the person who made the claim written notice describing the adjustment which has been made.

(8) For the purposes of this section the counteraction of a tax advantage is final when—
  (a) in a case where in response to the notice under paragraph 12 of Schedule 1 the taxpayer has effected the counteraction by amending a return, assessment or claim, it is no longer possible for the person to further amend the return, assessment or claim, and
  (b) in any other case—
    (i) the time allowed for bringing any appeal or further appeal against the adjustment made to effect the counteraction has ended, and

(ii) if any appeal has been brought within that time, that appeal has been withdrawn or determined.

(9) Any adjustments required to be made under this section may be made—
(a) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
(b) despite any time limit imposed by or under any enactment other than this Part.

(10) In subsection (8) the reference to "the taxpayer" is to be read in accordance with Schedule 1.

6 Proceedings before a court or tribunal

(1) In proceedings before a court or tribunal in connection with the general anti-abuse rule, HMRC must show—
(a) that there are tax arrangements that are abusive, and
(b) that the counteraction of the tax advantages arising from the arrangements is just and reasonable.

(2) In determining any issue in connection with the general anti-abuse rule, a court or tribunal must take into account—
(a) HMRC's guidance about the general anti-abuse rule that was approved by the GAAR Advisory Panel at the time the tax arrangements were entered into, and
(b) any opinion of the GAAR Advisory Panel about the arrangements (see paragraph 11 of Schedule 1).

(3) In determining any issue in connection with the general anti-abuse rule, a court or tribunal may take into account—
(a) guidance, statements or other material (whether of HMRC, a Minister of the Crown or anyone else) that was in the public domain at the time the arrangements were entered into, and
(b) evidence of established practice if it is shown that HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice.

7 Relationship between the GAAR and priority rules

(1) Any priority rule has effect subject to the general anti-abuse rule (despite the terms of the priority rule).

(2) A "priority rule" means a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.

(3) Examples of priority rules are—
(a) the rule in section 464, 699 or 906 of CTA 2009 (priority of loan relationships rules, derivative contracts rules and intangible fixed assets rules for corporation tax purposes), and
(b) the rule in section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).

8 Consequential amendment

(1) Section 42 of TMA 1970 (procedure for making claims etc) is amended as follows.

(2) In subsection (2), for "(3ZB)" substitute "(3ZC)".

(3) After subsection (3ZB) insert—

"(3ZC) Subsection (2) also does not apply in relation to any claim under section 5 of the Finance Act 2013 (claims for consequential relieving adjustments after counteraction of tax advantage under the general anti-abuse rule)."

9 Interpretation

In this Part—

"abusive", in relation to tax arrangements, has the meaning given by section 2(2) to (6);

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

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"the GAAR Advisory Panel" has the meaning given by paragraph 1 of Schedule 1;

"the general anti-abuse rule" has the meaning given by section 1;

"HMRC" means Her Majesty's Revenue and Customs;

"tax advantage" has the meaning given by section 3;

"tax arrangements" has the meaning given by section 2(1).

10 Commencement and transitional provision

(1) The general anti-abuse rule has effect in relation to any tax arrangements entered into on or after the day on which this Act is passed.

(2) Where the tax arrangements form part of any other arrangements entered into before that day those other arrangements are to be ignored for the purposes of section 2(3), subject to subsection (3).

(3) Account is to be taken of those other arrangements for the purposes of section 2(3) if, as a result, the tax arrangements would not be abusive.

SCHEDULE 1

Section 4

GENERAL ANTI-ABUSE RULE: PROCEDURAL REQUIREMENTS

The GAAR Advisory Panel

1 (1) In this Part of this Act "the GAAR Advisory Panel" means the panel of persons established by the Commissioners for the purposes of the general anti-abuse rule.

(2) In this Schedule "the Chair" means any member of the panel appointed by the Commissioners to chair it.

Meaning of "designated HMRC officer"

2 In this Schedule a "designated HMRC officer" means an officer of Revenue and Customs who has been designated by the Commissioners for the purposes of the general anti-abuse rule.

Notice to taxpayer of proposed counteraction of tax advantage

3 (1) If a designated HMRC officer considers—
(a) that a tax advantage has arisen to a person ("the taxpayer") from tax arrangements that are abusive, and
(b) that the advantage ought to be counteracted under section 4,
the officer must give the taxpayer a written notice to that effect.

(2) The notice must—
(a) specify the arrangements and the tax advantage,
(b) explain why the officer considers that a tax advantage has arisen to the taxpayer from tax arrangements that are abusive,
(c) set out the counteraction that the officer considers ought to be taken,
(d) inform the taxpayer of the period under paragraph 4 for making representations, and
(e) explain the effect of paragraphs 5 and 6.

4 If a notice is given to the taxpayer under paragraph 3, the taxpayer has 45 days beginning with the day on which the notice is given to send written representations about the proposed counteraction to the designated HMRC officer.

Referral to GAAR Advisory Panel

5 If no representations are made in accordance with paragraph 4, a designated HMRC officer must refer the matter to the GAAR Advisory Panel.

6 (1) If representations are made in accordance with paragraph 4, a designated HMRC officer must consider them.

(2) If, after considering them, the designated HMRC officer considers that the tax advantage ought to be counteracted under section 4, the officer must refer the matter to the GAAR Advisory Panel.

7 If the matter is referred to the GAAR Advisory Panel, the designated HMRC officer must at the same time provide the panel with—

(a) a copy of the notice sent to the taxpayer under paragraph 3,

(b) a copy of any representations made in accordance with paragraph 4 and any comments that the officer has on those representations, and

(c) a copy of the notice sent to the taxpayer under paragraph 8.

8 If the matter is referred to the GAAR Advisory Panel, the designated HMRC officer must at the same time give the taxpayer a notice which—

(a) specifies that the matter is being referred,

(b) is accompanied by a copy of any comments provided to the panel under paragraph 7(b), and

(c) informs the taxpayer of the period under paragraph 9 for making representations, and of the requirement under that paragraph to send any representations to the officer.

9 (1) The taxpayer has 14 days beginning with the day on which a notice is given under paragraph 8 to send the panel written representations about the proposed counteraction or about any comments provided to the panel under paragraph 7(b).

(2) The taxpayer must send a copy of any representations to the designated HMRC officer within that 14 day period.

(3) If no representations were made in accordance with paragraph 4, the designated HMRC officer—

(a) may provide the panel with comments on any representations made under this paragraph, and

(b) if comments are provided, must at the same time send a copy of them to the taxpayer.

Decision of GAAR Advisory Panel and opinion notices

10 (1) If the matter is referred to the GAAR Advisory Panel, the Chair must arrange for a sub-panel consisting of 3 members of the panel (one of whom may be the Chair) to consider it.

(2) The sub-panel may invite the taxpayer or the designated HMRC officer (or both) to supply the sub-panel with further information within a period specified in the invitation.

(3) Invitations must explain the effect of sub-paragraph (4) or (5) (as appropriate).

(4) If the taxpayer supplies information to the sub-panel under this paragraph, the taxpayer must at the same time send a copy of the information to the designated HMRC officer.

(5) If the designated HMRC officer supplies information to the sub-panel under this paragraph, that officer must at the same time send a copy of the information to the taxpayer.

11 (1) Where the matter is referred to the GAAR Advisory Panel, the sub-panel must produce—

(a) one opinion notice stating the joint opinion of all the members of the sub-panel, or

(b) two or three opinion notices which taken together state the opinions of all the members.

(2) The sub-panel must give a copy of the opinion notice or notices to—

(a) the designated HMRC officer, and

(b) the taxpayer.

(3) An opinion notice is a notice which states that in the opinion of the members of the sub-panel, or one or more of those members—

(a) the entering into and carrying out of the tax arrangements is a reasonable course of action in relation to the relevant tax provisions—

(i) having regard to all the circumstances (including the matters mentioned in subsections (2)(a) to (c) and (3) of section 2), and

(ii) taking account of subsections (4) to (6) of that section, or

(b) the entering into or carrying out of the tax arrangements is not a reasonable course of action in relation to the relevant tax provisions having regard to those circumstances and taking account of those subsections, or

(c) it is not possible, on the information available, to reach a view on that matter,

and the reasons for that opinion.

(4) In this Part, a reference to any opinion of the GAAR Advisory Panel about any tax arrangements is a reference to the contents of any opinion notice about the arrangements.

Notice of final decision after considering opinion of GAAR Advisory Panel

12 (1) A designated HMRC officer who has received a notice or notices under paragraph 11 must, having considered any opinion of the GAAR Advisory Panel about the tax arrangements, give the taxpayer a written notice setting out whether the tax advantage arising from the arrangements is to be counteracted under the general anti-abuse rule.

(2) If the notice states that a tax advantage is to be counteracted, it must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps that the taxpayer is required to take to give effect to it.

Notices may be given on assumption that tax advantage does arise

13 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule even if the officer merely considers that a tax advantage might have arisen to the taxpayer.

(2) Accordingly, any notice given under this Schedule—

(a) may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does), and

(b) may set out steps that the taxpayer may take to avoid the proposed counteraction.

EXPLANATORY NOTE

GENERAL ANTI-ABUSE RULE

SUMMARY

1. Part 1 introduces a general anti-abuse rule (GAAR) that provides for counteraction of tax advantages arising from tax arrangements that are abusive. The GAAR applies to income tax, corporation tax including amounts chargeable/treated as corporation tax, capital gains tax, inheritance tax, petroleum revenue tax and stamp duty land tax. It will also apply to the annual residential property tax due to be enacted with effect from 1 April 2013. Schedule 1 outlines the procedural requirements relevant to the application of the GAAR by HM Revenue & Customs (HMRC).

DETAILS OF THE CLAUSES

2. Clause 1 sets out the purpose of the GAAR, noting that it applies only to “tax arrangements” which are “abusive” (see paragraphs 3 and 4 below) and listing the various taxes covered by the GAAR (see paragraph 1 above).

3. Clause 2(1) defines “tax arrangements” as arrangements in respect of which it would be reasonable to conclude (having taken all circumstances into account) that the main purpose or one of the main purposes of the arrangements is to obtain a tax advantage.

4. Clause 2(2) defines “abusive” tax arrangements. Arrangements are “abusive” if entering into them or carrying them out cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions. Again, all circumstances must be taken into account and the clause includes a non-exhaustive list of circumstances which must be considered.

5. Clause 2(3) notes that any arrangements of which the tax arrangements form part must also be taken into account in determining whether the tax arrangements are abusive.

6. Clause 2(4) lists examples of things which might indicate that the tax arrangements are abusive. Tax arrangements may be abusive if they give rise to certain results (in general a tax result which differs from the economic result) but only if it is reasonable to assume that the result was not the result intended when the relevant tax provisions were enacted.

7. Clause 2(5) notes that a possible indicator of non-abusive arrangements is that the tax arrangements are in accordance with established practice and, at the time the arrangements were entered into, HMRC had indicated its acceptance of that practice.

8. Clause 2(6) confirms that the examples given in clauses 2(4) and 2(5) are not exhaustive.

9. Clause 3 defines the term “tax advantage”.

10. Clauses 4(1), 4(2) and 4(3) explain that the tax advantages arising from abusive tax arrangements are to be counteracted by the making of just and reasonable adjustments, whether in respect of the tax in question or any other tax to which the GAAR applies.

11. Clause 4(4) provides for the various ways in which the adjustments that are required to be made (whether by HMRC or by the person to whom the tax advantage arises) may be made. Clause 4(5) confirms that: HMRC must comply with the procedural requirements set out in Schedule 1 before making any such adjustments; and that any time limits imposed elsewhere in the tax legislation apply to the power to make adjustments under the GAAR.

12. Clause 4(6) notes that any adjustments made under clause 4 have effect for all purposes. This means that the adjustments are deemed to have effect for purposes other than just counteracting the tax advantage. They might, for example, adjust the base cost of an asset for a future capital gains disposal event.

13. Clause 5 sets out the process by which consequential relieving adjustments may be made.

14. Clause 5(1) notes that the section is only applicable where HMRC has notified the taxpayer (under paragraph 12 of Schedule 1) that the tax advantage in question is to be counteracted and the counteraction is final. Clause 5(8) explains when a counteraction is regarded as final for these purposes.

15. Clause 5(2) imposes a time limit of 12 months from the day on which the counteraction becomes final for a claim to be made for a consequential adjustment.

16. Clause 5(3) requires HMRC to make such of the adjustments claimed as are just and reasonable.

17. Clause 5(4) explains that adjustments may be made in respect of any period and may affect any person. However, Clause 5(5) specifies that HMRC may not make consequential adjustments which result in an increased tax liability for any person.

18. Clause 5(6) extends the application of existing administrative provisions for certain taxes to claims for consequential adjustments under the GAAR and so provides a consequential adjustments claim procedure in respect of each of the taxes covered by the GAAR.

19. Clause 5(7) requires any officer who makes a consequential adjustment to notify the claimant in writing of the adjustment made.

20. Clause 5(8) explains when a counteraction is to be regarded as final.

21. Clause 5(9) lists the means by which a consequential adjustment may be made and notes that time limits imposed by or under any other enactment do not apply to consequential adjustments under the GAAR.

22. Clause 5(10) notes that the reference to "the taxpayer" in Clause 5(8) is to be read in accordance with Schedule 1.

23. Clause 6(1) imposes the burden of proof on HMRC in any proceedings before a court or tribunal in connection with the GAAR. HMRC must show that there are tax arrangements which are abusive and that the counteraction is just and reasonable.

24. Clause 6(2) requires a court or tribunal, in determining any issue in connection with the GAAR, to take into account HMRC guidance (as approved by the GAAR Advisory Panel at the time the arrangements were entered into) and any opinion of the GAAR Advisory Panel about the arrangements.

25. Clause 6(3) lists other information which a court or tribunal may take into account in determining any issue in connection with the GAAR.

26. Clause 7(1) provides that all priority rules, as defined in Clause 7(2), are to have effect subject to the GAAR. Clause 7(3) lists a number of examples of priority rules found in tax legislation.

27. Clause 8 makes an amendment to the administrative provisions contained in Taxes Management Act (TMA 1970) to provide that the procedural requirements set out in section 42(2) of TMA 1970 in relation to certain claims do not apply to consequential adjustment claims under the GAAR.

28. Clause 9 defines a number of terms used in Part 1.

29. Clause 10(1) provides that the GAAR applies to any tax arrangements entered into on or after Royal Assent to Finance Bill 2013 ("the Commencement Date").

30. Clause 10(2) specifies that, where the tax arrangements under consideration form part of other arrangements entered into before the

Commencement Date, the other arrangements should be ignored in determining whether the tax arrangements in question are abusive. However, clause 10(3) notes that the other arrangements may be taken into account as evidence that the tax arrangements under consideration are not abusive.

DETAILS OF THE SCHEDULE

31. Paragraph 1 defines “the GAAR Advisory Panel” and “the Chair”.

32. Paragraph 2 defines “designated HMRC officer”.

33. Paragraph 3(1) requires a designated HMRC officer (“designated officer”) to notify a taxpayer in writing where the officer considers that the taxpayer has obtained a tax advantage which should be counteracted under the GAAR and paragraph 3(2) lists the information which must be contained in the notice.

34. Paragraph 4 specifies that the taxpayer has 45 days from the day on which the notice is given to provide written representations about the proposed counteraction to the designated officer.

35. Paragraph 5 provides that, if no representations are made by the taxpayer, a designated officer must refer the matter to the GAAR Advisory Panel (the “Panel”).

36. Paragraph 6(1) requires any representations made by the taxpayer to be considered by a designated officer. If the designated officer considers that counteraction is still appropriate, paragraph 6(2) provides that the matter must be referred to the Panel.

37. Paragraph 7 sets out the information which must be provided to the Panel by the designated officer when making a referral. This includes any comments which the designated officer has on any representations made by the taxpayer.

38. Paragraph 8 requires the designated officer to notify the taxpayer (at the same time as the referral is made) that the matter is being referred to the Panel and lists the information which must be included with the notice.

39. Paragraph 9 (1) allows the taxpayer 14 days, from the day on which the notice under paragraph 8 is given, to make written representations to the Panel about the proposed counteraction or about any comments provided to the Panel by the designated officer under paragraph 7.

40. Paragraph 9(2) requires the taxpayer to send a copy of any such representations to the designated officer within the same period.

41. Paragraph 9(3) provides that if a taxpayer has not made representations in accordance with paragraph 4 (i.e. in response to the initial notice under paragraph 3), the designated officer may provide the Panel with comments on any representations made by the taxpayer under paragraph 9 and must send a copy of these comments to the taxpayer.

42. Paragraphs 10 and 11 deal with the decision of the Panel and the opinion notices to be produced by the Panel.

43. Paragraph 10(1) requires the Chair to arrange for 3 members of the Panel (one of whom may be the Chair) to form a sub-panel to consider the referred matter.

44. Paragraph 10(2) allows the sub-panel to invite the taxpayer and/or the designated officer to supply further information within a specified period. Paragraph 10(3) requires such invitations to note the obligation imposed by paragraph 10(4) or paragraph 10(5) (as appropriate). These require the taxpayer and the designated officer respectively to send the other party a copy of any information supplied to the sub-panel at the same time it is sent to the sub-panel.

45. Paragraph 11(1) requires the sub-panel to produce either one opinion notice stating the joint opinion of all sub-panel members or two or three opinion notices which together state the opinions of all sub-panel members. Paragraph 11(2) requires the sub-panel to give a copy of the opinion notice(s) to the designated officer and the taxpayer.

46. Paragraph 11(3) explains what must be included in an "opinion notice", confirming that the sub-panel members must consider whether the entering into and carrying out of the tax arrangements is a reasonable course of action in relation to the relevant tax provisions, taking account of the various circumstances and indicators listed in clause 2 of Part 1. An opinion notice must also include the reasons for the opinion.

47. Paragraph 11(4) notes that a reference to any opinion of the Panel in Part 1 is a reference to the contents of any opinion notice.

48. Paragraph 12(1) requires the designated officer to consider the opinion of the Panel and then notify the taxpayer in writing as to whether or not the tax advantage is to be counteracted under the GAAR. If the notice states that the tax advantage is to be counteracted, paragraph 12(2) requires the notice to specify, in addition, the adjustments required, and any steps required to be taken by the taxpayer, to give effect to the counteraction.

49. Paragraph 13 clarifies that a designated officer may take any action under Schedule 1 even if the officer merely considers that a taxpayer

may have obtained a tax advantage. Therefore, any notice given under Schedule 1 may be given on the assumption that a tax advantage has been obtained and may set out the steps that the taxpayer may take to avoid the proposed counteraction.

BACKGROUND NOTE

50. The measure was announced at Budget 2012 following the publication, in November 2011, of a report by an independent study group led by Graham Aaronson QC. The Government accepted the group's recommendations that a general anti-abuse rule (GAAR) targeted at artificial and abusive tax avoidance schemes would be the right approach for the UK.

51. A consultation document on the GAAR, which included draft legislation, was published on 12 June 2012. The consultation ran until 14 September 2012. A number of changes were made to the original draft of the legislation in order to reflect comments received during the consultation process. A response document was published on 11 December 2012 to summarise the responses to the consultation, note the various amendments to the legislation and explain why these changes (and not others) were made. Revised legislation and draft guidance were published for technical consultation on 11 December 2012.

52. If you have any questions about this change, or comments on the legislation, please contact Carolyn Comben on 020 7147 0086 (email: carolyn.comben@hmrc.gsi.gov.uk).

1 Manufactured payments

(1) Schedule 1 contains provision for, and in connection with, the application of the Taxes Acts to manufactured payment relationships and payments representative of dividends and interest.

(2) In Schedule 1—

(a) the amendments made by Parts 1 and 2 have effect in relation to any payment representative of a dividend or interest which is made on or after 1 January 2014, and

(b) the amendments made by Part 3 come into force on that date.

SCHEDULE 1

Section 1

MANUFACTURED PAYMENTS

PART 1

INCOME TAX

1 Before Part 11A of ITA 2007 insert—

"PART 11ZA

MANUFACTURED PAYMENTS

614ZA Overview of Part

This Part deals with the application of the Income Tax Acts to manufactured payment relationships and payments representative of dividends or interest.

614ZB Key definitions

(1) For the purposes of the Income Tax Acts a person has a manufactured payment relationship if conditions A to C are met.

(2) Condition A is that under any arrangements—
(a) an amount is payable by or to the person, or
(b) any other benefit is given by or to the person (including the release of the whole or part of any liability to pay an amount).

(3) Condition B is that the arrangements relate to the transfer of securities.

(4) Condition C is that the amount or value of the other benefit—
(a) is representative of a dividend or interest on the securities, or
(b) will fall to be treated as representative of such a dividend or interest when it is paid or given.

(5) In subsection (2) the reference to an amount being payable, or other benefit being given, by the person includes a reference to an amount being payable, or other benefit being given, by another person on behalf of the person in question.

(6) In this Part—
"manufactured payment", in relation to a manufactured payment relationship, means an amount, or the value of a benefit, within subsection (2), and
"securities" means—
(a) shares in a company, and
(b) loan stock or any similar security (whether the security is of the government of the United Kingdom,

any other government, any public or local authority in the United Kingdom or elsewhere, or any other company or body).

614ZC Treatment of payer of manufactured payment

(1) This section applies where a person has a manufactured payment relationship under which a manufactured payment is paid by or on behalf of the person.

(2) No deduction is allowed in respect of the manufactured payment in calculating any profits or other income of the person for income tax purposes (subject to subsection (3)).

(3) Subsection (2) does not apply in relation to the person so far as the manufactured payment is brought into account under Part 2 of ITTOIA 2005 in calculating the profits of a trade carried on by the person.

(4) But nothing in subsection (3) affects the question whether (apart from that provision) a deduction in calculating the profits of a trade carried on by the person is allowed.

614ZD Treatment of recipient of manufactured payment

(1) Subsection (2) applies if a person has a manufactured payment relationship under which a manufactured payment is payable to the person.

(2) For the purposes of the charge to income tax on the person's income, the Income Tax Acts apply to the person as if the manufactured payment were a dividend or interest on the securities (as the case may require).

(3) Subsection (2) is subject to subsections (4) to (6).

(4) Subsection (2) does not apply in relation to the person so far as the manufactured payment is brought into account under Part 2 of ITTOIA 2005 in calculating the profits of a trade carried on by the person.

(5) Subsection (2) does not apply in relation to the person for the purposes of determining entitlement to double taxation relief in respect of any dividend or interest.

(6) In a case in which the manufactured payment is treated as a dividend by virtue of subsection (2), the person is not entitled to a tax credit under Chapter 3 of Part 4 of ITTOIA 2005 (tax credits for certain recipients of distributions) in respect of the dividend.

(7) For the purposes of this section "double taxation relief" means any relief given under or as a result of Part 2 of TIOPA 2010."

PART 2

CORPORATION TAX

2 Before Part 18 of the CTA 2010 insert—

“PART 17A

MANUFACTURED DIVIDENDS

815ZA Overview of Part

This Part deals with the application of the Corporation Tax Acts to manufactured dividend relationships and payments representative of dividends.

815ZB Key definitions

(1) For the purposes of the Corporation Tax Acts a company has a manufactured dividend relationship if conditions A to C are met.

(2) Condition A is that under any arrangements—
(a) an amount is payable by or to the company, or
(b) any other benefit is given by or to the company (including the release of the whole or part of any liability to pay an amount).

(3) Condition B is that the arrangements relate to the transfer of shares in a company.

(4) Condition C is that the amount or value of the other benefit—
(a) is representative of a dividend on the shares, or
(b) will fall to be treated as representative of such a dividend when it is paid or given.

(5) In subsection (2) the reference to an amount being payable, or other benefit being given, by the company includes a reference to an amount being payable, or other benefit being given, by another person on behalf of the company.

(6) In this Part—
“manufactured dividend”, in relation to a manufactured dividend relationship, means an amount, or the value of a benefit, within subsection (2), and
“the real dividend” means the dividend mentioned in subsection (4)(a).

815ZC Treatment of payer of manufactured dividend

(1) This section applies where a company has a manufactured dividend relationship under which a manufactured dividend is paid by or on behalf of the company.

(2) No deduction in calculating income for corporation tax purposes is allowed in respect of the manufactured dividend (subject to subsections (3) to (5)).

(3) Subsection (2) does not apply in relation to the company so far as the manufactured dividend is brought into account under Part 3 of CTA 2009 in calculating the profits of a trade carried on by the company.

(4) Subsection (5) applies if—
(a) the manufactured dividend relates to investment business which the company has,

(b) the company received the real dividend in the accounting period, and

(c) the real dividend is taxed by virtue of section 548(5) (recipients of distributions from REITs).

(5) The manufactured dividend is to be treated as expenses of management of the company's investment business for the accounting period for the purposes of Chapter 2 of Part 16 of CTA 2009.

(6) Nothing in subsection (3) affects the question whether (apart from that provision) a deduction in calculating the profits of a trade carried on by the company is allowed.

(7) The references in subsection (4) to the real dividend include references to a manufactured dividend which is treated as a real dividend by virtue of section 815ZD(2).

815ZD Treatment of recipient of manufactured dividend

(1) Subsection (2) applies if a company has a manufactured dividend relationship under which a manufactured dividend is payable to it.

(2) For the purposes of the charge to corporation tax on the income of the company, the Corporation Tax Acts apply to the company, and any company claiming title through or under the company, as if the manufactured dividend were a dividend on the shares.

(3) Subsection (2) is subject to subsections (4) to (8).

(4) Subsection (2) does not apply in relation to a company so far as the manufactured dividend is brought into account under Part 3 of CTA 2009 in calculating the profits of a trade carried on by the company.

(5) Subsection (2) does not apply in relation to a company for the purposes of determining entitlement to double taxation relief in respect of any dividend.

(6) Part 9A of CTA 2009 (company distributions), in its application in relation to a manufactured dividend as a result of subsection (2), has effect with the modification in subsection (7).

(7) The modification is that—

(a) references in that Part to the payer are to be treated as references to the company that pays the real dividend, and

(b) the definition of "the payer" in section 931T is to be treated as omitted.

(8) The company to which the manufactured dividend is payable is not entitled to a tax credit under section 1109 (tax credits for certain recipients of exempt qualifying distributions) in respect of the dividend.

(9) For the purposes of subsection (5) "double taxation relief" means any relief given under or as a result of Part 2 of TIOPA 2010.

(10) This section has effect regardless of section 358 of CTA 2009 (exclusion of credits on release of connected companies debts) or any

other provision of Part 5 of that Act (loan relationships) which prevents a credit from being brought into account."

PART 3

CONSEQUENTIAL ETC AMENDMENTS

Introductory

3 The following amendments are in consequence of, or otherwise connected with, the amendments made by Parts 1 and 2.

TCGA 1992

4 TCGA 1992 is amended as follows.

5 In section 263B (stock lending arrangements) for subsection (7) substitute—

"(7) In this section "securities" has the meaning given by section 263AA."

6 Omit section 263D (gains accruing to persons paying manufactured dividends).

7 In section 263F (power to modify repo provisions: non-standard repo cases)—

(a) in subsection (1)—

(i) at the end of paragraph (c) insert "or", and

(ii) omit paragraph (d) (and the word "or" at the end of it), and

(b) in subsection (2) omit "or 263D".

8 In section 263G (power to modify repo provisions: redemption arrangements)—

(a) in subsection (1) omit paragraph (d) (but not the word "or" at the end of it), and

(b) in subsection (2) omit "or 263D".

9 In section 263H (sections 263F and 263G: supplementary provisions) in subsection (3)(b) omit "or 263D".

10 (1) Section 263I (powers about manufactured overseas dividend) is amended as follows.

(2) In subsection (1) for paragraphs (a) and (b) substitute—

"(a) pays or receives an amount (a "manufactured overseas dividend") which is representative of an overseas dividend on overseas securities where the payment or receipt is required to be made under an arrangement for the transfer of the securities, or

(b) is treated as doing so for any purposes of the Taxes Acts."

(3) For subsection (6) substitute—

"(6) In this section—

(a) "overseas securities" means shares, stock or other securities issued by—

(i) a government, local authority or other public authority of a territory outside the United Kingdom, or

(ii) another body of persons not resident in the United Kingdom,

(b) "overseas securities" includes shares in a company which is not resident in the United Kingdom,

(c) "overseas dividend" means any interest, dividend or other annual payment payable in respect of overseas securities, and

(d) "securities" includes loan stock or any similar security."

FA 2004

11 In Schedule 24 to FA 2004 (manufactured dividends) omit paragraph 3(1) and (3).

ITTOIA 2005

12 ITTOIA 2005 is amended as follows.

13 In section 397(6) (list of provisions to which the section is subject) for the words from "section 592" to "owner under repo)," substitute—

"section 614ZD(6) of ITA 2007."

14 In section 397A (tax credit for distributions of non-UK resident companies)—

(a) in subsection (6) for the words from "section 592" to the end substitute—

"section 614ZD(6) of ITA 2007.", and

(b) omit subsection (8).

15 Omit section 397B (tax credits under section 397A).

ITA 2007

16 ITA 2007 is amended as follows.

17 Omit the following provisions (which deal with manufactured payments and repos)—

(a) sections 565 to 595,

(b) section 596(1) to (4), and

(c) section 606(8).

18 In section 647 (makers of manufactured payments) for subsection (6) substitute—

"(6) In this section "manufactured payments contract" means a contract under which—

(a) the seller is required to pay another person an amount which is representative of a periodical payment of interest on UK securities under an arrangement between them for the transfer of the securities, or

(b) the seller is required to pay another person an amount which is representative of an overseas dividend on overseas

securities under an arrangement between them for the transfer of the securities.

(7) In this section—

(a) "overseas securities" means shares, stock or other securities issued by—

(i) a government, local authority or other public authority of a territory outside the United Kingdom, or

(ii) another non-UK resident body of persons,

and includes shares in a non-UK resident company,

(b) "overseas dividend" means any interest, dividend or other annual payment payable in respect of overseas securities, and

(c) "UK securities" means securities of—

(i) the government of the United Kingdom,

(ii) a local authority in the United Kingdom,

(iii) another public authority in the United Kingdom, or

(iv) a UK resident company or other UK resident body,

but does not include shares in a UK resident company."

19 In section 658 (powers to modify: supplementary) for subsection (5) substitute—

"(5) Subsections (6) to (10) apply for the purposes of sections 656 and 657 and this section.

(6) "UK shares" means shares in a UK resident company.

(7) "UK securities" means securities of—

(a) the government of the United Kingdom,

(b) a local authority in the United Kingdom,

(c) another public authority in the United Kingdom, or

(d) a UK resident company or other UK resident body.

(8) But "UK securities" does not include UK shares.

(9) "Overseas securities" means shares, stock or other securities issued by—

(a) a government, local authority or other public authority of a territory outside the United Kingdom, or

(b) another non-UK resident body of persons.

(10) "Overseas securities" includes shares in a non-UK resident company."

20 In section 918(1) (manufactured dividends on UK shares: REITs) for paragraph (a) substitute—

"(a) a person pays a manufactured payment as mentioned in section 614ZC(1) and the amount payable is representative of a dividend (a "manufactured dividend"), and".

21 In section 919 (manufactured interest on UK securities)—

(a) for subsection (1) substitute—

"(1) This section applies if—

(a) a person pays a manufactured payment as mentioned in section 614ZC(1),
(b) the amount payable is representative of interest on UK securities ("manufactured interest"), and
(c) the person —
(i) is UK resident, or
(ii) pays the manufactured interest in the course of a trade carried on in the United Kingdom through a branch or agency.",

(b) in subsection (4) omit the words from "section 583" to "special cases)", and
(c) after subsection (5) insert—

"(6) In subsection (1) "UK securities" means securities of—
(a) the government of the United Kingdom,
(b) a local authority in the United Kingdom,
(c) another public authority in the United Kingdom, or
(d) a UK resident company or other UK resident body.

(7) But "UK securities" does not include shares in a UK resident company.

(8) In this section "securities" includes loan stock or any similar security."

22 Omit section 920 (foreign payers of manufactured interest: the reverse charge).

23 In section 921 (cases where interest on underlying securities paid gross) in subsection (3) for the words from ""securities"" to the end substitute ""manufactured interest" has the same meaning as in section 919."

24 Omit sections 922 to 925 (manufactured overseas dividends).

25 In section 925A(2) (creditor repos) for "to 925" substitute ", 919 and 921".

26 Omit section 925B (debtor repos).

27 In section 925C (actual payments ignored)—
(a) omit "or section 925B(2)", and
(b) for "to 925" substitute ", 919 and 921".

28 In section 926 (interpretation of Chapter 9 of Part 15) omit subsections (1) and (1A).

29 In Schedule 1 (minor and consequential amendments) omit paragraph 335(1) to (4) and (6) to (8).

30 In Schedule 2 (transitionals and savings) omit paragraphs 108 to 111 (and the headings "Part 12", "Manufactured payments and repos" and "Tax credits: stock lending arrangements and repos" immediately preceding paragraph 108).

31 In Schedule 4 (index of defined expressions) omit the entries for—
"buying back securities, in the context of a repo (in Part 11)",
"company UK REIT (in Chapter 2 of Part 11)",
"gross amount (in Chapter 2 of Part 11)",

"group (in Chapter 2 of Part 11)",
"group UK REIT (in Chapter 2 of Part 11)",
"manufactured dividend (in Chapter 2 of Part 11)",
"manufactured dividend (in Chapter 3 of Part 11)",
"manufactured interest (in Chapter 2 of Part 11)",
"manufactured overseas dividend (in Chapter 2 of Part 11)",
"overseas dividend (in Part 11)",
"overseas dividend (in Chapter 9 of Part 15)",
"overseas securities (in Part 11)",
"overseas tax (in Chapter 2 of Part 11)",
"overseas tax (in Chapter 9 of Part 15)",
"overseas tax credit (in Chapter 2 of Part 11)",
"prescribed (in Chapter 2 of Part 11)",
"principal company (in Chapter 2 of Part 11)",
"principal company (in Chapter 9 of Part 15)",
"property rental business (in Chapter 2 of Part 11)",
"property rental business (in Chapter 9 of Part 15)",
"related agreements (in Part 11)",
"relevant withholding tax (in Chapter 2 of Part 11)",
"repo (in Part 11)",
"the rules about manufactured payments (in Chapter 4 of Part 11)",
"stock lending arrangement (in Part 11)",
"trade carried on through a branch or agency (in Chapter 2 of Part 11)",
"transfer (in Chapter 2 of Part 11)",
"UK securities (in Part 11)", and
"UK shares (in Part 11)".

FA 2008

32 (1) FA 2008 is amended as follows.

(2) In Schedule 12 (tax credit for certain foreign distributions) omit paragraphs 26, 27(2)(a) and (c) and (3), 28(2)(a) and (c) and (3), 29(2)(a), (c)(i) and (d) and (3) and 30.

(3) In Schedule 23 (manufactured payments: anti avoidance) omit paragraphs 1 to 4 , 6 , 7 and 9 to 11.

CTA 2009

33 CTA 2009 is amended as follows.

34 In section 539 (introduction to Chapter about manufactured interest) omit subsection (7).

35 In section 540(3) (manufactured interest treated as interest under loan relationship) omit "and to section 799 of CTA 2010".

36 In section 550 (which makes provision about the effect of the sale of securities on a borrower)—

(a) in subsection (4) for "(6)" substitute "(5C)",

(b) after subsection (5A) insert—

“(5B) Nothing in subsection (3) entitles the borrower to double taxation relief in respect of any income payable in respect of overseas securities.

(5C) But nothing in subsection (3) affects the entitlement of the borrower to double taxation relief in respect of any overseas tax deducted from any amount representative of income payable in respect of overseas securities.

(5D) In subsection (5C) “overseas tax” means tax under the law of a territory outside the United Kingdom.”, and

(c) omit subsection (6).

37 In section 1221(1) (amounts treated as expenses of management) for paragraph (i) substitute—

“(i) section 815ZC(5) of CTA 2010 (treatment of payer of manufactured dividend),”.

38 In section 1248 (expenses in connection with arrangements for securing a tax advantage)—

(a) omit subsection (3), and
(b) in subsection (5) omit the definition of “relevant tax relief”.

FA 2009

39 In Schedule 19 to FA 2009 (income tax credits for foreign distributions) omit paragraphs 4 and 13(b).

CTA 2010

40 CTA 2010 is amended as follows.

41 Omit Part 17 (manufactured payments and repos).

42 (1) Section 1109(5) (provisions to which section 1109 is subject) is amended as follows.

(2) Omit paragraphs (a) to (c) (and the word “and” at the end of paragraph (c)).

(3) Immediately before subsection (5)(d) insert—

“(ca) section 815ZD (no tax credits for recipient of manufactured dividend), and”.

43 In Schedule 1 (minor and consequential amendments) omit paragraphs 259, 537, 538, 539(b) and (c), 635, 636 and 689(a) and (b)(i).

44 In Schedule 2 (transitionals and savings) omit Part 17 (manufactured payments and repos).

45 In Schedule 4 (index of defined expressions) omit the entries for—

“creditor quasi-repo (in Chapter 5 of Part 17)”,
“creditor repo (in Chapter 5 of Part 17)”,
“debtor quasi-repo (in Chapter 5 of Part 17)”,
“debtor repo (in Chapter 5 of Part 17)”,
“manufactured dividend (in Part 17)”,
“manufactured overseas dividend (in Part 17)”,
“overseas dividend (in Part 17)”,

"overseas securities (in Part 17)",
"overseas tax (in Part 17)",
"prescribed (in Chapter 4 of Part 17)",
"stock lending arrangement (in Chapter 5 of Part 17)", and
"UK shares (in Part 17)".

TIOPA 2010

46 (1) TIOPA 2010 is amended as follows.

(2) In section 85A(4) (schemes involving deemed foreign tax), omit paragraph (b) of the definition of "real foreign tax".

(3) In Schedule 7 (miscellaneous relocations) omit paragraph 113.

(4) In Schedule 8 (minor and consequential amendments) omit paragraph 82.

FA 2011

47 In Schedule 13 to FA 2011 (profits of foreign permanent establishments) omit paragraphs 22 to 24.

FA 2012

48 (1) FA 2012 is amended as follows.

(2) Omit section 22 (treatment of the receipt of manufactured overseas dividends).

(3) In section 78(3) (amounts which are deemed BLAGAB management expense for accounting period) omit the words from "section 783(6)" to the end.

(4) In Schedule 16 (minor and consequential amendments), omit paragraphs 220 to 223.

EXPLANATORY NOTE

MANUFACTURED PAYMENTS

SUMMARY

1. This Schedule simplifies the tax treatment of manufactured dividends for corporation tax purposes, and of all manufactured payments for Income Tax purposes, and repeals the detailed rules setting out the current tax treatment of manufactured dividends and repos in Part 17 of the Corporation Tax Act 2010 (CTA 2010) and of manufactured payments and repos in Chapters 1-3 of Part 11 of the Income Tax Act 2007 (ITA 2007).

DETAILS OF THE SCHEDULE

2. <u>Paragraph (1)</u> introduces a new Part 11ZA into ITA 2007, comprising sections 614ZA to 614ZD.

3. <u>Section 614ZA</u> explains that Part 11ZA deals with the application of the Income Tax Acts to manufactured payment relationships and payments which represent dividends or interest.

4. <u>Section 614ZB</u> defines the terms "manufactured payment relationship", "manufactured payment" and "securities".

5. <u>Subsection (1)</u> provides that for the purposes of the Income Tax Acts a person has a manufactured payment relationship if conditions A to C are met.

6. <u>Subsection (2)</u> gives Condition A. It provides that Condition A is that under any arrangements an amount is payable by or to a person, or any other benefit is given by or to the person, including the release from a liability to pay an amount.

7. <u>Subsection (3)</u> sets out Condition B. Condition B is that the arrangements relate to the transfer of securities.

8. <u>Subsection (4)</u> sets out Condition C, which is that the amount or value of the other benefit referred to in Condition A is, or will be treated as, representative of a dividend or interest on the securities.

9. <u>Subsection (5)</u> provides that in subsection (2), the reference to an amount being payable or other benefit being given by the person includes a reference to an amount being payable, or other benefit being given by another person on behalf of that person.

10. Subsection (6) defines “manufactured payment” for the new Part 11ZA, as an amount, or the value of a benefit, within subsection (2). It also defines securities for the purposes of that part, providing that “securities” means shares in a company and loan stock or any similar security.

11. Section 614ZC sets out the tax treatment of the payer of a manufactured payment.

12. Subsection (1) explains that section 614ZC applies where a person has a manufactured payment relationship under which a manufactured payment is paid by or on behalf of the person.

13. Subsection (2) provides that no income deduction is allowed in respect of the manufactured payment, subject to subsection(3).

14. Subsection (3) provides that subsection(2) does not apply in relation to a company so far as the manufactured payment is brought into account in calculating the profits of a trade carried on by the person.

15. Section 614ZD sets out the treatment of the recipient of a manufactured payment.

16. Subsection (1) provides that subsection(2) applies if a person has a manufactured payment relationship under which a manufactured payment is payable to that person.

17. Subsections (2) and (3) provide that for the purposes of the charge to income tax on the income of that person, the Income Tax Acts apply to the person as if the manufactured payment were a dividend or interest on the securities, subject to subsections (4) to (7).

18. Subsection (4) provides that subsection(2) does not apply to the person mentioned in that section as far as the manufactured payment is brought into account in calculating the profits of a trade carried on by that person.

19. Subsection (5) provides that subsection(2) does not apply in relation to the person mentioned in that section for the purposes of double taxation relief (DTR) in respect of any dividend or interest.

20. Subsection (6) provides that where the manufactured payment is treated as a dividend under subsection(2), the person mentioned in that subsection is not entitled to a tax credit under Chapter 3 of Part 4 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005), in respect of the dividend.

21. Subsection (7) defines double taxation relief, for the purposes of the section as any relief given under or as a result of Part 2 of the

Taxation (International and Other Provisions) Act 2010 (TIOPA 2010).

22. Paragraph [2] introduces a new Part 17A into CTA 2010, comprising sections 815ZA to 815ZD.

23. Section 815ZA gives an overview of Part 17A, explaining that it deals with the application of the Corporation Tax Acts to manufactured dividend relationships and payments which represent dividends.

24. Section 815ZB defines “manufactured dividend relationship”, “manufactured dividend” and “the real dividend”. The definitions are modelled on the manufactured interest provisions in Chapter 9 of Part 6 of the Corporation Tax Act 2009 (CTA 2009).

25. Subsection (1) provides that a company has a manufactured dividend relationship if conditions A to C are met. Those conditions are as follows:

26. Subsection (2) gives Condition A. Condition A is that arrangements are in place which provide that an amount is payable by or to a company, or any other benefit is given by or to the company. A benefit can include the release from any liability to pay an amount.

27. Subsection (3) sets out Condition B. Condition B is that the arrangements relate to the transfer of shares in a company

28. Subsection (4) sets out condition C, which is that the amount, or the value of the other benefit referred to in Condition A is, or will be treated as, representative of a dividend on the shares.

29. Subsection (5) provides that the reference to an amount being payable or other benefits being given by the company includes a reference to the amount or benefit being given by another person on behalf of the company.

30. Subsection (6) provides further definitions for Part 17A. A “manufactured dividend” means an amount, or the value of a benefit, within subsection (2), and “the real dividend” means the dividend mentioned in subsection (4)(a).

31. Section 815ZC sets out the treatment for tax purposes of the payer of a manufactured dividend.

32. Subsection (1) provides that the section applies where a company has a manufactured dividend relationship under which a manufactured dividend is paid by or on behalf of the company.

33. Subsection (2) provides that no income deduction is allowed in respect of the manufactured dividend. This is subject to subsections (3) to (5).

34. Subsection (3) provides that subsection (2) does not apply in relation to a company as far as the manufactured dividend is brought into account in calculating the profits of a trade carried on by the company. In these circumstances a deduction may be available subject to satisfying the normal requirements.

35. Subsection (4) provides that subsection (5) applies if the manufactured dividend relates to investment business of the company and the company received the real dividend in the accounting period and the real dividend is taxed by virtue of section 548(5) CTA 2010 (recipients of distributions from REITs).

36. Subsection (5) provides that in these circumstances, the manufactured dividend is to be treated as expenses of management of the company's investment business for the accounting period.

37. Subsection (6) provides that references in section 815ZC(4) to a real dividend include references to a manufactured dividend which is treated as a real dividend as a result of the application of section 815ZC(2). This means that where a company receives a manufactured dividend, and pays a manufactured dividend representative of that manufactured dividend, it may qualify as an expense of management, provided the other conditions of section 815ZC(4) apply.

38. Section 815ZD provides for the tax treatment of the recipient of a manufactured dividend.

39. Subsection (1) provides that subsection (2) applies if a company has a manufactured dividend relationship under which a manufactured dividend is payable to it.

40. Subsections (2) and (3) provide that for corporation tax purposes, the manufactured dividend is treated as a dividend on the shares, subject to subsections (4) to (8).

41. Subsection (4) provides that subsection (2) does not apply to a company as far as the manufactured dividend is brought into account as profits of a trade carried on by the company.

42. Subsection (5) provides that subsection (2) does not apply in relation to a company for the purposes of double taxation relief, defined in subsection (9) as any relief given under or as a result of Part 2 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010).

43. Subsection (6) provides that part 9A of CTA 2009 (which deals with company distributions) has effect with the modification given in subsection (7).

44. Section (7) sets out the modification, which is that references in part 9A to the payer are to be treated as references to the company that pays the real dividend, and that the definition of the payer in section 931T of CTA 2009 is treated as omitted.

45. Subsection (8) provides that the company to which the manufactured dividend is payable is not entitled to a tax credit under section 1109 of CTA 2010 in respect of that manufactured dividend.

46. Subsection (10) gives section 815ZD priority over other legislation, so that it has effect regardless of section 358 of CTA 2009, or any other provisions of Part 5 of CTA 2009 which would otherwise prevent a loan relationships credit from being brought into account.

47. Paragraph 3 introduces various consequential and other amendments.

48. Paragraph 4 provides that the Taxation of Chargeable Gains Act 1992 (TCGA 1992) is to be amended.

49. Paragraph 5 replaces section 263B(7) TCGA 1992 with new text defining securities for the purposes of section 263B, replacing references to the same definitions in Part 17 of CTA 2010, which has been repealed.

50. Paragraph 6 repeals section 263D TCGA 1992, which concerns gains accruing to persons paying manufactured dividends.

51. Paragraphs 7, 8 and 9 make consequential changes to TCGA 1992 to reflect the repeal of section 263D.

52. Paragraph 10 amends the regulation making power in Section 263I, introducing definitions of manufactured overseas dividend, overseas securities, overseas dividend and securities, as these definitions are being repealed from ITA 2007.

53. Paragraph 11 amends the Finance Act 2004 to reflect the repeal of section 263D.

54. Paragraph 12 provides for amendments to ITTOIA 2005.

55. Paragraphs 13 and 14 amend sections 397(6) and 397A of ITTOIA 2005 to reflect the replacement of section 592 ITA 2007 with the similar provision in section 614ZD(6).

56. Paragraph 15 omits section 397B of ITTOIA 2005. That section refers to the treatment of manufacture overseas dividends from which

tax has been deducted under section 581 ITA 2007. As that section, and the requirement to deduct tax, are being repealed, s397B will become redundant.

57. Paragraph 16 provides for amendments to ITA 2007.

58. Paragraph 17 provides for Chapters 1 to 3 of Part 11 (manufactured payments and repos) to be repealed, apart from section 596(5) which will be repealed separately, and makes a consequential change to section 606. The provisions of those chapters are either being replaced by sections 614ZA to 614 ZD or being repealed, in line with the new simplified regime.

59. Paragraph 18 amends section 647 ITA 2007. It introduces definitions of manufactured payments contract, overseas securities, overseas dividend and UK securities. This is necessary because section 647 currently refers to the definitions in section 578 and 581, which are being repealed.

60. Paragraph 19 amends section 658 ITA 2007, which supplements the regulation making powers in sections 656 and 657. Paragraph 19 introduces definitions of UK shares, UK securities and overseas securities into section 658. This is necessary because section 658 currently refers to the definitions in section 566 and 567, which are being repealed.

61. Paragraph 20 amends section 918(1) ITA 2007, which refers to manufactured dividends on shares in Real Estate Investment Trusts (REITs). It replaces a reference to section 573(1), which is being repealed, with a reference to section 614ZC(1).

62. Paragraph 21 amends section 919 ITA 2007, which concerns manufactured interest on UK securities. It replaces subsection (1), which refers to section 578(1) which is being repealed, with a similar subsection referring to section 614ZC(1).

63. Paragraph 22 repeals section 920 ITA 2007. That section contains the reverse charge provision, which imposes a requirement to deduct tax on a UK recipient of manufactured interest. That reverse charge requirement will no longer apply.

64. Paragraph 23 amends section 921 ITA 2007. That section applies to cases where interest is paid gross on underlying securities, and provides that section 919(2) does not require any deduction of a sum representing income tax on the payment of the manufactured interest.

65. Paragraph 24 repeals sections 922 to 925 ITA 2007. Those sections impose the requirement to deduct tax from manufactured overseas

dividends, and the reverse charge. Those requirements will no longer apply.

66. Paragraph 25 makes consequential amendments to section 925A(2) ITA 2007.

67. Paragraph 26 makes a consequential repeal of section 925B ITA 2007. That section refers to the consequences of the reverse charge provisions, which are being repealed.

68. Paragraph 27 makes consequential changes to section 925C ITA 2007.

69. Paragraph 28 repeals subsections (1) and (1A) of section 926 ITA 2007, since those interpretation provisions apply to sections which are being repealed.

70. Paragraphs 29, 30 and 31 make various minor and consequential amendments to ITA 2007 following the repeal of Chapters 1-3 and sections 922-925.

71. Paragraph 32 provides for the Finance Act 2008 (FA 2008) to be amended, and makes consequential changes to Schedule 12 and Schedule 23 to reflect the repeals of Chapters 1-3 and sections 922 - 925 of ITA 2007 and section 263D TCGA 1992.

72. Paragraph 33 provides for amendments to CTA 2009.

73. Paragraph 34 amends section 539 CTA 2009. It repeals section 539(7) which refers to interest deemed to be paid under section 812(2) CTA 2010 as that section is being repealed following the introduction of section 815ZB CTA 2010.

74. Paragraph 35 amends section 540(3) CTA 2009, deleting a reference to section 799 CTA 2010, which is being repealed.

75. Paragraph 36 amends section 550 CTA 2009. It deletes section 550(6) which refers to double taxation relief in respect of a manufactured overseas dividend, which will no longer be available, and inserts new subsections 550(5B – 5D) which provide that a borrower will not be entitled to double taxation relief as a result of section 550(3) unless actual overseas tax has been deducted from the manufactured payment.

76. Paragraph 37 amends section 1221(1) CTA 2009, which refers to amounts treated as expenses of management. It deletes section 1221(1)(i) and replaces the reference in that section to section 791(4) 2010, which is being repealed, with a reference to section 815ZC(5) 2010.

77. Paragraph 38 amends section 1248 CTA 2009. It repeals two references to section 799 CTA 2010, which is being repealed.

78. Paragraph 39 provides for amendments to the Finance Act 2009 (FA 2009), repealing paragraphs (4) and 13(b) which refer to provisions in ITTOIA 2005 and ITA 2007 which are being repealed.

79. Paragraph 40 provides for amendments to CTA 2010.

80. Paragraph 41 repeals Part 17 of CTA 2010. That Part contains provisions which apply to manufactured payments, stock lending, and repos, which are being replaced by sections 815ZA to 815ZD of CTA 2010, or which will no longer be required.

81. Paragraph 42 amends section 1109 (5) of CTA 2010. It inserts a reference to section 815ZD which provides that no tax credit is available for recipients of manufactured dividends, and repeals references in section 1109(5)(a) to legislation which is now repealed.

82. Paragraph 43 makes various repeals of paragraphs in Schedule 1 which refer to repealed legislation.

83. Paragraph 44 repeals a reference in Schedule 2 which refers to Part 17 of CTA 2010 as that Part is repealed.

84. Paragraph 45 makes consequential repeals from defined expressions in Schedule 4 CTA 2010.

85. Paragraph 46(1) provides for amendments to TIOPA 2010.

86. Paragraph 46(2) repeals section 85A(4)(b) which refers to sections 792 and 794 of CTA 2010, which are repealed.

87. Paragraph 46(3) and (4) repeal paragraph 113 from Schedule 7 and paragraph 82 from Schedule 8, both of which refer to repealed legislation.

88. Paragraph 47 amends Finance Act 2011. It repeals paragraphs 22 and 24 in Schedule 13, which refer to repealed legislation.

89. Paragraph 48 provides for amendments to Finance Act 2012. It repeals section 22, the final line of section 78(3) and paragraphs 220 to 223 of Schedule 16, all of which refer to repealed legislation.

90. The provisions of Part 1 of this Schedule, which apply for income tax, and those of Part 2, which apply for corporation tax, will apply in respect of manufactured payments made on or after 1 January 2014. The provisions of Part 3, which are mainly repeals and consequential amendments, will apply from 1 January 2014.

BACKGROUND NOTE

91. The legislation applying to manufactured payments is complex, and has been the subject of a number of avoidance schemes.

92. A consultation was carried out in 2012 which set out proposals for reforming and simplifying the legislation. Responses to the consultation document were supportive.

93. Legislation is therefore now being introduced to simplify the tax treatment of manufactured payments.

94. For corporation tax purposes, the current treatment of manufactured interest is not changed.

95. Manufactured dividends will be treated in two possible ways. When they are received by a financial trader, they will be taxed as trade receipts, and when paid by a financial trader they will generally be allowed as a trade deduction.

96. Generally, no specific provisions will not be required to bring about this effect, and following the accounts prepared in accordance with GAAP will bring about this effect.

97. In other circumstances, the receipt of a manufactured dividend will not be taxable and the payment of a manufactured dividend will not be allowable as a deduction.

98. The current rules requiring tax to be deducted when a manufactured overseas dividend (MOD) is paid will be repealed. The reverse charge (under which a UK company receiving a MOD from which tax had not been deducted had to deduct tax and pay it to HMRC) has also been repealed.

99. If you have any questions about this change, or comments on the legislation, please contact Geoff Heaton on 020 7147 2577 (email: geoff.heaton@hmrc.gsi.gov.uk) or Chris Murricane on 020 7147 2818 (email: chris.murricane@hmrc.gsi.gov.uk).

1 Unauthorised unit trusts

(1) The Treasury may by regulations make provision about the treatment of the trustees or unit holders of unauthorised unit trusts for the purposes of income tax, corporation tax, capital gains tax or stamp duty land tax.

(2) Regulations under this section may—

(a) confer or impose powers or duties on officers of Revenue and Customs or other persons;

(b) modify any enactment or instrument (whenever passed or made);

(c) specify descriptions of unauthorised unit trust in relation to which the regulations are to apply or are not to apply;

(d) make different provision for different cases or different purposes;

(e) make incidental, consequential, supplementary and transitional provision and savings.

In paragraph (b) "modify" includes amend, repeal or revoke.

(3) In this section—

(a) "unauthorised unit trust" means a unit trust scheme which is neither an authorised unit trust nor an umbrella scheme,

(b) "unit trust scheme" has the meaning given by section 237 of the Financial Services and Markets Act 2000, and

(c) "authorised unit trust", "umbrella scheme" and "unit holder" have the same meaning as in Chapter 2 of Part 13 of CTA 2010 (authorised investment funds).

EXPLANATORY NOTE

UNAUTHORISED UNIT TRUSTS

SUMMARY

1. This clause provides a power for HM Treasury to introduce regulations about the tax treatment of the trustees or unit holders of unauthorised unit trusts (UUTs). It also sets out the scope of what those regulations may provide for.

DETAILS OF THE CLAUSE

2. Section (1) provides the power to make provision by regulation about the treatment of the trustees or unit holders of UUTs for the purposes of income tax, corporation tax, capital gains tax or stamp duty land tax.

3. Section (2) sets out further details about the scope of the regulations made under this clause. This includes conferring or imposing powers or duties on HM Revenue & Customs officers, modifying any legislation, and specifying descriptions of different types of UUTs. The regulations may also contain provisions required to deal with transitional provisions.

4. Section (3) provides a definition of terms used in the clause.

BACKGROUND NOTE

5. Following the conclusion of a review of high risk areas of the tax system, begun at Budget 2011, this clause enables the introduction of new tax rules in regulations for UUTs and their investors.

6. The main objective of the review is to prevent UUTs being used for avoidance purposes, but it will also simplify the rules and reduce administrative burdens.

7. If you have any questions about this change, or comments on the legislation, please contact Wayne Strangwood on 020 7147 2545 (email: wayne.a.strangwood@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Unauthorised Unit Trusts (Tax) Regulations 2013

Made - - - -	*[2013]*
Laid before the House of Commons	*[2013]*
Coming into force - -	*[2013]*

The Treasury make the following Regulations in exercise of the powers conferred by section [ ] of the Finance Act 2013(**a**).

PART 1

Introductory and general provisions

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Unauthorised Unit Trusts (Tax) Regulations 2013.

(2) Chapters 1 and 2 of Part 2 (and this Part so far as applying to those Chapters) come into force on the day after the day on which these Regulations are made.

(3) Apart from that, these Regulations come into force on 6 April 2014.

Interpretation

2.—(1) In these Regulations—

"the Authorised Investment Funds Regulations" means the Authorised Investment Funds (Tax) Regulations 2006(**b**),

(**a**) 2013 c.[ ]
(**b**) S.I. 2006/964, amended by 2006/964, 2006/3239, 2007/683, 2007/794, 2008/705, 2008/1463, 2008/3159, 2009/2036, 2009/2199, 2010/294, 2010/1642, 2011/244, 2011/2192, 2012/519 and 2012/1783.

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,

“friendly society” has the same meaning it has for the purposes of Part 3 of FA 2012 (friendly societies carrying on long-term business),

“insurance company” has the same meaning as it has for the purposes of Part 2 of FA 2012 (insurance companies carrying on long-term business),

“non-reporting fund” has the same meaning as it has for the purposes of the Offshore Funds Regulations,

“notice” means notice in writing,

“the Offshore Funds Regulations” means the Offshore Funds (Tax) Regulations 2009(**a**),

“prospectus” means the prospectus or similar document made available to investors,

“UK resident” means resident in the United Kingdom (and references to a UK resident company are to a company which is resident there),

“unauthorised unit trust” means a unit trust scheme which is neither an authorised unit trust nor an umbrella scheme,

“unit holder” means a person entitled to a share of the investments of an unauthorised unit trust.

PART 2

Exempt unauthorised unit trusts

CHAPTER 1

Meaning of “exempt unauthorised unit trust”

Meaning of “exempt unauthorised unit trust”

3.—(1) An unauthorised unit trust is an “exempt unauthorised unit trust” with respect to a period of account if—

(a) its trustees are UK resident for the period,

(b) throughout the period all of its unit holders are wholly exempt from capital gains tax or corporation tax on chargeable gains (otherwise than by reason of residence), and

(c) it is approved under these Regulations for the period.

(2) In determining whether paragraph (1)(b) applies no account is to be taken of units which—

(a) have been disposed of by a unit holder, and

(b) are held by the managers of the trust (in that capacity) pending disposal.

(3) In determining whether paragraph (1)(b) applies no account is to be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by an insurance company or a friendly society.

(4) An unauthorised unit trust is not to be regarded as failing to meet the condition in paragraph (1)(b) in relation to any unit holder if—

(a) the managers or trustees of the unit trust become aware at any time that the unit holder is not as described in paragraph (1)(b),

(**a**) S.I. 2009/3001, amended by S.I. 2009/3139, 2010/294, 2011/1211.

(b) they could not reasonably have been expected to have become aware of that fact before that time, and

(c) the unit holder disposes of its units before the end of the period of 28 days beginning with that time.

(5) Paragraph (4) may not be relied on more than twice in any period of ten years.

CHAPTER 2

Approval as an exempt unauthorised unit trust

Application for approval as an exempt unauthorised unit trust

4.—(1) The managers or trustees of an unauthorised unit trust may make an application in writing to the Commissioners for the trust ("the applicant") to be approved.

(2) An application must be made on or before the last day of the first period of account for which approval is sought (or such later date as the Commissioners may allow).

(3) If accepted, an approval has effect for the period of account the first day of which is specified in the application and all subsequent periods (unless withdrawn under regulation 8).

(4) The Commissioners may not approve an unauthorised unit trust unless they are satisfied that the unit trust has, or will have, in place appropriate arrangements for the purpose of securing that the condition in regulation 3(1)(b) is met.

Contents of application

5.—(1) An application under this Chapter must contain the following—

(a) a statement specifying the first day of the first period of account for which approval is sought (such period ending no earlier than 6 April 2014),

(b) a copy of the applicant's current trust deed,

(c) a copy of the applicant's most recent prospectus,

(d) a statement specifying the appropriate arrangements which are or will be in place for the purpose of securing that the condition in regulation 3(1)(b) is and will be met for the first period for which approval is sought and all subsequent periods,

(e) a statement whether or not the applicant is or will be operating equalisation arrangements.

(2) A day specified in the application in paragraph (1)(a) may be provisional.

(3) If a provisional day is specified in the application, any approval by the Commissioners of the application has no effect unless the managers or trustees of the applicant give notice to the Commissioners either—

(a) confirming that day is the first day of the first period of account for which approval is sought, or

(b) specifying a different day as the first day of the first period of account for which approval is sought.

(4) The notice must be given no later than the date on or before which a return made under section 8A(**a**) of TMA 1970 relating to the first period must be delivered.

(**a**) Section 8A was inserted by section 90 of Finance Act 1990 (c. 29) and amended by sections 178 and 199 of Finance Act 1994 (c. 9), by section 103 of Finance Act 1995 (c. 4), by section 121 of Finance Act 1996 (c. 8), by section 882 and paragraphs 357 and 360 of Schedule 1 of ITTOIA 2005, by sections 89, 92 and 114 and Part 5(3) of Schedule 27 of Finance Act 2007 (c. 11), by section 34 and paragraphs 7 and 9 of Schedule 12 of FA 2008, and by section 40 and paragraph 9 of Schedule 19 of FA 2009.

(5) If a different day is specified under paragraph (3)(b), the application is to be treated for the purposes of regulation 4(3) as if that day had always been specified in the application.

Response by the Commissioners to application

6.—(1) The Commissioners may by notice require the managers or trustees of the applicant to provide further particulars in order to enable them to determine an application.

(2) A requirement may be imposed under paragraph (1) within 28 days of the receipt of the application or of any further particulars required under that paragraph.

(3) If a notice under paragraph (1) is not complied with within 28 days or such longer period as the Commissioners may allow, they need not proceed further on the application.

(4) The Commissioners must give notice to the applicant of their decision to accept or reject an application—

(a) within 28 days of receiving the application, or

(b) if they give a notice under paragraph (2), within 28 days of that notice being complied with.

(5) A notice of a decision to reject an application must give reasons for that decision.

Continuing requirements for approval

7.—(1) Approval under this Chapter is conditional on the requirements in this regulation being met by the unauthorised unit trust with respect to a period of account.

(2) Appropriate arrangements must be in place for the purpose of securing that the condition in regulation 3(1)(b) is met for the period.

(3) The period of account of the unauthorised unit trust must not exceed 18 months.

(4) The accounts for the period—

(a) must be prepared in accordance with the IMA SORP or its principles so far as relating to determining revenue and capital, and

(b) must be audited by a qualified independent auditor as being so prepared.

(5) In the following provisions of this Part references to accounts of an exempt unauthorised unit trust are to accounts meeting the conditions in paragraph (4).

(6) The managers or trustees of the trust must deliver with a return made under section 8A of TMA 1970—

(a) a statement from the managers or the trustees that the condition in regulation 3(1)(b) has been met throughout the period, and

(b) a copy of the trust's accounts.

(7) In this regulation—

(a) "the IMA SORP" means the Investment Management Association's Statement of Recommended Practice for the Financial Statements of Authorised Funds published in October 2010 as amended from time to time (or any successor statement of recommended practice), and

(b) "qualified independent auditor" means a person who—

(i) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006(**a**), and

(ii) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

(**a**) 2006 c.46.

Withdrawal of approval

8.—(1) The Commissioners may withdraw approval of an exempt unauthorised unit trust if they are satisfied that the requirements in regulation 7 are not met.

(2) The Commissioners may withdraw approval of an exempt unauthorised unit trust if the managers or trustees of an exempt unauthorised unit trust request them to do so.

(3) Withdrawal of an approval of an unauthorised unit trust is to be given by the Commissioners by notice to the managers or trustees of the trust.

(4) Withdrawal of approval has effect as from the date specified in the notice withdrawing the approval.

Appeal against rejection of application or withdrawal of approval

9.—(1) An unauthorised unit trust may appeal if an application is rejected or the Commissioners withdraw approval.

(2) The notice of appeal must be given to the Commissioners within a period of 42 days beginning with the day on which the notice of rejection or withdrawal is given.

(3) On an appeal, the tribunal may make a decision to uphold or quash the rejection or withdrawal.

(4) If the tribunal decides to quash a rejection of an application, these Regulations apply as if the Commissioners had accepted the application in the form in which it was considered by the tribunal.

(5) If the tribunal decides to quash the withdrawal of approval, these Regulations apply as if the Commissioners had not withdrawn their approval.

CHAPTER 3

Gains accruing to an exempt unauthorised unit trust

Exemption for gains accruing to an exempt unauthorised unit trust

10. Gains accruing to an exempt unauthorised unit trust are not chargeable gains for the purposes of TCGA 1992.

CHAPTER 4

Taxation of income of exempt unauthorised unit trusts

Basis periods

11.—(1) The income of an exempt unauthorised unit trust for a tax year is taken to be the income of an exempt unauthorised unit trust arising in a basis period for the tax year.

(2) The general rule is that the basis period for a tax year for an exempt unauthorised unit trust is the period of 12 months ending with the accounting date in that year.

(3) The accounting date, in relation to a tax year, means—

(a) the date in the tax year to which accounts are drawn up, or

(b) if there are two or more such dates, the latest of them.

(4) If there is no accounting date in the first tax year that the trust is an exempt unauthorised unit trust but there is an accounting date in the following tax year—

(a) there is no basis period for the first tax year (so that the trust has no income for that year), but

(b) the basis period for the following year is the period of account ending with the accounting date in that year.

(5) If there is no accounting date in the first two tax years that the trust is an exempt unauthorised unit trust—

(a) there is no basis period for the first tax year (so that the trust has no income for that year), but

(b) the basis period for the second tax year is the period starting on the first date of the period of account and ending on the 5 April in that year.

(6) Otherwise, if there is no accounting date in the tax year, the basis period is the period of 12 months beginning immediately after the end of the basis period for the previous tax year.

(7) If the basis period for a tax year does not coincide with a period of account of an exempt unauthorised unit trust, either of the steps in paragraph (8) must be taken if necessary in order to arrive at the amount of the income of the trust treated under regulation 14 as if it were accrued income profits arising in a basis period.

(8) The steps are—

(a) apportioning the income of a period of account to the parts of that period falling in different basis periods, and

(b) adding the income of a period of account (or part of a period) to the income of other periods of account (or parts),

and the steps must be taken by reference to the number of days in the periods concerned.

Treatment of income of an exempt unauthorised unit trust

12.—(1) If income arises to the trustees of an exempt unauthorised unit trust, the income is treated as the income of the trustees and not of the unit holders.

(2) If income tax on any part of the income arising to the trustees of an exempt unauthorised unit trust would apart from this paragraph be charged at the dividend ordinary rate, income tax on that part of the income is instead charged at the basic rate.

(3) None of the following applies in relation to the income—

(a) sections 397(1)(**a**) and 397A(1)(**b**) of ITTOIA 2005 (tax credits for qualifying distributions),

(b) section 399(2) and (6) of ITTOIA 2005 (person not entitled to tax credits treated as having paid income tax)(**c**),

(c) section 400(2) and (3) of ITTOIA 2005 (person whose income includes non-qualifying distribution treated as having paid income tax)(**d**), and

(d) section 479 of ITA 2007 (trustees' accumulated or discretionary income to be charged at special rates)(**e**).

(4) Sections 494, 495 and 496B of ITA 2007 (discretionary payments) do not apply in relation to payments made by the trustees.

(**a**) Section 397 was amended by section 34 and paragraphs 1 and 3 of Schedule 12 of FA 2008 and by section 1027 and paragraphs 492 and 515 of Schedule 1 of ITA 2007.

(**b**) Section 397A was amended by section 40 and paragraphs 1 and 2 of Schedule 19 of FA 2009 and by section 374 and paragraphs 65 and 66 of Schedule 8 of TIOPA 2010.

(**c**) Section 399 was amended by section 34 and paragraphs 1 and 2 of Schedule 12 of FA 2008 and by section 1027 and paragraphs 492 and 516 of Schedule 1 of ITA 2007.

(**d**) Section 400 was amended by section 1027 and paragraphs 492 and 517 of Schedule 1 of ITA 2007.

(**e**) Section 479 was amended by section 30 and paragraph 23 of Schedule 6 of FA 2010.

Treatment of capital expenditure of an exempt unauthorised unit trust

13. The trustees (and not the unit holders) of an exempt unauthorised unit trust are treated as the persons to or on whom an allowance or charge is to be made under any provision relating to relief for capital expenditure.

Special provision for accrued income profits

14.—(1) This regulation applies to income of an exempt unauthorised unit trust which—

(a) arises from its investments in securities within the meaning of Chapter 2 of Part 12 of ITA 2007 (accrued income profits), and

(b) is shown in its accounts.

(2) The income is charged to tax under Chapter 2 of Part 12 of ITA 2007—

(a) as if it were accrued income profits, and

(b) as if those profits were treated as made in the tax year in which the last day of the period of account in which the income is accounted for falls.

(3) None of the income is charged to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest).

CHAPTER 5

Charge to tax on unit holders of exempt unauthorised unit trusts

Charge to tax on unit holders

15.—(1) Tax is charged on income treated as received by a unit holder from an exempt unauthorised unit trust in the tax year.

(2) For the purposes of this regulation, unit holders are treated as receiving income if an amount is shown in the trust's accounts for a period of account as income available for payment to them or for investment.

(3) The income is treated as received by a unit holder for a distribution period.

(4) To calculate the amount of the income treated as received by a unit holder for a distribution period, calculate the unit holder's share of the trust's available income by applying the formula—

$$TAI \times \frac{R}{TR}$$

where—

TAI is the total amount shown in the trust's accounts as income available for payment to unit holders or for investment,

R is the unit holder's rights, and

TR is all the unit holders' rights.

(5) The income for a distribution period is treated as received on the date or latest date provided by the terms of the trust for any distribution for the period, unless that date is more than 12 months after it ends.

(6) If—

(a) that date is more than 12 months after the distribution period ends, or

(b) no date is so provided,

the income for the period is treated as received on the last day of the distribution period.

(7) If the terms of the trust provide for a period over which income from the investments subject to the trust is aggregated to ascertain the amount available for distribution to unit holders, the "distribution period" means—

(a) if the period is 12 months or less, that period, or

(b) if the period is more than 12 months, each successive period of 12 months within that period and any remaining period of less than 12 months.

(8) In any other case, the "distribution period" means successive periods of 12 months, the first of which begins with the day on which the trust was established.

Person liable

16. The person liable for any tax charged under this Chapter is the unit holder treated as receiving the income.

Priority rules

17.—(1) Any income, so far as it falls within—

(a) regulation 15, and

(b) Chapter 2 of Part 2 of ITTOIA 2005 or Chapter 2 of Part 3 of CTA 2009 (income taxed as trade profits),

is dealt with under Part 2 of ITTOIA 2005 or Part 3 of CTA 2009.

(2) Any income, so far as it falls within—

(a) regulation 15, and

(b) Chapter 3 of Part 3 of ITTOIA 2005, or Chapter 3 of Part 4 of CTA 2009, so far as relating to a UK property business,

is dealt with under Part 3 of ITTOIA 2005 or Part 4 of CTA 2009.

CHAPTER 6

Relief for trustees of an exempt unauthorised unit trust

Relief for deemed payments by trustees of an exempt unauthorised unit trust

18.—(1) If the unit holders of an exempt unauthorised unit trust are treated as receiving income under regulation 15(2), the trustees are treated as making a deemed payment of the same amount on the final day of the period of account referred to in regulation 15(2).

(2) The trustees are entitled to relief for a tax year equal to the amount of the deemed payments treated as made in that year.

(3) The relief is given by deducting that amount in calculating the trustees' net income for the tax year (see Step 2 of the calculation in section 23 of ITA 2007 (calculation of income tax liability)(**a**)).

(4) The total amount of the relief for a tax year must not exceed the amount of the trustees' modified net income for the tax year (within the meaning given by section 1025 of ITA 2007).

(5) If there is an excess, that excess is to be treated as if it were a deemed payment in the basis period for the following tax year.

Amounts ineligible for relief under regulation 18: income paid out of capital or exempt income

19.—(1) Relief is not to be given under regulation 18 for any part of a deemed payment so far as it is ineligible for relief.

(**a**) Section 23 was amended by section 5 and paragraph 6(o)(i) of Schedule 1 of FA 2009.

(2) The deemed payment is ineligible for relief if, or so far as, it is treated as being made in respect of income paid to the unit holders which can lawfully be made only out of—

(a) capital, or

(b) income that is exempt from income tax.

(3) The payment or that part of it treated as being made in respect of income made out of capital is ineligible for relief.

(4) The payment or that part of it treated as being in respect of income that is exempt from income tax is ineligible for relief if the rights or obligations of any person are or may in the future be different from what they would have been had the income or part not been so treated.

Amounts ineligible for relief under regulation 18: payments to certain unit holders where regulation 3(4) applies

20. Relief is not to be given under regulation 18 for any part of a deemed payment so far as it is attributable to income treated as received by a unit holder under regulation 15 where the unit holder—

(a) disposed of its units in the circumstances described in regulation 3(4)(c), and

(b) was not UK resident at the time the income is treated as received.

Effect of equalisation arrangements on relief for trustees

21.—(1) This regulation applies to an exempt unauthorised unit trust which has made a statement under regulation 5(1)(e) (equalisation arrangements) in the case of a disposal of units by way of either cancellation or acquisition by the managers of the trust.

(2) The amount of the deemed payment for which the trustees are entitled to relief for a tax year under regulation 18 includes any amount paid to unit holders (in the basis period for the year) on a disposal of some or all of their units so far as attributable to the income of the trust which has accrued up to the date of the disposal (but has not otherwise been received, or treated as received, by unit holders).

CHAPTER 7

Miscellaneous provisions

No tax charge for disposal of interests in offshore non-reporting funds: reporting condition

22.—(1) No tax is charged on the trustees of an exempt unauthorised unit trust under regulation 17 of the Offshore Funds Regulations on the disposal of an interest in a non-reporting fund if the reporting condition is met.

(2) The reporting condition is met if—

(a) the trustees prepare computations of reportable income for the fund for all accounting periods which, if the fund were a reporting fund, would be reporting periods ending on or before the day of disposal, and

(b) any excess of the trustees’ share of the reportable income of the non-reporting fund over their share of the distributions made by the non-reporting fund is included in the amount mentioned in regulation 15(2) for each period of account ending on or before that day.

(3) Nothing in paragraph (2) applies in relation to any time before the date on which the trustees acquire or re-acquire the interest.

(4) The trustees are treated for all purposes as if they had disposed of and immediately reacquired an interest in a non-reporting fund on a date they specify if in the event of a subsequent disposal of the interest—

(a) the reporting condition would not be met in relation to times before the date, but

(b) the trustees reasonably expect the reporting condition will be met in relation to times on and after the date.

(5) The date the trustees specify must be included in an appropriate entry in their return made under section 8A of TMA 1970 for the period of account in which the date falls but the date must not be earlier than 6 April 2014.

(6) The deemed disposal and reacquisition of the interest is taken to be for a consideration equal to its market value on the specified date.

(7) In this regulation—

"market value" has the meaning given by regulation 10 of the Offshore Funds Regulations,

"reporting fund" has the meaning given by regulation 50 of those Regulations, and

"reporting period" has the meaning given by regulation 91 of those Regulations.

(8) If a non-reporting fund is a UCITS fund for the purposes of regulation 12(**a**) of the Offshore Funds Regulations, regulation 80 of those regulations (treatment of investment transactions carried out by diversely owned funds) applies for the purposes of the computations mentioned in paragraph (2)(a).

No tax charge for disposal of interests in offshore non-reporting funds: qualifying index

23.—(1) No tax is charged on the trustees of an exempt unauthorised unit trust under regulation 17 of the Offshore Funds Regulations on the disposal of an interest in a non-reporting fund if—

(a) in accordance with the trust's investment strategy contained in its prospectus, the aim of the trust throughout the period during which the trustees held the interest has been to replicate the performance of a qualifying index,

(b) the main purpose of the investment in the non-reporting fund throughout that period is to represent the composition of the qualifying index, and

(c) the capital and income returns of the trust throughout that period replicated as closely as practicable the returns of the investment comprised in the qualifying index.

(2) For the purposes of this regulation an index is a "qualifying index" if—

(a) it is based solely on the value of securities listed on a recognised stock exchange or admitted to trading on a regulated market,

(b) an authority (whether in the United Kingdom or elsewhere) recognises the index on the basis that—

(i) its composition is sufficiently diverse,

(ii) it represents an adequate benchmark for the market to which it refers, and

(iii) it is published in such a way that it is widely available, and

(c) it is calculated and published by a body which is managed independently from the management of the exempt unauthorised unit trust.

(3) In this regulation "regulated market" has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see article 4.1(14))(**b**).

Treatment of investment transactions carried out by exempt unauthorised unit trusts

24.—(1) An investment transaction entered into by the trustees of an exempt unauthorised unit trust is treated for the purposes of the Income Tax Acts as entered into otherwise than in the course of a trade.

(2) "Investment transaction" has the same meaning as it has in Part 3 of the Investment Trust (Approved Company) (Tax) Regulations 2011(**c**), but as if—

(**a**) Regulation 12 was amended by S.I. 2011/1121.
(**b**) OJ L 145, 30.4.2004 p.1
(**c**) 2011/2999.

(a) references to an investment trust were to an exempt unauthorised unit trust, and

(b) references to the manager of the investment trust were to the managers or trustees of the exempt unauthorised unit trust.

Authorised investment funds investing in exempt unauthorised unit trusts

25. If an authorised investment fund (within the meaning given by the Authorised Investment Funds Regulations) is at any time in a period of account a unit holder of an exempt unauthorised unit trust, the following provisions of CTA 2010 do not apply in relation to the fund for any financial year in which that period (or any part of it) falls—

(a) Part 3 (relief for companies with small profits), and

(b) sections 614 and 618 (applicable corporation tax rate),

(and, accordingly, the rate of corporation tax which applies in relation to the fund is the main rate within the meaning of section 3 of CTA 2010).

PART 3

Non-exempt unauthorised unit trusts

CHAPTER 1

Definition of non-exempt unauthorised unit trust

Definition of non-exempt unauthorised unit trust

26. An unauthorised unit trust is a "non-exempt unauthorised unit trust" if it is not an exempt unauthorised unit trust.

CHAPTER 2

Tax treatment of non-exempt unauthorised unit trusts

Non-exempt unauthorised unit trust treated as UK resident company

27.—(1) In respect of income arising and chargeable gains accruing to UK resident trustees of a non-exempt unauthorised unit trust, and for the purposes of the provisions relating to relief for capital expenditure, the Tax Acts have effect as if—

(a) the trustees were a UK resident company, and

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

(2) References in the Corporation Tax Acts to a body corporate are to be read in accordance with paragraph (1); and sections 1104 and 1107 of CTA 2010 (companies and nominees required to provide tax certificates) apply with any necessary modifications.

Part 3 of CTA 2010 not to apply to non-exempt unauthorised unit trusts

28. Part 3 of CTA 2010 (relief for companies with small profits) does not apply in relation to a non-exempt unauthorised unit trust.

PART 4

Transitional provisions

CHAPTER 1

Transitional provisions for exempt unauthorised unit trusts

Transitional year for exempt unauthorised unit trusts

29.—(1) This regulation makes provision for a transitional year for an unauthorised unit trust if it is approved as an exempt unauthorised unit trust for a period that includes 5 April 2014.

(2) The "transitional year" is—

(a) the tax year 2013-14, where the trust has an accounting date in the tax year 2013-14 on or after 1 November 2013, or

(b) the tax year 2014-15, where the trust either has an accounting date in the tax year 2013-14 before 1 November 2013 or has no accounting date in the tax year 2013-14.

(3) In a tax year which is a trust's transitional year, the income of the trust for that tax year is taken to be the income arising in the period beginning with 6 April and ending with the accounting date in that year.

(4) If a trust's transitional year is the tax year 2014-15, Chapters 3 to 7 of Part 2 and Parts 3 and 5 do not apply in relation to the trust for that year.

(5) A transitional year does not count for the purposes of determining the first or second tax year that a trust is an exempt unauthorised unit trust under regulation 11(4) or (5).

(6) Any deemed payment or deemed deduction which would (but for this regulation) have been treated as made by the trustees under section 941 of ITA 2007 after the accounting date of the transitional year of the trust is treated as made on that accounting date.

(7) Any income of the trust which would (but for this regulation) be included in the amount of accrued income profits treated under Part 12 of ITA 2007 as made in a tax year after the transitional year is included in the amount of accrued income profits treated under that Part as made in the transitional year.

(8) The accounting date, in relation to a tax year, means—

(a) the date in the tax year to which accounts are drawn up, or

(b) if there are two or more such dates, the latest of them.

CHAPTER 2

Transitional provisions for non-exempt unauthorised unit trusts

Unauthorised unit trusts coming within charge to corporation tax: final deemed payments and accrued income profits

30.—(1) In the case of an unauthorised unit trust which comes within the charge to corporation tax on 6 April 2014 or a later date, any amount of income which would (but for this regulation) have been treated under—

(a) Chapter 10 of Part 4 of ITTOIA 2005, or

(b) Chapter 5 of Part 10 of CTA 2009,

as received by its unit holders on or after 6 April 2014 or that later date is treated as received on 5 April 2014 or, as the case may be, the day before that later date (and, accordingly, the trustees are treated as making a deemed payment under section 941 of ITA 2007 in respect of that income on the same day).

(2) Any income of the trust which would (but for this regulation) be included in the amount of accrued income profits treated under Part 12 of ITA 2007 as made after 6 April 2014 or a later

date, is included in the amount of accrued income profits treated under that Part as made on 5 April 2014 or, as the case may be, the day before that later date.

Part 5 not to apply to mixed unauthorised unit trusts

31.—(1) An unauthorised unit trust is not a non-exempt unauthorised unit trust, and Part 5 does not apply in relation to the trust, if at all times in the period beginning with 24 May 2012 and ending with 5 April 2014 it had at least one unit holder which was, and at least one unit holder which was not, wholly exempt from capital gains tax or corporation tax on chargeable gains (otherwise than by reason of residence).

(2) But paragraph (1) ceases to apply in relation to the trust if subsequently it no longer has any unit holders which are wholly exempt from capital gains tax or corporation tax on chargeable gains (otherwise than by reason of residence).

(3) In determining whether paragraph (1) or (2) applies no account is to be taken of units which—

(a) have been disposed of by a unit holder, and

(b) are held by the managers of the trust (in that capacity) pending disposal.

(4) In determining whether paragraph (1) or (2) applies no account is to be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by an insurance company or a friendly society.

PART 5

Repeals and consequential amendments

Chevening Estate Act 1959

32. In section 2(**a**) of the Chevening Estate Act 1959(**b**) (exemption from income tax, etc)—

(a) in subsection (1), after paragraph (c) insert—

“(d) from income tax chargeable under regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013, in respect of income arising from and subject to those trusts.”, and

(b) in subsection (1A), omit paragraph (c).

TCGA 1992

33. In section 100(**c**) of TCGA 1992 (exemption for authorised unit trusts etc), omit subsections (2) to (2B).

Finance Act 2000

34. In paragraph 51(3)(**d**) of Schedule 22 to the Finance Act 2000(**e**) (tonnage tax: general exclusion of investment income)—

(a) omit paragraph (c) (together with the “or” at the end of it),

(b) in paragraph (d), for “that Part” substitute “Part 10 of that Act”, and

---

(**a**) Section 2 was amended by section 73(7) and Part I and Schedule 13 of Finance Act 1963 (c. 25), by section 4 of the Chevening Estate Act 1987 (c. 20), by sections 882(1) and 884 and paragraphs 355 and 356 of Part 2 of Schedule 1 and Schedule 3 of ITTOIA 2005 and by section 1027 and paragraph 241 of Part 2 of Schedule 1 of ITA 2007.

(**b**) 1959 c.49.

(**c**) Sections 100(2A) and (2B) were inserted by section 20 of Finance (No 2) Act 2005 (c. 22) and amended by section 146, paragraphs 72 to 74 of Schedule 16 and paragraphs 14 and 15 of Schedule 18 of FA 2012.

(**d**) Paragraph 51 was amended by section 1322 and paragraphs 462 and 470 of Schedule 1 of CTA 2009.

(**e**) 2000 c. 17.

(c) at the end of that paragraph insert "or

(e) regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

ITTOIA 2005

35.—(1) ITTOIA 2005 is amended as follows.

(2) In section 365(1) (overview of Part 4 of Act), omit paragraph (i).

(3) In section 397(6)(**a**) (tax credits for qualifying distributions of UK resident companies: UK residents and eligible non-UK residents), omit the entry relating to section 504(4) of ITA 2007.

(4) In section 397A(6)(**b**) (tax credits for qualifying distributions of non-UK resident companies: UK residents and eligible non-UK residents), omit the entry relating to section 504(4) of ITA 2007.

(5) In section 399(7)(**c**) (qualifying distributions received by persons not entitled to tax credits), omit the entry relating to section 504(4) of ITA 2007.

(6) In section 400(**d**) (non-qualifying distributions), omit subsection (7).

(7) In section 410(3)(**e**) (when stock dividend income arises), for "section 504 of that Act" substitute "regulation 12 of the Unauthorised Unit Trusts (Tax) Regulations 2013".

(8) Omit Chapter 10(**f**) of Part 4 (distributions from unauthorised unit trusts).

(9) In section 839(3)(**g**) (annual payments payable out of relevant foreign income)—

(a) in subsection (3), omit the entry relating to Chapter 10 of Part 4 of ITTOIA 2005,

(b) in that subsection, omit the "or" before the entry relating to Chapter 7 of Part 5 of that Act,

(c) in that subsection, after that entry insert "or

regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.", and

(d) in subsection (3A)(b), for the words from "Chapter 5" to the end substitute "Chapter 7 of Part 10 of that Act (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

ITA 2007

36.—(1) ITA 2007 is amended as follows.

(2) In section 2(9) (overview of Act), omit paragraph (e) (but not the "and" at the end of it).

(3) In section 14(2) (income charged at the dividend ordinary rate: other persons), omit the entry relating to section 504(3) of ITA 2007 (but not the "and" at the end of it).

(4) In section 24(2)(b)(**h**) (reliefs deductible at Step 2), for "section 505 (relief for trustees of unauthorised unit trust)" substitute "regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013".

(5) In section 462(**i**) (overview of Part 9 of Act), omit subsection (9).

(6) Omit sections 504 to 505(**j**) (unauthorised unit trusts).

(**a**) Section 397 was amended by section 1027 and paragraphs 492 and 515 of Schedule 1 of ITA 2007.

(**b**) Section 397A was inserted by section 34 and paragraphs 1 and 4 of Schedule of 12 FA 2008 and amended by section 40 and paragraphs 1 and 2 of Schedule 19 of FA 2009 and by section 374 and paragraphs 65 and 66 of Schedule 8 of TIOPA 2010.

(**c**) Section 399(7) was amended by section 1027 and paragraphs 492 and 516 of Schedule 1 of ITA 2007.

(**d**) Section 400 was amended by section 1027 and paragraphs 492 and 517 of Schedule 1 of ITA 2007.

(**e**) Section 410 was amended by section 1027 and paragraphs 492 and 519 of Schedule 1 of ITA 2007, by section 1177 and paragraphs 444 and 458 of Schedule 1 of CTA 210 and by section 30 of paragraph 21 of Schedule 6 of FA 2010.

(**f**) Chapter 10 was amended by section 1027 and paragraphs 492, 541 and 542 of Schedule 1 of ITA 2007.

(**g**) Section 839(3) was amended by section 1322 and paragraphs 587 and 637 of Schedule 1 of CTA 2009.

(**h**) Section 24(1)(b) was amended by section 84 and paragraph 27 of Schedule 27 of FA 2008.

(**i**) Section 462 was amended by section 31 and paragraph 3 of Schedule 14 of F(No 3)A 2010.

(**j**) Chapter 9 was amended by Article 5 of the Income Tax Act 2007 (Amendment) Order S.I. 2010/23, by sections 34 and 66 and paragraphs 23 and 25 of Schedule 12 of FA 2008.

(7) In section 532(2)(f) (special rules about charitable trusts etc: exemption for savings and investment income), for the words from "Chapter 10" to the end substitute "regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013 as received by a unit holder from an exempt unauthorised unit trust."

(8) In section 809CZB(1)(a)(**a**) (loan or credit transactions: certain payments treated as yearly interest), for the words from "Chapter 5" to the end substitute "Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

(9) In section 825(2) (meaning of "disregarded savings and investment income")—

(a) omit paragraph (d) (together with the "or" at the end of it), and

(b) at the end of paragraph (e) insert "or

(f) regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

(10) In section 847(5) (overview of Part), omit paragraph (b) (but not the "and" at the end of it).

(11) In section 848(**b**) (income tax deducted at source treated as income tax paid by recipient), omit subsection (4).

(12) In section 873(2)(a)(**c**) (discretionary or accumulation settlements), for "section 504" substitute "regulation 12 of the Unauthorised Unit Trusts (Tax) Regulations 2013".

(13) In section 899(4)(b)(ii)(**d**) (meaning of "qualifying annual payment"), for the words from "Chapter 5" to the end substitute "Chapter 7 of Part 10 of that Act (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

(14) In section 904(2)(b)(ii)(**e**) (annual payments for dividends or non-taxable consideration), for the words from "Chapter 5" to the end substitute "Chapter 7 of Part 10 of that Act (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

(15) Omit Chapter 13(**f**) of Part 15 (unauthorised unit trusts).

(16) In section 964(**g**) (collection through self-assessment), omit subsection (2).

(17) In section 975 (statements about deduction of income tax)—

(a) omit subsections (3) and (4),

(b) in subsection (6), omit "or (4)" and "or U (as the case may be)", and

(c) omit subsection (7).

(18) In section 1025(4) (meaning of "modified net income"), omit "and Chapter 13 of Part 15".

(19) In Schedule 2 (unauthorised unit trusts: calculation of trustees' income pool), omit paragraphs 167 and 168.

(20) In Schedule 4 (index of defined expressions), omit—

(a) the entry relating to deemed deduction (in Chapter 13 of Part 15),

(b) the entry relating to deemed income (in Chapter 13 of Part 15),

(c) the entry relating to deemed payment (in Chapter 13 of Part 15),

(d) the entry relating to foreign element (in Chapter 13 of Part 15), and

(e) the entry relating to the gross amount (in Chapter 13 of Part 15).

(**a**) Section 809CZB was inserted by section 369 and paragraphs 1 and 7 of Schedule 5 of TIOPA 2010.
(**b**) Section 848(4) was inserted by section 40 and paragraph 2 of Schedule 13 of FA 2010.
(**c**) Section 873 was amended by section 30 and paragraph 23 of Schedule 6 of FA 2010.
(**d**) Section 899 was amended by section 1322 and paragraphs 699 and 700 of Schedule 1 of CTA 2009 and by section 1177 and paragraph 554 of Schedule 1 of CTA 2010.
(**e**) Section 904 was amended by section 1322 and paragraphs 699 and 708 of Schedule 1 of CTA 2009.
(**f**) Chapter 13 was amended by sections 1322 and 1326 and paragraphs 699 and 713 of Schedule 1 of CTA 2009 and by section 40 and paragraphs 1 and 2 of Schedule 13 of FA 2010.
(**g**) Section 964 was amended by section 69 of FA 2008.

CTA 2009

37.—(1) CTA 2009 is amended as follows.

(2) In section 932(1)(**a**) (overview of Part), omit paragraph (d).

(3) Omit Chapter 5(**b**) of Part 10 (distributions from unauthorised unit trusts).

(4) In section 982(1)(a) and (2)(a)(**c**) (provisions which must be given priority over Part 10), omit "5 or".

CTA 2010

38.—(1) CTA 2010 is amended as follows.

(2) In section 1(3)(**d**) (overview of Act), omit paragraph (h).

(3) In section 486 (exemption for investment income and non-trading profits from loan relationships)—

(a) in subsection (2)(c), for the words from "Chapter 5" to the end substitute "regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013 as received by a unit holder from an exempt unauthorised unit trust.", and

(b) in subsection (4), for the words from "Part 10 of CTA 2009" to the end substitute "regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013 (see regulation 17 of those regulations as to provisions given priority over that regulation)."

(4) Omit Chapter 3 of Part 13 (unauthorised unit trusts).

(5) In section 778(1)(b) (certain payments treated as interest), for the words from "Chapter 5" to the end substitute "Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

FA 2012

39. In section 74(1) of FA 2012 (the I – E rules: meaning of "income")—

(a) omit paragraph (f),

(b) omit the "and" before paragraph (j), and

(c) after that paragraph insert ", and

(k) income of the company chargeable under regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013."

Consequential repeals of other enactments

40. In consequence of the amendments made by the above provisions of this Part, omit the following provisions—

(a) in ITA 2007, paragraphs 541 and 542 of Schedule 1,

(b) in FA 2008, paragraph 23 of Schedule 1 and paragraph 25 of Schedule 12,

(c) in CTA 2009, paragraph 713 of Schedule 1,

(d) in FA 2009, paragraph 13(a) of Schedule 19,

(e) in CTA 2010, paragraph 663 of Schedule 1, and

(f) in FA 2010, section 40 and Schedule 13.

(**a**) Section 932 was amended by section 34 and paragraphs 20 and 23 of Schedule 14 of FA 2009.
(**b**) Chapter 5 was amended by section 1177 and paragraph 66 of Schedule 1 of CTA 2010.
(**c**) Sections 982(1)(a) and 982(2)(a) was amended by section 34 and paragraphs 20 and 26 of Schedule 14 of FA 2009.
(**d**) Section 1 was amended by sections 30 and 46 and paragraphs 1 and 2 of Schedule 16 and paragraph 1 of Schedule 5 of FA 2010 and by section 27 and paragraphs 19 and 20 of Schedule 3 of FA 2011.

Authorised Investment Funds Regulations

41.—(1) In regulation 17(2)(**a**) of the Authorised Investment Funds Regulations (allocation of income), after "Part 4 of CTA 2009" insert "or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013".

Offshore Funds Regulations

42. In regulation 18(6) of the Offshore Funds Regulations (the charge to tax: further provisions)—

(a) omit the "or" at the end of paragraph (a), and

(b) after paragraph (b) insert "or

(c) the trustees of an exempt unauthorised unit trust to which regulations 22 or 23 of the Unauthorised Unit Trusts (Tax) Regulations 2013 applies."

Signed

Name
Name

[Date] 2013 — Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) Regulation 17 amended by SI 2009/2036.

1 Disclosure of tax avoidance schemes

(1) Part 7 of FA 2004 (disclosure of tax avoidance schemes) is amended as follows.

(2) After section 312A insert—

"312B Duty of client to provide information to promoter

(1) This section applies where a person who is a promoter in relation to notifiable arrangements has provided a person ("the client") with the information prescribed under section 312(2) (duty of promoter to notify client of reference number).

(2) The client must, within the prescribed period, provide the promoter with prescribed information relating to the client.

(3) The duty under subsection (2) is subject to any exceptions that may be prescribed."

(3) After section 313ZA insert—

"313ZB Enquiry following disclosure of client details

(1) This section applies where—

(a) a person who is a promoter in relation to notifiable arrangements has provided HMRC with information in relation to a person ("the client") under section 313ZA(3) (duty to provide client details), and

(b) HMRC suspect that a person other than the client is or is likely to be a party to the arrangements.

(2) HMRC may by written notice require the promoter to provide prescribed information in relation to any person other than the client who the promoter might reasonably be expected to know is or is likely to be a party to the arrangements.

(3) The promoter must comply with a requirement under or by virtue of subsection (2) within—

(a) the prescribed period, or

(b) such longer period as HMRC may direct."

(4) In section 98C(2) of TMA 1970 (notification under Part 7 of FA 2004)—

(a) after paragraph (da) insert—

"(daa) section 312B (duty of client to provide information to promoter),", and

(b) after paragraph (db) insert—

"(dc) section 313ZB (enquiry following disclosure of client details),".

EXPLANATORY NOTE

DISCLOSURE OF TAX AVOIDANCE SCHEMES

SUMMARY

1. This clause relates to the Disclosure of Tax Avoidance Schemes (DOTAS). In particular, it relates to the existing requirement for the promoter of a disclosed scheme to provide HM Revenue & Customs (HMRC) with information concerning clients (a client list). Firstly, it provides a power for HMRC to require the promoter to provide further information about parties to the scheme in cases where it suspects the reported clients are not the only parties to the scheme. Secondly, it introduces a requirement for the client to provide information to the promoter that will enable HMRC to identify the client. This clause also makes the client and promoter liable to a penalty for the failure to provide such information.

DETAILS OF THE CLAUSE

2. This clause inserts two new information provisions into Part 7 Finance Act 2004 (Part 7). Both contain powers for regulations to prescribe the detail of the information to be provided and the time limits for providing it.

3. Paragraph (2) inserts new section 312B into Part 7. It provides that the client of a promoter must provide that promoter with prescribed information that will enable HMRC to identify the client.

4. Paragraph (3) inserts new section 313ZB into Part 7. It provides that HMRC can, in cases where it suspects the client identified on a promoter client list is not the only party to the arrangements, require the promoter to provide further prescribed information about parties to the arrangements.

5. Paragraph (4) applies penalty provisions in section 98C Taxes Management to a failure by a promoter or client to comply with the new provisions.

BACKGROUND NOTE

6. The primary legislation for the DOTAS regime is mainly contained in Part 7 consisting of sections 306 to 319. Penalties for failure by a person to comply with a Part 7 requirement to provide information are provided for in section 98C of the Taxes Management Act 1970.

7. Part 7 requires certain persons, normally a scheme promoter, who is the designer and seller of the scheme, to provide information to HMRC about tax avoidance schemes falling within certain descriptions prescribed in regulations. This gives HMRC an early warning of new schemes, the opportunity to consider changes in the law to close any loopholes identified, or challenge the scheme where it does not agree with the tax effect claimed.

8. HMRC may issue a Scheme Reference Number (SRN) to the promoter of a disclosed scheme. The promoter is required to pass the SRN to each client it becomes aware of entering into the scheme. A client who is not the user is required to pass the SRN on to the user if it knows who that is. The user is required to report the SRN to HMRC, usually on the relevant return in which the tax liability or claim is affected by the scheme.

9. Promoters who issue SRNs to clients are also required to provide a quarterly return of these client names and addresses (i.e. a client list). This informs risk assessment of the scheme and allows HMRC to cross-check against the relevant returns for the scheme users.

10. Currently, the information that promoters are required to provide on client lists is the client's name and address. Frequently, this is insufficient in order for the user of the scheme to be matched to a person in HMRC's records (for example, the promoter's data may be out of date or the client may be merely an intermediary).

11. The clause provides for the client to be required to provide prescribed information to the promoter within prescribed time limits. That information will consist primarily of the client's unique tax reference number (UTR) or national insurance number (NINO). Regulations (under section 312ZA of Part 7) in turn require the promoter to include that information in a client list.

12. The clause also provides that where HMRC suspects that the client is not the user of the scheme, it may require the promoter to produce further information about users of the scheme and other parties involved in the selling and execution of the scheme.

13. Failure to provide information required or requested under the new powers will make the promoter or the promoter's client, as appropriate, liable to a penalty not exceeding £5,000.

14. This measure implements proposals consulted upon in *Lifting the Lid on Tax Avoidance*, which ran from 23 July to 15 October 2012.

15. If you have any questions about this change, or comments on the draft legislation, please contact Lesley Hamilton on 020 7147 2564 (email: lesley.hamilton@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No.

TAXES

The Tax Avoidance Schemes (Information) (Amendment) Regulations 2013

Made - - - -	*2013*
Laid before the House of Commons	*2013*
Coming into force - -	*2013*

The Commissioners for Her Majesty's Revenue and Customs in exercise of the powers conferred by sections 312B(2), 313ZA(3), 313ZB(2) and 313ZB(3)(a) of the Finance Act 2004(**a**), and having regard to the definition of "prescribed" in section 318(1)(**b**), make the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Tax Avoidance Schemes (Information) (Amendment) Regulations 2013 and come into force on *date* 2013.

Amendments to the Tax Avoidance Schemes (Information) Regulations 2012

2. The Tax Avoidance Schemes (Information) Regulations 2012(**c**) are amended as follows.

3. In paragraph (3) of regulation 2 after "In reckoning any period under regulation 5 (apart from paragraph (8)), or regulations" insert " 8A, 13A,".

4. After regulation 8 insert–

"**Prescribed information under section 312B: information and timing**

8A.—(1) For the purposes of section 312B (duty of client to provide information to promoter) –

(a) the prescribed period is 10 days from the later of the date that the client receives the reference number allocated by HMRC under section 311 to the arrangements, or the date the client first enters into a transaction which forms part of the notifiable arrangements; and

(b) the prescribed information is –

(**a**) 2004 c.12. Part 7 of this Act was amended by section 1(1) of the Finance Act 2013 (c.XX).

(**b**) The functions of the Commissioners of Inland Revenue ("the Board") were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) and (2) of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**c**) SI 2012/1836.

(i) any identification number allocated to the client by HMRC ("unique taxpayer number") and the client's national insurance number; or

(ii) confirmation that the client does not have a unique taxpayer number or a national insurance number, or has neither number.".

5. In paragraph (1)(b)(ii) of regulation 13 delete "name and address" and insert "name, address, any identification number allocated to the client by HMRC ("unique taxpayer number") and national insurance number".

6. After paragraph (1)(c) of regulation 13 insert –

"(d) in sub-paragraph (b)(ii) where the promoter is unable to provide any unique taxpayer number or national insurance number, they must confirm that either–

(i) the client has complied with section 312B and does not have a unique taxpayer number or national insurance number; or

(ii) the client has not complied with section 312B.".

7. After regulation 13 insert –

"**Prescribed information under section 313ZB: information and timing**

13A.—(1) For the purposes of section 313ZB (further information from promoters) –

(a) the prescribed period is 10 days from the date that the promoter receives the written notice under section 313ZB; and

(b) the prescribed information is –

(i) the name and address of any person to whom section 313ZB(2) applies (but only those who will, or are likely to, either sell the arrangements to another person, or achieve a tax advantage by implementing the arrangements);

(ii) any identification number allocated by HMRC to any person mentioned at sub-paragraph (b)(i); and

(iii) sufficient information, held by the promoter at the time of receipt of a written notice under section 313ZB(2), as might reasonably be expected to enable an officer of HMRC to comprehend the manner in which any person mentioned at sub-paragraph (b)(i) is involved in the arrangements.".

Name
Name

[Dated] Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Tax Avoidance Schemes (Information) Regulations 2012 (SI 2012/1836) (the "principal Regulations") in three key ways. These changes are made following amendment of Part 7 of Finance Act 2004 under the Finance Act 2013.

Firstly, regulation 4 prescribes what information a client must provide to a promoter under section 312B of the Finance Act 2004, and by when this information must be provided.

Secondly, regulations 5 and 6 introduce additional information which a promoter must include in a client list it provides to HMRC under section 313ZA of the Finance Act 2004.

Thirdly, regulation 7 prescribes what information a promoter must provide to HMRC on receipt of a written notice under section 313ZB of the Finance Act 2004 and by when this information must be provided.

Regulation 3 affects how time is counted for the purposes of the changes made by regulation 6.

A Tax Information and Impact Note covering this instrument was published on 11th December 2012 alongside clause j8003 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 TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT) REGULATIONS 2013

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Tax Avoidance Schemes (Information) Regulations 2012 (the "Information Regulations") to take account of new obligations introduced in Part 7 of Finance Act 2004 by Finance Act 2013.

2.2 They set out the additional information which promoters are required to include in the client lists they provide to HMRC. So that the promoter can comply with this new obligation, these Regulations specify that clients must provide this same information to promoters, and set a deadline for this.

2.3 They also specify what additional information promoters must provide to HMRC about users of the relevant tax avoidance scheme, and set a deadline for this. This applies where HMRC has requested additional information because it suspects that a client list does not provide the details of all users of the tax avoidance scheme.

3. Matters of special interest to the Statutory Instruments

3.1 None

4. Legislative Context

4.1 Part 7 of Finance Act ("FA") 2004 (sections 306 – 319) provides for the notification, or "disclosure", to HMRC of certain tax arrangements and proposals for those 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.

4.3 Section 311 provides that HMRC may allocate a reference number to a disclosed scheme and issue it to the person who disclosed it. 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 pass on a SRN when they are not the intended user of

the scheme (the person intended to obtain the tax advantage) but know the person who is. Section 313ZA requires a promoter to provide periodic information to HMRC (a 'client list') about clients to whom it has become obliged to issue a SRN to

4.4 Section 96C of the Taxes Management Act imposes penalties on persons who fail to comply with disclosure obligations without reasonable excuse.

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 Tax avoidance represents a significant part of the UK tax gap. It is not in itself illegal, but it involves using the tax law to obtain a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve no purpose other than to reduce tax liability. And it enables some taxpayers to gain an unfair advantage, undermining confidence in the tax system.

7.2 HMRC's anti avoidance strategy has three core elements:

- Preventing avoidance at the outset where possible
- Detecting it early where it persists
- Countering it effectively by challenge by HMRC

7.3 The disclosure regime is a key component of the detection element of the strategy. It also informs counteraction and contributes to preventing avoidance by affecting the economics of the promotion of avoidance schemes.

7.4 The regime requires promoters to provide HMRC with a quarterly list of clients who have implemented a disclosed scheme. This provides HMRC with early notification of the scale of the potential tax at risk and allows a cross-reference to the client's relevant tax record. However, in many instances the information currently provided by promoters is insufficient to correctly match the clients to HMRC's taxpayer records.

7.5 These new regulations will require clients to provide their Unique Taxpayer Reference Number ("UTR") and/or National Insurance Number ("NINO") to the

promoter. The promoter will then be required to provide this information on the client lists so that HMRC can more accurately match these details with taxpayer records.

7.6 The regulations will also introduce a new information power so that where HMRC suspects that the client on the client list is not the person who is, or who is expected to be, the user of the scheme, HMRC are able to require the promoter to provide certain additional information.

8. Consultation outcome

8.1 The Government published a consultation document on 23 July 2012 entitled 'Lifting the Lid on Tax Avoidance Schemes'. That consultation contained a number of different proposals to improve the information available to HMRC and the public about tax avoidance schemes. These regulations take forward the DOTAS elements outlined in that consultation which seek to improve the information HMRC receives about users of disclosed schemes.

9. Guidance

9.1 Guidance will be published in advance of this instrument coming into force.

10. Impact

10.1 The impact on business, including civil society organisations is expected to be negligible. HMRC receives disclosures of schemes from between 50 and 100 promoters (businesses) each year. These regulations are not expected to increase that number. They will impose some additional reporting obligations on those firms who are required to disclose and require those firms' clients who implement schemes to provide their specific, individual reference numbers to the firms.

10.2 The impact on the public sector is nil.

10.3 A Taxes Impact Assessment is published alongside this Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to 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

Lesley Hamilton at the Anti-Avoidance Group Tel: 020 7147 2564 or email: Lesley.Hamilton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Abolition of income tax relief for patent royalties

(1) Chapter 4 of Part 8 of ITA 2007 (reliefs: annual payments and patent royalties) is amended in accordance with subsections (2) and (3).

(2) In section 448 (relief for individuals), in subsection (1)(b) omit "or 903(5)" and "and patent royalties".

(3) In section 449 (relief for other persons), in subsection (1)(b) omit "or 903(6)" and "and patent royalties".

(4) Accordingly, that Act is amended as follows—

- (a) in section 2 (overview of Act), in subsection (8)(c) omit "and patent royalties",
- (b) in section 24 (reliefs deductible at Step 2), in subsection (1)(b) omit "and patent royalties", and
- (c) in the heading for Chapter 4 of Part 8 of that Act omit "AND PATENT ROYALTIES".

(5) The amendments made by this section have effect in relation to payments made on or after 5 December 2012.

EXPLANATORY NOTE

ABOLITION OF INCOME TAX RELIEF FOR PATENT ROYALTIES

SUMMARY

1. This clause abolishes income tax relief for certain payments of patent royalties.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that subsections (2) and (3) amend Chapter 4 of Part 8 of Income Tax Act 2007 (ITA) which provides income tax relief for payments of patent royalties.

3. Subsection 2 amends section 448(1)(b) ITA by removing the reference to section 903(5) ITA and the words ‘and patent royalties’. Section 903(5) ITA contains the requirement for individuals to deduct an amount representing basic rate income tax from payments of patent royalties. By removing these references the subsection has the effect of abolishing the relief for payments of patent royalties made by individuals.

4. Subsection 3 similarly amends section 449(1)(b) ITA by removing the reference to section 903(6) and the words ‘and patent royalties’. Section 903(6) contains the requirement for persons other than individuals to deduct an amount representing basic rate income tax from payments of patent royalties. By removing these references the subsection has the effect of abolishing the relief for payments of patent royalties made by other persons such as trustees, personal representatives and non-resident companies within the charge to income tax.

5. Subsection 4 makes consequential amendments to ITA to remove redundant references to patent royalties.

6. Subsection 5 commences the provision from 5 December 2012. Relief will therefore not be available for payments of patent royalties made on or after that date.

BACKGROUND

7. The relief which is abolished relates only to payments of patent royalties which are not deductible in calculating income from any source, such as trading. Where patent royalties are deductible in calculating income from any source they will continue to be relieved in that way.

8. The relief is being abolished to counter known avoidance and to simplify the income tax code.

9. If you have any questions about this change, or comments on the legislation, please contact Judith Diamond on 020 7147 3422 (email: judith.diamond@hmrc.gsi.gov.uk).

1 Bank levies

(1) Schedule 19 to FA 2011 (the Bank Levy) is amended as follows.

(2) In paragraph 46 (bank levy to be ignored for purposes of corporation tax and income tax), in paragraph (b), after "paid" insert "(directly or indirectly)".

(3) In Part 7 (double taxation relief), after paragraph 69 insert—

"Foreign levies to be ignored for purposes of income tax or corporation tax

69A (1) In calculating profits or losses for the purposes of income tax or corporation tax—

(a) no deduction is allowed in respect of any tax which is imposed by the law of a territory outside the United Kingdom and corresponds to the bank levy, and

(b) no account is to be taken of any amount which is paid (directly or indirectly) by a member of a group to another member for the purposes of meeting or reimbursing the cost of such a tax charged in relation to the group.

(2) Paragraph 66(3) applies for the purposes of sub-paragraph (1) as it applies for the purposes of paragraph 66(2)."

(4) Accordingly—

(a) in paragraph 3, after "double taxation relief" insert "and with the deduction of foreign levies for the purposes of corporation tax and income tax", and

(b) in the heading for Part 7, after "RELIEF" insert "ETC"

(5) The amendments made by this section have effect in relation to any period of account beginning on or after 1 January 2013.

(6) The amendments made by subsections (3) and (4) also have effect in relation to any period of account beginning before that date, but only if, and to the extent that, the tax is the subject of a claim for relief under paragraph 66 or 67 of Schedule 19 to FA 2011 (bank levy: double taxation relief) made on or after 5 December 2012.

(7) For the purposes of subsections (5) and (6), a period of account beginning before, and ending on or after 1 January 2013 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate periods of account.

EXPLANATORY NOTE

BANK LEVIES

SUMMARY

1. This clause makes a number of amendments to Schedule 19 to the Finance Act 2011 (FA 2011). It puts beyond doubt that recharges of the Bank Levy are not an allowable deduction for the purposes of income tax and corporation tax whether recharged directly or via a third party. It also provides that foreign bank levies are not an allowable deduction for the purposes of income tax or corporation tax.

DETAILS OF THE CLAUSE

2. Subsection (2) amends paragraph 46, Schedule 19 of FA 2011to make it clear that an indirect recharge of the Bank Levy is also not an allowable deduction for the purposes of income tax and corporation tax.

3. Subsection (3) inserts new paragraph 69A into Part 7, Schedule 19 of FA 2011.

4. New paragraph 69A(1) provides that no deduction will be allowed for the purposes of income tax or corporation tax where a foreign bank levy corresponds to the Bank Levy. It also provides that any amounts paid or received in respect of meeting or reimbursing a corresponding foreign bank levy are not taken into account in determining the profit or loss for income tax or corporation tax purposes of any member of the relevant group.

5. New paragraph 69A(2) makes it clear that the same criteria are used to determine whether foreign bank levy corresponds to the Bank Levy as are used for double taxation relief.

6. Subsection (4) makes consequential amendments to paragraph 3, Schedule 19 and to the title of Chapter 7, Schedule 19 of FA 2011 following the extension of the scope of Chapter 7.

7. Subsection (5) provides that the provisions introduced by the clause will have effect for any periods of account commencing on or after 1 January 2013.

8. Subsection (6) provides that subsections (3) and (4) will apply to periods beginning before 1 January 2013 in respect of any

corresponding foreign bank levy that is the subject of a claim for double taxation relief made on or after 5 December 2012.

9. Subsection (7) provides that where a company has a period of account straddling the 1 January 2013 then it will be treated as if it had two periods of account. One for a period ending on 31 December 2012 and one for a period beginning on 1 January 2013.

BACKGROUND

10. Part 7 of Schedule 19 to FA 2011 provides for double taxation relief to be given where a bank or banking group is doubly charged to the UK bank levy and an equivalent foreign levy.

11. There is a general prohibition which applies to income tax, corporation tax or capital gains tax preventing further relief by way of a deduction against profits or gains where credit relief is given to alleviate double taxation. This clause aligns the treatment of amounts paid either directly or indirectly in respect of foreign bank levies with this general prohibition.

12. The clause also extends the principle that a bank levy is not an allowable deduction to foreign bank levies by putting beyond doubt that such levies, whether paid directly or by way of a recharge, are not an allowable deduction for the purposes of income tax and corporation tax.

13. If you have any questions about this change, or comments on the draft legislation, please contact Anthony Fawcett on 020 7147 0654 (email: anthony.c.fawcett@hmrc.gsi.gov.uk or Andrew Parkes on 020 7147 3427 (email andrew.parkes@hmrc.gsi.gov.uk).

1 Corporation tax: tax mismatch schemes

(1) Schedule 1 contains provision about tax mismatch schemes.

(2) The amendments made by that Schedule have effect in relation to schemes entered into at any time (including any time before the commencement date).

(3) But section 938O in Part 21BA of CTA 2010 (as inserted by paragraph 3 of that Schedule) does not apply to—

(a) scheme losses or profits that relate to a time before the commencement date, or

(b) scheme profits that relate to a time on or after that date but are made in relation to a scheme entered into before that date.

(4) In this section "the commencement date" means 5 December 2012.

SCHEDULE 1

Section 1

TAX MISMATCH SCHEMES

1 CTA 2010 is amended as set out in paragraphs 2 to 4.

2 In section 1(4) (overview of Act) after paragraph (j) insert—
"(ja) tax mismatch schemes (see Part 21BA),".

3 After Part 21B insert—

"PART 21BA

TAX MISMATCH SCHEMES

938O Losses and profits from tax mismatch scheme to be disregarded

(1) This section applies to a company that is (at any time) a party to a tax mismatch scheme.

(2) No scheme loss or profit made by the company in any accounting period in relation to the scheme is to be brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

(3) An amount that would, apart from this section, be brought into account for the purposes of Part 5 or 7 of that Act as respects any matter—
(a) is treated, for the purposes of section 464(1) or (as the case may be) 699(1) of that Act (priority of Part 5 or 7 for corporation tax purposes) as if it were so brought into account, and
(b) accordingly, may not be brought into account for any other corporation tax purposes as respects that matter.

938P Meaning of "tax mismatch scheme"

(1) A scheme is a tax mismatch scheme if condition A or B is met.

(2) Condition A is that, at the time the scheme is entered into, there is no practical likelihood that the scheme will fail to secure a relevant tax advantage of £2 million or more.

(3) The Treasury may by order substitute a higher amount for the amount for the time being specified in subsection (2).

(4) Any such substitution is to have effect in relation to schemes entered into on or after the day on which the order comes into force.

(5) Condition B is that—
(a) the purpose, or one of the main purposes, of the company in entering into the scheme is to obtain the chance of securing a relevant tax advantage (of any amount), and

(b) at the time the scheme is entered into—
   (i) there is no chance that the scheme will secure a relevant tax disadvantage, or
   (ii) there is such a chance, but the expected value of the scheme is nevertheless a positive amount.

(6) If, at the time the company enters into the scheme, there are chances that the scheme would, if carried out, secure different relevant tax advantages or disadvantages in different circumstances, the amounts and probabilities of each must be taken into account in determining the expected value of the scheme.

(7) In determining whether condition A or B is met, it is to be assumed that the parties to the scheme carry it out.

(8) Where, at the time the scheme is entered into, the length of the scheme period is uncertain, condition A or B is met if it would be met on any reasonable assumption as to the length of the scheme period.

(9) In determining whether condition A or B is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

938Q Meaning of "scheme loss" and "scheme profit"

(1) A loss or profit made by a company in an accounting period is a "scheme loss" or "scheme profit" in relation to a tax mismatch scheme if the loss or profit—
   (a) arises from a transaction, or series of transactions, that forms part of the scheme,
   (b) is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009, and
   (c) meets the first or second asymmetry condition.

(2) The first asymmetry condition is that the loss or profit affects the amount of any relevant tax advantage secured by the scheme.

(3) Where, at the end of the accounting period—
   (a) it is not certain whether the scheme will secure a relevant tax advantage, or
   (b) it is not certain what the amount of the relevant tax advantage secured by the scheme will be,

   a loss or profit is to be treated as meeting the first asymmetry condition if, at that time, there is a chance that the scheme will secure a relevant tax advantage and that the loss or profit will affect its amount.

(4) Where—
   (a) a loss or profit meets the conditions in subsection (1)(a) and (b), and
   (b) a part, but not the whole, of the loss or profit meets the first asymmetry condition,

   only that part of the loss or profit is a "scheme loss" or "scheme profit".

(5) The second asymmetry condition is that the loss or profit—

(a) does not meet the first asymmetry condition, but

(b) arises from a transaction, or series of transactions, that might (if events had turned out differently) have given rise to a loss or profit that would have done so.

(6) References in this section to a loss or profit include a loss or profit arising in respect of interest or expenses.

(7) In determining whether the condition in subsection (1)(b) or the first or second asymmetry condition is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

938R Meaning of "relevant tax advantage" etc and "the scheme period"

(1) In this Part "relevant tax advantage", in relation to a scheme, means an economic profit that—

(a) is made by the company over the scheme period,

(b) meets the condition in subsection (3), and

(c) is not negligible.

(2) In this Part "relevant tax disadvantage", in relation to a scheme, means an economic loss that—

(a) is made by the company over the scheme period,

(b) meets the condition in subsection (3), and

(c) is not negligible.

(3) The condition is that the economic profit or loss arises as a result of asymmetries in the way that the company brings, or does not bring, amounts into account as debits and credits for the purposes of Part 5 or 7 of CTA 2009.

(4) A reference in this section to asymmetries includes, in particular—

(a) asymmetries relating to quantification, and

(b) asymmetries relating to timing.

(5) In this section—

(a) a reference to an economic profit includes an increase in an economic profit and a decrease in an economic loss, and

(b) a reference to an economic loss includes an increase in an economic loss and a decrease in an economic profit.

(6) In this Part "the scheme period", in relation to a scheme, means the period during which the scheme has effect.

938S Meaning of references to economic profits and losses

(1) An economic profit or loss is to be computed for the purposes of this Part taking into account, in particular—

(a) profits and losses made as a result of the operation of the Corporation Tax Acts, and

(b) any adjustments required to reflect the time value of money.

(2) In determining for the purposes of this Part the amount of an economic profit or loss made by the company over the scheme period, profits and losses made by the company are to be taken into account only to the extent that they are attributable to times at which the company is a party to the scheme.

938T Tax capacity assumption

(1) This section applies for the purpose of determining whether a scheme will, or might, secure a relevant tax advantage.

(2) The economic profits and losses made by the company over the scheme period must be calculated on the assumption that the company—

(a) obtains the full tax benefit of any loss made by the company in relation to a loan relationship or a derivative contract during the period, and

(b) incurs the full tax cost of any profit made by the company in relation to a loan relationship or a derivative contract during the period.

(3) The "full tax benefit" of a loss is the reduction in the liability of the company to corporation tax that would result if—

(a) the loss were brought into account as a debit or as a reduction in a credit for the purposes of Part 5 or 7 of CTA 2009, and

(b) the company's profits chargeable to corporation tax, disregarding the loss, were equal to the debit (or the reduction in the credit) determined by reference to the loss.

(4) The "full tax cost" of a profit is the increase in the liability of the company to corporation tax that would result if—

(a) the profit were brought into account as a credit or as a reduction in a debit for the purposes of Part 5 or 7 of CTA 2009, and

(b) the company's profits chargeable to corporation tax, disregarding the profit, were nil.

938U Meaning of "scheme"

In this Part "scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

938V Priority

For the purposes of this Part the following provisions are to be treated as of no effect—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);

(b) section 690 of that Act (derivative contracts for unallowable purposes);

(c) Part 6 of TIOPA 2010 (tax arbitrage);

(d) Part 7 of that Act (tax treatment of financing costs and income)."

4 In Schedule 4 (index of defined expressions) at the appropriate places insert—

"economic loss (in Part 21BA)	section 938S"

“economic profit (in Part 21BA)	section 938S”
“relevant tax advantage (in Part 21BA)	section 938R”
“relevant tax disadvantage (in Part 21BA)	section 938R”
“scheme (in Part 21BA)	section 938U”
“scheme loss (in Part 21BA)	section 938Q”
“the scheme period (in Part 21BA)	section 938R”
“scheme profit (in Part 21BA)	section 938Q”.
“a tax mismatch scheme (in Part 21BA)	section 938P”

5 In section 231(8) of TIOPA 2010 (tax arbitrage: overview) for the words from “section” to the end substitute “sections 938N and 938V of CTA 2010 (this Part treated as of no effect for the purposes of Parts 21B and 21BA of CTA 2010 (group mismatch and tax mismatch schemes)).”

EXPLANATORY NOTE

TAX MISMATCH SCHEMES

SUMMARY

1. This clause and Schedule respond to tax avoidance schemes involving a tax mismatch. Tax mismatch schemes exploit the tax treatment of loan relationships and derivative contracts in the Corporation Tax Acts 2009 and 2010. The amendments block schemes where a company benefits from a tax advantage by creating a mismatch using a loan relationship or derivative. The changes apply, although they are not limited to, schemes where a company enters a loan relationship with a partnership of which it is a member and a loan is accounted for differently by the company and the partnership to give a tax advantage.

DETAILS OF THE CLAUSE

2. Subsection 1(1) introduces the Schedule which makes provisions for tax mismatch schemes.

3. Subsections 1(2) and 1(3) are commencement provisions.

4. Subsection 1(2) provides that the amendments made by the Schedule have effect in relation to schemes entered into at any time, including a time before the commencement date.

5. Subsection 1(3) provides that section 938O does not apply to scheme losses or profits that relate to a time before the commencement date, or to scheme profits that relate to a time on or after that date, but are made in relation to a scheme entered into before that date.

6. Subsection 1(4) gives the commencement date, which is 5 December 2012.

DETAILS OF THE SECTION

7. This Schedule_inserts a new Part 21BA into Corporation Tax Act 2010 (CTA 2010). Part 21BA comprises new sections 938O to 938V.

8. New section 938O sets out the operative rule if a company is at any time in an accounting period party to a tax mismatch scheme (TMS). “Scheme losses and profits” made by the company in that period are not to be brought into account as debits or credits for the purposes of

Part 5 (loan relationships) and Part 7 (derivative contracts) of CTA 2009.

9. New section 938P defines a TMS.

10. New subsection (1) provides that a scheme is a TMS if either of two Conditions is met.

11. Subsection (2) sets out the first condition (Condition A) is that when the company enters into the scheme there is no practical likelihood that the scheme will fail to result in a "relevant tax advantage" (RTA) of £2m or more. An RTA is defined in section 938R. The tests under condition A and B are applied to the position that exists at the outset of the scheme.

12. Subsection (5) sets out the second condition (Condition B) which is that the purpose, or one of the main purposes, of entering into the scheme is to obtain the chance of securing an RTA. The tests under condition A and B are applied to the position that exists at the outset of the scheme.

13. New section 938Q defines "scheme loss" and "scheme profit" as a loss or profit made by a company in an accounting period in relation to a tax mismatch scheme (as defined in section 938P) if the loss or profit:

- arises from a transaction, or series of transactions, that forms part of the scheme;
- is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009; and
- meets either of the asymmetry conditions in new subsections (2) or (5)..

14. New subsection (2) defines the asymmetry condition as that where the loss or profit affects the amount of any RTA secured by the scheme.

15. New subsection (4) applies where some of the loss or profit affects, or may affect, the amount of any RTA. In such a case just the part of the loss or profit that does or may affect the RTA is treated as a scheme loss or profit.

16. New subsection (5) applies the second asymmetry condition, if it becomes clear that a scheme will not (despite the fact that it is a TMS) produce an RTA.

17. New section 938R defines the term "relevant tax advantage" as an "economic profit" (see section 938S) which is not negligible that is

made by the company over the whole scheme period. Additionally the economic profit arises because of asymmetries in the way that the company brings, or does not bring, amounts into account as debits and credits under the loan relationships or derivative contracts rules.

18. New section 938R(4) defines "Asymmetries" to include asymmetries in timing and quantification.

19. New subsection (5) makes clear that an economic profit includes an increase in an economic profit and a decrease in an economic loss [no, this proposed addition is misleading].

20. New subsection (6) defines scheme period to mean the period during which the scheme has effect.

21. New section 938S provides the meaning of references to economic profits and losses. An economic profit or loss takes into account profits or losses made as a result of the operation of the Corporation Tax Acts and any adjustments required to reflect the time value of money. In determining the amount of an economic profit or loss made by the company over the scheme period, amounts are only to be taken into account to the extent that they relate to the times when the company is party to the scheme.

22. New section 938T makes clear that in determining whether a scheme is a TMS it is assumed that the company obtains the full tax benefit of any loss made in relation to a loan relationship or derivative contract over the scheme period. Similarly it is assumed that the company incurs the full tax cost of any profit made from a loan or derivative over the scheme period. This ensures that the tax advantage must arise as a result of structurally asymmetrical tax treatment of the transactions and not because of circumstantial matters such as losses that might be available to shelter profits from the loan or derivative.

23. New section 938U defines "scheme" as including all arrangements, schemes and understandings of any type whether or not legally enforceable, whether involving a single transaction or series of transactions.

24. New section 938V is a scope or boundary provision. It ensures that in determining whether any amounts are brought into account apart from the tax mismatch rules (and so might give rise to an RTA), existing unallowable purpose, tax arbitrage, and tax treatment of financing costs and income rules are to be treated as of no effect. It follows that the tax mismatch rules apply in priority to those rules.

25. Paragraph 4 introduces references to the new tax mismatch legislation in Schedule 4 of CTA 2009.

26. Paragraph 5 makes a consequential amendment to the tax arbitrage legislation in section 231(8) of the Taxation (International and Other Provisions) Act 2010.

BACKGROUND NOTE

27. This clause and Schedule close a tax avoidance scheme in the area of loan relationships and derivatives.

28. The schemes targeted are those which aim to defeat the group mismatch legislation in part 21B of CTA 2010. That legislation prevents any tax advantage arising as a result of asymmetries arising between different companies in a group. An asymmetry may involve, for example, different members of a group of companies bringing different amounts into account in respect of the same loan or derivative. The new legislation will similarly prevent tax advantages from arising from asymmetries in other circumstances, not necessarily involving a group of companies, for example where a company brings a loan into account in one way, and a partnership of which the company is a member brings the loan into account differently.

1 Derivative contracts: property total return swaps etc

(1) Chapter 7 of Part 7 of CTA 2009 (chargeable gains arising in relation to derivative contracts) is amended as follows.

(2) In section 643 (contracts relating to land or certain tangible movable property)—

(a) in subsection (1), for "and C" substitute ", C and D", and

(b) after subsection (4) insert—

"(4A) Condition D is that no two or more of the parties to the derivative contract are connected persons."

(3) In section 650 (property based total return swaps)—

(a) in subsection (1), for "to F" substitute "to H", and

(b) after subsection (7) insert—

"(8) Condition G is that no two or more of the parties to the derivative contract are connected persons.

(9) Condition H is that the securing of a tax advantage is neither the main purpose, nor one of the main purposes, for which the company is a party to the derivative contract.

"Tax advantage" has the meaning given by section 1139 of CTA 2010."

(4) In section 659 (meaning of "relevant credits" and "relevant debits"), after subsection (4) insert—

"(4A) But if the derivative contract has effect such that the return arising from the contract, so far as calculated by reference to that index, is calculated by reference to a percentage ("the capped percentage") which is closer to zero than the full percentage change in that index over that period (or which is zero even though there has been a change in that index), for the purposes of subsection (4) R% is the capped percentage."

(5) The amendments made by this section have effect in relation to accounting periods beginning on or after 5 December 2012.

(6) But, for the purposes of subsection (5), an accounting period beginning before, and ending on or after, 5 December 2012 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

EXPLANATORY NOTE

PROPERTY RETURN SWAPS

SUMMARY

1. This clause responds to tax avoidance schemes involving property return swaps. Property total return swaps utilise the legislation in Corporation Tax Act 2009 (CTA 2009) which applies to swap contracts relating to land or to an index over the value of land. This clause amends the legislation to prevent these provisions from being used to produce losses which are unrelated to real exposure to movements in property prices.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that Chapter 7 of part 7 of CTA 2009 is amended.

3. Subsection (2) inserts a new subsection 4A into section 643 of CTA 2009 and substitutes "and C" with "C and D" in subsection (1). Where section 643 and related provisions apply, the return from certain derivative contracts, relating to land or tangible movable property other than commodities is charged to corporation tax on chargeable gains.

4. Subsection 643(4A) introduces a new condition D, so that derivative contracts will only fall within section 643 if condition D is met.

5. Subsection (3) inserts new subsections (8) and (9) into section 650 of CTA 2009. Where that section and related provisions apply, the return from certain contracts involving a capital value index over land, and also involving interest rates, is charged to corporation tax on chargeable gains.

6. Subsection 650 (8) introduces a new condition G which must be met for section 650 to apply to a derivative contract.

7. Subsection 650 (9) introduces a new condition H which must be met for section 650 to apply to a derivative contract.

8. Subsection (4) adds a new subsection 4A to section 659. Section 659 includes a formula in subsection (4) which sets how to calculate credits or debits which are to be charged to corporation tax on chargeable gains.

9. New subsection 659(4A) provides that where a derivative contract has the effect that the return arising from a contract is lower (i.e. closer to zero, or zero) than the actual change in the index over that period, then for the purposes of the formula in section 659(4), the figure for R% is the actual return, and not the movement in the index.

10. Subsections (5) and (6) provide for commencement of the amendments to Chapter 7 of Part 7. They provide that the amendments have effect in relation to accounting periods beginning on or after 5 December 2012. An accounting period beginning before, and ending on or after 5 December 2012, is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods, for the purposes of the amendments provided for by subsection (1).

BACKGROUND NOTE

11. The amendments made by this clause prevent use of the property total return swaps legislation to obtain tax advantages. In many circumstances, returns from swaps entered into by companies are taxed or relieved as income. However in some circumstances where the swap has an underlying subject matter of land, or an index of changes in the value of land, a return can be taxed or relieved as capital.

12. This legislation is being used within groups of companies, in effect to convert capital losses into income losses, by entering into swaps between different members of the group, although overall the swap does not result in the group getting any net exposure to property. The new legislation will rule out any capital return where swaps are intra-group.

13. The formula used in the legislation is also being exploited in an attempt to generate capital gains which exceed those actually arising from the swap. The legislation will limit any capital return to the actual return under the contract.

1 Manufactured payments: stock lending arrangements

(1) Section 596 of ITA 2007 (deemed manufactured payments: stock lending arrangements) is amended as set out in subsections (2) and (3).

(2) For subsection (1) substitute—

“(1) This section applies if conditions A to C are met.

(1A) Condition A is that there is a stock lending arrangement in respect of securities.

(1B) Condition B is that a dividend or interest on the securities is paid, as a result of the arrangement, to a person other than the person who is the lender under the arrangement.

(1C) Condition C is that—

(a) no provision is made for securing that the lender receives payments representative of the dividend or interest, or

(b) provision is made for securing that the lender receives—

(i) payments representative of the dividend or interest, and

(ii) another benefit in respect of the dividend or interest (including the release of the whole or part of any liability to pay an amount).”

(3) In subsection (2) for paragraph (a) substitute—

“(a) were required, under the arrangement—

(i) in a case falling within paragraph (a) of subsection (1C), to pay the lender an amount representative of the dividend or interest, or

(ii) in a case falling within paragraph (b) of that subsection, to pay the lender an amount representative of the dividend or interest but deducting from that amount any payment mentioned in sub-paragraph (i) of that paragraph on which tax has been, or is to be, charged, and”.

(4) Section 812 of CTA 2010 (deemed manufactured payments: stock lending arrangements) is amended as set out in subsections (5) to (7).

(5) For subsection (1) substitute—

“(1) This section applies if conditions A to C are met.

(1A) Condition A is that there is a stock lending arrangement in respect of securities.

(1B) Condition B is that a dividend or interest on the securities is paid, as a result of the arrangement, to a person other than the person who is the lender under the arrangement.

(1C) Condition C is that—

(a) no provision is made for securing that the lender receives payments representative of the dividend or interest, or

(b) provision is made for securing that the lender receives—

(i) payments representative of the dividend or interest, and

(ii) another benefit in respect of the dividend or interest (including the release of the whole or part of any liability to pay an amount).”

(6) In subsection (2) for paragraph (a) substitute—

“(a) were required, under the arrangement—

(i) in a case falling within paragraph (a) of subsection (1C), to pay the lender an amount representative of the dividend or interest, or

(ii) in a case falling within paragraph (b) of that subsection, to pay the lender an amount representative of the dividend or interest but deducting from that amount any payment mentioned in sub-paragraph (i) of that paragraph on which tax has been, or is to be, charged, and”.

(7) After subsection (6) insert—

“(7) This section has effect regardless of section 358 of CTA 2009 (exclusion of credits on release of connected companies debts) or any other provision of Part 5 of that Act (loan relationships) which prevents a credit from being brought into account.”

(8) The amendments made by this section have effect in relation to cases in which a dividend or interest is paid, or is treated as paid, on or after 5 December 2012.

EXPLANATORY NOTE

MANUFACTURED PAYMENTS: STOCK LENDING ARRANGEMENTS

SUMMARY

1. This clause amends the Income Tax Act 2007 (ITA 2007) and the Corporation Tax Act 2010 (CTA 2010) to respond to tax avoidance schemes involving stock lending arrangements. These amendments block schemes where part of a manufactured payment is paid in the form of an intra-group loan write-off, or other non-taxable form, to avoid tax charges which would otherwise arise on the manufactured payment.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 596 of ITA 2007 as per subsections (2) and (3).

3. Subsection (2) substitutes subsection 1 of section 596 with a new subsection 596(1), which provides that section 596 applies if conditions A, B and C are met.

4. New subsections (1A) and (1B) set out conditions A and B which restate the previous conditions set out at section 596(1)(a) and (b) respectively.

5. New subsection (1C) sets out new condition C adds to the circumstances in which section 596 will apply by expanding the condition previously set out in section 596(1)(c). Subsection (1C) sets out the two different sets of circumstances for Condition C. The first is that no provision is made for making payments representative of the dividend or interest to the lender (subsection (1C)(a)). The second circumstance is that provision is made both for making payments representative of the dividend or interest (Section 1C (b)(i)) and another benefit, including the release of any liability to pay an amount (Section 1C (b)(ii)).

6. Subsection (3) replaces subsection (2)(a) from section 596 ITA 2007 with a new subsection 596 (2)(a).

7. New subsection 596(2)(a) sets out the consequences where Condition C is met because the case falls within either 596(1C)(a) or (b).

8. New subsection (2a)(i) provides that in a case falling within paragraph (1C)(a), the rules about manufactured payments apply as if

the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest.

9. New subsection (2a)(ii) provides that in a case falling within subsection (1C)(b), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest. This is after adjusting for any amount paid and falling within subsection (1C)(b)(i).

10. Subsection (4) provides for similar amendments to be made to section 812 CTA 2010 through subsections (5) to (7).

11. Subsection (5) substitutes subsection 1 of section 812 with a new subsection 812(1) which provides that section 812 applies if conditions A to C are met. Conditions A and B restate the previous conditions set out at section 812(1)(a) and (b) respectively.

12. Subsection (1C) provides a new condition C that adds to the circumstances in which section 812 will apply by expanding the condition previously set out in section 812(1)(c). Condition C is met in two different sets of circumstances, which are either that no provision is made for making payments representative of the dividend or interest to the lender (subsection (1C)(a) or that provision is made both for making payments representative of the dividend or interest (subsection 1C(b)(i)) and another benefit, including the release of any liability to pay an amount (subsection 1C(b)(ii)).

13. Subsection (6) replaces subsection (2)(a) from section 812 CTA 2010 with a new subsection 812(2)(a).

14. New subsection 812(2)(a) sets out the consequences where either Condition C (a) or Condition C (b) because the case falls within either section 812(1C)(a) or (b).

15. New subsection (2a)(i) provides that in a case falling within paragraph (1C)(a), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest.

16. New subsection (2a)(ii) provides that in a case falling within subsection (1C)(b), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest, but after adjusting for any amount paid and falling within subsection (1C)(b)(i).

17. Subsection (8) is a commencement provision. It provides for the amendments made by this section to come into effect on or after 5 December 2012.

BACKGROUND NOTE

18. These changes close a tax avoidance scheme in the area of stocklending arrangements.

19. The scheme attempts to prevent a tax charge arising when a financial trader is involved in stock lending. In those circumstances a manufactured payment made to represent the dividend or interest arising on the securities which have been lent would be taxed as trading income.

20. Section 596 ITA 2007 and section 812 CTA 2010 apply where there is no provision for a manufactured payment to be paid to represent the dividends or interest received on the securities. In those circumstances, section 596 or section 812 apply so that a payment is deemed to be made to the lender, and the stock lender is taxed accordingly. The tax position of the borrower is not affected.

21. The scheme attempts to avoid that charge by arranging for some manufactured payment to be made, but also for part of the payment representing the dividend to be received in a non-taxable form. The new legislation will provide that when any benefit is received representing the dividend, then it will give rise to a charge on the stock lender as though an actual manufactured payment had been received.

1 Self assessment: withdrawal of notice to file etc

(1) Schedule 1 contains provision for, and in connection with, withdrawing a notice under section 8, 8A or 12AA of TMA 1970 and cancelling liability to a penalty under Schedule 55 to FA 2009.

(2) The amendments made by Schedule 1 have effect—

(a) in relation to a return under section 8 or 8A of TMA 1970, or a return under section 12AA of that Act for a partnership which includes one or more individuals, in respect of a return for a year of assessment beginning on or after 6 April 2012, and

(b) in relation to a return under section 12AA of that Act for a partnership which includes one or more companies, in respect of a return for a relevant period beginning on or after 6 April 2012.

(3) In subsection (2)(b) "relevant period" means a period in respect of which a return is required.

SCHEDULE 1

Section 1

WITHDRAWAL OF NOTICE TO FILE ETC

1 TMA 1970 is amended as set out in paragraphs 2 to 5.

2 (1) Section 7 (notice of liability to income tax and capital gains tax) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (b) substitute—

"(b) falls within subsection (1A) or (1B),", and

(b) for "six months from the end of that year" substitute "the notification period".

(3) After subsection (1) insert—

"(1A) A person falls within this subsection if the person has not received a notice under section 8 requiring a return for the year of assessment of the person's total income and chargeable gains.

(1B) A person falls within this subsection if the person—

(a) has received a notice under section 8 requiring a return for the year of assessment of the person's total income and chargeable gains, and

(b) has received a notice under section 8B withdrawing the notice under section 8.

(1C) In subsection (1) "the notification period"—

(a) in the case of a person who falls within subsection (1A), means the period of 6 months from the end of the year of assessment, or

(b) in the case of a person who falls within subsection (1B), means the period of 30 days from the date on which the notice under section 8 was withdrawn."

(4) In subsection (2) for the words from "shall have effect" to the end substitute "and subsections (1A) to (1C) have effect as if references to a notice under section 8 were references to a notice under section 8A."

3 After section 8A insert—

"8B Withdrawal by HMRC of notice under section 8 or 8A

(1) This section applies to a person who is given a notice under section 8 or 8A.

(2) Before the end of the withdrawal period, the person may request HMRC to withdraw the notice.

(3) But no request may be made if—

(a) the person has made a return under section 8 or 8A in pursuance of the notice under that section, or

(b) the person has been served with notice of a determination under section 28C by virtue of the notice under section 8 or 8A having been given to the person.

(4) If, on receiving a request, HMRC decide to withdraw the notice under section 8 or 8A they must do so by giving the person a notice under this section.

(5) A notice under this section must specify the date on which the notice under section 8 or 8A is withdrawn.

(6) For the purposes of subsection (2) "the withdrawal period" means—

(a) the period of 2 years beginning with the end of the year of assessment to which the notice under section 8 or 8A relates, or

(b) in exceptional circumstances, such extended period as HMRC may agree with the person.

(7) Withdrawal of a notice given to a person under section 8 or 8A in relation to a year of assessment does not prevent HMRC from giving the person a further notice under that section in relation to that year.

(8) See paragraph 17A of Schedule 55 to FA 2009 as to the cancellation of liability to a penalty under any paragraph of that Schedule by including provision in a notice under this section."

4 After section 12AA insert—

"12AAA Withdrawal by HMRC of notice under section 12AA

(1) This section applies to a partner who is required by a notice under section 12AA to deliver a return.

(2) Before the end of the withdrawal period, the partner may request HMRC to withdraw the notice.

(3) But no request may be made if the partner has delivered a return under section 12AA in pursuance of the notice.

(4) If, on receiving a request, HMRC decide to withdraw the notice under section 12AA they must do so by giving the partner a notice under this section.

(5) A notice under this section must specify the date on which the notice under section 12AA is withdrawn.

(6) For the purposes of subsection (2) "the withdrawal period" means—

(a) in the case of a partnership which includes one or more companies, the period of 2 years beginning with the end of the period in respect of which the return under section 12AA was required by the notice under that section,

(b) in the case of any other partnership, the period of 2 years beginning with the end of the year of assessment to which the notice under section 12AA relates, or

(c) in the case of any partnership, such extended period as HMRC may agree with the partner in exceptional circumstances.

(7) Withdrawal of a notice under section 12AA in relation to the period in respect of which the return under that section was required or year of assessment (as the case may be) does not prevent HMRC from serving a further notice under section 12AA requiring a partner to deliver a return in relation to that period or year.

(8) References in subsections (2) to (6) to the partner include references to a successor of the partner (see section 12AA(11)).

(9) See paragraph 17B of Schedule 55 to FA 2009 as to the cancellation of liability to a penalty under any paragraph of that Schedule by including provision in a notice under this section."

5 In section 59B (payment of income and capital gains tax) after subsection (4) insert—

"(4ZA) In a case in which the notice required by section 7 was given following the receipt of a notice under section 8B, subsections (3) and (4) apply as if—

(a) the reference to the notice required by section 7 were a reference to the original notice required by that section, and

(b) the references to notice under section 8 or 8A were references to the original notice under that section.

(4ZB) In subsection (4ZA) the references to original notices are to notices given before the notice under section 8B."

6 (1) Paragraph 7 of Schedule 41 to FA 2008 (potential lost revenue in respect of failure to comply with relevant obligation) is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) In the case of an obligation under section 7 which arises by virtue of subsection (1B) of that section, the potential lost revenue is so much of any income tax or capital gains tax to which P is liable in respect of the tax year in question as—

(a) is unpaid on the relevant date, and

(b) continues to be unpaid at the end of the period specified in subsection (1C)(b) of that section by reason of the failure to comply with the obligation.

(1B) For the purposes of sub-paragraph (1A) the relevant date is—

(a) 31 January following the tax year, or

(b) if, after that date, HMRC refund a payment on account in respect of the tax year to P, the day after the refund is issued."

(3) In sub-paragraph (2) after "and a tax year" insert "(not falling within sub-paragraph (1A))".

7 In Schedule 55 to FA 2009 (penalty for failure to make returns etc) after paragraph 17 insert—

"Cancellation of penalty

17A (1) This paragraph applies where—

(a) P is liable for a penalty under any paragraph of this Schedule in relation to a failure to make a return falling within item 1 or 2 in the Table, and

(b) P makes a request under section 8B of TMA 1970 for HMRC to withdraw a notice under section 8 or 8A of that Act.

(2) The notice under section 8B of TMA 1970 may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.

17B (1) This paragraph applies where—

(a) P is liable for a penalty under any paragraph of this Schedule in relation to a failure to make a return falling within item 3 in the Table, and

(b) a request is made under section 12AAA of TMA 1970 for HMRC to withdraw a notice under section 12AA of that Act.

(2) The notice under section 12AAA of TMA 1970 may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.”

EXPLANATORY NOTE

WITHDRAWING A NOTICE TO FILE A SELF ASSESSMENT RETURN

SUMMARY

1. This Schedule provides HM Revenue & Customs (HMRC) with a power to withdraw a notice to file a Self Assessment (SA) tax return (individual, partnership and trustee), on request in certain circumstances. The Schedule also provides for a late filing penalties under Schedule 55 to the Finance Act 2009 to be cancelled where HMRC withdraw a notice using this power. The amendments have effect, in relation to individual, trustees and partnerships which include one or more individuals, in respect of returns for the tax year 2012-13 and subsequent tax years. For partnerships which include one or more companies, the amendments have effect in respect of a relevant period beginning on or after 6 April 2012.

DETAILS OF THE SCHEDULE

2. Paragraph 2 amends section 7 Taxes Management Act 1970 (TMA 1970). Section 7 TMA 1970 requires every person who is chargeable to income tax or capital gains tax for any year of assessment to notify HMRC that they are chargeable to tax if they have not received a notice under section 8 or 8A TMA 1970 within a specified time period.

3. Sub-paragraphs (2) and (4) make consequential amendments to section 7 of TMA 1970 as a result of the insertion of new subsections (1A) to (1C) by sub-paragraph (3).

4. Sub-paragraph 3 amends section 7 TMA 1970 by inserting new subsections (1A) to (1C). A person to whom new subsection (1A) or (1B) applies must notify HMRC that they are chargeable to tax within the period specified in new subsection (1C).

5. New subsection (1A) applies to a person who has not received a notice to file a SA return under section 8 TMA 1970.

6. New subsection (1B) applies to a person who has received a notice to file a SA tax return under section 8 TMA 1970 and has received a notice under new section 8B TMA 1970 (as inserted by paragraph 3) withdrawing that notice.

7. New subsection (1C) defines “the notification period” as, in the case of a person falling within new subsection (1A), 6 months from the

end of the year of assessment and, in the case of a person falling within new subsection (1B), 30 days from the date on which the notice under section 8 TMA 1970 was withdrawn.

8. Paragraph 3 inserts a new section 8B into TMA 1970 which provides that a person who receives a notice to deliver a personal or trustee SA tax return may request HMRC to withdraw the notice before the end of the withdrawal period.

9. New subsection 8B(3)(a) and (b) explains that a request to withdraw a notice cannot be made if the person or trustee has already submitted a SA tax return or they have received a notice of determination under section 28C TMA 1970.

10. New subsection 8B(4) and (5) provide that if HMRC decide to withdraw the section 8 or section 8A notice they must do so by giving the person or trustee a notice specifying the date on which the notice is withdrawn.

11. New subsection 8B(6) defines the "withdrawal period" by which a person or trustee can request to withdraw a notice to file a SA return.

12. New subsection 8B(7) provides that the withdrawal of a notice does not prevent the issue of a further notice by HMRC.

13. Paragraph 4 inserts a new section 12AAA into TMA 1970 which provides that a partner who receives a notice to file a partnership tax return may request HMRC to withdraw the notice before the end of the withdrawal period.

14. New subsection 12AAA(3) explains that a request to withdraw a notice cannot be made if the person or trustee has already submitted a partnership tax return.

15. New subsection 12AAA(4) and (5) provide that if HMRC decide to withdraw the notice to file a partnership tax return they must do so by giving the partner required to make the return a notice specifying the date on which the notice is withdrawn.

16. New subsection 12AAA(6) defines the "withdrawal period" by which a partner can request the withdrawal of a notice to file a partnership tax return.

17. New subsection 12AAA(7) provides that the withdrawal of a notice to file a partnership return does not prevent the issue of a further notice by HMRC.

18. New subsection 12AAA(8) explains that references to a partner include references to any successor of the partner.

19. Paragraph 5 inserts new subsections (4ZA) and (4ZB) into section 59B TMA 1970. Section 59B sets out the payment dates for income tax and capital gains tax. New subsections (4ZA) and (4ZB) provides that where a further notice to file is issued following withdrawal of a notice under new section 8B, it is to be treated as if it were the original notice to file issued under sections 8 or 8A TMA 1970. This means that the date for payment will be the same as it would have been if the original notice had not been withdrawn.

20. Paragraph 6 amends paragraph 7 to Schedule 41 to FA 2008 by inserting new sub-paragraphs (1A) and (1B) and making a consequential amendment to paragraph 7(2). Schedule 41 imposes penalties for failing to notify HMRC of, amongst other things, an obligation to notify chargeability to tax under section 7 TMA 1970.

21. New subsection (1A) defines the potential lost revenue where there is a failure to notify chargeability to tax or capital gains in accordance with new section 7(1B) TMA 1970 (as inserted by this Schedule). The potential lost revenue is so much of any income tax or capital gains to which the person is liable in respect of the tax year in question as is unpaid on the relevant date and continues to be unpaid at the end of the period specified in new section 7(1C) TMA 1970.

22. New subsections (1B)(a) and (b) define the "relevant date" for payment of potential lost revenue as 31 January following the tax year. For potential lost revenue through refunded payments on account the relevant date is the day after the refund was issued.

23. Paragraph 7 inserts new paragraphs 17A and 17B into Schedule 55 to FA 2009. Schedule 55 imposes penalties for the late filing of returns.

24. New paragraph 17A provides that HMRC may cancel the liability to a late filing penalty where they have agreed to the withdrawal of the notice to file a SA tax return for individuals and trustees under new section 8B TMA 1970 (as inserted by this Schedule).

25. New paragraph 17B provides that HMRC may cancel the liability to a late filing penalty where they have agreed to the withdrawal of the notice to file a SA tax return for partnerships under new section 12AAA.

BACKGROUND

26. Under the Self-Assessment (SA) regime anyone sent a notice to file a SA tax return by HMRC is required to complete and file a SA return with HMRC.

27. This clause and Schedule will introduce a new power to enable HMRC to withdraw a notice to file a SA tax return (individual, partnership and trustee) when they agree a SA tax return is not required and cancel any late filing penalties.

28. If you have any questions about this change, or comments on the legislation, please contact Angela Roach on 020 7147 0002 (email: angela.roach@hmrc.gsi.gov.uk).

1 Penalties: late filing, late payment and errors

(1) Schedule 1 contains provision for, and in connection with, penalties for late filing, late payment and errors.

(2) The amendments made by paragraph 1 of Schedule 1 have effect in relation to any assessment of a penalty under Schedule 24 to the FA 2007 made on or after the day on which this Act is passed.

(3) Subject to subsection (4), the amendments made by paragraphs 2 to 15 of Schedule 1 have effect for the tax year 2014-15 and subsequent tax years.

(4) The amendments made by paragraph 12 of Schedule 1 have effect on and after the day on which this Act is passed.

SCHEDULE 1

Section 1

PENALTIES: LATE FILING, LATE PAYMENT AND ERRORS

Amendments to Schedule 24 to FA 2007: penalties for errors

1 (1) In Schedule 24 to the FA 2007 (penalties for errors), paragraph 13 (procedure: assessment) is amended as follows.

(2) In sub-paragraph (1)(c), after "assessed" insert "(subject to sub-paragraph (1ZB))".

(3) After sub-paragraph (1) insert—

"(1ZA) Sub-paragraph (1ZB) applies where—

(a) a person is at any time liable for two or more penalties relating to PAYE returns, or for two or more penalties relating to CIS returns, and

(b) the penalties ("the relevant penalties") are assessed in respect of more than one tax period ("the relevant tax periods").

(1ZB) A notice under sub-paragraph (1) in respect of any of the relevant penalties may, instead of stating the tax period in respect of which the penalty is assessed, state the tax year or the part of a tax year to which the penalty relates.

(1ZC) For that purpose, a relevant penalty relates to the tax year or the part of a tax year in which the relevant tax periods fall.

(1ZD) For the purposes of sub-paragraph (1ZA)—

"a PAYE return" means a return for the purposes of PAYE regulations;

"a CIS return" means a return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme."

Amendments to Schedule 55 to FA 2009: penalty for failure to make returns

2 Schedule 55 (penalty for failure to make returns etc) to FA 2009 is amended in accordance with paragraphs 3 to 9.

3 In paragraph 1 (returns etc in respect of which penalties are to be paid under that Schedule)—

(a) in the definition of "penalty date" in sub-paragraph (4), after "document" insert "falling within any of items 1 to 3 and 5 to 13 in the Table";

(b) after sub-paragraph (4) insert—

"(4A) The Treasury may by order make such amendments to item 4 in the Table as they think fit in consequence of any

amendment, revocation or re-enactment of the regulations mentioned in that item."

4 In the table at the end of paragraph 1, in item 4 (annual return of payments for purposes of PAYE regulations etc), for the words in the third column substitute—

"Return under any of the following provisions of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)—
(a) regulation 67B (real time returns)
(b) regulation 67D (exceptions to regulation 67B)".

5 In paragraph 2 (amount of penalty: occasional returns and returns for periods of 6 months or more), for "1 to 5" substitute "1 to 3, 5".

6 After paragraph 6A insert—

"Amount of penalty: real time information for PAYE

6B Paragraphs 6C and 6D apply in the case of a return falling within item 4 in the Table.

6C (1) If P fails during a tax month to make a return on or before the filing date, P is liable in respect of that month to a penalty under this paragraph.

(2) But, in each tax year, P is not liable to any penalty under this paragraph in respect of the first tax month during which P fails to make a return on or before the filing date.

(3) P may be liable under this paragraph to no more than one penalty in respect of each tax month.

(4) The penalty under this paragraph is to be calculated in accordance with regulations made by the Commissioners.

(5) Regulations under sub-paragraph (4) may provide for a penalty under this paragraph in respect of a tax month to be calculated by reference to either or both of the following matters—
(a) the number of persons employed by P;
(b) the number of previous penalties incurred by P under this paragraph in the same tax year.

(6) The Commissioners may by regulations disapply sub-paragraph (2) in such circumstances as are specified in the regulations.

(7) If P has elected under PAYE regulations to be treated as different employers in relation to different groups of employees, this paragraph applies to P as if—
(a) in respect of each group P were a different person, and
(b) each group constituted all of P's employees.

(8) Regulations made by the Commissioners under this paragraph may include—
(a) different provision for different cases, and
(b) such incidental, consequential and supplementary provision as appears to the Commissioners to be expedient.

6D (1) P may be liable to one or more penalties under this paragraph in respect of extended failures.

(2) In this paragraph an "extended failure" means a failure to make a return on or before the filing date which continues after the end of the period of 3 months beginning with the day after the filing date.

(3) P is liable to a penalty or penalties under this paragraph if (and only if)—

(a) HMRC decide at any time that such a penalty or penalties should be payable in accordance with sub-paragraph (4) or (6), and

(b) HMRC give notice to P specifying the date from which the penalty, or each penalty, is payable.

(4) HMRC may decide under sub-paragraph (3)(a) that a separate penalty should be payable in respect of each unpenalised extended failure in the tax year to date.

(5) In that case the amount of the penalty in respect of each failure is 5% of any liability to make payments which would have been shown in the return in question.

(6) HMRC may decide under sub-paragraph (3)(a) that a single penalty should be payable in respect of all the unpenalised extended failures in the tax year to date.

(7) In that case the amount of the penalty in respect of those failures is 5% of the sum of the liabilities to make payments which would have been shown in each of the returns in question.

(8) For the purposes of this paragraph, an extended failure is unpenalised if a penalty has not already been imposed in respect of it under this paragraph (whether in accordance with sub-paragraph (4) or (6)).

(9) The date specified in the notice under sub-paragraph (3)(b) in relation to a penalty—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in sub-paragraph (2) in relation to the relevant extended failure.

(10) In sub-paragraph (9)(b) "the relevant extended failure" means—

(a) the extended failure in respect of which the penalty is payable, or

(b) if the penalty is payable in respect of more than one extended failure (in accordance with sub-paragraph (6)), the extended failure with the latest filing date."

7 In paragraph 18 (assessment), for sub-paragraph (5) substitute—

"(5) Sub-paragraph (6) applies if—

(a) an assessment in respect of a penalty is based on a liability to tax that would have been shown in a return, and

(b) that liability is found by HMRC to be excessive.

(6) HMRC may by notice to P amend the assessment so that it is based upon the correct amount.

(7) An amendment under sub-paragraph (6)—
(a) does not affect when the penalty must be paid;
(b) may be made after the last day on which the assessment in question could have been made under paragraph 19."

8 (1) Paragraph 19 (assessment) is amended as follows.

(2) In sub-paragraph (2) after "Date A is" insert "—
(a) in the case of an assessment of a penalty under paragraph 6C, the last day of the period of 2 years beginning with the end of the tax month in respect of which the penalty is payable,
(b) in the case of an assessment of a penalty under paragraph 6D, the last day of the period of 2 years beginning with the filing date for the relevant extended failure (as defined in paragraph 6D(10)), and
(c) in any other case,".

(3) In sub-paragraph (3)(a), after "return" insert "or returns (as the case may be in relation to penalties under section 6C or 6D)".

9 (1) Paragraph 27 (interpretation) is amended as follows.

(2) After sub-paragraph (2) insert—

"(2A) "The Commissioners" means the Commissioners for Her Majesty's Revenue and Customs."

(3) After sub-paragraph (3) insert—

"(3A) "Tax month" means the period beginning on the 6th day of a month and ending on the 5th day of the following month."

Amendments to Schedule 56 to FA 2009: penalty for failure to make payments on time

10 Schedule 56 (penalty for failure to make payments on time) to FA 2009 is amended in accordance with paragraphs 12 to 14.

11 In paragraph 1 (penalty for failure to pay tax), in sub-paragraph (4), for the words from "the date on which" to the end substitute "the day after the date specified in or for the purposes of column 4 of the Table in relation to that amount."

12 (1) Paragraph 6 (amount of penalty: PAYE and CIS amounts) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) P is liable to a penalty under this paragraph, in relation to each tax, each time that P makes a default in relation to a tax year."

(3) In sub-paragraph (2)—
(a) in the opening words, after "default" insert "in relation to a tax year";
(b) in paragraph (a), at the end insert "of tax payable in relation to the tax year";

(c) in paragraph (b), at the end insert "payable in relation to the tax year";

(d) in paragraph (c), at the end insert "payable in relation to the tax year";

(e) in paragraph (d), at the end insert "and due for the tax year".

(4) For sub-paragraphs (3) to (7) substitute—

"(3) But where a failure to make one of those payments (or to pay an amount comprising two or more of those payments) would, apart from this sub-paragraph, constitute the first default in relation to a tax year, that failure does not count as a default in relation to that year for the purposes of a penalty under this paragraph.

(4) The amount of the penalty for a default made in relation to a tax year is determined by reference to—

(a) the amount of the tax comprised in the default, and

(b) the number of previous defaults that P has made in relation to the same tax year.

(5) If the default is P's first, 2nd or 3rd default in relation to the tax year, P is liable, at the time of the default, to a penalty of 1% of the amount of tax comprised in the default.

(6) If the default is P's 4th, 5th or 6th default in relation to the tax year, P is liable, at the time of the default, to a penalty of 2% of the amount of tax comprised in the default.

(7) If the default is P's 7th, 8th or 9th default in relation to the tax year, P is liable, at the time of the default, to a penalty of 3% of the amount of tax comprised in the default.

(7A) If the default is P's 10th or subsequent default in relation to the tax year, P is liable, at the time of the default, to a penalty of 4% of the amount of tax comprised in the default."

(5) In sub-paragraph (8), for paragraph (b) substitute—

"(b) a previous default counts for the purposes of sub-paragraphs (5) to (7A) even if it is remedied before the time of the default giving rise to the penalty."

(6) After sub-paragraph (8) insert—

"(8A) Regulations made by the Commissioners for Her Majesty's Revenue and Customs may specify—

(a) circumstances in which, for the purposes of sub-paragraph (2), a payment of less than the full amount may be treated as a payment in full, or

(b) circumstances in which sub-paragraph (3) is not to apply."

13 After paragraph 9 insert—

"Interaction with other penalties and late payment surcharges

9A In the application of the following provisions, no account shall be taken of a penalty under this Schedule—

(a) section 97A of TMA 1970 (multiple penalties),

(b) paragraph 12(2) of Schedule 24 to FA 2007 (interaction with other penalties), and

(c) paragraph 15(1) of Schedule 41 to FA 2008 (interaction with other penalties)."

14 (1) Paragraph 11 (assessment of penalty) is amended as follows.

(2) For sub-paragraph (4A) substitute—

"(4A) If an assessment in respect of a penalty is based on an amount of tax due or payable that is found by HMRC to be excessive, HMRC may by notice to P amend the assessment so that it is based upon the correct amount.

(4B) An amendment made under sub-paragraph (4A)—

(a) does not affect when the penalty must be paid;

(b) may be made after the last day on which the assessment in question could have been made under paragraph 12."

(3) Omit sub-paragraph (5).

Consequential amendment

15 In consequence of paragraph 7, paragraph 10 of Schedule 10 to the Finance (No. 3) Act 2010 is repealed.

EXPLANATORY NOTE

PENALTIES: LATE FILING, LATE PAYMENT AND ERRORS

SUMMARY

1. This clause and Schedule provide for penalties to apply where the Real Time Information (RTI) returns and payments required under the Income Tax (Pay As You Earn) Regulations 2003 (the PAYE Regulations) are not made on time or the returns are inaccurate.

DETAILS OF THE CLAUSE

2. Subsections (2) to (4) of the clause are the commencement provisions.

3. Subsection (2) provides that the amendments to Schedule 24 to the Finance Act 2007 (penalty for errors) have effect in relation to any assessment which is made on or after the day on which the Finance Bill receives Royal Assent.

4. Subsection (3) provides that the amendments to Schedule 55 to the Finance Act 2009 (new penalties for failure to make returns) and to Schedule 56 to the Finance Act 2009 (penalties for late payment) for RTI come into effect for tax year 2014-15.

5. Subsection (4) provides that the amendment to paragraph 6 of Schedule 56 to the Finance Act 2009 (in respect of the amount of a penalty for late payment of PAYE or tax due in relation to the Construction Industry Scheme) apply from the day on which the Finance Bill receives Royal Assent.

DETAILS OF THE SCHEDULE

6. The schedule amends Schedule 24 of Finance Act 2007 (FA 2007) which deals with inaccuracy penalties, and also amends Schedules 55 and 56 to Finance Act 2009 (FA 2009) which cover penalties for failure to make returns and failure to make payments on time respectively.

7. Paragraph 1 amends paragraph 13 of Schedule 24 FA 2007 for returns under PAYE and the Construction Industry Scheme (CIS). This Schedule covers applies penalties for inaccurate returns.

8. Subparagraph 1(2) amends paragraph 13(1) of Schedule 24 FA 2007 and sub-paragraph (3) inserts new sub-paragraphs (1ZA) to (1ZD) so

that penalty notices for inaccuracies that occur more than once during a tax year are required to state only the year in which they occurred.

9. Paragraphs 2 to 9 make amendments to Schedule 55 FA 2009 for late filing penalties.

10. Paragraph 3 removes RTI returns from the definition of "penalty date" in paragraph 1(4) of Schedule 55 FA 2009. It also inserts new paragraph 1(4A) to permit the Treasury to amend item 4 of the Table at the end of paragraph 1 of Schedule 55 FA 2009 as a consequence of any amendment to the PAYE regulations.

11. Paragraph 4 amends the definition of return in the Table at the end of paragraph 1 of Schedule 55 FA 2009 to refer to RTI returns made under regulation 67B or 67D of the PAYE Regulations.

12. Paragraph 5 removes RTI returns from paragraph 2 of Schedule 55 FA 2009, which means the penalties set out in paragraphs 3 to 6 of that Schedule do not apply to RTI returns.

13. Paragraph 6 inserts new paragraphs 6B to 6D into Schedule 55 FA 2009. New paragraph 6B provides that paragraphs 6C and 6D apply where the return is an RTI return. New paragraph 6C provides for a filing default to apply where a return is late; for one late filing penalty to apply in each tax month for each PAYE scheme where filing defaults are incurred; and for an initial unpenalised filing default each tax year for each PAYE scheme. New paragraph 6C also provides a power for the Commissioners for Revenue and Customs to set the size of the late filing penalties in Regulations, and for the Commissioners to specify in Regulations the circumstances in which the unpenalised default is to be disapplied. Subparagraph 6C(7) provides that late filing penalties will apply to each PAYE scheme that an employer can elect to have under the PAYE Regulations. New paragraph 6D provides for a penalty for "extended failures", that is where a return is outstanding for 3 months or more. This penalty is not automatic, and will be calculated at 5 per cent. of the amount that would have been shown as due on any missing return(s).

14. Paragraph 7 substitutes paragraph 18(5) of Schedule 55 FA 2009 and inserts new subparagraphs (6) and (7) so that the quantum of the penalties assessed under this Schedule can be amended (rather than the assessment being withdrawn and replaced), where the original penalty assessment is based on an excessive tax liability.

15. Paragraph 8 amends paragraph 19 of Schedule 55 FA 2009 in relation to RTI returns. As a consequence of the amendments, penalties in relation to such returns can be assessed within the normal time limits for all other penalties assessed under Schedule 55 FA09.

16. Paragraph 9 inserts a definition of "the Commissioners" and the "tax month" into paragraph 27 of Schedule 55 FA 2009.

17. Paragraphs 10 to 14 make amendments to Schedule 56 FA 2009 for late payment penalties.

18. Paragraph 11 amends the definition of "penalty date" in paragraph 1(4) of Schedule 56 FA 2009 to make it clear that a late payment penalty arises on the day after the date specified in column 4 of the Table in paragraph 1 of schedule 56 FA09.

19. Paragraph 12 amends_paragraph 6 of Schedule 56 FA 2009. Subparagraph (2) substitutes paragraph 6(1) and subparagraph (3) amends paragraph 6(2) to provide that penalties are incurred for each late payment relating to a tax year, rather than for each payment due during a tax year.

20. Paragraph 12(4) substitutes paragraphs 6(3) to (7) and inserts a new subparagraph (7A) into Schedule 56 FA 2009. The substituted paragraph 6(3) provides for the first default to be unpenalised. Substituted paragraphs 6(4) to (7) detail how the quantum of a penalty is to be established and provide that an earlier penalty does not have to be recalculated should a later penalty be incurred in the tax year.

21. Paragraph 12(5) amends subparagraph (8) by substituting a new paragraph (b) to provide that a default that has subsequently been remedied still counts as default when calculating subsequent penalties under Schedule 56 FA 2009.

22. Paragraph 12(6) introduces new subparagraph (8A) which provides that the Commissioners may specify in regulations circumstances where a payment of less than the full amount due under the PAYE regulations may be treated as full payment, and so not incur a late payment default. Regulations may also set out the circumstances where the first default in the tax year will count as a default for penalty purposes.

23. Paragraph 13 introduces a new paragraph 9A into Schedule 56 FA 2009 to ensure that the quantum of certain specified penalties are not affected by penalties under Schedule 56 FA 2009.

24. Paragraph 14 substitutes a new paragraph 11(4A) of Schedule 56 FA 2009 to ensure that a late payment penalty can be reduced, rather than withdrawn and replaced, should the underlying amount of tax due upon which the penalty is based be reduced. This paragraph also inserts new subparagraph 11(4B) into Schedule 56 FA 2009 which makes it clear that such a reduction does not affect the penalty payment date, and can be made after the final date for raising the

initial late payment penalty as set by paragraph 12 of Schedule 56 FA 2009. Paragraph 14(3) repeals paragraph 11(5), which permitted a supplementary assessment to be made in respect of penalties under paragraph 6 of Schedule 56 FA 2009.

25. Paragraph 15 repeals paragraph 10 of Schedule 10 to the Finance (No.3) Act 2010. This paragraph, which made an amendment to the late filing penalty rules for replacement assessments, is no longer required as a consequence of the amendment made by paragraph 7 of the Schedule.

BACKGROUND NOTE

26. Under RTI, employers have to provide HMRC with pay and deduction details each time they pay their employees. The majority of employers will do this via their payroll software.

27. The increased frequency of returns under RTI could lead to an increase in the number of inaccurate returns submitted by employers. When an inaccuracy is made on an RTI or Construction Industry Scheme return and is repeated in subsequent returns, this legislation allows HMRC to notify the penalties together rather than individually, as would be required under the current provisions.

28. If the pay and deduction information is not received "on or before" employees are paid then a late filing default will arise. This may lead to a late filing penalty under the provisions inserted into schedule 55 FA09 and described above.

29. PAYE payment obligations are not changing under RTI. All employers must continue to pay HMRC the sums deducted from the payments to their employees within 17 days after the end of the tax period where payment is made by an approved method of electronic communications, or within 14 days after the end of the tax period where payment is made by any other means. If these payments are not received in full and on time a late payment default will arise, which could lead to a late payment penalty. From April 2014 these late payment penalties will be automated and will be charged in-year, rather than after the end of the tax year.

30. If you have any questions about this change, or comments on the legislation, please contact Stephanie Allistone on 020 7147 2394 (email: stephanie.allistone@hmrc.gsi.gov.uk).

1 Agreement between UK and Switzerland

(1) In Schedule 36 to FA 2012 (agreement between UK and Switzerland), after paragraph 26 insert—

"Transfers to HMRC under Agreement

26A (1) Income or chargeable gains of a person are to be treated as not remitted to the United Kingdom if conditions A to D are met.

(2) Condition A is that (but for this paragraph) the income or gains would be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom.

(3) Condition B is that the money is brought to the United Kingdom pursuant to a transfer made to HMRC in accordance with the Agreement.

(4) Condition C (which applies only if the money brought to the United Kingdom is a sum levied under Article 19(2)(b)) is that the sum was levied within the period of 45 days beginning with the day on which the amount derived from the income or gain in question was remitted as mentioned in Article 19(2)(b).

(5) Condition D is that the transfer is made in relation to a tax year in which section 809B, 809D or 809E of ITA 2007 (application of remittance basis) applies to the person."

(2) In section 809R of ITA 2007 (composition of mixed fund), for subsection (5) substitute—

"(5) A transfer from a mixed fund is an "offshore transfer" for the purposes of subsection (4)—

(a) if and to the extent that section 809Q does not apply to it,

(b) if it is a one-off payment levied in accordance with Part 2 of the Agreement, or

(c) if it is a sum levied under Article 19 of the Agreement and (if levied under paragraph (2)(b) of that Article) condition C in paragraph 26A of Schedule 36 to FA 2012 is met in respect of it.

In this subsection "the Agreement" has the same meaning as in Schedule 36 to FA 2012 (agreement between UK and Switzerland)."

(3) In subsection (6) of that section after ""offshore transfer"" insert "by virtue of subsection (5)(a)".

(4) The amendments made by this section are to be treated as having come into force on the day on which Schedule 36 to FA 2012 came into force.

EXPLANATORY NOTE

AGREEMENT BETWEEN UK AND SWITZERLAND

SUMMARY

1. This clause amends Schedule 36 to Finance Act 2012 which gave effect to the Agreement signed on 6 October 2011 between the UK and Switzerland on co-operation in tax matters. It provides that provides that certain transfers made under the Agreement will not give rise to a taxable remittance where they are made by a person who is an individual who is taxed on the remittance basis.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces new section 26A to Schedule 36 to Finance Act 2012 which provides that foreign income and gains of a person are treated as not remitted to the UK when they are used to make a transfer in accordance with the Agreement, provided the following conditions are met:

   - Condition A is that the foreign income and gains would be treated as remitted to the UK in the absence of subsection (1) as a result of money being brought to the UK;
   - Condition B is that is that the money is brought to the UK as part of a transfer made under the terms of the Agreement;
   - where the money brought to the UK is a sum under Article 19(2)(b) of the Agreement, Condition C is that the sum is levied within 45 days from the day on which the amount derived from the foreign income and gains was remitted to the UK;
   - Condition D is that the transfer is made in relation to a tax year in which the person is an individual who is taxed on the remittance basis.

3. Subsection 2 amends subsection 809R(5) of the Income Tax Act (ITA) 2007 and provides that any transfer from a mixed fund will be treated as a offshore transfer where it is a payment levied in accordance with Part 2 of the Agreement or a sum levied under Article 19 of the Agreement.

4. Subsection 3 amends subsection 809R(6) of ITA 2007 and provides that the changes made by subsection 2 are restricted to the transfers

defined in that subsection. This will mean that any transfer from a mixed fund to the UK will not be treated as an offshore transfer.

5. Subsection 4 provides that the effective date of this section will be the date on which Schedule 36 to Finance Act 2012 came into force.

BACKGROUND

6. The UK Switzerland Agreement was signed on 6 October 2011. Schedule 36 to Finance Act 2012 was enacted to give the terms and principles of that agreement statutory effect in the UK.

7. The Agreement is expected to come into force on 1 January 2013.

8. If you have any questions about this change, or comments on the legislation, please contact David Lewis on 020 7147 2403 (email: david.e.lewis@hmrc.gsi.gov.uk).

1 International agreements to improve tax compliance

(1) The Treasury may make regulations for the purpose of giving effect to or enabling effect to be given to—

(a) the agreement reached between the Government of the United Kingdom and the Government of the United States of America to improve international tax compliance and to implement FATCA, signed on 12 September 2012;

(b) any agreement modifying or supplementing that agreement;

(c) any other agreement between the Government of the United Kingdom and the government of another territory which makes provision corresponding, or substantially similar, to that made by an agreement within paragraph (a) or (b).

(2) Regulations under this section may in particular—

(a) authorise HMRC to require persons specified for the purposes of this paragraph ("relevant financial entities") to provide HMRC with information of specified descriptions;

(b) require that information to be provided at such times and in such form and manner as may be specified;

(c) impose obligations on relevant financial entities;

(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.

(3) Regulations under this section may—

(a) make different provision in relation to different periods of time;

(b) make different provision for different cases or circumstances;

(c) contain incidental, supplemental, transitional, transitory or saving provision (including provision amending any enactment).

(4) In this section—

"FATCA" means the provisions commonly known as the Foreign Account Tax Compliance Act in the enactment of the United States of America called the Hiring Incentives to Restore Employment Act;

"HMRC" means Her Majesty's Revenue and Customs;

"specified" means specified in regulations under this section.

(5) The power conferred by this section is without prejudice to any other powers conferred by or under any enactment.

(6) The power of the Treasury to make regulations under this section is exercisable by statutory instrument.

(7) Any statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

EXPLANATORY NOTE

INTERNATIONAL AGREEMENTS TO IMPROVE TAX COMPLIANCE

SUMMARY

1. This clause gives HM Treasury a power to make regulations for the purpose of giving effect to the agreement between the Government of the United Kingdom and the Government of the United States of America to improve international tax compliance and to implement FATCA. FATCA means the United States' provisions commonly known as the Foreign Account Tax Compliance Act contained within the hiring Incentives to Restore Employment Act. The power also enables HM Treasury to make regulations in respect of agreements entered into which are corresponding or substantially similar.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that HM Treasury may make regulations for the purpose of giving effect to certain agreements regarding international tax compliance.

3. Subsections 1(a) - 1(c) set out the type of agreements to which the regulations may give effect.

4. Subsection (2) permits HMRC to require specified persons to provide certain information to HMRC in a specified manner at a designated time.

5. Subsections (2)(d) and (e) set out that the regulations may make provision (including provision on penalties) for non compliance and appeals in relation to any penalties imposed.

6. Subsection (3) allows for further provisions to be made as needed.

7. Subsection (4) provides relevant definitions.

8. Subsection (5) provides that the exercise of this power does not affect any powers under any other enactment.

9. Subsection (6) provides that regulations made under this power are to be made by statutory instrument.

10. Subsection (7) provides that orders made under the provision are subject to the negative resolution procedure.

BACKGROUND

11. This clause enables the United Kingdom to implement the United Kingdom's (UK) international obligations under an Intergovernmental Agreement (IGA) entered into between the United States (U.S.) and the UK.

12. In 2010 the U.S. introduced legislation to combat tax evasion by US persons. These provisions known as the Foreign Accounts Tax Compliance Act (FATCA) require financial institutions outside the U.S. to pass information about the accounts of US persons to the US tax administration, the Internal Revenue Service (IRS). Any financial institution that fails to comply with the U.S. legislation is subject to a 30% withholding tax on any US source income. Current law does not allow financial institutions to pass FATCA information either direct to the U.S. or to HMRC on a voluntary basis, nor does it enable HMRC to require it.

13. Under the IGA, if UK financial institutions comply with legislation that meets the terms negotiated between the U.S. and the UK, and the UK shares this information with the U.S., those institutions will be deemed to have complied with FATCA and will not be subject to the 30% withholding tax. The legislation to implement the IGA will also set out what financial institutions have to report to HMRC, and the due diligence that needs to be applied to identify and then report relevant account information.

14. As part of the Agreement the US has agreed to provide the UK with reciprocal data on the US accounts of UK persons. The information provided to HMRC (both by the UK banks and by the U.S.) is expected to generate additional compliance cases. Financial institutions will be required to begin collecting data in 2013, with HMRC receiving the data from 2015.

15. If you have any questions about this change, or comments on the legislation, please contact Malcolm White on 020 7147 0565 (email: malcolm.white@hmrc.gsi.gov.uk) or Neil Higgins on 020 3300 9109 (email: neil.higgins@hmrc.gsi.gov.uk).

1 Data-gathering from merchant acquirers

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

"Merchant acquirers

13A A person who is a merchant acquirer is a relevant data-holder."

(2) This section applies in relation to relevant data with a bearing on any period (whether before, on or after the day on which this Act is passed).

EXPLANATORY NOTE

DATA-GATHERING FROM MERCHANT ACQUIRERS

SUMMARY

1. This clause amends HM Revenue & Customs' (HMRC) bulk data-gathering powers. The change enables HMRC to issue notices to merchant acquirers, who process payment card transactions, requiring them to provide data about business taxpayers. The changes will have effect from Royal Assent.

DETAILS OF THE CLAUSE

2. Subsection 1 amends Schedule 23 to Finance Act 2011 (FA 2011). It specifies that merchant acquirers are relevant data-holders within the meaning of Schedule 23. Accordingly, it enables HMRC to issue notices to merchant acquirers to obtain bulk data about businesses.

3. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power for HMRC to obtain data from merchant acquirers.

4. Subsection 2 provides that data can be required which relates to periods before the law comes into effect. This approach follows that taken for Schedule 23 FA 2011 and is subject to the time limits in Schedule 23.

BACKGROUND

5. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultation. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

6. Merchant acquirers were not explicitly specified as data-holders in Schedule 23 FA 2011 as originally enacted, and do not fall within any other existing categories of data-holder specified in the schedule.

7. The clause refers to 'merchant acquirers' but does not define them. The Government believes this term applies only to financial institutions, commonly known as merchant acquirers, that contract with businesses to reimburse them for supplies made where a credit, debit or charge card (or an equivalent method of payment as may be

introduced) was accepted. The clause is intended to apply solely to the narrow field of such institutions.

8. The data held by merchant acquirers about credit, debit and charge card transactions represents a valuable source of information about businesses' incomes. The data will be matched with data HMRC already holds to check returns and identify businesses that may not have declared their full sales, or who are not registered for tax. This will improve HMRC's ability to identify and target those who are underpaying tax.

9. HMRC will use the data to help in the risk assessment of businesses, and will not be obtaining data about individual card holders.

10. Treasury secondary legislation is needed to specify the data that HMRC may require merchant acquirers to provide. These draft regulations were published on 11 December 2012.

11. If you have any questions about this change, or comments on the legislation, please contact George Margesson on 020 7147 3069 (email: george.margesson@hmrc.gsi.gov.uk) or Madeleine O'Brien on 020 7147 2466 (email: madeleine.o'brien@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2013 No.

TAXES

The Data-gathering Powers (Relevant Data) (Amendment) Regulations 2013

Made - - - -	*2013*
Laid before the House of Commons	*2013*
Coming into force - -	*2013*

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 1(3) of Schedule 23 to the Finance Act 2011(**a**).

Citation and Commencement

1. These Regulations may be cited as the Data-gathering Powers (Relevant Data) (Amendment) Regulations 2013 and come into force on *date* 2013.

Amendments to the Data-gathering Powers (Relevant Data) Regulations 2012

2. The Data-gathering Powers (Relevant Data) Regulations 2012(**b**) are amended as follows.

3. After regulation 11 insert –

"Merchant acquirers

11A.—(1) The relevant data for a data-holder of the type described in paragraph 13A of Schedule 23 are –

(a) in relation to each person who holds a merchant account with the merchant acquirer (a "trader"), information relating to payments made to a merchant account, including the currency the payments were made in;

(b) the reference number of the account into which the payments referred to in sub-paragraph (a) were made and, where necessary for identifying the account, the branch where the account is held;

(c) the customer ID number, being any unique reference number which has been allocated to a trader, for the purposes of identifying the trader, as part of the business arrangement between the merchant acquirer and the trader;

(**a**) 2011 c.11. Schedule 23 to this Act was amended by section 1(1) of the Finance Act 2013 (c.XX).
(**b**) SI 2012/847.

(d) the merchant ID number, being any unique reference number which has been allocated to a trader's merchant account, for the purposes of identifying this merchant account, as part of the business arrangement between the merchant acquirer and the trader;

(e) the name, address and telephone number of each trader and for each merchant account; and

(f) where available to the merchant acquirer at the time of receipt of a data-holder notice, the e-mail address, website address and VAT number of each trader and for each merchant account.

(2) In this regulation "VAT number" means "registration number" as defined in paragraph 1 of regulation 2 of the Value Added Tax Regulations 1995(**a**).".

Name
Name
[Dated] Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Data-gathering Powers (Relevant Data) Regulations 2012 by specifying the relevant data which merchant acquirers must provide an officer of Revenue and Customs on receipt of a data-holder notice under Schedule 23 to the Finance Act 2011 (c 11).

A Tax Information and Impact Note covering this instrument [was published on 11th December 2012 alongside the relevant clause and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

(**a**) SI 1995/2518, to which there are amendments not relevant to these Regulations.

EXPLANATORY MEMORANDUM TO

THE DATA-GATHERING POWERS (RELEVANT DATA) (AMENDMENT) REGULATIONS 2013

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.

1.1. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Data-gathering Powers (Relevant Data) Regulations 2012 to prescribe what data a merchant acquirer must provide to HMRC on receipt of a data-holder notice. Merchant acquirers, which process payment card transactions for businesses, are introduced by Finance Act 2013 as a new class of data-holder under Part 2 of Schedule 23 to Finance Act 2011 (FA 2011).

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

3.1 These Regulations are subject to the negative procedure of the House of Commons because they are not the 'first' regulations made under paragraph 1(3) of Schedule 23 to the FA 2011. Therefore, paragraph 44(2) of Schedule 23 does not apply. Consequently, paragraph 44(3) of Schedule 23 applies instead.

4. Legislative Context

4.1 HMRC's data-gathering powers were modernised in Schedule 23 to FA 2011 following consultation. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

4.2 Merchant acquirers were not explicitly specified as data-holders in Schedule 23 to FA 2011 as originally enacted, and do not fall within any other existing categories of data-holder specified in the schedule.

4.3 The relevant section in Finance Act 2013 (which introduces merchant acquirers as a new class of data-holder under Schedule 23) refers to merchant acquirers but does not define them. It is intended to apply solely to the narrow field of financial institutions, known as merchant acquirers, that contract with businesses to reimburse them for supplies

made using a credit, debit or charge card. The number of businesses that will be affected by notices issued under this measure is small.

4.4 These Regulations are needed to specify the data that HMRC may require merchant acquirers to provide.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective is to provide HMRC with a power to require merchant acquirers to provide bulk data about business taxpayers, in order to identify those who do not declare their full sales.

7.2 These Regulations specify the types of data that can be obtained from merchant acquirers. These cover the total card payments made to each UK business that accepts credit and debit cards, their contact details, bank account details, and their VAT number where it is held.

7.3 This data will be matched with data HMRC already holds to check returns. It will improve HMRC's ability to identify and target those who are underpaying tax, allowing HMRC to compare actual sales made using cards with turnover declared to HMRC. It will also highlight businesses have not registered with HMRC for tax, in particular for VAT. HMRC's current estimate of uncollected tax (the tax gap) is around £32 billion, of which £9.6 billion is represented by VAT.

7.4 HMRC will use the data to help in the risk assessment of businesses, and will not be obtaining data about individual card holders. More accurately targeted compliance checks will help level the playing field for those who do pay the correct amount of tax.

7.5 The data to be collected is currently held by merchant acquirers and no practical concerns about providing it have yet been raised. Merchant acquirers will be able to appeal against a data notice on the grounds that complying would be unduly onerous.

7.6 Legislation is required to provide HMRC with the power to issue notices to merchant acquirers. It would not be feasible to rely on the willingness of the merchant acquirers to provide such information. Doing so without clear legal cover could leave them open to possible challenge under data protection law. Legislation will provide certainty on this point.

- *Consolidation*

7.6 This is the first time that the Data-gathering Powers (Relevant Data) Regulations 2012 have been amended. There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 No general consultation has previously been undertaken on this measure. The draft primary and secondary legisaltion is being published for comment on 11 December as part of the 2013 Finance Bill.

9. Guidance

9.1 Relevant guidance will be updated, working with the merchant acquirers.

10. Impact

10.1 The impact on business, charities, voluntary bodies and the public sector is negligible. Merchant acquirers will incur an administrative burden in providing the data to HMRC. Businesses that are not paying the full amount of tax will face greater scrutiny from HMRC as a result of this measure, but there will be no impact on businesses that comply with their tax obligations.

10.2 A Tax Information and Impact Note will be published alongside the legislation on 11 December 2012.

11. Regulating small business

11.1 The legislation does not apply to small business. There are a small number of merchant acquirers in the UK and they are all large financial institutions.

12. Monitoring & review

12.1 The measure will be monitored by HMRC, making use of the data obtained under the proposed legislation.

13. Contact

If you have any questions about this instrument please contact **George Margesson** at HMRC (tel: 020 7147 3069, or email: george.margesson@hmrc.gsi.gov.uk).

1 Overpayment relief: generally prevailing practice exclusion and EU law

(1) In Schedule 1AB to TMA 1970 (recovery of overpaid tax etc), in paragraph 2 (cases in which Commissioners not liable to give effect to claim), after sub-paragraph (9) insert—

“(9A) Cases G and H do not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(9B) For the purposes of sub-paragraph (9A), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).”

(2) In Schedule 2 to the Oil Taxation Act 1975 (management and collection of petroleum revenue tax), in paragraph 13B (claim for relief for overpaid tax etc: cases in which HMRC not liable to give effect to a claim), after sub-paragraph (8) insert—

“(9) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(10) For the purposes of sub-paragraph (9), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).”

(3) In Part 6 of Schedule 18 to FA 1998 (overpaid tax, excessive assessments or repayments etc), in paragraph 51A (cases in which Commissioners not liable to give effect to a claim), after sub-paragraph (8) insert—

“(9) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(10) For the purposes of sub-paragraph (9), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a)."

(4) In Part 6 of Schedule 10 to FA 2003 (relief in case of overpaid tax or excessive assessment), in paragraph 34A (cases in which Commissioners not liable to give effect to a claim), after sub-paragraph (8) insert—

"(9) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(10) For the purposes of sub-paragraph (9), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a)."

(5) The amendments made by this section have effect in relation to any claim (in respect of overpaid tax, excessive assessment etc) made after the end of the six month period beginning with the day on which this Act is passed.

2 Overpayment relief: time limit for claims

(1) In Schedule 1AB to TMA 1970 (recovery of overpaid tax etc), in paragraph 3 (making a claim), in sub-paragraph (3) after "the relevant tax year is" insert "—

(a) where the amount liable to be paid is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA, the tax year to which the return (or, if more than one, the first return) relates, and

(b) otherwise,".

(2) In Schedule 2 to the Oil Taxation Act 1975, in paragraph 13C (claim for relief for overpaid tax etc: making a claim), in sub-paragraph (3) after "the relevant chargeable period is" insert "—

(a) where the amount liable to be paid is excessive by reason of a mistake in a return or returns under paragraph 2 or 5, the chargeable period to which the return (or, if more than one, the first return) relates, and

(b) otherwise,".

(3) In Part 6 of Schedule 18 to FA 1998 (overpaid tax, excessive assessments or repayments, etc), in paragraph 51B (making a claim), in sub-paragraph (3), after "the relevant accounting period is" insert "—

(a) where the amount liable to be paid is excessive by reason of a mistake in a company tax return or returns, the accounting period to which the return (or, if more than one, the first return) relates, and

(b) otherwise,".

(4) The amendments made by this section have effect in relation to any claim (in respect of overpaid tax, excessive assessment etc) made after the end of the six month period beginning with the day on which this Act is passed.

EXPLANATORY NOTE

OVERPAYMENT RELIEF: GENERALLY PREVAILING PRACTICE EXCLUSION AND EU LAW

SUMMARY

1. This clause removes the practice generally prevailing restriction within overpayment relief provisions if the tax overpaid was charged contrary to European Union (EU) law.

DETAILS OF THE CLAUSE

2. Subsection (1) amends the overpayment relief provision for income tax and capital gains tax in Schedule 1AB to TMA 1970 by inserting new sub-paragraphs (9A) and (9B) into paragraph 2.

3. New sub-paragraph (9A) disapplies two restrictions (Cases G and H) for overpayment relief if the tax was charged contrary to EU law. The restrictions apply to tax which is calculated in accordance with the practice generally prevailing.

4. New sub-paragraph (9B) defines when tax is charged contrary to EU law.

5. Subsections (2) to (4) make similar changes to disapply Case G in the overpayment relief provisions for petroleum revenue tax, corporation tax and stamp duty land tax.

6. Subsection (5) provides that the amendments will have effect for claims made six months or more after Royal Assent to the Finance Bill.

BACKGROUND

7. Overpayment relief provisions provide relief where tax has been paid or a person is liable to tax as a result of an assessment, determination or direction and the taxpayer believes that the tax is not due. There are four such provisions applying to income tax and capital gains tax, corporation tax, petroleum revenue tax, and stamp duty land tax.

8. Cases A to G (or H in the case of employment income) of the overpayment provisions list circumstances in which relief is not due. Case G (H in the case of employment income) disallows relief where the amount paid or liable to be paid is excessive by reason of a

mistake in calculating liability and the liability was calculated in accordance with the practice generally prevailing at the time.

9. Member States of the EU are obliged to provide remedies for tax levied contrary to EU law. In most cases such tax will have been paid in accordance with the practice generally prevailing at the time.

10. The Court of Appeal in *Test Claimants in the Franked Investment Income Group Litigation v Commissioners of Inland Revenue and another* [2010] STC 1251 (the "FII GLO litigation") held that the restriction for practice generally prevailing in error or mistake relief (the predecessor of overpayment relief) could be read out of the provision when claims were made in respect of tax charged contrary to EU law.

11. Following this decision HM Revenue & Customs (HMRC) explained in Revenue & Customs Brief 22/10 that in applying the new overpayment relief provisions claims in respect of tax paid in breach of EU law would not be disallowed on the grounds that it was paid in accordance with generally prevailing practice.

12. The Supreme Court in the FII GLO litigation ([2012] UKSC 19) called the Court of Appeal decision into question. Although the Supreme Court did not consider overpayment relief the judgment has created uncertainty about the application of those provisions which this clause resolves.

13. The changes made by this clause place on a legislative footing the current practice set out in Revenue & Customs Brief 22/10, ensuring that the overpayment relief provisions provide appropriate relief for overpayment of tax charged contrary to EU law.

14. If you have any questions about this change, or comments on the legislation, please contact Adrian Wilsdon on 020 7147 2359 (email: adrian.wilsdon@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

OVERPAYMENT RELIEF: TIME LIMITS FOR CLAIMS

SUMMARY

1. This clause ensures that the time limit for claims to relief for tax which has been over assessed as a result of a mistake in a return runs from the tax year or chargeable period to which the mistake relates.

DETAILS OF THE CLAUSE

2. Subsection (1) amends the overpayment relief provision for income tax and capital gains tax in Schedule 1AB to TMA 1970. Paragraph 3 of that Schedule provides that claims to relief must be made within four years of the end of the "relevant tax year". In the case of claims to relief where a person has been assessed as liable to pay an amount which is not due as a result of a mistake in a return this subsection provides that the relevant tax year is the tax year to which the return relates.

3. Subsections (2) to (3) make similar amendments to the overpayment relief provisions for petroleum revenue tax and corporation tax.

4. Subsection (4) provides that the amendments will have effect for claims made six months or more after Royal Assent to the Finance Bill.

BACKGROUND

5. The four overpayment relief provisions provide relief where tax has been paid or a person is liable to tax as a result of an assessment, determination or direction and the taxpayer believes that the tax is not due. There are four such provisions applying to income tax and capital gains tax, corporation tax, petroleum revenue tax and stamp duty land tax. (The stamp duty land tax provision is not affected by this amendment.) Overpayment or over assessment may arise from a mistake in a return or for other reasons.

6. A four year time limit for claims to the relief runs from the end of "the relevant tax year", "relevant accounting period" or "relevant chargeable period". If tax has been overpaid the relevant tax year, etc is that to which the return relates and otherwise it is the tax year in respect of which the payment was made. If a person is liable to tax as a result of an assessment, determination or direction there is no separate provision for claims resulting from a mistake in a return.

Instead there is only one rule for the relevant tax year, etc and that is the year to which the assessment, determination or direction relates.

7. The clause corrects this and ensures that the time limit runs in all cases from the year or period to which the return in respect of which the mistake was made relates.

8. If you have any questions about this change, or comments on the legislation, please contact Adrian Wilsdon on 020 7147 2359 (email: adrian.wilsdon@hmrc.gsi.gov.uk).

1 Powers under Proceeds of Crime Act 2002

Schedule 1 makes provision for, and in connection with, conferring powers under Chapter 3 of Part 5 and Chapters 2 and 3 of Part 8 of the Proceeds of Crime Act 2002 on officers of Revenue and Customs.

SCHEDULE 1

Section 1

PROCEEDS OF CRIME: POWERS OF OFFICERS OF REVENUE AND CUSTOMS

Proceeds of Crime Act 2002

1 The Proceeds of Crime Act 2002 is amended as set out in paragraphs 2 to 20.

2 (1) Section 289 (searches) is amended as follows.

(2) In subsections (1), (1A)(a) and (2) for "a customs officer" substitute "an officer of Revenue and Customs".

(3) In subsections (1C) and (1D) for "customs officer" substitute "officer of Revenue and Customs".

(4) After subsection (5)(b) insert—

"(ba) are exercisable by an officer of Revenue and Customs only so far as the officer is exercising a function relating to a matter other than an excluded matter,".

(5) After subsection (5) insert—

"(5A) The reference in subsection (5)(ba) to an excluded matter is to a matter specified in section 54(4)(b) of, or in any of paragraphs 3, 5, 7, 10, 12 and 14 to 30 of Schedule 1 to, the Commissioners of Revenue and Customs Act 2005."

3 In section 290 (prior approval for search)—

(a) in subsection (4)(a) for "a customs officer, a customs officer" substitute "an officer of Revenue and Customs, such an officer", and

(b) in subsection (6) for "customs officer" substitute "officer of Revenue and Customs".

4 In section 291(2) (report on exercise of powers) for "customs officer" substitute "officer of Revenue and Customs".

5 In section 292 (code of practice)—

(a) in subsection (1) for "customs officers" substitute "officers of Revenue and Customs", and

(b) in subsection (6) for "a customs officer" substitute "an officer of Revenue and Customs".

6 (1) Section 294 (seizure of cash) is amended as follows.

(2) In subsections (1) and (2) for "A customs officer" substitute "An officer of Revenue and Customs".

(3) After subsection (2) insert—

"(2A) The powers conferred by this section are exercisable by an officer of Revenue and Customs only so far as the officer is exercising a function relating to a matter other than an excluded matter.

(2B) But the powers may be exercised by the officer in reliance on a suspicion that relates to an excluded matter.

(2C) The reference in subsection (2A) to an excluded matter is to a matter specified in section 54(4)(b) of, or in any of paragraphs 3, 5, 7, 10, 12 and 14 to 30 of Schedule 1 to, the Commissioners of Revenue and Customs Act 2005."

7 In section 295(1) (detention of seized cash) for "customs officer" substitute "officer of Revenue and Customs".

8 In section 296(2) (interest on cash) for "customs officer" substitute "officer of Revenue and Customs".

9 In section 297(4) (release of detained cash) for "A customs officer" substitute "An officer of Revenue and Customs".

10 In section 302(6) (compensation) for "a customs officer" substitute "an officer of Revenue and Customs".

11 In section 351(5) (person making application to vary or discharge order)—
- (a) for "a customs officer" substitute "an officer of Revenue and Customs", and
- (b) for "customs officer" substitute "officer of Revenue and Customs".

12 (1) Section 352 (search and seizure warrants) is amended as follows.

(2) In subsection (5)—
- (a) omit paragraph (a), and
- (b) in paragraph (c) at the end insert ", a confiscation investigation or a money laundering investigation".

(3) In subsection (7) omit "(a) or".

13 (1) Section 353 (requirements where production order not available) is amended as follows.

(2) In subsection (10)—
- (a) omit paragraph (a), and
- (b) in paragraph (c) at the end insert ", a confiscation investigation or a money laundering investigation".

(3) In subsection (11) omit "(a) or".

14 (1) Section 369 (customer information orders: supplementary provisions) is amended as follows.

(2) In subsection (5)—
- (a) for "a customs officer" substitute "an officer of Revenue and Customs", and
- (b) for "customs officer" substitute "officer of Revenue and Customs".

(3) In subsection (7) for "a customs officer" substitute "an officer of Revenue and Customs".

15 In section 375(4) (account monitoring orders: supplementary provisions)—
- (a) for "a customs officer" substitute "an officer of Revenue and Customs", and
- (b) for "customs officer" substitute "officer of Revenue and Customs".

16 After section 375 insert—

"Officers of Revenue and Customs

375A Restriction on exercise of certain powers conferred on officers of Revenue and Customs

(1) This section applies to the powers conferred on an officer of Revenue and Customs which are exercisable in connection with—

(a) a production order made or to be made in relation to a confiscation investigation or a money laundering investigation,

(b) a search and seizure warrant issued or to be issued in relation to a confiscation investigation or a money laundering investigation,

(c) a customer information order, and

(d) an account monitoring order.

(2) The powers are exercisable by the officer only so far as the officer is exercising a function relating to a matter other than an excluded matter.

(3) The reference in subsection (2) to an excluded matter is to a matter specified in section 54(4)(b) of, or in any of paragraphs 3, 5, 7, 10, 12 and 14 to 30 of Schedule 1 to, the Commissioners of Revenue and Customs Act 2005."

17 In section 377(1) (persons subject to code of practice) for paragraph (e) substitute—

"(e) officers of Revenue and Customs."

18 In section 378 (officers)—

(a) in subsection (1) for paragraph (d) substitute —

"(d) an officer of Revenue and Customs.",

(b) in subsections (2)(c) and (6)(b) for "a customs officer" substitute "an officer of Revenue and Customs", and

(c) in subsection (4) for paragraph (c) substitute —

"(c) an officer of Revenue and Customs."

19 After section 408 insert—

"Officers of Revenue and Customs

408A Restriction on exercise of certain powers conferred on officers of Revenue and Customs

(1) This section applies to the powers conferred on an officer of Revenue and Customs which are exercisable in connection with—

(a) a production order made or to be made in relation to a confiscation investigation or a money laundering investigation,

(b) a search warrant issued or to be issued in relation to a confiscation investigation or a money laundering investigation,

(c) a customer information order, and

(d) an account monitoring order.

(2) The powers are exercisable by the officer only so far as the officer is exercising a function relating to a matter other than an excluded matter.

(3) The reference in subsection (2) to an excluded matter is to a matter specified in section 54(4)(b) of, or in any of paragraphs 3, 5, 7, 10, 12 and 14 to 30 of Schedule 1 to, the Commissioners of Revenue and Customs Act 2005."

20 In section 412 (interpretation), in the entry relating to the meaning of references to a "constable", for "a customs and excise officer" substitute "an officer of Revenue and Customs".

Commissioners for Revenue and Customs Act 2005

21 In Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (restrictions on functions of Commissioner and officers) omit—

(a) paragraphs 13 and 13A, and

(b) the italic heading immediately preceding those paragraphs.

Relationship of provisions of 2005 Act with provisions of 2002 Act

22 Nothing in section 6 or 7 of the Commissioners for Revenue and Customs Act 2005 (initial functions) restricts the functions in connection with which officers of Revenue and Customs may exercise a power under—

(a) Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 (as amended by this Schedule), or

(b) Chapters 2 and 3 of Part 8 of that Act (as so amended).

Consequential amendments

23 In section 80(1) and (3) of the Serious Crime Act 2007 (amendment of sections 352(5) and 353(10) of the Proceeds of Crime Act 2002) omit paragraph (a) and the word "and" at the end of that paragraph.

24 In Schedule 7 to the Policing and Crime Act 2009 (minor and consequential amendments) omit paragraph 116.

EXPLANATORY NOTE

POWERS UNDER THE PROCEEDS OF CRIME ACT 2002

SUMMARY

1. This clause and Schedule provide for amendments to be made to Proceeds of Crime Act 2002 (POCA). HM Revenue & Customs (HMRC) has criminal asset recovery powers under POCA but for former Inland Revenue (IR) functions the powers can only be exercised by the police on HMRC's behalf. This presents a potential loss of revenue to the Exchequer when HMRC are unable to exercise the powers, for example, during a search when the police are not present. This clause and Schedule extend certain powers under POCA so they can be exercised by officers of HMRC in respect of a limited number of former IR functions.

DETAILS OF THE CLAUSE

2. The clause provides that Schedule which contains provisions concerning the amendment of powers contained in POCA, has effect.

DETAILS OF THE SCHEDULE

3. The Schedule amends the various references to a 'customs officer' in Chapter 3 of Part 5 and in Part 8 of POCA to read "officer of Revenue and Customs". These changes will align with POCA amendments introduced by Schedule 10 of the Serious Crime Act 2007 (SCA) which use "officer of Revenue and Customs" in relation to the detained cash investigation powers.

4. Paragraph 1 provides for POCA to be amended as set out in paragraphs 2 to 20.

5. Paragraph 2 amends section 289 of POCA. This section concerns searches.

6. Sub-paragraphs (2) and (3) replace references to 'customs officer' with references to 'officer of Revenue and Customs'.

7. Sub-paragraph (4) inserts new subsections (5)(ba) which provides that HMRC officers may only exercise powers under section 289 in respect of matters which are not "excluded".

8. Sub-paragraph (5) inserts new subsection (5A). This subsection defines "excluded matters" which are listed below. These are mainly ex-IR matters which are not within the scope of a Finance Bill or

matters in respect of which it is not considered necessary to extend the POCA powers. Consequently, an officer of Revenue and Customs is only allowed to search for cash using the POCA power when exercising a function which is not an excluded matter. The excluded functions are:

- Disabled person's tax credit
- Child benefit
- Child trust funds
- Guardian's allowance
- The issue of bank notes
- The National Insurance Fund
- Oil and gas royalties
- Payment of or in lieu of rates
- Payment in lieu of tax reliefs, in so far as the Commissioners of Inland Revenue were responsible before the commencement of section 5
- Pension schemes
- Petroleum revenue tax
- Rating lists
- Recovery of taxes due in other member States, in relation to matters corresponding to those for which the Commissioners of Inland Revenue were responsible before the commencement of section 5 Stamp duty
- Stamp duty land tax
- Stamp duty reserve tax
- Statutory maternity pay
- Statutory paternity pay
- Statutory sick pay
- Student loans
- Valuation lists in relation to council tax
- Valuation of property.

9. Paragraphs 3, 4 and 5 make consequential amendments to sections 290, 291 and 292 to replace references to "customs officers" with references to "officers of Revenue and Customs".

10. Paragraph 6 amends section 294 of POCA which deals with seizure of cash.

11. Sub-paragraph (2) makes consequential amendments to subsections (1) and (2) of section 294 to replace references with "customs officers" with references to "officers of Revenue and Customs".

12. Sub-paragraph (3) inserts new subsections (2A) to (2C) to section 294. These new subsections limit the amendments so that they only apply to ex IR functions that are not 'excluded matters' as listed above. This amendment ensures that the clause remains within the scope of a Finance Bill. Consequently, an officer of Revenue and Customs is only able to seize cash under POCA when exercising a function which is not an excluded matter. New subsection (2B) confirms that an officer of Revenue and Customs who is exercising a function that is not an excluded matter is able to seize cash that the officer suspects is connected to an excluded matter.

13. Paragraphs 7, 8, 9 10 and 11 make consequential amendments to sections 295, 296, 297, 302 and 351 to replace references to "customs officers" with references to "officers of Revenue and Customs".

14. Paragraphs 12 and 13 make consequential amendments to sections 352 and section 353 so as to replace references to "customs officer" with "officer of Revenue and Customs" in relation to confiscation investigations or money laundering investigations. Officers of Revenue and Customs can already conduct detained cash investigations so the sections are simplified by amalgamating the definitions for detained cash investigations, confiscation investigations and money laundering investigations into one subsection.

15. Paragraphs 14 and 15 make consequential amendments to sections 369 and 375 so as to replace references to "Customs officers" with references to "officers of Revenue and Customs".

16. Paragraph 16 inserts new section 375A. This section limits the amendments to Chapter 2 of Part 8, so that they only apply to ex IR functions that are not 'excluded matters (as listed in the note to paragraph 2 above). This ensures that the clause remains within the scope of the Finance Bill). Consequently, an officer of Revenue and Customs is only able to exercise the related powers when exercising a function which is not an excluded matter.

17. Paragraphs 17 and 18 made consequential amendments to sections 377 and 378, replacing references to "customs officers" with references to "officers of Revenue and Customs".

18. Paragraph 19 inserts new section 408A. This section limits the amendments to Chapter 3 of Part 8, so that they only apply to ex IR functions that are not 'excluded matters (as listed in the note to paragraph 2 above). This ensures that the clause remains within the scope of the Finance Bill). Consequently, an officer of Revenue and Customs is only able to exercise the related powers when exercising a function which is not an excluded matter.

19. Paragraph 20 makes the consequential amendment to section 412 to replace the reference to "a customs and excise officer" with the reference to "an officer of Revenue and Customs".

20. Paragraph 21 repeals paragraphs 13 and 13A of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (CRCA). These two paragraphs reinforced the generic restriction within CRCA on the use of the POCA cash seizure and detained cash investigation powers for former IR matters and are no longer needed now that the POCA powers are being extended.

21. Paragraph 22 is an avoidance of doubt provision that confirms that the generic restriction within CRCA does not apply to the POCA asset recovery powers (as amended by this schedule).

22. Paragraph 23. Section 80 of the SCA amended the definition of 'appropriate person' in both section 325(5) and section 353(10) POCA to include 'financial investigator'. Following the deletion of paragraph (a) of section 325(5) and 353(10) (see paragraphs 12 and 13 above) this amendment is no longer needed.

23. Paragraph 24 omits Paragraph 11 of Schedule 7 to the Policing and Crime Act 2009 (PCA) which amended paragraph 13A to Schedule 2 to CRCA. As paragraph 13A is repealed (see paragraph 19 above) this amendment is no longer needed.

BACKGROUND

24. When the IR and HM Customs and Excise (C&E) merged in 2005 legislation in the CRCA prevented the automatic transfer of powers from one regime to another.

25. Following the HMRC Powers Review, most of the powers were harmonised when Police and Criminal Evidence Act (PACE) replaced former IR and C&E powers in England, Wales and Northern Ireland (FA 2007), and by amendments to the Criminal Law (Consolidation) (Scotland) Act 1995 for Scotland. The POCA powers were not

included in the Powers Review process and this clause and Schedule correct this.

26. If you have any questions about this change, or comments on the legislation, please contact Alinda Howland on 020 7147 0511 (email: alinda.howland@hmrc.gsi.gov.uk).

1 Detention of excise goods

(1) Section 139 of CEMA 1979 (provisions as to detention, seizure and condemnation of goods etc) is amended as follows.

(2) After subsection (1) insert—

“(1A) A person mentioned in subsection (1) who reasonably suspects that any thing may be liable to forfeiture under the customs and excise Acts may detain that thing.

(1B) References in this section and Schedule 2A to a thing detained as liable to forfeiture under the customs and excise Acts include a thing detained under subsection (1A).”

(3) In subsection (2), for the words from “either” to the end substitute “deliver that thing to an officer”.

(4) In subsection (4), for “the Commissioners at the nearest office of customs and excise” substitute “an officer”.

(5) In subsection (5), for “Schedule 3” substitute “Schedules 2A and 3”.

(6) After that subsection insert—

“(5A) Schedule 2A contains supplementary provisions relating to the detention of things as liable to forfeiture under the customs and excise Acts.”

(7) After Schedule 2 to that Act (composite goods: supplementary provisions as to excise duties and drawbacks) insert—

“SCHEDULE 2A Section 139(5A)

SUPPLEMENTARY PROVISIONS RELATING TO THE DETENTION OF THINGS AS LIABLE TO FORFEITURE

Interpretation

1 In this Schedule, references (however expressed) to a thing being detained are references to a thing being detained as liable to forfeiture under the customs and excise Acts.

Period of detention

2 (1) This paragraph applies where a thing is detained.

(2) The thing may be detained for 30 days beginning with the day on which the thing is first detained.

(3) The thing is deemed to be seized as liable to forfeiture under the customs and excise Acts if its detention ceases to be authorised under this paragraph.

Notice of detention

3 (1) The Commissioners must take reasonable steps to give written notice of the detention of any thing, and of the grounds for the detention, to any person who to their knowledge was, at the time of the detention, the owner or one of the owners of the thing.

(2) But notice need not be given under sub-paragraph (1) if the detention occurred in the presence of—

(a) the person whose offence or suspected offence occasioned the detention,

(b) the owner or any of the owners of the thing detained or any servant or agent of such an owner, or

(c) in the case of any thing detained on a ship or aircraft, the master or commander.

Unauthorised removal or disposal: penalties etc

4 (1) This paragraph applies where a thing is detained and, with the agreement of a person within sub-paragraph (2) ("the responsible person"), the thing remains at the place where it is first detained (rather than being removed and detained elsewhere).

(2) A person is within this sub-paragraph if the person is—

(a) the owner or any of the owners of the thing at the time it was detained or any servant or agent of such an owner, or

(b) a person whom the person who detains the thing reasonably believes to be a person within paragraph (a).

(3) If the responsible person fails to prevent the unauthorised removal or disposal of the thing from the place where it is detained, that failure attracts a penalty under section 9 of the Finance Act 1994 (civil penalties).

(4) The removal or disposal of the thing is unauthorised unless it is done with the permission of a proper officer of Revenue and Customs.

(5) Where any duty of excise is payable in respect of the thing—

(a) the penalty is to be calculated by reference to the amount of that duty (whether it has been paid or not), and

(b) section 9 of the Finance Act 1994 has effect as if in subsection (2)(a) the words "5 per cent of" were omitted.

(6) If no duty of excise is payable in respect of the thing, that section has effect as if the penalty provided for by subsection (2)(b) of that section were whichever is the greater of—

(a) the value of the thing at the time it was first detained, or

(b) £250.

5 (1) This paragraph applies where—

(a) a thing is detained at a revenue trader's premises,

(b) the thing is liable to forfeiture under the customs and excise Acts, and

(c) without the permission of a proper officer of Revenue and Customs, the thing is removed from the trader's premises, or otherwise disposed of, by any person.

(2) The Commissioners may seize, as liable to forfeiture under the customs and excise Acts, goods of equivalent value to the thing, from the revenue trader's stock.

(3) For the purposes of this paragraph, a revenue trader's premises include any premises used to hold or store anything for the purposes

of the revenue trader's trade, regardless of who owns or occupies the premises."

(8) The amendments made by this section have effect in relation to things detained on or after the day on which this Act is passed.

EXPLANATORY NOTE

POWER TO DETAIN GOODS

SUMMARY

1. This clause amends section 139 of the Customs and Excise Management Act 1979 (CEMA). It makes explicit provision for the detention of things on reasonable grounds to suspect that they may be liable to forfeiture. It also applies section 9 of the Finance Act 1994 to provide for a penalty to be imposed if goods are removed from the place they are detained where they are detained in situ. A person liable to a penalty will have a right of appeal if there is a reasonable excuse.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces the amendments to section 139 of CEMA.

3. Subsection (2) inserts new subsections (1A) and (1B) after section 1 of s139 of CEMA.

4. New subsection (1A) provides for an officer to detain anything if they have reasonable grounds to suspect that it is liable to forfeiture.

5. New subsection (1B) explains that a thing detained as liable to forfeiture has the same meaning as that in subsection 1A.

6. Subsection (3) removes references to an 'office of customs and excise', as these premises no longer exist following the merger of HM Revenue & Customs (HMRC). It replaces that expression with the expression 'officer' which will include HMRC officers and those who work for the UK Border Force.

7. Subsection (4) removes references to the 'Commissioners' and 'office of customs and excise'. It replaces those references with the expression 'officer', which will include HMRC officers and those who work for the UK Border Force.

8. Subsection (5) provides for goods that are detained to be dealt with under section 139(5) of CEMA. This allows the goods to be disposed of in a suitable manner.

9. Subsection (6) explains that a new Schedule 2A provides for supplementary provisions.

10. Subsection (7) inserts the new Schedule 2A to CEMA.

11. New schedule 2A provides for supplementary provisions relating to the detention of things as liable to forfeiture.

12. New paragraph 1 explains that a reference to a 'thing' being detained is the same as any other references in the Customs & Excise Acts.

13. New paragraph 2 provides for the period of detention.

14. New paragraph 2(1) applies the period of detention where a thing is detained under the new provisions.

15. New paragraph 2(2) provides for a period of detention of 30 days, beginning on the day that the thing is first detained.

16. New paragraph 2(3) provides that, at the end of the 30 day period, the thing will be deemed to be seized as liable to forfeiture unless it is released.

17. New paragraph 3(1) provides that the Commissioners must take reasonable steps to provide a notice of detention to the owner of any thing detained.

18. New paragraph 3(2) (a), (b) and (c), detail the circumstances in which the Commissioners do not need to provide a notice of detention.

19. New paragraph 3(2)(a) states that notice need not be given if the person suspected of the offence, leading to the seizure, is present when the goods are detained.

20. New paragraph 3(2)(b) states that notice need not be given if the owner, or the owners' agent or servant is present.

21. New paragraph 3(2)(c) states that notice need not be given if the goods are detained on board a ship or aircraft and the master or commander are present.

22. New paragraph 4(1) provides for the circumstances under which goods can be detained and left at the place of detention with the agreement of a person defined as "the responsible person".

23. New paragraph 4(2) defines "the responsible person".

24. New paragraph 4(2)(a) defines the responsible person as the owner at the time the goods were detained, or that person's agent or servant.

25. New paragraph 4(2)(b) defines a responsible person alternatively as the person that an officer believes to be the responsible person.

26. New paragraph 4(3) provides for penalties if the responsible person fails to prevent the detained goods from being removed from the place

where they are detained. It makes provisions for a civil penalty under the Finance Act 1994.

27. New paragraph 4(4) provides that the disposal of any goods, detained at the place where first discovered, is unauthorised if not with the permission of an officer.

28. New paragraph 4(5)(a) provides for the penalty to be calculated on the duty value of the goods, whether that duty is due or not.

29. New paragraph 4(5)(b) applies section 9 of the Finance Act 1994 with modification to take account of this.

30. New paragraph 4(6)(a) and (b) provide that where things, which do not attract duty, are detained, the penalty will be based on the value of the thing at the time when it was first detained or £250, whichever is the greater.

31. New paragraph 5(1)(a) to (c) sets out the circumstances in which the paragraph applies.

32. New paragraph 5(1)(a) details that the paragraph applies when goods are detained at a revenue trader's premises.

33. New paragraph 5(1)(b) details that the paragraph applies when the thing is liable to forfeiture.

34. New paragraph 5(1)(c) details that the paragraph applies when the goods are removed traders premises or disposed of.

35. New paragraph 5(2) provides for the Commissioners to seize from revenue traders' premises, goods of an equivalent value to the thing, where paragraph 5(1) applies.

36. New paragraph 5(3) provides that revenue traders' premises include any premises that are used to hold or store anything for the purpose of revenue traders' trade. It does not matter who owns or occupies the premises.

37. Subsection (8) provides for the measure to take effect, in relation to things detained, on and after the date that Finance Bill 2013 receives Royal Assent.

BACKGROUND

38. This measure will strengthen our powers to detain goods on reasonable grounds pending investigation of their duty status. It will also clarify the law in respect of our powers and put beyond doubt our ability to detain goods that officers suspect are liable to forfeiture.

39. This measure will also provide statutory safeguards and allow the goods to remain in place when detained, minimising disruption to businesses.

40. If you have any questions about this change, or comments on the legislation, please contact Karen Rourke on 01702 361934 (email: karen.rourke@hmrc.gsi.gov.uk).

1 Penalty instead of forfeiture of larger ships

(1) Section 143 of CEMA 1979 (penalty in lieu of forfeiture of larger ship where responsible officer is implicated in offence) is amended as follows.

(2) For subsection (1) (Commissioners' power to impose fine up to £50) substitute—

"(1) This section applies where—

(a) any ship of 250 or more tons register would, but for section 142, be liable to forfeiture for, or in connection with, any offence under the customs and excise Acts, and

(b) in the opinion of the Commissioners, a responsible officer of the ship is implicated either by the officer's own act, or by neglect, in that offence."

(3) In subsection (3) (Commissioners' power to bring condemnation proceedings)—

(a) for the words from the beginning to the first "they" substitute "The Commissioners", and

(b) for "£500" substitute "£10,000".

(4) In subsection (4) (power to detain ship pending payment of deposit against fine or condemnation proceedings)—

(a) for the words from the beginning to "section, the" substitute "The",

(b) for "£50 or, as the case may be, £500" substitute "£10,000", and

(c) omit "their final decision or, as the case may be,".

(5) In paragraph (a) of subsection (6) (definition of "responsible officer)—

(a) after "means" insert "a person who is, or is acting as,",

(b) for "or an engineer" substitute ", an engineer or the bosun", and

(c) omit the words from "and, in the case of a ship manned" to the end.

(6) After that subsection insert—

"(7) If the Treasury consider that there has been a change in the value of money since the Finance Act 2013 was passed or, as the case may be, since the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sum for the time being specified in subsections (3) and (4) such other sum as appears to them to be justified by the change.

(8) An order under subsection (7) may not vary the penalty for any conduct occurring before the coming into force of the order.

(9) An order under subsection (7) must be made by statutory instrument.

(10) A statutory instrument containing an order under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament."

EXPLANATORY NOTE

PENALTY INSTEAD OF FORFEITURE OF LARGER SHIPS

SUMMARY

1. The measure increases the level of financial penalties that can be imposed by HM Revenue & Customs (HMRC) under section 143 of the Customs and Excise Management Act 1979 (CEMA). Section 143 applies to ships of 250 tons register and over, where a responsible officer has been complicit or negligent in respect of customs or excise offences committed on board their ship.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that section 143 of CEMA (penalty in lieu of forfeiture of larger ships where responsible officer is implicated in offence) is amended.

3. Subsection 2 removes the Commissioner's power to impose a fine up to £50.

4. Subsection 3 increases the maximum penalty that a court can impose on ships involved in revenue offences from £500 to £10,000.

5. Subsection 4 increases the deposit the Commissioners may require whilst a ship is detained pending proceedings to a maximum of £10,000.

6. Subsection 5 amends the definition of responsible officer in section 143 to add bosuns, remove 'the serang' and ensure that persons 'acting as' any of the listed persons are included.

7. Subsection 6 enables the amount of the penalty (and deposit) to be altered, by statutory instrument, if there is a change in the value of money.

BACKGROUND NOTE

8. The maximum level of the penalties has been the same since 1952 and their value has been eroded by inflation.

9. If you have any questions about this change, or comments on the legislation, please contact Anne Treadaway on 020 7147 0337 (email: anne.treadaway@hmrc.gsi.gov.uk).

1 Definition of "goods" for certain customs purposes

In section 1(1) of CEMA 1979 (interpretation), in the definition of "goods", for "baggage" substitute "containers".

EXPLANATORY NOTE

DEFINITION OF “GOODS” FOR CERTAIN CUSTOMS PURPOSES

SUMMARY

1. This clause amends the current definition of “goods” in section 1 of the Customs and Excise Management Act 1979 (CEMA) to make clear that the definition of “goods” includes containers. This will ensure that items such as packages of commercial documents, containers containing live animals and containers containing human remains are within the scope of the Commissioners’ powers.

DETAILS OF THE CLAUSE

2. Subsection 1 amends the definition of ‘goods’ in section 1(1) of CEMA 1979 (interpretation) from ‘includes stores and baggage’ to ‘includes containers’.

BACKGROUND NOTE

3. Some importers and exporters have questioned Commissioners' powers to search, examine and require information about goods extends to parcels and packages that are empty or that contain (or are said to contain) only documents, or that contain things in which there may be no value or property.

4. If you have any questions about this change, or comments on the legislation, please contact Anne Treadaway on 020 7147 0337 (email: anne.treadaway@hmrc.gsi.gov.uk).

1 Hire cars for disabled persons

(1) In section 268D of CAA 2001 (hire cars for disabled persons), in subsection (2), after paragraph (a) insert—

"(aa) personal independence payment under the Welfare Reform Act 2012, or the Welfare Reform Act (Northern Ireland) 2013, because of entitlement to the mobility component;

(ab) [armed forces independence payment under a scheme established under section 1 of the Armed Forces (Pensions and Compensation) Act 2004];".

(2) The amendment made by this section has effect in relation to expenditure incurred on or after 1 April 2013.

EXPLANATORY NOTE

HIRE CARS FOR DISABLED PERSONS

SUMMARY

1. The clause expands the definition of a disabled person in the Capital Allowances Act 2001 (CAA 2001) to include recipients of the Personal Independence Payment and the Armed Forces Independence Payment.

DETAILS OF THE CLAUSE

2. The clause amends section 268D(2) CAA 2001 to include reference to recipients of the Personal Independence Payment received under the Welfare Reform Act 2012 or the Welfare Reform Act (Northern Ireland) 2013 and to recipients of the Armed Forces Independence Payment, made under a scheme established under section 1 of the Armed Forces (Pensions and Compensation) Act 2004. The amendment applies to expenditure incurred on or after 1 April 2013.

BACKGROUND

3. CAA 2001 provides certain benefits where cars are hired to disabled persons in that a car that falls within this definition can be treated as a short life asset (SLA).

4. The SLA regime enables tax allowances to be brought into line with the actual depreciation of plant or machinery when an item is scrapped or sold within eight years of its acquisition. This ensures that the total allowances given by this point match the actual net cost to the business, providing an advantage where the allowances would otherwise be less than the net cost.

5. The definition of a “disabled person” for capital allowances purposes is based on the receipt of certain types of allowances, including Disability Living Allowance (DLA).

6. The Welfare Reform Act 2012 made a number of significant changes to the welfare system including replacing DLA for people between 16 and 64 years of age with Personal Independence Payments. The Welfare Reform Act (Northern Ireland) 2013 will make similar changes in Northern Ireland. Personal Independence Payments are being introduced in phases, starting in April 2013.

7. On 22 October 2012 the Government announced its intention to introduce a separate payment for seriously injured service and ex-service personnel who are in receipt of a qualifying award from the armed forces compensation scheme, called the Armed Forces Independence Payment.

8. This clause ensures that the definition of hire cars for disabled persons within CAA 2001 accommodates these changes.

9. If you have any questions about this change, or comments on the legislation, please contact Andrew Donaldson on 020 7147 2282 (email: andrew.s.donaldson@hmrc.gsi.gov.uk).

1 Vehicle licences for disabled people

Schedule 1 makes provision about vehicle licences for disabled people.

SCHEDULE 1

Section 1

VEHICLE LICENCES FOR DISABLED PEOPLE

1 VERA 1994 is amended as follows.

2 (1) Section 22ZA (nil licences for vehicles for disabled persons: information) is amended as follows.

(2) In subsections (2) and (4), and in the heading, omit "nil".

(3) For subsection (5) substitute—

"(5) In this section "relevant licence functions" means functions relating to applications for, and the issue of—

(a) vehicle licences in respect of vehicles to which paragraph 1A of Schedule 1 applies, and

(b) nil licences in respect of vehicles that are exempt vehicles under paragraph 19 of Schedule 2 or paragraph 7 of Schedule 4."

3 In Schedule 1 (annual rates of duty), in Part 1 after paragraph 1 insert—

"1A (1) The annual rate of vehicle excise duty applicable to a vehicle to which this paragraph applies is 50 per cent of the rate which (but for this paragraph) would be applicable.

(2) This paragraph applies to a vehicle when it is being used, or kept for use, by or for the purposes of a disabled person who is in receipt of personal independence payment by virtue of entitlement to the mobility component at the standard rate if—

(a) the vehicle is registered under this Act in the name of the disabled person, and

(b) no other vehicle registered in his or her name under this Act is—

(i) a vehicle to which this paragraph applies, or

(ii) an exempt vehicle under paragraph 7 of Schedule 4.

(3) This paragraph has effect as if a person were in receipt of personal independence payment by virtue of entitlement to the mobility component at the standard rate in any case where—

(a) the person has ceased to be in receipt of it as a result of meeting the condition in section 86(2) of the Welfare Reform Act 2012 or section 85(2) of the Welfare Reform (Northern Ireland) Act 2012 (treatment as in-patient in hospital or similar institution), and

(b) the person would continue to be entitled to receive the mobility component of the payment at the standard rate but for meeting the condition.

(4) For the purposes of sub-paragraph (2), a vehicle is to be treated as registered under this Act in the name of a person in receipt of personal independence payment by virtue of entitlement to the mobility component at the standard rate if it is so registered in the name of—

(a) an appointee, or

(b) a person nominated for the purposes of this paragraph by the person or an appointee.

(5) In sub-paragraph (4) "appointee" means a person appointed pursuant to regulations made under (or having effect as if made under) the Social Security Administration Act 1992 or the Social Security Administration (Northern Ireland) Act 1992 to exercise any of the rights and powers of a person in receipt of personal independence payment."

4 (1) In Schedule 2 (exempt vehicles), paragraph 19 is amended as follows.

(2) In sub-paragraph (2), after paragraph (a) insert—

"(aa) he or she is in receipt of personal independence payment by virtue of entitlement to the mobility component at the enhanced rate,

(ab) [he or she is in receipt of armed forces independence payment,]".

(3) After sub-paragraph (2A) insert—

"(2B) This paragraph has effect as if a person were in receipt of personal independence payment by virtue of entitlement to the mobility component at the enhanced rate in any case where—

(a) the person has ceased to be in receipt of it as a result of meeting the condition in section 86(2) of the Welfare Reform Act 2012 or section 85(2) of the Welfare Reform (Northern Ireland) Act 2012 (treatment as in-patient in hospital or similar institution), and

(b) the person would continue to be entitled to receive the mobility component of the payment at the enhanced rate but for meeting the condition."

(4) In sub-paragraph (3), for "person in receipt of a disability living allowance by virtue of entitlement to the mobility component at the higher rate, or of a mobility supplement," substitute "disabled person who satisfies sub-paragraph (2) by virtue of paragraph (a), (aa), (ab) or (b) of that sub-paragraph".

(5) In sub-paragraph (4)(a), after "disability living allowance," insert "personal independence payment [or armed forces independence payment],".

5 The amendments made by this Schedule are treated as having come into force on 8 April 2013.

EXPLANATORY NOTE

VEHICLE LICENCES FOR DISABLED PEOPLE

SUMMARY

1. This clause and Schedule amend the Vehicle Excise and Registration Act (VERA) 1994 to give a 50 per cent discount to rates of Vehicle Excise Duty (VED) to persons receiving the standard mobility component of Personal Independence Payment (PIP), and a complete exemption to those receiving either the enhanced mobility component of PIP, or Armed Forces Independence Payment (AFIP).

DETAILS OF THE SCHEDULE

2. Paragraph 2 of the Schedule amends section 22ZA VERA 1994 to provide that information relating to a welfare payment recipient may be supplied in support of the administrative functions for a 50 per cent discount to rates of VED or an exemption.

3. Paragraph 3 amends Part 1 of Schedule 1 to VERA 1994 to introduce a new provision giving a 50 per cent discount to rates of VED to persons receiving the standard mobility component of PIP. The discount only applies to one vehicle, and remains in effect during any period of the recipient's treatment as in-patient at hospital or similar institution. The vehicle is either to be registered in the name of the recipient or of a person appointed to manage the affairs of a recipient unable to manage their own affairs, or in either case, their nominee.

4. Paragraph 4 amends Schedule 2 of VERA 1994 to add receipt of either the enhanced mobility component of PIP or of AFIP as qualifying conditions for exemption from VED. The exemption remains in effect during any period during which a person in receipt of the enhanced mobility component of PIP receives treatment as in-patient at a hospital or similar institution. The vehicle is either to be registered in the name of the recipient or of a person appointed to manage the affairs of a recipient unable to manage their own affairs, or in either case, their nominee.

BACKGROUND NOTE

5. The Welfare Reform Act (WRA) 2012 introduced the new PIP which will be phased in gradually with effect from 1 April 2013.

6. The Ministry of Defence announced the introduction of the new AFIP benefit (for armed forces personnel injured in action since 2006) in summer 2012.

7. If you have any questions about this change, or comments on the draft legislation, please contact Jason Donovan on 01792 786860 (email: Jason.Donovan@dvla.gsi.gov.uk).

1 Trusts with vulnerable beneficiary

Schedule 1 contains provision about trusts which have a vulnerable beneficiary.

SCHEDULE 1

Section 1

TRUSTS WITH VULNERABLE BENEFICIARY

Inheritance Tax Act 1984

1 IHTA 1984 is amended as follows.

2 (1) Section 71A (trusts for bereaved minors) is amended as follows.

(2) For subsection (3)(c)(ii) substitute—

"(ii) if any of the income arising from any of the settled property is applied for the benefit of a beneficiary, it is applied for the benefit of the bereaved minor."

(3) After subsection (3) insert—

"(3A) Trusts are not to be treated as failing to secure that the conditions in subsection (3) are met by reason only of provision falling within subsection (3B).

(3B) Provision falls within this subsection if it enables the trustees, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than the bereaved minor an amount specified in, or determined under, the order.

(3C) An order under subsection (3B) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which subsection (3A) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made.

(3D) The power to make an order under subsection (3B) is exercisable by statutory instrument, and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons."

(4) Omit subsection (4).

3 (1) Section 71D (age 18-to-25 trusts) is amended as follows.

(2) For subsection (6)(c)(ii) substitute—

"(ii) if any of the income arising from any of the settled property is applied for the benefit of a beneficiary, it is applied for the benefit of B."

(3) After that subsection insert—

"(6A) Where the income arising from the settled property is held on trusts of the kind described in section 33 of the Trustee Act 1925 (protective

trusts), paragraphs (b) and (c) of subsection (6) have effect as if for "living and under the age of 25," there were substituted "under the age of 25 and the income arising from the settled property is held on trust for B,".

(6B) Trusts are not to be treated as failing to secure that the conditions in subsection (6) are met by reason only of provision falling within subsection (6C).

(6C) Provision falls within this subsection if it enables the trustees, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than B an amount specified in, or determined under, the order.

(6D) An order under subsection (6C) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which subsection (6B) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made.

(6E) The power to make an order under subsection (6C) is exercisable by statutory instrument, and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons."

(4) Omit subsection (7).

4 (1) Section 89 (trusts for disabled persons) is amended as follows.

(2) For subsection (1)(b) substitute—

"(b) which secure that, if any of the settled property or income arising from it is applied during the disabled person's life for the benefit of a beneficiary, it is applied for the benefit of the disabled person."

(3) After subsection (2) insert—

"(2A) The trusts on which settled property is held are not to be treated as falling outside subsection (1) by reason only of provision falling within subsection (2B).

(2B) Provision falls within this subsection if it enables the trustees, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than the disabled person an amount specified in, or determined under, the order.

(2C) An order under subsection (2B) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which subsection (2A) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made.

(2D) The power to make an order under subsection (2B) is exercisable by statutory instrument, and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons."

(4) Omit subsection (3).

(5) In subsection (4), for the words following "into settlement," substitute "was a disabled person".

(6) For subsections (5) and (6) substitute—

"(4A) In this section "disabled person" has the meaning given by Schedule 1A to the Finance Act 2005."

5 (1) Section 89A (self-settlement by person with condition expected to lead to disability) is amended as follows.

(2) In subsection (1)(b), for the words following "A becoming" substitute "a person falling within any paragraph of the definition of "disabled person" in paragraph 1 of Schedule 1A to the Finance Act 2005".

(3) In subsection (2), after "settled property" insert "or income arising from it".

(4) For subsections (5) and (6) substitute—

"(5) For the purposes of subsection (1)(b), assume—

(a) that A will meet any conditions as to residence or presence that are required to establish entitlement to the allowance or payment in question,

(b) that there will be no provision made by regulations under any of the following provisions—

(i) sections 67(1) and (2), 72(8) and 113(2) of SSCBA 1992,

(ii) sections 67(1) and (2), 72(8) and 113(2) of SSCB(NI)A 1992,

(iii) sections 85 and 86 of WRA 2012, and

(iv) sections 84 and 85 of WR(NI)A 2013, and

(c) that A will not be prevented from receiving the allowance or payment in question by any of the following provisions—

(i) section 113(1) of SSCBA 1992,

(ii) section 113(1) of SSCB(NI)A 1992,

(iii) section 87 of WRA 2012, and

(iv) section 86 of WR(NI)A 2013."

(5) Before subsection (7) insert—

"(6A) For the purposes of subsection (2), ignore any provision falling within subsection (6B).

(6B) Provision falls within this subsection if it enables the trustees, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than A an amount specified in, or determined under, the order.

(6C) An order under subsection (6B) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which subsection (6A) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made.

(6D) The power to make an order under subsection (6B) is exercisable by statutory instrument, and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons."

(6) For subsection (8) substitute—

"(8) In this section—

"SSCBA 1992" means the Social Security Contributions and Benefits Act 1992,

"SSCB(NI)A 1992" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

"WRA 2012" means the Welfare Reform Act 2012, and

"WR(NI)A 2013" means the Welfare Reform (Northern Ireland) Act 2013."

6 (1) Section 89B (meaning of "disabled person's interest") is amended as follows.

(2) For subsection (2) substitute—

"(2) In subsection (1)(c) "disabled person" has the meaning given by Schedule 1A to the Finance Act 2005."

(3) After that subsection insert—

"(2A) Where the income arising from the settled property is held on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), subsection (1)(d)(v) has effect as if for "A's life" there were substituted "the period during which the income from the property is held on trust for A"."

7 (1) The amendments made by paragraphs 2 to 6 have effect in relation to property transferred into settlement on or after 8 April 2013.

(2) But if the settlement was created before 8 April 2013 and no alterations have been made to the trusts on or after that date, nothing in paragraphs 2 to 6 is to be read as preventing property transferred into settlement on or after that date from being property to which section 71A, 71D, 89 or 89A of IHTA 1984 applies.

Taxation of Chargeable Gains Act 1992

8 TCGA 1992 is amended as follows.

9 (1) Section 169D (exceptions to rules on gifts to settlor-interested settlements etc.) is amended as follows.

(2) For subsection (3) substitute—

"(3) The first condition is that, immediately after the making of the disposal—

(a) the settled property is held on trusts which secure that, during the lifetime of a disabled person, if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of that person, and

(b) the settled property is held on trusts—

(i) which secure that, during his or her lifetime, he or she is entitled to all of the income (if there is any) arising from any of the property, or

(ii) which secure that, during his or her lifetime, if any such income is applied for the benefit of a beneficiary, it is applied for his or her benefit."

(3) After subsection (4) insert—

"(4A) Where the income arising from the settled property is held on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), subsection (3)(b)(i) has effect as if the reference to the lifetime of the disabled person were a reference to the period during which the income is held on trust for the disabled person.

(4B) For the purposes of subsection (3), ignore any provision falling within subsection (4C).

(4C) Provision falls within this subsection if it enables the trustees, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than the disabled person an amount specified in, or determined under, the order.

(4D) An order under subsection (4C) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which subsection (4B) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made."

(4) For subsections (7) to (9) substitute—

"(7) In this section "disabled person" has the meaning given by Schedule 1A to the Finance Act 2005".

(5) Omit subsection (10).

(6) The amendments made by this paragraph have effect in relation to disposals to the trustees of a settlement on or after 8 April 2013.

(7) But if the settlement was created before 8 April 2013 and no alterations have been made to the trusts on or after that date, nothing in this paragraph is to be read as preventing section 169D(2) of TCGA 1992 from applying in relation to the disposal.

10 (1) Paragraph 1 of Schedule 1 (application of exempt amount and reporting limits in cases involving settled property) is amended as follows.

(2) In sub-paragraph (1)—

(a) for "mentally disabled person or a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement

to the care component at the highest or middle rate" substitute "disabled person", and

(b) for paragraphs (a) and (b) substitute—

"(a) if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of that person, and

(b) either—

(i) that person is entitled to all of the income (if there is any) arising from any of the property, or

(ii) if any such income is applied for the benefit of a beneficiary, it is applied for that person's benefit,".

(3) After that sub-paragraph insert—

"(1A) The trusts on which settled property is held are not to be treated as falling outside sub-paragraph (1) by reason only of provision falling within sub-paragraph (1B).

(1B) Provision falls within this sub-paragraph if it enables the trustees of the settlement, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than the disabled person an amount specified in, or determined under, the order.

(1C) An order under sub-paragraph (1B) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which sub-paragraph (1A) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made."

(4) In sub-paragraph (2), for the words from the beginning to "that sub-paragraph" substitute "The reference in sub-paragraph (1)".

(5) In sub-paragraph (6), for the definitions of "mentally disabled person", "attendance allowance" and "disability living allowance" substitute—

""disabled person" has the meaning given by Schedule 1A to the Finance Act 2005; and".

(6) The amendments made by this paragraph have effect in relation to years of assessment beginning on or after 6 April 2013.

(7) But if the settlement was created before 8 April 2013 and no alterations have been made to the trusts on or after that date, nothing in this paragraph is to be read as preventing sections 3(1) to (5C) and 3A of TCGA 1992 from applying in relation to the settlement as provided by paragraph 1(1) of Schedule 1 to that Act.

Finance Act 2005

11 FA 2005 is amended as follows.

12 (1) Section 34 (disabled persons) is amended as follows.

(2) In subsection (2), for paragraph (b) substitute—

"(b) either—

(i) that the disabled person is entitled to all the income (if there is any) arising from any of the property, or

(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person."

(3) After that subsection insert—

"(2A) The trusts on which property is held are not to be treated as failing to secure that the conditions in subsection (2) are met by reason only of provision falling within subsection (2B).

(2B) Provision falls within this subsection if it enables the trustees, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than the disabled person an amount specified in, or determined under, the order.

(2C) An order under subsection (2B) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which subsection (2A) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made.

(2D) The power to make an order under subsection (2B) is exercisable by statutory instrument, and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons."

(4) Omit subsection (3).

13 (1) Section 35 (relevant minors) is amended as follows.

(2) For subsection (3)(c)(ii) substitute—

"(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor."

(3) After that subsection insert—

"(3A) Trusts to which subsection (2) applies are not to be treated as failing to secure that the conditions in subsection (3) are met by reason only of provision falling within subsection (3B).

(3B) Provision falls within this subsection if it enables the trustees, in any period specified in an order made by the Treasury, to apply for the benefit of a person other than the relevant minor an amount specified in, or determined under, the order.

(3C) An order under subsection (3B) may, in particular—

(a) make provision relating to amounts of capital or income, or both,

(b) specify circumstances in which subsection (3A) is, or is not, to apply in relation to a trust,

(c) make different provision for different cases, and

(d) include provision having effect in relation to any time before the order is made.

(3D) The power to make an order under subsection (3B) is exercisable by statutory instrument, and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons."

(4) Omit subsection (4).

14 For section 38 substitute—

"38 Meaning of "disabled person"

In this Chapter "disabled person" has the meaning given by Schedule 1A."

15 (1) The amendments made by paragraphs 12 to 14 have effect for the tax year 2013-14 and subsequent tax years.

(2) But if the settlement was created before 8 April 2013 and no alterations have been made to the trusts on or after that date, nothing in paragraphs 12 to 14 is to be read as preventing a claim being made for special tax treatment under Chapter 4 of Part 2 of FA 2005.

16 After Schedule 1 insert—

"SCHEDULE 1A — Section 38

MEANING OF "DISABLED PERSON"

"Disabled person"

1 "Disabled person" means—

(a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of administering his or her property or managing his or her affairs,

(b) a person in receipt of attendance allowance,

(c) a person in receipt of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate,

(d) a person in receipt of personal independence payment by virtue of entitlement to the daily living component,

(e) a person in receipt of constant attendance allowance[, or

(f) a person in receipt of armed forces independence payment].

Attendance allowance

2 A person is to be treated as a disabled person under paragraph 1(b) if he or she satisfies HMRC that if he or she were to meet the prescribed conditions as to residence and presence under section

64(1) of SSCBA 1992 or section 64(1) of SSCB(NI)A 1992 he or she would be entitled to receive attendance allowance.

3 A person who is (or is treated as) a disabled person under paragraph 1(b) is not to cease to be (or to be treated as) such a disabled person by reason only of—

(a) provision made by regulations under section 67(1) or (2) of SSCBA 1992 or section 67(1) or (2) of SSCB(NI)A 1992 (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in hospital or is provided with certain accommodation), or

(b) section 113(1) of SSCBA 1992 or section 113(1) of SSCB(NI)A 1992 or provision made by regulations under section 113(2) of SSCBA 1992 or section 113(2) of SSCB(NI)A 1992 (general provisions as to disqualification and suspension).

Disability living allowance

4 A person is to be treated as a disabled person under paragraph 1(c) if he or she satisfies HMRC that if he or she were to meet the prescribed conditions as to residence and presence under section 71(6) of SSCBA 1992 or section 71(6) of SSCB(NI)A 1992 he or she would be entitled to receive a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.

5 A person who is (or is treated as) a disabled person under paragraph 1(c) is not to cease to be (or to be treated as) such a disabled person by reason only of—

(a) provision made by regulations under section 72(8) of SSCBA 1992 or section 72(8) of SSCB(NI)A 1992 (no payment of disability allowance for persons for whom certain accommodation is provided), or

(b) section 113(1) of SSCBA 1992 or section 113(1) of SSCB(NI)A 1992 or provision made by regulations under section 113(2) of SSCBA 1992 or section 113(2) of SSCB(NI)A 1992 (general provisions as to disqualification and suspension).

Personal independence payment

6 A person is to be treated as a disabled person under paragraph 1(d) if he or she satisfies HMRC that if he or she were to meet the prescribed conditions as to residence and presence under section 77(3) of WRA 2012 or section 76(3) of WR(NI)A 2013 he or she would be entitled to receive personal independence payment entitlement by virtue of entitlement to the daily living component.

7 A person who is (or is treated as) a disabled person under paragraph 1(d) is not to cease to be (or to be treated as) such a disabled person by reason only of—

(a) provision made by regulations under section 85 of WRA 2012 or section 84 of WR(NI)A 2013 (exclusion of certain care home residents),

(b) provision made by regulations under section 86 of WRA 2012 or section 85 of WR(NI)A 2013 (exclusion of certain hospital in-patients), or

(c) section 87 of WRA 2012 or section 86 of WR(NI)A 2013 (exclusion of prisoners and detainees).

Interpretation

8 In this Schedule—

["armed forces independence payment" means armed forces independence payment under a scheme established under section 1 of the Armed Forces (Pensions and Compensation) Act 2004,]

"attendance allowance" means an allowance under section section 64 of the SSCBA 1992 or section 64 of the SSCB(NI)A 1992,

"constant attendance allowance" means an allowance under article 8 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606),

"disability living allowance" means a disability living allowance under section 71 of the SSCBA 1992 or section 71 of the SSCB(NI)A 1992,

"HMRC" means Her Majesty's Revenue and Customs,

"personal independence payment" means a personal independence payment under section 77 of WRA 2012 or section 76 of WR(NI)A 2013,

"SSCBA 1992" means the Social Security Contributions and Benefits Act 1992,

"SSCB(NI)A 1992" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

"WRA 2012" means the Welfare Reform Act 2012, and

"WR(NI)A 2013" means the Welfare Reform (Northern Ireland) Act 2013."

EXPLANATORY NOTE

VULNERABLE BENEFICIARY TRUSTS

SUMMARY

1. This Schedule ensures, for the purposes of defining a vulnerable beneficiary trust, that a disabled person includes individuals in receipt of Personal Independence Payment by virtue of entitlement to the daily living component; and harmonises rules that limit how the capital and income of these trusts may be applied.

DETAILS OF THE SCHEDULE

2. Paragraph 1 provides for the amendment of the Inheritance Act (IHTA) 1984.

3. Paragraph 2 amends section 71A of IHTA 1984.

4. Subparagraph (2) amends section 71A(3)(c)(ii) to provide that any of the trust income that is applied is applied for the benefit of the bereaved minor.

5. Subparagraph (3) adds new sections 71A(3A) to (3D) to IHTA 1984, which enable HM Treasury to provide by Order the circumstances when amounts applied for the benefit of persons other than the bereaved minor do not disqualify a trust from being a qualifying trust for the benefit of a bereaved minor.

6. Subparagraph (4) omits provisions that disregard the existence of a statutory power of advancement.

7. Paragraph 3 amends section 71D of IHTA 1984.

8. Subparagraph (2) amends subsection 71D(6)(c)(ii) to provide that any of the trust income that is applied is applied for the benefit of the person aged between 18 and 25.

9. Subparagraph (3) adds new subsections 71D(6A) to (6E) to IHTA 1984, which make provision in relation to protective trusts; and enable HM Treasury to provide by order the circumstances when amounts applied for the benefit of persons other than the person aged between 18 and 25 do not disqualify a trust from being a qualifying trust for the benefit of a person aged between 18 and 25.

10. Subparagraph (4) omits provisions that disregard the existence of a statutory power of advancement.

11. Paragraph 4 amends section 89 of IHTA 1984.

12. Subparagraph (2) amends section 89(1)(b) to provide that any of the trust capital or income that is applied is applied for the benefit of the disabled person.

13. Subparagraph (3) adds new sections 89(2A) to (2D), which enable the Treasury to provide by order the circumstances when amounts applied for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person.

14. Subparagraph (4) omits provisions that disregard the existence of a statutory power of advancement.

15. Subparagraphs (5) and (6) amend the definition of a disabled person and define it as having the meaning given by new Schedule 1A to the Finance Act 2005 (introduced at paragraph 16 to this Schedule).

16. Paragraph 5 amends section 89A of IHTA 1984.

17. Subparagraph (2) applies the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

18. Subparagraph (3) amends section 89A(2) to provide that any of the trust income that is applied is applied for the benefit of the disabled person.

19. Subparagraph (4) amends sections 89A(5) and (6) to include the assumption that the beneficiary is entitled to receive personal independence payment when resident outside the UK or in a care home, hospital or prison.

20. Subparagraph (5) adds new sections 89A(6A) to (6D), which enable the Treasury to provide by order the circumstances when amounts applied for the benefit of persons other than the person with a condition expected to lead to a disability do not disqualify a trust from being a qualifying trust for the benefit of a person with a condition expected to lead to a disability.

21. Subparagraph (6) amends subsection (8) to include definitions for "WRA 2012" (the Welfare Reform Act 2012) and "WR(NI)A 2013" (the Welfare Reform (Northern Ireland) Act 2013).

22. Paragraph 6 amends section 89B of IHTA 1984.

23. Subparagraph (2) applies the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

24. Subparagraph (3) makes provision in relation to protective trusts.

25. Paragraph 7 provides for the commencement of paragraphs 2 to 6.

26. Subparagraph (2) grandfathers for existing trusts the current limitations on how income and capital can be applied.

27. Paragraph 8 provides for the amendment of the Taxation of Chargeable Gains Act (TCGA) 1992.

28. Paragraph 9 amends section 169D of TCGA 1992.

29. Subsection 2 amends subsection 169D(3) to provide that any of the trust capital that is applied is applied for the benefit of the disabled person; and that any of the trust income is similarly applied or that the disabled person is entitled to all of the income.

30. Subparagraph (3) adds new sections 169D(4A) to (4D), which make provision in relation to protective trusts; and enable the Treasury to provide by order the circumstances when amounts applied for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person.

31. Subparagraph (4) applies the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

32. Subparagraph (5) omits provisions that disregard the existence of a statutory power of advancement.

33. Subparagraph (6) provides for the commencement of paragraph 9.

34. Subparagraph (7) grandfathers for existing trusts the current limitations on how income and capital can be applied.

35. Paragraph 10 amends paragraph 1 of Schedule 1 to TCGA 1992.

36. Subparagraph (2) provides that any of the trust capital that is applied is applied for the benefit of the disabled person; and that any of the trust income is similarly applied or that the disabled person is entitled to all of the income.

37. Subparagraph (3) adds new paragraphs 1(1A) to (1C), which enable the Treasury to provide by order the circumstances when amounts applied for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person.

38. Subparagraph (4) omits provisions that disregard the existence of a statutory power of advancement.

39. Subparagraph (5) applies the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

40. Subparagraph (6) provides for the commencement of paragraph 10.

41. Subparagraph (7) grandfathers for existing trusts the current limitations on how income and capital can be applied.

42. Paragraph 11 provides for the amendment of the Finance Act (FA) 2005.

43. Paragraph 12 amends section 34 of FA 2005.

44. Subparagraph (2) provides that any of the trust income that is applied is applied for the benefit of the disabled person or that the disabled person is entitled to all of the income.

45. Subparagraph (3) adds new sections 34(2A) to (2D), which enable the Treasury to provide by order the circumstances when amounts applied for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person.

46. Subparagraph (4) omits provisions that disregard the existence of a statutory power of advancement.

47. Paragraph 13 amends section 35 of FA 2005.

48. Subparagraph (2) amends section 35(3)(c)(ii) to provide that any of the trust income that is applied is applied for the benefit of the bereaved minor.

49. Subparagraph (3) adds new sections 35(3A) to (3D), which enable the Treasury to provide by order the circumstances when amounts applied for the benefit of persons other than the bereaved minor do not disqualify a trust from being a qualifying trust for the benefit of a bereaved minor.

50. Subparagraph (4) omits provisions that disregard the existence of a statutory power of advancement.

51. Paragraph 14 applies the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

52. Paragraph 15 provides for the commencement of paragraphs 12 to 14.

53. Subparagraph (2) grandfathers for existing trusts the current limitations on how income and capital can be applied.

54. Paragraph 16 inserts new Schedule 1A to FA2005.

55. Paragraph 1 of new Schedule 1A provides a list of the various meanings of “disabled person”.

56. Paragraphs 2 to 7 treat a person as a disabled person if he or she would be entitled to receive a relevant payment or allowance were it

not for them being resident outside the UK or in a care home, hospital or prison.

57. Paragraph 8 defines various terms used in the Schedule.

BACKGROUND

58. Special tax rules exist for trusts for the benefit of a vulnerable beneficiary. In essence, the rules:

- reduce, following an election and annual claim, the trustees' tax liability on income and chargeable gains to an amount that, broadly, would be chargeable on the beneficiary if the gains had accrued and/or the income had arisen directly to that person;

- extend the annual exempt amount of chargeable gains that applies to trusts to match that available to individuals;

- ignore the normal charges to inheritance tax for trusts; instead, the property is treated as part of the beneficiary's estate on their death.

59. The Welfare Reform Act 2012 introduces the Personal Independence Payment, which will replace Disability Living Allowance (DLA) for working age people (16 to 64). The existing definition of a vulnerable beneficiary for tax purposes relies in part on whether the person is in receipt of DLA, so a new definition is required.

60. Current limitations on how the income and capital of a qualifying vulnerable beneficiary trust can be applied differ between taxes. In some cases, up to 50% of the capital can be applied for the benefit of a person other than the vulnerable person without the loss of the favourable tax position.

61. HMRC consulted on the changes brought into effect by this Schedule between 17th August and 8th November.

62. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 020 7147 2766 (email: alan.mcguinness@hmrc.gsi.gov.uk).

1 Childcare exemptions: meaning of disabled child

(1) In section 318B of ITEPA 2003 (childcare: meaning of “disabled” etc), in subsection (3)(a), after “allowance” insert “or personal independence payment”.

(2) The amendment made by this section has effect for the tax year 2013-14 and subsequent tax years.

EXPLANATORY NOTE

CHILDCARE EXEMPTIONS: MEANING OF DISABLED CHILD

SUMMARY

1. This clause adds a further reference to the definitions of "disabled child" provided for in section 318B(3) of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA). The effect is to allow tax relief for employer-supported childcare to continue where a child is in receipt of a Personal Independence Payment (PIP) rather than a Disability Living Allowance (DLA).

DETAILS OF THE CLAUSE

2. Subsection (1) of the clause amends section 318B(3)(a) ITEPA by adding a reference to a personal independence payment.

3. Subsection (2) of the clause provides that the amendment is to come into effect on or after Royal Assent to the Finance Bill.

BACKGROUND NOTE

4. The Government announced, as part of the June 2010 Budget, its intention to reform DLA with effect from 2013-14. Proposals for replacing DLA with a new PIP formed part of the consultation on welfare reform, and PIP was introduced in Part 4 of the Welfare Reform Act 2012.

5. The purpose of the benefit is to contribute to the extra costs faced by long-term disabled people to leading full and active lives.

6. Tax relief for employer-supported childcare is available as long as certain conditions are met. Normally the age criterion for a child is until the first week of the September following their 15th birthday. However, for disabled children that is extended to the first week of the September following their 16th birthday.

7. Definitions for qualifying disabled children include being in receipt of DLA which now needs to be extended to children in receipt of PIP to ensure consistency of treatment in line with welfare reforms.

8. PIP will initially be phased in for new applicants; therefore for disabled children the reference to both DLA and PIP is required until such time as DLA is replaced completely.

9. If you have any questions about the change, or comments on the legislation, please contact Su McLean-Tooke on 020 7147 2665 (email: susan.mclean-tooke@hmrc.gsi.gov.uk).

Order made by the Treasury, laid before the House of Commons under section 74(4) of the Finance Act 1994, for approval by resolution of that House within twenty-eight days beginning with the date on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2013 No. XXXX

INSURANCE PREMIUM TAX

The Insurance Premium Tax (Relevant Allowance) Order 2013

Made - - - -	*2013*
Laid before the House of Commons	*2013*
Coming into force - -	*2013*

The Treasury make the following Order in exercise of the power conferred by section 71 of the Finance Act 1994(**a**).

1. This Order may be cited as the Insurance Premium Tax (Relevant Allowance) Order 2013 and comes into force on DATE 2013.

Amendments to the Finance Act 1994

2. In Schedule 7A to the Finance Act 1994 (insurance premium tax: contracts that are not taxable), in paragraph 3 (contracts relating to motor vehicles for use by handicapped persons)(**b**)—

(a) in sub-paragraph (2)(a) for "disability living allowance" substitute "relevant allowance";

(b) in sub-paragraph (3) for "disability living allowance" substitute "relevant allowance";

(c) for sub-paragraph (4)(b) substitute—

"(b) "relevant allowance" means—

(i) a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992(**c**) or section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**d**),

(ii) a personal independence payment under Part 4 of the Welfare Reform Act 2012(**e**) [or Part [X] of the Welfare Reform Act (Northern Ireland) 2012(**f**)], or

(iii) an armed forces independence payment under [article 79A] of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**g**).".

(**a**) 1994 c. 9.
(**b**) Schedule 7A was inserted by SI 1994/1698; there have been amendments to Schedule 7A but none are relevant.
(**c**) 1992 c. 4.
(**d**) 1994 c. 7.
(**e**) 2012 c. 5.
(**f**) 2012 c. X.
(**g**) S.I. 2011/517; relevant amendments were made by [S.I. 2012/XX] which inserted article 79A.

Names

DATE Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the relevant insurance premium tax primary law provisions following the introduction of the new personal independence payment and armed forces independence payment to ensure that they continue to have the same effect.

The effect of the Order is that the insurance premium tax reliefs that currently apply to persons who are in receipt of disability living allowance will additionally apply to persons who no longer receive disability living allowance but instead receive one of the two new specified allowances which are being phased in over a number of years.

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

EXPLANATORY MEMORANDUM TO

The Insurance Premium Tax (Relevant Allowance) Order 2013

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This instrument amends paragraph 3 of Schedule 7A to the Finance Act 1994.

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

None.

4. Legislative Context

This instrument is made under section 71 of the Finance Act 1994.

5. Territorial Extent and Application

This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

David Gauke, Exchequer Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of The Insurance Premium Tax (Relevant Allowance) Order 2013 are compatible with the Convention Rights".

7. Policy background

7.1 The Department of Work & Pensions (DWP) is reforming the welfare benefits system by bringing in the new Universal Credit system. Part of these reforms involves the phasing out of Disability Living Allowance (DLA) and the introduction of the new Personal Independence Payment (PIP) and Armed Forces Independence Payment (AFIP) (AFIP is being introduced by the Ministry of Defence (MoD) on behalf of DWP).

7.3 PIP and AFIP will for the foreseeable future operate alongside DLA (the intention is that DLA will eventually be phased out). Certain tax reliefs and exemptions

currently apply to disabled people who are in receipt of DLA and tax legislation needs to be amended if the same reliefs and exemptions are to apply in the future to people who are in receipt of PIP and AFIP.

7.4 Insurance Premium Tax (IPT) legislation provides for an exemption from IPT for premiums received under contracts of insurance that provide cover for motor vehicles insured or leased by disabled drivers who are in receipt of the mobility component of DLA.

7.5 In order to maintain the status quo for the future, the instrument inserts references to PIP and AFIP into the relevant part of the IPT legislation to ensure that recipients of these new benefits will continue to benefit from the IPT exemption which applies for contracts of insurance where disabled drivers are in receipt of DLA.

7.6 There are no plans at present to consolidate Schedule 7A to the Finance Act 1994.

8. Consultation outcome

As the changes effected by this instrument are consequential amendments required merely as a result of the reform of the welfare benefits system by the DWP and MoD, they have not been subject to consultation.

9. Guidance

The changes will be reflected in published guidance.

10. Impact

An Impact Assessment has not been prepared for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This instrument arises from changes to the benefits system being introduced by the DWP (and MoD) and does not in principle change HMRC's current tax policies. Monitoring of the changes will be done by the relevant Departments as part of their evaluation of their new benefits system.

13. Contact

Helen West at Her Majesty's Revenue & Customs Tel: 020 7147 0602 or email: helen.west@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

STATUTORY INSTRUMENTS

2013 No. XXX

VALUE ADDED TAX

The Value Added Tax (Relevant Allowance) Order 2013

Made - - - -	*2013*
Laid before the House of Commons	*2013*
Coming into force - -	*2013*

The Treasury make the following Order in exercise of the powers conferred by sections 29A(3) and 30(4) of the Value Added Tax Act 1994(**a**).

1. This Order may be cited as the Value Added Tax (Relevant Allowance) Order 2013 and comes into force on DATE 2013.

Amendments to the Value Added Tax Act 1994

2. In Schedule 7A to the Value Added Tax Act 1994 (charge at reduced rate)(**b**), in Group 3 (grant-funded installation of heating equipment or security goods or connection of gas supply), in Note 6(2), after sub-paragraph (f) insert—

“(g) personal independence payment under Part 4 of the Welfare Reform Act 2012(**c**) [or Part [X] of the Welfare Reform Act (Northern Ireland) 2012(**d**)];

(h) armed forces independence payment under [article 79A] of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**e**).”.

3. In Group 12 (drugs, medicines, aids for the handicapped etc) of Schedule 8 (zero-rating) to the Value Added Tax Act 1994—

(a) in item 14, for “disability living allowance” substitute “relevant allowance”;

(b) in Note (6)(b)(**f**), for “disability living allowance” substitute “relevant allowance”; and

(c) for Note (7)(a) substitute—

“(a) “relevant allowance” means—

(i) a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992(**g**) or section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**h**),

---

(**a**) 1994 c. 23; section 29A was inserted by section 99(4) and (7)(c) of the Finance Act 2001 (c. 9).
(**b**) 1994 c. 23; Schedule 7A was inserted by section 99(5) of, and Schedule 31 to, the Finance Act 2001. Group 3 was amended by SI 2002/1100 and Note 6 to Group 3 was amended by section 47 of, and paragraphs 47 and 48 of Schedule 3 to, the Tax Credits Act 2002 (c. 21).
(**c**) 2012 c. 5.
(**d**) 2012. c. X.
(**e**) S. I. 2011/517; relevant amendments were made by [S.I. 2012/XX] which inserted article 79A.
(**f**) Note (6)(b) was amended by S. I. 2002/1397.
(**g**) 1992 c. 4.
(**h**) 1992 c. 7.

(ii) a personal independence payment under Part 4 of the Welfare Reform Act 2012 [or Part [X] of the Welfare Reform Act (Northern Ireland) 2012], or

(iii) an armed forces independence payment under [article 79A] of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011.".

Names

DATE Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the relevant value added tax primary law provisions following the introduction of the new personal independence payment and armed forces independence payment to ensure that they continue to have the same effect.

The effect of the Order is that the value added tax reliefs that currently apply to persons who are in receipt of disability living allowance will additionally apply to persons who no longer receive disability living allowance but instead receive one of the two new specified allowances which are being phased in over a number of years.

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

EXPLANATORY MEMORANDUM TO

The Value Added Tax (Relevant Allowance) Order 2013 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This instrument amends Schedule 7A and Schedule 8 to the Value Added Tax Act 1994.

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

None.

4. Legislative Context

This instrument is made under sections 29A(3) and 30(4) of the Value Added Tax Act 1994.

5. Territorial Extent and Application

This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

David Gauke, Exchequer Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view, the provisions of The Value Added Tax (Relevant Allowance) Order 2013 are compatible with the Convention Rights”.

7. Policy background

7.1 The Department of Work & Pensions (DWP) is reforming the welfare benefits system by introducing the new Universal Credit system. Part of these reforms involves the phasing out of Disability Living Allowance (DLA) and the introduction of the new Personal Independence Payment (PIP) and Armed Forces Independence Payment (AFIP). AFIP is being introduced by the Ministry of Defence (MoD) on behalf of DWP.

7.2 PIP and AFIP will for the foreseeable future operate alongside DLA (the intention is that DLA will eventually be phased out). Certain tax reliefs and exemptions

currently apply to disabled people who are in receipt of DLA and tax legislation needs to be amended if the same reliefs and exemptions are to apply in the future in relation to people who are in receipt of PIP or AFIP.

7.3 Value Added Tax (VAT) legislation provides for a reduced rate of VAT for the grant-funded installation of heating equipment or security goods or connection of a gas supply to those who receive any component of DLA.

7.4 The VAT legislation also provides for a zero rate of VAT for disabled people, in receipt of the mobility component of DLA, leasing a motor vehicle from a lessor whose business consists predominantly of the provision of motor vehicles to such persons.

7.5 In order to maintain the status quo for the future, this instrument inserts references to PIP and AFIP into the relevant parts of the VAT legislation to ensure that recipients of these new benefits will benefit from the same VAT reduced and zero rates that apply to recipients of DLA.

7.6 There are no plans at present to consolidate Schedule 7A or Schedule 8 to the VAT Act 1994.

8. Consultation outcome

As the changes effected by this instrument are consequential amendments required merely as a result of the reform of the welfare benefits system by the DWP and MoD, they have not been subject to consultation.

9. Guidance

The changes will be reflected in published guidance.

10. Impact

An Impact Assessment has not been prepared for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This instrument arises from changes to the benefits system being introduced by the DWP (and MoD) and does not in principle change HMRC's current tax policies. Monitoring of the changes will be done by the relevant Departments as part of their evaluation of the new benefits system.

13. Contacts

13.1 Michelle Stokell at Her Majesty's Revenue and Customs Tel: 020 7147 3967 or e mail michelle.stokell@hmrc.gsi.gov.uk can answer any queries regarding the VAT zero rate element of this instrument.

13.2 John Egerton at Her Majesty's Revenue and Customs Tel: 020 7147 0238 or e mail john.egerton@hmrc.gsi.gov.uk can answer any queries regarding the VAT reduced rate element of this instrument.

STATUTORY INSTRUMENTS

2013 No.

INCOME TAX

The Income Tax (Exempt Amounts for Childcare Vouchers and for Contracted Out Childcare) Order 2013

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	*6th April 2013*

The Treasury make the following Order in exercise of the powers conferred by sections 270A(11) and 318D(1) of the Income Tax (Earnings and Pensions) Act 2003(**a**).

Citation, commencement and effect

1.—(1) This Order may be cited as the Income Tax (Exempt Amount for Childcare Vouchers and for Employer Contracted Childcare) Order 2013.

(2) This Order comes into force on 6th April 2013 and has effect for the tax year 2013–14 and subsequent tax years.

Amendment of the Income Tax (Earnings and Pensions) Act 2003

2.—(1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.

(2) In section 270A (limited exemption for qualifying childcare vouchers), in subsection (6ZA)(a)(**b**) for "£22" substitute "£25".

(3) In section 318A (childcare: limited exemption for other care), in subsection (6A)(a)(**c**) for "£22" substitute "£25".

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 amends sections 270A(6ZA) and 318A(6A) of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").

(**a**) 2003 c. 1. Section 270A(11) was inserted by paragraph 3 of Schedule 13 to the Finance Act 2004 (c. 12: "FA 2004") and amended by paragraph 2(6) of Schedule 8 to the Finance Act 2011 (c. 11: "FA 2011"). Section 318D(1) was substituted by paragraph 1 of Schedule 13 to FA 2004 and amended by paragraph 6 of Schedule 8 to FA 2011.
(**b**) Section 270A(6ZA) was inserted by paragraph 2(5) of Schedule 8 to FA 2011.
(**c**) Section 318A(6A) was inserted by paragraph 4(5) of Schedule 8 to FA 2011.

Section 270A ITEPA provides for a limited tax relief for childcare vouchers and section 318A ITEPA provides for a limited tax relief for directly contracted childcare. The amount of tax relief is determined on the basis of an estimate of an employee's relevant earnings for the tax year. For additional rate taxpayers the maximum weekly amount which can be subject to tax relief is £22.

This Order amends the maximum weekly amount which can be subject to tax relief with effect from 6th April 2013 to £25.

A Tax Information and Impact Note covering this instrument was published on 11th December 2012 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 INCOME TAX (EXEMPT AMOUNTS FOR CHILDCARE VOUCHERS AND FOR CONTRACTED OUT CHILDCARE) ORDER 2013

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends sections 270A and 318A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). These sections provide for limited tax relief where employers provide qualifying childcare vouchers or contract directly with childcare providers. As a result of the change in the rate of income tax for additional rate taxpayers, the relevant exempt value of childcare vouchers and directly contracted childcare provided for additional rate taxpayers is increased from £22 per week to £25 per week.

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

3.1 None.

4. Legislative Context

4.1 These Regulations are made by the Treasury under sections 270A(11) and 318D(1) ITEPA, and it is the first use of those powers.

4.2 If the estimate of relevant earnings indicates that the employee is an additional rate taxpayer, the level of the amount of childcare support (childcare vouchers and directly contracted childcare only), on which tax relief is available is restricted to £22 per week. This is based on a charge to income tax at 50%.

4.3 The Finance Act 2012 reduced the charge to income tax for additional rate taxpayers from 50% to 45% with effect from 6 April 2013. The amendment in this Order ensures that the exempt amount is aligned with the marginal rate of tax by increasing the amount on which tax relief is available to £25 per week.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury, Sajid Javid, has made the following statement regarding Human Rights:

"In my view the provisions of the Income Tax (Exempt Amounts for Childcare Vouchers and for Contracted Out Childcare) Order are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 In the Finance Act 2012, the Government introduced a change in the charge to income tax for additional rate taxpayers from 50% to 45%. As a consequence in order to restrict the value of tax relief available for employer-supported childcare to the value received by basic rate taxpayers, that is, approximately £11 per week, the tax exempt amount needs to be increased from £22 per week to £25 per week. The amendment only applies to individuals who joined employer-supported childcare schemes on or after 6 April 2011.

8. Consultation outcome

8.1 These Regulations were published in draft on 11 December 2012 as part of the consultation process for Finance Bill 2013.

9. Guidance

9.1 The relevant HMRC guidance will be amended in line with these Regulations.

10. Impact

10.1 The impact of this instrument on business is negligible.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note covering this instrument was published on 11 December 2012. It is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small businesses if they provide employer-supported childcare. HMRC will amend their external guidance to support employers and employees. However, the change in value carries no further burden to businesses.

12. Monitoring and Review

12.1 This policy will be monitored and assessed alongside other measures in the Government's package of personal tax and benefits changes.

13. Contact

Mrs Su McLean-Tooke at HMRC Tel: 020 7147 2665 or email: susan.mclean-tooke@hmrc.gsi.gov.uk can answer any queries regarding this instrument.

STATUTORY INSTRUMENTS

2013 No.

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. *) Regulations 2013

Made - - - -	*****
Laid before Parliament	*****
Coming into force - -	*6th April 2013*

The Treasury make the following Regulations in exercise of the powers conferred by sections 3(2) and (3) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 3(2) and (3) and 171(3), (4) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**) and now exercisable by them.

The Secretary of State and the Department for Social Development(**c**) concur in the making of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. *) Regulations 2013 and come into force on 6th April 2013.

Amendment of the Social Security (Contributions) Regulations 2001

2. In paragraph 7A(4)(a) of Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 (certain non-cash vouchers to be disregarded as payments in kind)(**d**) for "£22" substitute "£25".

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

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

(**a**) 1992 c. 4 ("the 1992 Act"). Section 3 has been amended: the relevant amendment is that made by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2: "the Transfer Act"). Section 175(4) was amended by paragraph 29 of Schedule 3 to the Transfer Act.
(**b**) 1992 c. 7 ("the Northern Ireland Act"). Section 3(2) was amended by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671: "the Transfer Order"). Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the Transfer Order.
(**c**) The functions of the Department of Health and Social Services for Northern Ireland under the Northern Ireland Act were transferred to the Department for Social Development by Article 8(b) of and Part 2 of Schedule 6 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481).
(**d**) Paragraph 7A was inserted by S.I. 2011/1000.

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 on **

Name
Date A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 ("the principal Regulations").

Part 5 of Schedule 3 to the principal Regulations provides for certain non-cash vouchers to be disregarded as payments in kind in the calculation of earnings for the purpose of establishing liability for earnings-related National Insurance contributions. Paragraph 7A provides a limited disregard for qualifying childcare vouchers where employees join a scheme on or after 6th April 2011. The amount of the disregard is determined on the basis of an estimate of an employee's relevant earnings for the tax year. For additional rate taxpayers the maximum weekly amount to be disregarded is £22.

Regulation 2 of these Regulations amends the maximum weekly amount to be disregarded with effect from 6th April 2013 to £25.

A Tax Information and Impact Note covering this instrument was published on 11th December 2012 and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. X) REGULATIONS 2013

2013 No.

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (the 2001 Regulations). It amends the value of the National Insurance contributions (NICs) disregard in relation to qualifying childcare vouchers provided for individuals subject to income tax at the additional rate of charge.

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

3.1 None

4. Legislative Context

4.1 These Regulations amend the 2001 Regulations to allow the NICs treatment of certain non-cash vouchers to be aligned with the tax treatment of such vouchers. The amendment to the disregard concerns childcare vouchers made available to individuals (chargeable to the additional rate of income tax), through an employer-supported childcare scheme. The amount to be disregarded is increased from £22 to £25 and comes into effect on 6 April 2013.

4.2 The relevant tax change which reduced the additional rate of tax from 50% to 45% was introduced in the Finance Act 2012 and will come into force on 6 April 2013. The amendment made in these Regulations mirrors the policy and wording for the related tax relief for childcare vouchers in section 270A(6ZA)(a) of the Income Tax (Earnings and Pensions) Act 2003, as amended by the Income Tax (Exempt Amounts for Childcare Vouchers and for Contracted Out Childcare) Order 2013.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These Regulations align the NICs disregard with the tax treatment of employees chargeable to the additional rate of income tax. The change reflects a change made to the tax relief for childcare vouchers which were made to support the Government's policies on providing support for childcare costs in order to encourage parents to work. These Regulations amend the amount to be disregarded for qualifying childcare vouchers for employees who joined employer-supported childcare schemes on or after 6 April 2011 from £22 to £25.

8. Consultation outcome

8.1 These Regulations were published in draft on 11 December 2012 as part of the consultation process for Finance Bill 2013.

9 Guidance

9.1 HMRC will update the guidance prepared for use by employers and parents, to include reference to the effect of this legislation.

10. Impact

10.1 The impact of this instrument on business, charities or voluntary bodies is negligible.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note relating to this instrument was published on 11 December 2012 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 new regulations apply to small business.

11.2. A Small Firms Impact Test has not been undertaken. The change introduces no further administrative burdens over and above those already in existence.

12. Monitoring & review

12.1 HMRC will monitor the impact of the Regulations in relation to childcare provisions and will review after 24 months.

13. Contact

Mrs Su McLean-Tooke Tel: 020 7147 2665 or email: susan.mclean-tooke@hmrc.gsi.gov.uk can answer any queries regarding the effect of this instrument.

STATUTORY INSTRUMENTS

2013 No. 0000

INCOME TAX

CORPORATION TAX

The Capital Allowances (First-year Tax Credits) Order 2013

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Order in exercise of the powers conferred by paragraph 3(3) of Schedule A1 to the Capital Allowances Act 2001(**a**).

Citation and commencement

1. This Order may be cited as the Capital Allowances (First-year Tax Credits) Order 2013 and comes into force on [*date*] 2013.

Extension of period in meaning of "relevant first-year expenditure"

2. In paragraph 3(1)(b) of Schedule A1 to the Capital Allowances Act 2001 (meaning of "relevant first-year expenditure") for "31 March 2013" substitute "31 March 2018".

Name
Name
Date Two of the Lords Commissioners for Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on [*date*] 2013, extends to 31 March 2018 the period during which relevant first-year expenditure must be incurred in respect of which a first-year tax credit may be claimed.

Schedule A1 to the Capital Allowances Act 2001 (c. 2) contains provision about the payment of first-year tax credits to companies in connection with certain first-year expenditure. Paragraph 3(1)(b) of Schedule A1 provides that the first-year expenditure, in respect of which a first-year tax credit may be claimed, must be incurred between 1 April 2008 and 31 March 2013 inclusive. This Order extends the period from 31 March 2013 to 31 March 2018.

(**a**) 2001 c. 2; Schedule A1 was inserted by paragraph 5 of Schedule 25 to the Finance Act 2008 (c. 9).

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

EXPLANATORY MEMORANDUM TO

THE CAPITAL ALLOWANCES (FIRST-YEAR TAX CREDITS) ORDER 2013

1. This Explanatory Memorandum has been prepared by Her Majesty's Revenue & Customs on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

The period during which relevant first-year expenditure must be incurred in respect of which a first-year tax credit may be claimed is due to end on 31 March 2013. This Instrument extends that period to 31 March 2018.

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

None

4. Legislative Context

4.1 Schedule A1 to the Capital Allowances Act 2001 ("CAA") contains provision about the payment of first-year tax credits to companies in connection with certain first-year expenditure.

4.2 Paragraph 3(1) of Schedule A1 defines relevant first-year expenditure, that is, the expenditure in respect of which a first-year tax credit may be claimed. Paragraph 3(1)(b) of Schedule A1 provides that the first-year expenditure, in respect of which a first-year tax credit may be claimed, must be incurred between 1 April 2008 and 31 March 2013 inclusive.

4.3 At Budget 2012 it was announced that the availability of first-year tax credit would be extended for a further five years.

4.4 Paragraph 3(3) of Schedule A1 provides the power to enable the Treasury to extend the period in which the relevant first-year expenditure must be incurred. This Order extends the period from 31 March 2013 to 31 March 2018.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Although subject to the negative resolution procedure, this instrument amends primary legislation. The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

"In my view the provisions of the Capital Allowances (First-year Tax Credits) Order 2013 are compatible with the Convention rights."

7. Policy Background

7.1 One hundred per cent first-year allowances for energy-saving and environmentally beneficial technologies, commonly known as enhanced capital allowances or ECAs, enable business to claim accelerated tax relief on expenditure incurred on qualifying energy-saving and water efficient technologies. The cash-flow benefit of accelerated tax relief can encourage businesses to invest in technologies that reduce water use and improve water quality.

7.2 First-year tax credits were originally introduced in 2008 for a five year period ending on 31 March 2013. They are designed to further encourage investment in energy-efficient and environmentally beneficial plant or machinery by allowing companies within the charge to corporation tax, to surrender tax losses attributable to these ECAs, for a payable tax credit (known as a first-year tax credit).

7.3 The losses that may be surrendered are specifically those attributable to ECAs claimed on energy-saving or environmentally beneficial plant and machinery. The amount of first-year tax credit that a company will receive is 19 per cent of the surrenderable loss for the relevant period, although this is subject to an upper limit. The upper limit of the tax credit is the greater of –

- the total of the company's PAYE and NICs liabilities for the relevant period; or
- £250,000.

7.4 This Order extends the period during which relevant first-year expenditure on designated energy-saving and environmentally beneficial technologies must be incurred in respect of which a first-year tax credit may be claimed for a further five years to 31 March 2018.

8. Consultation outcome

The Government does not generally consult on legislation containing straightforward technical changes to dates. However, the draft regulations and explanatory memorandum were published on 11 December 2012 as part of the consultation process for Finance Bill 2013 clauses and other tax updates.

9. Guidance

All guidance will be updated as appropriate as part of the normal process of review.

10. Impact

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

11. Regulating small business

11.1 The legislation only applies to companies. This includes all small companies but not the wider small business community

11.2 To minimise the impact of the requirements on small firms (in this case small companies) employing up to 20 people, the legislation provides a simple process for qualifying companies of all sizes to benefit from the scheme.

11.3 When the first-year tax credit scheme was introduced in 2008, following a consultation exercise, it was limited to companies only because it was considered that the compliance and Exchequer risks involved in extending the scheme to self-employed individuals and partnerships would require complex additional rules, which would make the system too cumbersome, and undermine the scheme. In addition self-employed individuals already have the benefit of a loss relief not available to companies; an individual may claim for losses made in the first four years of a trade to be deducted in calculating his or her net income for the three tax years before the one in which the loss is made.

Although companies of all sizes may claim the benefit of first-year tax credits, it is only where a company has losses that cannot be utilised in any other way that they may benefit from tax credits, for example companies starting up who may not have other profits to absorb any arising losses. As larger companies are more likely to be able to set losses against other profits (particularly those companies in a group situation), it is smaller companies that are more likely to claim first-year tax credits..

12. Monitoring and review

The take-up and annual cost of first-year tax credits are monitored through boxes on tax returns.

13. Contact

Nick Williams at HM Revenue & Customs (tel: 020 7147 2541; e-mail: nicholas.williams@hmrc.gsi.gov.uk) can answer any queries about the instrument.

2013 No.

VALUE ADDED TAX

The Value Added Tax (Reduced Rate) (Cable-Suspended Passenger Transport Systems) Order 2013

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Order in exercise of the powers conferred by sections 29A and 96(9) of the Value Added Tax Act 1994(**a**).

Citation and commencement

1. This Order may be cited as the Value Added Tax (Reduced Rate) (Cable-Suspended Passenger Transport Systems) Order 2013 and comes into force on [DATE] 2013.

Amendment of Schedule 7A to the Value Added Tax Act 1994

2.—(1) Schedule 7A to the Value Added Tax Act 1994 (charge at reduced rate)(**b**) is amended as follows.

(2) In Part 1 (index to reduced-rate supplies of goods and services), at the appropriate place insert—

"Cable-suspended passenger transport systems…………………… Group 13".

(3) In Part 2 (the groups), at the end insert—

"GROUP 13

CABLE-SUSPENDED PASSENGER TRANSPORT SYSTEMS

Item No.

1. Transport of passengers by means of a cable-suspended chair, bar, gondola or similar vehicle designed or adapted to carry not more than 9 passengers.

NOTES:

Supplies not within item 1

1. Item 1 does not include the transport of passengers to, from or within—

(**a**) 1994 c. 23; section 29A was inserted by section 99(4) of the Finance Act 2001 (c. 9); section 96(9) was amended by section 99(6) of, and paragraph 5 of Schedule 31 to, the Finance Act 2001.

(**b**) Schedule 7A was inserted by section 99(5) of, and paragraph 5 of Schedule 31 to, the Finance Act 2001; Group 12 (caravans) was inserted by section 196 of, and paragraph 6(1) and (3) of Schedule 26 to, the Finance Act 2012 (c. 14).

(i) a place of entertainment, recreation or amusement; or

(ii) a place of cultural, scientific, historical or similar interest,

by the person, or a person connected with that person, who supplies a right of admission to, or a right to use facilities at, such a place.

2. For the purposes of Note 1 any question as to whether a person is connected with another shall be determined in accordance with section 1122 of the Corporation Tax Act 2010(**a**).”.

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 inserts a new Group 13 into Schedule 7A to the Value Added Tax Act 1994 (charge at reduced rate) to provide for a reduced rate for the transport of passengers by means of certain cable-suspended vehicles designed or adapted to carry not more than 9 passengers provided that the transport is not supplied to, from or within a specified place by a person (or a person connected with that person) who supplies a right of admission to, or a right to use facilities at, that place.

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

(**a**) 2010 c. 4.

Draft Regulations laid before the House of Commons under section 221 of the Finance Act 2012, for approval by resolution of that House.

STATUTORY INSTRUMENTS

2013 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

STAMP DUTY

STAMP DUTY RESERVE TAX

The Building Societies (Core Capital Deferred Shares) Regulations 2013

Made - - - -	***
Coming into force - -	***

The Treasury make the following Regulations in exercise of the powers conferred by section 221 of the Finance Act 2012(**a**).

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with section 221(6) of the Finance Act 2012.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Building Societies (Core Capital Deferred Shares) Regulations 2013 and come into force on [ ] 2013.

(2) These Regulations have effect in relation to shares issued, and securities converted into shares, on or after [that date].

Core capital deferred shares

2.—(1) "Core capital deferred shares" are deferred shares that form part of the core tier one capital of a building society.

(2) For the purposes of this regulation—

(**a**) 2012 c. 14.

(a) "building society" and "deferred shares" have the same meanings as in the Building Societies Act 1986(**a**) (see section 119), and

(b) the reference to "core tier one capital" is to be read in accordance with the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time).

Disapplication of provisions

3.—(1) The following provisions do not apply to core capital deferred shares—

(a) section 109 of the Building Societies Act 1986 (exemption from stamp duty)(**b**),

(b) section 372 of ITTOIA 2005 (building society dividends)(**c**),

(c) section 889 of ITA 2007 (payments in respect of building society securities)(**d**),

(d) section 498 of CTA 2009 (building society dividends and interest)(**e**),

(e) section 1054 of CTA 2010 (building society payments)(**f**).

(2) Core capital deferred shares are not—

(a) loan capital under section 78(7) of FA 1986(**g**),

(b) qualifying corporate bonds under section 117 of TCGA 1992(**h**), or

(c) restricted preference shares under section 160 of CTA 2010.

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the taxation of a certain type of regulatory capital instrument that may be issued by building societies. These instruments are known as "core capital deferred shares" and are defined in regulation 2 as deferred shares that form part of the core tier one capital of a building society. Regulation 3 disapplies tax and stamp duty provisions relating to building society shares in relation to core capital deferred shares and provides that such shares are not loan capital for stamp duty purposes under section 78(7) of the Finance Act 1986, qualifying corporate bonds under the Taxation of Chargeable Gains Act 1992 or restricted preference shares under section 160 of the Corporation Tax Act 2010.

(**a**) 1986 c. 53.
(**b**) 1986 c. 56, section 109 was amended by paragraph 8 of Schedule 12 to the Finance Act 1988 (c. 39).
(**c**) 2005 c. 5. Section 372 was amended by paragraph 514 of Schedule 1 to the Income Tax Act 2007 (c. 3).
(**d**) Section 889 was amended by paragraph 27 of Schedule 1 to the Finance Act 2008 (c. 9).
(**e**) 2009 c. 4.
(**f**) 2010 c. 4.
(**g**) 1986 c. 41, section 78(7) was amended by section 154(2) of the Finance Act 2008 (c. 9) and paragraph 323 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).
(**h**) 1992 c. 12, section 117 was amended by section 84(1) of the Finance Act 1993 (c. 34), paragraph 61 of Schedule 14 and Part 5(3) of Schedule 41 to the Finance Act 1996 (c. 8), Part 3(10) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 433 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005, paragraph 231 of Schedule 1 to the Corporation Tax Act 2010 and paragraph 200 to Schedule 8 of the Taxation (International and Other Provisions) Act 2010 (c. 8).

EXPLANATORY MEMORANDUM TO

The Building Societies (Core Capital Deferred Shares) Regulations 2013

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations provide that where a building society issues deferred shares, or converts existing securities into deferred shares, that will form part of its core tier one capital ('core capital deferred shares' (CCDS)) those shares will be taxed in the same way as a company' s issued share capital.

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

3.1 None

4. Legislative Context

4.1 These Regulations are the first use of the power in section 221 Finance Act 2012 which allows the Treasury to make provisions about the tax and stamp duty consequences in relation to securities issued in pursuance of any regulatory requirement imposed by the European Union or the UK.

4.2 Regulatory provisions made by the Financial Services Authority require building societies to maintain a certain level of core tier one capital. Building societies are mutual organisation run for the benefit of their members and as such are restricted in the type of capital raising instruments that they can issue. There are specific tax rules for building societies existing tier one instruments, known as permanent interest bearing shares, which ensure that they are taxed as debt instruments. However, CCDSs will not qualify as permanent interest bearing shares. The closest equivalent instrument to a CCDS is a share in a company so these regulations ensure that the tax treatment is equivalent.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury, Greg Clarke, has made the following statement regarding Human Rights:

"In my view the provisions of the Building Societies (Core Capital Deferred Shares) Regulation 2013 are compatible with the Convention rights."

7. Policy background

7.1 CCDSs will replace a building society's existing tier one capital instruments which will not count towards tier one capital once the Capital Resource Directive IV (CRD IV) is in force. CRD IV amongst other matters aims to increase the loss absorbing capacity of regulatory capital instruments issued by financial institutions. The loss absorbing features of CRD IV compliant regulatory capital instruments leads to uncertainty on the tax treatment of such instruments.

7.2 The current tax rules were designed in relation to building socities' existing core tier one instruments which share features with debt type instruments. However, these rules are not appropriate for CCDSs which are equivalent to the issued share capital of a company, so these Regulations make provision to ensure that CCDSs are taxed as shares.

8. Consultation outcome

8.1 This measure has not yet been consulted upon.

9. Guidance

9.1 Her Majesty's Revenue and Customs Corporate Finance Manual will be updated to reflect the changes set out in this instrument as part of the normal guidance update process.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is nil.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The outcome will be subject to regular internal review.

13. Contact

Fiona Hay at Her Majesty's Revenue and Customs Tel: 020 7147 2543 or email: fiona.hay@hmrc.gsi.gov.uk can answer any queries regarding the instrument.